

Condominium Home Owners' Association

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Bulletin: 300-264

Condo Smarts

Headline: Council needs liability insurance

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Dear Condo Smarts: Our strata council has a unique situation. We recently had a lawsuit that involved owners of a unit who alleged that they were treated unfairly because we prevented them from renting out. We did start the proceedings but after legal consultation decided that it was easier to settle rather than take it to court.

The strata council agreed to pay \$15,000, then filed a claim with our insurance company for the settlement plus \$10,000 in legal bills. We have been informed by our insurance company that our claim has been denied because we had an obligation in our insurance policy to contact them immediately upon identifying that we were being sued.

They claim that as a result of not notifying them, we did not allow them the opportunity to establish a reasonable defense against the suit.

Now council is stuck with the \$15,000 settlement and almost \$10,000 in legal bills and our owners are expecting us to pay for this out of our own pockets. So who pays for these bills?--DF in Metro Vancouver

Dear DF: This is a perfect example of why every strata corporation should have directors' and officers' liability insurance coverage if possible.

There are a number of situations where councils have to make decisions that place themselves or the strata at risk or enforce bylaws that may be challenged. The key to your insurance, though, is that you must reasonably comply with the terms and conditions of the policy.

The company reserves the right to not only defend the claim but also subrogate the claim, an action on your behalf to recover the loss. There are other significant reasons to carry D&O insurance.

For example, where the strata corporation provides water and sewer services, or there are public facilities or amenities on the strata property. It's not only a general liability issue, but your failure to properly maintain or service your common assets may also expose your council to lawsuits. Make sure your property managers are named on your policy as they are agent, and check for exclusions such as Human Rights Claims, or underinsured clauses.

Before a strata decides on settlements that have both financial and liability implications, get legal advice. Ask yourself this question: Why would our strata council have the authority to settle a lawsuit and authorize legal fees without notifying the owners of the strata about the lawsuit or calling a special general meeting to approve the deal?

Of course, you want to defend against the claim but, at some point, the owners of the corporation are paying the bills and they need to decide how much, how they are being paid and the terms of the settlement.

On the day you receive notice of a lawsuit, there are three actions a strata council should immediately undertake: Call an emergency strata council meeting, call your lawyer and call your insurer. Don't wait till the dust settles if you've done the right thing.

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