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Legal battles setting rules on who pays for termite damage

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These pests typically grow no longer than an inch, but their impact to the housing industry can be devastating.

Termites are responsible for more than \$2 billion of damage each year, according to the **National Pest Management Association Inc.** — some \$500 million in Florida alone. The moist, subtropical environment filled with plenty of wood-frame structures is paradise for these insects, but who is responsible to pay up when termites attack is a question still being answered through insurance policies, contracts and lawsuits.

Pestering buyers with pests

Termite feasts tend to take place inside walls and other out-of-view areas, not announcing their presence until it's too late — when walls and floors begin to buckle and sag from weakened wood. The most severe damage has been generally found inside structures built in the 1970s and 1980s that may not have received regular pest control visits or where less-than-ideal construction techniques make infestation easier.

Multifamily community buyers keep that in mind when eyeing a piece of property, and look closely at past treatments and what kind of bonds are established by pest control companies to ensure infestations are properly eradicated.

“Florida is loaded with termites, so it’s absolutely a concern for buyers,” said Byron Moger, director of apartment brokerage services with **Cushman & Wakefield of Florida**. “It’s like making a boat out of steel and floating it out in the ocean. You better make sure you keep putting paint on it, or it will rust away. Termites have to be treated with the same diligence, or there could be some real problems down the road.”

Those problems can carry hefty price tags that could be left for owners to shoulder.

Peter Cardillo of the Cardillo Law Firm in Tampa is known as Florida’s “Bug Lawyer” and has focused entirely on infestation cases around the state since 2003. He has

seen firsthand some of the damage created by termites and has as many as 60 active cases involving pest damage in Florida courts.

Two of his more recent cases involve **Park Place** Condominium Association of Tampa Inc. near the **University of South Florida** main campus and **The Oaks Unit III Condominium Association Inc.**, both which are fighting both insurance and pest control companies to pay for damages of \$5.5 million at Park Place and more than \$1 million at The Oaks.

“The insurance companies claim [the termite damage] is not covered,” Cardillo said. “They claim that the buildings have to be in a state of collapse, which is basically structurally impaired, and there is enough subjectivity in that assessment for them to screw my clients basically.”

Taking responsibility

In court documents filed with both the **Hillsborough County Circuit Court** and the U.S. District Court’s Middle District of Florida, Cardillo said denying the claim simply because a building hadn’t collapsed breached the contract and, at least in the case of The Oaks, was executed in bad faith.

Neither **Allstate Insurance Co.**, the defendant in The Oaks suit, nor its attorney, Jane Anderson of **Boyd & Jenerette** in Jacksonville, returned calls seeking comment. But Gary Landry, VP of the **Florida Insurance Council** — a state lobbying group for the insurance industry — said there is a lot of misconceptions on what insurance is supposed to cover.

“What homeowners insurance sets out to do is protect them from great catastrophes that the average person can’t protect against,” he said. “But you also have a certain degree of responsibility on what happens to your home, and there are some things that can be controlled, like termites.”

That means proper treating when homes are constructed and regular treatments after that to stop infestations before they gain steam.

“You can’t take in just anything happens to a home and cover it,” Landry said. “Otherwise, policies would be too expensive.”

Courts haven’t always agreed.

“Associations and owners are required to carry property insurance, and the idea is that they do that and they’re protected,” Cardillo said. “Sometimes when something comes up where they need protection, the insurance companies simply aren’t there.”



Pete Cardillo Termite Attorney



Termite Damage