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# **What's the Difference?**

## **Insurance Claim v. Maintenance, Repair & Replacement**

A common question that attorney's hear from client associations: Who is going to pay for this? The answer is often determined by identifying whether the issue at hand is an insurance claim or a maintenance, repair and replacement issue. A wise attorney once said: Just because you maintain it, does not mean that you insure it and just because you insure it does not mean that you maintain it. Let's look at some specific examples and then determine how to differentiate an insurance claim and a maintenance issue.

**Garage door of a Townhome unit:** Let's assume that the garage door is a limited common element. If a tornado hits the community and the garage door needs to be replaced as a result of the damage, it is likely that the replacement will be taken care of under the association or owner's insurance policy. If the garage door needs to be replaced because it is 17 years old and no longer works properly, this is a maintenance, repair and replacement issue.

**Water is entering three units within a condo building because a common area pipe burst:** We will assume that in this case there is extensive damage to multiple rooms in each of the three units as well as damage to the common elements within the walls, ceilings and floors; total damage exceeding the amount of the deductible. This is likely going to be an insurance claim for the association, as well as each of the unit owners on their individual policies. The association policy should cover the common elements and the shell of the units that were damaged (refer to the Condo Act for specifics). The individual unit owner policies should cover the personal property and any improvements which were made to the unit.

**What about other situations that don't seem as easy to determine?** When a situation arises that causes the board to contact their legal counsel with the question, "Who is going to pay for this?", the attorney is going to identify the answer to the following three questions:

1. Is there coverage under the association's insurance policy?
2. Does the cost of the damage exceed the association's deductible?
3. Is the source of the loss covered?

If the answer to any of these questions is no, we now have a maintenance repair and replacement issue and we must then look to the association's governing documents.

While most associations and owners are familiar with the maintenance, repair and replacement provisions of the governing documents, they are not as familiar with the terms of the association's insurance policies. When there is substantial damage to a unit from an insurable loss,

an association should not be looking at its maintenance responsibility matrix, but to its insurance policy. The same holds true for the insurance carrier, which may try to look to the maintenance responsibility matrix to deny a claim.

Please note that with townhome and other common interest community associations, insurance responsibilities are set forth in the association's governing documents. Statute does not indicate insurance requirements as it does for condos.

**How else do insurance and maintenance impact one another?** If an association does not perform routine maintenance, repair and replacement of the common elements and a loss occurs due to a sudden event that would normally qualify as an insurance claim, the claim could be denied due to lack of proper maintenance.