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Construction Law: An attorney discusses dealing with leaks - by C. Jaye Berger

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Dealing with leaks and how to determine responsibility for it can be a major headache. The best thing anyone can do is to be certain they have insurance coverage in place. Anyone renting out their condominium unit or co-op apartment should have their own insurance, as well as requiring renter's insurance from the tenant. Do not try to save money by just relying on the tenant's insurance. It never hurts to be over insured. If your tenant causes a leak in someone's else's apartment, they will sue both you and the tenant.

Responsibility for the damage varies depending on whether it is in a co-op or in a condominium. As a general matter, if the leak occurs in a condominium unit, everything in that unit is the owner's responsibility. However, that can change if the leak was caused by the negligence of others, such as work being done by the building, by a neighbor or even by your own tenant.

Guidance can be found in the by-laws and declaration of the condominium and in the Proprietary Lease in a co-op. If it results from a renovation, the Alteration Agreement will be helpful to review, as is the lease for the tenant. The building may have money in escrow for damages caused by a renovation and there will likely be a certificate of insurance.

The second best thing anyone can do is to be proactive and photograph the apartment before there is any damage. You want to be able to show that the apartment was in excellent condition before the renovation work was done. Sometimes, a neighbor or the building will ask to take photographs, but it is best if you take them first and document the condition. Even if you have some cracks already, you can show that they were made worse by the renovation work. Immediately contact the managing agent of the building to advise them of the leak. Next, contact legal counsel to guide you through the process and assist in contacting the insurance company.

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