

**Assembly bill 968 and Civil Code §4775:  
Is Your Association About To Take On Additional REPAIR AND REPLACEMENT  
Responsibilities COME January 1, 2017?**

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An association's maintenance, repair and replacement responsibilities are generally one of the largest and most expensive responsibilities associations are obligated to undertake. As you may recall, Assembly Bill 968 was enacted during the California 2014 legislative session, and has the potential to significantly alter association repair and replacement responsibilities starting on January 1, 2017, for associations with exclusive use common areas.

Specifically, AB 968 will amend Civil Code §4775. As currently written, Civil Code §4775 provides that unless otherwise provided in an association's CC&Rs, an association is responsible for maintaining, repairing and replacing the common area, except for exclusive use common area, and the owners are responsible for maintaining their own separate interests as well as any exclusive use common area appurtenant to their separate interests. The current language of section 4775 resulted in confusion regarding what constitutes exclusive use common area within an association and who is supposed to repair and replace it. This confusion was partially alleviated and partially compounded in 2010 by the court's decision in *Dover Village Association v. Jennison* (2010) 191 Cal.App.4th 123, which also addressed what components are exclusive use common area within an association. AB 968 was intended to resolve this confusion, which it essentially did. However, it may also alter an association's maintenance and repair obligations unless its CC&Rs are amended prior to January 1, 2017.

Civil Code §4775 As Amended by AB 968

The new Civil Code §4775 states as follows:

“(a) (1) Except as provided in paragraph (3), unless otherwise provided in the declaration of a common interest development, the association is responsible for repairing, replacing, and maintaining the common area.

(2) Unless otherwise provided in the declaration of a common interest development, the owner of each separate interest is responsible for repairing, replacing, and maintaining that separate interest.

(3) Unless otherwise provided in the declaration of a common interest development, the owner of each separate interest is responsible for maintaining the exclusive use common area appurtenant to that separate interest and the association is responsible for repairing and replacing the exclusive use common area.

(b) The costs of temporary relocation during the repair and maintenance of the areas within the responsibility of the association shall be borne by the owner of the separate interest affected.

**(c) This section shall become operative on January 1, 2017."**

#### What Exactly is Exclusive Use Common Area?

Does Civil Code §4145 define exclusive use common area? It depends. Civil Code §4145 does define the term "exclusive use common area" and contains a list of components that are considered exclusive use common area if an association's governing documents are silent on this issue. For example, shutters, awnings, window boxes, exterior doors, patios. However, if an association's governing documents contains a definition of exclusive use common area, under the Dover Village case, that definition prevails and Civil Code §4145's definition and component list does not apply.

Does that mean Civil Code §4145 has been rendered meaningless by the Dover Village case? No. Civil Code §4145 still operates as a default definition of the term exclusive use common area if an association's governing documents do not define this term.

#### So How Do I Determine What Is or Isn't Exclusive Use Common Area In My Association?

To determine what is exclusive use common area in your community one needs to look first at the governing documents for a definition. An association's CC&Rs or Condominium Plan may define the term exclusive use common area as one of the following: (1) A component that is solely used by one or more, but less than all, separate interests in the community or (2) specifically stated components, such as roofs, exterior doors, exterior windows, balconies, patios, etc.

## Come January 1, 2017, How Will Civil Code §4775 Affect My Community?

If your CC&Rs expressly assign the repair and replacement of exclusive use common areas to the owners, then Civil Code §4775 will not affect your community.

Conversely, if your association's CC&Rs do not currently specifically assign the obligation to repair and replace exclusive use common areas to the owners, then come January 1, 2017, your association will become responsible for repairing and replacing those exclusive use common area components. Having your association assume this responsibility will likely result in an increase in assessments as the association will need to budget additional funds for repair and replacement of these components. Moreover, your association will need to add these exclusive use common areas as line items to the reserve study as well as further fund reserves for these additional items.

Accordingly, it may be in the best interest of your association to amend its CC&Rs to expressly assign the repair and replacement of exclusive use common areas to the owners.

## What About Maintenance of Exclusive Use Common Area? And What Constitutes Maintenance As Opposed to Repair and Replacement?

Come January 1, 2017, Civil Code section 4775 will provide that owners of separate interests (lot or unit) will still be responsible for maintaining exclusive use common area and an association will be responsible for repairing and replacing exclusive use common area. Which raises the question, what is the difference between maintenance, repair, and replacement?

Replacement seems fairly easy to figure out, but the difference between maintaining and repairing is more difficult. An association may need to attempt to define these terms in its rules or the CC&Rs. For example, maintenance likely consists of routine acts that keep an exclusive use common area component in working order. Think of it in terms of scheduled maintenance or preventative maintenance - periodic cleaning, painting, staining, oiling hinges, caulking, etc. Repair implies fixing something that is broken or replacing it.

## Maintenance Matrices

In our opinion the most effective way of eliminating confusion or ambiguities surrounding whether owners or an association is responsible for certain components is adopting a maintenance matrix. The typical maintenance matrix lists each component within a community and specifically assigns each component either to the owners or the association

to maintain, repair, and replace. (Since a picture is worth a thousand words see below for a portion of a sample maintenance matrix.) Even if your association is not affected by AB 968, maintenance matrices are extremely effective for addressing maintenance ambiguities in your governing documents.

Keep in mind that if your association prepares a maintenance matrix which summarizes the current maintenance, repair and replacement responsibilities as found in your association’s governing documents, then the maintenance matrix can be adopted like any other rule, i.e. the board can adopt the maintenance matrix at an open meeting after considering any comments made by the membership regarding the matrix (and the membership had at least thirty (30) days to voice their comments to the association). See Civil Code §4360 for the specific requirements regarding association rule adoption. Conversely, if while preparing a maintenance matrix, your association desires to change any of the maintenance, repair, or replacement assignments as currently stated in your CC&Rs, then the maintenance matrix would technically be amending your CC&Rs; CC&R amendments must be approved by a vote of the membership pursuant to your association’s CC&R amendment provisions.

PORTION OF SAMPLE MAINTENANCE MATRIX

<i>COMPONENT(S)</i>	<i>OWNER</i>	<i>ASSOC.</i>
<i>Air Conditioning System - Each Unit</i>	X	
<i>Bathroom Fixtures</i>	X	
<i>Ceilings</i>		X
<i>Common Area Improvements</i>		X
<i>Electrical Wiring – Interior</i>	X	