

# Water Seepage: What Should Homeowners Do?

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## Introduction

Water seepage is a prevalent issue faced by many homeowners in Hong Kong, particularly in older buildings or those with inadequate maintenance. It can lead to significant property damage, health hazards, and unwanted disputes. If you are experiencing water seepage, it is essential to take the right steps to address the problem effectively. This article outlines the key actions you may take, from figuring out insurance coverage to identifying the source of seepage, and claiming for loss and damage.

## A. Insurance

Insurance plays a vital role in mitigating the financial impact of water seepage. However, not all insurance policies cover this, so it is important to ascertain the scope of coverage.

Most standard home insurance policies cover loss and damage of home contents caused by an accident, but it is important to note what types of home contents and incidents are insured. General loss and damage to the insured home as a result of water seepage caused by third parties are typically not covered, unless a more extensive coverage is provided in the policy.

Besides covering for loss and damage to your home, it is equally important to cover liability for loss and damage to a third party caused by your negligence (e.g. loss and damage caused to a neighbouring property due to water seepage from your home), also known as third-party liability. Nowadays, such third-party liability insurance is commonly included in home insurance policies, but you may wish to double-check the terms and coverage of your policy.

When faced with water seepage problem, if your insurance policy covers water seepage claims, you should notify your insurer immediately as late reporting may result in their rejection of your claims. Your insurer may then advise on next steps to take, and depending on the situation, they may engage a loss adjuster to investigate and assess the loss and damage, as well as engage a law firm to handle the case, if necessary.



## B. Identifying the Source of Water Seepage

In order to determine which party is liable for loss and damage caused by water seepage, you will first have to identify the source of seepage. Generally speaking, if the seepage originates from neighbouring premises, the owner of that premises should be responsible; if the seepage originates from common part(s) of the building, the management company or the incorporated owners of the building (IO) should be responsible.

To identify the source of water seepage, below are possible steps you may take:

1. Report the water seepage to your building's management company immediately. Very often, they will act as an intermediary to liaise with the owner of the neighbouring premises and/or the IO, and conduct preliminary investigation on the seepage. If the relevant parties are cooperative, the seepage issue may be resolved efficiently and amicably at a comparatively lower cost.
2. If the matter cannot be resolved, you may lodge a water seepage complaint to the Joint Office for Investigation of Water Seepage Complaints (the "Joint Office", 滲水投訴調查聯合辦事處/滲水辦), which is a government office jointly set up by the Food and Environment Hygiene Department and the Buildings Department to deal with water seepage issues in buildings. Upon receipt of the complaint, the Joint Office will generally be in contact within 6 working days to arrange for an inspection at your premises. Depending on the suspected source of seepage, they may also conduct inspection at the neighbouring premises. The Joint Office will carry out non-destructive tests to identify the source of seepage. Once identified, and if the seepage poses a nuisance, the Joint Office may serve a nuisance notice on the person(s) concerned requiring the abatement of nuisance within a stipulated time, failing which he/she may be subject to prosecution. This process usually takes several months, depending on whether the owner/occupant concerned is cooperative, for instance if they refuse to allow the Joint Office to enter their premises for investigation. If he/she is not cooperative, the Joint Office may have to apply to the Court for a warrant to enter the neighbouring premises, and this will prolong the process. Despite the lengthy process, the advantage of involving the Joint Office is their statutory power to apply for a warrant and issue a nuisance notice, compelling the person(s) concerned to cooperate and rectify the problem.
3. Apart from seeking assistance from the Joint Office, you and the owner(s) concerned may consider to jointly engage a professional surveyor to promptly



ascertain the source of seepage and assess the loss and damage, especially in cases where the Joint Office cannot ascertain the source of seepage upon carrying out non-destructive tests. A professional surveyor will usually prepare a detailed report, setting out his/her findings and analysis, which may be adduced as expert evidence if the matter is escalated to Court. However, if the owner(s) concerned is not cooperative, there is risk that he/she may deny entry of your surveyor into the premises concerned for investigation, and your surveyor will only be able to conduct tests in your premises which may result in limited findings.

### **C. Legal Bases for Claiming Loss and Damage**

After identifying the source of seepage, you will then be able to ascertain which party should be held responsible for the loss and damage caused by the seepage. So, what are some of the potential legal bases for claiming such loss and damage?

1. **Contractual:** Every multi-unit or multi-storey building should have a Deed of Mutual Covenant (DMC) in place which contains terms that are binding on all of the unit owners, and sets out the rules for management and regulation of the building. Very often, the DMC will contain terms to the effect that the management company or the IO should maintain the common parts in good repair and condition, and similarly, the unit owners should maintain their own premises in good repair and condition, so as to prevent any nuisance, damage or inconvenience to the occupiers of any neighbouring premises. Knowing and allowing water seepage to occur would mean that the relevant party has failed to keep the premises in good repair and condition, in breach of the terms of the DMC.
2. **Statutory:** The Building Management Ordinance (Cap. 344), e.g. Sections 18 and 34H, also contains terms of similar effect as the above. Further, if the seepage constitutes public health nuisance, the Joint Office may issue a nuisance notice pursuant to Public Health and Municipal Services Ordinance (Cap. 132) requiring the person(s) concerned to abate the nuisance, and failure to comply may result in prosecution (as mentioned above).
3. **Common Law:** Water seepage is often due to negligence of a party in failing to keep his/her premises in good repair and condition, thereby knowing and allowing seepage from his/her premises to a neighbouring premises, causing annoyance and inconvenience to the affected party, which constitutes a common law nuisance.



Generally speaking, loss and damage caused by water seepage (subject to assessment) may be recoverable from the liable party, e.g. costs for repair / renovation works to reinstate the affected premises, loss of rental income, general damage for distress, inconvenience and discomfort, etc. (if any).

## D. Conclusion

Water seepage usually starts with occasional drips which then intensifies to causing health and safety hazards if not promptly rectified. Start by reviewing your insurance coverage to ensure that it covers water seepage incidents. If so, notify your insurer immediately once you are faced with a seepage problem. Lodge a complaint with the building's management company and the Joint Office for preliminary investigations on the source of seepage. Engage professional surveyors and escalate the matter legally if necessary.

Our team has extensive experience in handling seepage cases and other property disputes in Hong Kong, whether it is acting for landlords/tenants and/or unit occupants, or management office and/or the Incorporated Owners. If you are experiencing such problems, feel free to contact our team and we strive to provide pragmatic and efficient legal support in a problem-solving and cost-efficient manner.


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