

RIM VILLAGE HOMEOWNERS ASSOCIATION
P.O. Box 1583, Moab, Utah 84532



October 13, 2010

RE: Association Policy on Pest Control

Dear Owners,

During the past several months you have received information regarding termites found in a few units within Rim Village. In an effort to clearly define the Association's policy regarding pest control, the Board requested the HOA's attorney, Richard Jones of Helgesen, Waterfall & Jones, draft a memorandum of opinion.

At the Board meeting held October 9, 2010, the Board formally adopted the memorandum and the following policy:

Policy on Pest Control: The HOA is not responsible for the inspection, eradication or treatment for pests that may enter individual units. It is the owner's responsibility to contract for inspection and treatment for all pest control. If a unit owner is remiss in maintaining their unit to the extent that pests invade the walls of the unit and the pests enters into and damages walls held in common with adjoining units, it remains the responsibility of the unit owner to eradicate the pests and repair the damage solely at the owner's expense. If the owner fails to make appropriate repairs, the HOA reserves the right to enter the unit, repair the damage and levy a special assessment on the unit owner in the amount of the repair and other costs incurred associated with the repair as per Article 11.8 of the CC&Rs:

11.8 Liability of Owners for Damage by Member. Each Member shall be liable to the Association for any damage to Association Property or for any expense or liability incurred by the Association, to the extent not covered by Association insurance, which may be sustained by reason of the negligence or willful misconduct of such Member or any person using the Association Property through such Member and for any violation by such Member or any such person of this Restated Declaration or any rule or regulation adopted by the Association. The Association shall have the power, as elsewhere provided in this Restated Declaration to levy and collect an Assessment against a Member, to cover the costs and expenses incurred by the Association on account of any such damage or any such violation of this Restated Declaration or of such rules and regulations.

Attached for your review is the memorandum of opinion from Richard Jones. If you have any additional questions, please direct them to the Board at rimtrustees@rimvillagehoa.org.

Sincerely,

Rim Village HOA Board of Trustees

Duane Stewart	Sharon Butler
Gordon Huetter	Nancy Motter
Mike Sawyer	Mel Taylor

Memorandum

To: Board of Directors
Rim Village Homeowners Association

From: Richard W. Jones, Esq.

Date: August 27, 2010

Re: HOA Responsibility for Pest Control

I have been asked to provide an opinion regarding the Association's and the homeowner's responsibility in dealing with the termite problem that has recently occurred in some of the units at Rim Village.

Rim Village is a community association wherein each owner holds title to the land on which their home is built. It is not a condominium wherein an owner has an interest in the air space of a unit inside a building and does not own a fee interest in the land. As such, each owner at Rim Village has general maintenance obligations associated with his or her home unless there is express language in the Association documents (CC&Rs, bylaws, rules) requiring the Association to perform maintenance services on the homes. As you know, the Rim Village CC&Rs were amended last year and many of the maintenance and repair obligations associated with the homes were assumed by the Association, but the CC&Rs are silent regarding any obligation the Association might have to become involved in the removal of pests inside of a Rim Village home.

The CC&Rs defines those specific areas the Association has agreed to maintain for the owners, which areas are referred to as the "Common Maintenance Area" (see Section 1.6 in the CC&Rs). Section 1.6 provides that the Association is responsible to repair and maintain the "interior nonbearing walls", which may be one area where the termites are doing damage. I understand the homes in Rim Village are built slab on grade. For termites to enter a home they must enter from the ground and then through cracks in the concrete slab to attack the wood in the walls. Treatment of termites is made by injecting pesticides in the ground below the concrete slab. The ground under a home is an area of the property which is owned exclusively by the homeowner and for which the Association has assumed no maintenance responsibility. Consequently, it is difficult to find a basis upon which the Association must pay to remove the termite problem.

Section 1.17 defines a Unit Interior and places the responsibility on the homeowner to repair, replace and maintain the Unit Interior, which consists of the area from the drywall in. Since the termites may be doing damage to the studs within the interior walls, an argument could be made that the Association has some maintenance obligations associated with the termites. However, because termite eradication is treated by drilling through the floors of the units and injecting pesticide into ground beneath the floor, the homeowner remains responsible for preventing the termites from entering the home in the first place, not the Association.

Because the Declaration is silent regarding problems created by pests, this is an area of the Declaration that could be amended to deal with future problems. An amendment may be as simple as amending the definition of the Common Maintenance Area to exclude interior nonbearing walls and stating that all owners are responsible to deal with pests (termites, mice, cockroaches) in their own unit.

Even if the Association were responsible for treating the termite problem, an individual homeowner does not have the right to engage a pest control company to treat the termite problem and then send a bill to the Association. An owner must first give notice to and receive permission from Rim Village prior to incurring any expense the owner desires the Association to pay so the Association may first determine if it has any responsibility to pay for the expense. In this case, an owner at Rim Village hired a company to exterminate the termites and then, after the work was completed, informed Rim Village of the problem and demanded that it pay the bill. The owner took it upon himself to deal with the problem, which means the bill he incurred is his bill to pay. Also, if Rim Village had received notice from the owner and determined the Association had responsibility to make a repair, it may have found a better or cheaper way to deal with the termite problem.

Since the Restated Declaration is silent on the subject of termite and pest control, the Association is within its proper bounds to take the position that termite damage is not within the scope of its normal maintenance obligations and that each owner must deal with this issue without the Association's involvement. However, if challenged, you may want to amend the CC&Rs to clarify how Rim Village should address the pest control issue in the future.