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# WHO IS RESPONSIBLE FOR THE SKYLIGHTS AT WATER'S EDGE CONDOMINIUM?

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OCTOBER 27, 2022  
GRACE RECABO, OWNER  
3311 Lakeside View Dr., Bailey's Crossroads VA 22041



## **WHO IS RESPONSIBLE FOR the SKYLIGHTS at WATER'S EDGE CONDOMINIUM?**

### **SUMMARY**

The Unit Owners' Association of Water's Edge, a condominium in Falls Church, VA, have failed and refused to maintain, repair and replace the skylight located in the roof above Unit owner Grace Recabo's condominium located at 3311 Lakeside View Drive in Falls Church, Virginia. The Unit Owners' Association claims this skylight is not their responsibility. However, the governing documents of Water's Edge condominium clearly state that this is an obligation of the Unit Owners' Association. This will be explained below.



**Figure 1: Skylight in Roof over 3311 Lakeside Drive, Bailey's Crossroads, VA 22041 (also known as, Unit 2-6 in Water's Edge Condominium).**

## INTRODUCTION

The governing legal documents of The Water's Edge condominium are the Declarations and By-Laws filed in the Land Records of Fairfax County beginning at Book 5965 and Page 0826. They provide a legal description, plans and plats of the entire condominium and its parts. For your reference, copies of the entire Declarations and By-Laws have been attached. Relevant pages from those documents have been appended to this report.

### THE VIRGINIA CONDOMINIUM ACT DIVIDES A CONDOMINIUM INTO TWO PARTS

The Virginia Condominium Act was first passed in 1966. It is the law that governs condominiums in Virginia.

The Condominium Act provides the following definitions:

- “Common elements” means all portions of the condominium other than the Units;
- “Common expenses” means all expenditures lawfully made or incurred by or on behalf of the Unit owners’ association, together with all funds lawfully assessed for the creation or maintenance of reserves pursuant to the provisions of the condominium instruments.
- “Limited common element” means a portion of the common elements reserved for the exclusive use of those entitled to the use of one or more, but less than all, of the units; and,
- “Unit” means a portion of the condominium designed and intended for individual ownership and use.

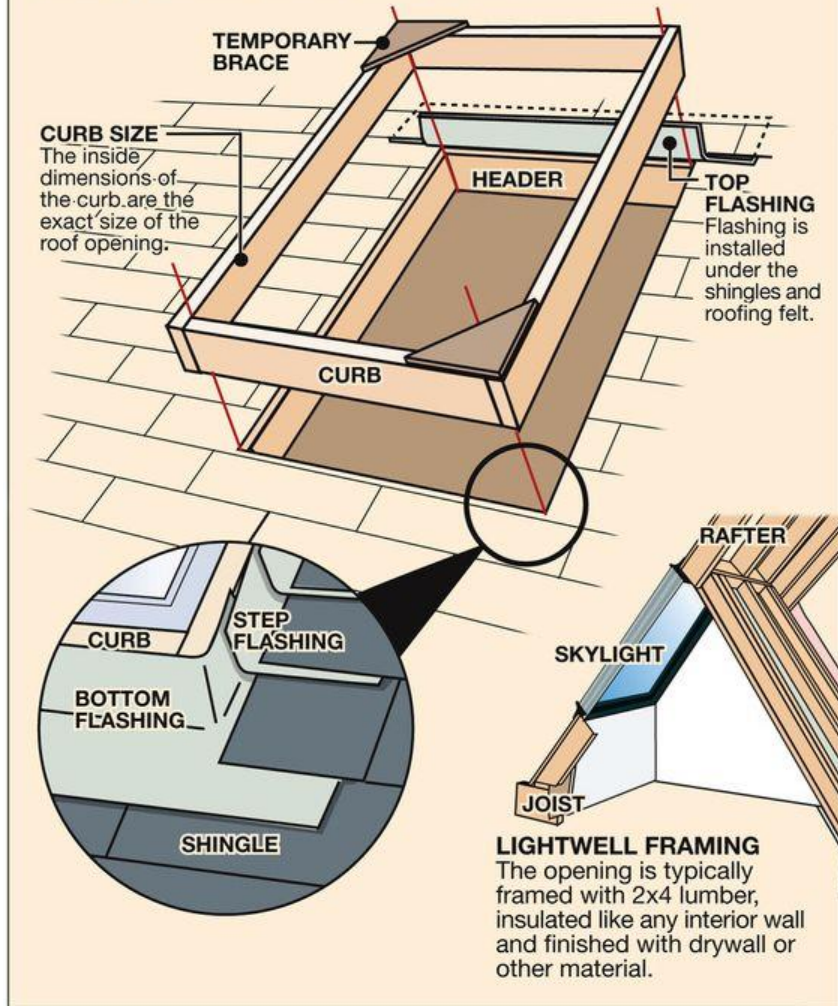
Because the Condominium Act defines the Common Elements as “all portions of the condominium other than the Units,” it follows that A condominium community is divided into two parts and only two parts. The two parts are the Units and the Common Elements.

The Condominium Act further subdivides the Common Elements into two parts, the general Common Elements, and the Limited Common Elements. Therefore, the Limited Common Elements are still part of the Common Elements. See Act definitions above.

## HOME HOW-TO

### Skylight

Skylights are a great source of natural lighting and can make a room feel larger. Taking your time and doing your homework will help in this big home repair project.



Source: [www.doityourself.com](http://www.doityourself.com)

Creators.com/Bob Kast

**Figure 2: Typical Construction of a Rooftop Skylight**

### THE WATER'S EDGE BY-LAWS MAKE THE UNIT OWNERS' ASSOCIATION RESPONSIBLE FOR THE COMMON ELEMENTS

There is nothing in the Water's Edge By-Laws that would help to decide what are the boundaries between the Common Elements and private Units. However, ARTICLE VI, Section 1 of the By-Laws states that, unless provided elsewhere,

**“The Unit Owners’ Association shall be responsible for the maintenance, repair and replacement of the Common Elements, including the Limited Common Elements, whether located inside or outside of Units, the cost of which shall be a Common Expense.”**

## **THE WATER’S EDGE DECLARATIONS PROVIDE THE LEGAL DESCRIPTION OF THE BOUNDARY BETWEEN THE UNITS AND THE COMMON ELEMENTS**

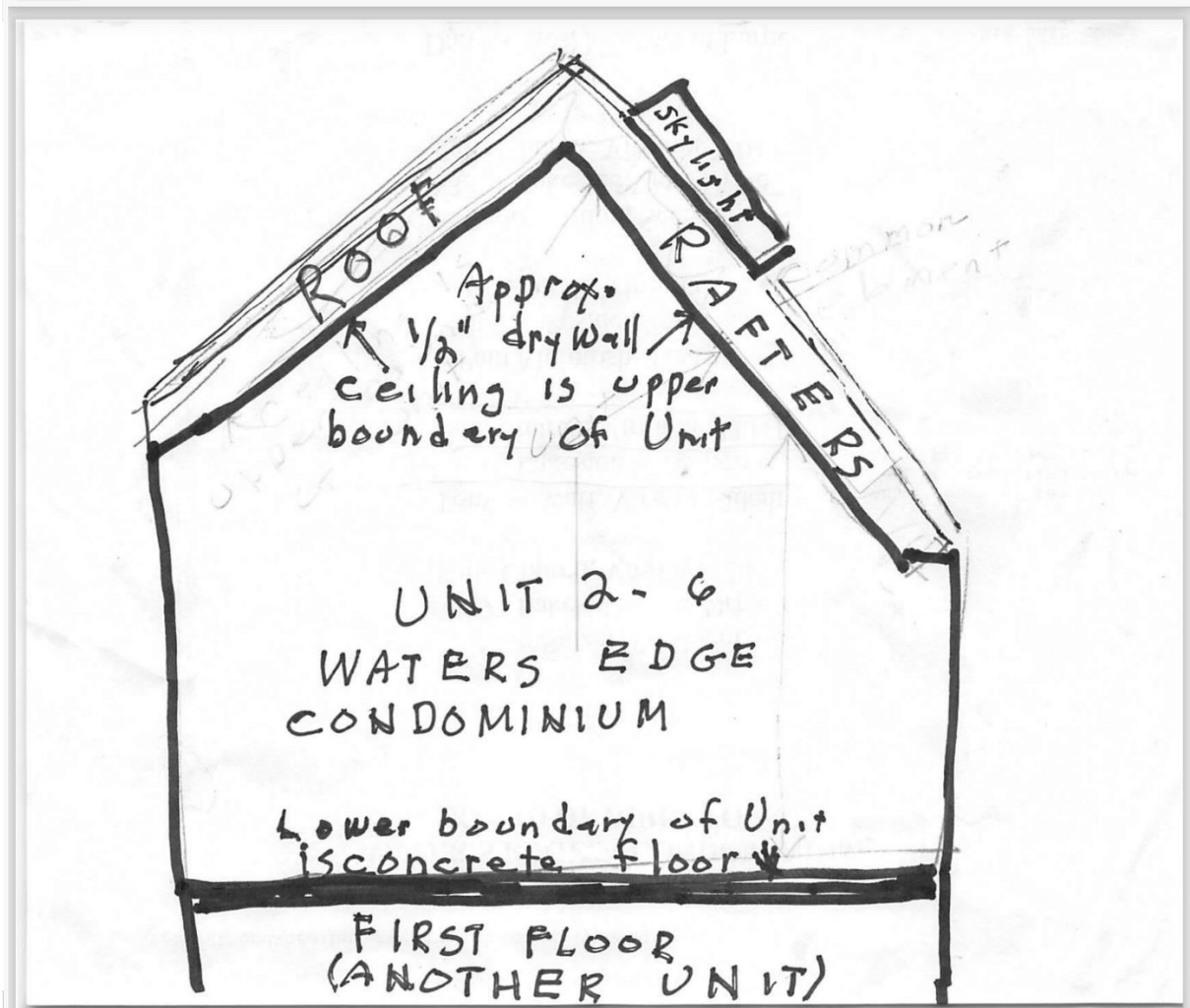
The Declarations say at paragraph 6(a)(3) that the General Common Elements include all roofs of the buildings. The Unit Owners’ Association does not dispute that it is responsible for the exterior roofs of the buildings. However, it has taken the position that a skylight that forms part of a roof is somehow, paradoxically, not a Common Element and therefore not its responsibility to maintain.

The skylight over Unit Owner Ms. Recabo’s unit was installed by the developer-builder of the Water’s Edge condominium when it was originally built in 1984. The skylight was an original Common Element and was not added by Ms. Recabo or any previous Unit owner. The skylight is the same as skylights in several dozen other Units in Water’s Edge. While not all Units have skylights, these skylights contribute to the overall look and feel of the Water’s Edge community.

A review of the Water’s Edge Declarations and By-laws does not support the position that the Unit Owners’ Association is not responsible for the skylights. Whether any building component is part of the Common Elements or part of an individual Unit depends on two factors:

**1. Location:** Is the component within the legal boundaries of a Unit or outside the legal boundaries of a Unit?

**2. Specific Exceptions:** Is there a specific exception in the Declarations that makes a building component as part of a private Unit, even though the component is physically located entirely outside of the legal boundaries of the Unit?



**Figure 3: Illustration of legal boundaries of 3311 Lakeside View Drive, Bailey’s Crossroads, VA 22041 (also known as, Unit 2-6 in Water’s Edge Condominium).**

### **BOUNDARIES OF UNITS AND LOCATION OF SKYLIGHT**

Paragraph 5 of the Declarations defines the boundaries of each Unit. It states that, in the vertical dimension from bottom to top, each Unit consists of the space measured vertically from the exposed surface of the concrete or gypcrete flooring of the Unit to the uppermost, unfinished (unexposed) surface of the drywall ceiling of the Unit.

Above the upper boundary of the Units lie the horizontal roof beams, the slanted roof rafters, the plywood roof deck, the roof felt, the roof flashing and roof shingles. Above all that is located the skylight. Clearly, a skylight located above the roof is physically outside the legal boundaries of the individual Units. This would make it part of the Common Elements of the condominium and the responsibility of the Unit Owners’ Association.

## **IS A SKYLIGHT A SPECIFIC EXCEPTION?**

The Unit Owners' Association and their management company have taken the positions that:

1. a skylight in a roof is a window; and,
2. no window is a part of the Common Elements and, therefore, it is not the responsibility of the Unit Owners' Association to maintain, repair or replace, EVEN if located entirely within the Common Elements.

But is this true?

The word "skylight" does not appear in the Declarations.

There is only one mention of windows in the Declarations. Paragraph 5(c) of the Declarations states that each Unit includes "all windows in the Unit." Please note the words IN THE UNIT. All windows IN THE UNIT are part of the Unit and therefore the responsibility of each individual Unit owner to maintain. This is undisputed.

However, the Unit Owners' Association is ignoring the words IN THE UNIT.

The Declarations do NOT say that all windows are part of an individual Unit. They say that all windows IN THE UNIT are part of the Unit.

The Declarations do NOT say that all windows adjacent to, or near, a Unit but outside the boundaries of a Unit, are part of a Unit.

The Declarations do NOT say that all windows providing any benefit only to a particular Unit are part of a Unit.

Therefore, a skylight located entirely outside an individual Unit is NOT a part of any Unit. It is, therefore, defined by the Condominium Act, and the Water's Edge Declarations, to be a part of the Common Elements. It is the responsibility of the Unit Owners' Association to maintain, repair and replace all parts of the Common Elements.

## **DOES SERVING ONLY ONE OR TWO UNITS MAKE A BUILDING COMPONENT PART OF A UNIT EVEN THOUGH IT IS OUTSIDE THE UNIT?**

The Unit Owners' Association argues that, because a skylight is above a Unit, it only serves that Unit, and is therefore not a Common Element. This argument is false for three reasons:



1. The Declarations contain nothing that would support this argument.
2. The skylight above Ms. Recabo's Unit actually serves both her Unit and the Unit directly below it. Without the skylight, the building roof would be incomplete. Just like the rest of the roof, the skylight protects Ms. Recabo's Unit, as well as the Unit below it, from rain and snow.
3. There are many components that serve just one Unit, but the Declarations explicitly declare them to be part of the Common Elements. For instance, the Declarations state that the "patios, decks or yards adjacent to Units (which are reserved for the exclusive use of the adjacent Units which each is adjacent), the front entrance landing and access steps serving townhouse Units, the fireplace chimney and flue serving flat Units, and any dead attic space appurtenant to a Unit" are all Limited Common Elements.

The Condominium Act and the Water's Edge Declarations both state that Limited Common Elements are part of the Common Elements. See Declarations Paragraph 8(b). The Unit Owners' Association maintains these Limited Common Elements even though they only benefit one unit or two units. Therefore, it was not the intention of the Developer-Declarant that elements serving only one or two Units should be maintained by the Unit owners.

There is no basis for the Unit Owners' Association to maintain that some Common Elements that serve only one or two particular units (such as the decks) are their responsibility, but that other Common Elements (such as the roof skylights) are not their responsibility. The position of the Condominium Unit Owners Association is self-contradictory. Skylights are treated in an illogical and inconsistent manner compared to other Common Elements.

## **THE PLATS**

Ms. Recabo's individual Unit 2-6 is described in two different plats in the Declarations. The first plat can be found at page 50 of the attached Declarations. The second plat is found at page 94 of the Declarations. Both of these plats have been filed in the Land Records of Fairfax County, VA, and are a legal description of the boundaries of Ms. Recabo's individual Unit. These plats show that Ms. Recabo's Unit 2-6 consists of two upper floors and nothing above or below these two floors. The plats have no indication that Ms. Recabo's Unit includes the roof over her Unit or the skylight above the roof. These plats are legally binding descriptions of the physical limits and boundaries of her individual Unit.

## **CONCLUSION**

There is no basis in the Virginia Condominium Act or the governing documents of the Water's Edge condominium for the Unit Owners' Association to claim that a rooftop skylight located above the roof over Grace Recabo's Unit, as well as over the Unit beneath hers, is part of Ms. Recabo's Unit rather than part of the Common Elements of the Water's Edge condominium.

The roof skylight is physically outside the legal boundaries of her unit. No exception exists in the governing documents that would make this rooftop skylight a part of her Unit. Therefore, the skylight is part of the Common Elements of the Water's Edge condominium. It is the obligation of the Unit Owners' Association to maintain, repair and replace the rooftop skylight protecting Ms. Recabo's Unit, as well as the Unit below hers.