

ANDERSON LAW OFFICE, PLLC

2605 East Cliff Road
Burnsville, MN 55337

Christine L. Anderson, Esq.
christine@andersonlawofficepllc.com

OFFICE (952) 440-8900

30 August 2021

Board of Directors
St. Frances Woods Townhomes No. 7, Inc.

VIA E-MAIL ONLY

Re: Patio Maintenance, Repair & Replacement/Cost Responsibility

Dear Board:

Kimberly Gannon from Premier Association Management advised me the Board requested a legal opinion regarding the obligation of the Association/Unit Owners for patios within the Association community.

Documents Reviewed. I reviewed the original Declaration recorded on 7-28-000 (for the 7th Addition) and First Amendment to Declaration recorded on 9-10-2003 (for the 8th Addition).

Maintenance Obligations of Association for Patios. Under Article III, Section 1 of the Association's original Declaration, patios (unless constructed as part of the original construction) are specifically *excluded* from the Association's maintenance, repair and replacement obligation and are thus the sole obligation of Unit Owners to maintain, repair and replace. The Association's sole obligation with regard to these patios would be under the Architectural Control Committee provisions of Article IX of the Declaration.

For patios that *were* constructed as part of the original construction, the Association would have the obligation to maintain, repair and replace the patios. The rest of this opinion covers this scenario.

Patios are Limited Common Elements. Under Article II, Section 1(d)(ii) of the Declaration, patios are defined as Limited Common Elements meaning they are allocated exclusively to the Unit which they serve.

Another source of authority for classifying patios constructed as part of the original construction as a Limited Common Element is the First Amendment to Declaration. Section 2(d)(ii) carries over the same definition of Limited Common Elements and specifically identifies patios as being a Limited Common Element.

Since Patios are Limited Common Elements, the Association may Assess the Maintenance, Repair and Replacement Cost for the Patio to the Unit Owner. Under Article IV, Section 1 of the Declaration, assessments for Common Expenses must be allocated equally among the Units, except that special allocations of Common Expenses are permitted as provided in the Declaration. This Section provides that "pursuant to Minn. Stat. 515B.3-115(h)(2)" the Association may assess any Common Expense benefitting less than all of the Units, against the Units benefitted on the basis of (i) equality; or (ii) square footage of the area maintained, repaired or replaced; or (iii) actual cost incurred with respect to each Unit. There is no longer a statute 515B.3-115(h)(2); this was likely in effect in 2000 when the Declaration was first drafted

but was changed with subsequent legislation. The Association can still rely on the substantive provisions under this sentence, however, to charge the cost of patio maintenance, repair and replacement back to the Unit needing or requesting the work, under the (iii) formula with the actual cost incurred with respect to each Unit.

515B Provides Additional Authority to Assess Patio Cost to Units. Additionally, Chapter 515B of Minnesota statutes can supplement an Association's Declaration where the Declaration is silent or for clarification. Under Minn. Stat. 515B.3-115(e):

(1) any common expense associated with the maintenance, repair, or replacement of a limited common element shall be assessed against the units to which that limited common element is assigned, equally, or in any other proportion the declaration provides; and

(2) any common expense or portion thereof benefiting fewer than all of the units may be assessed exclusively against the units benefited, equally, or in any other proportion the declaration provides.

This is clear authority under 515B for the Association to assess the cost of patio maintenance, repair and replacement exclusively to the Unit where the work is being performed.

Moving Forward. Practically speaking, if the Association receives notice of a patio defect or an Architectural Control request to maintain, repair or replace a patio, the Association is responsible for doing the maintenance, repair or replacement, but the cost of said maintenance, repair and replacement can and should be assessed back to the Unit where the work was performed. If the Owner doesn't pay, the assessment is a lien on the land and a personal obligation of the Owner to pay.

Please let me know if you need any more information about this subject matter.

Sincerely,

Christine Anderson

Christine Anderson