



Condominium Law Q&A

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Question – My friend owns a condo in Melbourne. She lives on the first floor corner. Two weeks ago the condo above her had a leak from the water heater area. It leaked for several days before she could contact the owner. It ruined her ceiling, walls and her bedroom carpet was soaked. The owner had Allstate Insurance. When my friend contacted Allstate, they said since it was a condo, she was responsible for her own repairs to her condo. How can this be, since it was the leak from the condo above her that caused the problem? What is her recourse? Please let me know what to advise her. J.H., Cocoa

Answer – Yours is among the most frequently asked questions I receive and yet is perhaps the most difficult to answer, since the duty to maintain one's unit and the obligation for insurance coverage for a casualty loss are not reconcilable. There are two distinct and separate courses of action available to one who suffers a loss such as you described. First, if it can be proved that the cause of the leak was the failure of the upstairs unit owner to properly maintain his/her hot water heater, which he/she knew was a problem, then the unit owner sustaining the loss has a claim under the tort theory of "negligence" against the unit owner whose leaking hot water heater caused the damage. The problem here is that this course of action requires filing a lawsuit and spending both time and money for court costs and legal fees, which often exceed the cost of repairs and, for the most part, are not recoverable. Accordingly, the

most cost effective approach for resolving casualty losses is to file an insurance claim. The question is whether the claim is appropriately against the association's carrier, the carrier of the unit owner whose hot water heater leaked, or the carrier of the unit owner sustaining the loss. The answer depends on what was damaged. For the most part, all improvements except for certain enumerated exclusions contained within the unit [wall, floor and ceiling coverings, personalty, built-in cabinets and appliances, electrical fixtures] are covered by the association's insurer. Thus, restoration of the walls is clearly the association's responsibility, while the carpet is that of the unit owner. Now, comes the rub. If the deductible exceeds the loss, then the debate is whether the association is still liable for the cost of repairs, or if it is the unit owner sustaining the loss. If the latter, then the problem is whether the unit owner's policy will cover same. The answer to this critical question depends upon who you ask. The Division of Florida Land Sales, Condominiums and Mobile Homes takes the position that if the association is obligated to cover the item under its insurance, then it is responsible for the cost of repair, which is assessed as a common expense. Most legal authorities, including myself, are of the opinion that the condominium documents control. Until the court resolves the debate, it is anyone's guess.

Question – My question is: What right do buyers have in choosing their own tile, and are we entitled

to a refund by not choosing one of the developer's limited selection? I have been asked to select décor for a new condominium in Hallandale; the closing is supposed to be at the end of this year. However, the only choices are four carpet colors (included in cost) or one tile color at an extra \$10,000. When I requested my own, I was told I would have to get "planning permission" from Hallandale and be "approved by the condo board," which would mean having to wait several months till after the closing to get my tile installed. I've been told I have to sign an addendum in order to have "nothing" installed in the unit. If this is the case, surely I'm entitled to a refund.
L.V., Daytona Beach

Answer – The purchase of a condominium unit is based on contract law, in which there are two essential agreements: (1) purchase and sales agreement, (2) declaration of condominium. The Condominium Act does not address the initial decorative choices offered unit purchasers, thus, one must read the two referenced contracts to ascertain your legal rights. While I have never heard of unit owners being limited in their choice of carpet or tile colors [upgrades paid for by purchasers are the rule not the exception], whether or not the developer can limit your choices to its color scheme is solely dependent on what you agreed to in the referenced contracts. ■

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