

Condo Smarts

Headline: Deficit Disaster

Topic: Insurance, Budgets; Deficits

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Dear Tony: Our strata has not replaced the plumbing and with a number of common area leaks in the last 2 years, our deductible is now at \$100,000. With another pipe break in early January, the strata was faced with a \$100,000 deductible for the claim that the property manager charged to our 2017 operating account which ended January 31st. Our strata is a 105 unit highrise in east Vancouver and as an owner we are being faced with a substantial increase in strata fees as part of our annual budget. There are already petitions going around to defeat the budget. Do we not have choices or alternatives to pay for the deductible? We have looked at the council minutes for January and February and there is no mention of the claim or the approval of the proposed budget. Who decides where an expense is made from the strata corporation's funds?

Nicole M.

Dear Nicole: You have identified a perfect governance question. The *Strata Property Act* would deem this as an unapproved expenditure as it was not approved as part of your 2017 budget or contingency fund. As a result, the *Act* gives the strata corporation the authority to expend this money from either the contingency reserve fund or operating fund. This does not give the strata corporation the ability to simply dump all types of unapproved costs on the owners in the operating and force them into a deficit each year.

You might follow the simple rule – don't spend money that doesn't exist. The *Act* permits expenses from either fund and in the case of an insurance deductible, the *Act* grants a rare provision for the council to approve a special levy without the need for a 3/4 vote resolution or special general meeting.

At a properly convened council meeting, the strata council, by majority vote, approve the amount of the special levy, the date it is due and the amount each strata lot pays. If you issue a special levy, those owners who have homeowner or landlord insurance may qualify to claim on their policy the deductible/special levy, which may be substantially less than the levy.

This is also the rare occasion that an insurance deductible may form part of a lien against a strata lot because it was an authorized special levy. The decision to charge this cost, as an unauthorized expense to the operating fund is a majority decision of council. The decision must be included in the minutes and the owners must be informed of the expense as soon as feasible.

Unfortunately, your owners were not informed until the notice package for the AGM was sent out. While a strata corporation may delegate some of its authority through a strata management agency agreement, there are still decisions the council need to retain as they are obliged to give notice of those decisions to the owners. Major expenses, emergency expenses, bylaw enforcement decisions, unapproved expenses, insurance deductible allocations and the approval of the proposed annual budget are all council decisions. The complication of this decision to place the deductible in the 2017 budget put the strata corporation in deficit and the strata must pay back the deficit in the next fiscal year. If the owners defeat the budget at the AGM, the new council should seek advice on their options to cover the cost of the deductible before they hold a special general meeting within 30 days. It is always possible to reallocate an expense to correct an error or as instructed by the owners.