

33 §1603-111. TORT AND CONTRACT LIABILITY

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Neither the association nor any unit owner except the declarant is liable for that declarant's torts in connection with any part of the condominium which that declarant has the responsibility to maintain. Otherwise, an action alleging a wrong done by the association shall be brought against the association and not against any unit owner. [1981, c. 699, (NEW).]

If the wrong accrued during any period of declarant control, and if the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any unit owner: (1) For all tort losses not covered by insurance suffered by the association or that unit owner; and (2) for all costs which the association would not have incurred but for the breach of contract or other wrongful act or omission. In any case where the declarant is liable to the association under this section, the declarant is also liable for all litigation expenses, including reasonable attorneys' fees, incurred by the association. During any period in which the control of the declarant is limited to the power to approve actions of the association or executive board, as provided in section 1603-103, subsection (d), the declarant shall be liable under this section only for losses caused by the exercise of declarant's right of disapproval. Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates. A unit owner is not precluded from bringing an action contemplated by this section because he is a unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed by section 1603-117, other liens affecting the condominium. [1981, c. 699, (NEW).]

SECTION HISTORY

1981, c. 699, (NEW).

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