
Condo Smarts

Headline: Damages to the building

Topic: Insurance

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Dear Tony: Is a strata entitled to collect the amount of damages from an owner when the origin of the claim is from their strata lot? Our bylaws require an owner to pay for any strata insurance deductible when they have caused a claim, but does this also apply to a flood caused by the owner when there is no claim? With high deductibles there is growing pressure on properties to claim back costs and not file claims. What steps do we take to make this a guarantee we can collect the losses?

Darlene V. Surrey

Dear Darlene: The *Strata Property Act* creates a provision where an owner may be required to pay for a deductible portion if they were responsible for the claim. The provision is not a “catch all” condition that would secure collection, damages, or other losses. Strata corporations are advised to define the conditions or obligations by adopting a bylaw that sets out the conditions where the costs of insurance deductibles, damages and other related costs may become the responsibility of the owner. The law offices that routinely assist strata corporations, provide reliable bylaw formats to support your risk management programs; however, this is only the first step. Effective administration of a bylaw and proper notice to all owners and tenants whenever there are changes to insurance policies or building conditions is also critical.

In the recent Civil Resolution Tribunal insurance decision with NW2487, the strata corporation was unable to collect an amount of damages that was a damage claim only because the strata corporation chose not to file a claim, cover the deductible amount as a strata cost and the equal amount covered by the owner. The strata corporation failed to give proper notice to the owners that the insurance deductible had increased from \$10,000 to \$100,000, and their bylaw did not support damages not covered by a claim or below such an

amount. The bylaw had also set a much higher burden for the strata to effectively prove of willful act or negligence. This is not necessary as the threshold for “responsible” is a lower test of proof.

While the decision is unfortunate for the strata corporation, it provides us with valuable direction on insurance bylaws and strata administration:

1. A bylaw that addresses responsibility for insurance deductibles and damages is essential.
2. Whenever there is a change in insurance policy amounts, deductibles, exemptions or conditions, a strata corporation is required to give immediate, direct notice to owners and tenants. A general posting in the minutes or on a web portal does not constitute notice.