

The Classic Condominium Claim ---

Water leaks from an upstairs unit damaging units belowand the fight starts.

- Why doesn't the upstairs unit owners' policy pay for all the damage?
- Why do we have to turn in a claim on the HOA policy for damage a unit owner caused?
- The unit owner upstairs caused the loss. I insist on him paying for the damage to my unit!
- The insurance carrier for the upstairs unit is no good. The claim was filed a week ago and the adjuster has still not inspected the damage!
- The fact is that the water came from unit 300 and 300 is responsible to pay for all damages!

The argument: With ownership comes responsibility. If you own a unit, you have the responsibility to maintain your property. If there is a water leak emanating from your unit, you are responsible for the damage to the other unit owners' property you damage. You will be expected to turn in claim to your carrier and you must invoke coverage to pay for the loss you caused.

Problem with the argument: A unit owner's policy includes Comprehensive Personal Liability (CPL). CPL will defend the named insured against an allegation of negligence and will indemnify the named insured if shown to be legally liable. Note: CPL will pay for damage that the policy holder causes only if he or she is determined to be "legally liable". That means "Negligent". Negligence is not "synonymous" with "responsible".

Two "this happened to me" stories for comparison: Notice that the basic facts of both stories are similar. Water leaked from an upstairs unit from an appliance to the unit below.

Story #1: Unit 300 in a 15 year old association is purchased by Mr. Smith. Prior to the sale, Mr. Smith enlisted the services of a realtor who specialized in resort area condominiums. Per the realtor's suggestions, Mr. Smith had a real estate inspector evaluate the property and develop a report on the condition of the unit. Mr. Smith then closed on the unit and exactly two days after the closing, Mr. Smith's hot water heater ruptured and damaged the units below severely. Negligent or not?

Story #2: Unit 400 Mr. Jones installed a new dishwasher in his unit and not being a plumber, failed to tighten the flare fittings to the water supply line correctly. Once the dishwasher was installed, he left the unit. The pipe fitting held for a few hours then ruptured damaging units below. Negligent or not?

Functional Problem with a unit owner Liability Claim:

Obligation of the liability adjuster for the accused unit owner is to investigate and defend the policy holder. Water claims, however, must be dealt with immediately. While the accused unit owner's insurer is investigating, the damaged property is not being dried and damages are not mitigated, possibly mold is growing, the usage of the property is delayed, no action is being taken and tempers are flaring.

By a great percentage, most accusations of negligence in condo unit occurrences are denied. So the obvious tactic to take to get immediate action is to file claims with the property carriers of all the affected entities to process the claims as soon as possible.