

COMMON AREA AND REPAIR

ASSOCIATION COMMON AREA
MAINTENANCE, REPAIR, AND
REPLACEMENT OBLIGATIONS



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One of the most important responsibilities of a homeowner's association is the protection, preservation, and enhancement of property values. One way to accomplish this is through the aesthetic appeal of the community. In all condominium projects and in most townhome projects, the association is charged with the responsibility of maintaining, repairing, and replacing the exterior components of the residential units and all surrounding landscaping. In detached single-family residence communities, the association is often not responsible for the actual maintenance, repair, and replacement of the home's exterior components and surrounding landscaping, but the association frequently has architectural controls over the same and the ability to require owners to perform any necessary work.

While most association Declarations (CC&Rs) provide the necessary framework for and authority granting the association access to perform its common area responsibilities, the legislature recently clarified this right through the passage of Senate Bill 90. Section 57-8-7 of the Utah Condominium Ownership Act was amended to clarify that the association is "responsible for the maintenance, repair, and replacement of the common areas and facilities" and that owners are "responsible for the maintenance, repair, and replacement of the owner's unit." Similar language was amended into the Utah Community Association Act at Section 57-8a-224. In addition to this clarification on maintenance responsibilities between the association and its owners, this new legislation also specifically grants the association the right to access a unit or lot when necessary to perform its common area maintenance obligations after giving "reasonable notice" to the unit or lot owner. The legislation defines "reasonable notice" as either a written notice that is hand delivered at least 24 hours before the proposed entry, or when reasonable under the circumstances in the case of an emergency repair. An "emergency repair" is defined as "a repair that, if not made in a timely manner, will likely result in immediate and substantial damage to a common area or to another unit [or lot]."

While the association has the right to access a unit or lot when necessary to perform its maintenance obligations, it is responsible for any damage it causes to a unit or lot it accesses under the new legislation. This affords unit and lot owners some protection against the accessing association.

Associations accomplish these important maintenance obligations through its duly elected board of directors who have a duty to ensure that this responsibility is carried out. It is important for every board member to understand the association's maintenance obligations and the association's legal rights and limitations regarding the same. Every board member is charged with the duty to preserve, protect, and enhance the marketability of the project's units or lots pursuant to the covenants, conditions, and restrictions contained in the Declaration.