



## Maintenance and Insurance Briefing Paper

January 19, 2026

**Background:** A number of questions have been raised in the past few months regarding HOA maintenance responsibilities, insurance responsibilities, what the current Governing Documents say and what they don't say, and the right of the HOA Board to "clarify" language. The Board sought legal advice to help us navigate these complex issues and presented the results at the Annual Meeting on Dec 9<sup>th</sup>, 2025. Because the presentation needed to be extremely brief, the Board promised a more thorough briefing paper which summarizes our research and the legal advice.

Issue: Purpose(s) of the Governing Documents

Issue: Maintenance responsibilities

Issue: Insurance responsibilities

Issue: Legal basis for HOA Board clarifications

**Purpose(s) of the Governing Documents:** The primary purpose of the documents is to create a non-profit corporation (i.e. the Homeowners Association) with the purpose of maintaining specific aspects of the community's buildings & grounds such as trash & snow removal, recreational facilities & operations, common water & sewer lines, irrigation & mowing, mailboxes, building exteriors & parking lots, etc.

Among additional functions set forth under Colorado law and the Association's Governing Documents, an Association – acting through its Board of Directors – is responsible for:

- Levying assessments to fund the above services and manage finances.
- Making prudent decisions, based on reasonable research and consultation with professionals, in the best interest of ALL owners, i.e., the "community as a whole."
- Enforcing the Governing Documents, including architectural guidelines, covenants, policies and rules which support the Governing Documents.
- Oversight of a managing agent (if any), and other professional consultants.

It's important to note that the Governing Documents are generally about the Association and its responsibilities. Also, all policies that have been adopted by the Board since 2017 were reviewed by Legal Counsel for conformance with the current Governing Documents and applicable Colorado law.

The general purpose of the Governing Documents is **not** to discuss Owner responsibilities. Also, Legal Counsel has stated that the Governing Documents need to be "read as a whole". In summary, most of the Articles in the Declarations are about HOA responsibilities. Exceptions are noted below where the Governing Documents discuss Owner responsibilities.

**Maintenance Responsibilities:** Legal Counsel has advised us that Common Law begins with the premise that if you own something (a house, a car, whatever), you're responsible for maintaining it. Park East Square is a townhome community. It is **not** a condominium community.

What's the difference? In general, for a condominium, an owner owns only the interior of the unit, from the drywall in. The HOA owns and maintains the building structure and the common areas. But for a townhome, an owner owns everything within their lot line (more like a single-family home), and is responsible for the maintenance of everything within the lot line (like a single-family home) – **except** as may be delineated in the Governing Documents. The HOA owns and maintains the common areas for the use of all owners. It is important to understand that generic descriptions of condominiums and townhomes that may be found via artificial intelligence or in various state laws and regulations, (including Colorado), are irrelevant and superseded by a specific HOA's Governing Documents.

For Park East Square, the structural portions of our units are not owned by the HOA, but owned by the individual owner. Owners are responsible **and have always been responsible** for maintenance of all improvements on their lots, including structural maintenance. The exception is certain portions of the D unit above the carports.

- Article VII of the Governing Documents state that the HOA is only responsible for maintenance of Common Areas and the exterior of the building erected on each Lot, including roofs, siding, trim, gutters, downspouts, and the structure/build-out of certain “common easement areas” in each building. The maintenance obligations inside the building are limited to the carport, hallway, trash room, storage closets. The HOA is also responsible for utility service lines serving more than one lot. Although not stated, it is clear that utility lines (water, sewer, electric) serving a single lot are the responsibility of the Owner. The same is true for a townhome's structure.
- Examples of structural maintenance that have historically been the responsibility of the HOA as per Article VII:
  - Carport headers that have rotted from water intrusion due to faulty original architectural detailing.
  - Carport steel beam supporting the D unit that twisted due to heaving by the center carport post and pier.
  - Note that in both instances above, permits from the City of Boulder have been obtained.
- Examples of structural maintenance that have historically been the Owner's responsibility:
  - Rusted out support posts in crawl spaces
  - Sections of floor joists removed by original contractor to accommodate plumbing
  - Steel beam deflection due to foundation wall tilt and heaving piers
  - Rim joists that have rotted from water intrusion (usually as a result of a deck improperly attached without flashing)
  - Pieces of attic trusses removed to correct contractor mistakes to accommodate party wall drywall work
- Article VI concerning Party Walls, Section 3, is an exception to the general purpose of the Governing Documents regarding HOA responsibilities. It states that repair and maintenance of party walls shall be shared by the Owners of the lots abutting the lot line. For example, in a kitchen fire that affects the party wall between two units, the two Owners are responsible for repairs. The HOA does not get involved.

**Insurance Responsibilities:** Article XII, Section 2 states that the HOA is only obligated to insure what it is responsible to maintain. This statement about the HOA's responsibility is complimented in Article XII, Section 5 which provides that "each Owner shall be responsible for obtaining property, hazard, and liability insurance for such Owner's Lot and all improvements thereon".

Note that the term "improvements" is a real estate term: A house (including the foundations and roof) on a single-family home lot is considered "improvements". On a farm property, the house, the barn, and the outbuildings are all considered "improvements".

According to the Insurance History posted on the PESHA website, the HOA obtained "all-in" insurance in 1990. In subsequent years through 2019, the history indicates that there were possible legal issues as to whether an "all-in" policy was appropriate. In 2020 and 2021, the HOA realized that we were under-insured with the "all-in" approach; premium increases were becoming unaffordable; and carriers would not bid due to vague language.

("All-in" insurance was often described as "if you pick up the unit and shake it, everything attached was covered" – i.e. interior walls, kitchen cabinets, wiring, insulation, etc. These would be restored to builder-quality standard.)

Therefore, in 2021 the HOA adjusted the insurance from "all in" to "studs out", by selecting an industry standard "studs out" shell policy (which will restore a weathertight shell in the case of an insurable event such as a fire) **because** a policy that only insures the siding, the roofing, the gutters and downspouts, the carport, trash room, etc. (i.e. exactly what the Governing Documents state) would be impractical and no company would bid on it.

The master policies since 2021 insure **more** than what the HOA is required to insure (such as the entire building structure and the windows). However, having such an insurance policy does not, in reverse, **require the HOA to maintain more** than what the Governing Documents require as per Article VII.

Understand that the insurance requirements under CCIOA do not apply to PESHA because PESHA was created before 7/1/1992 and **PESHA is not a condominium community**.

It is also worth noting that in the insurance history, the HOA has been advising owners to obtain their own policies since 2007. And detailed letters to owners were sent in 2017 and 2019 with specifics about the type of policy that should be obtained and desired attributes (such as loss assessment coverage).

As part of the proposed adjustment of insurance coverage from "all in" to "studs out", with advice from construction and insurance experts, the Board created a chart to clarify the maintenance responsibilities and insurance coverage for the HOA, as per the Governing Documents. The chart was duly reviewed and approved by Legal Counsel. And although the main purpose of the chart was to outline the HOA's responsibilities as per the Governing Documents, the Board felt it would be helpful to also outline the maintenance and insurance responsibilities for the Owners, rather than leave Owners to "guess" at their responsibilities. This Brief, in part, serves to provide further explanation and context for the provisions of that valid, and still applicable, Maintenance and Insurance Chart.

**Legal basis for HOA Board clarifications:** Judicial case law in Colorado allows association boards to make business decisions in good faith, on an informed basis, and in the best interests of the Association. The PESHA Board consulted with construction experts, insurance experts, and obtained legal opinions from attorneys **before** implementing the adjustment of the insurance in 2021 and adopting the current Maintenance and Insurance Chart in 2022.

The recent legal analysis in 2025 confirms that the Board not only had the right ***but also had the fiduciary duty*** to interpret the maintenance and insurance provisions in the Governing Documents and to purchase insurance more in keeping with what the Governing Documents delineate. Nothing was changed in the Governing Documents, and no maintenance responsibilities were shifted from the HOA to the owners. Therefore, the Chart on the website is legal and remains in effect.

There have been some opinions expressed by certain owners that the phrase, "in the best interests of the Association" means "in the best financial interests of the individual Owners". While the Association encompasses all member Owners, there can be a wide range of opinion among individual Owners as to what's best. For example:

- Some Owners would be happy with minimal monthly dues, and letting the property suffer from neglect and lower property values. While other Owners want the property to be repaired and maintained so their property values keep up with the market.
- Appearance is more important to some than others – many people enjoy living here because of our green open space. Owners have expressed their appreciation when their building gets repaired or their parking lot gets repaved, others do not feel it is necessary to expend funds for such items.
- This Board has determined, in good faith, that "In the best interests of the Association" means that the HOA doesn't take on maintenance or insurance responsibilities beyond our capabilities, much less beyond what the Governing Documents stipulate.