

Part I: Who Pays When Causation, Claims and Coverage Cross?

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Part One of a Three-Part series: My oriental carpet was damaged by a roof leak; shouldn't the association pay for the cost to replace my carpet?

The answer is, "it depends." Having insurance does not always equate to a legal responsibility for damage caused (or repairs necessitated). Likewise, a legal responsibility for damage or repairs may not necessarily trigger insurance coverage. Thus, it is not as simple as saying, "because the leak came from the roof, the association is responsible." The real answer is it almost always depends on the very specific facts at issue.

Generally, the association is responsible for the maintenance, repair, and replacement of the common elements; whereas, unit owners are responsible for the maintenance repair and replacement of their units.^[1] Thus, if a condominium has a leak from a common element roof into the interior of a unit, but the leak is not due to any negligence on the part of the association, then the association may have no legal responsibility to effectuate repairs to the interior of the unit, no less replace that oriental carpet that was ruined. But, the analysis does not end there. Pursuant to the New Jersey Condominium Act, if the damage is caused to any part of the condominium property covered by insurance, that is required to be maintained by the association, then the Association could be responsible to use the proceeds of any such insurance to repair **covered** portions of the unit, provided the governing documents did not state otherwise.^[2]

Let's take a closer look at that oriental carpet that was damaged by a roof leak. In that scenario, it is unlikely that the oriental carpet would be covered by the association's insurance policy. Thus, barring some negligence on the part of the association, it is not likely that the association would have any responsibility to replace the oriental carpet. The required elements of negligence are (1) duty, (2) a breach of that duty, (3) causation and (4) damages. While there is a duty to maintain the common elements, and the causation of the damage is caused by a leak from the common element roof, the element of "breach" of the duty to maintain is frequently missing, absent some prior notice to the association of a condition.

We strongly recommend that you consult with an attorney whenever dealing with issues pertaining to responsibility or insurance coverage for property damage

claims. Tune in next week for Part 2 of this three-part series: “They are responsible, shouldn’t their insurance carrier provide coverage?”

[1] *See N.J.S.A. 46:8B-14(a).*

[2] *See N.J.S.A. 46:8B-24(a)* (“Damage to or destruction of any improvements on the condominium property or any part thereof or to a common element or elements or any part thereof covered by insurance required to be maintained by the association shall be repaired and restored by the association using the proceeds of any such insurance. The unit owners directly affected shall be assessed on an equitable basis for any deficiency and shall share in any excess.”); *compare N.J.S.A. 46:8B-24(c)* (“The master deed or the by-laws may make other and different provision covering the eventualities set forth in [N.J.S.A. 46:8B-24(a)] or covering other results of damage or destruction to any part or all of the condominium property, notwithstanding the provisions of [N.J.S.A. 46:8B-24(a)].”).