

McLean Gardens Condominium

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To: All Unit Owners
From: The Board of Directors
Re: Repairing Casualty Damage to Units
Date: February 26, 2014

INTRODUCTION

As all of us who live in McLean Gardens know, occurrences resulting in sudden damage (“casualty damage”) to units from water and other causes are, unfortunately, not uncommon. We also know that when such damage occurs, confusion may arise concerning insurance coverage and the respective responsibilities of the Condominium Association and of individual unit owners. The Board of Directors believes, therefore, that it may be helpful to provide unit owners with a summary and clarification of the provisions of the Association’s insurance coverage and of its governing documents relating to these matters.

INSURANCE COVERAGE

Condominiums carry “single entity” damage insurance. This means that there is a single insurance policy (the “Master Policy”) covering the entire property, both units and common elements. One insurance company will pay to have damage fixed after a fire, flood or other casualty, without regard to whether the damage is in a unit or in the common elements, or both. The McLean Gardens Condominium Association, using common funds, purchases this coverage every year. The Master Policy covers the basic buildings, including standard unit flooring, cabinets, major appliances, etc. It does not cover a unit owner’s furniture or other personal property, and it does not cover improvements (such as wallpaper or upgraded fixtures) installed by the unit owner.

Like most property damage insurance, the Association’s Master Policy has a “deductible.” In the post-September 11 insurance market, both premiums and deductibles have risen sharply. The deductible on our Master Policy has increased to \$25,000.00 per occurrence. This means that there is no coverage under the Master Policy unless the total cost of repairing the damage from a single fire, flood or other casualty incident is more than \$25,000.00. Under our Bylaws, the deductible, when there is an insurance claim, is a common expense, and will be paid by the Association. However, in any situation where casualty damage costs less than \$25,000.00, there

will be no insurance claim submitted under the Master Policy. In such a case, the owner of a damaged unit might find that he/she is responsible for paying for all of the repairs to the unit.

To avoid the possibility of having to pay thousands of dollars for unit repair costs, each owner should have an individual condominium owner's ("HO-6") insurance policy, and should make sure that the policy, or an extra endorsement to the policy, provides "building coverage" or "dwelling coverage." All owners should review this with their own insurance agents and should make certain that they have adequate coverage.

RESPONSIBILITIES OF ASSOCIATION

In the absence of Master Policy insurance coverage, responsibility for basic maintenance and repairs is governed by our Bylaws and by the Chart of Maintenance Responsibilities attached to the Bylaws. These documents provide, generally, that the Association will pay for the cost of repairing damage to the common elements, and that the owner of a damaged unit will be responsible for the cost of all unit repairs. There are some important exceptions to the general rule, however. One of these exceptions is that the Association is responsible for repairing both unit and common element damage caused by water coming from "plumbing and related systems and components thereof." This would include leakage from domestic hot and cold water supply pipes and fixtures, and from sanitary sewer pipes and fixtures, but not from pipes that are part of the air conditioning and heating systems. Furthermore, the Association is not responsible for repairing such damage in any unit where the negligence of the occupants was the primary source of the problem. In addition, the Association has the right to recover its repair expenses from any party whose act, neglect or carelessness caused the damage. With respect to leaks from appliances attached to plumbing systems (e.g., hot water heaters, dishwashers, icemakers, etc.), the Association will be responsible for repairing unit and common element damage except in cases where the leak damage resulted from a resident's negligence.

Regarding the standard of repair for which the Association is liable, the Bylaws provide that repairs and replacements are to be "substantially similar to the original construction." Thus, repairs and replacements made by the Association shall restore the damaged components to the configuration and standard of finishes existing in the original construction, at the time of condominium conversion. Damaged plaster and drywall will be patched and the patched area will be painted white or off-white, in the discretion of the Association. Repairs performed by the Association will not include any other painting or replacement of wall coverings, or restoration of upgrades, improvements or betterments made to any unit. Any such upgrades, improvements or betterments to a unit may be restored by the unit owner, at the unit owner's sole expense.

Finally, it should be noted that the Association has the right, but not the obligation, to arrange for emergency water removal and such other emergency repairs as may be necessary for the protection of the Condominium and the unit owners. The cost of any such emergency repairs made to a unit shall be paid by the owner of the unit if not covered under the Master Policy or caused by plumbing leaks as described above.

RESPONSIBILITIES OF OWNERS

As noted above, each unit owner is responsible for routine maintenance and repair of his/her unit, and for the cost of repairing casualty damage to the unit if there is no claim under the Master

Policy, or if the damage is caused by water coming from a source other than plumbing and related systems (for example, from roof, window or foundation leaks or from leaks from air conditioning or heating systems). In addition, in instances where the Association is responsible for repairs, the unit owner must pay for any repairs that go beyond restoring the unit to its original condition at the time of condominium conversion, and must reimburse the Association for repairing damage for which the owner was at fault.

Finally, to avoid potential liability for repair costs, unit owners must engage in preventive maintenance by replacing the unit's hot water heaters, plumbing fixture water supply lines and plumbing fixture service valves before they have reached the end of their useful lives. (The National Association of Home Builders has determined that the average lifetime of a hot water heater is 14 years, and that the average lifetime of PVC unit plumbing fixture water supply lines and plumbing fixture service valves is 15 years.) Where any hot water heater, water supply lines or service valves have reached or exceeded the applicable average lifetime set forth above, and where failure occurs, resulting in damage to a unit or common elements, the unit owner shall be deemed to be negligent and shall be liable for the costs (except to the extent covered by the proceeds of insurance) of repairing all damage.

SUMMARY

1. Generally, each unit owner is responsible for maintaining and repairing his/her unit, at the unit owner's expense. The owner is also responsible for repairing casualty damage to the unit if there is no claim under the Master Policy.
2. If there is a claim under the Master Policy, the deductible is a common expense, and is paid by the Association. If the damage was caused through a resident's act, neglect or carelessness, the Association has the right to recover the amount of the deductible from the unit owner.
3. If water damage originates from "plumbing and related systems and components thereof," the Association is responsible for repairing the damage to common elements, and to units, but the Association is not responsible for repairing such water damage to a unit if the damage was caused by the negligence of that unit's occupants. If the damage was caused through someone else's act, neglect or carelessness, the Association has the right to recover its costs from that party.
4. In the absence of a Master Policy insurance claim, the Association is not responsible for the cost of repairing water damage to a unit when the water did not flow from "plumbing and related systems and components thereof", (including appliances and closed systems). The unit owner is responsible for the cost of repairing unit damage in those instances.
5. When the Association is responsible for repairs to a unit, its responsibility extends only to restoring the unit to its original condition at the time of condominium conversion, irrespective of any later upgrades, improvements or betterments.

If you have any questions, please contact Community Manager, Pervaiz Ahmed at (202) 966-9780.