

## **Strata Living**

Headline: Can council spend money without permission?

Topics: Spending Authority

Publication / Date: 24 Hours, May 28, 2015

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**Dear Tony:** This is pretty simple. An owner changed their own toilet, flooded out their unit and the unit below. The insurance deductible cost was \$5,000 for the water claim and the damages were \$12,000. Council chose not to file the claim on the advice of our broker because our deductible would go up to \$10,000, so council just paid for the claim out of the contingency fund, and tried to claim the amount against the owner, but as there is no deductible claimed, so her insurance company won't pay the amount claiming she should only be liable for the \$5,000 deductible. We are only 18 units so this is a big hole in our fund. Do they have the authority to make that decision?

*Kyle Davies*

**Dear Kyle:** The strata corporation is authorized to expend funds that are approved in the annual budget, approved by a resolution of the owners under a special levy or contingency expense, an emergency, or for unauthorized amounts up to the maximum set out in the bylaws or \$2,000 or 5% of the annual budget whichever is less. An insurance deductible is a common expense of the strata corporation which may be paid from either the operating account, contingency account or by a special levy. The deductible is essentially the "emergency or mandatory amount", and the strata in your case would have likely commenced an action against the offending owner for the claim and the insurance deductible amount as the cause of the flood was a result of their direct actions. All of the owners in the strata are named insureds on the policy, so a strata owner can still file a claim,

and whether the claim was filed or not, your strata still reported it to the insurance company, which may still affect your risk and deductible. The problem you now have is how to collect the amount when the strata refused to file an insurance claim?

Because many strata bylaws and homeowner policies have limitations and conditions set out around the application of insurance deductibles or claims for damages, it is important to review your strata bylaws and for the homeowners to review their personal policies to see what options are available. It may not be too late for the insurance claim to be filed. Twenty percent of your owners may wish to consider petitioning for a Special General Meeting to vote to instruct council to file the claim. At the very least, your council should seek legal advice, a cost which could have been avoided had they simply filed the claim in the first place.