

Water, Water, Everywhere...

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Almost every multi-level condominium we represent has encountered issues with water infiltration over the years. These situations usually arise when a lower level unit suffers water infiltration damage from a known or unknown source. The most consistent problem arises when the source of the water causing the damage is clearly from another unit and not a common element. In this type of situation, the board must determine if it is *obligated* to act under these circumstances or if they will be held liable for their failure to act or remedy the situation.

In the case of Brauer v. Burnes, the Superior Court ruled that although the Board may *voluntarily* act to address this type of matter, it is ultimately the unit owner's responsibility to address the issue causing the leak and remedy the problem.

This case involved a unit owner who filed numerous complaints about water damage which ultimately were the result of another unit owner's failure to maintain and/or prevent water infiltration to a lower level unit. Like many documents, the Association had a provision that allowed the board to act using its own judgment, but the documents did not mandate that the board take specific action to remedy the situation.

Ultimately, the unit owner initiated a lawsuit against the board claiming negligence, breach of contract, trespass and nuisance. The Court found in favor of the Association on every count and dismissed the complaint on summary judgment. The Court specifically found that the provision in the Declaration of Trust pertaining to the board's ability to perform work on the unit was permissive rather than mandatory and relied on the same as one of the principles for dismissing the case.

Although this was a lower court decision, this case is certainly helpful in resolving many of the conflicts which an association may face with respect to water damage and other issues.