



## Smart Water Protection

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### Unit owner may not be responsible for damage caused by leak from unit

**Question:** I’m the president of a condominium association, and we are constantly faced with leaks in units that cause damage to units below them.

The unit suffering the damage often has very limited insurance, and so the owner of that unit does not want to do more than paint their unit. Instead, they want the unit causing the damage to pay for their repairs.

We were told it is every unit owner’s responsibility to fix the damage in their own unit, even if the damage is caused by another unit. Do these owners have any recourse against the unit owner causing the damage?

Does the condominium association have any liability? We have this issue almost every two months! — **L.P.**

**Answer:** *I am confident that damage caused by water leaks is the most common issue I deal with in my condominium law practice. The older a building gets, the worse the problem becomes.* I represent older properties that have monthly major floods, costing them tens of thousands a year to remedy. I tend to see this problem a lot in very new buildings, as well — usually the bugs in the plumbing or the sprinkler system appear in the first few years, or sometimes contractors doing a build out will damage a pipe or a sprinkler during construction. When I worked in property management, I represented a building where the pool filter for a rooftop pool cracked, releasing nearly the entire pool’s worth of water into the building, and flooding twenty floors. *It is one of the hidden risks of living in a high rise condominium — stuff flows downhill.*

There is a common misconception that, when water emanates from a condominium unit, that unit is automatically responsible for the damage to that unit, the common elements, and to other units. But, that is not the way the law works. A unit owner is only responsible for damage to someone else’s property if the damage was caused by that owner’s carelessness (negligence), or by their intentional act. For example, if a unit

owner leaves the tub running until it overflows, or intentionally breaks their toilet tank to cause a flood (that has actually happened), they will be legally responsible for the damage caused to other units.

But, if a pipe fails, or a washing machine supply line splits, that typically falls into the “stuff happens” category. The Condominium Act, at Section 718.111(11), provides that the condominium association must insure the condominium property as originally installed by the developer, minus certain delineated items. In the event of a casualty, such as a flood, the association is responsible to repair those items, whether or not the repairs fall within the limits of their insurance coverage, or whether there is a deductible that must be paid. Usually, in the event of water damage, this means the association must repair drywall and ceilings. For this reason I suggest that, in the event of any leak, the association take all needed steps to dry out the common elements and the affected units, rather than leaving that responsibility to the unit owners — a \$2000 drywall repair can quickly become a \$20,000 mold remediation project if left untreated. The unit owners are responsible for their own personal property, including wall finishings, floor coverings, furniture, cabinets, etc. This is why it is critically important that every unit owner carries insurance.

People naturally want to blame someone for things that are not our own fault, but often leaks and similar casualties are not anyone’s fault, at least legally. Condominium buildings are a maze of hidden pipes and valves. Over time, everything can and will fail. **Many of my older properties use water bugs or other water detection devices that wirelessly notify the office if a leak is detected — and these absolutely can and do avoid major catastrophes.** I also recommend that associations promulgate rules that require owners to turn off the water to their units when they are out of town for more than a week or so (obviously this would not include water that services the air conditioning, and this also depends on whether each unit has its own water shut off valve). Associations may also benefit from regular plumbing inspections, where a plumber can check the valves and toilets in every unit and inform owners of any repairs that need to be made. But, while these common-sense steps can definitely reduce incidents of water damage, nothing will prevent them entirely — this is just one of the negatives of living in multi-owner housing.



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