



May 10, 2023

Dear Unit Owner(s):

The Board wanted to provide the additional clarification below regarding the skylight amendment that was sent to all owners for review and consideration. Please note that the proposed amendment, and the process for amending, has been done with consultation with counsel that is an expert in the Commonwealth of Virginia's community association law.

Why does the Board state that it has always considered the electively installed skylights on twenty-two (22) units to be the individual unit owner's responsibility?

The Board knows that it has always been the Association's policy that skylights are the unit owner's responsibility as skylights have never been accounted for in our budget or reserves studies as they would have been required to be accounted for in these documents if they were considered a common element. Additionally, all repair, replacement, and maintenance of skylights has been paid for by individual unit owners up to this point. It would be a change in policy for the Association to start paying for skylights now. The purpose of the amendment is to add the specific clarifying language to our governing documents.

Referring to the skylights as electively installed is in reference to the fact that the skylights were an option provided to the original buyers, during initial construction, that not all buyers elected for. Twenty-two of the twenty-four units with third stories elected to have this add-on installed. Two third-story units currently do not have skylights.

How many units need are needed to approve the amendment?

Two-thirds (2/3), or 79 units, are required to approve this amendment. The Amendment is intended to provide clarification to existing maintenance and financial responsibilities for skylights in the Condominium. It is not changing unit boundaries, the undivided interest in common elements, or the liability of common expenses and would not require 100% of unit owners for approval.

If the skylights were common elements, can the Board roof it in?

Yes. Bylaw's Article VI, Section 3.A states that any addition, alteration or improvement to common elements costing less than \$10,000 (to be increased automatically in proportion to CPI beginning in 1984) can be done with Board's approval. The cost to roof in a skylight is less than \$10,000. Additionally, the CPI index is up more than 250% since 1984. This alteration is within the Board's powers granted by the Bylaws.



What is “Fairfax County Department of Code Compliance (DCC) v. Grace L. Recabo” that has been referenced in regards to our skylights?

In 2022 a tenant in a Water's Edge unit contacted Fairfax County's Consumer Services Division and placed a complaint about several issues regarding the condition of the unit they rented. A Fairfax County Department of Code Compliance (DCC) Inspector was sent to inspect the unit and several violations were cited against the unit owner. The unit owner appealed one of the several violations stating that it was not the unit owner's responsibility to maintain the leaking skylight.

The unit owner appealed the violation to the Fairfax County Board of Building Code Appeals and a hearing was held with the DCC and the unit owner to determine if the violation would be upheld, the association was not involved in this hearing. The Appeals Board determined that the unit owner was not the party that the Notice of Violation should be issued to. After the hearing our association was in contact with the DCC to discuss the resolution and we were advised that the HOA would not be cited for the violation as the DCC assumed that when we appealed to the Fairfax County Board of Building Code Appeals, the Appeals Board would have the same resolution that they could not hold the association responsible either. Their reasoning was that our governing documents do not specify who's responsible for the repair, replacement, and maintenance of skylights and that their agency is not the appropriate government entity to make the determination of who is responsible for the skylights under our governing documents.

This case is another example of why our association needs to amend our governing documents to clearly specify the party responsible for skylights. This case is not a decision by a court of law stating who is responsible for skylights.

The Board recommends that owners approve this amendment and return their Ratification form to KPA as soon as possible. If you have any questions, please email Kelly Lang at klang@kpamgmt.com.

Sincerely,

The Water's Edge Board of Directors