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November 21, 2023 Strata Insurance Basics

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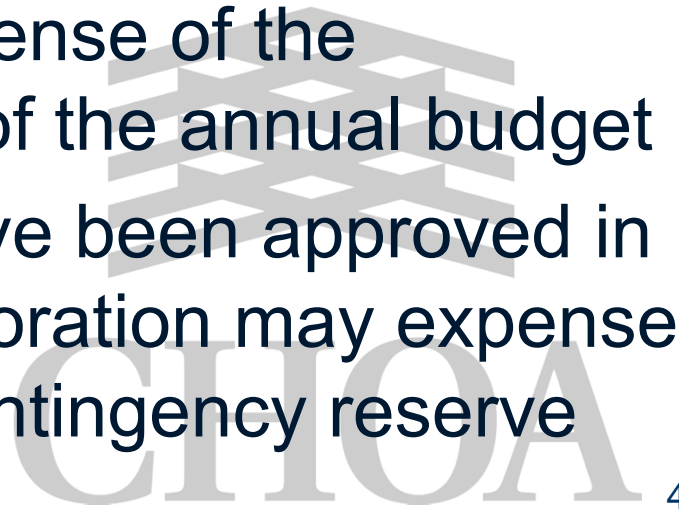
Good company to have around

Education Pilot Project

- The fall webinar series is a pilot project to develop an 8 part education series for new strata council members and owners. Your feedback is welcome throughout the sessions and at the end of the 8 as we continue to develop the on line programs and support materials.
- The information presented and discussed in the webinar is not intended as legal advice or an opinion on the merits or questions raised by a participant. It is only intended for educational purposes.
- Participants are advised to seek legal counsel independently regarding the specific nature of a bylaw, bylaw enforcement, interpretation of legislation, or matters relating to contractual relationships.

How do we pay for Insurance?

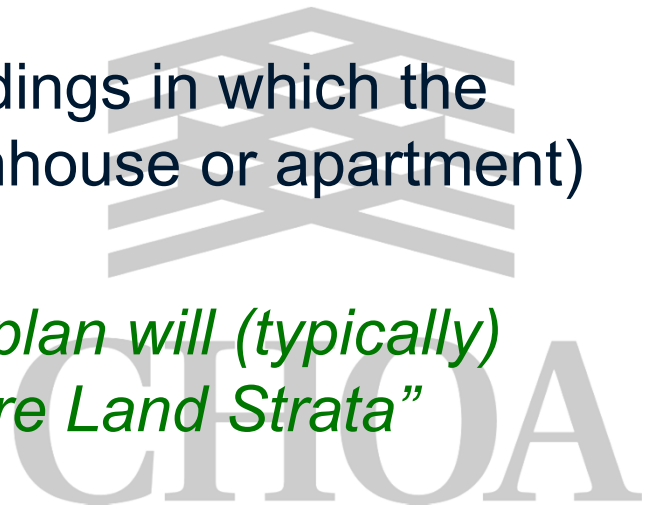
- Strata Insurance is a mandatory requirement of the Strata Property Act
- The details of what must be insured and for what values are set out in the Act and the Strata Property Regulations
- Insurance is a common expense of the corporation and forms part of the annual budget
- Where insufficient funds have been approved in the annual budget, the corporation may expense insurance costs from the contingency reserve fund



What Type of Strata Are We?

- Before you can determine your insurance requirements, it is important to obtain a copy of your registered strata plan to determine whether your strata plan is “bare land” or not.
 - Bare land where (typically) only the boundaries of the land are shown
 - Non-bare land where the buildings in which the dwelling units (such as a townhouse or apartment) are shown

In a bare land strata, the strata plan will (typically) identify on page 1 the term “ Bare Land Strata”



What Type of Strata Are We?

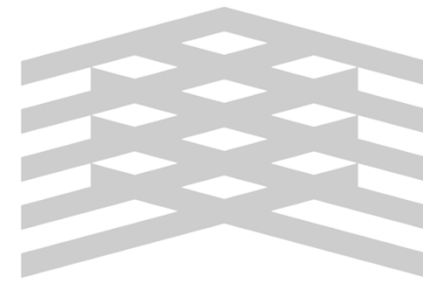
- What is the difference ?
 - Non-bare land, where buildings are typically shown on the strata plan and, where there are multiple units within the same building, the boundaries of the strata lots within the buildings are shown and identified.
 - Bare Land strata, where typically only common buildings (such as a club house) are shown on the strata plan and the boundaries of the strata lots are shown as “bare land” and the buildings on the strata lots are typically **NOT** shown.

What Type of Strata Are We?

- What is the difference?
 - Insurable interest of the strata corporation differs in “non-bare land” strata and “bare land” strata.
 - Unless bylaws amended, strata corporation is not responsible to insure for buildings on bare land strata lot that are not shown on the strata plan.
 - Townhouse (e.g. duplex or triplex design) bare land plans exist; Buildings are connected – however, without a bylaw, strata corporation is not responsible to insure for these buildings because they are not shown on the strata plan.
 - To confirm insurance is purchased/placed for all buildings in bare land, bylaw may be required for strata corporation to insure the buildings and structures. (*Note: in some cases, party-wall agreements are registered that address this issue between strata lots*)

The Basics

- There are 3 basic types of key policies that affect a strata corporation or strata lot owners or tenants
 - Strata Corporation Policy
 - Strata Lot Owner's Policy
 - Landlord / Tenant Policy

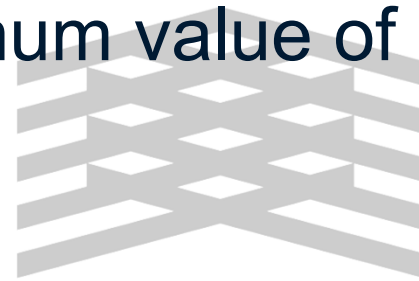


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What do we Insure?

The Strata Corporation Policy: Required by the SPA

- Property coverage for specified property must be maintained for **full replacement value**, for a specific list of perils (SPA s. 149)
- Liability coverage to a minimum value of \$2 million (SPA s. 150)

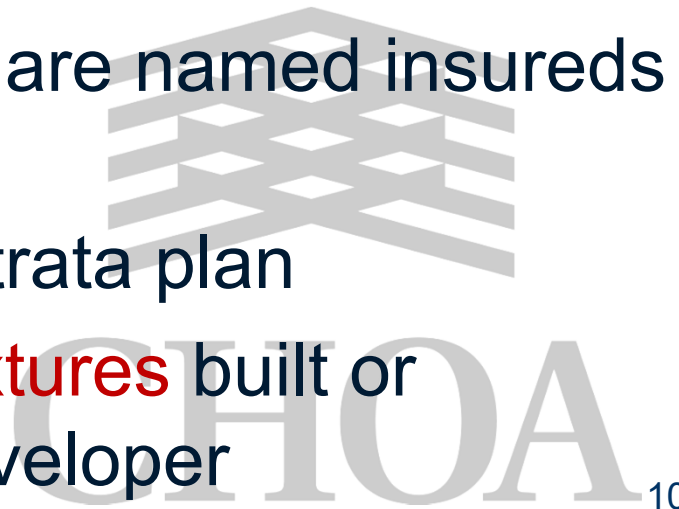


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Insurance Coverage

What does Strata Corporation Policy Cover?

- Common property
- Common assets (including any furnishings, equipment or other items owned by the strata corporation)
- Owners and tenants who are named insureds of the policy
- Buildings shown on the strata plan
- Except for a bare land, **fixtures** built or installed by the owner developer



Insurance

What are fixtures?

- *Strata Property Regulation* s. 9.1

“items attached to a building, including floor and wall coverings, and electrical and plumbing fixtures, but does not include, if they can be removed without damage to the building, refrigerators, stoves, dishwashers, microwaves, washers, dryers or other items”

Insurance

What is mandatory?

- *Strata Property Regulation* s. 9.1
 - The strata corporation must obtain property insurance that covers the major perils that are fire, smoke, windstorm, hail, explosion, water escape, lightning strikes, riots or civil commotion, impact by aircraft and vehicles, vandalism and malicious acts.

What is optional or may be an exclusion?

Property coverage:

- Earthquake – optional
- Landscaping– optional
- Money and securities – optional and limited
- Plants – optional and limited
- Environmental damage and restoration – optional
- Loss of rents or income – optional
- Theft or fraud by an employee – optional
- Additional fixtures or components constructed on the property that are not part of the original construction

Commercial Policies

Commercial Enterprise (Business Operations) Policy

- Many strata corporations operate commercial enterprises such as golf courses, marinas, or other commercial partnerships that may include communications systems, or industrial property.
- Verify appropriate insurance, coverage and deductible values for perils associated with commercial enterprise and general liability.
- Unique exposures can exist (such as docks, fueling stations and rentals).

Full Replacement Value

- Full insurance coverage is essential, otherwise strata corporation may be limited in amount of a claim
- Engage routine appraisal
- Confirm requirements with your broker to verify values and appraisals meet requirements of the SPA and insurance policies
- Identify conditions that may change full replacement value
- Report any material changes



Different Insurance Policies

Strata Lot Owner's Policy

Owner responsibility to insure their personal property, betterments to their strata lot, personal risks (including coverage for a strata corporation deductible or an amount lower than the deductible, in the event the owner is responsible for a claim), and living out allowances.

SPA does not require mandatory insurance for strata lot owners.

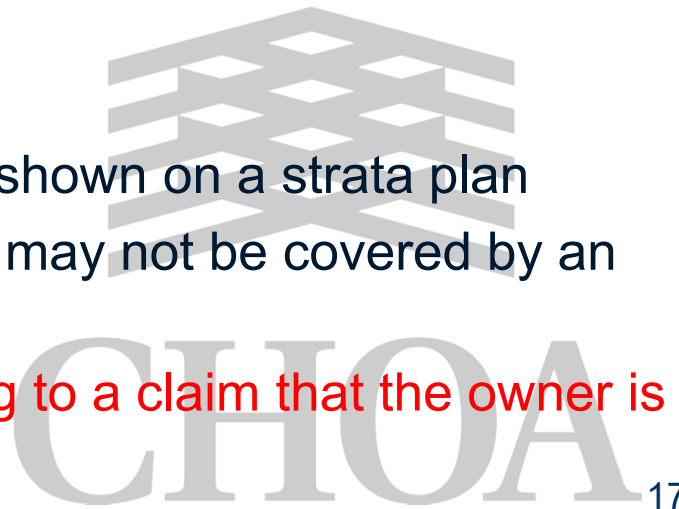
Home Owner Risks

SPA s. 154

Annual Insurance /Summary Report

Important for owners to understand they are/may be responsible for insurance for:

- Personal property
- Personal liability
- Betterments to a strata lot
- Buildings on a strata lot not shown on a strata plan
- Damages to a strata lot that may not be covered by an insurance policy
- Insurance deductible relating to a claim that the owner is responsible for (SPA s. 158)



Changes in the past 2 years

- Strata corporation must inform owners and tenants *as soon as feasible* of any material change in strata corporation's insurance coverage, including any increase in insurance deductible(s)
- This significant change to SPA s. 154 means if there are any material changes in cost or the policy, strata corporation cannot wait until the next AGM to report. Always report immediately.

Changes To Section 98

What happens when increase in premium cost is not within the annual budget?

- Strata corporation may be able to expend the cost/additional cost from CRF to secure the insurance (SPA s. 98)
- Strata corporation may negotiate a loan for the financing (Note: this requires a $\frac{3}{4}$ vote for approval per SPA s. 111)
- Special levy on the owners which requires a $\frac{3}{4}$ vote for approval per SPA, s. 108

Changes To SPA Section 59

Form B Information Certificate

- Effective Apr 1/23, copy of insurance certificate/summary report must be attached to Form B Information Certificate
- Essentially same report provided to owners as per SPA s. 154 at Annual General Meeting
- Insurance certificate summarizes coverage, deductibles, broker, insurers, named insureds, amount and commission

Changes To BC Insurance Act

- Broker must provide notification to strata corporation at least 30 days in advance if insurer has advised of an intention not to renew the contract or to renew on different terms and conditions
- Broker must disclose their commission rate or actual value charged on a policy
- Best pricing practices by agreement of the insurance industry no longer implemented



Strata Lot Tenant/Occupant

Responsibility of a tenant or occupant to insure their personal property and personal risks, such as general liability.

Even though the SPA does not require mandatory insurance for strata lot tenants or occupants, owners are reminded they may be liable for any related insurance deductibles caused by the owner, tenants, occupants or guests. A landlord policy is recommended in all circumstances where the strata lot is rented.

Landlord Policy

The Landlord Policy

- Investment coverage to protect lost revenues, liability claims, and living out cost allowances in the event strata lot is not habitable.
- In the event of a claim caused by the tenant resulting in damages or an insurance deductible claim, the strata lot owner may be responsible.
- General liability coverage is also recommended to protect the landlord from 3rd party actions in the event of a claim caused by their tenants and other persons residing in the lot with the tenants.

What is a loss limit?

A loss limit may be imposed if insurance broker unable to place full replacement coverage through insurers

e.g. full replacement value is \$25 million.

- The insurance broker can only secure coverage for 80% of the value.
 - There is only \$20 million coverage, but SPA requires coverage for full replacement value.
- *What are the options if you cannot obtain full replacement value of insurance?*

What are exclusions?

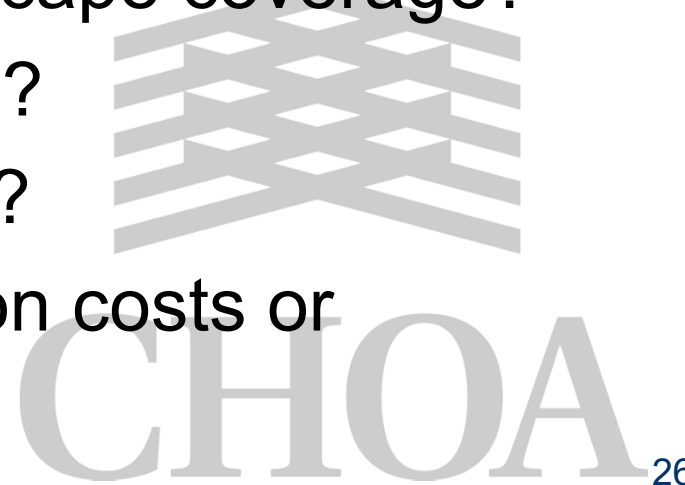
- An exclusion may be imposed by an insurer or negotiated with multiple insurers as a condition of placing the policy.
- Exclusions may arise as a result of a condition or failure that is known or existing that cannot be insured for perils until the condition is corrected.
 - Example: Continual piping failures from poly-b plumbing.
- Insurers may impose more restrictive terms aimed at minimizing their exposure to ongoing risks.

Can we negotiate exclusions?

If our policy cost or deductibles are so high, can we exclude a peril that could significantly reduce the cost for the insurance?

- For example: Water escape is now a \$500,000 deductible because of water escape issues.

- Can we exclude water escape coverage?
- What are the implications?
- Who makes this decision?
- Will this have any effect on costs or deductibles?



What is a subscription property policy?

Due to the high replacement cost values/earthquake exposure in BC, most strata corporation policies are written on “subscription property policy” basis.

- A subscription policy can have anywhere from two to twenty different insurance companies involved.
- Each insurance takes percentage of the property risk, a percentage of the property premium and in turn each of those insurers pays their same percentage of any insured loss that occurs.
- A example of a subscription property policy might be as follows:
 - Insurance Company A insurers: 45%
 - Insurance Company B insurers: 25%
 - Insurance Company C insurers: 20%
 - Insurance Company D insurers: 10%

Insurance

Earthquake – optional under SPA

- Insurance for loss of the structure of damages may be covered by an earthquake clause.
- Deductible of earthquake insurance is a percentage based on total replacement value.
 - For example: if a 50 unit strata has a replacement cost value of \$12.5 million and the earthquake deductible is 10%, the strata corporation deductible in the event of earthquake damages and claims is \$1.25 million.
 - Some policies may narrow the deductible % to the damaged building(s) only, or other limitations

Insurance

Earthquake – Optional under SPA

- Strata lot owners should consider the risk of the deductible amount or an amount below the deductible and review their homeowner policy for appropriate coverage.
- Owners are advised to confirm with their insurance broker whether they are eligible for earthquake coverage, and if there are any limitations.
- Confirm in writing with your broker if there are any exclusions, conditions or exemptions relating to an earthquake

What does director and officer liability insurance include?

Claims made against the strata corporation in respect of errors or omissions made by the strata council members in the exercise of their duties.

- Example: an unintended error in information disclosed on a Form B Information Certificate resulting in a claim against the strata corporation

Insurance for CRT Claims

Does your policy include claims made under the Civil Resolution Tribunal (CRT)?

– There is no limit to the amount that may be claimed in the CRT

- Example: A buyer who was provided incorrect parking allocation information on a Form B Information Certificate, has experienced a loss of a parking space that was not allocated to the strata lot. The estimated cost is \$50,000. The buyer/owner may seek an action against the strata corporation for the error.

Directors and Officers

There can be a wide variance in the coverage offered between different D&O liability policies, some policies contain exclusions relating to such things as:

- Failure to maintain insurance
- Employee Disputes
- Human Rights
- Evictions
- Wrongful Entry
- Breach of contract
- Failing to render a service



What does D&O Exclude?

Examples:

- If your strata corporation is not insured to meet the minimum requirements of the SPA, the D&O insurance may not cover the strata council in the event they are sued.
- If your strata council knowingly violates legislation that constitutes breach of contract, fraud, Human Rights claims, wrongful entry, the D&O policy may not cover your claims or defence

After a loss has occurred

The event (flood) occurs

- Strata corporation immediately acts to mitigate loss, stop flood source and commence emergency restoration (drying etc.). Your strata corporation should have contact numbers easily assessable for plumbers, emergency contractors, etc.
- The first call: To insurance broker who can take incident report and help obtain an estimate from emergency contractor for emergency cost + final repair.
- After reviewing deductibles and estimated cost of repair, make an informed decision on whether to proceed with filing insurance claim or not. Many factors should be considered.
- If proceeding with a claim, instruct your broker to proceed with filing claim with insurers and having adjuster assigned. Adjuster will help with obtaining bids for final repairs from the one or potentially more restoration firms.
- If proceeding with a claim, strata council will determine whether or not strata corporation has recourse to recover policy deductible from an owner

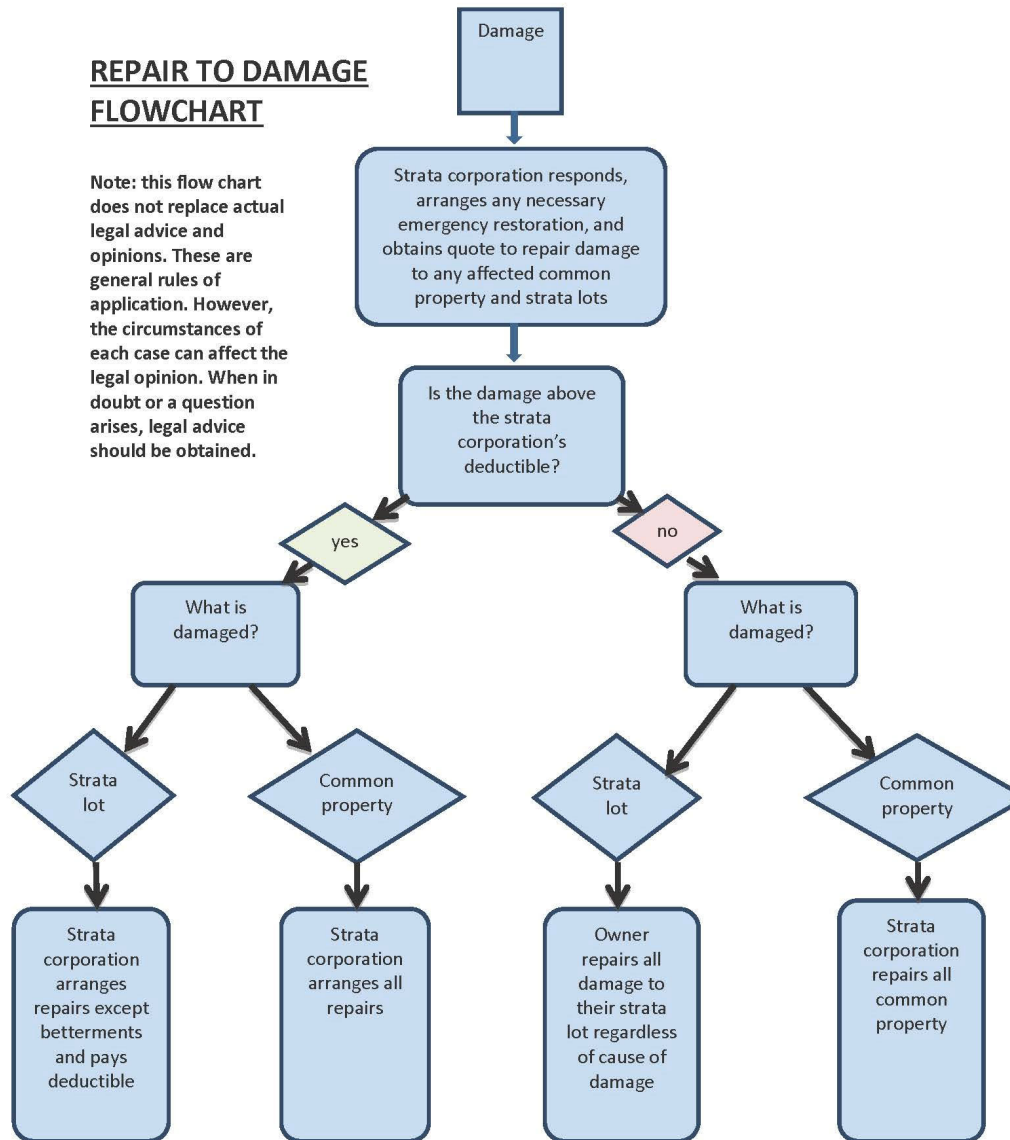
Claims Below Deductible

Where costs to repair/replace below the insurance deductible, need to look at:

- What property was damaged (part of strata lot? common property? LCP?)
- What do strata corporation bylaws say about repair and maintenance? e.g. Standard Bylaws 2 (Repair and maintenance by owner) and 8 (Repair and maintenance by strata corporation)
- Strata corporation has no obligation to damaged parts of strata lot where insurance does not respond & no applicable bylaw (“strata corporations are not insurers”)
- Recovery of amounts spent by strata corporation

REPAIR TO DAMAGE FLOWCHART

Note: this flow chart does not replace actual legal advice and opinions. These are general rules of application. However, the circumstances of each case can affect the legal opinion. When in doubt or a question arises, legal advice should be obtained.



NOTES: Strata corporation may be able to charge back the deductible or damage below the deductible if there is a valid chargeback bylaw and the threshold set out in the bylaw is met (i.e. negligence or responsibility). If there is no chargeback bylaw, the strata corporation may be able to sue the owner for the deductible under s. 158(2), but not the damage below the deductible. Where damage is below the deductible, the "innocent" owner may sue for reimbursement of strata lot repairs if the damage was caused by the negligence of the strata corporation or the negligence of another owner. The above chart is courtesy of Clark Wilson LLP (www.cwilson.com)

Losses below deductible

Strata lot owner responsible for repairing damage to their strata lot that is below the deductible if the strata corporation has no responsibility to repair damaged item under the strata bylaws.

Standard Bylaw 2: An owner must repair and maintain the owner's strata lot....

Owners are responsible for any betterments to their strata lots



Who pays deductible?

Once strata council has determined who is responsible for loss, strata corporation proceed with collection to recover amount paid.

- Deductible is a common expense of strata corporation and paid by the strata corporation
- Strata corporation may be in a position to recover deductible amount if owner is responsible for the loss or damage that gave rise to claim

Who pays deductible?

How does strata council determine if an owner is responsible for the deductible?

- Location or origin of the claim
- Cause of the claim
- Bylaws of the corporation



How do bylaws impact collections for damages and insurance deductibles?

Bylaws form an essential part of the strata corporation's ability to enforce collections for insurance deductibles and damages. They define responsibility, obligation to compensate the corporation and costs associated with claims.

Legal advice is recommended for Insurance Bylaws as the bylaws often are tested by applications to the Civil Resolution Tribunal or Supreme Court.

Deductible as common expense

What happens when strata corporation does not have sufficient funds to pay the deductible amount, or council prefers not to deplete the CRF amounts?

- SPA s. 158 permits strata council to issue special levy for insurance deductible without need for a $\frac{3}{4}$ vote resolution at general meeting.
- *This is the one time under the SPA that the strata council may impose a special levy without the approval of the owners.*

Deductible as common expense

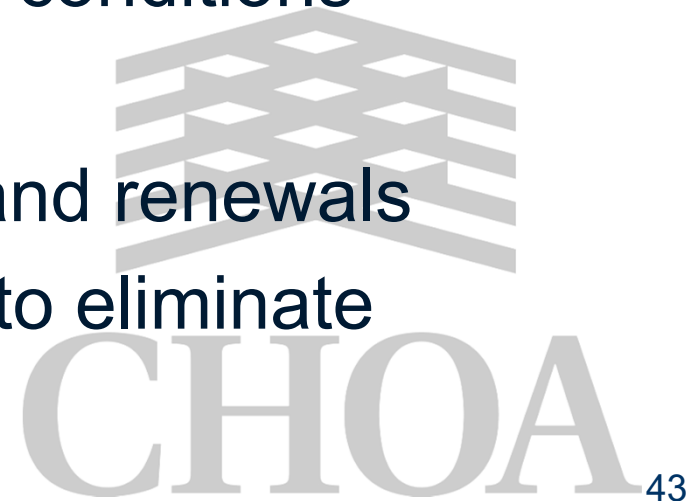
Council holds council meeting and votes on resolution that approves amount of the special levy, each strata lot's share of the levy and due date(s) of the levy. That notice of resolution is then issued to owners.

- Note: Wording and conditions of the resolution must comply with SPA s. 108 because it is a special levy.

Insurance – best practices

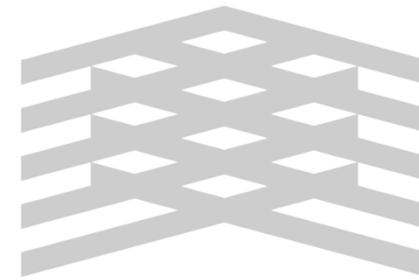
Maintain direct relationship with your insurance broker and actively discuss:

- Renewals
- Risk Management
- Changes in your property conditions
- Claims history
- Limitations on coverage and renewals
- Confirm details in writing to eliminate misunderstandings



Insurance Seminar Spring 2024

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