

Condo Smarts

Headline: How is the Insurance deductible decided?

Topic: Insurance

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Dear Condo Smarts: I have recently sold my townhouse on Vancouver Island, and at the point of sale, the agent requested a payment certificate from the strata corporation. I had checked my account with the strata council not 2 weeks earlier, and was informed I had no outstanding amounts owing to the strata. The Form F payment certificate indicated that I owed a \$2,500 insurance deductible amount from 2008, that was from a broken pipe that caused a flood. The council were unaware of the charge to my account, but the property manager advised that this is a routine charge back and it was my responsibility to pay the amount before the title could be transferred. As a result there were a number of complications with the sale, and even though it proceeded, we ended up having to pay the amount to the strata corporation. This process did raise an important question. Who decides that an insurance deductible is charged back to a strata lot and under what conditions? Louise Baxter

Dear Louise: The *Strata Property Act* grants a provision to the strata corporation, that in the event an owner is responsible for the loss or damage that gives rise to a claim, the strata may sue an owner to recover the deductible amount. In many circumstances, strata corporations also adopt bylaws that reflect the provisions of the *Act*, which clarifies the authority of the strata corporation and subsequently the strata council for the purpose of the collection and the owner's obligations. So basically there are 2 options. Option A, the strata corporation attempts to collect the amount by providing notice of the claim, and the owner or their insurer voluntarily pays the claim. Option B the strata corporation enforces it's bylaw to proceed with an enforcement and collection process. In either option, if an owner or their insurer on behalf of the owner does not pay the deductible amount, the strata corporation will still be required to proceed to court to collect the amount. Section 115 of the *Act*, the Form F provisions, does not permit a strata corporation to include claims of damages against an owner which have not been determined by a court or arbitration. Arguably that is also a claim of an owner being responsible for an insurance deductible. If the strata corporation is intending on including a claim for

an insurance deductible on a Form F they should seek legal advice on the limitation periods of such claims and the application of such a collection on a payment certificate. Leaving the technical options aside, the real question comes down to who made the decision to charge a strata lot an insurance deductible, and what was the procedure that was followed? If the strata corporation has a bylaw regarding insurance deductibles they must follow section 135 of the *Act* that sets out the procedures on enforcing bylaws, which is the decision of strata council. They have to inform the owner of the complaint, the owner is entitled to respond in writing or request a hearing and may dispute the claim, and eventually the strata council make a decision on how to apply or enforce the bylaw. At some point the council will simply render a decision, and may issue an invoice along with the decision to the owner of the strata lot. But what happens in the absence of a bylaw? Who has the authority to impose the cost for the deductible? The strata council would still have to make a decision to attempt to collect the amount, in the absence of a court or arbitration decision, but there is no mechanism in the *Act* to charge the amount to the account. An enforceable insurance bylaw is helpful in enabling the strata council to proceed with a bylaw enforcement and collection process and also provides the alleged owner with a reasonable process of notice and a hearing, but in the end, it's a decision of the strata council, not the manager.

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