



## **A lawyer discusses building leaks and what to do about them - by C. Jaye Berger**

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Leaks are so common in buildings that at times it seems like rivers and streams are running through them. Water travels so it is not always easy to follow the trail to the source. People have renovated their apartments which can mask problems. If someone finds water on a bathroom floor, it is easy to assume, sometimes incorrectly, that the source is the apartment above. It might be that or it might be originating several floors above and just exiting where you see it. Tenants and occupants may jump to conclusions.

Building staff should immediately be contacted, as should legal counsel. They can enter other apartments to investigate. One woman had a flood from a balcony above her apartment. Turns out the apartment was occupied by a rental tenant. Everyone else had drains that were cleaned periodically by a company with a maintenance contract with the building. Leaves and papers can accumulate and block the drain. Common sense should have told them that cleaning around that balcony, but leaving it out, would be a problem, but no one considered that. After a massive leak and flood, someone did just that and the unit was cleaned and maintained like the others through the managing agent for the rental apartments.

Some people who have just had new roofs installed report water damage which may have resulted from faulty installation. One landlord called me to complain that even though his building has a new roof, every time it rains, they have leaks and water damage. There may also be leaks from work on the roof. People may try to claim it is due to faulty material, but it is almost never that. It usually has something to do with faulty installation, such as seams that are not attached or joined well. Water travels all over the building in unpredictable ways. It can cause direct damage, such as damage to the structure and personal property and indirect damage, such as causing mold.

It bears reminding that not only should landlords have their own insurance coverage, but they should make sure that their tenants do as well. Landlords and their managing agents should be named as additional insureds in the tenant's policy. This insurance must be in place before the tenant moves in and before the tenant engages in any renovation work. Landlords need to see plans showing exactly what work is being done. They must also have their own architect or engineer check the work to see that what is shown in the drawings is what is being built. Once the walls are closed up, it is hard to determine if the flashing was installed properly on a terrace. Damage can occur from a combination of factors—some involving work done by the landlord and some arising

from work done by the tenant. It is better to have overlapping coverage than to not have enough.

This is why building owners need to be aware that subcontractors are working on their building. A general contractor may ask a subcontractor, in the contract between them, to name the company as an additional insured. If that does not happen and there is a loss, the general contractor will need his own carrier to respond to the loss. I have seen instances where a subcontractor did not purchase the required insurance before the work began, but purchased it a couple of weeks into the job. Naturally the loss occurred during the period before the insurance was purchased.

Building staff must be aware of renovation projects and compliance with plans.

Giving timely notice of such claims to the insurance carrier is especially important and can mean the difference between being covered and not being covered. For me it boils down to good routine maintenance. One building had no repair work done in 20 years and only did patch work. There has to be a program in place and a budget. The same building never has assessments. Shareholders and unit owners must have insurance. Renters insurance is also needed. Consult with an attorney knowledgeable in this area.

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