

How Should an HOA Divide Repair Costs? Discussion Forum Follow-Up

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This article is part of an ongoing series in which we'll take your questions from the [HOAleader.com discussion forum](#) and get you the answers you need from experts who specialize in association management. If you have a question you need answered, [post it on the message board](#).

A reader asks, "Our HOA has both condos and stand-alone homes. The condos vary in size, as do their roof and siding areas. They pay an additional assessment for the HOA to take care of many items, including the roofs and siding. When the roofs have to be replaced, does the HOA decide whether all the condos will pay an equal assessment or one based upon their respective roof areas? The [CC&Rs](#) and [bylaws](#) are ambiguous. Also, it is the contention of the board that it has the authority to mandate the replacement of roofs when necessary rather than having a vote by the condo owners."

Here, our experts offer their insight on allocating repair costs and determining when owners' input is required for expenses.

Scenario #1

As our reader did, the first place to check for an answer is her [HOA's governing documents](#). Because they're ambiguous, there are two possible answers to her question.

First, it's possible (but probably not likely) that her governing documents simply allocate expenses according to percentage of ownership. So perhaps the single-family lots in her HOA are 3,000 square feet, and the condos are 1,000-2,000 square feet. Depending on how many units in the association, each single-family homeowners' percentage of ownership could be 3 percent, and each condo owners' would be 1-2 percent. In that case, the cost of the repairs would simply be allocated among all owners based on their percentage of ownership.

"If the association is responsible for maintaining roofs throughout the community, that's its responsibility to everybody," says **Jed L. Frankel**, a partner at **Eisinger, Brown, Lewis, Frankel & Chalet PA** in Hollywood, Fla., who advises community associations. "If the association encompasses 10 large buildings, and one needs to have its roof replaced, it's got to be replaced."

Some owners may complain that their funds shouldn't go to repairing a building in which they don't live, but those are the rules. "Everybody goes into these communities knowing what those allocations are," says Frankel. "That gets back to the HOA's declaration, which in Florida sets forth the methods used to assess and what the percentages are. People after the fact may complain that their two-

bedroom is smaller than the next guy's two-bedroom. But if assessments in your declaration are based on bedrooms and not square footage, you knew that.

"Often we're asked, 'We have a certain type of unit that's much smaller than everyone else's, and work needs to be done in that particular area. Can we special-assess just the unit owners in that area?'" Frankel adds. "No. They contribute to the general fund just like you do, and if you need to repair the bigger roof, their money will be used toward that. So why shouldn't your money be used to repair their roof?"

Scenario #2

What's more likely is that our reader's HOA has different governing documents for each type of entity—condo, townhome, or single-family home—in the development, and then all fall under a [master association](#).

"Any time we have mixed-use subdivisions, it's clearly spelled out what expenses are allocated to whom," explains [Michael S. Hunter](#), an attorney and partner at Horack Talley Pharr & Lowndes PA in Charlotte, N.C., who represents associations. "With a condo, everyone owns a percentage interest of the common elements. So if there are 400 condo units, you'd own a .25 percent interest in all the common elements, and that's what your assessment would be based on. With a planned community of single-family homes, all lots pay equally. You don't own a percentage interest because the HOA owns the common areas.

"In the case where you've got condos, their common-area expenses are going to be charged only to those owners, and they should have their own separate assessment," adds Hunter. "Then you'll have a master association that covers both the single-family homes and the condos, and its governing documents will say that every homeowner—including condo

and single-family homeowners—will pay, say, \$100 a year because they're all sharing the same roads and clubhouse. That should be spelled out in the governing documents. In North Carolina, you can't set up a condo without it having its own governing documents. So you couldn't mix condos and single-family homes in one set of governing documents. If it's not set up that way in North Carolina, whoever set up the HOA and drafted the governing documents did a poor job."

That process makes sense, says Hunter, because maintenance costs are much higher for condo buildings. "Why would it be fair for single-family homeowners to pay a higher percentage because you live in a condo?" he asks. "It's only fair that expenses that benefit only condo owners should be borne only by the condo owners and vice versa. Then there's a master association in which everybody pays a fixed, uniform rate, whether you own a 5,000-square-foot home or a 2,000-square-foot condo. If the condos and townhomes don't each have their own governing documents, there could have been a drafting error, and that HOA probably needs to fix its governing documents."

Going to Court?

Florida is similar to North Carolina because typically condos are designated as a subassociation within a master association when there are mixed home types in a development, says Ben Solomon, an attorney and founder of the Association Law Group in Miami Beach, Fla., who advises more than 500 associations and also represents developers through his second law firm, Solomon & Furshman LLP. "The other way to handle mixed product is to create a single association, but then you'd

define each housing type in the governing documents and address these types of issues."

But it sounds like our reader's governing documents don't match up to any of our possible scenarios. "I've seen governing documents that don't specify what happens in these types of situations," says Solomon. "If these issues aren't covered in the governing documents, review your state's statute. Ultimately you may need to go to court for a declaratory judgment to get the court to review the document and hear the arguments about who's responsible. Or it may be possible to amend the governing documents to address this issue, but that's not always possible or practical."

On our reader's final issue: Can the board mandate replacement of roofs, or does it need an owner vote? If the funds will come out of an operating or reserve account, the board can and should determine when and how to spend those funds without an owner vote. If a special assessment is needed to cover the cost, the board must follow the governing documents' requirements for getting homeowner approval of the special assessment.