



May 18, 2016

Members of the Scottsdale Terrace Condominium Association

**RE: Notice of Maintenance Obligations**

Dear Association Member:

This law firm represents the Scottsdale Terrace Condominium Association ("Association"). Sometimes confusion arises within condominium settings regarding who is responsible to maintain and repair certain items and who pays for such maintenance and repairs. As such, this letter is being sent to you to provide a quick reference as to what the Association's governing documents and Arizona law obligate you to do as owners versus the obligations of the Association.

Arizona law provides that an association's declaration of covenants, conditions and restrictions are a contract and must be enforced as written. *Powell v. Washburn*. So, the starting point for an analysis of the various maintenance obligations is the Condominium Declaration for the Association, as well as any amendments thereto (collectively, the "CC&R's"). The Association's CC&Rs do not have one specific provision that spells out all of the respective maintenance and financial obligations of the owners and the Association. The respective maintenance obligations are divided into what type of element is at issue: (i) the unit, (ii) a limited common element, or (iii) a common element. Enclosed, you will find a checklist that provides a visual snapshot of the types of elements and the relative maintenance obligations and financial obligations therefore.

Owners must maintain their units and most of the limited common elements, which are common elements that are typically restricted for use by one owner. Owners are responsible for any repairs or replacements of the limited common elements associated with their particular unit, such as awnings, windows, balconies, porches, storage sheds, as well as all repairs needed within the unit, i.e., any damage from water leaks, replacing water heaters/furnaces, fixtures, and electrical wiring, etc.

The Association is responsible for the maintenance, repair and replacement of common elements, those items that benefit all of the owners such as driveways,

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the pool, parking areas, buildings, roofs, etc. While the Association is obligated to maintain the common elements, the costs incurred may be passed through to the benefitted owners in circumstances when not all of the owners benefit. This is because A.R.S. §33-1255 requires that common expenses that do not benefit all owners must be passed through directly to the benefitted owner(s).

In addition, the CC&Rs require that the Association maintain insurance so that the common and limited common elements may be replaced if damaged, for example, by fire. The Association's policy covers units to the extent that certain structural components would be repaired or replaced; however, the Association does not maintain insurance that covers owners' personal items (furniture, jewelry, clothing, etc.) and fixtures such as cabinets. Owners are encouraged to maintain their own insurance policies. It is also important to know that when proceeds from the Association's insurance policy are used to repair or replace something, the deductible will be assessed to the benefitted owner(s).

We hope this letter and the attached "checklist" are helpful. Please reach out to Vision Community Management if you have any questions regarding your obligations as an Owner.

Regards,  
GOODMAN LAW OFFICES, P.C.

Clint G. Goodman  
For the Firm

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**SCOTTSDALE TERRACE CONDOMINIUMS ASSOCIATION**

**MAINTENANCE CHECKLIST**

ITEM	TYPE OF ELEMENT	WHO MAINTAINS?	WHO PAYS?
Unit – All interior finished surfaces, doors, windows	Part of Unit	Unit Owner	Unit Owner
Heating & A/C units, hot water heaters, plumbing, electrical wiring sewer facilities & fixtures located within unit	Part of Unit	Unit Owner	Unit Owner
Windows and doors (including the glazing, sashes, frames, sills, thresholds, hardware, flashing and other components)	Limited Common Element*	Unit Owner	Unit Owner
Heating & A/C units, hot water heaters, plumbing, electrical wiring, sewer facilities & fixtures located outside unit that serve the unit exclusively	Limited Common Element*	Unit Owner	Unit Owner
Patios and balconies	Limited Common Element*	Unit Owner (Except Walls)	Unit Owner
Assigned Parking Space	Limited Common Element*	Association	Association
Parking areas, asphalted areas, walkways, driveways, stairways, private streets, sewer facilities (some)	Common Element **	Association	Association
Recreational amenities	Common Element **	Association	Association
Roofs, exterior walls enclosing patios and balconies	Common Element **	Association	Benefitted Unit Owner(s)

\* Although Unit Owners must maintain the Limited Common Elements, if the Association is required to make any structural repairs or replacements of those Limited Common Elements, the Association is authorized to pass those costs through to the benefitted Unit owner(s). In addition, Unit owners are required to maintain all Limited Common Elements in “good, clean and sanitary condition.” If any Unit Owner fails to maintain his or her Limited Common Elements in “good, clean and sanitary condition,” the Association is authorized to make any necessary repairs and charge those costs to the Unit Owner.

\*\* Even though the Association is responsible to maintain, repair or replace Common Elements, Unit Owners causing any damage are responsible for such costs of repair or replacement.



May 18, 2016

Members of the Scottsdale Terrace Condominium Association

**RE: Resolution re Water Intrusion**

Dear Association Member:

This law firm represents the Scottsdale Terrace Condominium Association ("Association"). The Board of Directors ("Board") of the Association is charged with the repair, maintenance, and upkeep of the common elements and certain limited common elements of the Association. Generally, the cost of such maintenance is a common expense to be borne by the Unit owners of the Association. However, Unit Owners are responsible for the maintenance and repair of their Unit and certain areas used exclusively by the Unit Owner, or damage caused to the Common Elements due to their own negligence or willful conduct.

Due to several issues with Units being damaged as a result of residents' negligence or failure to timely report and/or address water intrusion and flooding issues within the condominium, the Board has determined that it is necessary to adopt a Resolution setting forth the policy and procedures for preventing water intrusion damage, clarify Unit Owners' duties to timely report and/or address water intrusion and to set forth some guidelines on ultimate liability therefore.

Please reach out to Vision Community Management if you have any questions regarding your obligations as an Owner.

Regards,  
GOODMAN LAW OFFICES, P.C.

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# SCOTTSDALE TERRACE CONDOMINIUMS ASSOCIATION

## RESOLUTION OF THE BOARD CONCERNING WATER INTRUSION AND DAMAGE

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### AUTHORITY

WHEREAS, the Association is governed by a Declaration of Horizontal Property Regime and Declaration of Covenants, Conditions and Restrictions for the Association recorded at Instrument No. 2006-0398125, Official Records of Maricopa County, Arizona, and all amendments thereto (the "Declaration");

WHEREAS, all Units within the Association are governed by the Declaration;

WHEREAS, Sections 1.43 and 6.3 of the Declaration allow the Association to adopt reasonable rules and regulations from time to time;

WHEREAS, Section 5.1 of the Declaration provides that the Association is responsible for the maintenance and repair of the common elements;

WHEREAS, pursuant to Section 5.1 of the Declaration:

Owners, Lessees and Occupants shall immediately notify the Association of (a) any broken or leaking water pipes, toilets, clothes washers or hot water heaters and (b) any water intrusion into the Buildings from the roofs or windows, and any Unit Owner, Lessee or Occupant who obtains actual knowledge of but does not immediately notify the Association of such matters shall be strictly liable to the Association and to the other Owners, Lessees and Occupants for any damage to the Common Elements or other Units caused by water intrusion into the Common Elements or other Units that could have been avoided if the Owner, Lessee or Occupant had immediately notified the Association of the broken or leaking water pipes, toilets, clothes washers or hot water heaters or the water intrusion into the Buildings from the roofs or windows.

WHEREAS, Section 5.2 of the Declaration provides that Unit Owners are responsible for the maintenance and repair of their Unit and certain areas used exclusively by the Unit Owner;

WHEREAS, pursuant to Section 5.2 of the Declaration:

Each Owner shall be strictly liable to the Association and the other Owners, Lessees and Occupants for any damage to the Common Elements or other Units caused by water intrusion into the Common Elements or other Units from the Owner's Unit.

WHEREAS, Section 5.3 and 7.2.4 of the Declaration provide that Unit Owners are responsible for damage caused to common elements or Units by the, willful or negligent misconduct or acts of the Unit Owner or the Owner's lessees, occupants or invitees;

WHEREAS, AR.S. § 33-1255(C), (E) allows the Association to assess certain common expenses to Unit Owners; and

WHEREAS, the Board of Directors is extremely concerned about water damage to Units and Common Elements, and the potential ramifications of such damage to the members of the Association, as well as any members specifically affected due to the damage caused to Units and the Common Elements and the increase in insurance premiums that result :from numerous water claims;

NOW, THEREFORE, based on the power authorized to the Board of Directors and the responsibilities of the Owners, the Board of Directors hereby adopts the following resolution and makes the provisions below part of the Association's Rules and Regulations:

**RULES RELATING TO MAINTAINING UNITS**  
**AND REPORTING WATER LEAKS**

1. Each Owner shall install steel-braided toilet tank fill hoses with steel connectors and ball valve shutoffs at the wall.
2. Each Owner shall install copper, steel-braided, or nylon mesh tubing on ice maker refrigerators to replace plain plastic tubing.
3. Each Owner shall install steel-braided hoses with steel connectors and ball valve shutoffs at the wall connecting any and all bathroom or kitchen sink(s) to its water supply.
4. Each Owner shall install copper or steel-braided hoses with steel connectors on any and all dishwasher water connections.
5. Each Owner shall install copper or steel-braided hoses with steel connectors on any and all washing machine connections. Each Owner shall also install a catch pan for their washing machine.

6. Failure of a Unit Owner to install the steel-braided connections as set forth in the preceding Paragraphs 1-5 shall be deemed willful or negligent for purposes of liability and responsibility for resulting damage.

7. Pursuant to Section 5.2 of the Declaration, "Any Owner, Lessee or Occupant that leaves their Unit unoccupied for more than seven (7) consecutive days shall turn off the water to all toilets and the clothes washer in the Unit." If an Owner leaves a Unit vacant for more than seven (7) days, the Owner shall shut off the water to the Unit. If the Owner is on a common water line and cannot shut off all of the water to the Unit, the Owner shall shut off all water valves inside of the Unit to shut off water to the Unit to the greatest extent possible. Failure of a Unit Owner to meet the obligations of Section 5.2 of the Declaration shall be deemed willful or negligent for purposes of liability and responsibility for resulting damage.

8. If a Unit is vacant for more than more than seven (7) days, the Owner shall have a person perform weekly inspections of the Unit to ensure that no water leaks or other damage has occurred to the Unit. Failure to provide for inspection of the Unit shall be deemed willful or negligent for purposes of liability and responsibility for resulting damage.

9. Pursuant to Section 5.2 of the Declaration, "All doors and windows in the perimeter walls of a Unit are Limited Common Elements allocated to the Unit. The glazing, sashes, frames, sills, thresholds, hardware, flashing and other components of the doors and windows are part of the doors and windows allocated as Limited Common Elements." Each Owner shall be responsible to inspect and maintain all windows and doors to ensure that they are free from and impermeable to any leak, water intrusion or flooding. Failure to ensure that the windows and doors of a Unit are free from and impermeable to any leak, water intrusion or flooding shall be deemed willful or negligent for purposes of liability and responsibility for resulting damage.

10. Each Owner shall provide the Association with an emergency contact person with appropriate contact information, including telephone number.

11. Every Unit Owner shall have an absolute duty to report any leak, water intrusion or flooding observed in their Unit, in the Common Elements that serve or adjoin their Unit or the limited Common Elements allocated to their Unit to the Association through its duly authorized managing agent immediately upon discovery. Failure to report an observed leak, water intrusion or flooding within 24 hours of discovery shall be deemed willful or negligent for purposes of liability and responsibility for resulting damage. The duty to report shall apply whether the Unit Owner became aware of the leak, water intrusion or flooding personally or by means of information provided by their tenants, invitees, licensees, guests or co-occupants of their Unit.

12. In the event of water damage or a damage claim, each affected Owner must provide the name of the Owner's insurance company, agent name, address and telephone number to the

Association within forty-five (45) days from the date that the Association requests this information.

13. Any duty of an Owner pursuant to these Rules and Regulations shall not be excused by reason of a Unit being used and/or occupied by a tenant, guest, invitee, licensee or any individual or party other than the Unit Owner.

**RULES COVERING THE COSTS OF DAMAGE IF  
LESS THAN THE INSURANCE DEDUCTIBLE**

1. If damage occurs solely to one Unit and/or the Limited Common Elements allocated to a Unit that is less than the Association's insurance deductible the owner of the Unit shall be responsible for full payment of the cost for repair, replacement or restoration thereof unless the damage was caused by another Unit Owner's willful or negligent act.

2. If damage occurs to more than one Unit and/or the Limited Common Elements allocated to the Units but not the Common Elements that is less than the Association's insurance deductible, each respective Unit Owner shall be responsible for full payment of the cost of the repair, replacement or restoration thereof unless the damage was caused by another Unit Owner's willful or negligent act.

3. If damage occurs to one or more Units and/or the Limited Common Elements allocated to the Units and to the Common Elements that is less than the Association's insurance deductible, the costs of repair, replacement or restoration thereof shall be prorated based on the percentage of damage caused to each Unit and the damage caused to the Common Elements, and each respective Unit Owner shall be responsible for full payment of his or her pro rata share and the damage caused to the Common Elements, unless the damage was caused by another Unit Owner's willful or negligent act.

4. If damage occurs solely to the Common Elements that is less than the Association's insurance deductible, the Association shall be responsible for the costs of repair, replacement or restoration thereof unless the damage was caused by another Unit Owner's willful or negligent act.

5. Notwithstanding the foregoing paragraph 4, if damage occurs solely to a Common Element(s) or Limited Common Element(s) that benefit fewer than all of the Units that is less than the Association's insurance deductible, the owner of the Unit(s) to which such Common Element(s) or Limited Common Element(s) are allocated shall be responsible for full payment of the cost for repair, replacement or restoration thereof, unless the damage was caused by another Unit Owner's willful or negligent act.



6. If a willful or negligent act of a Unit Owner (or the Owner's residents, tenants, guests or agents) causes damage, the Unit Owner shall be responsible for the full costs of repair, replacement or restoration thereof.

7. The Board of Directors shall determine the costs to be paid by each party if the amount of damage is less than the Association's insurance deductible. Any amount determined to be the payment obligation of a Unit Owner to repair the Common Elements or any Unit and/or the Limited Common Elements allocated to a Unit other than the Owner's Unit shall be charged to the Owner and collectible in the same manner as a regular assessment.

8. If damage is caused to the Common Elements that is not covered by insurance, and if such damage was caused by the willful or negligent act of an Owner, or an Owner's lessees, occupants or invitees, the Association shall charge the cost to repair such damage to the Owner, which is collectible in the same manner as a regular assessment.

9. Each Owner should be aware of the amount of the Association's insurance deductible so that the Owner carries proper insurance coverage to meet any gaps in insurance coverage.

#### **RULES RELATING TO PAYMENT OF INSURANCE DEDUCTIBLES**

1. In the event that loss or damage covered by the Association's insurance policy is caused by a willful or negligent act of a Unit Owner, the Owner's lessees, occupants or invitees or from unknown causes within the Unit without any negligence being attributable, the Association shall pay the deductible as a Common Expense, and shall assess said Common Expense deductible to the Unit Owner.

2. In the event that more than one Unit is involved in any insured loss and the cause of the damage cannot be attributable to any one Unit or Owner, the deductible will be proportionately distributed among all Units who have experienced the loss.

3. In the event that the cause of the insured loss is directly attributable to a failure in operation of a Common Element, and a Unit owner has not been willful or negligent in timely reporting the damage as set forth hereinbefore, the Association shall pay the deductible.

#### **RULES REGARDING INSURANCE CLAIM PROCEDURES**

1. In the event a Unit Owner or resident is insured for any loss to the condominium Unit or their property, the Association shall be entitled to require the Unit Owner or resident to claim any loss under such Owner or resident's insurance policy.

2. Unit Owners must file all claims with the Association's managing agent, not with the Association's insurance agent. The managing agent will not refer the claim to the Association's insurance agent until the Unit Owner provides proof that the claim exceeds the applicable insurance deductible.

3. The Association shall disburse insurance proceeds pursuant to the requirements of the Declaration and/or A.R.S. § 33-1253(E).

The Board of Directors adopted this Resolution at a duly called meeting on the \_\_\_ day of 5/14/2016.

DATED this \_\_\_\_ day of 5/14/2016.

Scottsdale Terrace Condominium Association

By:   
Its: President