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June 2, 2025

**PRIVILEGED AND CONFIDENTIAL - ATTORNEY WORK PRODUCT AND
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VIA ELECTRONIC MAIL (legendscondoassociation@gmail.com)

Thomas Boylan, Treasurer
The Legends at Grove City Condominium Association
309 Nicklaus Court
Grove City, PA 16127

Re: Opinion Letter Regarding Limited Common Elements

Dear Mr. Boylan:

I am writing to you in response to your request for our legal opinion with regard to The Legends at Grove City Condominium Association (“Legends” or the “Association”). The Association Executive Board (“Board”) has asked me to identify who is responsible for payment of Limited Common Expenses – including expenses for maintenance and repairs of roofs, siding, driveways – pertaining to the multi-family Units, and how such payments are to be made.

I have formed my opinion based on my review and analysis of the Uniform Condominium Act (the “Act”), 68 Pa.C.S. §§ 3101, et seq.; the Association’s governing documents, consisting of the Declaration of Condominium (“Declaration”) as amended and the Bylaws; and your helpful “Questions for William Labovitz” memorandum and “History of the Legends at Grove City” memorandum. I note that I do not have, and I did not review, the policies developed by the Board to clarify the governing documents.

The starting point is to define the Limited Common Elements. Pursuant to Section 1.3.2(h) of the Declaration, “Limited Common Elements” include Common Elements described in Section 3203(4) of the Act. Under Section 3203(4) of the Act, “Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit’s boundaries, are limited common elements allocated exclusively to that unit.” Consistent with the Act, Section 1.3.2(h) specifically includes “driveways and patios located adjacent to a Unit” in the list of Limited Common

Elements. *See also* Declaration Article III (“Limited Common Elements” include driveways and patios, which “are for the exclusive use of the Unit which they serve”).

Notably, Limited Common Elements are only associated with multi-family Units at Legends. Section 1.3.2(h) of the Declaration expressly provides that “[d]riveways and patios servicing single-family units are not Limited Common Elements.”

The Association’s definition of Limited Common Elements is consistent with the definition found in other communities. Limited Common Elements are a subset of Common Elements (defined in the Act as “all portions of a condominium other than the units”) that include porches, driveways, patios and other fixtures outside of Units that serve one or more Units but not the entire community.

Next, we must review the assignment of maintenance, repair and replacement responsibilities with respect to these Limited Common Elements.

As an initial matter, Section 2.4 of the Declaration (Maintenance Responsibilities) generally provides that “the Units and Common Elements shall be maintained and repaired by each Unit Owner and by the Association in accordance with the provision of Section 3307 of the Act, except as expressly set forth to the contrary herein.” Under Section 3307 of the Act, “the association is responsible for maintenance, repair and replacement of the common elements [including Limited Common Elements] and each unit owner is responsible for maintenance, repair and replacement of his unit.”

This clear delineation of responsibility as to the Association and its Unit Owners found in the Act is modified by Section 2.4 of the Declaration as follows:

- Unit Owners are responsible for “ordinary maintenance and repair of patio Limited Common Elements” (emphasis added).
- The Association is responsible for “structural repairs or replacements of all general and limited Common Elements on multi-use buildings, including but not limited to the roofs, exterior walls, patios, driveways, and landscaping areas.”
- “Owners of single-family units shall be responsible for maintenance of the exterior of their units, including but not limited to roofing, siding, windows, doors, patios and driveways.”

In my experience, it is common for associations to assume responsibility for exterior, structural repairs needed to prevent structural failure, including roofs and exterior walls. Patios and driveways vary depending on the governing documents of particular communities.

In the matter and hand, it is my opinion that based on Section 2.4 of the Declaration, Unit Owners are responsible for maintenance and non-structural repairs of their patios, which pertain to cosmetic or functional improvements. The Association is responsible for maintenance, repairs and replacements of all other Limited Common Elements (both structural and non-structural) of the multi-family Units under Section 2.4 of the Declaration incorporating Section 3307 of the Act.

The next point to consider is how the maintenance, repairs and replacements of the Limited Common Elements of the multi-family Units are paid for.

We start with definitions. Common Expenses are broadly defined by Section 3103 of the Act as “expenditures made or liabilities incurred by or on behalf of the association, together with any allocations to reserves, including general common expenses and limited common expenses.” Per Section 3314(b) of the Act, “common expenses shall be assessed against all the units in accordance with the common expense liability allocated to each unit (section 3208) in the case of general common expenses.”

Under the same Section 3103 of the Act, Limited Common Expenses are defined as “expenses identified as such pursuant to section 3314(c).” Section 3314(c) of the Act, in turn, provides that “(1) Any common expense associated with the maintenance, repair or replacement of a limited common element shall be assessed in equal shares against the units to which that limited common element was assigned at the time the expense was incurred. (2) Any common expense benefiting fewer than all of the units shall be assessed exclusively against the units benefited.”

The Declaration’s definition of “Limited Expenses” also incorporates Section 3314(c) of the Act discussed immediately above. However, the Declaration goes on to state that this definition in the Act may be modified by Section 2.4 of the Declaration.

Pursuant to Section 2.4 of the Declaration, “All Common Expenses associated with the maintenance of a Limited Common Element shall be assessed as Limited Expenses against the Units to which such Limited Common Element was assigned at the time the expense was incurred . . .” It would appear from this provision that certain maintenance work performed by the Association on Limited Common Elements shall be charged to the particular multi-family Units affected by or benefitting from such work.

In determining the allocation of responsibility for payments, we must also consider the language later in Section 2.4 of the Declaration providing that the costs associated with structural repairs or replacements of Limited Common Elements on multi-Unit buildings (which we said above are the responsibility of the Association) are “to be charged as General Common Expenses.”

Taken as a whole, my opinion is as follows:

- **Unit Owners are responsible for performing and paying for “ordinary maintenance and repair” of their patios.**
- **The Association is responsible for performing “structural repairs or replacements” of Limited Common Elements on multi-use buildings, including roofs, exterior walls, patios, driveways, and landscaping areas. The costs for such work shall be paid by all multi-family Unit Owners since only the multi-family buildings have Limited Common Elements. As discussed herein, the Declaration is clear that owners of single-family Units are responsible for the exterior of their own Units. It follows that assessment funds paid by single-family Unit Owners should not be used to pay for Limited Common Elements, which are only associated with the multi-family Units.**
- **The Association also is responsible for performing non-structural maintenance, repairs and replacements of Limited Common Elements on multi-unit buildings. However, the expenses for such work shall be paid only by the Units to which such Limited Common Elements were assigned.¹**
- **Maintenance and repair of the Common Elements (excluding the Limited Common Elements) is the responsibility of the Association with payment made by all Unit Owners.**
- **With regard to the Limited Common operational expenses of grinder pump electric bills and insurance premiums on the multi-unit buildings, the Association is responsible for continuing to pay such expenses with funds from multi-family Unit Owners.**

You also asked whether payments should be made from the “General operational fund,” “Common Reserve fund” or the “Limited Common Reserve fund.” In my experience, associations usually maintain operating accounts for budgeted/anticipated and scheduled repairs and maintenance projects, and reserve accounts for major repairs and replacement projects, such as the installation of new roofs and paving projects. Structural repairs on Limited Common Elements on multi-unit buildings shall be funded through Limited Common Reserve funds and/or special assessments. The operational expenses associated with the grinder pump electric bills and insurance premiums on the multi-unit buildings may be paid out of the general fund, but I suggest that they be accounted for separately in order to be transparent to all Unit Owners.

¹ Article VIII of the Bylaws states that the cost of maintenance, repair and replacement of all Limited Common Elements shall be charged to all Unit Owners as a Common Expense, “except as otherwise provided in the Declaration.”

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We have not undertaken any independent investigation to determine the existence or absence of the facts set forth herein, and any limited inquiry undertaken by us during the preparation of this opinion should not be regarded as such an investigation. No inference as to our knowledge of the existence or absence of such facts should be drawn from the fact of our representation as counsel to the Association.

This opinion is issued as of the date hereof and is necessarily limited to the laws now in effect and the facts and circumstances known to the undersigned on the date hereof. We are not assuming any obligation to review or update this opinion should applicable law or the existing facts or circumstances change. We are furnishing this opinion as counsel for the Association, and it may not be relied upon by any other person other than the Association.

I hope and trust that I have answered the Board's questions. Should you have any additional questions, please do not hesitate to contact me.

Very truly yours,



William J. Labovitz