

Condo Smarts November 13, 2019

Beware of Bylaws That Limit Actions!

Dear Tony: Our strata corporation renewed their insurance policy in October and our deductible was increased from \$25,000 to \$100,000, and our policy has increased from \$69,000 to \$121,000. The cost increase will impose an 8% increase in our annual budget, without any other increases but we are most concerned by the deductible rate. After investigating homeowner coverage, we have found most policies limit a claim amount for a deductible if the owner is responsible to a maximum of \$50,000 or in rare cases \$75,000. If an owner or their tenant is responsible for a claim, are we restricted to the limit of the amount an owner can cover in their policy? Our property manager has suggested a bylaw that limits an owner's risk to \$50,000, which would mean the remaining owners would cover the balance of the \$100,000 dollar deductible in the event of a claim, or we would deplete our contingency funds to cover the cost. Because we averaged 2 claims a year over the past 5 years relating to water and careless owners, it is likely we will have at least one claim this year. Would we be placing our owners in a position of greater risk by adopting this bylaw or is it a viable option for the strata corporation to consider? Marco D.

Dear Marco: Insurance rates and deductible limits are rapidly rising across BC. With a reduced number of companies providing insurance coverage and an increased rate of claims and risk, our brokers are struggling to obtain competitive coverage at manageable rates for the public. The risk with multi-family buildings is the compounded damages that result from fire and water claims. When unit 401 experiences an overflowing bath tub, failed washing machine hose, burst water line on a fridge ice maker or dishwasher line, or an aging piping system that fails, it is likely 3 or more units may be affected. If the amount of a claim is below a deductible, each unit owner and the corporation bare the cost of their respective damages. That alone is a compelling argument for everyone to purchase homeowner insurance. If the amount is above the deductible, the strata policy covers the claim to repair/replace the original fixtures and structure installed by the owner developer. If an owner is responsible for the claim, which does not necessarily require any neglect or willful action, the strata may seek to recover the amount of the deductible from the owner. Limiting the risk of what an owner is responsible to cover may limit the risk for the claim, but it increases the risk to the remaining owners, which may not always be practical or fair. If an owner, their tenants or occupants cause a claim as a result of neglect or a willful act, why should the balance of the owners cover the cost? A common example is damages caused by tenants who have been the cause of chronic problems in a building and the landlord is unwilling to evict the tenants, or an owner who has a hot water tank that is well past normal life expectancy and is refusing to upgrade. Why should a landlord or owner who have failed to address a problem or a risk be exempted from the higher deductible? If your strata corporation is considering a bylaw that limits the amount an owner may have to pay for a deductible, obtain legal advice from a lawyer experienced with strata law and insurance specifically for strata corporations. Certain conditions within the bylaws may ensure your strata corporation is not exposed to claims caused by neglect or willful action or they could potentially limit your ability to recover the deductible. If there is a claim on the strata insurance resulting in a claim, the deductible is a common expense of the corporation. There are several options to recover/pay the amount. If an owner is responsible for the claim, hopefully the owner has insurance and their insurance will voluntarily cover the deductible amount; however, if that is not the case, the strata corporation pays the claim and then commences a claim through the courts or the Civil Resolution Tribunal to obtain an order for the payment of the deductible amount. If the owner is not responsible, the deductible is a common expense of the corporation and the strata corporation may pay the amount from the operating fund, the contingency reserve fund, or, the strata council, without the need for a 3/4 vote at a general meeting, may set a special levy for the deductible and apply that as an assessment to all strata lots based on unit entitlement. As we approach deductible amounts of 50, 100 or 250 thousand dollars,

this is the most likely scenario. This may also allow owners with insurance that include this coverage to claim their share of the deductible on their policies. Remember, even though the special levy does not require a 3/4, the council must still comply with the requirements of the *Act* and show the total amount of the levy, how it is calculated and each unit share, the purpose of the levy, and the due date for the levy.

Tony Gioventu, Executive Director CHOA

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