



Vista Pointe Townhomes Centennial, CO 80112

MAINTENANCE FREE LIVING is one of the most misunderstood and overstated concepts of living in an HOA. I have had numerous residents in Vista Pointe tell me the developer or a Realtor told them “the HOA takes care of everything outside” or “if it was part of the original construction, the HOA will maintain it”. The problem is these types of statements that overstate or oversimplify and can eventually lead to an antagonistic relationship with their HOA.

Generally speaking, HOA’s do not form themselves. In Vista Pointe’s case, the city and county required the developer to create the association to address common maintenance, utilities, and insurance issues. HOA’s are complicated legal entities with many legal documents including Articles of Incorporation, Declaration of Covenants (Dec’s), and Bylaws being the most commonly discussed. Federal, state, county, and city laws, acts, plats and maps can all come into consideration. 2020’s pandemic brought the CDC and Tri-County Health into the HOA management mix. This just exemplifies the difficulty in drafting governing documents that can stand the test of time and address every possible maintenance issue.

The Declaration of Covenants (Dec’s) are filed in Arapahoe County and run with the land. This means they are always in effect and anyone who owns a unit is subject to them. In simpler terms, the Dec’s are the part of the contract between the owners and the HOA that define their respective responsibilities. The Board of Directors, management and the HOA’s legal counsel are responsible for interpreting and following the governing documents using their best business judgment and legal advice and opinions.

Owners cannot rely on statements from anyone regarding maintenance responsibilities. Only the governing documents and more specifically the Dec’s define the owners and the HOA’s maintenance responsibilities. This will not change unless the governing documents are amended and approved by 67% of the owners. Even a simple amendment to the Dec’s would cost between ten and twenty thousand dollars.

In 2020, the Board of Directors sought the legal opinion of the HOA's attorney regarding maintenance of Limited Common Elements (LCE). As the community is now reaching 20 years old and more owners were requesting maintenance of their LCE. Many were relying on statements attributed to the developer or a Realtor rather than the Dec's. Others relied on only a portion the Dec's. The Dec's discussion of LCE definitions and maintenance occurred in multiple sections. The attorney was able to review the entire document and render the following legal opinion:



November 9, 2020

Via Email Only

Board of Directors
Vista Pointe Townhome Association c/o Mitch Powell
921 South Dearborn Way Aurora, CO 80012

Re: *Opinion Re: Maintenance and Repair of Limited Common Elements Our File No. 8835.0006*

Dear Members of the Board:

Denver Office **William H. Short** Direct 303.991.2030
bshort@altitude.law

Altitude Community Law P.C. has been retained to provide an opinion regarding responsibility for the maintenance and repair of exterior decks and patios. This letter is in response to that inquiry.

QUESTION and RESPONSE

- Q: Are the Unit Owners or the Association responsible for maintenance and repair to limited common elements (LCE) or for improvements added to the common elements (CE)?**
- A: The Unit owner is responsible for maintenance and repair of LCEs, i.e. an area used by one or a few Units, to include patios, balconies, porches, exterior steps, stoops or stairs serving only one condominium Unit, and individual Unit sidewalk steps and walkways. The Association is responsible for common sidewalks, common staircases and common steps.**

The governing documents and insurance documents are available on the HOA website: www.vistapointe.org

The Declarations of Covenants (Dec's) explain the maintenance responsibilities of the owners and HOA. They also explain the insurance responsibilities of both the owners and the HOA. Insurance generally does not cover maintenance responsibilities or damage caused by the lack of maintenance.

Vista Pointe HOA's policies have a high property damage deductibles (\$5000) and in most cases that involve a single unit or wind and hail damage an owner can be responsible for all or a proportionate share of the deductible. Please review the insurance newsletter on the website and make sure you have adequate personal insurance (HO-6 policy with increased loss assessment coverage).

Insurance requires prompt reporting to trigger a claim. Interior damage that occurs over a long period of time regardless of the cause will usually revert to the owner to repair. Report any interior or exterior damage promptly, every time it occurs, to create a time line and record for a potential claim.

While there is supposed to be property insurance coverage for all the exterior elements of the property including many limited common elements. HOAs all over metro Denver have witnessed the unwillingness of some insurers to honor their policies over the past decade. Governing documents don't always address allocations of shortfalls for limited common elements leaving it to the Boards, managers, and attorneys to use their best business judgement. Owners in HOA's, just like any type of homeowner, must be prepared for emergency cash outlays.

Doors and door frames, windows and window frames, basement windows and enclosures have always been homeowner maintenance responsibilities. Interior damage resulting from lack of maintenance or anything that could be defined as "old damage" is the homeowners responsibility. The HOA will investigate current or active reports of damage to determine the maintenance responsibility. We may ask for photographic evidence of damage or the cause when known. Exterior repairs that are the responsibility of the HOA will always be scheduled as promptly as practical.

In closing, your volunteer Board and management do their best to interpret and follow the governing documents. In a perfect world with unlimited budget, every request would be handled promptly and with perfect results. HOA's are not perfect by design. They are run by volunteers with limited budgets and little or no training. Most of these volunteers want to do what is best for their neighbors and themselves and have the best of motives. Owners and residents need to give these volunteers the benefit of the doubt and respect the decisions they are forced to consider.