

Condo Smarts

Headline: Insurance Complications

Topic: Insurance

Publication date: Nov 13, 2014

Publication: The Province

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Dear Tony: Our strata corporation have been making repairs to the insides of strata lots when there is water damage as a result of an overflowing toilet, tub, dishwasher or some other cause, either started from another strata lot or within the strata lot. By accident, we recently found out that we had \$9,500 in repairs to a council members' strata lot as a result of a flood caused by their Jacuzzi tub. The management company has advised the strata council, that it is the decision of the strata council to decide whether to perform repairs on strata lots, and the strata can decide how the repairs are done and paid for. The council made the decision without reporting it in the minutes and with all council members present. If they determine the owner was responsible for this the strata would then back charge the owner. As an owner in the strata I have a very difficult time believing that the strata has the authority to make these kinds of decisions and that the council can randomly determine when they will or will not file an insurance claim. The council says they have a legal opinion on this, but they refuse to provide a copy. Everyone seems to be hiding behind claims of legal authority and financial confidentiality to prevent the owners from finding out the truth.

CB.W Surrey

Dear CB: The responsibility of maintenance and repairs is determined by the strata corporation's bylaws. Under the standard bylaws of the *Strata Property Act*, and most bylaws of strata corporations, the strata is responsible for the maintenance and repair of common property, and, other than minor maintenance, such as cleaning, the limited common property. Strata lot owners are responsible for the maintenance and repair of

their strata lots, with the exception of when an insurance claim is filed on the strata insurance, and the original fixtures installed by the developer, are covered under the insurance claim. However, even in this circumstance, an owner may still be liable for the amount of the insurance deductible if they are responsible for the claim. A strata corporation does not have the authority to conduct repairs on a strata lot that are the responsibility of the owner, unless the strata corporation has adopted a bylaw where the owners have agreed to assume the responsibility for those specified portions of strata lots, or the strata corporation, in the process of conducting building repairs has adopted a three quarters vote resolution for a specific project including repairs approved by the owners at a general meeting.

The role of the strata council is to enforce and comply with the bylaws. If your bylaws have been amended and are unclear, your strata corporation will certainly require legal assistance on resolving the confusion. If a strata council are choosing to make repairs to a strata lot without the authority of the bylaws, a three quarters vote approved at a general meeting, or in the absence of a court or arbitration decision, they may be doing so in violation of the strata bylaws. This is especially complicated where it involves a council member, who should have removed themselves from the decision making process, as they had a direct interest and benefit in the outcome. Unless otherwise approved in the bylaws, each homeowner has the same responsibilities: maintain and repair the strata lot, and maintain personal insurance to cover the amounts of any insurance claim that they may be responsible for, or the amount below a

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deductible that is damages within their strata lot. Whether or not a home owner decides to purchase condo insurance to cover their personal property, personal risks, or costs associated with a deductible or an amount below the deductible has no impact on the strata corporation or strata lot owner's responsibilities. Responsibility is still determined through the bylaws and the circumstances of claims for liability of deductibles. While it may seem like a good idea to help out owners with repairs to the strata lot, the strata has no legal authority to conduct the repairs and spend the funds. There are other problems that arise with this situation. What if there are any defects or damages associated with the repairs or the repairs are incomplete? Will the strata then be responsible for those costs? Why would the strata pay for damages to a unit just because an owner chose not to insure their strata lot properly? Where is the ceiling on cost? Deductibles can reach \$25,000 or higher. Because damages or an insurance deductible cannot be liened for collection and do not take a priority in charges over mortgages or other priority charges, what happens when the strata corporation cannot collect the amount owing? Insurance for strata corporations and strata owners can be extremely complicated. If you would like to learn more, check out the CHOA information guide and fall seminars on insurance at www.choa.bc.ca .

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