



Condominium Law Q&A

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Reader Feedback - I was pleased to read Gary Poliakoff's recent column about children in diapers using adult swimming pools. He is absolutely right about swim pants — no manufacturer warrants their efficacy. What Mr. Poliakoff omitted was the serious threat that is posed by the parasite cryptosporidium. This is shed by mammals in their feces, infants included. It is not killed by chlorine, is easily spread by water and, if ingested, may cause cramps, diarrhea, nausea, vomiting and even death in elderly people and those with impaired immune systems. A series of outbreaks last summer in Utah sickened 2,000 people. In 2005 in upstate New York, an outbreak at a water park sickened 4,000 people. In Milwaukee in 1993, contaminated drinking water affected 400,000 people, of whom more than 100 died. Operators of public or community pools should be aware of this health hazard and its potential for illness or even death. While it does not usually show clinical signs in infants, it poses a serious threat to the aged or medically impaired individuals. The rules against individuals wearing diapers in pools is not discrimination but rather a proper public health and safety measure. D.D., Cocoa Beach

Question - I own a first floor unit in a condominium community in Lauderdale Lakes, FL. I recently discovered the main drain located within the walls of one of my bathrooms has been leaking. The leak caused significant water and mold damage to both of my bathrooms. I immediately notified my association of the problem and requested the leak be fixed, as well as repair of the damages associated

with the leak. I notified the association on a Friday, and the following Wednesday, I received a letter via postal service, stating the association would not pay for any damages. I sent a second notice requesting repairs. The President of the association responded by saying the leak will be investigated, and if it is a common element, it will be repaired. However, the mold damage is the unit owner's responsibility, thus the association will not pay for anything related to it. It was stated that mold forms as a result of negligence. But if the mold formed within the walls and I notified the association immediately after seeing signs of a leak, how is that considered negligence? I have been informed by several individuals, including attorneys and public adjusters, that if the source of the leak stems from condominium property, then the association is responsible for repairing the damages associated with the leak. If this is so and the association is refusing to pay, how can I force them to do what they are obligated to do? In the event I take matters to court and prevail, the association would also be responsible for all court costs and legal fees, right? Please advise, as I am so confused regarding my options. R.J., Lauderdale Lakes

Answer - There are two separate issues, which must be resolved; namely, when there is damage as a result of a casualty, is the resulting loss covered by the association's carrier or the unit owner's? The Condominium Act, as amended effective October 1, 2008, provides that the association is responsible to cover all improvements other than certain listed exclusions (unit wall, floor and ceiling coverings,

electrical fixtures, appliances, water heaters, water filters, built-in-cabinets and countertops, and window treatments; Air conditioning units which use to be the responsibility of the unit owner are now that of the association). In addition, if the association's insurance, due to lack of coverage or deductibles, is insufficient to cover the loss, the cost of same is a common expense to be assessed against all unit owners. Let's assume that an element, which

is required to be insured by the unit owner, is damaged by mold (wall coverings) that was caused by the association's negligence. Then, independent and apart from the insurance coverage issue, you could bring an action for damages against the association. The problem is one of cost benefit. Legal fees would probably not be recoverable, and it is both time consuming and costly to sue.

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