

NEWCASTLE MANOR HOMEOWNERS ASSOCIATION

A California Non-Profit Mutual Benefit Corporation

WATER INTRUSION AND MOLD REMEDIATION POLICY

The following guidelines were adopted by the Board of Directors on May 3, 2021, and are now in effect and enforceable.

Newcastle Manor Homeowners Association ("Association") requires a clear and consistent policy for handling routine and emergency water and mold issues within the Association Project.

The following policies are intended to provide clear guidelines and procedures for consistently responding to water intrusions, and damage caused thereby, without requiring legal consultation in each instance, in order to protect the financial interests of both Owners and the Association.

This policy has been adopted by the Board in the exercise of its duty to maintain, protect and enhance the value of the properties, as well as the property and financial interests of all Owners, by expressing a consistent policy for the Board to address such claims, consistent with the requirements of the law and the Association's governing documents.

I. INTRODUCTION

According to the *Declaration of Covenants, Conditions and Restrictions for Newcastle Manor Homeowners Association* (the "CC&Rs"), the Association is generally responsible for the maintenance, repair, restoration, and replacement of the Association Property (excluding the Exclusive Use or Restricted Use Common Areas), including but not limited to exterior walls, balconies, roofs and all facilities, improvements and landscaping therein. (CC&Rs, Art. V, Sect. K; Condominium Plan Note 3; Civil Code § 4775.)

According to the CC&Rs, each Owner is generally responsible for the maintenance, repair, restoration, and replacement of all portions of the Unit and Exclusive Use Common Areas, including, but not limited to, the interior walls, ceilings, floors, and doors, in a clean, sanitary and attractive condition. Owners are required, at their sole cost and expense, to maintain in an open and unobstructed condition all sewer and drainage pipes and lines serving his own Unit between the points at which same enter said Unit and the points at which same join other sewer and drainage pipes and lines serving other Units. (CC&Rs, Art. I, Sect. 17, Art. X, Sect. 1; Art. XI, Sect. 3; Condominium Plan Note 7; Civil Code § 4775.)

Note that individual air conditioners, dishwashers and garbage disposals, which may be physically located within any Unit shall be deemed to be fixtures and attached to the real property, "but the upkeep, maintenance, repairs and replacement shall be the responsibility of the Unit Owner and not of the Board." (CC&Rs, Art. X, Sect. 2.) All other furnishings and appliances are personal property and shall not become a part of the real property of the building. (CC&Rs, Art. X, Sect. 2.)

The Owner shall also be liable to the Association for maintenance, repairs, or replacements of Common Area or the equipment, facilities or structures thereon, that "have been determined to have been damaged by the negligence or willful misconduct of said Owner or of his family, relatives, guests, invitees, or tenants, both minor and adult. In the case of joint ownership, the liability of the Owners shall be joint and several." (CC&Rs, Art. X, Sect. 12) This includes water intrusion from any pipes, drains, conduits, appliances or equipment located within a Unit.

Additionally, in the event a portion of sewer connections or lines, facilities and/or water connections and lines or electricity, gas, telephone lines, air conditioning and heating lines, or television cables, are shared by more than one unit, and any portion of such connection or line is damaged or destroyed through the negligent act or acts or failure to act, the willful misconduct of one Unit Owner or any of his employees, agents, invitees, tenants or guests, so as to deprive other Unit Owners of the full use and enjoyment of said connection or line, then such connection or line shall be repaired or restored by the Association, but at the expense of the Unit Owner who commits or whose guests, agents, or employees commit, such act or acts. (CC&Rs, Art. XIV, Sect. 1(D).)

The Association is not liable for any damage to the interior of a Unit, unless the damage was caused by the negligence of the Association, its Board, agents or employees, under circumstances where the Board's decisions were not made in good faith, after a reasonable investigation and in the best interests of the community as a whole. (Civil Code § 4775; *Lamden v. La Jolla Shores Clubdominium Ass'n* (1999).) This includes damage to any Unit interior walls, floors and fixtures, as well as any personal property, and other items within a Unit, resulting from water which may leak or flow from outside of any Unit or from any part of the building, or from any pipes, drains, conduits, appliances or equipment or from any other place or cause, that is not caused by the Association's negligence.

II. INSURANCE

Pursuant to Article VIII, Section 4 of the CC&Rs, each Owner is responsible to insure his or her personal property against loss by fire or other casualty and may carry public liability insurance covering his individual liability for damage to persons or property occurring inside his Unit. In addition, any improvements made by an Owner to his Unit may be separately insured by such Owner provided such insurance shall be limited to the type and nature of coverage commonly known as "tenant's improvements" coverage. Each Owner should maintain adequate levels of liability and property insurance for his or her Unit against losses to personal property located within the Unit

or Exclusive Use Common Areas, and upgrades or Improvements installed by an Owner located within the Unit or Exclusive Use Common Areas.

Please note that an Owner may be financially responsible to restore, repair and replace his or her Unit, even if the leak is not his or her fault. Failure to carry insurance could cost thousands of dollars.

Notwithstanding anything herein to the contrary, any and all damage sustained to the interior of a Unit, including the personal property covered under any insurance policy, whether held by the Association or the Owner, should be a covered loss and such claim must be timely submitted to the insurance carrier.

Insurance claims against the Association's master policy must be filed by the Board. Please report your losses to the Managing Agent.

III. PREVENTIVE MAINTENANCE REQUIREMENTS

Owners are expected to proactively perform regular inspections and maintenance on their plumbing lines which exclusively serve their Unit, plumbing fixtures and appliances whether free standing or built-in, including, but not limited to, the following:

1. Plumbing supply lines to toilets, sinks and other appliances;
2. Sewer lines, to the extent said lines exclusively serve the Unit;
3. Shut-off valves to ensure proper operation; and
4. All appliances and fixtures that use or hold water.

Owners are also expected to regularly use bathroom exhaust fans and keep units well ventilated in order to reduce moisture and the potential for mold growth.

All such inspections, maintenance and repairs should be performed as needed, but at least annually, by someone qualified to recognize and perform these needed inspections and repairs. Please note that use of drain cleaner products such as Drano are discouraged since the product itself may solidify and cause damage to the plumbing lines.

The Association strongly encourages owners to document all such inspections, maintenance and repairs so that the Owner can demonstrate to the Association that he/she has acted reasonably and responsibly in fulfilling his/her responsibilities.

Please note that an Owner's failure to inspect, maintain and repair the plumbing lines, fixtures and appliances in his/her unit as stated in this policy shall constitute negligence by that Owner. Any such Owner shall be financially liable for any and all damage to Common Area and/or other Units.

IV. PLUMBING PROTOCOL & PROCEDURES

The Association shall not be liable to any Owner or his or her family, tenants, guests, invitees or others for damage to personal property, furniture, clothing, artwork, decorations, and other similar items within a Unit, resulting from water which may leak or flow from outside of any Unit or from any part of the building, or from any pipes, drains, conduits, appliances or equipment or from any other place or cause, unless caused by the negligence of the Association, its Board of Directors, agents or employees.

Therefore you, as an Owner, are strongly encouraged to carry proper insurance for such personal property and Improvements to your Unit.

A. Water Intrusion (Leaks)

Protocol

- Call the Managing Agent immediately, using the instructions for reporting a maintenance emergency that is regularly provided to Owners on paper and/or the Association's website, upon discovery of water intrusion. Never report a leak via email only, which can result in a delayed response. Leaks should be addressed immediately upon discovery to avoid major damage.

Additional Terms

Owners/Residents are required to repair all leaks in their Units, and to report all water intrusion and/or mold growth in their Units to the Association's contracted Managing Agent immediately upon discovery, using the latest contact information that is regularly provided to Owners on paper and/or the Association's website.

It is frequently impossible to determine who is ultimately responsible for a leak or moisture intrusion problem before work begins. Therefore, when responsibility is uncertain, the Association will begin the work and will advise the Owner/Resident within a reasonable time if and when the Association believes one or more Owners may have full or partial financial responsibility.

The Association will not clean or replace any of the Owner/Resident's personal property. The Owner/Resident is solely responsible for cleaning or replacing any damaged furniture, clothing or other personal property within his/her Unit regardless of the source of the water intrusion. The Owner will also be responsible for the Unit's utility

costs, even if the contractor undertaking the remediation and restoration work uses these utilities.

Every Owner/Resident may make his or her individual decision whether to remain in the Unit during the remediation and restoration work, except that the Association may require an Owner/Resident to relocate during certain remediation and restoration work, including, without limitation, structural repairs and mold remediation. Anyone contemplating remaining in the Unit during remediation and restoration work should consult with their personal physician before making a final decision. Any Owner/Resident choosing to remain in the Unit does so at his/her own risk.

The Owner, not the Association, shall be responsible for all relocation costs during the remediation and/or restoration period. (Civ. Code §4775(b).) If the Unit is occupied by a tenant, the Owner and tenant must resolve any issues associated with relocation between themselves. The Association does not assume any responsibility for the Owner's lost rent, temporary relocation costs and/or loss of use, if any.

B. Water Shut Offs

Since the water shut offs in your Unit may affect other Units, please abide by the following protocol for water shut offs:

Protocol:

- For emergency shut offs, locate the water shut offs for your Unit and shut off the water. If you do not know where water shut off valves are located, it is your responsibility to schedule a time to consult with a licensed plumber to show you where they are located. After the water is shut off, or if you are having problems shutting off the water, contact the Managing Agent immediately, using the instructions for reporting a maintenance emergency that is regularly provided to Owners on paper and/or the Association's website.
- For non-emergency shut offs, consult with a licensed plumber to determine if repair in your Unit requires shutting off water to other Units. Those Units must be notified at least seventy-two (72) hours before the shut off.
- Water shut offs shall not be conducted on Fridays, weekends, or holidays, unless in the event of an emergency.

C. Clogged Kitchen Lines

These types of clogs are typically due to improper use of garbage disposals (i.e. disposing of foods and grease) or a malfunctioning garbage disposal. Foods like corn husks, egg shells, bones, celery, onion skins, rice, potato skins, and other fibrous items, or liquid or solid grease can cause a back-up in the drain line. You are also discouraged from using drain cleaner products, such as Drano, to unclog a sink.

Protocol:

- Contact the Managing Agent immediately, using the instructions for reporting a maintenance emergency that is regularly provided to Owners on paper and/or the Association's website, who will contact an Association approved plumber to perform the repair.
- If the Association's plumber determines that the plug was local (i.e., serving the Unit between the points at which same enter said Unit and the points at which same join other drainage pipes and lines serving other Units) to the Unit's plumbing line, then the Owner of the Unit is responsible for paying the plumber's invoice at the time of service. The cost of the service, if not paid directly by Owner, will be charged by the Association to the Owner as a Special Assessment (also known as a Reimbursement Assessment).

D. Clogged Sewer Lines

Owners are responsible for all sewer back-ups that occur in a pipe that services only their Unit, regardless of where said pipe is located. Additionally, Owners are responsible for the plumbing lines located within their Unit's airspace, including, without limitation, the lines under sinks, toilet supply lines, etc. Paper towels, wet wipes, and sanitary products should never be flushed down the toilet. The Association is responsible for the Common Area plumbing lines.

Protocol:

- Contact the Managing Agent immediately, using the instructions for reporting a maintenance emergency that is regularly provided to Owners on paper and/or the Association's website, who will contact an Association approved plumber to perform the repair.
- If the plumber determines that the plug was local to the Unit's plumbing line (i.e., serving the Unit between the points at which same enter said Unit and the points at which same join other sewer pipes and lines serving other Units), then the Resident or Owner of the Unit is responsible for paying the plumber's invoice at the time of service.
- If the plumber determines that the plug was in the main line, then the Association will be billed for the work.

V. RESPONSIBILITY FOR WATER DAMAGE

A. Association Responsibility for Water Damage

The Association will incur the cost to repair the water leak, dry out the affected Common Areas and/or Units, and will remediate any mold in the Common Areas and/or Units when the mold can be attributed to the Common Area source and due to negligence on the part of the Association. Again, the Association will not clean or replace any of the Owner/Resident's personal property. The Owner/Resident is solely responsible for cleaning or replacing any damaged flooring, wall coverings, furniture, clothing or other personal property within his/her Unit.

B. Adjacent Unit Responsibility for Water Damage

When a leak originates in an adjoining and/or adjacent Unit, the Association is not responsible to repair the leak, dry out affected Units, or repair the damage to the affected Units. Each Owner affected by a leak in an adjoining Unit must be prepared to act timely to protect and restore his or her own Unit. However, due to the potential for excessive damage if the situation is not immediately addressed by all affected Owners, the Association is prepared to act as outlined in this section.

If an Owner or his/her insurance carrier does not immediately accept responsibility for a water leak or moisture intrusion, the Association may enter the affected Unit(s) to make remedial repairs, including, but not limited to: extracting any water; drying out the Unit(s); removing drywall as necessary; and removing cabinets, floor coverings, baseboards, appliances and other fixtures, and drywall as necessary to access any water and/or mold in the Common Area wall cavities. Regardless of whether a Unit is the source of the leak or is merely damaged by a leak in an adjacent Unit, the Association does not guarantee or warranty the condition of any removed items or whether these items can be reinstalled or reused or whether they will have to be replaced. The Association will not be responsible for any damage to these items. The risk of loss or damage to these items shall remain with the Owner. (As stated above, Owners should carry their own insurance coverage to protect themselves against damage to these items.)

Owners will be responsible for the cost of repair or replacement of personal property. The responsible Owner shall be liable for all repair and restoration costs, as well as costs to remediate mold in any Common Area wall and ceiling cavities and within the affected Unit(s) as necessary to obtain mold clearance.

Other affected Owners must seek their own recovery from the party ultimately responsible. The Association will not act as the representative for any Owner/Resident on the issue of cost recovery.

Any costs and expenses incurred by the Association to repair or remediate mold shall be assessed and charged solely to and against the Owner who causes damage to the Common Area or any area that the Association is obligated to maintain as a Special Assessment (also known as a Reimbursement Assessment) levied pursuant to

Article VI, Section 6 of the CC&Rs. Each Owner is strongly encouraged to carry "Loss Assessment" coverage as part of their insurance policy, of up to the deductible amount of the Association's Property Insurance.

C. Unit Responsible for Water Damage

If it appears that a water leak, back-up waste water, and/or mold growth is only in, or has only affected the responsible Unit, and the Common Area walls, ceilings or floors have not been affected by water intrusion, the Association will do nothing beyond ensuring that water will not spread to Common Areas or other Units. The responsibility for dealing with the problem will be the Owner of the affected Unit's sole responsibility.

If it appears that the water leak, back-up waste water, and/or mold growth is not just in the responsible Unit, but also has affected the Common Area walls, ceilings and/or floors, the responsible Owner shall be liable for all repair and restoration costs. However, should the responsible Owner fail to immediately repair water damage, the Association shall make repairs, dry out the Common Areas and affected Unit(s), and remove cabinets, floor coverings, baseboards, appliances and other fixtures and drywall as necessary to access the water and/or mold in the Common Area wall cavities, the cost of which may be assessed against the Owner.

The Association may levy a Special Assessment (also known as a Reimbursement Assessment) against the Owner to recover costs and expenses incurred for repair pursuant to Article VI, Section 6 of the CC&Rs. Other affected Owners must seek their own recovery from the party responsible for the water intrusion. The Association will not act as the representative for any Owner/Resident to recover costs and expenses for repair and in connection therewith.

D. Shared Responsibility: Association and Unit Responsible for Water Damage

The Association will repair the water leak, dry out the affected Unit(s) and Common Area, and/or perform the mold remediation and Unit restoration as described above in Section A if it is determined that the Association shares responsibility for water damage. However, the Association will require the co-responsible party to contribute their percentage share of the cost of such work based on their percentage share of the responsibility.

The Association will notify the impacted Owner(s) as soon as reasonably possible of the Owner(s) anticipated or expected financial contribution in the event of shared responsibility. Failure of the Association to notify the Owner(s) will not eliminate the Owner(s) responsibility to pay their proportionate share of the total costs incurred.