

What happens when the hot water heater bursts?

This is a question I am asked seemingly on a daily basis. It has some variations in format; perhaps involving a burst pipe, toilet/shower leak, or air-conditioner drip pan overflow but the theme is always the same. That is, something involving the unexpected flow of water happens within a unit which causes damage to other units, typically the unit(s) located directly below the water event, and to the common elements. Who is responsible for repairing the damage? Who is responsible for paying for the repairs?

Water intrusion events like these are usually considered casualties. A casualty is something that happens unexpectedly, through no fault of anybody. Hurricanes,

tornadoes, strong storms, and other Acts of God are easy examples of casualty events. A burst pipe within the ceiling, floor or wall is also, most often than not, a casualty because no one can accurately predict when a pipe will fail. Of course, this will change where, for example, a unit owner or the association is aware of an existing pipe leak and does nothing to fix it. Similarly, where a condominium association has a rule requiring owners to replace their hot water heaters at least once every 10 years, the 11-year-old hot water heater that bursts will probably not be a casualty event.

The association has a statutory responsibility to insure the units, common elements, and association property for casualty damage. Similarly, the unit owners must insure portions of their units against casualty damage. Keep in mind that the obligation to maintain something does not always translate into an equal responsibility to insure that same item. The Association and unit owners' insurance responsibilities are described in Section 718.111 (11), Florida Statutes. The unit owners must provide insurance for all floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and counter tops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of a unit. The Association must provide casualty insurance for everything else.

When a casualty occurs, the association must file a claim with its insurance company for any damages to the common elements and other items that are the association's insurance responsibilities pursuant to the Condominium Act. Likewise, a unit owner is responsible to file a claim with his/her homeowner's insurance for damages to the unit and its contents. Neither party is liable to the other nor would either insurance company be liable to the other.

If there is casualty damage to the common elements and/or other items that the association must insure that exceeds the association's deductible and the proceeds from the association's insurance are sufficient to pay for such damages, the law requires the association to repair the damages to these items (i.e. fixes the broken pipe, leaking roof, etc.) and nothing further needs to be done. If the proceeds from insurance are not sufficient or if there are no insurance proceeds (either because there is no coverage or because the damages are below the deductible), the association must repair

those items that it is responsible to insure and the cost to do so is a common expense shared by all of the unit owners. The declaration may actually provide a different process when there is a shortfall in insurance proceeds, but an association cannot follow this different process unless a majority of the entire membership votes to "opt-out" of the law and into the different process described in the declaration.

The association is not responsible for paying for any casualty related damages to a unit owner's personal furnishings or to the list of "excluded" items (listed above) unless the association was negligent and such negligence caused the damage. It is also possible that a unit owner may be negligent. If a unit owner's negligence (or intentional act) causes damage to the common elements and/or other units, the association must still repair all of the common elements, but the negligent unit owner (or his/her insurance) will be responsible to pay for the damages. Similarly, if a unit owner's negligence causes damage to another unit, the other unit owner suffering the damage should file a claim with his/her individual insurance and such insurance may then go after the negligent owner for damages.

There is a difference between normal, day-to-day maintenance and repairs versus those repairs made necessary due to a casualty. The declaration of condominium will often contain a separate section dealing with repairs after a casualty. In addition, the insurance responsibilities of the parties involved will often dictate who has to actually perform the repairs after a casualty.