



April 6, 2023

Via Email

Board of Directors
Breakaway West Association
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CONFIDENTIAL

COMMUNICATION

ATTORNEY CLIENT PRIVILEGED

Re: *Breakaway West Association/Garage Roof and Pool Area*
Our File No. 8139.0056

Dear Members of the Board:

Altitude Community Law P.C. has been retained to provide an opinion regarding the maintenance, repair, and replacement of the garage roof/pool area, and whether it is considered a project common element and therefore, a common expense. This letter is in response to that inquiry.

QUESTION and RESPONSE

Is the garage roof/pool area a project common expense?

Yes.

RECOMMENDATION

The swimming pool and its deck are project common elements, as defined by the Declaration, regardless of the fact they are located on the roofs of a portion of the garage units. As such, the maintenance and repair costs are a common expense to all owners, not an individual garage owner expense.

FACTS

The Declaration for Breakaway West Association was recorded in the Eagle County Clerk and Recorder's Office on November 28, 1972 at Reception No. 122245.

The Declaration, in Section 1(g), defines project common elements to mean "...**property of any kind owned by the Association** of Unit Owners...and used or **reserved for the common use of the members** of such Association and their guests; such **property may include**...parking areas, **recreational facilities**...equipment, materials, or other property...necessary or convenient thereto." [Emphasis added].

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Section 1(k)(1) and (2) provide that “Common Expenses” mean “all sums lawfully assessed against...the project common elements” and “expenses of...maintenance, repair or replacement...of the project common elements.”

DISCUSSION

The Declaration provides three separate categories of elements within the Association: general common elements, limited common elements and project common elements. Common elements and project elements are maintained by the Association, not individual owners. Additionally, project common elements are owned by the Association, which includes recreational facilities. The swimming pool and its decking are located on the roofs above the garage units (which are not considered any of the three elements). The swimming pool and its decking are separate and apart from the garage roofs and are considered a project common element.

The pool decking is an integral and necessary part of the pool; the swimming pool cannot exist without its decking. The garages are individual units and while they have roofs, the roofs are not an integral part of the garage; the garage can exist without the roof. A shade or other cover can be placed on top and the garage still functions as a garage. As such, garages are categorized separately as units as opposed to elements. Additionally, if one garage requires maintenance and repair, it does not affect the use of garages by other owners. Further, because garages, and their roofs, are units and not common elements or limited common elements, they are not owned or maintained by the Association, they are owned and maintained by individual owners.

The pool and its deck however, are not functional as separate items and one relies on the structural integrity of the other. The pool deck leaks must be repaired to ensure the swimming pool remains functional. Failure to maintain and repair them results in the closure of the pool, making it unavailable to all owners. The pool is a common area, and, pursuant to the Declaration, any recreational facility reserved for common use of the members is categorized as a project common element, and the maintenance responsibility is the Association's.

Maintenance of project common elements is a common expense (See Sections 1(k)(1) and (2) of the Declaration). Additionally, Section 18 provides “assessments made upon the owners by the Association...provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the...project common elements.” Therefore, any costs for maintenance and repair of project common elements are an assessment upon all owners, based on the floor areas, as provided for in Exhibit B of the Declaration and Exhibit A of the First Supplement to the Declaration.

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CONCLUSION

Because the swimming area is a recreational facility reserved for common use of members, it is a project common element, and its maintenance is therefore a common expense shared by the owners of the Association pursuant to the Declaration.

Our recommendations and opinions are based on the facts stated or assumed and known to us as of the date of this letter, but are not a guarantee of results or a specific outcome. The documents relied upon in preparing this letter are set forth on Schedule A.

We hope this letter satisfactorily addresses the question presented to us. Should you have any further questions or comments or desire further clarification, please do not hesitate to contact us.

Sincerely,

A handwritten signature in blue ink, appearing to read 'DAF', with a stylized flourish extending from the end.

David A. Firmin
Altitude Community Law P.C.

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SCHEDULE A

Documents Reviewed:

1. Declaration
2. Condominium Maps