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**MEMORANDUM**

To: Ocean Winds HPR

From: Holly R. Jensen, Esquire

Date: September 9, 2016

Re: Maintenance Responsibilities of Regime v. Owner

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**ISSUE**

The Board would like a breakdown of the maintenance responsibilities of each Owner in Ocean Winds HPR versus the maintenance responsibilities of the Regime itself.

**BRIEF ANSWER**

The Master Deed puts the onus on the Regime to perform maintenance and repairs to the general common elements and limited common elements, and puts the onus on the owners to contribute pro-rata to the cost of the maintenance and repair of the general and limited common elements. The onus of performing maintenance and repairs to the Apartments is on the owners themselves. If an owner fails to maintain and repair his Apartment, the Regime can perform the work and assess the owner for the costs thereof.

**DISCUSSION**

Pursuant to the Master Deed of Ocean Winds Horizontal Property Regime, dated July 28, 1987, and recorded in Book H167, Page 183 in the Office of the RMC for Charleston County ("Master Deed") each owner is charged with maintaining his Apartment, which is the legal term for each condominium unit. "Every Apartment owner shall at his own expense at all times well and substantially repair, maintain and keep his Apartment including without limitations all internal installations therein providing water, electricity, air condition, and telephone and television services, all fixtures belonging to such units in good order and condition and shall be liable for all loss or damage

whatsoever caused by his failure to perform any such work diligently, and, in the case of such failure after reasonable notice to perform shall reimburse the Regime for all expenses incurred by the Regime in performing any such work authorized by the Board of Administration or management agent.” Master Deed § 11.01.

The Master Deed defines the boundaries of each Apartment as follows: “[T]he vertical boundaries of the Apartments are the unfinished inner surface of the perimeter walls as shown on the plans, and the horizontal boundaries are the unfinished inner surfaces of the ceilings and floors.... [A]ll spaces, interior partitions and other fixtures and improvements within the boundaries of an Apartment are a part of the Apartment. All furring, wall board, plaster board, plaster, paneling, tile, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces are part of the Apartment.” Master Deed § 2.03. Thus, maintenance in good repair of the systems falling within these Apartment boundaries is the owner’s responsibility.

Further, any “attic, doorsteps, stoops, porches, screened or otherwise, balconies, decks, patios, compressors, mailboxes, and all exterior doors and windows or other fixtures, hot water heaters located outside the Apartment, or mechanical apparatus designed to serve one (1) or more, but less than all the Apartments, are limited common elements allocated exclusively to such Apartment or Apartments.” Master Deed § 2.06.

A distinction must be drawn between limited common elements, which are allocated for the exclusive use of one or more but less than all units, and general common elements, which are used by all units. The general common elements consist of the land underlying the buildings, along with “the foundations, crawl spaces, exterior stairways, outside walkways, entrances and exits, elevators, pool, poolhouse and recreational facilities, landings, roofs, yards, gardens, irrigation systems, unassigned parking and carport areas, compressor platforms, spaces for garbage and trash containers, downspouts, gutters and outside lighting.” Master Deed § 2.05.

The Master Deed goes on to state that in the event “any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of an Apartment, any portion thereof serving more than one (1) Apartment or the general common elements is a part of the general common elements.” Master Deed § 2.05.

Understanding the distinction between Apartments, limited common elements, and general common elements is central to the question posed by the Board. As stated above, Apartment owners are responsible to maintain their Apartments. Master Deed § 11.01. Apartment owners are also responsible for the expenses of “maintenance, repair and replacement of limited common elements” on a pro-rata basis with any other owners to whom those limited common elements have been allocated. Master Deed § 5.03. Apartment owners must also contribute pro-rata to the expenses of administration of the Regime and towards the cost of maintenance and repair of the general common elements. Id.

## **CONCLUSION**

The Master Deed thus clearly states that the Regime is responsible to perform maintenance and repairs to the general common elements and limited common elements. The Regime then passes these costs on to the owners in the form of assessments, so that each owner contributes pro-rata to the maintenance and repair of the general and limited common elements. Responsibility falls to the owners themselves to perform maintenance and repairs to the Apartments. If an owner fails to maintain and repair his Apartment, the Regime can perform the work and assess the owner for the costs thereof.