

Sewer Backup CLAIMS BRIEF



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Who's Responsible for Sewer Backup Damage?

By Sherri Butler

The Claims Department receives an average of seven sewer backup claims per month. If there is one thing we have learned from this frequency, it's that nothing creates an irate and sometimes irrational citizen faster than sewage that has backed up into a basement or bathroom of a home. Understandably, a homeowner is concerned about cleanup, damage to their property, and health issues created by bacterial contamination to floors and walls. They want immediate relief from the local government who provides their service. Educating your constituents about the responsibility for potential backup is an effective tool to avoid misunderstandings and rancor associated with these claims.

Who is Liable

Courts have determined that local governments are liable for the negligent operation of a sewer system. *True v. Mayor and Commissioners of Westernport*, 196 Md. 280 (1950). Yet, clearly a local government cannot guarantee that a public sewer system will not backup. Items such as disposable diapers and grease that are placed into the system by residents and businesses can cause unavoidable backups despite regular maintenance and cleaning of the lines. Therefore, a local

government is liable for sewer back-up damage only when the negligent construction, inspection, or maintenance of the sewer line specifically causes the backup.

Determining Liability

A local government is negligent in the operation of its sewer system if it fails to correct a defective condition, which it knew about or should have known about. Because of the immediate nature of the problem, it is important to quickly and accurately determine liability for a backup. The public works department should first establish the nature of the defect or the event that caused the backup. For instance, was there a structural defect in the line? Were there tree roots or foreign matter in the line that caused a clog? Was there a maintenance function performed by the local government, prior to the backup?

Since a local government is only legally liable if it was negligent, it must next establish if it knew of or should have known of the defective condition, which caused the backup. For instance, did the local government know of a structural defect in the line and failed to repair it? Had there been citizen complaints or reports of problems with the line? Did the local

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government fail to properly inspect and routinely maintain the lines? Each local government should maintain written or computer records of complaints and maintenance procedures performed on lines. For instance, records that indicate that a line was not inspected or maintained regularly, may be evidence of negligence on the party of the local government. However, inspection and maintenance standards for sewage lines varies greatly depending on the type of line and usage.

Unless our member has elected a Broad Form of Sewer Backup Coverage which pays for damages regardless of fault, LGIT will not accept liability for a backup on behalf of our member unless negligence is clearly established. Therefore, although it is appropriate to assist a resident with preliminary cleanup if possible, employees should be instructed never to accept liability for damages.

Informing your Users

Educating the public about potential backups can go a long way toward diffusing a difficult situation when it arises. Many residents are not aware that they can protect themselves from sewer backup losses by purchasing an endorsement on their personal homeowner insurance policy. This endorsement must be specifically requested from the homeowner insurer and costs about \$25-\$50 per year. Even when a local government is

negligent, residents should be encouraged to seek assistance from their homeowners insurance when they experience such a loss. Homeowners coverage will pay replacement cost value of damaged contents but a local government is only responsible for the ACV (Actual Cash Value) of contents. Having the resident proceed through their own insurer will benefit the resident. LGIT can reimburse the homeowner insurer if it is clearly established that the local government was negligent. Additionally, some homeowners are not aware that the local government is responsible only for backups caused by defects in the main line. Homeowners should be made aware that it is their responsibility to keep their lateral access lines clean. A backup caused by a defective condition in the lateral line is not the responsibility of the local government.

Regularly notify residents that sewer backups are a potential problem for every user and that your local government is not necessarily responsible for damages associated with a backup. Notification may be placed in your billing, distributed as fliers or door hangers, and placed in community newspapers. As an example, following is a copy of a mailing notification used by Howard County and placed in their billing each quarter. Proactive education can go a long way toward maintaining a positive relationship with your residents, even when they're ankle deep.

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