



Repairs: Who Makes Them, Who Approves Them, & Who Pays?

Understanding Repair Obligations in Co-ops & Condos

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Key Questions:

- Who is responsible for repairs?
 - Who approves repairs?
 - Who pays for the repair?
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Repair vs. Alteration vs. Casualty

Definition of Repair: Routine maintenance to restore functionality.

Definition of Alteration: Structural or aesthetic changes initiated by the owner.

Definition of Casualty: Damage caused by unexpected events like floods or fires.

Governing Documents: Prop Lease & By-Laws Relevant Sections

Co-op: Proprietary Lease Sections 2, 3 and 18:

Section 2: Covers lessors repairs

Section 3: Lessor's obligation to provide services

Section 18: Covers repairs inside apartments

Condo: Typical repair clauses in a condo agreement might include:

Unit owner responsibility:

The owner is responsible for all repairs within the unit boundaries, including interior walls, floors, ceilings, plumbing, electrical systems, appliances, and fixtures.

Common area responsibility:

The condo association is responsible for maintaining and repairing common elements like exterior walls, roofs, hallways, elevators, landscaping, and swimming pools.

Limited common elements:

Certain areas like balconies, patios, and exterior doors might be considered "limited common elements" where the unit owner is responsible for some maintenance while the association handles major repairs.

Damage caused by negligence:

If damage to the unit or common areas is caused by the unit owner's negligence, they are typically responsible for repair costs.

Water damage responsibility:

If repair is needed, then it is based on location. Responsibility might be split between the unit owner (for leaks within their unit) and the association (for leaks originating from common areas). Note this does not apply to casualty damage.

Responsibility

Criteria:

Location, Not

Fault

Location-Based:

Typically, location within the unit or building determines responsibility.

Trouble Spots in Definitions

What is a decoration?

Floors, Parquet floors, subfloors tiles, sheetrock, paint.

Terrace/balcony pavers, decking.

Is the original installation still a decoration?

What is considered "Inside a wall " vs. "exposed":

Radiator valves, AC sleeves, mold, shower bodies.

What is considered part of unit components, fixtures, & appliances:

Lead pans, windows, and fireplaces..

Structural vs. Non-Structural:

Load-bearing walls, caulk vs. cracks.

Responsibility Criteria: Location, Not Fault

Location-Based:

Owners Responsibilities

Board Responsibilities

Shifting from Board to Owner



- (a) Act or omission of owner
- (b) Repair or casualty (leak vs. flood)
- (c) Repairs to prior alterations
- (d) Alteration consents (e.g. plumbing)

Responsibility Criteria: Location, Not Fault

Location-Based:

Owners Responsibilities

Board Responsibilities

Shifting from Owner to Board

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- (a) Fixing conditions within walls
- (b) Board action causes damage
- (c) Discretion in timing and scope of repairs

Shifting Responsibility from Board to Owner:

Acts of Owner

Indemnity clauses, proving negligence.

Repair vs. Casualty:

Insurance coverage, waiver of subrogation.

Past Alterations:

Current and prior owner responsibilities.

Consent Conditions:

Branch line plumbing, waterproofing, leak sensors.

Shifting Responsibility from Owner to Board:

Repairs within walls

Extent of board's repair obligations

Board-Caused Damage:

Accountability for damage caused by
board's actions.

Board's Discretion:

Scope and timing of repairs; recurring
leaks and Local Law 11 considerations.





When can the board repair or replace?

- **Building-Wide Programs:**
“Incentives” for early repairs (e.g., bulk discounts).
- **Cure violations; compelled with law**
Open building permits.
- **Limit damage to other owners**
Smoke exfiltration from apartment- caulking
- **Legal Compliance for major alterations**
ADA, Fair Housing
- **Authorities to enforce repairs to functional components**
Local Law 97, Electrification
- **Board’s discretion to provide services**



Anticipating and dealing with the problems:

Read Governing Documents:

Anticipate issues and identify responsibilities.

Amend Documents: Repair Clause.18

Clearly outline repair obligations.

Alteration Agreements:

Ensure responsibility for and damage caused by alterations and future repairs.

Ensure written assumption of repair obligations by purchaser.

If responsibilities are not clear, follow past practices:

Make building policy based on precedent.

Conclusion and Key Takeaways

- Understand and reference governing documents.
- Location is key to determining responsibility.
- Ensure clear communication between owners and boards.
- Always clarify responsibilities through documentation and past practices to avoid disputes.

Q & A



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