



Property Damage—Who Pays for Repairs?

Changes to the Florida Condominium Statute in 2004 and 2008

by George W. Keys, SPPA

Whether a catastrophe such as a hurricane or a small water leak interrupts the normal life of a condominium community, the property manager is immediately called upon to deal with all parties involved and coordinate the restoration project.

Often, however, there is disagreement and confusion as to who is really supposed to pay for the necessary repairs. The declaration of condominium and the bylaws of the association are the documents for which all Florida condominium unit owners and many property managers

instinctively reach. These documents provide solutions to many issues that arise in multi-family communities... but do these documents always provide the correct information following an insured event? No!

Florida Statute 718.111(11) is the law that governs condominium insurance. Large changes to this law became effective on January 1, 2004 and further modifications took effect on July 1, 2008. Many of these changes are designed to standardize what the association is responsible to insure and for what the individual owner is responsible. This statute overrides all pre-existing insurance responsibility directives found in the governing documents of Florida condominiums and/or the insurance policy.

While it is impossible in the scope of this summary to fully condense every detail addressed in the statute and its upcoming revisions, involved parties are well served to develop at least a working picture of where the line is drawn between the unit owner's responsibility to insure property and when the association's insurance policy must respond in the event of property damage.

The easy way to envision the unit owner's responsibility is to think of the unit from the finish on the walls, floors, and ceilings inward. Accordingly, the unit owner is responsible to insure the paint or other wall finishes such as wallpaper, along with the flooring, cabinetry, countertops, lighting fixtures, window treatments,



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appliances, and all of the unit owner's personal possessions which are not part of or permanently attached to the real property.

The Legislature has recognized that proper insurance is vital to the financial health of Florida condominiums. As such, following the recent hurricanes, specific changes to the policies of unit owners

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and associations will now be required. As of January 1, 2009 any new policy written for a unit owner must cover all improvements to the unit owner's condominium that solely benefit the unit owner. The unit owner's policy must contain language stating the policy is excess over any other policies. Casualty insurance policies issued to unit owners must also list the association as a named insured and loss payee. Each unit owner will be required to carry special assessment coverage of no less than \$2,000 per occurrence in their individual policies. The association may require unit

owners to provide proof of an effective hazard and liability insurance policy, but not more than once a year.

In simplified terms, the association is responsible to insure the building(s) including all interior drywall (unfinished) along with the windows and sliding glass doors, the common areas of the community, and anything for which the individual unit owner is not responsible under the statute. As of January 1, 2009, the association must obtain an independent insurance appraisal, at least once every 36 months, so as to properly determine the amount of hazard insurance that is appropriate. The deductible for the master insurance policy for the association must comply with statutory guidelines and the amount of the deductible must be determined at a board meeting that is open to all owners.

It is critical for property managers and condominium dwellers to comprehend that the responsibility for the maintenance, repair, and replacement of an item due to a non-insured event is governed by the condominium documents. This is often the most misunderstood aspect of condominium claims. It is not until an insured catastrophe occurs that responsibility changes from the direction given by condominium bylaws and documents to direction given by 718.111(11), F.S.

To further simplify the issue, please consider the following examples:

- Unit owners observe damage to their sliding

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glass doors and windows resulting from a hurricane:

~ Condominium bylaws/ documents require the owner to be responsible for the maintenance repair and/or replacement of windows and sliding glass doors.

However, when a hurricane occurs, the resultant damage to the windows and sliders is covered under the association's Master Policy. This is the requirement of Florida Statute 718.111(11), F.S.

- A pipe bursts in a wall of a third floor unit causing extensive damage to that unit. Water seeps down into the two units directly below, causing extensive damage:

~ The Master Policy for the association should respond to repair the plumbing leak, any damage to the dry-wall, and any damage caused by water intrusion into the building cavities. This damage would include damage to the electrical wiring, ducts, insulation, or any other systems within the wall cavity. The individual unit owners' insurance companies should respond to damage to the finishes on the interior drywall, cabinets, floors, and the owner's personal property in the affected units.

It is important for the property manager, the board of directors and the individual unit owners to have an understanding of the responsibilities



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of all parties under the Florida Condominium Act to ensure the best interests of the association and the unit owners are protected. Appropriate and timely insurance claims need to be filed and correct procedures followed so that the outcome of any claim will result in a proper recovery for the insured parties.

Due to the complexities under the statute regarding the separation of responsibilities for insurance, as well as the intricacies of the policies for both the association and the unit owner, professional assistance immediately following a catastrophe can be of immeasurable value. A public adjuster can efficiently document, estimate, and negotiate a property insurance claim to assist the property manager in bringing the matter to its best resolution. It is vitally important to check the credentials of any professional the property manager or the board of directors interviews to represent the association and/or the unit owner.

The Florida Association of Public Insurance Adjusters or the National Association of Public Insurance Adjusters show lists of their members on their respective websites. Designations such as CPPA or SPPA represent additional experience and expertise and are significant barometers of the professional's qualifications.

George W. Keys, SPPA is President of Keys Claims Consultants, Inc., with corporate headquarters in Naples, FL. For more information, visit www.keysclaims.com. ■

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