

Condo Smarts

Headline: Insurance Deductibles

Topic: Insurance

Publication / Date: The Province, June 21, 2018

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Dear Tony: Our strata council have been advised by our property manager to pay for a water escape claim to our building rather than file an insurance claim to avoid an increase in our insurance costs and our deductible costs. This is only the third claim in 10 years in our 18-floor high rise. As a result, we only have a \$5,000 deductible. The claim to repair damaged drywall, flooring and cabinets to the two units below is estimated at \$11,000. We have been told we can recover this cost from the owner who caused the claim from an overflowing bath tub. The owner who caused the claim has responded that they will not pay any amount as their insurance coverage for their unit will cover the deductible amount of \$5,000. Our council is very confused by the opposing information we have been receiving. Whose insurance covers the claim and can we recover the costs so the rest of the owners in the building are not paying for one owner's neglect?

Tara D. Burnaby

Dear Tara: A common error condo owners make is applying the cause of the claim to whose insurance is responsible to cover the loss. Under the *Strata Property Act*, with the exception of a Bare Land Strata, the common property, common assets, structure and fixtures are insured through the strata corporation policy.

Basically, think of it this way, before the first day an owner moves in, everything except removable appliances is covered. When these items are damaged, whether they are in a strata lot or defined as common property, it is the strata corporation's insurance policy that is applied.

Provided the amount of the claim is over the deductible as in your case, the insurer for the strata corporation remedies the loss and bills the strata corporation for the deductible; in this case \$5,000.

The cause of this claim, an overflowing bath tub, falls under the responsibility of an owner. If an owner is

responsible for a claim, the strata corporation may proceed with an action through the courts or the Civil Resolution Tribunal to obtain a judgement to determine who is responsible for the claim and the amount of the deductible. When owners have prudently purchased condo insurance that covers the amount of a deductible, once they have received a statement or demand invoice from the strata corporation for the amount of the deductible, they contact their insurance provider who pays the amount. In most cases the insurers work in cooperation well in advance to reduce red tape and delays.

Strata councils seem to be under the impression they can deny a claim and manage the restoration themselves. There are several problems with this approach. First, an owner under the *Strata Property Act* is a named insured on the policy and they can file the claim directly. Second, the restoration and remediation when water damage is involved is rarely undertaken sufficiently to prevent mould, dry rot, pest infestation and future damage to the units. The final problem with avoiding the filing of a claim is the strata corporation will be limited to the extent of the amount they can collect from the owner.

If the owner was responsible for the claim, and the deductible was \$5,000, how do you expect to collect the additional \$6,000 in damages that would have been covered by the insurance if council had filed a claim? In your case neither amount is a deductible so the authority to proceed with an action to collect the amount may no longer apply. There is one other wrinkle in this approach. Where did the strata corporation get the authority to spend \$11,000 of the owners' common funds? This is not an emergency expense, authorized contingency expense or operating expense. It is an insurable claim covered by a common policy all the owners pay through their strata fees. Yes, there is a risk your deductible will increase and perhaps even your policy, but that is one of the costs of living collectively in a strata corporation.