

Huntington
Homeowners'
Association

Legal Opinion on Repairs

The following is the text of a letter received from the association's lawyer on the question of responsibility for exterior repairs to privately-owned units.

December 27, 2005

HUNTINGTON HOME OWNERS' ASSOCIATION, INC.

Board of Directors

Timothy Baker, Treasurer

350 2nd Street North, #11

St. Petersburg, FL 33701

Re:Responsibility for Repair of Exterior Surfaces

Dear Board of Directors:

This letter is in response to your inquiries, and to my earlier telephone conversation with Timothy Baker, Treasurer, regarding responsibility for repair and replacement of exterior surfaces. The background you provided us regarding this situation is as follows:

"One of our unit owners brought to the attention of the board what appeared to be minor rot of some exterior trim boards. The board in the past has replaced rotting boards on other units, as part of routine maintenance and repair of exterior surfaces. So, in this case we hired a home-repair contractor to replace the rotting boards. Once the job got under way, the contractor discovered that there might be more damage than appeared. He removed some clapboards from the side of the house and discovered that there was considerable water damage to the underlying sheathing. The contractor believes that this damage was caused by water getting behind some metal flashing that may have been improperly installed when the building was constructed in 1998. The clapboards themselves were not damaged, except in the process of being removed."

You have informed me that the parties involved agree that it is the Association's responsibility to pay for the replacement of the rotted trim boards, as they are clearly "exterior surfaces." The parties also agree that it is the homeowner's responsibility to pay for repairs or replacement of the damaged sheathing, as the sheathing does not constitute an exterior surface. You are uncertain about

responsibility for replacement of the damaged clapboards, and have asked us whether that is the Association's, or the unit owner's, responsibility. I have reviewed the Association Governing Documents, and my findings and conclusions are as follows:

1. The Declaration of Covenants, Conditions, Restrictions and Easements of the Huntington (the "Declaration"), Article II, describes the maintenance responsibilities of homeowners and the Association.

2. Article II, Section 9.(a)(ii) provides in pertinent part: "The Association shall provide maintenance . . . as follows: (ii) the exclusive right to painting, repair and replacement of exterior building surfaces and roofs" The purpose of the Association's responsibility to paint, repair and replace the exterior building surfaces and roofs is to ensure a uniform appearance and structural consistency throughout the Community.

3. The only exceptions to the Association's responsibility for exterior building surfaces are "maintenance, repair or replacement resulting from any fire, wind, flood, tornado, hurricane, accident, intentional act or other casualty . . . ," or repairs or replacement that are required "because of any gross negligence or the willful act of any . . . Owner or any member of such owner's family or household" None of these exceptions apply to the instant situation.

4. I have been informed that, in situations of "normal" wear and tear, the Association replaces clapboards, since it has always considered them "exterior building surfaces." The only difference in this situation is that the clapboards were in good condition, and only became damaged due to their removal, which was necessary in order to repair the rotted trim and damaged sheathing.

5. It is my opinion that the clapboards do constitute "exterior building surfaces," and as such, the Association is responsible for repairing and/or replacing them, even though the clapboards only have to be removed and replaced in order to repair other damage.

You have also asked how to handle these repairs, when some items (sheathing) are the responsibility of the owner, and others (trim and clapboards) are the Association's responsibility. It would be best if the work were performed by one contractor, under one proposal. Also, you have advised me that the sheathing will need to be repaired and/or replaced before the trim and clapboards can be replaced.

Therefore, it is my recommendation that (unless the owner's insurance company objects) the Association hire a contractor to perform the work, and coordinate scheduling and payment with the owner. The proposal can be itemized, and an invoice sent to both the owner and the Association, for each party's portion of the work. If the owner is unresponsive, or refuses to cooperate, the Association can, subject to Article II, Section 9.(c), have the repairs/replacement done, including the owner's portion, and assess the owner for the costs of the required work.

I have been informed that, in a similar situation, the owners hired a contractor, had the work done, and sent the Association a bill for its portion of the work. It is my understanding that the owners hired the contractor because they were in a hurry to sell the home, and that there was no problem with quality or completion of work, and that the Association paid for the necessary repairs/replacement of the trim and clapboards. This is not a problem from a legal perspective, but it is important to make sure that the contractor performing repairs is properly licensed and insured.

I trust that this opinion has been responsive to your inquiries. Again, I apologize for the length of time it has taken you to receive this letter, and I assure you that we will do everything possible to address your needs in a timely manner in the future.

If you have any questions about this matter, or if we may be of additional assistance in any way, please do not hesitate to contact me.

Very truly yours,
Anne M. Hathorn
For the Firm
AMH/