

**PROPOSED RULE CHANGES IN RED.  
COMMENT PERIOD OPEN UNTIL 8/5/24.**

**NOTICE OF PROPOSED RULE CHANGE TO THE  
RULES AND REGULATIONS OF  
LEISURE VILLAGE ASSOCIATION, INC.**

\_\_\_\_\_, 2024

In compliance with California *Civil Code* Section 4360, you are hereby notified that the Board of Directors of Leisure Village Association, Inc. (“Association”) is proposing to adopt the following operating rule, as outlined herein.

**1. PURPOSE AND EFFECT OF THE PROPOSED RULE CHANGE**

Prior to the recording of the Amended and Restated Declaration of Covenants, Conditions, and Restrictions of Leisure Village Association, Inc. on June 30, 2021 (“CC&Rs”), carports in the community were generally the responsibility of the Association to repair, replace and maintain. Under the operative CC&Rs, repair and maintenance responsibilities for carports were modified and homeowners became responsible, with some limited exceptions (as described in more detail below).

In light of the need to distinguish between the Association’s and Owners’ respective responsibilities for carports, as well as due to the shared nature of carports amongst multiple Owners, a policy is necessary to create and govern procedures when components of the carports need to be repaired, replaced and/or maintained.

**2. GOVERNING LEGAL AUTHORITY**

This Proposed Rule/Policy is being adopted in connection with existing provisions of the Association’s governing documents, including without limitation, Article V, Section 5.5 and Article IX of the CC&Rs.

The following authority regarding the repair, replacement and maintenance for carports is presently set forth in the Association Rules and CC&Rs:

- Rule 19.05: “The interiors of all carports and patios shall be maintained by their owners in a neat, clean and attractive condition. No carports or patios shall be used for storage, except within closed lockers, as approved. No power equipment, hobby shops, or carpenter shops shall be maintained in any carport, and no automobile overhaul or maintenance work shall be permitted therein.”

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- CC&Rs: Art. 2, Sect. 2.14: “a portion of the Common Area over which an exclusive easement(s) is reserved appurtenant to one or more, but fewer than all, of the Lots, or otherwise designated for the exclusive use of one or more, but fewer than all, of the Owners of the Lots ... The Exclusive Use Common Area may include a patio slab, a patio cover, car ports, a patio enclosure, a garden, a landscaped area, or similar use, or any combination thereof, and may be enclosed by an approved fence or wall, subject to the Association's rules and regulations.”
- CC&Rs: Art. 9, Sect. 9.2: “Each Owner of a Lot shall be responsible for the maintenance, repair, and upkeep of his or her Lot and Residence, except as the Association may be responsible for exterior maintenance and repair, in a clean, sanitary and attractive condition and good state of repair. No Improvements (including but not limited to Residences, garages, carports, walls and fences) shall be permitted to fall into disrepair and all Improvements shall at all times be kept in good condition and repair...In addition, each Owner shall be responsible for the maintenance of any and all Exclusive Use Common Areas appurtenant to his or her Lot, including the Patio or Yard Area, in a clean, sanitary, workable, and attractive condition, as set forth in applicable law.”

Carports are defined as “Exclusive Use Common Areas.” This means that the owners are responsible for the repair and maintenance of carport components, whereas the Association is responsible for their replacement. This allocation is consistent with Civil Code Section 4775(a)(3), which provides: “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.”

The following proposal sets forth a proposed policy to create procedures and regulations for carports based on the existing authority and allocation of repair and maintenance responsibilities.

### **3. PROPOSAL**

The Board hereby proposes to **add** this Policy to the Association’s Rules and Regulations with the following language:

#### **CARPORTS**

##### **I. Allocation of Repair, Replacement and Maintenance Responsibilities**

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- A. Owners: Owners are responsible for the following repair and maintenance items for their respective carports:
- Interior maintenance and sweeping, cleaning, removal of debris
  - Painting
  - Repair, cleaning of beams, posts, roofs
  - Repair, cleaning of pavement/concrete flooring
  - Pest treatment, including, without limitation, treatment for termite and rodent infestation, and remediation of fungal growth
  - Built-in storage units/cabinets

IMPORTANT: Any exterior repair or modification to an Owner's exclusive use common area carport requires first applying for and obtaining architectural approval from the Association. Owners shall not begin work until they receive such written approval.

Except as set forth in Section II(A), below, if an Owner observes signs of termites, it is their responsibility to treat the termites and repair any resultant damage.

- B. Association: Association is responsible for the following replacement items in the carports:
- Beams, posts, roofs, sheathing
  - Pavement/concrete flooring

## **II. Modification to the Allocation of Repair, Replacement and Maintenance Responsibilities for Carports**

The allocation of repair, replacement and maintenance responsibilities as described above may shift or be modified by the following events:

- A. Termites: Some of the carport beams may be subject to termite infestation prior to the change in maintenance responsibilities for carports, which occurred on or about June 30, 2021 with the recording of the CC&Rs ("the Pre-Existing Termites"). The Association will cause an inspection by a licensed and insured pest control company to determine which carports have the presence of termites; the termite report will be made available to any requesting Owner who has a carport space on the list. The Association will perform termite treatment at its sole cost and expense for any carports with Pre-Existing Termites.

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For carports that develop termites at a later time (those carports without the Pre-Existing Termites), the cost of termite/pest treatment and/or eradication shall be borne by the Owners of the carport at issue.

**B. Cause of Damage:**

1. The costs of any repair, replacement and/or maintenance services required to be performed by the Association under this Policy caused by the negligence or willful misconduct of any Owner, or Owner's Lot's Residents, Tenants, Invitees, vendors or contract purchasers, shall be borne entirely by such Owner.
2. The costs of any repair, replacement and/or maintenance services required to be performed by the Owner under this Policy caused by the negligence or willful misconduct of the Association, its agents, employees or vendors, shall be borne entirely by Association.

**III. Procedures for Shared Responsibilities Between or Amongst Owners**

The following procedures shall apply when there is a shared maintenance or repair responsibility item involving more than one owner of a shared carport ("Shared Carport Items"):

- A. Whenever a Shared Carport Item requires attention, all affected carport Owners shall cooperate with one another in a reasonable and timely manner.
- B. The affected Owners involved in a Shared Carport Item shall solicit bids from licensed and insured contractors to perform any repairs or maintenance needed and mutually select a bid or repair estimate for the work.
- C. The affected Owners shall split the cost of a Shared Carport Item equally, unless they agree otherwise in writing. Alternatively, the affected Owners may cause a contractor or other third party to apportion the damage in the carport as appropriate.
- D. When the Shared Carport Item requires architectural approval, the affected Owners shall jointly submit an architectural application. Owners shall not begin work until they receive written approval from the Association.

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- E. If Owners who are performing a Shared Carport Item have a disagreement with respect to vendor selection, cost or scope, etc., the Association has the option, but not the duty, to perform the work and charge back the owners for their respective costs as a Special Individual Assessment in accordance with the CC&Rs.

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