

Stephan C. Nikoloff, Esq.*
Tiffany A. Grant, Esq.
Daniel J. Greenberg, Esq.

*also admitted in PA

Joseph R. Cianfrone, Esq.
Of Counsel

**CIANFRONE, NIKOLOFF,
GRANT & GREENBERG, P.A.**
ATTORNEYS AT LAW

1964 Bayshore Blvd., Suite A
Dunedin, Florida 34698
(727) 738-1100
Fax (727) 733-0042
www.attorneyjoe.com
steve@attorneyjoe.com

June 16, 2021

VIA E-MAIL ONLY

Board of Directors
Ashley Downs Homeowners Association, Inc.
c/o Ameri-Tech Community Management, Inc.
24701 US 19 N, Suite 102
Clearwater, Florida 33763

Re: Maintenance Responsibilities – CORRECTIONS

Dear Board Members:

Please accept this correspondence in relation to the referenced matter.

On June 8, 2021, an opinion was issued to the Association regarding various maintenance issues. More specifically, the questions focused around what entity was responsible for certain exterior maintenance items. After issuing the opinion, the Association responded with certain photographs and other information that has caused alterations to certain portions of the June 8, 2021 correspondence. The changes are below.

First, in our original correspondence, as to air conditioner pads/platforms, it was opined that these would be the Association's responsibility. After review of the supplemental information provided by the client, the air conditioner pads/platforms are inextricably linked to both the dwelling and air conditioning systems. As such, these would be the responsibility of the individual owners, and, if a pad/platform is shared, any issues with regard to these pads/platforms would be worked up between those owners.

Second, the original opinion states that patios would be part of the Association's responsibility. Again, after reviewing the supplemental information, the patios are inset into the dwelling itself and are part of the building structure. As such, owners would be responsible for maintenance of these areas.

It is important to note that if an owner is granted permission to install an exterior deck or patio, such owner installations remain the owner's responsibility to maintain as well.

The remainder of the June 8, 2021 letter stands at written.

Should you have any questions, please feel free to contact me.

Sincerely,


Stephan C. Nikoloff, Esq.

SCN:bm

Stephan C. Nikoloff, Esq.*
Tiffany A. Grant, Esq.
Daniel J. Greenberg, Esq.

*also admitted in PA

Joseph R. Cianfrone, Esq.
Of Counsel

**CIANFRONE, NIKOLOFF,
GRANT & GREENBERG, P.A.**
ATTORNEYS AT LAW

1964 Bayshore Blvd., Suite A
Dunedin, Florida 34698
(727) 738-1100
Fax (727) 733-0042
www.attorneyjoe.com
steve@attorneyjoe.com

June 8, 2021

VIA E-MAIL ONLY

Board of Directors
Ashley Downs Homeowners Association, Inc.
c/o Ameri-Tech Community Management, Inc.
24701 US 19 N, Suite 102
Clearwater, Florida 33763

Re: Maintenance Responsibilities

Dear Board Members:

Please accept this correspondence in relation to the referenced matter.

The Association recently contacted our office to request an opinion addressing the maintenance responsibilities of the Association. The Association advised that the specific areas that the Association is currently concerned with include air conditioning platforms for the individual homes as some of the homes share air conditioning platforms, exterior decks and patios and landscape plantings. We understand that in relation to the plantings, there are owners who have planted shrubs and plants in common areas along the exterior walls and in the front and rear of their units. Please accept the following comments.

The Declaration of Agreements, Easements, Covenants, Conditions and Restrictions of Ashley Downs states, in relevant part, as follows:

Article II
Property Rights

Section 3. Use of Common Area. Except for the right of ingress and egress, the Owners are hereby prohibited and restricted from using any of said property outside their respective Residential Units except as may be allowed by the Association's Board of Directors or as may be expressly permitted in a Declaration to which the Properties or any part thereof are submitted for the purposes of creating a residential association. ***No planting or gardening shall be done upon the Common Area, and no fences, hedges or walls shall be erected or maintained upon the Common Area except as are installed in accordance with the initial construction of the improvements located thereon or as approved by the Association's Board of Directors or their designated representatives.*** No antennae of any kind may be erected upon the Common Area or upon the exterior of any residential unit. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all Owners and is necessary for the protection of said Owners.

Article III
Exterior Maintenance

All exterior maintenance shall be the responsibility of the Association. The cost of such exterior maintenance shall be added to and become part of the assessment to which such lot/Residential Unit is subject, said additional assessment being due and payable immediately upon the assessment's accrual.

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Residential Units upon the properties and separates attached Residential Units shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions, shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall not covered by insurance shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Structural Change. The Owners of the respective Residential Units shall make no structural changes in a party wall(s).

Article VI
Covenant for Maintenance Assessments

Section 2. Purpose of Assessments. The assessments levied by the Association shall be exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area and of the units situated upon the properties. The regular monthly assessments as determined by the Association shall include but not be limited to the following expenses:

- a) Maintenance of the exterior of Residential Units, including roofs;
- b) Maintenance and repair of Recreation Areas and Facilities, roads, sidewalks, entrance monuments and entrance walls, water lines, sanitary sewer facilities (including lift stations) beyond the boundaries of the lots, storm drainage facilities within the Properties, and common area electric;
- d) Lawn and landscaping maintenance of the Common Areas and individual Residential Units, including irrigation and sprinkler maintenance;
- e) Common Area management and maintenance;
- h) Basic cable only – excludes rental equipment, installation costs, program upgrades, etc.;

Note: Water and sewer charges to the individual Residential Units are not common expenses and are paid separately by the Owners.

Article IX
Additional Powers, Rights and Obligations of the Association

Section 2. Maintenance. The Association shall maintain and keep in good repair the exterior of the buildings, including the buildings in which the Residential Units are located, as well as the Common Areas and those portions of individual lots, if any, for which the Association is responsible and for this purpose may levy assessments described herein. The roads, water lines, sanitary sewer facilities (including lift stations) beyond the boundaries of the lots, and storm drainage facilities within the properties are private. They are not dedicated to the public. Therefore, the cost and responsibility of their maintenance will be borne by the Association.

Section 5. Damage to Common Properties, and/or Residential Units. In the event the Board of Directors of the Association determines by a two-thirds (2/3) vote that any Owner has failed or refused to discharge properly his obligations with respect to the maintenance, repair or replacement of any items for which an Owner is responsible as provided herein or finds that any Owner is responsible for damage to the Common Area that is not covered by insurance, the Association shall give the Owner written notice by certified mail, postage prepaid, return receipt requested, of the Association's intent to provide the necessary maintenance, repair or replacement at the Owner's sole cost and expense, which notice shall set forth with particularity the maintenance, repairs and replacement deemed necessary. The Owner shall have fifteen (15) days from the date of mailing the notice to complete the maintenance, repair or replacement in a manner acceptable to the Board of Directors or appear before the Board to contest its determination. If the Owner fails in this obligation, the Association may provide such maintenance, repair and replacement at the Owner's sole cost and expense and the cost shall be added to and become part of the assessment for which the Owner is responsible, said additional assessment becoming due and payable immediately upon the assessment's accrual and shall become a lien against the lot and/or Residential Unit or the Owner enforceable by the Association, plus all costs of collection, including a reasonable attorneys' fee.

Article X
Restriction Upon Individual Use for the Common Good

Section 11. Additional Improvements. Additional improvements to a Residential Unit after conveyance by Declarant, including such things as screening and improving the patio, shall be undertaken only pursuant to Association approval.

This recitation of provisions is necessary as they are all relevant to the question posed. The Declaration bounces around from section to section as it relates to exterior maintenance, but the provisions are consistent.

Ashley Downs is a community wherein the lots and the dwellings are one in the same, meaning that the lot includes the dwelling, but not any of the land around it. The undeveloped land in the subdivision (yards, landscaping, etc.) is all common area. As such, as it relates to landscape planting, the Association is responsible for all landscaping. This is confirmed by Article II, as stated above, which requires that no planting be done by the owners unless specifically approved by the Association. It is further confirmed by Article III that all exterior maintenance is done by the

Association. Owners should not be planting anywhere on the property without the express consent of the Association, especially in the areas along the perimeter walls as there are easements there.

The dwellings/residential units, which are terms that are used fairly interchangeably in the Declaration, are, on the whole, the owner's responsibility. As it relates to repair and maintenance of the dwelling, this is the owner's responsibility with two notable exceptions. First, the Association is responsible for all exterior maintenance of a dwelling. This would include only those things that involve the exterior surface of the dwelling, e.g. painting, pressure washing, etc. The term exterior is defined limitedly and does not include the actual structural exterior walls themselves.

The second dwelling maintenance responsibility for the Association is roofs. Pursuant to Article VI, the purpose of assessments covers exterior maintenance including roofs. As such, and as it relates to all things regarding the roofs, that is the Association's responsibility.

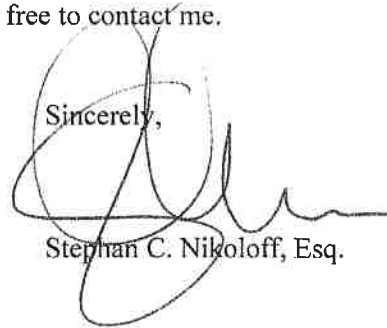
~~As to air conditioner pads/platforms, this would be the Association's responsibility. First, they are on the exterior of the dwelling. Second, they are share use. As such, the pads are the Association's responsibility. It should be noted; however, that the air conditioning components are not the Association's responsibility.~~

~~The same analysis would hold true for exterior decks and patios. They are, again, outside the dwelling unit, and as such, would be part of the Association's responsibility. However, it is important to note that the Association is not responsible for owner improvements to the patios, nor is an owner permitted to make modifications without the express consent of the Association.~~

The Association has indicated that it would like to do a mailing to advise owners of their maintenance responsibility. Please advise if the Association would like our office to prepare anything for the mailing.

Should you have any questions, please feel free to contact me.

Sincerely,



Stephan C. Nikoloff, Esq.

RECEIVED
JUN 15 2021

SEE LETTER
6/16/21

SCN:bm