



Fixing Termite Damage Is Seldom as Easy as Phoning Your Pest Control Company

by Pete Cardillo

Discovering your condominium has termite damage ranks right up there with news that you need a root canal or that the IRS is auditing you.

But don't despair.

Sure, these ravenous critters are capable of tremendous—and tremendously expensive—destruction. Yet chances are excellent that if you follow some simple steps, you and your unit owners won't be on the hook for pricey repairs.

In more than 15 years as an attorney specializing in termite litigation, here's what I've learned that can make the difference between not paying

a dime or shelling out hundreds of thousands (even millions) of your association's own dollars.

Don't wait to get started. Sure, termite damage occurs over years, not days or weeks. But the expiration of the statute of limitations is among the favorite excuses used by pest control companies for dodging liability. This is no time to drag your feet.

You'll need to follow two different courses of action at the same time. You'll need to deal with your pest control company and your insurer. We'll start with the pest control company.

First, put down the phone. Don't call your pest control company. Make sure you have copies of your pest control contract as well as any and all records provided by the pest control company. This includes seemingly trivial documents such as monthly or quarterly inspection and treatment reports.

Chances are you will have misplaced at least a couple of such documents, which is why you'll want to ask your pest control company for these. Remember, don't volunteer why you want this information. You're not making a claim; just gathering info. Simply tell them you need a copy of all your records, just to make sure your files are complete. However, never lie! Ask when you can swing by and get a copy of your file, commonly called your customer or branch file. Do the same thing with any pest control companies you previously had contracts with. I'm not telling you this to make

you paranoid. Rather, I've seen, far too often, how key documents can curiously go missing after a customer has reported termite damage.

Once you have all your pest control files, look at your contract. Look to see if you have a repair guarantee or repair promise/bond. This means that if you have termite damage while this contract is active, they are obligated to pay for repairs. If not, it may say that they're not responsible for repairs, or responsible only for retreating for termites if termite infestation damage is discovered. If either of these is true, again, don't despair. Also (and I can't emphasize enough how important this is), do not cancel or allow your contract with this pest control company to lapse. Doing so will effectively nix any responsibility the pest control company may have in paying for repairs.

Now you can make a claim. You can do this by phone. Start with the branch manager, not the service technician who comes by your property every so often to inspect or treat it. Document your phone calls. If they don't respond, document that. If you still hear nothing after several calls, move to e-mail or mail a short note.

Now the ball is in their court. They can either say they aren't responsible—especially if your contract with them includes no repair promise/bond—or they'll want to come inspect the property. Let them. You want them to. You don't want them to have any reason to say you weren't cooperative.

Make sure they inspect both the outside and inside of the property. This means they'll need access to individual condominiums. No doubt

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you have some process for vendors to access condominiums. Simply inform your unit owners that XYZ Pest Control needs access to their residence and ask when the earliest time is for this to be arranged. Remember, as a condominium association board member, you have a duty to protect the building so such actions are necessary.



Make sure to have some representative from the association—board member or property manager—at these inspections. The pest control company will take pictures of damage. Your representative should do the same. Still photos are better than video.

Keep in mind that most termite damage is hidden behind walls. It's usually discovered during renovations, or even when

damage becomes so bad that, say, a piece of exterior stucco falls off. Such damage is only the tip of the iceberg. Your termite control company may want to remove sections of the building, usually on the outside, to follow where the damage goes and otherwise learn how extensive it is. This is an invasive inspection. This isn't just looking at, poking, or touching. This can alter the physical condition of the building. Do not allow them to do this if they just show up for an initial inspection. Don't let them tear into walls without advance notice. You need to schedule this so that you can arrange for a structural engineer—one you hire, not one from the termite company—to accompany any such inspections.

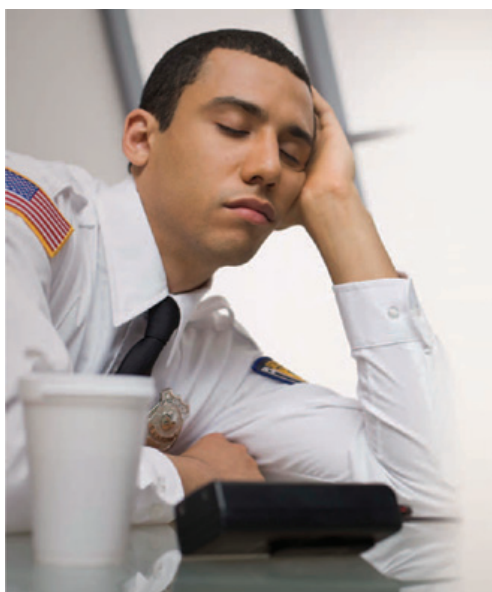
This isn't about being nosy; it's about making sure the building is safe. Consider that each piece of wood framing in a condominium

performs a structural function. Any damage to this framing is cause for concern about the structural integrity of a building.

For an invasive inspection, get a written scope of work to be performed and a schedule so you know what they'll be doing and when—just like you would with any construction project. They'll be employing a third-party contractor to remove wood, stucco, siding, etc.

Part of the scope and schedule should include a timetable. Also, make sure they provide a written description of exactly how they'll put things back. Insist on your building being returned to its exact current condition. Naturally, they should bear all costs of this invasive inspection work.

If your pest control company makes an offer to pay for repairs, make sure it's adequate. You'll need to hire a contractor to look at the damage and decide if what they offer is sufficient to pay for repairs.



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Do not under any circumstances sign anything releasing the pest control company from further liability for termite damage to the property. Too often, termite damage thought only to exist in one part of a building turns out later to be far more extensive—and expensive to repair—than originally thought. What’s more, signing a release with your termite company will effectively end any chances you may have to recover money from your insurer.

As I mentioned earlier, your second course of action involves your property insurer. As with your pest control company, first get copies of any and all insurance policy documents, including previous insurers. Again, you’re not (yet) making a claim; you’re merely making sure your files are complete.

Most property insurance policies exclude termite damages (typically called “insect damage”) from the list of things they’ll pay for. If a pledge to repair termite damage is not in the contract, don’t despair. You very likely still have a claim.

However, nearly all insurance contracts include a pledge to pay for something called “collapse.” Any significant termite-related structural damage means the structure may be in a state of collapse. Now this doesn’t mean the building is in the midst of literally falling down. Rather, it means the damage to the building is sufficiently bad enough to qualify as “collapse.”

Indeed, insurers have paid many millions of dollars in termite-related claims on just such cases, even ones involving previous insurers. In a recent example, condominium owners collected \$1.7 million from an insurer whose policy had lapsed a half dozen years before any claim was made.

Once you have your documents, make a claim. With insurance contracts, this typically means in writing, in a specific way, and to a particular person or persons. Check your policy to make sure you perform even this seemingly minor step correctly. Better yet, a good lawyer can help you navigate these tricky legal waters.

Insurance consideration is the most important part of this process. You may see termite damage as only something your pest control company is responsible for. Consider that, as a condominium association board member, you have a duty to recover as much money as you can so you can make sure you adequately cover repair costs, which invariably turn out to be more than was anticipated.

You want to be prepared to pursue both. Think of this as making sure you’re prepared. You don’t need to use both weapons, but you should be ready to.

They almost always deny the claim, which means you’ll need a lawyer, preferably one experienced with termite-related contracts and claims.

Finally, remember that you almost always have recourse in termite damage cases.

Pete Cardillo is Managing Partner of Cardillo Law Firm in Tampa, Florida: a termite property damage and plaintiffs litigation firm devoted to the area of termite damage and property insurance law. For more information, visit www.cardillolaw.com. ■

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