

WHO PAYS FOR UNIT INTERIOR WHEN THE CAUSE OF THE DAMAGE IS FROM THE OUTSIDE?

- Now that the rainy season is upon us and roof leaks and other water intrusion problems are more prevalent, many owners of condominiums are asking why they should pay for damage to their interior when the cause of the damage was from the outside, an association responsibility. The April article in the Community Up-Date addresses this very issue.

GUEST COLUMN by Becker & Poliakoff, P.A.

WHO REPAIRS THE UNIT INTERIOR?

You would think that the division of maintenance responsibilities in a condominium would be simple. The owners take care of unit interiors and everything inside the units, and the association takes care of everything else. Of course, it is not nearly that simple.

In most communities, the association is responsible for the portions of the unit which provide structural support for the building or which contain utility lines that serve other parts of the building. There will also be circumstances when the common elements are damaged as a result of the negligence of a unit owner or an owner's tenants or guests. In these cases, maintenance and repair that would normally be the responsibility of the association can be the responsibility of the unit owner.

The focus of this discussion will be damage done to the interior of the unit, which is caused, by some event that occurs outside the unit boundary, or damage that is caused to the unit while the association is discharging its other maintenance and repair obligations under the documents. Consider the following examples:

1) In an association project, like concrete restoration, it may become necessary to access a unit and remove portions of the floor to expose damaged concrete and rusted steel reinforcement bars. Who is responsible for restoring the finished floor? This is always a very contentious issue with big projects, like concrete repairs. There will be owners who will contend that any damage done to their unit should be repaired by the association because the damage was caused by the association's repair project. There will be other owners who will say that the association cannot be responsible because some owners may have carpet while others have tile and others have marble. The cost to the association to repair the same square footage with these three types of flooring can vary considerably.

2) A unit suffers water damage due to a roof leak. It is inevitable that a roof will leak at some point. This is one way of knowing that the roof requires repair or replacement. However, a roof leak will typically impact the units and may result in damage to the furnishings inside the units. Who repairs the unit interior and the furnishings?

We proceed on the assumption that the damage done to the unit interior would normally fall within the maintenance, repair or replacement responsibilities of the unit owner. How then does the responsibility shift to the association? There should only be two circumstances under which this responsibility can shift. First, there could be a contractual shift in responsibility. In other words, the declaration of condominium may contain a clause, typically referred to as an incidental damage clause, which shifts responsibility to the association for damage to the unit interior caused while the association is discharging its responsibilities under the documents, like in the example above involving concrete restoration. Bear in mind that an incidental damage clause will not shift responsibility to the association for damage to an improvement installed by the unit owner. If the owner undertook the installation without association approval, the association should not be responsible for repairs or replacement, even under an incidental damage clause. Further, even if the association approves an installation, the opinions from the Division of Florida Land Sales, Condominiums and Mobile Homes hold that the unit owner is responsible for future maintenance, repair and replacement of such alterations and improvements, unless there was some express agreement on the part of the association to take on such responsibility in the future.

The second circumstance where responsibility for damage to the unit interior can shift to the association involves the theory of common law negligence. If the damage caused to the interior of the unit results from the negligence of the association, the association is responsible for repairing the damage even if the damage would normally be within the unit owner's responsibility. For example, with the roof leak referred to in the example above, if the association knowingly fails to timely perform repairs or replacement to the roof, and the unit continues to suffer water damage, at some point, the association becomes responsible for the damage to the unit because it has been negligent in the discharge of its maintenance obligations under the declaration. Similarly, if the association hires a contractor to repair the roof who does not do a proper or complete job, and the leak continues and further damage is done, the association can have liability for negligently discharging its maintenance responsibilities under the declaration. However, if the roof leaks and the association responds in a timely manner and performs appropriate repairs, the association is not responsible for the damages to the unit interior.

Absent one of these bases to shift responsibility for repair to the interior of the unit to the association, there is generally no legal basis upon which to do so. The strict legal analysis notwithstanding, the law remains unsettled in this area, as there is still the risk that a court of equity may impose broader obligations upon the association for incidental damage done to a unit interior, even in the absence of a contractual basis or in the absence of negligence, as previously noted.

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