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THE VALUE OF A MAINTENANCE MATRIX

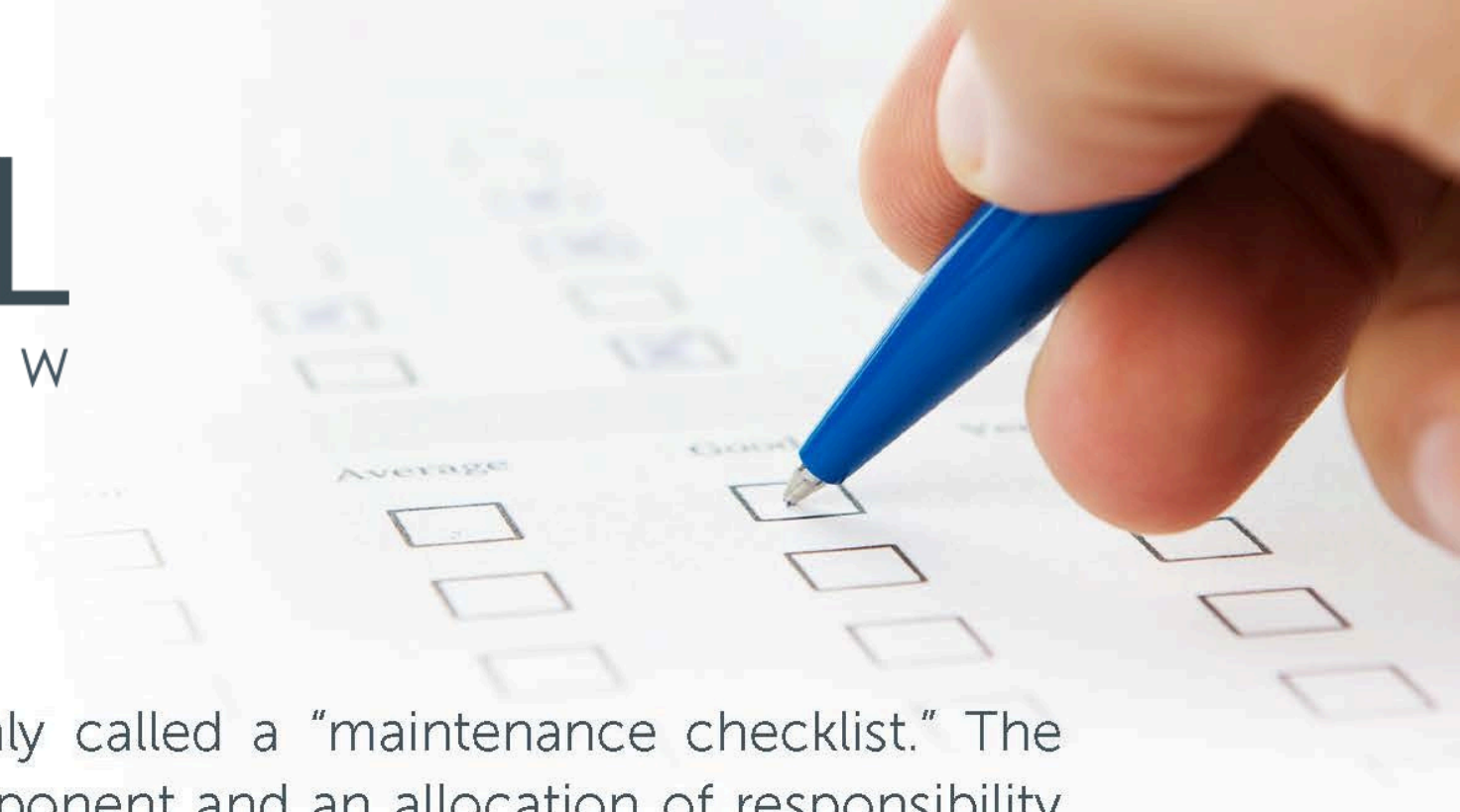


It is not uncommon for the customer service personnel of a management company to be left wondering whether a contractor should be called out to a property after receiving a work request over the phone. Generally, the problem lies in the fact that each homeowners association has its own set of governing documents which dictate the respective maintenance responsibilities of the homeowners, as well as the homeowners association. Assuming that the management company employee has not memorized the governing documents for each homeowners association managed by that company, the person taking that work request phone call may not know whether the Association is obligated to make the repair.

Because many work requests are performed as a result of an emergency, like an active plumbing leak, the management company can be forced to send out an Association contractor just to ensure that the damage is minimized. The real nightmare begins when the homeowners association attempts to receive reimbursement from the homeowners when it is later determined that the homeowner should have made the repair. This common scenario has given rise to what has been named a "maintenance matrix." If drafted properly, a maintenance matrix can be an invaluable tool that allows the Association management, as well as the Board of Directors, to quickly respond to work requests and related homeowner inquiries.

The preparation of a maintenance matrix usually involves a detailed review of the Association's governing documents, as well as applicable law in the State of California, by the homeowners association's legal counsel. Based upon the information derived from those reviews, the attorney will prepare a matrix of the various physical elements of the development and include a designation as to whether the Association or the individual owners are responsible for its maintenance. Detailed matrices also include a cross reference to the governing document or law upon which that allocation was determined. In other words, the attorney would include the language from the governing documents that the attorney used to draw that conclusion.

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This is in comparison to what is commonly called a “maintenance checklist.” The checklist will normally just include the component and an allocation of responsibility without any reasoning as to why one column was checked instead of the other. These are obviously easier for someone taking customer service phone calls to use. They are short and to the point. However, without the citation, the Board of Directors may be forced to continue to ask the attorney for an opinion on individual components each time the Board’s decision is challenged.

Often times there are ambiguities in the governing documents that cannot be easily resolved. As a result, the matrix represents the opinion of the attorney. That opinion may change if the Board of Directors or manager provides information that is relevant to the consideration. For example, if a maintenance responsibility is ambiguous, but the homeowners association has had a thirty-year history of repairing that component, the history may factor into the attorney’s opinion and thus change the allocation on the matrix. Further, the realization that significant ambiguities exist may cause the Board of Directors to consider an amendment to the CC&Rs in order to make life easier for future Board of Directors for the homeowners association.

It is important to remember that a maintenance matrix is not meant to be part of the Association’s governing documents, unless of course the CC&Rs are amended to include a maintenance matrix, which sure does make for a user-friendly set of governing documents. Without a CC&R amendment, the maintenance matrix is simply meant to clarify the Board of Directors’ position regarding the maintenance of most, if not all, components within the Association. The Board could be wrong (or at least a judge may think so).

Maintenance requests should still be reviewed on a case-by-case basis, as there are certain circumstances where the maintenance obligations of either the homeowners association or a homeowner may require further analysis. For example, if a homeowner accidentally backs his or her car into the side of one of the buildings, the homeowner will be responsible for the repair costs associated with bringing the building back to its original condition. The exterior surfaces of the building might normally be the Association’s financial responsibility; however, where such negligence exists on behalf of the homeowner, the maintenance obligation could shift.

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