

Emery Bay Village Homeowners Association Preserving Evidence & Incident Report Policy

Preserving Evidence in Case of Possible Litigation or Arbitration

Property damage claims are a fact of life in many associations. A fire starts in a kitchen and spreads to adjoining units. A contractor knocks into a common area sprinkler, which leaks, flooding other Units. A washing machine overflows, causing water damage and mold to units below. Occasionally, there may be a bodily injury claim—someone trips on a slippery substance on the common area and falls, sustaining injuries.

Associations often do not have any procedure to document claims. Board Members resign or move away, or a new board is elected. The management company is replaced. If the property damage or bodily injury claim ends up in litigation, arbitration, or an internal dispute resolution hearing, the association may need “physical evidence” of what caused the injury in order to either recover money or to defend itself from a claim by one of the Owners. However, in many cases, the association’s attorney or the insurance defense counsel is not notified of the problem until months or years later, and no one on site thinks to preserve the physical evidence or to maintain the “chain of custody.” Associations should develop written procedures for investigating any claim involving bodily injury or property damage. This will also assist the Association’s insurer in investigating claims.

Practice Tips: The following steps need to be taken in the event of any bodily injury or property damage claim within the development:

1. Determine what caused the problem. If there is any physical evidence of the cause of the problem, label the evidence and keep it in a safe place. For example, if defective wiring in a kitchen caused a fire, save the wire and place a label on it to show where it was taken from.
2. Determine who has personal knowledge of where the physical evidence came from, and what condition it was in before it was removed. Have the person who has personal knowledge of the physical evidence maintain custody of it so that he or she can testify that this is the same item that was involved in the event in question.
3. Keep records of what physical evidence exists and where it is kept, and give a copy to the association’s counsel, or, if there is an insurance claim, to the insurance broker and/or defense counsel.
4. Develop a form to be filled out by a board member, manager, or your attorney at the time the damage occurred. The form should describe the date, time and location of the accident or problem, identify all the witnesses with personal knowledge of what occurred, provide the contact information for each witness, describe factually exactly what occurred, and describe any physical evidence and what happened to it. Keep all the completed forms in a location where they can be retrieved if needed. These forms may be discoverable, so do not write anything down on the form that you would not want a judge or a jury to see.

RETAIN THIS INCIDENT REPORT IN YOUR ASSOCIATION
PERMANENT RECORDS

This report should be prepared whenever property damage or personal injury occurs in or around the Development. Any physical items related to the incident (for instance, bills, invoices, pictures, building materials) should be retained and carefully accounted for at all times.

Person Reporting Incident

Name:
Title:
Address:
Telephone:

Witnesses and/or Persons with Knowledge of the Incident

Name:
Title:
Address:
Telephone:

Name:
Title:
Address:
Telephone:

Name:
Title:
Address:
Telephone:

Name:
Title:
Address:
Telephone:

DESCRIBE THE INCIDENT IN DETAIL

Are there any documents, pictures or objects of any kind related to the incident? If there was a failure of some part of the building, you should save the part that failed.

YES

NO

If "yes", who has custody of these items?

Name:

Title:

Address:

Telephone:

Name:

Title:

Address:

Telephone:

IMPORTANT: IF THERE IS PHYSICAL EVIDENCE OF THE "INCIDENT" IT MUST BE PRESERVED AND IT MUST REMAIN IN THE CUSTODY OF A PERSON WHO CAN IDENTIFY IT IN COURT AND WHO CAN TESTIFY FROM PERSONAL KNOWLEDGE THAT THIS WAS THE ITEM INVOLVED IN THE INCIDENT.