



A Condominium Management Company

ASSOCIATION NEWS

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Condominium Water Losses Preventions & Procedures

~ by D. Douglas Alexander, Attorney at Law, Makower Abbate, PLLC

Sooner or later nearly every condominium association will experience a serious water loss episode. The causes vary and may include frozen water supply or fire suppression lines that burst, sewer backups, leaking drain lines, leaking shower enclosures, leaking shower pans and failed toilet tank parts and seals. Most of these losses are completely avoidable. Consequences of these escapes of water range from minor to catastrophic. The consequences can be immediate and obvious but in some instances they occur out of sight and in enclosures that can become breeding areas for mold and mildew. Tangible costs may include repair of the failed pipe or part, cleanup, repair of damaged building components, temporary relocation of the residents, mold remediation and the ultimate and sometimes dramatic impacts on association insurance premiums and availability of coverage. Less tangible costs include the loss of use, extra administrative effort and loss of good will. Accordingly, everyone involved should recognize the time, trouble and expenses that water losses will cause. Unfortunately, very little effort is made to prevent these losses. When they do occur, the losses are often mishandled by the resident, the insurance adjusters, the property manager and the board of directors to everyone's detriment and frustration. This article will therefore address prevention measures and proper loss procedures.

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Rochester Public Library Events and Offerings:

- * *Tickets & More:*
Library patrons can receive discounts on Detroit Zoo tickets, certain memberships, and dining
- * *"We dig your pets" Parade,* Thurs. June 27, 2013 from 6:30-7:30pm
- * Summer Reading Club

The library offers many other fun events; for more information, please contact the library at:
(248) 656-2900

New Face, New Name

We would like to introduce you to Makayla Eckardt. Makayla has been added to our management team as an additional Management Coordinator.

Makayla recently graduated from Oxford High School Suma Cum Laude. She was involved in many clubs and activities during High School, including: Drama Club, Improv Club, Yearbook Club, Sign Language Executive Board (Senior Year), and National Honor Society President working with organizations such as K-9 Animal Rescue, among various other volunteer organizations in the Oxford Community. She has also won awards, such as: Society of Women Engineers Medal of Merit, Society of Women Engineers Madame Curie Award, and the Congressional Medal of Merit Award.

She plans to continue her education at Oakland University in the fall, where she will pursue a degree in nursing to become a nurse anesthetologist.

Makayla will be with us full-time during her furthering education program.



Makayla Eckardt
Management
Coordinator

Establishing a Reserve Fund

~ excerpt from *Common Ground Magazine*

Interesting “Food for Thought” regarding establishing a Reserve Fund...

1. **GET THE OWNERS ON BOARD.** Owners sometimes think reserves are costing them extra money or wonder why they should pay now for something that may not have to be replaced for several years. To help owners understand the importance of reserves, boards can inform them of these important points:
 - * A reserve fund may be required by law
 - * Reserve funds provide for the planned replacement of major items that must, at some point in time, be replaced
 - * Major items deteriorate over time. Although a roof will be replaced when it is 25 years old, every owner who lived under it should share its replacement cost
 - * Reserves minimize the need for special assessments, and enhance resale values
2. **CONDUCT A RESERVE STUDY.** The board should work with its manager, accountant, engineer, and/or reserve specialist to conduct a reserve study. Reserve studies have two parts: a physical and financial analysis.
3. **SET UP A COMPONENT SCHEDULE.** A component is a part of the common elements, like a roof or boiler, and the schedule is the date when the experts think it will need to be replaced. A component schedule is therefore a list of all common area components and the dates when they likely need to be replaced.
4. **SELECT A FUNDING PLAN.** There are a few primary reserve funding strategies, and the board must decide the one that’s right for the association based on funding goals. Some examples are:
 - * *Baseline Funding.* With this approach, an analyst looks at all major property components that will need repair or replacement in the next 30 years, each component’s expected cost and projected remaining life. The contributions are set at a level that ensure the reserve fund balance never dips below zero or some other dollar figure set by the board. It’s the least expensive, but riskiest approach. If a piece of equipment fails early or costs more than expected, associations may face a deficit, requiring a special assessment or loan.
 - * *Adequate Funding.* This is the most expensive formula, but the safest. It’s the least likely to leave a board needing an emergency special assessment. Each component is evaluated separately, and then the cost of replacement is divided by the number of years left until it needs replacement. For example, a board would save \$10,000/year for a roof that will cost \$100,000 to replace in 10 years. Then, all those components and their costs per year are added up to establish the annual reserve fund requirement.
 - * *Threshold funding.* Under this method, the goal for the reserve fund balance is set at a level between baseline and adequate funding. That level is based on the association’s tolerance for risk, among other factors.
5. **DECIDE HOW OFTEN TO CONDUCT A RESERVE STUDY.** Experts recommend that studies be reviewed or updated every one to five years, but this can vary according to the age and needs of the association.

Condominium Water Losses Preventions & Procedures

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Loss Prevention

Loss prevention efforts fall into two primary categories; education and preventive maintenance.

Education

Education of the residents, the manager and the board will avoid many losses. First, everyone needs to be made aware of the necessity of maintaining heat during the entire cold weather season which should be recognized as starting in September and ending in May here in Michigan. Loss of heat is not necessarily a risk limited to periods of extended absence. Certain units and locations will be more vulnerable to frozen pipes when heat is not maintained owing to variables such as variations in insulation and pipe locations, exposure to prevailing winds, stacking of units, etc. An effort must be made to identify especially vulnerable units and locations to enable corrective efforts before the loss and to prioritize ongoing monitoring and inspections. Everyone involved needs to know:

- * How to shut off the unit's main water supply during periods of absence and if that can be accomplished without interrupting service to adjacent units. Shutoff valves should be tagged. Their locations should appear in seasonal reminder notices. Residents needing assistance should be visited and the tags hung for them and without charge
- * How to drain pipes and fixtures, especially toilet tanks and water heaters once the water supply is shut off
- * The importance of turning off individual supply lines (if the main cannot be shut down) to individual fixtures and appliances such as each toilet tank, ice makers, water heaters, hot tubs, etc.
- * Who to contact when access is needed
- * Who to contact when a loss occurs
- * How to get help if the resident is physically/mentally incapable of taking the preventive measures

Residents also need to know which building components are their responsibility to maintain and repair as well as what items will or will not be covered by the association's insurance. Most insurance agents that sell association policies are willing to attend membership meetings to make presentations, field questions and provide informative brochures on coverages as well as loss prevention measures. Invite them to do so!

Preventive Maintenance - Inspection, Timely Action & Professional Assistance

Many leaks progress from minor drips to major flows if nobody is alert to suspicious dampness. Water heaters and toilet tanks should be visually inspected for leakage at reasonable intervals. Shower and tub enclosures control water leaks by their tile grout, caulking and the pan beneath the shower and tub. If the grout joints are open or the caulking is discontinuous, leakage is occurring but may not be obvious as the water is traveling behind the finished surfaces. The older the unit and its fixtures, the more likely that pipe joints and toilet seals will fail. Repairs and replacements should occur before the great flood. Many residents fail to take notice and put off submitting a work order or arranging their own repairs; some may be unable to recognize problems so the association should consider making its own arrangements for the inspections as a service to the residents. Similarly, drains should be periodically snaked to clear obstructions. Locations with recurring blockages may require camera inspection to determine the real causes of the blockages which may include actual breaks in the pipe or "bellies" that trap passing material until it builds itself into an obstruction.

Please note that preventive maintenance and inspections are also critically needed with respect to outdoor features of the units. Roofs should be inspected at least annually and again after any significant wind or ice event to assess the integrity of the sealing of every roof penetration (chimneys, sanitary vent stacks, attic vents, ridge vents, etc.) and all flashings. If access is difficult owing to roof height, binoculars may be used in some instances. Gutters and downspouts should be cleared of all debris four times per year. An effort should also be made to try to keep them draining freely during freezing weather.

Many water losses stem from ice dams which form on shingled roofs owing to excess heat loss through the roof deck. These can be minimized or avoided by adequate attic ventilation and insulation. Experts can evaluate the potential for problems before they occur and prescribe appropriate steps to increase ventilation and reduce heat losses.

False Economy Leads to Major Expenses

Many directors perceive that their primary duty is to "save" money. This error leads many boards to defer roof replacements too long and to over economize on materials, contractors and quality control. Considering the amount of money entailed in most roof replacement projects, the Board should generally retain a certified roofing inspector or other qualified expert to determine if the roofs should be replaced, how they should be replaced and what materials should be specified. A qualified construction manager should also oversee the work in progress to assure compliance with the contract specifications. These are not tasks that directors or professional property managers should undertake simply because they lack the requisite experience, training and credentials. In short, a cheap roof job will usually wind up costing much more than the more expensive but professionally managed job.

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Loss Procedures

The Initial Response

The first order of business is to gain access to the leak. If the resident is not present to give access and the emergency contacts fail, the police should be contacted to accompany the manager or board member who can usually gain access via the services of a locksmith so as to avoid damage to locks and doors. The premises must be properly secured when leaving and written notice of the entry provided to the co-owner/resident.

When entry is made, preservation of evidence should be attempted even as the water is being shut off. Photographing the thermostat(s), gas supply valve position, circuit breaker position, furnace controls and the damaged area(s) should be done at once. All damaged areas and items should be photographed. Be alert to the possibility that negligence may be proven by demanding proof of payment of gas bills which may reflect little or no consumption prior to the loss. The association must focus first on what was damaged, tempting as it may be to begin assigning blame. If there are damaged common elements that are within the scope of the association's repair duties under the master deed or by-laws, the association will still have those duties without regard to how the loss occurred. If there are damaged common elements or non-common element items that are within the association's insurance coverage, the association may also be responsible for making repairs. That will depend in turn on whether the dollar amount of the loss covered under the association's policy exceeds the applicable deductible. If the loss exceeds the deductible, a claim must be made under the association's policy, failing which, the association may be held liable for the amount that would have been paid in excess of the deductible and for failing to make the repairs.

To File a Claim or Not to File a Claim?

When in doubt, the claim should be made. If there is no coverage under the association's policy, there will generally be no adverse consequence to the association. The co-owner should also make a claim under their HO-6 policy for the same reason. Association legal counsel should be alerted at this stage of the situation to discuss the particulars of the loss and the Board's intentions.

Article IV of the typical condominium bylaws will usually oblige the association to insure all common elements against property damage. The most common version also requires the association to also insure certain non-common element items:

"Such coverage shall include interior walls within any Unit and the pipes, wires, conduits and ducts contained therein and shall further include all building items including fixtures, equipment and trim within a Unit which were furnished with the Unit by the Developer."

The most common version also states that:

"Each Co-owner shall be solely responsible to insure all betterments, improvements, and additions to their Unit and its appurtenant Limited Common Elements."

But, in reality, many associations purchase policies that also cover those betterments, improvements, and additions to the units and their appurtenant limited common elements. If that is the case, the duty to repair and replace such items shifts to the association, but only to the extent of the proceeds the association's insurer pays after it subtracts the deductible. Since the co-owners are considered named insureds under the association's policies, they have the right to require that the association submit a claim under the association's policy if proceeds would be payable under it. After all, their assessments have been paying the premiums on the policy.

Who Makes the Repairs and Who Picks the Contractor?

It should go without saying that the duty to repair dictates who is responsible for their completion. The governing documents must be consulted. Contrary to popular belief, the insurance company does not have the right to select the contractor. The party who has the duty to make the repair has that right.

After the Loss Occurs and Repairs are Complete

Once the dust settles, it is important to review what happened and consider how a recurrence may be avoided in the future. At this stage of the proceedings, we can also focus on the possibility of recouping some or all of the association's expense if someone was in fact negligent and the negligence was a proximate cause of the loss.

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The association's insurer cannot sue the negligent co-owner to recover what it paid under the policy because the co-owners are all considered "named insureds" under the master policy. This is not true with respect to the co-owner's insurer who can and often does pursue the association, its directors and/or managers to recover what it paid under the HO-6 policy purchased by the co-owner. Consider how difficult it will be to defend against this type of claim if there is no established preventive maintenance program.

Most condominium bylaws include text in Article VI which allows the association to assess the co-owner for all monetary damages the association incurs which result from the co-owner's negligent damage to the common elements. Legal counsel should be consulted before the supposedly negligent co-owner is invoiced so that the documents and facts can be analyzed to determine if there is a basis for the invoice.

Understanding the World of Condominium Insurance

The Association's and Co-owners' Duties to Insure

Condominium bylaws state the association's duties to obtain insurance. Carefully review Article IV where this text generally is found. There are three basic types of duty statements; "bare walls", "modified single entity" and "all-in". Most associations have the duty to buy "modified single entity" coverage.

"Bare walls" means the association only has to insure the common elements; the co-owner must insure everything else.

"Modified single entity" means the association must insure all common elements plus certain non-common elements such as interior walls and standard equipment, fixtures and trim originally supplied by the developer.

"All-in" means that the association must insure the common elements plus the as interior walls and standard equipment, fixtures and trim originally supplied by the developer plus all betterments, improvements, alterations and modifications.

The co-owners will almost always have the duty to insure their own liability risks and their "contents".

The Association's Policies' Descriptions of the Scope of Coverage

To further confuse matters, the insurers' policies fall into two basic but different categories when it comes to describing what they cover. Some describe exactly what they cover without regard to what the condominium bylaws oblige the association to insure. Others simply state that their policy insures everything the governing documents require the association to insure. This can make it challenging to tailor the association's coverage to its actual duties. The usual result is that the association buys far more coverage than it has to and that can have disastrous impacts on future premiums.

Association Loss Histories and Their Impact on Future Premiums

Association insurance premiums are based in part on their loss histories. Co-owners' individual policy premiums generally have little to do with the co-owner's personal loss history. The broader the association's actual coverage, the greater its loss history totals will eventually be over time. There are three obvious ways to minimize future premiums.

First, avoid losses. (Not by refusing to report them but by avoiding them altogether.) Second, buy only as much coverage as the condominium bylaws require the association to carry. Third, consider increasing the dollar amount of the association's deductible.

The Association's Agent

The association's insurance agent may be someone's brother or sister in law but he or she better be well experienced in the world of condominium! This person is a key player who ought to be consulted regularly and met with at least annually. We serve as the associations' legal counsel, not their insurance 6 advisors. Use the right professional for insurance advice especially since insurance agents do not charge by the hour...

Condominium Water Loss Checklist

After the initial emergency response...

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Step One – Initial Info Gathering:

Try to make a preliminary determination of what items have been damaged and what caused the damage to occur. Make written notes of telephone contacts and personally view the scene if possible. Take photos. Note names and contact info of witnesses. If forcing entry, attempt emergency notice to co-owner/resident, always notify police and try to have police present when locksmith opens door. If pipes have frozen and burst, proceed directly to thermostat and take photo of setting. Note (measure with a thermometer) air temperature indoors. Inspect furnace and note if gas valve is shut off, utility company shutoff boot has been affixed outside or furnace on/off switch is turned off; take photos.

Step Two – Initial Notification of Association's Insurer(s):

Submit a written claim via verifiable delivery method such as fax, email or nationally recognized delivery service that provides proof of delivery.

UNLESS:

- You are certain that there are no damaged common elements, AND
- No damaged items mentioned as being within Association duty to insure per CBL Art. IV in spite of not being common elements, AND
- No evidence of negligent act or omission attributable to Association or its manager or contractor, AND
- No evidence that a common element caused the loss, AND
- No reason to think another unit has damage

Since it is not likely that all of the above is going to be known at first and since there is usually no cost to submit a claim that is not covered, most damage events should be promptly reported.

Step Three – Follow Up and Management of Expectations

Contact the co-owner and resident to advise that a claim has been submitted. Encourage both to make claim to their insurers and to provide contact info on their adjusters. Contact association insurer and confirm receipt of claim. Obtain name and contact info for adjuster including claim number assigned by the insurer. (Adjusters track matters using these numbers plus the date of loss and name of insured). Contact adjuster and obtain time info regarding inspection, when to expect coverage determination and confirm dollar amount of deductible. Share time info with co-owner and resident.

Step Four – Contact Association Legal Counsel

Counsel will need preliminary loss info and complete set of association governing documents (Master Deed and Condominium Bylaws). Counsel should make initial determination of responsibilities for uninsured portions of loss including expenses not covered by virtue of deductibles. Counsel can also advise on any negligence issues and sort out what the governing documents require to be done.

Step Five - Analyze Cause of Loss and Future Loss Prevention

Many water losses are directly attributable to someone's negligence. Builders sometimes place pipes in a wrong location or fail to insulate adequately. Boards sometimes fail to perform periodic roof inspections or perform preventive maintenance, preferring to wait and "save" money in the meanwhile. Most often however, the resident of the unit has decided to "save" money by turning the heat down too far or off altogether. Most residents do not know how to prevent losses by maintaining heat, shutting off water supply lines, turning off ice makers, winterizing commodes or drain traps.

Once the loss occurs, it is important to analyze its causes and to take action to avoid future losses. Educating the co-owners and residents will avert many losses and has to be an ongoing effort. Many people who choose to buy a condominium do so because they have accepted the myth of the "carefree, luxury lifestyle". The fact is that every co-owner needs to know how to avoid water losses and they must either take precautions themselves or hire someone to do it for them.

Important Notice

This article and checklist are intended for general information purposes and shall not be construed to be legal advice or opinions. Readers should consult legal counsel of their own choosing for legal advice and opinions.

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Upcoming Community Events

Date	Event	Venue Information
June 26	Festival of the Hills 2013, 6:00 - 11:00pm <i>Assortment of family games provided by the Rochester Avon Recreation Authority. Musical guest, Mell Ball and Colours (voted "Best Party Band" in Michigan)</i>	Borden Park @ John R and Hamlin Rd. Free Admission Fireworks display begins at 10:00pm
June 27	Rascal Flatts; 8:00pm	DTE Energy Music Theatre More Information: www.palacenet.com
June 27	George Benson; Inspiration <i>A tribute to Nat King Cole with the Detroit Symphony Orchestra</i>	Meadow Brook Music Festival
July Fireworks	Clarkston Festival of Fun, July 4 @ 10:15pm Lake Orion Fireworks, July 4 @ dusk Addison Oaks Freedom Fireworks Fest Weekend, July 5 Waterford Bing Bang Fireworks, July 6 @ 10:00pm	For more information or for other firework display locations, go to: www.michiganfireworks.com
June 20 - July 25	"Music in the Park" 7:30pm - 9:00pm each Thursday evening	Rochester Municipal Park Go to: " www.downtownrochestermi.com/events/events-calendar " for band listings
July 4 - July 14	Oakland County Fair Fireworks display, July 4 @ dusk	Springfield Oaks County Park (248) 634-8830; www.oakfair.org
July 11 -13	Rochester City Sidewalk Sales	Downtown Rochester
July 23	Lynyrd Skynyrd & Bad Company, 7:00pm	DTE Energy Music Theatre More Information: www.palacenet.com
August 2	Ted Nugent, 7:00pm	DTE Energy Music Theatre More Information: www.palacenet.com
August 4	Keith Urban w/Little Big Town and Dustin Lynch, 7:00pm	DTE Energy Music Theatre More Information: www.palacenet.com