

# **Water Leaks: Responsibilities and Liability**

## **by Carl Street**

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I would like to address many of the popular but ERRONEOUS myths, theories and misunderstandings of the relationships of involved parties and the legal definition of responsibility. Hopefully, the following will clarify...

1. A person is responsible for the actions of themselves AND their property. Whether or not damage is caused intentionally, IS IMMATERIAL to their civil responsibility for the damage. For example, if you left your unit for 2 months and did absolutely nothing negligent or illegal and all your appliances were in good working order when you left, etc., etc. And, a month after your absence there was an electrical failure in your refrigerator that caused a fire that damaged the common area and/or your neighboring units YOU ARE RESPONSIBLE FOR ANY AND ALL DAMAGE. Lack of malicious intent, negligence, etc. ARE NOT MATERIAL to your civil responsibility for the damage. PERIOD. NO EXCEPTIONS.
2. Insurance companies do NOT determine fault or responsibility. They ONLY determine whether or not they are required under the terms of their insurance contract to defend and/or reimburse their insured for damage claims. In order to grasp this concept you need to understand the legal relationships of the parties involved. Here goes:
  - A. The insurance company only has a contract with the purchaser of the insurance -- called the insured -- to defend and indemnify the insured for claims and damages as defined in the contract. The ONLY possible legal relationship involved here is the contractual relationship between the insurance company and the insured. Please note this relationship does not, and cannot legally, encompass, bind and/or impact any relationship with third parties not specifically named in the contract.
  - B. Damage claims CANNOT be made against the damaging party's insurance company because the damaged party has NO legal relationship with the insurance company. THIS IS A CRITICAL POINT. Damage claims can only be made against the damaging party.
  - C. If the insurance company of a damaging party refuses coverage THIS DOES NOT RELIEVE THE DAMAGING PARTY OF RESPONSIBILITY. It only means the damaging party will not receive financial assistance from their insurance company regarding the claim. That is the damaging party's misfortune; but it has ABSOLUTELY NO EFFECT on the damaging party's responsibility for the damage.

Virtually all insurance coverage is predicated upon what is known as a "SUDDEN EVENT". For example, if your car is damaged due to an accident (a sudden event) you have coverage; but if your car is damaged due to rust, you do NOT have coverage. Since, the insurance company has determined the damage was caused by wear and tear they have properly and legally denied coverage to their INSURED. Conversely, if a pipe had broken causing a flood (a sudden event) the insurance company would have been legally required to provide coverage to their INSURED.

Note the repeated references to coverage to the INSURED -- note also, there is NO reference to coverage for the damaged party for the reasons outlined above. AGAIN, the denial of coverage does

NOT relieve the damaging party of responsibility for the damage it only means the damaging party cannot get financial aid from their insurance company to repair the damage caused by their property.

Since we own our condominiums, we are each responsible for the actions of our condominium property. Therefore, it is wise to periodically inspect our property for items such as water leaks, electrical problems, etc. as we are each responsible for any damage caused by their failures. Our units and their infrastructure are human created physical devices and ALL will fail in some manner sooner or later. Failures are more than an inconvenience, they usually are expensive and often DANGEROUS. Failing to inspect, make timely repairs, and maintain your property is irresponsible and just plain stupid as it endangers not only your bank account; but jeopardizes the property, health and life of both you and your neighbors.

If you are not qualified to inspect and/or maintain your property you can have your home inspected by professional services usually for a few hundred dollars -- a wise investment that I make about every 5 years. Professionals not only know more, they have instruments and experience that allow them to detect problems even the most conscientious homeowner would miss. The very idea that a homeowner would risk a third of a million dollar investment plus their lives and those of their neighbors to save less money than they would pay for haircuts strikes me as the height of false economy and I have little sympathy for those who would risk the property, life and health of their neighbors in this manner.

Water damage cannot be ignored as it has serious implications beyond the immediate visible damage such as: dry-rot, fungus/mold growth, termite infestation, electrical service, electrical alarm, telephone, TV cable failures, etc. In addition, water damage does NOT repair itself over time, it only gets worse. Ignoring water damage can easily convert a \$500 repair into a \$20,000 repair -- this can and HAS happened already numerous times at the Murieta.

The HOA is responsible for the health and safety of our residents as well as the preservation and enhancement of the value of our property. Accordingly, the HOA must and will take whatever legal actions are necessary (up to and including lawsuits, foreclosure and confiscation and sale of an individual's condominium and property) to protect the interests of the Community. These are not pleasant tasks to consider or perform; but under the law the Board of Directors has no alternative but to obey the law. Anything less, makes the Board of Directors liable for the damages as well.

Finally, to sell a unit without disclosing known damage is felony fraud and would make the seller subject to up to 5 years in prison plus punitive damages which could be as much as 3 times the sale price. Also, no unit can be sold without a property and document inspection which will turn up the problem. Under the lending codes, the damage would have to be repaired prior to completion of the sale. If that were not enough, no sale can be completed without the HOA's escrow package which gives the HOA the power (and responsibility) to prevent any sale where we are aware of problems.

**Carl Street,  
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