

**Condo Smarts**

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**Dear Condo Smarts:** What happens to a strata corporation when they cannot collect a significant insurance deductible from an owner? In 2007, an owner caused a flood in our building that resulted in a \$47,000 claim, and an insurance deductible of \$25,000. At the time we were in the process of re-piping the building and as a result of a number of leaks our deductible was very high. The property manager advised that rather than waste the funds to go to court, we could simply wait until this person sold their unit and collect the funds at that time. It is also important to note that we do not have any bylaws around insurance deductibles and who pays those amounts. Surely we don't just end up writing this amount off if they never pay?  
Jayson K, Victoria

**Dear Jayson:** When there is a claim on the insurance policy, the deductible for that claim, water damage for example, becomes a common expense of the strata corporation. The Strata Property Act, backed up with a number court decisions, does give the strata corporation the ability to sue an owner to collect a deductible amount, if the owner is responsible for the loss or damage that gave rise to the claim. There are some very serious pitfalls in the collection process that could limit or prevent the strata corporation from collecting the amount. Many strata corporations adopt bylaws that relate to insurance deductibles and damages, without contemplating the impact of those bylaws. The test set by the Act is "responsible for the loss or damage that gave rise to the claim;" however, some bylaws may enhance the ability of the strata to collect the deductibles, or complicate the enforceability of the collection or action by inserting language that may be difficult to interpret or prove. The objective of the strata corporation is to be able to collect the deductible, and based on the circumstances or sequence of events that caused the claim in the first place, a well worded bylaw that does not limit the ability of the strata corporation to recover the amount is essential. Considering that the deductible amounts can vary from \$2,500 to \$100,000, it is a valuable venture to pay for an experienced lawyer to draft your insurance bylaws to protect the collective interest of

the owners. Don't believe the myth that "we can simply add it to the account and wait until the owner sells". Claims for damages or bylaw enforcement claims have very specific limitation periods. Within these periods of 2 years for damages and 6 years for bylaw claims, the strata corporation is permitted to commence an action in the hopes of any success at recovering the loss. Without significant risk of loss, the strata cannot simply add the amount to a Payment Certificate when the owner is selling in hopes that they may collect. A certificate must not include claims of damages against an owner which have not been determined by a court or by arbitration. Depending on your bylaws or lack thereof, you may not be able to include these amounts for insurance deductible charge backs on a Payment Certificate. If your strata corporation is facing a claim where an owner may be responsible for the loss and the owner is disputing the amount, it is certainly time for expedient legal advice on what your course of action may be. Even if the strata in Jayson's case was still within the period to attempt to claim the amount, a change in management, strata council, or operations, could result in a loss of the necessary information to either attempt to claim the amount against the owner or proceed with an action. The longer you wait, the more difficult the collection becomes. A \$25,000 insurance deductible could be a devastating cost for many owners, so it is critical that each owner annually reviews their insurance policies to ensure they have the best home owner coverage to protect not only their personal property, but also their personal risks to the potential claims within the strata corporation.

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