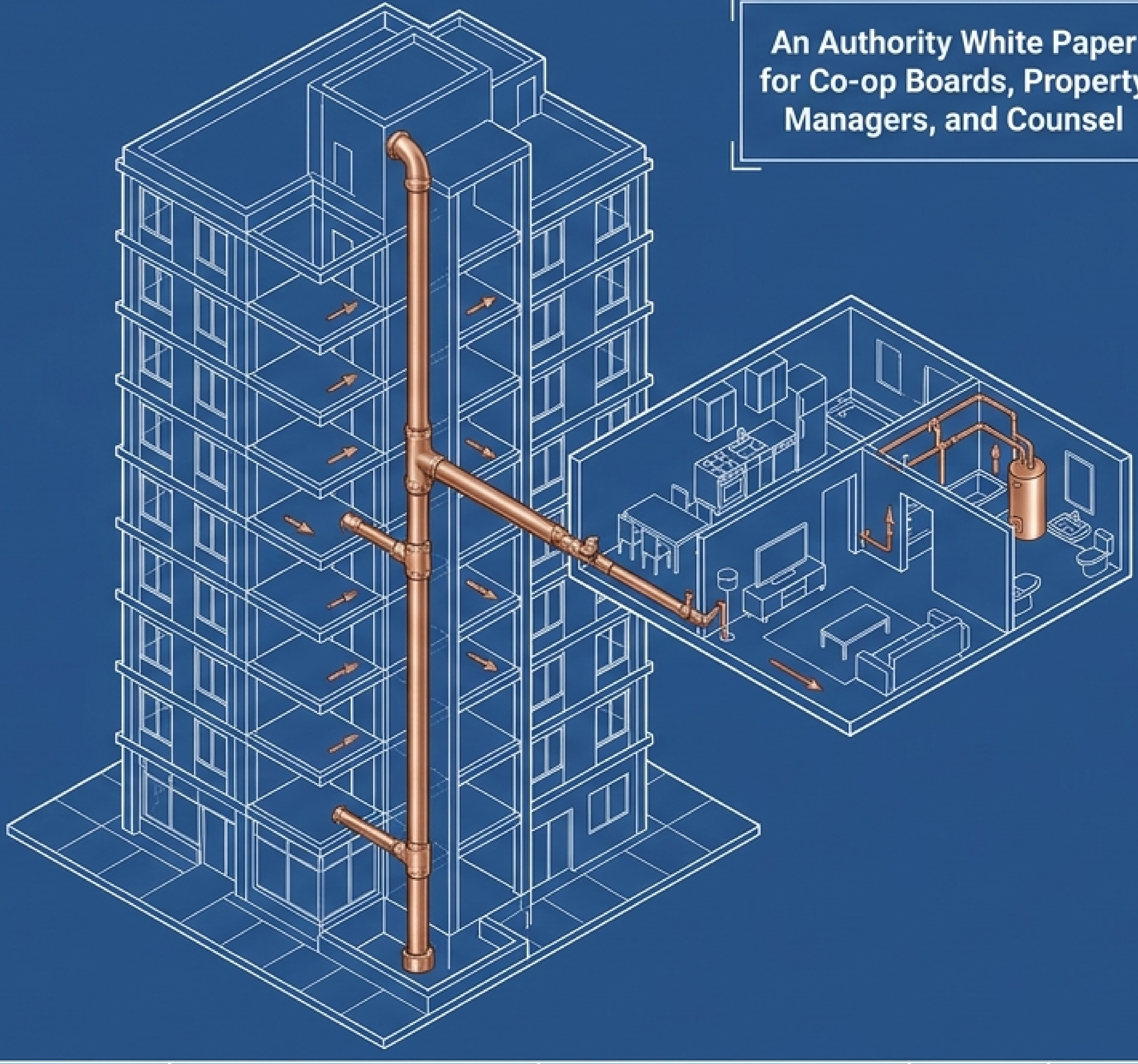
The Anatomy of a Co-op Water Claim

Allocating Responsibility: Master Policies, Proprietary Leases, and Municipal Liability in New York

An Authority White Paper for Co-op Boards, Property Managers, and Counsel



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The Myth

~~The water started in 4B’s faucet, so 4B is responsible for all the damage.~~

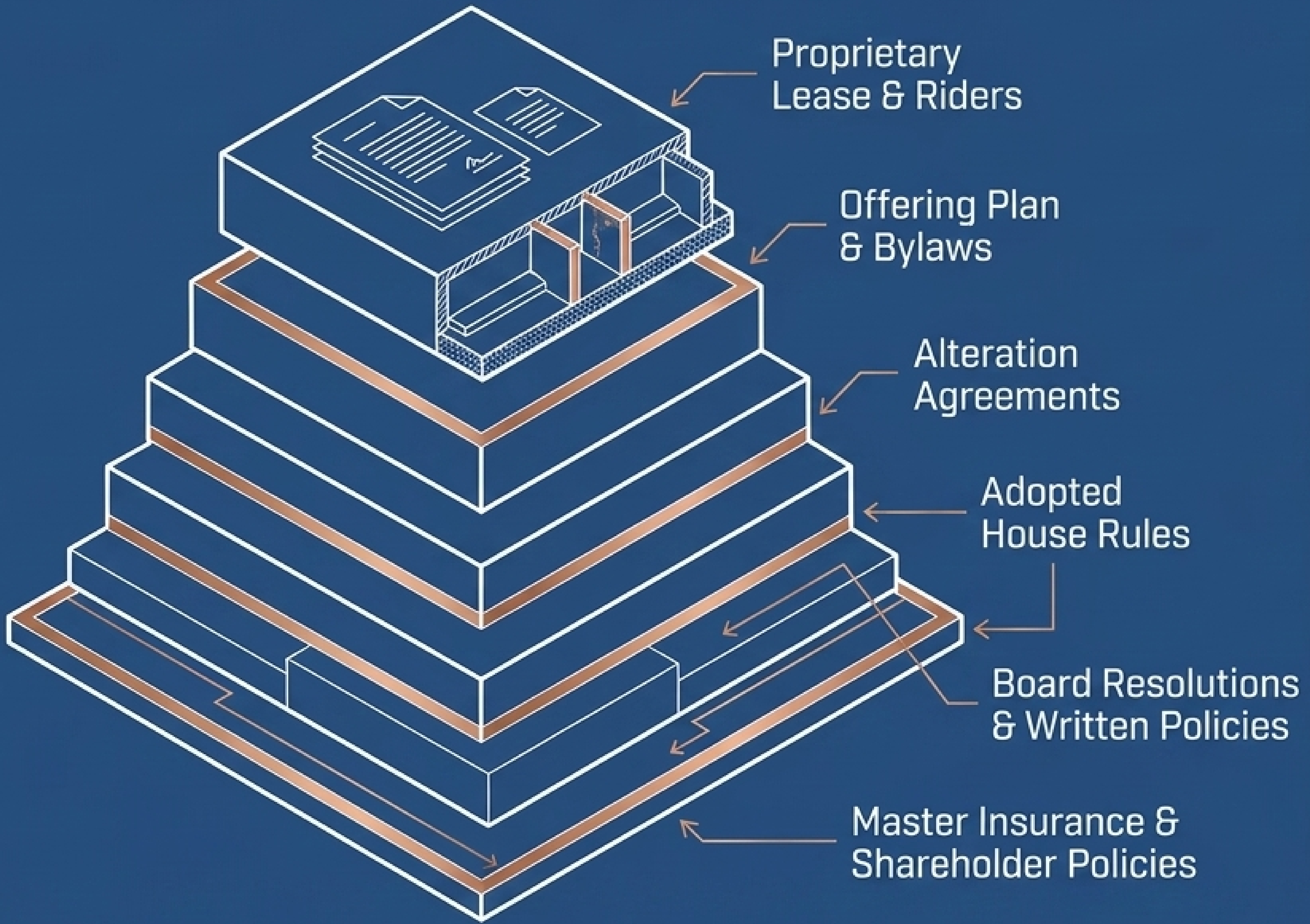
The Reality

Origin ≠ Fault. Responsibility and insurance coverage are entirely separate questions.

CONTROLLING PRINCIPLE: The proprietary lease allocates repair duties, the master policy determines funding, and tort law determines ultimate liability.

The Question	The Controlling Authority
Question 1: Who was required to maintain the failed component?	Proprietary lease, alteration agreement, bylaws, house rules
Question 2: Who must physically restore the apartment & building?	Proprietary lease, casualty provisions, habitability law
Question 3: Which insurer must initially pay?	Master policy and individual HO-6 shareholder policies
Question 4: Who is ultimately liable for the loss?	Negligence, contract, indemnification, subrogation, municipal-liability law

Never conflate a contractual maintenance duty with tort liability. An insurer can cover property even if the insured was not negligent.



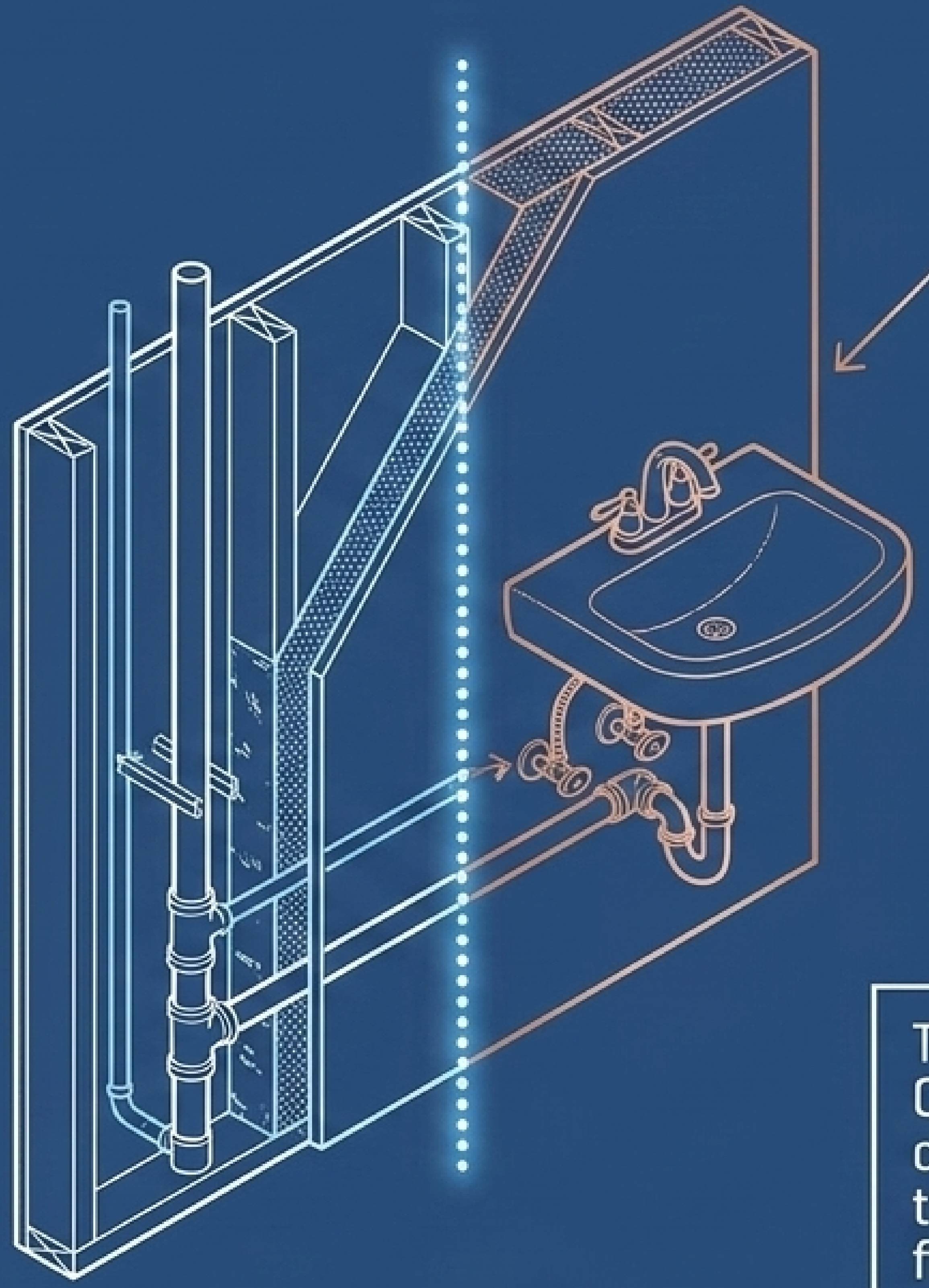
Beware the House Rule Trap

A general house rule cannot automatically override an express proprietary-lease provision.

Boards cannot shift all liability to a shareholder via a house rule if the lease lacks the authority to do so.

Shareholder Responsibility

Faucets, exposed fixtures, appliances, flexible supply lines, shutoff valves, visible plumbing.



Cooperative Responsibility

Risers, mains, branch pipes concealed within walls, building-wide pressure systems.

The Machado Precedent: In Machado v. Clinton Housing Development Co., the court enforced lease language making the shareholder responsible for exposed fixtures, even though the fixture connected to plumbing inside the wall.

Proprietary Lease

Allocates routine maintenance and financial responsibility.

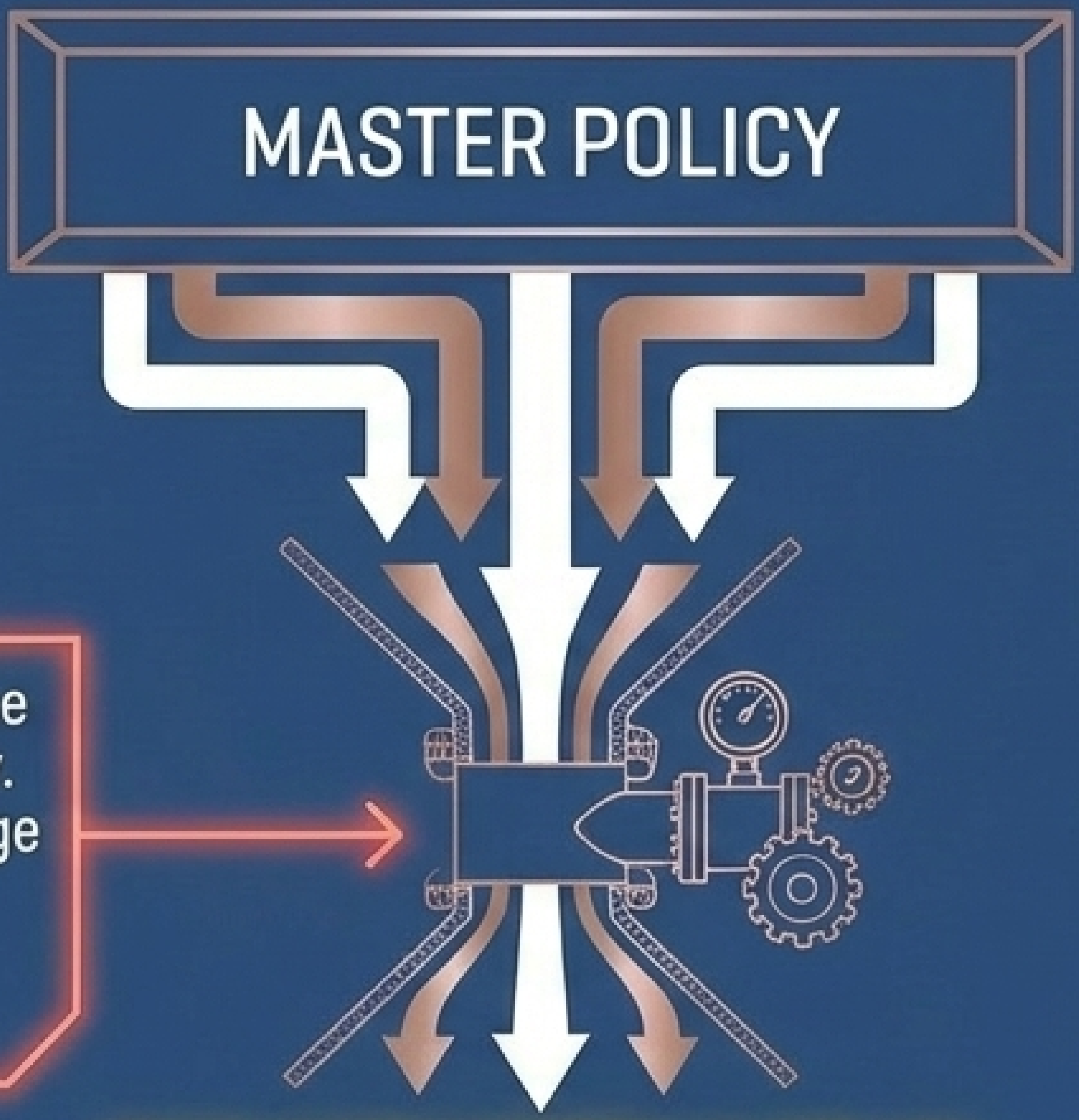
Statutory Duty

Nondelegable Duties: Warranty of Habitability (RPL § 235-b) & Multiple Dwelling Law § 78

Gendell v. 42 West 17th St: A cooperative can face negligence claims for independent duties regardless of lease allocations.

- Maintain building pressure
- Inspect pressure-reducing valves
- Respond promptly to leaks
- Deploy immediate drying & mold-prevention

The Master Policy may cover ensuing building damage even if the failed component (e.g., a defective faucet) is not covered.

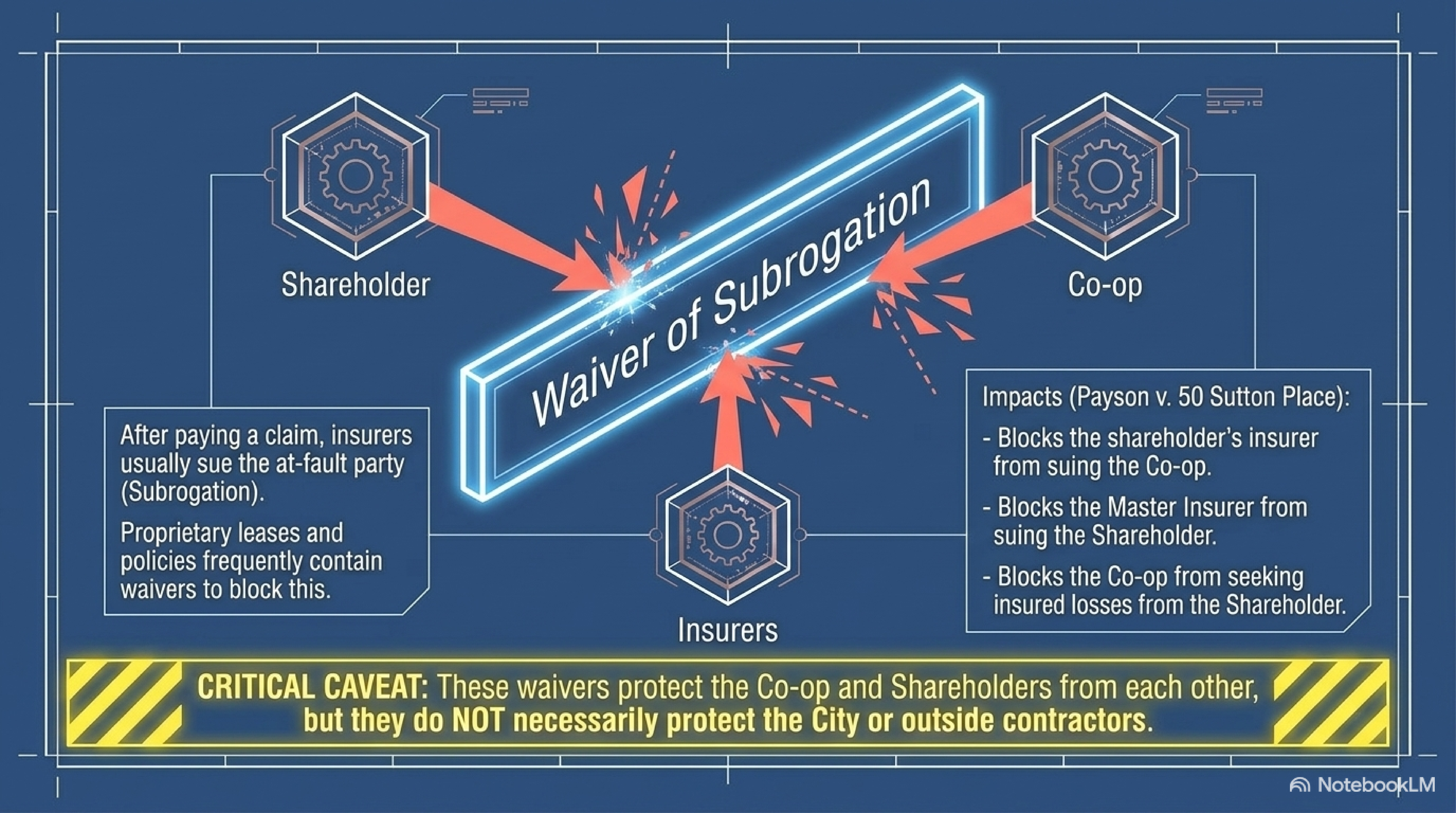


The master-policy deductible is the co-op's contractual responsibility. Boards cannot automatically charge the deductible to the source apartment merely because the water began there.

THE DEDUCTIBLE TRAP

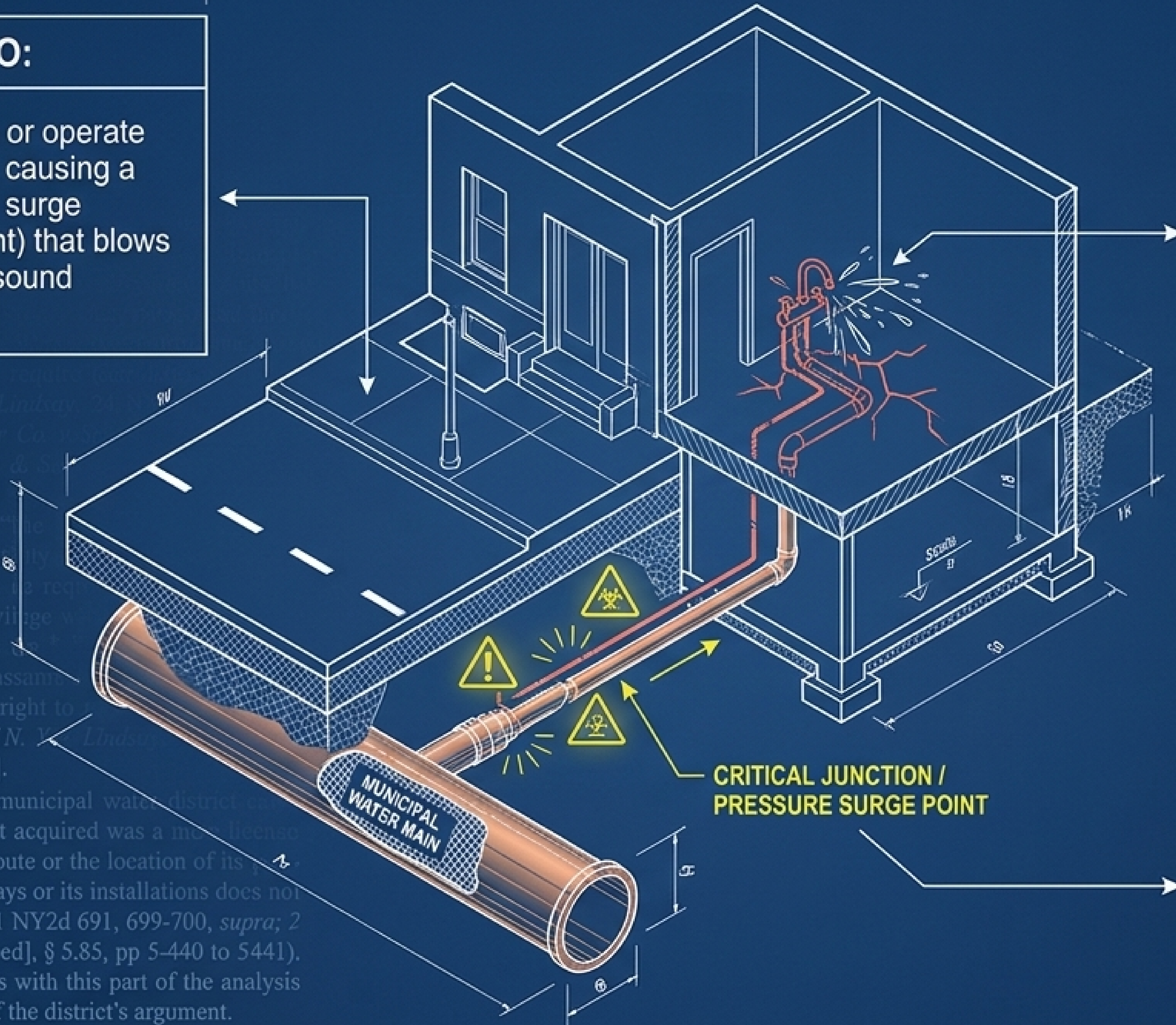
When can you shift the deductible? Only permitted with:

1. Express proprietary lease authorization
2. Valid alteration agreement indemnification clause
3. Proven negligence by the shareholder


Waiver of Subrogation
Shareholder
Co-op
Insurers
After paying a claim, insurers usually sue the at-fault party (Subrogation).
Proprietary leases and policies frequently contain waivers to block this.
Impacts (Payson v. 50 Sutton Place):
- Blocks the shareholder's insurer from suing the Co-op.
- Blocks the Master Insurer from suing the Shareholder.
- Blocks the Co-op from seeking insured losses from the Shareholder.
CRITICAL CAVEAT: These waivers protect the Co-op and Shareholders from each other, but they do NOT necessarily protect the City or outside contractors.
NotebookLM

THE SCENARIO:

City workers flush or operate the water system, causing a massive pressure surge (hydraulic transient) that blows out an otherwise sound apartment faucet.



THE LEGAL STANDARD (DE WITT PROPERTIES):

Proprietary Function: Operation of a water system for private customers is a proprietary function, not a governmental one.

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No Immunity: The city is held to ordinary negligence standards and is not protected by governmental immunity. Liability requires proof of negligence and causation.

NotebookLM

1

Scenario One (City Fault)

Cause: Pressure surge / hydraulic transient.

- Evidence Needed: City repair logs, pressure readings before/after, neighboring building complaints, water-hammer calculations.

2

Scenario Two (Shareholder/Contractor Fault)

Cause: Normal pressure, but a deteriorated or improperly installed fixture failed.

- Evidence Needed: Visible corrosion, unapproved alterations, product defect, history of ignored leaks.

3

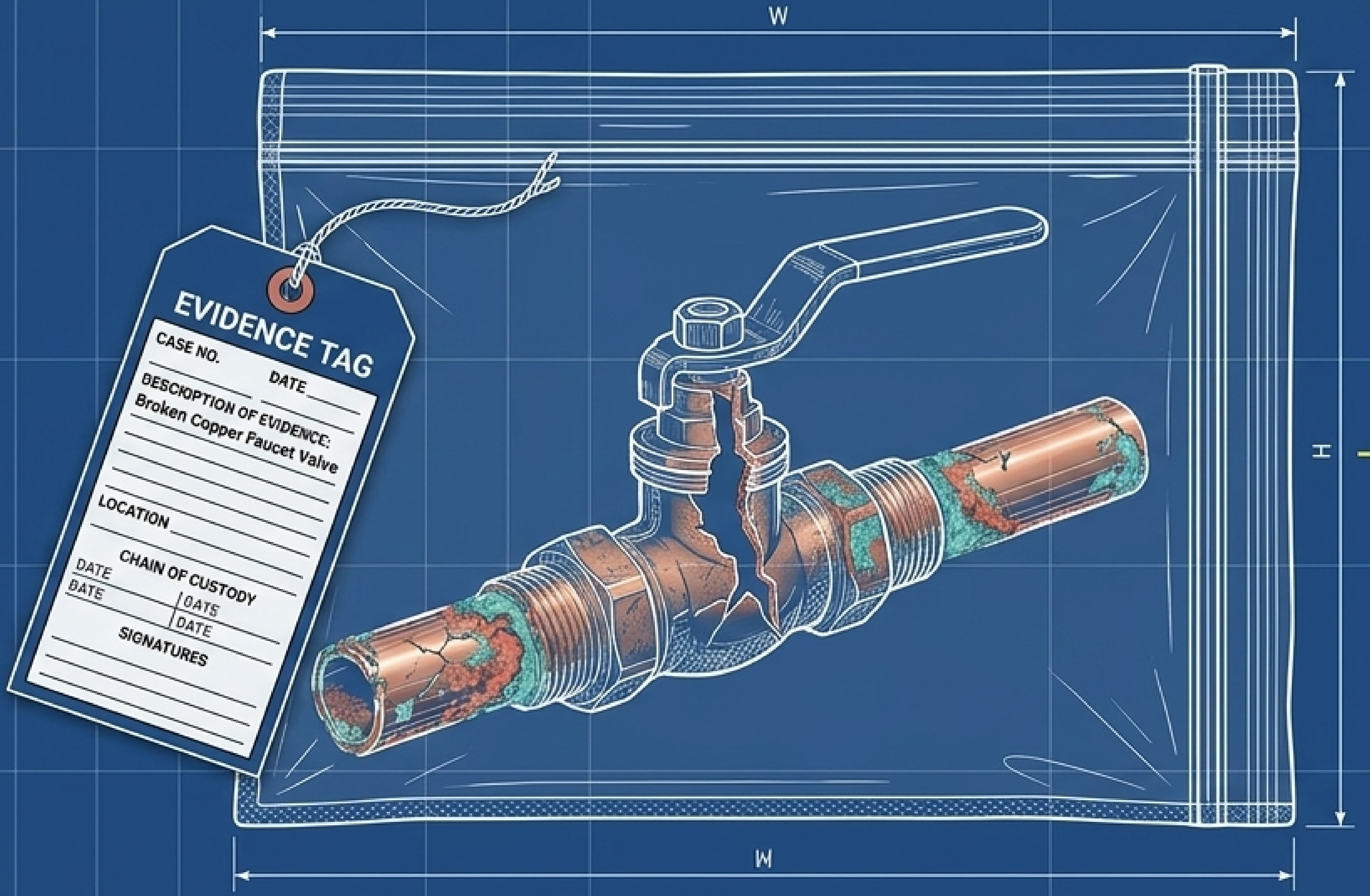
Scenario Three (Combined Causes)

Cause: City surge + weak fixture + failed building pressure regulator.

- Outcome: New York comparative-fault principles allocate percentages of responsibility among all actors. Do not prematurely admit sole fault.

DO NOT DISCARD THE FAILED FIXTURE.

It is the central piece of evidence determining liability.



1. **Document in Place:** Photograph the fixture exactly as it is before removal.
2. **Detail the Damage:** Photograph connection points, threads, fracture surfaces, seals, and corrosion.
3. **Secure the Assembly:** Retain the entire assembly (not just the broken piece) in a dry, secured evidence container.
4. **Do Not Alter:** Never clean, test, or modify the component after failure.

URGENT DEADLINE

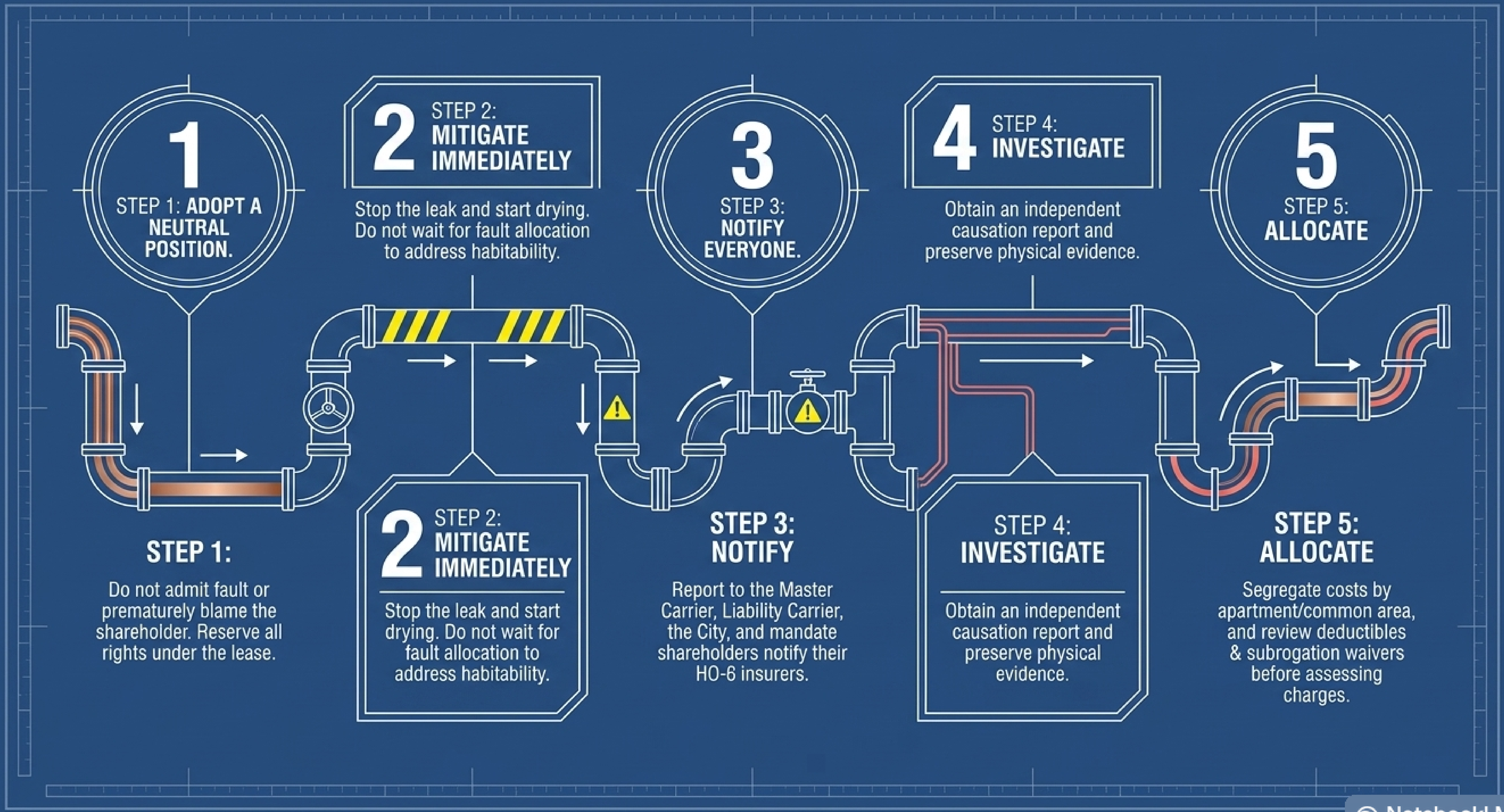
General Municipal Law § 50-e requires a Tort Notice of Claim to be served within **90 DAYS** after the occurrence.

CRUCIAL SCOPE WARNING

A notice filed by the Co-op does **NOT** automatically preserve individual shareholders' claims. **Separate notices** may be required for occupants (personal property), the Co-op (building damage), and insurers (subrogation).

REQUIRED NOTICE INFORMATION

Must include: Time/location, nature of municipal work, description of the pressure surge, and known damages.


1
STEP 1: ADOPT A NEUTRAL POSITION.
STEP 1:
Do not admit fault or prematurely blame the shareholder. Reserve all rights under the lease.
2
STEP 2: MITIGATE IMMEDIATELY
Stop the leak and start drying. Do not wait for fault allocation to address habitability.
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3
STEP 3: NOTIFY EVERYONE.
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Report to the Master Carrier, Liability Carrier, the City, and mandate shareholders notify their HO-6 insurers.
4
STEP 4: INVESTIGATE
Obtain an independent causation report and preserve physical evidence.
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5
STEP 5: ALLOCATE
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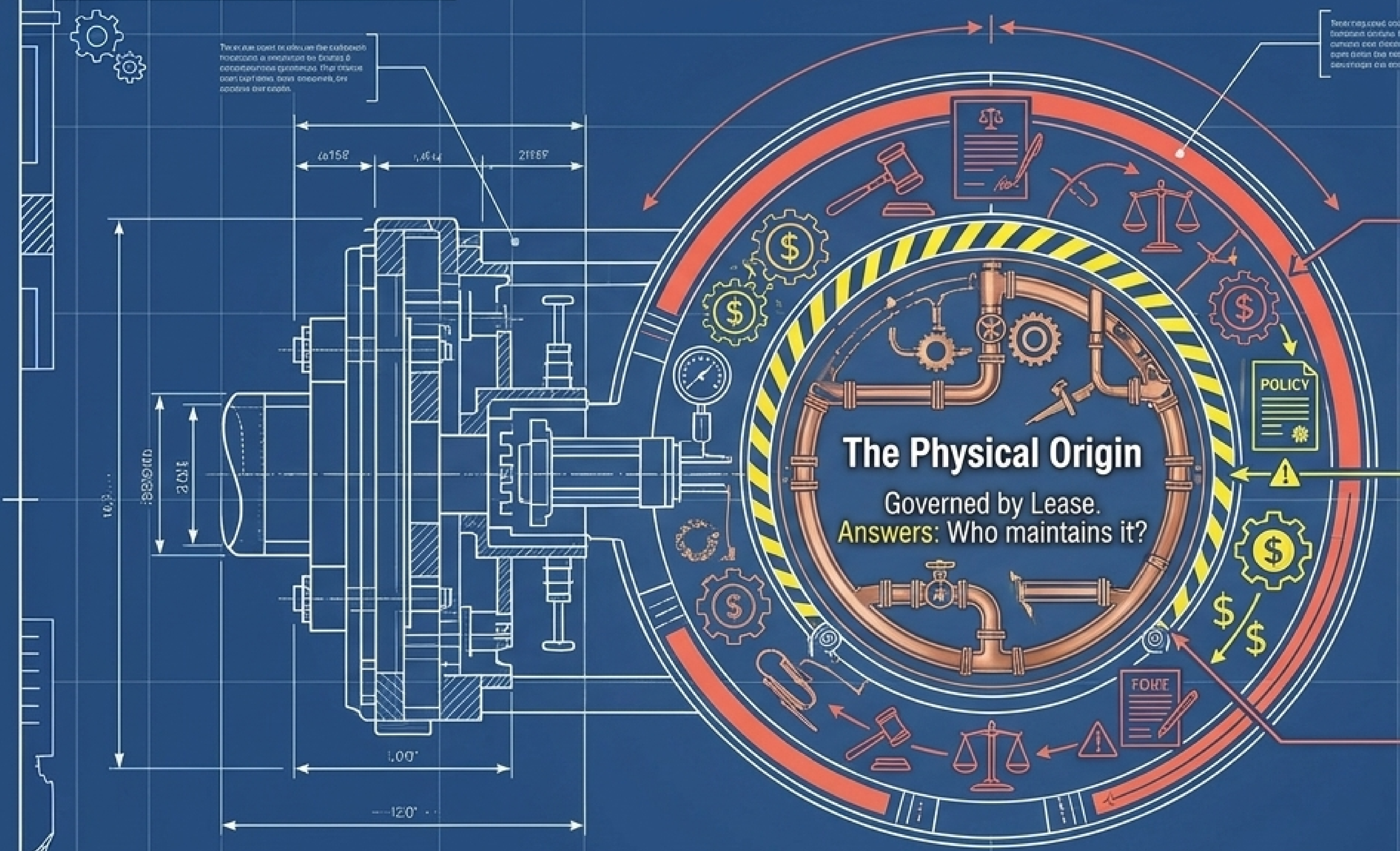
Segregate costs by apartment/common area, and review deductibles & subrogation waivers before assessing charges.



The Ultimate Liability

Governed by Tort, Subrogation & Municipal Law.
Answers: Who is left holding the bill?

The Financial Fix

Governed by Master/HO-6 Policies & Habitability Law.
Answers: Who funds the immediate repair?

The Ultimate Liability

Governed by Tort, Subrogation & Municipal Law.
Answers: Who is left holding the bill?

SYNTHESIS INSIGHT

A successful resolution requires managing all three rings simultaneously.
Determining the physical origin is only the beginning of the analysis, not the end.

Read the Lease

It dictates maintenance duties, but rarely dictates ultimate tort liability.

Preserve the Evidence

The broken plumbing part is your entire case. Secure it immediately.

Mind the Clock

You have exactly 90 days to file a Notice of Claim against NYC (GML § 50-e).

Check the Waivers

Subrogation clauses change everything regarding who can actually be sued.

Don’t Assume

Origin does not equal negligence.

Mitigate First

The Board’s nondelegable duty to maintain habitability means fixing the damage now, and arguing over the bill later.