



## *The Special Assessment April 2023 Edition*

### *Not My Circus, Not My Monkeys! Or... Is it? Condominium Casualty Losses and Insurance Issues*

**By Olga S. Tseliak**



The following scenario is all too familiar for many who live in or manage a condominium: a pipe bursts in a unit, water is everywhere, panic ensues, with all those affected looking to the association to both stop the water leak and make the repairs. The initial instinct on the part of the association may be to treat this as a “unit-to-unit” problem on the grounds that it is a unit casualty loss that did not originate in the common elements. Oh, and filing a claim on the association’s master insurance policy for the damage to Units – out of question! As we frequently counsel our clients, however, the association’s involvement in casualty loss situations in condominiums is almost always inevitable.<sup>1</sup>

Why is this you may ask?

In most instances, when water leaks from one unit into another, a reasonable owner would call a plumber to stop the underlying problem (*e.g.*, a clogged toilet, broken dishwasher, *etc.*). When or if the water leak is reported to the association, it is typically a good practice to either have an association contractor visit the unit to confirm the cause of the leak and create a proper record. If, however, the leak is ongoing, and the owner is unresponsive, out of town, *etc.*, the association should typically take action to try to stop the leak – do not leave the other affected owners and residents on their own. To that end, most condominium instruments have a “right of entry” provision that would allow for entry into the unit in emergency situations, such as an ongoing water leak. In the process, a good record of the suspected cause of the water leak should be created with photographs and descriptions of the malfunctioning component and the reasons. In addition, it is important to inspect for common element damage, such as common elements separating the units.

Next comes the restoration part. Here you might ask – why would this be the association’s problem when you think that only the units sustained damage? This is because most condominium instruments contain a provision requiring the

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<sup>1</sup> To be distinguished from maintenance-related long-standing leaks that occur over time, like a shower drain or an HVAC slow leak. The analysis and the required response on the part of the Association is different. For situations involving water damage, consult with your legal counsel to properly determine the best course of action.

association to get involved in the event of a casualty loss in the building, units included. It doesn't matter that the sudden water leak may have come from an appliance or a pipe that is indisputably a "unit component." The association may still be responsible for restoring the damaged parts of the building, including units, to the condition in which it was originally conveyed by the declarant. Note, however, that the restoration provision is usually not triggered in the event of slow dripping water or water intrusion through the roof due to a maintenance or repair issue. Therefore, it is imperative to check the governing documents and be cognizant of what the restoration obligations of the association may be under the circumstances.

To pay for the restoration in the event of a casualty loss, the association has to make a decision on whether to file a claim with the association's master insurance policy or to "self-insure" the repairs to minimize the claim history. Again, the involvement of the association's insurance is a source of frequent misunderstandings or confusion. Typically, the Bylaws provide that the association purchases a "master" insurance policy that insures the *entire* condominium project – units included. Depending on what the association's bylaws require, the master policy usually insures units only to builder-grade replacements and does not typically insure unit betterments/improvements to the unit (beyond builder grade) or the personal property of residents inside the units. The unit owners themselves can insure their betterments/improvements and personal property by purchasing a unit owner's insurance policy (often called an "HO-6" policy). Importantly, the master policy generally provides coverage for only "casualty" events (i.e., sudden, unexpected losses, like a fire or burst pipe). Insurance does not typically cover damage resulting from failing to perform normal maintenance, such as a slow leak that worsens over time, like the line of a shower drain that has been leaking through to the unit below over a long period of time.

Lastly, the issue of who pays the master deductible is often a point of contention. Here, the answer would depend on the terms of the association's governing documents, which can have a lot of permutations. In Virginia, most commonly, the issue of who is at fault determines who pays the deductible on the master policy; however, the association's bylaws should be carefully examined with your counsel to make that determination. In the District of Columbia, if the Bylaws are silent on the responsibility for payment of a deductible amount, and if the damage originates from a unit (regardless of negligence), the unit owner could be responsible for the deductible not to exceed \$5,000 if the association previously provided notice to unit owners of this potential responsibility for the deductible before the damage occurred.

Given that water leaks are one of the most commonly reported causes of damage in condominiums, boards of directors should consider adopting a policy resolution to address in greater detail exactly how a reported leak will be handled, units restored, and costs assessed, including the master insurance deductible. If your association is interested in such a resolution, or caught up in one of the all-too-common scenarios described above where damage occurs, panic ensues, and the parties are unsure of responsibilities, we encourage you to contact legal counsel for assistance.



## Chadwick Washington Zoom Webinar Series

Chadwick, Washington, Moriarty, Elmore & Bunn, P.C., is pleased to host and invites you to attend one or more of its educational Webinar Series for 2023 highlighting topics relating to community association law and governance. Each Webinar is one hour, with two topics presented by CWMEB attorneys followed by Q&A Sessions in separate Zoom breakout rooms staffed by CWMEB attorneys. The waiting room for the Webinars will open about 15 minutes before the sessions begin at 7:00 p.m., with the Q&A Breakout Rooms opening at approximately 7:40 p.m.

Topics this season include Tips for Handling Difficult Board Members; Best Practices for Holding “Due Process” hearings; Avoiding Pitfalls When Planning a Membership Meeting; Tips for Reviewing Architectural Applications; What to Look for When Hiring a Management Company; How to Deal with Vendor Breaches and Other Contract Problems; Basics of Bankruptcy and Assessment Collection; Defending Associations from Lawsuits and Other Claims; a Virginia legislative update (June sessions); and many more.

The firm’s next educational Zoom Webinar will be held on **Monday, April 24, 2023, at 7:00 p.m.** and will include presentations regarding **Addressing Fair Housing Accommodation Requests** and **Smoking, Sounds & Other Annoying Violations**. If you are interested in registering, you may do so directly [here](#).

We look forward to seeing all of our clients and guests during our 2023 Webinar Series and encourage you to register early for those topics and presentations you don’t want to miss. The schedule listing the dates, times and topics for the 2023 Webinar Series is posted [here](#). Clients, managers and guests can also register for the Webinar(s) of choice directly [here](#). Additionally, more information can be found on the Seminar Series page of our website at [www.chadwickwashington.com](http://www.chadwickwashington.com).

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## ***Chadwick Washington Attorneys Presenting at Central Virginia Chapter CAI Community Associations Day Tradeshow & Expo***



CWMEB Attorneys **Brendan Bunn, Sara Ross, Jerry Wright, Michael Sottolano** and **Lesley Rigney** are featured speakers at the 2023 Central Virginia Chapter of Community Associations Institute annual Community Associations Day Tradeshow & Expo on April 14, 2023 at the Omni Richmond Hotel. More information about the event, including how to register, can be found [here](#).





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