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## HOA VIEW

# Water leaks in your condo: Who's responsible? And why the confusion?



**BY DONNA DIMAGGIO BERGER**  
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There are many advantages to living in a multifamily condo or coop building in South Florida: great views, enviable locations and abundant amenities. However, there is always the possibility of water leaks.

Not surprisingly, when these leaks occur, there is often an inherent tension and finger-pointing between the owner who suffers interior damage and the boards who are being asked to pay for repairs.

### What's the cause of the leak?

The starting point to determine responsibility for water leaks is to determine the cause of the leak. Most leaks occur because of ordinary wear and tear to the roof, the exterior walls, or a plumbing line or fixture, while others occur as a result of a casualty event, like a hurricane.

If the association or a unit owner fails to maintain certain pipes or appliances for which they bear responsibility under their governing documents, the association or owner may be held responsible to not only repair the damaged pipe or appliance but also for all other interior damages which result.

However, sometimes you cannot know there is a problem until you see a leak. Accordingly, in most cases when water damage is sustained as a result of a flood, windstorm, roof or window failure or even a leak emanating from an upstairs unit, the roof, or an exterior wall, Florida's Condominium Act requires the association to repair damage to a unit's unfinished interior walls, floors and ceiling as well as the windows and doors.

In the event of a casualty event, owners are responsible for damage to their floor coverings, ceiling coverings, appliances, cabinetry, appliances, furniture and personal property.

### So what's the source of the confusion?

Often, disputes occur after a water leak and damage to a unit not as a result of confusion but as a result of an owner failing to have insurance coverage.

Unfortunately, many condominium owners do not carry adequate insurance in the event of damage to a unit's interior. In those instances, an owner may feel it makes sense to pursue the association or another owner for interior damages rather than paying out of pocket.

While there is not usually a legal requirement for owners to purchase such interior coverage insurance (known as an HO-6 policy), every condominium

and cooperative association should create and publish a water leak policy that clearly advises owners and residents of the respective obligations between the association and its owners for repairing damages resulting from water leaks.

That policy should make it abundantly clear to owners that if they fail to maintain proper interior unit coverage, they will be responsible for paying for certain interior damages out of their own pockets.

### What about mold?

Mold can literally be a dirty word in multifamily buildings. Given the shared duct work in these structures and Florida's humid environment, the likelihood for mold to spread from unit to unit or into the common elements requires a high level of responsiveness to water leaks. The same analysis discussed above applies to the issue of mold.

The association must remove and replace mold-infested drywall. However, mold remediation to other parts of the unit including furniture and personal property remains the owners' responsibility unless the association has been remiss in either its maintenance obligations or in its responsiveness to a casualty event.

If you serve on the Board of Directors of a condominium association that operates a multifamily building, you can expect the issue of water leaks to arise at some point. If you live in a multifamily building, you can also reasonably expect to be impacted by water intrusion into your unit eventually.

Owners and boards must be aware of their respective maintenance, repair and replacement responsibilities under

both the pertinent statute and the provisions of the association's governing documents. A pipe's location outside the unit does not necessarily mean that the association is responsible to repair same.

Conversely, a pipe located inside a unit also does not necessarily mean that the owner is responsible for same if that pipe services more than one unit. When determining the respective maintenance and repair obligations between the

owners and the association, one must review the definition of the unit's boundaries as well as the maintenance provisions contained in every set of condominium documents.

Out-of-state owners whose units remain vacant for any length of time need to be particularly vigilant and ensure that their units are checked regularly to confirm that a leak has not occurred since they last visited the property.

Owners who suffer damage from leaks have a duty to mitigate their damages by immediately notifying their association of the situation, allowing access for inspection and repair, and taking certain steps to prevent the growth and spread of mold in the aftermath of a leak.

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*Donna DiMaggio Berger is a shareholder at Becker Law. She is a Florida Bar board-certified specialist in condominium and planned development law.*