
Strata Living

Headline: What happens when the strata is being sued?

Topics: Lawsuits; Insurance

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Dear Tony: Our strata council was sued in April because of a bylaw that was allegedly not enforced properly. They contacted a lawyer to defend the strata and in the end we lost and the strata ended up paying almost \$45,000 in fees and costs. This part of the dispute seems normal, but the owners want to know why the strata did not contact the insurance company and file a claim, which only has a \$10,000 deductible for these types of actions? It seems unwise to have paid for an insurance policy that we did not take advantage of and then ended up paying for money the owners never authorized.

Fran G.

Dear Fran: You are absolutely right! Strata councils and strata managers must review their insurance options in the process of defending against a claim either as a law suit, a loss such as water escape or fire, or even a claim through the Civil Resolution Tribunal or the Human Rights Tribunal. If the council chooses to not file a claim, which may have been covered by the insurance, they may be assuming the responsibility for the additional costs if they have not sought the approval of the owners at a general meeting.

A similar example has recently occurred in a strata corporation with a water escape claim. The deductible is \$5,000, and the strata chose not to file the claim with the insurance company to avoid an increase in the deductibles and the policy. The total cost was \$14,000, and the strata corporation subsequently attempted to recover the amount of the deductible against the owner where the claim originated. The owner's lawyer advised as this was not an insurance deductible as no claim was filed, there is no provision in the *Act* to permit the strata to recover such losses, and refused to pay. Like the liability claim, the strata corporation had

no authority spend the additional \$9,000 on repairs that would have otherwise been covered by the strata insurance. In both circumstances, the strata councils chose not to file claims, resulting in a much higher cost exposure to the strata corporation, without the approval of the owners for the expense. Whenever your strata is faced with a notice of court action, claim in the Civil Resolution Tribunal or a Human Rights complaint, your first call should always be to your insurance provider. When you are renewing your insurance, confirm whether these types of claims are covered under your insurance policy.