

## Condo Smarts July 3, 2019

### Who Pays the Cost of Damages?

**Dear Tony:** We are very confused about the responsibility to repair a strata lot when there is a minor leak causing damage. For example, a bird nest had plugged one of our drains and resulting in a gutter overflowing and a unit being damaged because an owner left their window open. The owner demanded we do the repairs to their unit which cost \$3,500, well below our water deductible of \$10,000. On another occasion an owner overflowed her bath tub and the unit below had \$6,000 of water damage. We were told by our manager that it was our responsibility to repair the unit and the strata would claim the \$6,000 against the owner upstairs. We are now being told by an owner that we are not responsible for these repairs and had no authority to spend the money of the strata corporation on repairs that were the responsibility of the owners. When does the strata conduct repairs and when does the insurance apply to a claim? What if the strata do not want to file a claim and just pay for the repairs? Marco F.

**Dear Marco:** There is often a great deal of confusion between the responsibility to maintain and repair or whether an insurance claim is processed and who pays the costs. Everyone would like one solution to apply to all circumstances, yet there are several variables to consider. The answer is partly determined by your bylaws and ultimately who or what was responsible for the claim. Before you can determine this responsibility, you must always review your bylaws. The Schedule of Standard Bylaws of the Strata Property Act defines that the maintenance and repairs of a strata lot are the responsibility of a strata lot owner; however, this is a bylaw and not part of the Act, and strata corporations have amended this provision. The standard bylaw determines that in the circumstances such as the overflowing bath tub or the gutter overflow through the open window, the owner of each strata lot is responsible for the damages in their unit. If the amount was above the insurance deductible value a claim could have been filed and in the case of the roof overflow the deductible would have been paid as a common expense of the corporation, and in the case of the overflowed bath tub the strata corporation pays the deductible and then recovers the \$10,000 deductible from the owner who caused the claim. There have been attempts to prevent owners from filing claims on the strata insurance to avoid increased insurance costs or increased deductible amounts; however, an owner and tenant are deemed by the Act to be named insureds on the strata policy, and as a named insured the owner or tenant is entitled to file a claim. While strata corporations try to amend their bylaws to prevent owner or tenant claims as named insureds, the result would be an unenforceable bylaw as it does not comply with the Act.

The most important question a strata council or manager needs to pose is, "where did we get the authority to spend this money?" If an owner's unit has been damaged by a loss, where did the strata get the authority to spend strata funds on an item clearly the responsibility of the owner under the bylaws? A leaking tub that damages someone's ceiling is generally not the responsibility of the strata corporation. There may be circumstances such as a broken common property water line where the strata corporation is required to enter a unit, open a wall and then repair the pipe. The damage was caused by a failure of a common property component and required the strata corporation to intervene and cause damage that required restoration. If it was an insurable claim the deductible is a common expense of the corporation with no counter claim for the deductible, and if it is below the deductible the corporation repairs this item as an emergency expense. As an owner remember if your unit was responsible for the claim for damages or an insurance claim, you may be liable for these costs. Purchase homeowner/landlord insurance to cover your personal contents, betterments and improvements to your strata lot, your personal liability and most important, a deductible coverage in the event you are responsible for a strata claim.

Tony Gioventu, Executive Director CHOA

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