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## Condominiums: How Do We Know Who Repairs What?

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Condominium association clients and managers often struggle to determine whether the owner or the association must repair or maintain a certain portion of the condominium. It can be confusing, particularly if the recorded declaration is old, and possibly silent or ambiguous on the subject.

What are some of the common issues and where do we look for answers?

Common elements v. limited common elements v. units. These categories are starting points for the maintenance/repair analysis. Associations are generally responsible for common elements. Owners are generally responsible for what is defined as the "unit". Be aware those definitions can vary quite a bit from document to document. Finally, limited common elements may exist in the condominium. Those are common elements used exclusively by less than all of the units. Declarations are split fairly evenly with respect to maintenance and repair of limited common elements. If the declaration does not clearly state whether a particular item falls in one of the three categories, the Condominium Act definitions may help with the classification.

The declaration. The declaration is the contract between the owners and the association. The contract spells out maintenance and repair responsibilities. Most questions about maintenance and repair are going to be answered by going through the review of the categories above, placing an item in the category, and determining what the declaration says about maintenance and repair. In a perfect world, every single item of maintenance/repair would be listed in the declaration, specifying "association" or "owner". Everything from balconies to patio doors to lights to window sills would be included. In reality, the terms like common elements and unit are ambiguous, and declaration drafters may have listed some specific items but rarely all. A legal interpretation may be necessary.

Negligence. Even though the declaration determines the contractual responsibility, the declaration and/or common law may place financial liability on an owner. For instance, if an owner or the owner's tenant, guest, or family causes damage, the financial responsibility can be passed on to the owner. The association may be able to assess the owner under its declaration, or it may have to sue.

The "pass through" statute. The Condominium Act has a provision that can impact who pays for a repair, even if the association is contractually responsible to do the work. A.R.S. Section 33-1255(C) states that unless the declaration "otherwise

provides” when an association incurs a common expense (1) for a limited common element, it “shall” be assessed against the unit to which the limited common element is assigned, or (2) that benefits fewer than all of the units, the association “shall” assess the units benefited. In other words, the expense is “passed through” to the owner(s).

Insurance. Insurance coverage carried by associations does not change the repair responsibilities under the declaration. But, it may pay for the work that must be done. It may also provide coverage for repair of items that the association would not have to repair under the declaration.

As you can see from this basic outline, determining maintenance and repair responsibilities, particularly in condominiums with older documents, can be a challenge. If you have any questions about this subject or your documents, contact James Hazlewood or another attorney in the firm.