

## Strata Living

Headline: Insurance Bylaws

Topics: Insurance

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Written by: Tony Gioventu

**Dear Tony:** Our strata council adopted a number of bylaws that have created several problems regarding collections of insurance deductibles. The most obvious is that the bylaw determines if an owner is negligent resulting in a claim, the owner of the strata lot is responsible for the insurance deductible paid by the strata corporation. We had a recent claim involving a dishwasher coupling that failed and flooded 3 units. The deductible is \$10,000 and the strata sent a notice of the claim amount to the owner of that strata lot. The owner responded they were not negligent as they had no way of knowing that the coupling was about to fail and there was no previous such event in the building that owners were aware of. The owner refused to pay the amount and the council and the owner agreed to arbitration. The arbitrator sided with the owner's claim, and noted, that by having inserted the condition of negligence into the bylaw, the strata had over defined the risk in such a way that they had to prove the owner was in fact negligent. We're getting mixed messages from law firms about whether we do or do not need insurance bylaws. Can you give us some direction?

*Sonja J. Burnaby*

**Dear Sonja:** The *Strata Property Act* establishes that if an owner is responsible for the loss or damage that gives rise to an insurance claim, the strata may sue the owner to recover the deductible. The same liability for the owner would apply if it was an occupant or tenant that was responsible for the claim.

Strata bylaws have a specific purpose for the control, management, maintenance, use and enjoyment of strata lots, common property and assets of the strata for the administration of the strata. Insurance for full replacement value of the common property, assets and

fixtures as defined by the Act must be maintained by the strata corporation.

Where we get into confusion is who pays for losses and what happens in strata lots. As a result, strata corporations attempt to define an owners' responsibilities to make it easier, but often result in bylaws that create greater confusion or definitions that in the arbitrator's decision "over defined" the interpretation of responsibility, so now there is a greater burden on the strata to prove negligence, not just responsibility which has been upheld by the courts. Rental bylaws that indicate owners will be required to pay a deductible if they are responsible for a claim, or bylaws that direct owners to maintain home owner, landlord, and occupant insurance are useful because they provide owners with information about their insurance and the risk of the strata insurance deductible.

It is important to remember that the strata corporation has no insurable interest in personal property or personal liability so avoid inserting your strata into the insurance policy relationships of owners.

The legal profession is generally on the same page with respects to the types of bylaws and information to be included in insurance bylaws. If your strata is adopting an insurance bylaw, get written legal advice. This is not a bylaw for volunteers.