

Common Area Maintenance and Modifications

Overview of the Changes

The Hickory Woods Board of Directors has been informed by our legal counsel, Gary Daddario who specializes in HOA law, that the Association is placed at significant risk by allowing modifications and maintenance of Common Areas, beyond the Limited Common Areas (LCA), by unit owners. These inherent risks could potentially pose a huge liability to all unit owners in the event an injury was to occur while an owner or resident was maintaining common areas of the community. The Board has been informed that accidents happen quite often in 55+ communities and that expensive special assessments have been levied to all unit owners to cover legal costs and settlements. The Board must legally act as fiduciary for the association, and thus, act in the best financial interest of the homeowners' association (HOA).

The Hickory Woods Declaration and Bylaws, which are similar to most HOA charters regarding responsibilities for HOA management of common areas, state that the Association is responsible for all Common Areas of the community. These are also requirements as defined by NH state laws. Unit Owners and residents of Hickory Woods are only responsible for their Limited Common Areas, which are defined by the site plan filed in the Rockingham County Registry of Deeds, typically the areas in front of the unit, and within 15 feet of the sides and back of the unit.

The Board of Directors cannot direct unit owners or residents to perform any maintenance in the common areas, beyond the LCA. However, unit owners or residents have requested permission from the Board to do maintenance activities in the common areas. The HOA's legal counsel strongly recommends against the Board's current common area maintenance policy. However, the Board wants to balance the liability risks with owners' desires to maintain common land. In order to help protect the HOA from liability, legal counsel recommends that the board for the association should have owners sign a liability waiver that informs the unit owners and residents of the risks and gains their acceptance of the risks, in the event of injury, along with an agreement that the owner(s) and resident(s) will not hold the HOA liable. Please note that although this agreement (waiver) will offer some measure of protection to the HOA in the event of an injury on common area, there is no assurance that it will prevent law suits or judgements against the HOA.

The Board has created new rules to cover the maintenance and modification of common areas. As always, the Bylaws are the foundation for these rules. (Attachment 1 - *Rules for Common Area Maintenance and Additions, Alterations or Improvements*) These rules have been created to permit unit owners or residents to maintain current and any future approved alterations in common areas. Future alterations to common areas will be limited to enhancing natural landscaping, such as trees or shrubs that require limited or no maintenance. Mulched beds or architectural additions will not be approved going forward.

The Board has also created the *Hickory Woods HOA Common Area Maintenance Agreement* that unit owners and residents must sign before they are allowed to perform any maintenance or modification activities within the common areas. (Attachment 2 - *Hickory Woods HOA Common Area Maintenance Agreement*)

A new request form has been created (Attachment 3 - *Request for Maintenance of Common Areas*) to be used for requesting Board permission for all maintenance activities within the common area. The second page of this request form has a reference chart that defines what