

Window Responsibility 180 Cook St 10/27/2014

Pursuant to Section 1.40 of the Declaration, a Unit is defined as:

The air space contained within the enclosed rooms occupying part of a floor or floors in the Building, and bounded by the unfinished interior surfaces of the perimeter walls (or the demising walls, if two or more Units adjoin each other), unfinished interior surfaces of floors (or the lowermost floor in respect of the Units containing more than one level), unfinished interior surfaces of ceilings (or the uppermost ceilings, in respect of the Units containing more than one level), and the unfinished interior surfaces of windows and window frames, doors and door frames of the Buildings, and which is separately identified on the Condominium Map.

Based on the above definition, the windows are outside of the boundaries of the Units, and are therefore a part of the Common Elements. Section 2.6 of the Declaration further provides that windows are Limited Common Elements allocated exclusively to the Unit.

Section 9.1 of the Declaration generally states that the Association is responsible for the maintenance, repair and reconstruction of all of the Common Elements to include the Limited Common Elements, whether located inside or outside of the Units in accordance with Article Nine of the Declaration. Section 9.2(b) more specifically provides, however, that the Owner of any Unit to which a Limited Common Element is appurtenant shall keep such Limited Common Elements in a clean and neat condition, and shall be responsible for its repair, maintenance, improvements and reconstruction in accordance with Section 9.3. Section 9.3 states that all repairs and replacements shall be substantially similar to the original construction and installation and shall be of first-class quality, but may be done with contemporary building materials and equipment.

Despite the general statement that the Association maintains the Common Elements, including the Limited Common Elements, rules of construction and interpretation state that a more specific provision will control over the more general. As such, the specific provision in Section 9.2(b) which states that an Owner is to maintain the Limited Common Elements appurtenant to his or her Unit controls. Accordingly, it is our opinion that Owners are responsible for the maintenance of the windows appurtenant to their Units, which would include both repair and replacement, if needed.

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