

## What a strata corporation needs to know about insurance?

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Until property is damaged or some kind of insurance claim is made, people don't often give a lot of thought to what an insurance policy covers and, perhaps more importantly, does not cover. What follows is intended to provide a general outline of the typical insurance obligations within a condominium. However, insurance policy wordings can vary from policy to policy and from year to year. Strata Corporations, owners, tenants and other occupiers of condominiums are therefore advised to review the wordings of their own policies and to raise any questions regarding coverage with their broker.

### The Strata Property Act

Although insurance requirements have always formed a part of the legislation governing condominiums, Part 9 of the *Strata Property Act* (the Act), in conjunction with Part 9 of the Strata Property Regulation (the Regulation), spells out in greater detail the minimum types and levels of insurance that a Strata Corporation is required to obtain.

### How many policies?

Within a Strata Corporation, there are likely to be a number of insurance policies in place, obtained by the Strata Corporation itself or its owners and other occupiers, including:

- the Strata Corporation's own insurance policy (referred to in this article as "Strata Corporation Policies")
- the strata lot owner's insurance policy (referred to as "Strata Lot Policies")
- any tenant's insurance policy (referred to as "Tenant Policies")
- insurance policies on any vehicles
- construction warranties

### What does the Strata Corporation's Insurance Policy cover?

At a minimum, the Act requires the Strata Corporation to obtain and maintain property insurance and liability insurance.

#### Property Insurance

Property insurance is intended to insure real and personal property against loss or damage. Section 149(1) of the Act requires that each Strata Corporation obtain and maintain property insurance covering the following types of property:

- the common property;
- the common assets (which would include any furnishings, equipment or other items owned by the Strata Corporation);
- the buildings shown on the strata plan; and
- except in the case of a bare land strata plan, fixtures built or installed by the developer as part of the original construction on the strata lot

(these items are referred to in this article as the "Corporation Covered Property").

Regulation 9.1(1) defines fixtures to mean "*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.*"

Although the Act and Regulation do not require the Strata Corporation to insure removable heavy appliances, some policies issued to strata corporations do cover these items.

Under section 152(b), the Strata Corporation does have the option of obtaining insurance for fixtures built or installed on a strata lot that were not built or installed by the developer as part of the original construction on the strata lot.

When obtaining property insurance, three forms of coverage are typically available: comprehensive, broad and specified perils. These terms refer to the breadth of the perils insured by the policy, a peril being the cause of the property loss.

Section 149 of the Act requires the Strata Corporation to obtain property insurance that covers the major perils identified in the regulations, as well as any perils mandated by the bylaws. Regulation 9.1 defines “major perils” to mean the perils of fire, lightning, smoke, windstorm, hail, explosion, water escape, strikes, riots or civil commotion, impact by aircraft and vehicles, vandalism and malicious acts.

Section 152(a) permits the Strata Corporation to obtain coverage for further types of perils. Earthquake coverage is probably the most notable omission from the list of major perils mandated by the Act.

A strata corporation should also review any agreements to which it is a party to ensure that, if the corporation has assumed an obligation to place property insurance on property outside of the strata corporation, that obligation is fulfilled.

### **Liability Insurance**

Section 150(1) of the Act requires the Strata Corporation to obtain and maintain liability coverage to insure the Strata Corporation against claims for property damage and bodily injury suffered by others. By virtue of Regulation 9.2, the Strata Corporation must have at least \$2 million in liability insurance coverage. However, increasing the amount of liability coverage from \$2 million to some higher figure typically results in only a modest increase in the rate of premium and, as a result, most strata corporations obtain liability insurance coverage limits of at least \$5 million. As the damages from a significant or catastrophic injury claim can exceed \$2 million, strata corporations are advised to consider obtaining higher coverage limits.

#### **Exclusions to Coverage**

Even the most comprehensive form of insurance policy, whether affording property coverage or liability coverage, typically contains a long list of exclusions. Exclusions act to limit or completely eliminate coverage for certain types of property, perils or forms of liability. While it is impossible to list all possible exclusions, some common exclusions include claims in respect of:

- land and/or water;
- motor and other recreational vehicles;
- money and other forms of security;
- underground property situated outside the building foundations;
- plants and animals;
- loss of rents or other income;
- explosions arising from property owned by the Strata Corporation;
- misappropriation or theft by the Strata Corporation or its employees;
- damage caused by rust, corrosion, vermin, insects, wet or dry rot, mould, dampness or dryness of the atmosphere, or by extremes of temperature;
- damage to electrical devices or machinery;
- faulty workmanship or construction;
- wear and tear or gradual deterioration;
- damage caused by water seepage (as opposed to sudden water escapes);
- pollution damage caused by the Strata Corporation or its occupiers;
- and
- liabilities assumed by contract.

Exclusions should be reviewed carefully to determine how the coverage afforded by the policy will be limited. In some cases, it may be possible to negotiate a removal of the exclusion or to increase the policy limits with respect to the limited coverage. In other cases, it is expected (such as with vehicles) that other insurance policies will respond to the claim.

### **Why should owners, tenants and other occupiers obtain insurance?**

As discussed above, the property and liability insurance coverage mandated by the Act will not respond to many of the losses that an owner, tenant or other occupier may suffer. It is for this reason that section 161 of the Act specifically contemplates that an owner may obtain his or her own insurance to cover those risks not covered by the Strata Corporation Policy.

The most obvious exclusions from the property coverage of the Strata Corporation’s insurance policy are the contents of a strata lot, such as furnishings and other personal items belonging to the owner, tenant or occupier. In addition, the Strata Corporation’s insurance does not typically include upgrades or alterations to a strata lot. Owners should be aware that alterations and upgrades made by *prior* owners are also

typically excluded from the Strata Corporation's insurance coverage.

**The typical wording of a liability policy often does not take into account the unique nature of a strata corporation, instead relying on terms and concepts used in a "for profit" organization. As a result, although owners, tenants and occupants are required to be additional named insureds under the Strata Corporation's insurance policy by virtue of section 155 of the Act, it is by no means certain that an owner, tenant or occupant will be defended by the Strata Corporation's insurer for claims arising from or related to the strata premises, even if the claim arises from an injury suffered on the common property. An owner, tenant or occupant should therefore ensure that they have their own liability coverage to respond to any claims made against the owner, tenant or occupant arising from any injuries suffered in or about the strata lot itself, any limited common property and the common property, as well as for claims that arise away from the strata premises.**

#### **Who pays for the Strata Corporation's Insurance?**

The annual premium for the Strata Corporation's insurance policy forms part of the common expenses of the Strata Corporation. All owners therefore share the cost of insurance in accordance with the relative unit entitlement of their strata lot.

Can a Section obtain insurance?

Although the Strata Corporation is required to obtain minimal coverage for the corporation as a whole, Section 194(4) of the Act provides that a section may obtain coverage to expand on the perils insured by the Strata Corporation or to increase the amount of coverage obtained by the Strata Corporation. Such coverage may be desirable if the section (as opposed to the Strata Corporation) acquires any real or personal property or if the activities carried out in the section expose the section and its owners to a greater risk of loss or damage.

Only those owners in the section obtaining the insurance are required to contribute to the premium for or to contribute to any deductibles paid by the section in respect of any claims under the section's insurance.

#### **Who does the Strata Corporation's insurance policy insure?**

By virtue of section 155 of the *Strata Property Act*, the Strata Corporation, the owners, the tenants and persons normally occupying the strata lots are "named insureds" for the property and liability coverage discussed above. As discussed above, the extent of coverage that an owner, tenant or occupant may actually receive under the strata corporation's liability policy is by no means certain. A council should however endeavour to ensure that an owner, tenant or occupant is a named insured on the Strata Corporation's insurance policy, including in respect of claims for injury or damage arising out of the common property or any part of a strata lot that the Strata Corporation has agreed to repair and maintain under the bylaws.

By contract, a Strata Corporation may assume an obligation to obtain insurance coverage for others (e.g. with the property manager or an employee, or pursuant to a lease, easement or air space parcel agreement). The Act does not restrict the Strata Corporation's ability to obtain insurance coverage for others. When renewing the Strata Corporation's insurance policy, the Strata Corporation should review its contracts so that any obligations to insure others are identified for the Strata Corporation's insurance broker.

#### **How do the owners know what full replacement value is?**

Under section 149(4)(a) of the Act, the Strata Corporation must obtain property insurance that insures on the basis of full replacement value. "*Full replacement value*" is the full cost of replacing or rebuilding something that has been lost or damaged, with no deductions for any depreciation of the property.

A Strata Corporation will almost certainly require an independent insurance appraisal by a qualified appraiser in order to determine the full replacement value of the Corporation Covered Property. Although the Act does not mandate an annual insurance appraisal, the Act does require an annual review of the adequacy of the Strata Corporation's insurance coverage.

**What if the Strata Corporation is not fully insured for a loss?**

If the Strata Corporation's insurance coverage is not adequate to meet the costs of repairing or replacing the damaged Corporation Covered Property, the Strata Corporation will be required to pay for any shortfall. Ultimately, this shortfall will be passed on to the owners in the form of a common expense (typically a special levy).

**Another potential benefit of Strata Lot Policy is the supplemental coverage it can provide if the Strata Corporation has no insurance or if the Strata Corporation's insurance coverage proves to be inadequate or is not effective for some reason. For example, if someone is injured on the common property or common property is damaged, resulting in a claim in excess of the Strata Corporation's policy limits, the Strata Corporation would likely have to pass a special assessment to make up the shortfall. In such a case, a Strata Lot Policy will often cover the cost of any special assessment levied against your strata lot to make up the shortfall. Depending on its wording, a Strata Lot Policy may not pay any or may pay only a portion of any special assessments passed to pay the Strata Corporation's deductible.**

**Are there additional insurance options?**

The Act does not limit the Strata Corporation's options with respect to insurance coverage. As a result, each Strata Corporation is encouraged to investigate options with respect to expanding coverage to address common exclusions in property and liability policies and/or to address unique features of the Strata Corporation. For example, damage caused by earthquakes or floods is often excluded from standard property damage coverage. With the payment of an additional premium, the Strata Corporation may be able to obtain additional coverage to respond to damage caused by these perils.

Other common forms of optional coverage may include:

- Boiler and machinery insurance (to respond to claims arising from the Strata Corporation's boiler or other mechanical or electrical equipment)
- Crime insurance (to respond to claims for misappropriation of funds by the Strata Corporation's agents and employees)
- Glass coverage
- Directors and officers liability insurance

- Pollution coverage

Sometimes, it is the operations of the strata lot owners that may give rise to the potential for a claim against the Strata Corporation. For example, the operations of a manufacturing facility in a commercial lot may create the risk of a pollution claim. Similarly, the operations of a restaurant or bar may create the risk of liquor liability claims. In such cases, the Strata Corporation may require, by way of an appropriately drafted bylaw, that the Strata Corporation be named as an additional insured to the strata lot owner's policy.

**What does directors and officers' liability coverage insure?**

Under the Act, strata council members are held to the same standard of care as that expected of the directors of companies and non-profit organizations. Delegating duties to others, including a property manager, will not allow the council members to escape liability.

As a result, a common addition to many Strata Corporation Policies is coverage for directors and officers (D&O) liability. This coverage is specifically contemplated as optional coverage by virtue of section 151 of the Act, which permits the Strata Corporation to obtain errors and omissions insurance on behalf of council members. D&O liability insurance is intended to respond to any claims made against the Strata Corporation's management (being the members of the Strata Council and the property manager) in respect of any errors or omissions made by strata council members in the exercise of their duties. The Strata Corporation itself should be included as a named insured to the D&O liability coverage. In addition, if some of the Strata Council's duties have been delegated to non-members, consideration should be given to adding these individuals as named insureds.

Some common exclusions from coverage under D&O liability insurance include:

- claims arising from fraudulent or criminal acts
- claims for libel, slander and wrongful entry or eviction
- claims for bodily injury or property damage
- claims for wrongful acts in obtaining or maintaining any insurance policy or bond
- claims for salaries
- claims for fines and penalties levied for failure to comply with the Act

Upon payment of an increased premium, the insurer may be prepared to drop or modify some of the common exclusions. With some exclusions, the insurer expects that the Strata Corporation or its members will have other insurance coverage to respond to the claim.

**Who pays the deductible for a claim?**

If a claim is made on the Strata Corporation's insurance policy, it is the Strata Corporation's obligation to pay the deductible?

Section 158(1) of the Act provides that the payment of a deductible is treated as a common expense and all owners, therefore, contribute to the cost of the deductible in accordance with unit entitlement. Approval of the owners is not required to pay the deductible by way of funds raised by special levy or taken from the contingency reserve fund.

With some deductibles being as high as \$100,000, strata corporations and owners are often concerned about recovering the cost of the deductible from anyone who may be responsible for the loss. If an owner is responsible for the loss or damage that gave rise to the claim under the Strata Corporation's insurance policy, section 158(2) of the Act specifically provides that the Strata Corporation is permitted to sue the owner to recover any deductible paid by the Corporation. To further strengthen this provision, some strata corporations have adopted a bylaw requiring a negligent or careless owner to pay the deductible without the need for a court order confirming the negligence or carelessness.

*Are there any restrictions on what the Strata Corporation can do with any insurance money received?*

With many insurance claims, the insurance company will arrange directly for the necessary repairs to be made. However, in some cases, the Strata Corporation will instead receive a payment from the insurance company. If the Strata Corporation receives any money from the insurance company, section 157 of the Act provides that any insurance money received must be used without delay to repair or replace the damaged property.

There is one exception to this statutory requirement, that being the passage of a  $\frac{3}{4}$  vote resolution by the owners not to repair or replace the damaged property

under section 159 of the Act. That vote must be held within 60 days of the receipt of the insurance money by the Strata Corporation. If a decision is made not to repair or replace, the insurance money is held in trust by the Strata Corporation for the benefit of the owners in accordance with unit entitlement. A resolution not to repair or replace is subject to review by the Supreme Court upon application by an interested person, including the Strata Corporation's own insurer.

*How does the Strata Corporation make a claim against an insurance policy?*

Depending on the type of coverage, insurance coverage is written on either "occurrence" basis or a "claims-made" basis. The term "occurrence-based" means that the policy in place at the time the incident or actions giving rise to the loss or damage will respond to the claim. In many cases, property insurance and general liability insurance is occurrence-based. If the loss has been caused by a discrete event, such as a fire or the sudden escape of water, it is usually fairly easy to determine which policy should respond. If the loss has been caused by more than one event or the damage has been suffered on ongoing basis, more than one policy may respond to the loss.

Some forms of liability insurance, specifically errors and omission insurance or D&O liability insurance, are "claims made" policies, meaning the policy that is in place at the time the claim is made (rather than when the allegedly wrongful act occurred) will respond to the claim.

*If there is any doubt which insurance policy may respond, notice should be given under all possible policies.*

In all cases, insurance policies require the insured to give prompt notice to the insurance company. A failure to do so often results in the denial of the claim by the insurer. The Strata Corporation should therefore give its insurer notice as soon as it becomes aware of a possible claim. The policy wording should be consulted to ensure that notice of a claim is made in accordance with the insurer's requirements as the form and recipient of notice. For example, there is typically a requirement to give notice of a claim in writing – if notice is not given in written form, the insurer may be able to deny the claim.

If the insurer denies coverage, most policies require that any court action against the insurance company must be commenced within one (1) year of the date of the loss or damage. If the action is not commenced within the year, the claim is barred by the limitation period, meaning that the insured loses any right to claim on the policy.

#### *Reviewing the insurance policy*

When the insurance policy and/or endorsements are received from the insurance company or the broker, the wording should be reviewed to ensure that the policy provides the coverage expected and that any errors in coverage (for example, the limits are correct or the list of additional named insureds is complete) are pointed out to the insurer and corrected.

Policies should also be reviewed for exclusions and conditions as both may vary from policy to policy and from year to year. A condition is a term in the policy that establishes the foundation for the insurance contract or dictates the manner in which an insured gives notice of a claim. Failure to comply with a condition can result in the entire policy being voided or a specific claim being denied.

Some conditions are established by statute and are therefore included in all insurance policies. Two of the most important statutory conditions deal with representations by the insured and the obligation to advise the insurer of any changes in the risk. A material misrepresentation on the part of the insured or a failure on part of the insured to advise the insurer of a material change in the risk covered will result in all or a part of the insurance coverage being voided.

Other conditions are introduced into the policy wording by the insurers themselves. Examples of common general conditions include an obligation on the part of the insured to advise the insurer of any problems in the fire detection systems in the building or to give immediate notice of any claims.

#### *Does the Strata Corporation have any obligations with respect to preserving the Strata Corporation's insurance policies?*

An insurance policy is a contract between the Strata Corporation and the insurance company. As a written contract to which the Strata Corporation is a party, an

insurance policy is a record which must be maintained by the Strata Corporation in accordance with section 35(2)(g) of the Act. Regulation 4.1(7)(b) requires the Strata Corporation to retain a copy of any insurance policy for at least six years from the date of expiry of the policy. However, as the ultimate limitation period for claims in British Columbia is currently 30 years from the date that a cause of action arose, a Strata Corporation should endeavour to retain its insurance policies as long as possible.

Under section 36(1) of the Act, certain persons, including owners are entitled to review the Strata Corporation's insurance policy and to obtain a copy of the policy. Strata lot owners and others obtaining individual insurance policies may wish to take a copy of the Strata Corporation's insurance policy with them when they obtain their own insurance policy to ensure that any possible gaps in insurance coverage are minimized or eliminated.

#### **What obligation does the Strata Corporation have to update coverage?**

Section 154 of the Act requires the Strata Corporation to review annually the adequacy of its insurance coverage and to report on the coverage at the annual general meeting. Although not intended to be a complete list of the factors a Strata Corporation should take into account in undertaking the annual review, the following provides a starting point for the review process:

- (a) when was the last time an insurance appraisal was done;
- (b) has the Strata Corporation acquired any new property or assets;
- (c) what types of activities take place on common property or using common assets – is the liability insurance adequate to cover these activities;
- (d) by virtue of its contracts with others, does the Strata Corporation have any obligations to insure others, such as employees, property managers, or other independent contractors;
- (e) does the Strata Corporation allow people who are not owners or occupiers to use common property or common assets. If so, does this create a risk of a claim against the Strata Corporation;

- (f) what types of claims have arisen in respect of the Strata Corporation in last year and was the Strata Corporation's insurance coverage adequate to respond to those claims;
- (g) has the Act, the Regulation or the Strata Corporation's own bylaws changed, altering or increasing the Strata Corporation's obligations with respect to insurance;
- (h) what exclusions currently exist in the Strata Corporation's insurance policy – is it possible to obtain coverage for these risks for an additional premium;
- (i) what new forms of insurance coverage are available;
- (j) what new exclusions are being added on an industry-wide basis to property and liability insurance policies – does the Strata Corporation have grounds to make a claim on its existing policy before the policy wording changes;
- (k) with respect to the D&O liability insurance
  - does the policy wording or the application impose a requirement to report possible claims to the insurer before the expiry of the year – if so, have any possible claims been reported;
  - if increased D&O coverage was purchased to address a potential claim, does the risk of a claim remain. If so, should the increased coverage be continued;
  - should anyone be added as a named insured;
- (l) is the Strata Corporation contemplating any construction projects over the next year. If so, is additional insurance coverage required?

#### *What is subrogation?*

In some cases, the damage suffered by the Strata Corporation or an individual owner may have been caused by the actions of others. If an insurance company pays out a claim on behalf of an insured, the company has the right to step into the shoes of the insured and bring a claim to recover the amounts paid out. This type of claim is called a "subrogated" claim and could result in legal proceedings against those seen as responsible for the loss. If the insurer does bring a subrogated claim, the insured is typically required by the terms of the policy to assist the insurer in advancing the claim.

The insurer's right of subrogation may be restricted in a number of ways, including a waiver of subrogation by the insurance company. By virtue of section 155 of the Act, which lists the named insureds on the Strata Corporation's insurance policy, certain persons are protected from the possibility of subrogated claims. In some Strata Corporation Policies, the insurance company may waive, unconditionally or with notice from the Strata Corporation, its rights of subrogation against additional parties, including employees or property managers.

#### **Who else should have insurance?**

Over the course of a year, the Strata Corporation may come into contact with any number of outside contractors, such as construction and maintenance contractors, architects, engineers, accountants, brokers, property managers and security personnel. The Strata Corporation should ensure that insurance requirements are spelled out in any contracts and further ask for a copy of the independent contractor's liability insurance policy to ensure adequate coverage and limits. Anyone handling the Strata Corporation funds should be covered by fidelity bonding or insurance as claims for misappropriation of funds are typically excluded from the Strata Corporation's property and liability policies.

If the Strata Corporation undertakes any construction projects, adding the Strata Corporation to the contractor's liability insurance and the contractor to the Strata Corporation's insurance policy will assist in ensuring adequate coverage in the event of a claim in respect of the contractor's work.

#### **Whose coverage responds?**

The following questions often arise with the types of claims experienced by strata corporations and their owners. Additional information (such as bylaw amendments) may alter the typical situation and, as a result, it may be necessary to consult the insurance brokers and/or legal counsel for further advice.

What if the pipe in a unit bursts or the dishwasher pump cracks resulting in a flood and damage to my unit and to other units?

In general, the Strata Corporation's insurance policy will respond to most of the damage caused to your unit and to other units. If furnishings, strata lot upgrades or other personal items are damaged, it is each strata lot

owner's own insurance policy that will respond to those portions of the claim.

If you were responsible for the loss in some way (for example, failing to maintain the pipe or the dishwasher), the Strata Corporation may be able to claim against you for the deductible. As a named insured under the Strata Corporation's insurance policy, the Strata Corporation's insurer cannot make a claim against you to recover monies paid out on behalf of the Strata Corporation. However, the insurers of other strata lot owners may be able to bring a claim against you for any amounts the insurer is required to pay to repair or replace damaged property in another suite. This type of claim, which is called a subrogated claim, may be covered under the liability coverage afforded by your insurance policy.

*What if I left a tap running and the sink or tub overflowed causing damage?*

Under the property coverage afforded by the Strata Corporation's insurance policy, the Strata Corporation's insurer will, subject to any deductible amounts, respond to the damage to any strata lots and common property caused by the water overflow. An individual owner's own insurance will respond to any claims for damage to the contents or to any upgrades or improvements to the strata lot.

Although the Strata Corporation's insurer has no right of subrogation against you for the amounts spent to repair or replace the damaged property, the Strata Corporation may decide to bring a claim against you for any amounts that the Strata Corporation is required to pay as a deductible.

*What if I left the tap running and the bathtub overflowed causing damage to the common property but the amount of the claim is less than the deductible?*

If the amount of a claim on the Strata Corporation's insurance policy is less than the deductible, the Strata Corporation is required to undertake the repairs to the common property.

The Strata Corporation is, however, permitted to bring a claim against you to recover any amounts the Strata Corporation is required to spend to undertake the repairs.

*What if a pipe in a wall bursts and damages the building?*

Many pipes in the walls are common property and if they burst, most damage caused by the break is covered by the Strata Corporation's insurance policy. The exceptions would be the contents, upgrades and alterations to a strata lot, which would be covered by Strata Lot Policies.

If I damage the common property and the Strata Corporation fails to make an insurance claim, can the Strata Corporation claim against me for the damage?

If the type of damage would have been covered by the Strata Corporation's property damage coverage, then no, the Strata Corporation cannot claim against you. This is because you are a named insured under the policy and are entitled to benefits of any policy, including protection from subrogated claims.

However, if the loss would not have been covered by the policy even if a claim had been made, there is nothing in the Act or the Regulation that would prevent the Strata Corporation from making a claim against you for the cost of repairing or replacing the damaged property, particularly if the Strata Corporation has passed an appropriately worded bylaw.

Will the Strata Corporation's property insurance cover damage to my new hardwood floor?

In most cases, any upgrades or alterations to a strata lot undertaken by an owner are not covered by the Strata Corporation's property insurance coverage. As a result, if the hardwood floor was not installed by the developer at the time of construction of the condominium, the strata lot owner will typically have to look to his or her own insurance policy to cover any damage to the flooring. Most policies obtained by strata lot owners provide that the insurer will, within specified limits, cover "improvements" or "betterments" to the owner's unit. If an owner has undertaken significant improvements to the strata lot, the owner should confirm with his broker or insurer that the limits of coverage are adequate for the enhancements to the unit.



*If I have added a new window or door to my strata lot or added an awning to the exterior, who insures the addition?*

In general, the expectation is that any alterations or improvements undertaken by a strata lot owner or tenant will be covered by the Strata Lot Policies.

To that end, most Strata Corporation Policies provide that any improvements or betterments undertaken by an owner or tenant in and around a “unit” are not covered by policy. At the same time, most Strata Lot Policies provide that any improvements or betterments undertaken by an owner or tenant in and around a “unit” or the owner’s “premises” are covered, within specified limits, by the policy. The terms “unit” and “premises” often have extended definitions extending beyond the strata lot itself to cover areas of exclusive use.

To ensure that there is adequate insurance coverage in place for any alterations to common property, expectations as to who will be responsible for any costs associated with the alteration or improvement, including providing insurance coverage, should be spelled out in writing when the Strata Council approves the change to common property. In addition, as the insurance policies obtained by each of the Strata Corporation and the individual strata lot owner or tenant may not be perfectly complementary, the insurance policies should be reviewed by both parties to confirm that insurance expectations concerning the alteration or improvement have been met.

An owner should advise his or her insurer of changes or upgrades to the common property for which they are responsible to ensure that these betterments are included in the Strata Lot Policy.

It may not always be obvious to an insurance appraiser as to who (i.e. the Strata Corporation or an individual owner) may have undertaken an alteration or improvement to common property. As a result, the Strata Corporation should provide the appraiser with a written list of all changes to common property undertaken by strata lot owners. This will allow the appraiser to exclude the common property changes for which an owner is responsible from the valuation of the common property.

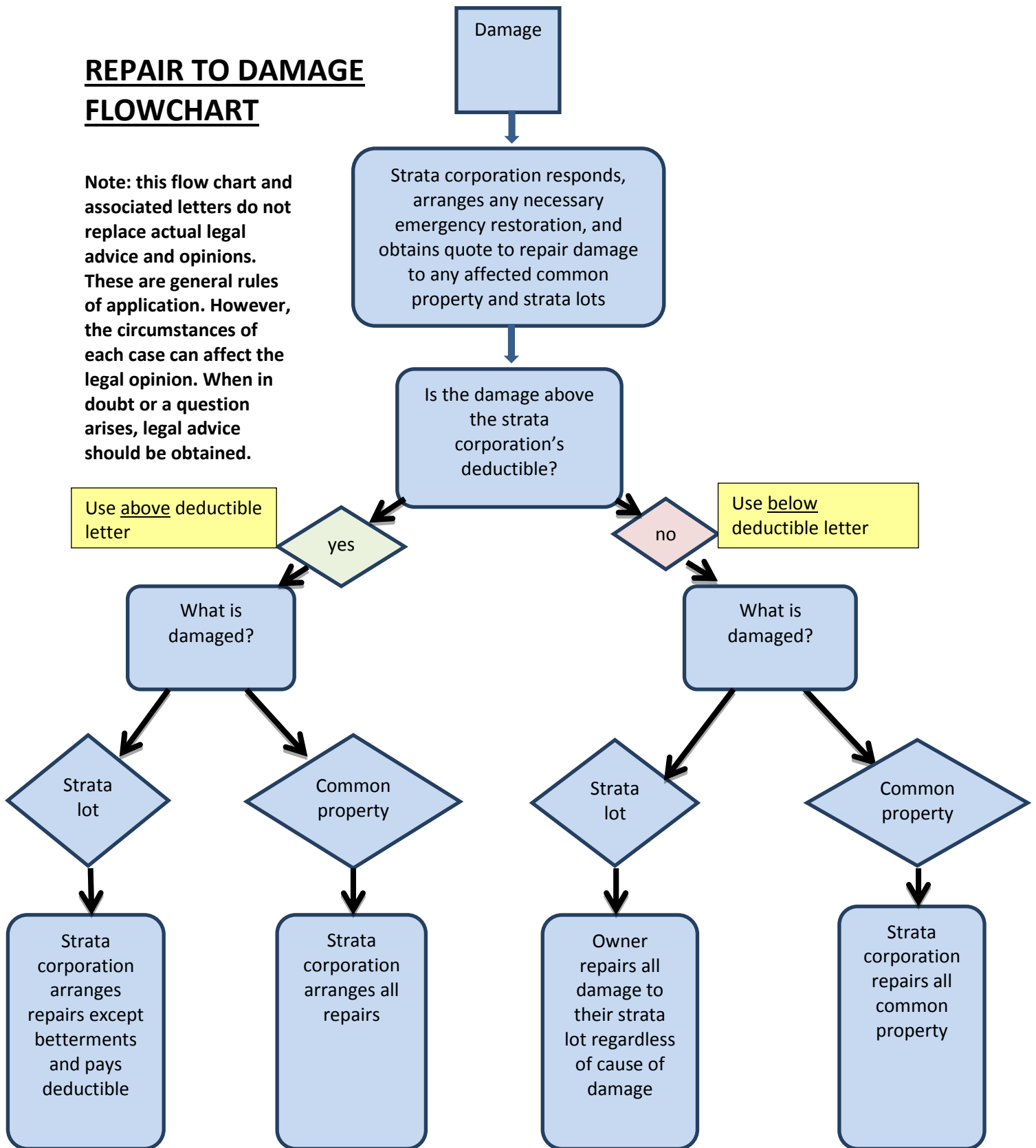
Subsequent owners of a strata lot may not always be aware that a former owner has undertaken changes to his or her strata lot, to the common property or to the common assets and has agreed to assume financial responsibility for those changes. Section 59(3)(b) of the Act provides that a Strata Corporation may, through the Information Certificate, apprise a subsequent purchaser of both the alteration and the responsibilities arising from the alteration. If the Strata Corporation fails to notify a new owner of this information in the Certificate, the Strata Corporation may not be able to later insist on that owner bearing the financial responsibility for the alteration.

#### Conclusion

The *Strata Property Act* has expanded the insurance obligations imposed on a Strata Corporation. At the same time, the Strata Corporation’s insurance policy does not cover all liabilities that may arise in connection with a condominium. To minimize any surprises, strata corporations and owners are encouraged to review their insurance policies with their brokers in light of the potential responsibilities they may face in the event of a loss.

# REPAIR TO DAMAGE FLOWCHART

**Note: this flow chart and associated letters do 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.