

## WATER INTRUSION PROBLEMS and RESPONSIBILITIES, PART II

The maintenance and upkeep responsibilities of property in a condominium are usually identified and defined in the declaration of condominium. Typically, the maintenance of the common elements is the responsibility of the association while the maintenance responsibilities for the unit belong to the unit owner(s). Although a unit owner may also be responsible for negligence or intentional damage to common property or the property of other units.

I asked Chad M. McClenathen, a long time association attorney with the law firm of Hankin, Persson, Davis, McClenathen & Darnell, to help clarify some of the concerns by our readers. For the sake of argument I asked Chad to assume that in each case below the association is only responsible for the unfinished interior surfaces for the perimeter walls, floors, and ceilings.

### QUESTION:

The owners immediately above our condominium had their bathroom remodeled recently. Unfortunately, the work done by the contractor was less than complete and it caused water damage to my ceiling, which needed repair. Since I rent my unit, the rental agent moved my two-week tenant to another unit causing me a rental income loss of \$1,600. The owner above me promised to repair my unit but nothing has been done to date. Should I repair my ceiling and send him the bill? Also, what about the loss of rent I incurred?

**ANSWER:** Damages caused by water intrusion should be reported to the insurance agent and insurance company that insured the damaged unit. If common elements are also damaged, the Association should report the damage to its insurance carrier and agent.

With input and assistance from necessary parties, such as water extraction companies, consultants, and contractors, the unit owner should repair the damage to the unit for which the unit owner is responsible under the condominium documents, and the Association should repair the damage to common elements, and portions of the unit that the Association is required to repair under the Declaration of Condominium. Based on the facts stated above, the unit owner is responsible for the repair of the finished surfaces, such as paint, wallpaper, popcorn plaster, etc, and contents and furniture. The Association is responsible for the unfinished surfaces, such as the drywall or plasterboard. Cooperation is obviously necessary to permit the owner of the downstairs unit and the Association to coordinate the repairs.

Each party that is damaged is responsible for the uninsured cost of the repairs for which they are responsible, including any deductible amount under the insurance policy. The owner of the downstairs unit, and the Association, have the right to seek reimbursement for damages from the owner of the upstairs unit if they can prove that the upstairs unit owner, or agents of that owner, were negligent and caused the damage. Such matters, if pursued, are typically resolved in the small claims court of the county. I do not represent

individual owners as part of my practice and do not know if lost rent would be a recoverable element of the damages.

**QUESTION:**

I have had three roof leaks in my condominium the past year in the dining room area. The association has attempted to repair the leak on each occasion. I don't know if it's the same leak or different leaks but this time it damaged my popcorn ceiling and the repair bill is over \$400. The association refused to pay the bill since it claims the drywall does not have to be replaced and it made every effort to repair the roof in a timely manner. Why should I have to pay the bill?

**ANSWER:** Although the parties involved in this dispute are different, the answer is basically the same as the answer to the preceding question. Damages caused by water intrusion should be reported to the insurance agent and insurance company that insured the damaged unit. The unit owner will be responsible for the uninsured cost of the repairs, including any deductible amount under the insurance policy. The unit owner has the right to seek reimbursement for damages from the Association if the unit owner can prove that the Association, or agents of the Association, were negligent and caused the damage. If the amount of the claim justifies the cost, the unit owner may have to engage the services of a consultant, such as an engineer or roof expert, to investigate and determine if the Association repaired the roof in a proper manner, and whether the prior unsuccessful efforts to repair the roof indicate a substandard or untimely approach that might support a negligence claim.

**QUESTION:**

I recently put my condo on the water, which has had an annual tenant for the past three years up for sale. A prospective buyer noticed mold and algae on the wall surface in at least three rooms. I have asked the association to fix the problem but they have informed me that it appears to be surface mold and I should turn it into my insurance company. My tenant has apparently told the association that she does not like cost of running the air conditioning and rarely turns on the air for cooling. I believe the mold is caused by outside moisture and not by the lack of cooling the unit. The association has written me a letter stating that it will be responsible should samples taken from inside the wall cavity prove water intrusions from the outside be responsible. I want the association to take care of all the mold and algae problems.

**ANSWER:** The answer to this question is very similar to the first question. If there is mold and water intrusion, there may be damage to common elements (the drywall, wood studs, window frames, etc.) and to the interior of the unit. Thus, claims are reported to the insurance agents and carriers of both the unit owner and the assoc, and repaired.

The crux of this matter, as is often the case, is the source(s) of the water intrusion. The unit owner and/or the Association need to engage a reputable consultant and determine the source(s) of the water intrusion. Once the source is known, the party responsible for the Declaration of Condominium determines eliminating the water intrusion. For example, if it is a window assembly for which the unit owner is responsible, the unit owner must repair or replace the window. If it is the roof that the Association is required to maintain, the Association must repair or replace the roof.

Once the problem is determined and fixed, and the damage repaired, the involved parties can determine if they want to seek reimbursement based on negligence. For example, the Association might decide to pursue the unit owner, who is responsible for the actions of the tenant, if the Association is confident that it can prove that the damages the Association was forced to incur was caused by the failure of the tenant to air condition the unit and remove our wonderful Florida humidity. On the other hand, the unit owner may have a claim against the Association if the unit owner can prove the Association performed its maintenance functions in a negligent manner.

▽ Walt Hammerling is a CAM and not an attorney. Please contact your Association attorney for information dealing with your Association. Walt Hammerling is the President of Argus Property Management, Inc. and the Broker of record for Argus Realty Group, Inc. He may be reached at either (941) 927-6464 or at [Argusmgmt.com](http://Argusmgmt.com)