

Condo Smarts

Headline: Insurance Proceeds

Topic: Insurance

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Dear Condo Smarts: We are in a joint commercial/residential building that recently experienced a significant amount of water damage to both areas of the building. The common areas were finished in hardwood with insert custom carpeting, and the damage was so extensive that the strata corporation has chosen to change to a finished concrete surface, in order that we can avoid such a claim in the future. So instead of replacing the flooring, the strata simply received a settlement from the insurance provider for the loss. Strata council from the residential section decided the money should go into contingency until we decided on what repairs or upgrades we would undertake in the future. The commercial owners, who also share the common corridors at the ground level, disagree and want to use the funds for the extent of restoration to the floors necessary to make them safe and attractive. In a sectioned strata, who makes this decision, the residential section or the commercial section. Our bylaws don't give us any direction. Corey in the GVRD.

Dear Corey: Insurance is a common expense of the strata corporation, and while sections may have additional insurance for special features or liabilities that are exclusive to their sections, the strata corporation falls under the one policy. Interesting problem in Corey's strata. Their bylaws prescribe that a council is elected for the strata corporation and each section elects an executive council. The minutes of the recent annual general meeting show that they elected an executive of the residential section, but failed to elect or show that a strata council of the corporation or commercial section was elected. This is a problem that now compounds their insurance settlement as to who has the authority, if anyone, to act for the strata corporation.

The insurable assets, including the fixtures built or installed by the owner developer, form part of those components that the strata corporation must insure. Your common expenses, claims, and possibly settlements received by the strata corporation, are all allocated on unit entitlement or another formula that was created under previous legislation or that relate to a specific person(s) interest. Insurance money received with respects to damaged property must be used to repair or replace the damaged property without delay, unless the strata decides not to make the repair or replacement under section 159 of the Strata Property Act. They have the option to decide to not repair or replace by a 3/4 vote resolution at a special general meeting held no later than 60 days after the receipt of the money. If a strata corporation decides not to repair or replace the damaged property, they must distribute the money according to each person's interest, or if an application is made to the Supreme Court, as ordered by the court.

The strata council of either the corporation or either section does not have the authority to make the decision to not repair or to not replace. The strata corporation must use the funds to repair or replace and cannot use the funds for any other purpose. Because no two strata policies or corporations are the same, the proceeds and outcomes of settlements can be much more complicated than a simple repair or refund. Before your strata council proceeds with a decision that is contrary to the Act, seek legal advice on the options and procedures required to ratify your recommendations at a general meeting.

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