



Who Must Cover Repairs After Water Heater Ruptures?

Association's insurer is likely on the hook

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Q: I live in a 16 year old condominium building which has three levels of condominium units stacked upon each other. Over the years, we have had several incidents where water leaks from the second or third floor have caused damage to not only the units where the leaks originated, but to units below as well. Every time this happens the association consistently requires each unit owner to repair their own damage. There was a recent incident where a hot water heater ruptured on the third floor. The second floor unit was heavily damaged, but now two weeks later, the mess has still not been cleaned up. The owners are seasonal residents and are not at the unit. The association has so far refused to make any repairs because, as I understand it, the board believes this is the unit owner's responsibility, or even the third floor unit owner's responsibility for failing to maintain the water heater. Who is responsible to clean up the second floor unit? **M.S. (via e-mail)**

A: First, whenever you have damage to condominium property, it is necessary to determine whether the cause of the damage was a "casualty" event or a maintenance problem. A casualty event will implicate the insurance provisions in the Florida Condominium Act, whereas a maintenance failure is generally addressed by specific

provisions in the declaration of condominium. Casualty events are generally defined as sudden, unexpected events that cause damage. In my experience, a burst water heater is usually classified as a casualty event and is typically covered by insurance. An example of a maintenance failure would be a slow drip from a water supply line that develops and progresses over time.

Effective July 1, 2008, the Florida Condominium Act was amended to substantially revise the insurance and casualty repair obligations of the association. The statute provides that the association must insure all portions of the condominium property as originally installed or replacements of like kind and quality, as well as all alterations or additions made to the common elements or to association property by the association. The unit owners are required to insure all of their personal property as well as floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and counter tops, and window treatments, including curtains, drapes, blinds, hardware and similar window treatment components or replacements of any of those items. This has been the basic law for many years.

The important revisions to the statute now require that if the insurance proceeds received under the association's policy are inadequate to pay for the cost of repair of any casualty damage to association-insured property, due either to the deductible or the fact that the damage exceeds the insurance coverage, then the association must pay the cost of repair of all items it insures, as a common expense. There is an exception to this rule if the association has affirmatively voted to "opt out" of the statutory procedure.

Therefore, assuming that the damage caused by the burst water heater includes items that the association is obligated to insure, then the association should submit a claim to its insurance carrier. Any shortfall in insurance proceeds to repair those items of property that the association insures should be paid for by the association as a common expense, unless the association has opted out of the new law by majority vote, in which case the declaration of condominium controls.

This new statute differs from the old law, which might explain the way the association previously handled damage repairs. In my experience, water damage events almost always affect common elements, and because the association has an obligation to maintain common elements and to protect other units from damage caused by water intrusion or resulting mold, the association should promptly act to mitigate against further damage. Both the second and third floor unit owners should notify their HO-6 (interior unit dwelling policy) insurance carriers of the incident as well.

The insurance provisions of the Condominium Act do acknowledge that a negligent party may be held

liable for damage caused by his negligence. However, given the urgency to clean up water damage and prevent further damage including mold, the negligence question should be put off until after mitigation of further damage takes place.

Q: Our condominium association has been fortunate to have the same president for the past 12 years, and he has done a great job. Unfortunately for us, he has decided not to run for re-election this year. Because of his lengthy and truly remarkable service to the association, I proposed that the association purchase a gift for him to honor his service. However, one of the other directors, who actually supports giving him a gift as well, raised the issue whether or not the association could spend money on a gift for him since it would be a form of compensation. Could you tell me if that would be legal? **W.H. (via e-mail)**

A: Unfortunately, barring some specific provision in your governing documents that would permit the board to pay compensation to a director or to give a gift, the association is not permitted to give a director a gift that is paid for with association funds. The basic reason for this is that an association is only permitted to spend money on valid, common expenses. In my experience, the definition of common expenses established by a declaration of condominium rarely, if ever, includes expenditures for gifts to directors. As an alternative, I would suggest that you solicit contributions from condominium owners separate from the association finances, and purchase a gift using those voluntary contributions. I would hope that a sufficient number of other owners would share the board's view of the outgoing president's past service.

Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, co-operative, and homeowners' associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm's Naples and Ft. Myers offices.

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