

# UNIVERSITY TERRACE BERKELEY HOMEOWNERS ASSOCIATION

## Policy Regarding Water Leaks

From time to time, Owners and/or tenants request that the Association reimburse them for water damage to their Unit interiors or to their personal property. The determination of who is responsible for the repairs depends on several factors including applicable provisions of the Condominium Instruments, relevant law and the existence of insurance proceeds. In addition, the following basic principles apply: a) Owners, not the Association, are responsible for the maintenance, repair, or replacement of Units; b) the Association did not create any original building conditions which may contribute to leaks; c) the Association's budget and reserve study only covers Common Area components and does not provide funds for interior Unit repairs; and d) there is no way to estimate or budget the amount of money needed to make all repairs that may be needed over the life of the development.

The purpose of this Policy Regarding Water Leaks ("Policy") is to clarify the maintenance responsibilities of the Association and the Owners, address responsibility for damage to Units and establish a process to deal with such damage when it occurs. All capitalized terms not otherwise defined shall have the meanings set forth in the Declaration of Covenants, Conditions & Restrictions for University Terrace Berkeley Homes recorded on October 11, 1994, and all amendments to the same ("CC&Rs").

### MAINTENANCE RESPONSIBILITIES

The first step in determining who is responsible for the damage is to determine who is responsible for the component that failed. The CC&Rs set forth the maintenance responsibilities of Owners and the Association.

Subject to certain limited exceptions, Owners are responsible for maintenance, repair, and replacement of their Units (CC&Rs, Section 5.1(a)) and for cleaning, maintaining, and repairing the Exclusive Use Common Area ("EUCA") appurtenant to their Unit, including their parking space, storage area, Balcony (second-floor Units), Patio (ground-floor Units) and Private Yard (ground-floor Units) (CC&Rs, Section 3.3 and Section 5.1(b)). Owner responsibilities for their Balcony (second-floor Units) and Patio (ground-floor Units) include compliance with the Association's "Guidelines for Balcony and Patio Maintenance and Use Restrictions" and "Guidelines for Maintenance and Modification of Private Patio Areas."

The Association is responsible for maintenance and repair of Common Areas (CC&Rs, Section 5.2). The Association is also responsible for cleaning, maintaining, and repairing EUCA's if they are not properly cleaned, maintained, or repaired by an Owner. (CC&Rs, Section 5.1(b) and Section 7.9). In the event that the Association incurs costs for cleaning, maintaining, or repairing an EUCA whose cleaning, maintenance, or repair is ordinarily the responsibility of an Owner, the Association may levy a special assessment against said Owner for those costs (CC&Rs, Section 7.9, Section 9.7(c); "Guidelines for Balcony and Patio Maintenance: Liability."

An analysis of the CC&Rs will usually provide the answer as to who is responsible to maintain, repair or replace a particular component because, in most cases, it will be easy



to determine whether a component is part of a "Unit," "Common Area" or "EUCA" (CC&Rs Article 3). In some cases, however, it is not so obvious and analysis of additional documents and legal sources may be necessary. Should any Owner have questions regarding whether they or the Association are responsible for a specific component, the Owner should ask the Board of Directors ("Board") c/o the Management Company (see "Contact Information" below).

### **Repairs to Failed Component / Source of Damage**

Owners are responsible for the maintenance, repair, and replacement of any component designated as an element within a Unit that causes water damage.

Owners are responsible for the maintenance, repair, and replacement of any component within the boundaries of their Exclusive Use Common Area that causes water damage.

The Association is responsible for the maintenance, repair, and replacement of Common Area components that cause water damage.

### **Repairs to Resulting Damage in Other Units and Common Area**

The Association is responsible for the repair and replacement of Common Area components damaged by a water leak originating in the Association-maintained Common Area.

Owners are responsible for the repair and replacement of their Units and their personal property damaged by water leaks originating in their own Units.

Owners are responsible for the repair and replacement of Exclusive Use Common Area components damaged by a water leak originating within the boundaries of their Exclusive Use Common Area.

Owners are also responsible for the repair and replacement of their Units and their personal property, even if the cause of the damage is a water leak originating in a portion of the Common Area to be maintained by the Association, unless and to the extent such damage is covered by insurance carried by the Association. (CC&Rs, Sections 4.27, 5.1(a) and 10.4).

Owners are responsible for the cost of repair and replacement of damage to Common Area and their Exclusive Use Common Area caused by water leaks originating in the Owner's Unit or caused by the Owner or their agent, occupant, tenant, invitee, guest, or pet. (CC&Rs, Sections 4.8, 4.27, and 5.1(b)). Owners may also be liable for damage to other Units, Exclusive Use Common Areas, and others' personal property to the extent such damage is caused by water leaks originating in the Owner's Unit or caused by the Owner or their agent, occupant, tenant, invitee, guest, or pet.



## **INSURANCE OBLIGATIONS, CLAIMS, AND INSURANCE PROCEEDS**

Separate from its maintenance duties, the Association is responsible to insure the Common Area against casualty losses in accordance with the CC&Rs. The Association maintains a blanket policy of hazard insurance that covers all insurable improvements within the development, including fixtures within the Units, such as wall and floor coverings, cabinets, built-in appliances, and water heaters, but excluding Owner improvements or upgrades of those fixtures, in an amount equal to the full replacement cost. (CC&Rs, Sections 10.2(a) and 10.4.) Any policy obtained by the Association shall be primary in the event an Owner carries insurance covering the same loss. (CC&Rs, Section 10.2(c))

Owners are responsible to insure their Unit improvements and upgrades and their personal property. (CC&Rs, Sections 5.1(a) and 10.4)

### **Insurance Claim**

When there is a loss to a structure:

The Board will tender a claim to the Association's insurance carrier when the Board finds it necessary and prudent to do so. The Association has the discretion not to file a claim when the damage does not exceed the amount of the deductible on the Association's policy and/or when making a claim may have an adverse impact on the Association's claim history and continued insurability.

The existence of coverage under these policies is not based on any presence or absence of fault of the insured. So long as it is a risk covered by the policy and so long as the limits of the policy are not yet exhausted, the policy should cover the loss. In the absence of coverage, the Owner is responsible for losses related to the Unit, including but not limited to personal property, and Owner liability, generally.

### **Insurance Deductibles**

Deductible Responsibility, generally: Owner shall be responsible to pay the deductible on any Association insurance applicable to a loss resulting from the conduct or negligence of the Owner, or their agent, occupant, tenant, invitee, guest, or pet, or from any loss which emanates from an Owner's Unit which damages Common Area or the Unit and/or improvements of another Owner.

Deductible Responsibility with One or More Negligent Party(ies): In the event a loss results in damage to more than one Unit, or to Common Area and to one or more Units, **and** that damage is covered by an Association-maintained insurance policy, in the case of negligence, responsibility for the deductible may be shifted to the Association for its negligence or to one or more Owners if their negligence is responsible for the loss. The deductible amounts owed may be levied against the responsible Owner(s) in the form of a special assessment pursuant to Sections 7.9 and 9.7(c) of the CC&Rs.

### **Liability Insurance**



The Association is required to carry liability insurance to cover losses caused by the Association's negligence. Owners are responsible for carrying similar coverage to insure them against liability. (CC&Rs, Section 10.1)

## PROCEDURES

When any damage (either to Common Area, one or more Units, or both) is known or believed to be caused by a water leak (e.g., broken pipe), the affected Owner is obligated to immediately notify the Association.

If the damage is limited to a single Unit (i.e., no Common Area or other Units were damaged), and the Association is not responsible for the damage, the Unit Owner may make the Unit repairs (in accordance with any applicable provisions of the CC&Rs) but must still report the incident to the Association. Owners may not make repairs or alterations to Common Area without explicit Association approval.

The Association will respond to reports of water leaks in or originating from Common Area as follows:

- A. The Association may retain third party contractors or other appropriate professionals to respond to the initial report and to take steps to mitigate the potential damage or take steps to prevent the occurrence of further damages. The retention of a remediation company to take steps to dry the Common Area and to prevent the growth of mold may be required.
- B. The Association may also retain other third-party contractors or appropriate professionals to observe, test, and report on the problem, and, where it is the Association's responsibility to do so, repair the problem. That third party may also document the condition of the subject area and the cause(s) of the damage.
- C. If the problem is caused by Owner neglect or by the failure of a component for which an Owner is responsible, the Association may, in its discretion:
  - 1. Cause repairs to be performed to those areas for which the Association is responsible to maintain, repair or replace; and,
  - 2. Levy a monetary penalty against the responsible Owner(s) in accordance with the CC&Rs to reimburse the Association for all costs incurred.
- D. When the Board finds it necessary and prudent to do so, the Board may tender claims to the appropriate insurance carriers for a determination of coverage.
- E. In the event the Association's maintenance, repair, or replacement to Common Area pipes inside a wall result in damage to a Unit, the Association shall only be responsible for restoring those areas or components disturbed during the course of Association repairs.



- F. Owners are responsible for any relocation expenses associated with their Unit. (Civil Code § 4775(b).)

A copy of this Policy may be sent to an Owner at their official address in the Association's records upon Owner request. Owners are encouraged to keep this Policy and to ensure that their tenants are provided a copy.

*The foregoing Policy Regarding Water Leaks was adopted by the Board of Directors of University Terrace Berkeley Homeowners Association at an open meeting of the Board held on August 17, 2023, following notice to the members, the opportunity for member comment and Board consideration of member comments pursuant to Civil Code § 4360.*

Date: 8/24/23

**UNIVERSITY TERRACE BERKELEY  
HOMEOWNERS ASSOCIATION**

By: \_\_\_\_\_

Its: \_\_\_\_\_

*Secretary*



## **Attachment A**

### **Procedural Checklist for Owners Experiencing a Water Damage Incident**

1. If an emergency exists, contact the appropriate authority(ies) (e.g., police and/or fire department).
2. Promptly notify the Association by contacting management (contact information is provided below).
3. Make a determination, as best as you can, whether the damage affects property other than your Unit. (Owners should note that, in most cases, any damage beyond the interior walls, ceiling, carpet or other floor coverings, and ceilings is "property other than your Unit.")
4. If the damage affects only one Unit, the Owner should:
  - Take immediate steps to stop the problem from causing further damage;
  - Determine the cause of the damage and whether any liability rests with others;
  - Determine whether a claim should be made on the Owner's insurance policies;
  - Promptly notify the Association of any damages which may be the type covered by the master property insurance policy; and
  - Take steps to repair the damage (but first make sure doing so will not affect the Common Area or affect insurance coverage carried by the Association—check with the Board first).
5. If the damage affects more than one Unit, the Owners should:
  - Take immediate steps as appropriate or safe to stop the problem from causing further damage;
  - Determine the cause of the damage and whether any liability rests with others;
  - Determine whether a claim should be made on the Owner's insurance policies;
  - Promptly notify the Association of any damages which may be the type covered by the master property insurance policy; and
  - Take steps to repair the damage (but first make sure doing so will not affect the Common Area or affect insurance coverage carried by the Association—check with the Board first).
6. If the damage affects Common Area, or the Owner is unable to determine whether Common Area is affected, the Owner should:
  - Take immediate steps as appropriate or safe to stop the problem from causing further damage;
  - Notify the Association immediately by contacting management (contact information is provided below);
  - If the Owner is not able to make a determination whether Common Area has been damaged, promptly report the incident to management along with an explanation of why no determination could be made; and
  - In accordance with the Policy, the Association may take steps to mitigate damage and prevent further loss; however, such action shall not be



construed as a representation that the Association is responsible to make or pay for such repairs.

7. When an incident is reported to the Association, the following information should be provided. The Owner should be as specific as possible at the time.
- The date and time the incident occurred;
  - An explanation of the specific problem causing the damage and whether the problem has ceased or continues to cause damage;
  - An explanation of the damage caused;
  - Identification of the parties and property involved;
  - Whether any third parties have been called to address the problem. If yes, identification of those parties and an explanation of whether the problem was resolved;
  - Any action being requested of the Association;
  - Whether the Owner's insurer has been put on notice of the incident; and
  - Any other relevant information.

**Management Company Contact Information:**

Board of Directors  
University Terrace Berkeley Homeowners Association  
c/o Common Interest Management Services  
Attn: Dave Rosenblatt, Senior Manager  
315 Diablo Road, Suite 221  
Danville, CA 94526  
Telephone: 925-743-3080, extension 226  
Facsimile: 925-743-3084  
Email: drosenblatt@commoninterest.com