



# Who is responsible to repair and pay for flood damage in a condominium unit?

By [Rod Escayola](#) March 06, 2012



We were recently asked to provide advice following a flood in a condominium unit. The condominium corporation was surprised to hear that it may have the obligation to repair the unit despite the fact that the damage was limited to the unit.

To better understand the obligations of the owners and those of the condominium corporation in case of a flood, it is important to understand the difference between the obligations to “maintain” and the obligation to “repair after damage”.

## ***Obligation to “maintain”***

[Section 90 of the Condominium Act, 1998 \(the “Act”\)](#) provides that the condominium corporation has the obligation to maintain the *common elements* and that each owner has the obligation to maintain his or her *own unit*. Most declarations will reiterate the owner’s obligation to *maintain* his or her unit to the standard of a “prudent owner” and provide that each owner shall be responsible for all damages to any and all other units and to the common elements which are caused by his or her failure to maintain his or her unit.

## ***Obligation to “repair after damage”***

On the other hand, [section 89 of the Act](#) imposes an obligation on the condominium corporation to *repair both the units and the common elements* after damage, subject to any provision of the declaration which may alter the corporation’s obligations and which may impose an obligation on the unit owner to repair his or her unit after damage.

## ***The corporation’s obligation to obtain insurance coverage***

[Section 99\(1\) of the Act](#) provides that the condominium corporation has the obligation to obtain insurance to cover damage to both the unit and the common elements caused by major perils, such as a “fire, lightning, smoke, windstorm, hail, explosion, water escape, strikes, riots or civil commotion, impact by aircraft or vehicles, vandalism or malicious acts” or other perils that a declaration or by-law may specify.



### ***The owner's responsibility to obtain insurance coverage***

While the corporation has the obligation to maintain a certain level of insurance coverage for damage to the units, the owner is responsible to obtain and maintain sufficient insurance to cover any damage to any personal property within his or her unit such as:

- Furnishings;
- Fixtures;
- Equipment;
- Decorations;
- Personal property; and
- Chattels,

as well as any improvements or additions to the standard unit.

The Act does not impose an obligation on the owner to maintain insurance, but in many declarations this is an obligation imposed on the unit owner.

### ***Who is responsible to pay for damages caused by a flood?***

The unit owner will be responsible for all costs related to damage to his/her personal possessions and any improvements or additions to the standard unit, whether or not the owner has maintained insurance. The condominium corporation's insurance will pay for the cost of repairing the damage to the standard unit.

### ***Who is responsible to pay the insurance deductible?***

As a starting point, [section 105 of the Act](#) provides that the condominium corporation is responsible to pay the deductible, if any. However, there are exceptions to that. For instance, if the owner has caused the damage to his unit through an act or omission, the owner is responsible to pay the deductible. [Section 105\(3\)](#) of the Act provides for a further exception, which allows the condominium corporation to pass to the owner the responsibility for the deductible if it has adopted a by-law to that effect.

In sum, in order to determine whether the Corporation or the unit owner is responsible to repair damage caused to a unit or payment of the insurance deductible, it will be necessary to refer to the Act, the Declaration and the condominium by-laws, as there is no "one-size fits all" answer to this question.



## Condo Reporter

Heenan Blaikie

In a posting to come, Barbara Holmes will discuss the condominium corporation's duty to repair a unit after a fire damage.

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