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Community Associations Newsletter

Stemming the Flow of Water Intrusion Claims

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Say it isn't so! Please tell us there is no chance of another Snowpocalypse or Snowmageddon. Unfortunately, all signs point to another incredibly cold winter season. Along with the drop in temperatures come the inevitable pipe bursts that so many condominiums experience. Whether involving new construction or older buildings, water intrusion issues plague many of our condominium association clients. So how do associations better prepare for the upcoming season?

A review of your governing documents and policy resolutions **now** will give you a head start in properly handling those inevitable water claims.

There are generally three sections in typical condominium instruments worth exploring. First, look for the division of maintenance and repair obligations between unit owners and the association. Most documents designate the responsibility for maintenance and repair of **common elements** to the association and that of the **unit, its equipment, appliances and appurtenances** to the unit owner. At the same

time, there are exceptions to these general rules, particularly when negligence or misconduct of a unit owner or resident is involved.

Associations can create policies which set requirements for proper maintenance of certain items by a unit owner. For example, if an association has experienced an excessive number of burst pipes because of inadequate insulation, a helpful policy resolution would require unit owners to winterize their unit pipes, especially if a unit will be unoccupied during the winter months. An association may also consider a *high risk component* policy, which clearly defines those "high risk" items under the owner's care. Such policies, when clearly drafted, are helpful in determining the responsibility for on-going maintenance and repairs when a unit owner neglects a specific maintenance obligation.

The second section of condominium instruments worth examining relates to insurance. Typically, governing documents require condominiums to maintain a master property insurance policy which covers **all units** as well as the **fixtures initially installed within the units**. A master

policy *does not* cover furniture, wall coverings, improvements, or other personal property of unit owners, all of which are usually the individual unit owner's responsibility.

The third section to review is the casualty loss and destruction provisions. In case of damage to the building, these provisions will identify the association's responsibilities in terms of repairs to common elements as well as individual units and certain related components.

This is a good place to note again the value of clearly drafted association policies that clarify the association's and unit owners' insurance coverage obligations, particularly when it comes to reporting and investigation of individual owners' casualty losses. Such policies can help to ensure timely reporting of losses, which can assist in damage mitigation and favorable claims review by the master insurance carrier.

Let's assume your documents are in good order. What happens when there is damage from water? Where does an association start in handling this situation?

While this sounds entirely obvious, the drama of a flood can lead to forgetting that the first step is to have a qualified contractor clearly identify the

cause of the leak. Was it the result of maintenance failure by a unit owner? If so, does the damage affect other unit owners or the common elements? Depending on your documents, *the association may have an obligation to fix the unit and common element itself*, but not pay for the consequential loss of the affected unit owner(s). The association may also look to the at-fault unit owner for payment of the deductible for that claim. While insurance deductibles are often considered "common expenses" to be shared by all members of an association this is not always the case; the condominium documents may shift the burden for the deductible, especially if a particular unit owner is the cause of the loss.* Clear Association policies again can make all the difference.

Obviously, reviewing your condominium instruments is an important place to start. Consulting with legal counsel and/or your experienced insurance representative is always a good idea. Adopting clear Association policies and then keeping owners well-informed as to their maintenance, insurance, repair and reporting obligations will obviously be most helpful when facing any damage situation, particularly the difficult issues of water intrusion.

*State law can also be valuable in these situations. For example, the Maryland Condominium Act states that when there is a covered loss which originates in unit, the unit owner may be assessed the insurance deductible up to \$5,000.00 and the Act requires annual notice to unit owners regarding this provision. Accordingly, if you have a water leak in a Maryland condominium, you should contact counsel for the association to assist you.