

NASSAU GROVE HOME OWNERS ASSOCIATION, INC.
SPECIAL RESOLUTION NO.2019-01
MODIFICATION OF MASTER INSURANCE POLICY TO COMPLY WITH THE
CODE OF REGULATIONS

WHEREAS, the Unit Property Act requires the Council and owners to comply with the Act and the Code of Regulations; and,

WHEREAS, the Declaration established the plan of condominium ownership for "Nassau Grove" on or about May 30, 2007 and defines the terms used in the Declaration and in the accompanying Code of Regulations; and,

WHEREAS, the Code of Regulations, on or about June 29, 2007, was declared to govern Nassau Grove; and,

WHEREAS, the Code of Regulations of Nassau Grove provides for the creation of the Nassau Grove Home Owners Association, Inc. (The "Association"); and,

WHEREAS, the Code of Regulations for Nassau Grove and the Third Amendment to the Code of Regulations for Nassau Grove Condominium, Article III, Section 3.1 entitled Number and Qualifications assigns the governance of the affairs of the condominium to the Board of Directors known as the Council; and,

WHEREAS, the Council appointed a Document Review Group (DRG) comprised of Nassau Grove Owners to review our governing documents to determine if ambiguities exist with regard to maintenance and repair and insurance responsibilities of the Association and Unit Owners; and,

WHEREAS, the DRG found that the existing governing documents assign maintenance and repair of Units and the Limited Common Elements appurtenant thereto to the Unit Owners; and,

WHEREAS, the DRG further found that the existing governing documents, specifically Section 6.1(f) of the Code of Regulations, assign insurance responsibility of Units and the Limited Common Elements appurtenant thereto to the Unit Owners; and,

WHEREAS, the law firm of Steen, Waehler & Schrider-Fox, LLC, confirmed the findings of the DRG in a written legal opinion dated January 11, 2019 (attachment 1); and,

WHEREAS, the DRG made a recommendation to the Council to adopt the DRG's findings that the existing Code of Regulations require that the Council insure the Common Elements against casualty and liabilities and require that the Unit Owners insure their own Units and the Limited Common Elements appurtenant thereto; and,

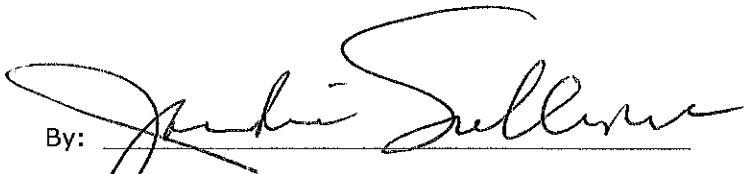
WHEREAS, the Council hereby accepts the work, findings, and recommendation of the DRG at the April 5, 2019 Council meeting; and,

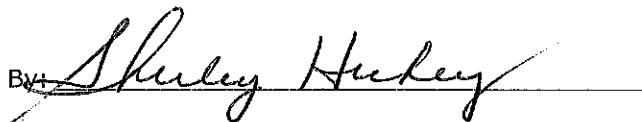
WHEREAS, the Council hereby also accepts the legal opinion issued in support of the DRG's work, findings, and recommendations,

NOW, THEREFORE, in consideration of the foregoing BE IT RESOLVED that the Council, as the governing Board of Directors of Nassau Grove, shall modify the existing Condominium Master Policy to insure against casualties and liabilities of the general Common Elements only, and shall require that Unit Owners insure their own Units and the Limited Common Elements appurtenant thereto in accordance with Section 6.1(f) of the Code of Regulations. The Council shall give advance, written notice to all Unit Owners of the effective date of the removal of individual Units and the Limited Common Elements appurtenant thereto from the Condominium Master Policy. The Council shall continue to maintain a Condominium Master Policy that provides insurance coverage of Nassau Grove general Common Elements and shall continue to require that Unit Owners insure their own Units and the Limited Common Elements appurtenant thereto, in accordance with Section 6.1(f) of the Code of Regulations, until such time as the Unit Owners might make appropriate amendments to the Code of Regulations and/or the Declaration to modify the foregoing described insurance requirements.

We hereby certify that this Special Resolution 2019-01 was duly adopted by the Council on April 5, 2019.

For the Nassau Grove Home Owners Association Council

By: 
Jackie Sullivan, President
Nassau Grove Council

By: 
Shirley Hickey, Secretary
Nassau Grove Council

Attachment

JAMES F. WAEHLER*
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TEMPE BROWNELL STEEN

limited to representing charitable and non-profit organizations without compensation, except where compensation is Court ordered

January 11, 2019

Via U.S. First Class Mail & Email: nrichard@seascapepm.com

Nassau Grove Home Owners Association, Inc.

Board of Directors

c/o SeaScape Property Management

Attn: Neal Richard

P.O. Box 1761

Millsboro, DE 19966

RE: Limited Common Elements - maintenance/repair & insurance issues

Dear Board Members:

This letter is sent as a follow up to the verbal discussions that we have had concerning the above-referenced issues and to confirm the legal opinion that I have given the Board during said discussions.

Beginning first with the issue of maintenance and repair, it is my legal opinion that maintaining and repairing the Limited Common Elements is the general responsibility of each individual Unit Owner and not the responsibility of the Association. Section 8(h) of the Declaration identifies and describes the Limited Common Elements (a subset of Common Elements that includes, among other things, structural parts of the building, roof and exterior siding) and states that "[m]aintenance and repair of these Limited Common Elements, as per Section 5.6(b) of the Code of Regulations, shall be borne by the Owner, unless amended by the Association." Similarly, Section 5.6(b) of the Code of Regulations ("COR") states that:

Except for the portions of his Unit required to be maintained, repaired and replaced by the Council, **each Unit Owner shall be responsible**, except if repair or replacement is caused by a catastrophic loss covered by the Condominium Master Policy, **for the maintenance, repair and replacement, at his own expense of his Unit** as the same is defined in Section 7 of the Declaration **and the Limited Common Elements appurtenant thereto** as defined in Section 8 of the Declaration. (Emphasis added.)

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Concluding that Limited Common Element maintenance and repair is a Unit Owner responsibility is not only supported by the plain language of the above-referenced sections of the Declaration and COR, but said conclusion is further buttressed by the fact that each Owner is also responsible for insuring the Limited Common Elements appurtenant to his or her Unit, a responsibility that often goes hand in hand with a maintenance and repair responsibility. Section 6.1 (f) of the COR states that:

It shall be required of each Owner at each Owner's expense to provide public liability, Property damage, title and other insurance with respect to such Owner's own Unit and Limited Common Elements appurtenant thereto. Each Owner, including the Developer, is required to carry public liability and Property damage insurance on their respective properties and Units and Limited Common Elements appurtenant thereto and to furnish copies of certificates thereof to the Association.

The above quoted language is quite clear, in my opinion, that the responsibility for insuring the Limited Common Elements belongs to each Unit Owner.

Maintaining insurance on the Limited Common Elements, as described in and required by Section 6.1(f), is an important obligation of each Unit Owner, particularly when one considers Section 7.5 of the COR. Section 7.5 states that, in the event of damage or destruction by fire or other casualty to any Unit or to any Limited Common Elements appurtenant to a Unit, the Unit Owner is responsible for clearing away the debris, damaged improvements, etc., at his or her expense. Section 7.5 further states that the Unit Owner is also responsible for repairing or rebuilding the damaged or destroyed Unit or appurtenant Limited Common Elements. Therefore, again, it is important that each Unit Owner insures both his or her Unit and the appurtenant Limited Common Elements as required by Section 6.1(f), not only to comply with said section of the governing documents, but also to enable the Unit Owner to comply with the repair/rebuilding requirements in Section 7.5.

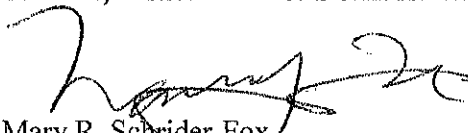
Of course, there may be occasions when the Association's master policy covers a casualty because the general Common Elements have been affected and/or because of a catastrophic loss to the Property (which is a possibility identified in Section 5.6(b) of the COR when repair or replacement responsibilities of both Unit elements and Limited Common Elements might shift). When the Association's master policy provides coverage, the usual question that arises is "who is responsible for the deductible?" The answer to that question is that the Unit Owners affected by the damage or destruction are responsible for paying the deductible as the deductible is a cost associated with the loss that is not covered by the proceeds of insurance (see Section 7.2(b) of the COR).

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In closing, I trust that the above addresses the several issues that we have previously discussed concerning the Limited Common Elements. Should you have any additional questions, please do not hesitate to let me know.

Very truly yours,

STEEN, WAEHLER & SCHRIDER-FOX, LLC



Mary R. Schrider-Fox

MRSF