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Florida Condo Owner With Mold Damage or Water Damage due to Condo Water Leaks? What Happens if the Condo Association Refuses to Pay?

November 20, 2013 by [Brett A. Kaplan, Esq.](http://fightsforyou.net/florida-property-damage-insurance-attorney/florida-condo-owner-mold-damage-water-damage-due-water-leak-happens-condo-association-refuses-pay/) <http://fightsforyou.net/florida-property-damage-insurance-attorney/florida-condo-owner-mold-damage-water-damage-due-water-leak-happens-condo-association-refuses-pay/> - [respond](#)

All too common down in South Florida, condominium owners get that phone call from condominium security that they hear about from other unit owners but never expect to get themselves — you need to come home now, you have a condo water leak in your unit and it needs to be dealt with immediately, or the hot water heater or washing machine has burst in the upstairs unit in the floor above you (or your next door neighbor's unit, i.e., unit to unit water intrusions) and the whole line of condos down your unit line is flooded. When these types of water leak incidents occur, not only is their water damage to the common elements (drywall, ceilings, interior wall air crevices, windows, etc.), but personal property is usually ruined (furniture, paintings, wood floors, the paint on the walls starts to bubble, the floor or wall tile becomes loose, the ceiling fans no longer work, the kitchen cabinets start to warp and come apart, etc.), the repair and remediation process takes a long time such that as a Florida condominium owner, renter, resident or tenant, there is the loss of use of the condominium unit, and mold damage can result in a very short period of time (which can cause an owner or tenant to suffer from nasal or respiratory illnesses, an allergic reaction and/or other bodily injuries) if the water damage is not dealt with in a quick manner (usually by a Florida licensed and certified water and mold remediation company).

A question often asked of a Florida condo water leak lawyer is who is liable (or at fault) and responsible for paying for these types of damages caused by Florida condo water leaks, who is responsible for fixing the damage, and what insurance applies to pay for these types of damages when the condominium association refuses to accept their fault and responsibility to pay for mold remediation and build out of the condo unit. The answers to these questions can depend on a multitude of factors, but the primary concerns will be:

1. What is the source of the condo water leaks (ie., from a burst pipe inside the drywall that is a common element under the buildings declaration of condominium versus from a burst water heater, leaky faucet or garbage disposal, or pipe under your sink that is personal property to be maintained by the respective unit owner or tenant that lives above you, next door or on the second floor);
2. What type of property damage was done (ie., common elements versus personal property or fixtures, water damage versus mold damage);
3. Who caused the condo water leaks (ie., another owner or tenant of a neighboring unit because they were negligent in replacing an already leaky water heater, dish washer or air conditioning unit, a unit owner or tenant who hired a plumber, electrician or air conditioning contractor to do maintenance who then broke a pipe and caused a flood, or the condominium association as a result of their failure to maintain the building's common elements such as the roof, pipes inside the walls, stucco on the exterior of the building, sewer pipe stacks, etc.);
4. What caused the condo water leaks (was it a toilet or hot water heater that continued to leak over over time such that the unit owner would be negligent in maintaining there unit or is it a common element roof leak that happens suddenly because of a Hurricane, tornado or hail storm); and
5. What types of insurance are available (ie., a Florida condominium homeowners (or renters if by way of a tenant) insurance policy versus a commercial general liability (CGL) insurance policy for a condo association's failure to maintain its common elements versus commercial property insurance policy for repair of the condominium building when causalities such as Hurricanes or tornado's occur) and what types of water damage, property damage or mold damage does the insurance cover.

A Florida condo leak lawyer will have to deal with these questions and answers to same, in assisting a unit owner, tenant or resident in recovering money to get the damage fixed, and forcing the appropriate insurance company or entity to fix the condo. The primary sources of Florida law that could be applicable are the declaration of condominium (and the condo's by-laws, rules and regulations and articles of incorporation), Chapter 718 of the Florida Statutes (statutory duties which govern Florida condominiums,

including the association's responsibility to maintain its common elements, and the condominium's insurance requirements for casualties and other damage events), and Florida insurance law regarding what types of damages may be covered under certain situations (such as condo water leaks caused by wear and tear as opposed to causalities that occur suddenly and unexpectedly, or whether mold damage may be excluded under the insurance policy). [For an extensive discussion on a Florida condo water damage loss from a condo unit above, upstairs or next door to you, see my prior article.](#)

Of note, Florida Statute 718.111(f) sets forth the requirements of a condominium's insurance coverage and what portion of the property the building is required to insure:

(f) Every property insurance policy issued or renewed on or after January 1, 2009, for the purpose of protecting the condominium must provide primary coverage for:

1. All portions of the condominium property as originally installed or replacement of like kind and quality, in accordance with the original plans and specifications.
2. All alterations or additions made to the condominium property or association property pursuant to s. 718.113(2).
3. The coverage must exclude all personal property within the unit or limited common elements, and floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of the unit and serve only such unit. Such property and any insurance thereupon is the responsibility of the unit owner.

If you get that call that there is water and mold in your condo unit as a result of condo water leaks, immediately notify the condominium association (whether the president, vice-president or other board member), property manager or security so that the appropriate action can take place to either notify the other unit owner or tenant of the water coming from their unit, or the association can immediately start the dry out process assuming common elements have been damaged. You may also want to send a letter certified mail return receipt to the association (or the other unit owner if the water originated from an upstairs unit above yours) putting them on notice of their potential responsibility in the matter, and seeking an insurance disclosure under Florida Statute 627.4137, which provides the following:

627.4137 Disclosure of certain information required.—

(1) Each insurer which does or may provide liability insurance coverage to pay all or a portion of any claim which might be made shall provide, within 30 days of the written request of the claimant, a statement, under oath, of a corporate officer or the insurer's claims manager or superintendent setting forth the following information with regard to each known policy of insurance, including excess or umbrella insurance:

(a) The name of the insurer.

(b) The name of each insured.

(c) The limits of the liability coverage.

(d) A statement of any policy or coverage defense which such insurer reasonably believes is available to such insurer at the time of filing such statement.

(e) A copy of the policy.

In addition, the insured, or her or his insurance agent, upon written request of the claimant or the claimant's attorney, shall disclose the name and coverage of each known insurer to the claimant and shall forward such request for information as required by this subsection to all affected insurers.

The insurer shall then supply the information required in this subsection to the claimant within 30 days of receipt of such request.

(2) The statement required by subsection (1) shall be amended immediately upon discovery of facts calling for an amendment to such statement.

(3) Any request made to a self-insured corporation pursuant to this section shall be sent by certified mail to the registered agent of the disclosing entity.

As the unit owner, you also have the duty and responsibility under Florida law to mitigate your damages regardless of who has liability and caused the condo water leaks. As such, you should assist in the dry out process by protecting your condo unit and personal property from further water damage or mold damage. [For an extensive discussion on Florida condominium owner insurance claims or lawsuits when a unit owner has water damage and wanting to know what the association's insurance may cover, see my prior article.](#)

Moral of the Story: if you own, rent or reside in a Florida condominium and the condo unit sustains water or mold damage from a unit upstairs, the unit above, or even a next door neighbor, or condo water leaks result from a failure of the association to maintain its common elements, whether the condominium is located in Orlando, Marco Island, Davie, Tampa, Sunrise, Pembroke Pines, Fort Myers, Tamarac, Coral Springs, Hollywood, Allapattah, Miami Gardens, Aventura, Naples, South Beach, Kendale Lakes,

The Hammocks, North Miami Beach, Hialeah, West Kendall, Homestead, Pinecrest, the Florida Keys, Weston, Florida City, Palmetto Bay, Miami Shores, Sunny Isles, Golden Beach, Miami Lakes, West Palm Beach, Key West or another area within Miami, Fort Lauderdale or Palm Beach, or anywhere in Miami-Dade County, Broward County, Palm Beach County or Monroe County, know that the complexities of such a Florida condominium water loss will usually require the retention of a Florida condo leak lawyer or Fort Lauderdale condo mold damage attorney to investigate the water loss and figure out what insurance may be applicable, who may be liable, at fault, or responsible for fixing the water damage (may take experts such as engineers, public adjusters, plumbers, architects, general contractors, etc.), and who may be responsible for paying for the property loss and mold damage when a condo association won't pay due to the condominium unit's water damage or mold damage being under their insurance deductible.

Filed Under: [Condo Leak](#), [Condo Water Damage](#), [Florida Property Damage and Insurance](#)