

Condo Smarts

Headline: Insurance Coverage on Upgrades

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Dear Condo Smarts: How are the following terms defined? A) "fixtures" in a strata lot and B) "fixtures built or installed by the owner developer as part of the original construction"? We are a newer strata (5 years old), and most of our units were sold as presales. When people arranged for the presale, they negotiated upgrades. The upgrades included granite counter tops, solid wood kitchen cabinets, hardwood floors and marble finishing in the bathrooms. Our council originally assumed that because these items were negotiated by the purchasers, they would automatically be considered the owner's responsibility for each series of upgrades. Now we've had a water leak, and a claim on the strata insurance for the hardwood floors and kitchen cabinets, from the unit below. The insurance company defined these as "betterments" and declined the claim. The owner's insurance company says no, they are fixtures as part of the original construction and the strata insurance must cover the cost. Council has no interest in either position; however, we really have to know where we stand so that we can advise the owners of their liabilities when buying their own insurance. If the fixtures were installed by the developer, how could they be called betterments? We've asked to see the sales agreements and betterments or increases for upgrades are not shown on the documents. John G. Vancouver

Dear John: Your confusion is absolutely justified. There are no provisions under the Strata Property Act to treat owner developer improvements or upgrades separately from the total construction. In a recent building that I toured where upgrades were offered, 50% of the buyers opted for hardwood floors and granite counter tops while the other 50% remained the standard. While there is a significant difference in cost to replace, why would the strata corporation or insurer determine that only the lowest standard is the only option for insurance appraisal and coverage? According to Veronica Franco, a lawyer with Clark Wilson," as long as the improvements were part of the original construction, then those improvements should be fixtures that are insured under section 149. The contract of purchase and sale is just evidence that the developer installed them as part of the original construction. The problem really is whether the strata corporation/owner can prove that the improvements are part of the original construction. Obviously, if all betterments were insured under the strata corporation's policy, then this takes care of some of the problems that arise when homeowners do not purchase their own homeowner insurance policy. However, not all betterments are alike. Someone's betterment may be far more expensive than another owner's betterment, and could affect the premium in ways not necessarily

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proportional to unit entitlement. In addition, insuring for betterments would require a lot more work on the part of a strata corporation. The strata corporation would have to make sure it kept track of all the betterments and then advise the appraiser of all the betterments. Any errors in reporting could result in liability to the strata corporation if the betterment is not properly insured. As a result, strata corporations that do not want to take on the extra work or potential liability will leave it to the individual owners to insure their betterments."

The general practice of the developer in the first year of a new development is to provide the insurer with the costs of construction values to determine the appraisal rate of the building when the units are first conveyed to the owners, but the strata corporation will have to commission appraisals in the future to establish the full replacement value as

required by the Strata Property Act. In the first year it would be prudent to create an inventory of upgrades; however, if owners wish to additionally insure the upgrades on their home owner insurance, they can guarantee that if a claim does arise, they will be insured for the additional coverage.

"Fixtures" means items attached to a building, including floor and wall coverings and electrical and plumbing fixtures, but do not include, if they can be removed without damage to the building, refrigerators, stoves, dishwashers, microwaves, washers, dryers, or other items. Remember that if you are in a bare land strata, the conditions are also different in that buildings not shown on the strata plan are not included in the obligations of insurance. The condition of insurance for fixtures does not apply to a bare land strata plan.

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