



Condominium Law Q&A

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Question – I am currently president of our condo association and would like your opinion about a request for the condo association to reimburse a unit owner for mold damage. An absentee owner is claiming damage to his unit as a result of water coming into his unit from the unit directly above his during hurricane Frances and Jeanne. His unit was vacant during the time of the hurricanes, and he stated he visited the unit a week after Hurricane Jeanne. At that time, he claims he inspected the unit and eliminated all visible mold. He did not indicate what procedures were used to eliminate the mold. Approximately three months later, his parents arrived at the unit and found it full of mold. The owner is asking that the condo association reimburse him for mold removal, new drywall, and baseboards. The first notification the condo association received concerning his mold problem was the latter part of January, when we received an estimate for the cost of drywall and baseboard replacement, claiming it to be the condo association's responsibility. While units above and below this unit also received water damage, each of the other owners took prompt corrective action and, as a result, experienced no mold growth. Our board of directors denied this owner's claim for reimbursement for correcting the mold problem because of his negligence in not taking prompt, effective action to resolve the existing mold problem and to prevent further mold growth. Is it not true that if unit owners leave their unit unattended for an extended time and neglect to protect their unit from mold growth, the owner, not the condo association, must assume the

cost of any damage as a result of their negligence? In the case of the 2004 hurricanes, our condo association hurricane insurance deductible far exceeded our costs for damage. Our board believes it would be unfair to use association funds or levy a special assessment to all owners when owner negligence is involved. Thus, we are seeking your opinion. Should the condo association reimburse this unit owner for the mold damage? J.C., Cocoa Beach

Answer – The question presented is among the most difficult to answer because there is no consensus of agreement among the experts as to who is responsible for the cost of repairs when insurance proceeds are inadequate to cover the cost of repairs. In analyzing the issues, it is necessary to distinguish between the obligation to maintain, the duty to insure against a casualty loss and the need to mitigate damages. In most cases, the unit owner is responsible for the cost of replacement and repair of all improvements within the interior unit boundaries, including the dividing walls, baseboards and interior finishes. The association, on the other hand, by operation of law, has the duty to obtain and maintain insurance coverage for casualty losses on all improvements, including the unit drywall and bases. In the event of a casualty, the party who is insured must mitigate damages. Translated, following a hurricane, this means "shoring up" [Closing up openings in the building; placing blue tarps on the roof; and, placing plywood over blown out doors and windows.], and "drying out" [Removal of wet carpeting, drywall and baseboards.] to prevent the growth of mold. Herein is

the rub. The Division takes the position that the party responsible for carrying insurance is obligated for the cost of repairing the unit when damage is caused by a casualty, regardless of what the condominium documents say and whether or not insurance proceeds are adequate. Most authorities disagree, arguing that the condominium documents, recorded prior to the effective date of the statutory amendments, control. Then there is the additional element of the unit owner failing to advise that a problem might exist, allowing the mold to grow. Until the courts sort this out, no one can give a definitive answer, but quite frankly, under the facts presented, I agree with the association's position and would suggest that the unit owner file a claim with his carrier.

Question – We have lived in the condo since it was new 3 years ago. I live on the top floor, and there is a tremendous skylight and a metal damper which bangs at winds of 15 mph and greater. This is a loud continuous banging noise. It keeps me up at night. The board keeps giving me excuses that nothing can be done or they are working on this or that. This is 3 years, what can I do? T.V., Indialantic

Answer – There is obviously a solution to the problem. The board, for whatever reason, just doesn't want to bother fixing it. So, unless you are willing to take legal action to compel a resolution of the problem, you will just have to continue putting up with the noise. ■

Gary A. Poliakoff is a founding principal of [Becker & Poliakoff, P.A.](#) and has served as its President since the inception of the Firm. He is on the Board of Governors of the Shepard Broad Law Center of Nova Southeastern University where he is an Adjunct Professor, teaching Condominium Law and Practice.

Mr. Poliakoff is co-author of [Florida Condominium Law and Practice](#), [The Florida Bar Continuing Legal Education](#), 1982, and author of a national treatise, [The Law of Condominium Operations](#), West Group, 1988. Mr. Poliakoff can be contacted by emailing gpoliakoff@becker-poliakoff.com.