

Sunridge at Avon II Condominium Association
c/o Board of Directors
PO Box 2621
Avon, CO 81620

Date: March 23, 2022

Dear Owners:

RE: FREQUENTLY ASKED WATER LEAK QUESTIONS DOCUMENT

Over the years, the Association has experienced a number of questions regarding maintenance and repair obligations for a variety of different events. In an effort to address these issues, and questions that arise from these types of water leaks, we have prepared the following responses to frequently asked questions.

Please keep in mind that the answers set forth below are intended to supplement the Resolution Regarding Procedure for Investigation of Water Leaks and Repairs adopted by your Board of Directors and enclosed herein.

1. Who is responsible for maintaining and repairing components damaged by water?

Upon review of the Declaration, each individual owner has an obligation to maintain, repair and replace those items set forth in Article XIII, Section 8.2 which generally consists of all components of the Unit, including Limited Common Elements appurtenant to the Unit. The Association, on the other hand, has a maintenance obligation for all of the General Common Elements and Limited Common Elements to the extent such maintenance affects the structural components of the buildings, such as the exterior walls of the balconies.

The general rule is that any damage to the interior of a Unit is the obligation of that Unit owner to repair. This would include water damage that starts in one Unit and then impacts the Unit below. In cases like this, absent negligence as discussed below, the owners of each Unit are required to maintain their own Units. Moreover, because the Declaration defines the Unit boundaries to include the perimeter walls, floors and ceilings, any damage to the finished surfaces including drywall, plaster, gypsum, lath, furring, wallboard, plasterboard, paneling, surface texture, wallpaper, paint, tiles, carpet, hardwood and any other finished flooring or other materials is the owner's responsibility. Accordingly, in the event of water infiltrating into a Unit, the owner would be responsible for drying out the carpet, replacing wet carpet if necessary, repairing wet drywall, etc. This would include leaks from shower pans, shower heads, sinks, water supply lines to faucets and toilets.

Who holds the obligation to make a repair (i.e., the Association or the owner) is typically dictated by the location of the damage. If the area damaged is within the Unit, then absent negligence, it is the Unit owner's responsibility to repair. For example, even if the source of the leak was outside the Unit and within an area maintained by the Association, the Unit owner is still responsible for repairing any interior damage. Said another way, just because the Association has the maintenance obligation for the roofs, that does not automatically mean the Association has the obligation to repair damage caused to the interior of a Unit when water has entered the Unit through a roof component. The Association would only be responsible for such interior repair if the Association was negligent in its maintenance obligations over the roof and that negligence caused the interior damage. Generally speaking, the source of the water is irrelevant to determining who is responsible for repairing the damage. It is the location of the damage which is determinative in most situations.

To be clear, absent negligence, each individual owner is responsible for any damages to the interior finishes of the walls, ceilings and floor, as well as any damage to their personal belongings, furnishing, kitchen counters and cabinets or bathroom vanities and all appliances.

Even though the owner may have a responsibility for drywall, if as part of emergency services, the Association causes to be removed any portion of drywall, the Association at its expense will replace the damaged drywall but not texture and tape.

2. Under what circumstances does negligence shift the underlying obligation to pay for the maintenance or repair of the damaged areas?

As discussed above, the Declaration requires the owner to maintain and repair finished surfaces of the walls, ceilings and floors, so if there were drywall stains or cracking, the owner would be responsible for repair or replacement. However, if someone else's negligence was the cause of the damage to the wall surface, then under a negligence theory the person that caused the damage should be responsible for the cost of repair. For example, the upstairs Unit owner failed to turn off running water that resulted in damage to the downstairs Unit. Or if an owner had a waterbed that burst or a fish tank that broke causing damage to either other Units or to components maintained by the Association, then that owner is responsible for the repairs. Accordingly, should a loss occur due to negligence on the part of the owner, the Association may have the ability to assess common expense costs related to the repair of Association maintained components to the individually negligent owner.

3. How do you analyze whether someone was negligent?

In laymen's terms, to be negligent is to act in some careless way that causes harm to another. From a legal perspective, there are four elements of a negligence claim:

- A. Duty. The person that caused the damage owed a legal duty to the plaintiff (the damaged party) under the circumstances;
- B. Breach. That person (originating Unit) breached that legal duty by acting or failing to act in a certain way;
- C. Causation. It was the defendant's (owner of unit in which leak commenced) actions (or inaction) that actually caused the plaintiff's (damaged party) injury; and
- D. Damages. The plaintiff (damaged party) was harmed or injured as a result of the defendant's (owner of Unit in which the leak commenced) actions (or inaction).

With respect to the first item, both the Association and owners owe a duty of care to properly and timely maintain and repair the components they are obligated to maintain and repair under the provisions of the Declaration set forth above. As a result, each owner has the obligation to maintain their Unit in a manner so that it will not cause damage to another Unit.

Whether or not an owner breached this duty is a determination made by the Board of Directors on a case by case basis looking at the facts surrounding the leak.

What if I have a Fish Tank?

Fish tanks are designed to last between 10 – 20 years with proper maintenance (per www.aquariumsatwork.com). If the tank is not properly maintained, this time frame could be substantially shorter. As fish tanks are optional, the Board will have a presumption that any fish tank damage will be considered negligent.

What if my Waterbed Leaks ?

As with fish tanks, water beds are difficult to maintain and cause damage if not properly maintained. Any loss from a waterbed will have a presumption of negligence and the owner will be responsible for all costs.

What if there is Extra Electricity usage due to Remediation and Restoration work?

If no negligence exists, any extra costs for electricity used by the Unit, that is above and beyond the normal usage of the occupant(s), for any remediation and restoration work, for example: fans, dehumidifiers, etc., is a matter that is solely the financial responsibility of the owner, and a matter that is solely between the owner and any occupants of the Unit and their respective insurance companies.

What if anyone in the Unit turns off any of the fans, dehumidifiers, etc. before the remediation/drying is complete?

If anyone in a Unit turns off or moves any remediation equipment before the remediation is complete, the Unit owner is responsible for any additional costs associated with any delays in the remediation process.

Owner/Landlord and Renters/Guests responsibilities?

An owner must understand that they are responsible and liable for their renters or guests' actions and duty of care to properly and timely report water leaks, backups, floods, etc., just as if the owner were living in the Unit themselves.

If no negligence exists, any displacement, loss of use, or damages to an owner's or occupants' personal belongings is a matter that is solely the financial responsibility of the owner, and a matter that is solely between the owner and any occupants of the Unit and their respective insurance companies.

Is always having adequate insurance coverage important for all parties?

YES. It is always recommended that all owners and renters each always have the correct and adequate insurance in place to assist and protect themselves with all of the matters described above, and any other reasonable and customary property ownership, liability, and/or rental, or renters insurance matters, including but not limited to, water/sewer back up coverage, loss assessment coverage, loss of use coverage (a minimum of 12 months), and personal property coverage.