
Condo Smarts

Headline: Insurance Bylaws

Topic: Insurance

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Dear Tony: Our strata corporation has consulted with a lawyer as well as our property manager and have been advised that if we approve a bylaw that limits the amount an owner would have to pay if they were responsible for an insurance claim, it would be easier for the strata corporation to renew our insurance policy. The bylaw basically limits the amount to \$50,000 as we now have a \$250,000 deductible for water escape. This makes no sense to us because the amount an owner would have to pay for the deductible if they caused a claim has nothing to do with the insurance policy. The strata corporation and the rest of the owners would still be required to pay the remaining \$200,000. How does this benefit anyone?

Carmen R. Richmond

Dear Carmen: Bylaws that limit, restrict or qualify claims, coverage or limitations of liability are extremely complicated to administer. For example, while the *Strata Property Act* sets a threshold for corporations that enables them to recover the deductible if an owner is “responsible” for a claim, strata corporations are under the impression if they adopt a bylaw that qualifies this condition as negligence, it is easier to collect. Not so, the higher standards, definitions or thresholds will require a higher test in the courts or tribunal to obtain a successful judgement. A bylaw that limits an owner’s liability will impose a greater liability on the rest of the owners, even if they had nothing to do with the cause of the claim. Yes, deductibles are excessive, but the related risks the insurers are adopting may be equally high.

At this time owners may be able to obtain insurance to cover high deductibles, but the rational question owners must discuss at your meeting is why they are shielding an owner from such a liability if the owner

caused the claim? Why should the remaining owners pay for a \$250,000 deductible if someone has caused a claim as a result of failing to comply with the strata bylaws, maintaining their strata lot or appliances, or an action that caused the claim? Sadly, there will be owners who lose their homes as a result of high deductibles and claims. We have not identified any related benefits to renewing insurance or the cost of policies if strata corporations adopt such bylaws.

An insurance deductible, as a result of a claim on your strata policy, is a common expense of the strata corporation and paid by the strata corporation until it is determined who is responsible for the claim and the amount is collected. A strata corporation is automatically authorized by the Act to pay a deductible from the contingency reserve fund, operating fund or directly special levy each owner for their share. Unlike strata fees and special levies, insurance deductibles do not qualify for a lien priority over charges such as mortgages. While a strata may obtain a decision from the courts or the tribunal for a high deductible amount, if there is no equity left in a property because mortgages are so high the remaining owners may still be at risk of covering the full deductible amount.

A word of caution, if a strata council or property manager indicate they have legal advice on a matter, it is beneficial to either have the lawyer attend the meeting or a copy of the written opinion on the proposed bylaw included with the notice. Managers and council members frequently wordsmith bylaws before they send out notice packages that are not the same advice provided.