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When must a condominium association warn unit owners of a danger?

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In normal circumstances, a condominium association has no obligation to repair a problem in an individual unit. A New Jersey court has ruled, however, that an association may still have a legal duty to warn all other unit owners of the problem if it is potentially dangerous.

In the 2005 case of *Siddons v. Cook*, a condominium owner whose unit was flooded due to a broken dishwasher hose in an upstairs unit sued the upstairs owner and the association for the damages sustained. At the time of the incident, the association's administrator already had been made aware by other residents that similar hoses, which had been installed originally by the developer and were not visible or accessible without pulling out the dishwasher, had broken in other condominium units on three previous occasions.

A New Jersey appellate court held that while the upstairs owner was not liable, the association owed a duty to warn all owners of the potential hazard presented by the defective hoses. The court's decision is significant because it could be extended to require an association to warn its residents of other situations that pose a danger to them, such as where criminal conduct has occurred on the premises, and to hold the association liable for damages that result from failing to do so.

In reaching its decision, the court observed that "under some circumstances the knowledge of a dangerous condition, regardless of control over that condition, may impose upon a person a duty to warn third parties of danger." Therefore, even though the defective hose was part of the unit and not a common element, and the association had no duty to inspect or maintain personal property located in the unit, the court nonetheless held that the association "had a duty to act reasonably to warn the unit owners of the potential danger" of flooding because the association knew of the condition, which was not "open and obvious" to the unit owners.

In analyzing the case, the court balanced four factors:

The relationship of the parties. The court noted that the association had a fiduciary obligation to its unit owners, and possessed statutory power to protect the property of owners and to gain access to each unit to make emergency repairs necessary to prevent damage to any unit. The court found that these factors emphasized the close relationship between an association and its unit owners, and weighed in favor of finding that the association owed a duty to warn its owners of the potential flooding that the hoses could cause.

The nature of the risk and the ability to exercise care. The court found that prior to the incident in question the association had been notified at least three times that dishwasher hoses had flooded other units, that the majority of unit owners were not aware of this risk, and that the association was in the best position to notify owners and could have done so without relatively easily through its newsletter or other reasonable means.

The public interest in the proposed solution. The court found that the individual interests of the unit owners in their personal property and, collectively in the common elements, would be safeguarded by requiring the association to provide a warning.

An association's board and property manager therefore should err on the side of caution or consult with the association's legal counsel if they are uncertain about whether to issue a warning regarding a specific situation.