

Condo Smarts January 22, 2020

Insurance Bylaws

Dear Tony: Our strata corporation has consulted with a lawyer and our property manager and have been advised that if we approve a bylaw that limits the amount an owner would have to pay if they were responsible for a claim, it would be easier for the strata corporation to renew our insurance policy. The bylaw basically limits the amount to \$50,000 as we now have a \$250,000 deductible for water escape. This makes no sense to us however because the amount an owner would have to pay for the deductible if they caused a claim has nothing to do with the insurance policy. The strata corporation and the rest of the owners would still be required to pay the remaining \$200,000. How does this benefit anyone? Carmen R.

Dear Carmen: Bylaws that limit, restrict or qualify claims, coverage or limitations of liability are extremely complicated to administer. For example, while the Strata Property Act sets a threshold for corporations that enables them to recover the deductible if an owner is “responsible” for a claim, strata corporations are under the impression if they adopt a bylaw that qualifies this condition as negligence, it is easier to collect. Not so, the higher standards, definitions or thresholds will require a higher test in the courts or tribunal to obtain a successful judgement. A bylaw that limits an owner’s liability will impose a greater liability on the rest of the owners, even if they had nothing to do with the cause of the claim. Yes, deductibles are excessive, but the related risks the insurers are adopting may be equally high. At this time owners may be able to obtain insurance to cover high deductibles, but the rational question owners must discuss at your meeting is why they are shielding an owner from such a liability if the owner had caused the claim? Why should the remaining owners pay for a \$250,000 if someone has caused a claim as a result of failing to comply with the strata bylaws, maintaining their strata lot or appliances, or an action that caused the claim? Sadly, there will be owners who lose their homes as a result of high deductibles and claims. We have not identified any related benefits to renewing insurance or cost of policies if strata corporations adopt such bylaws. An insurance deductible as a result of a claim on your strata policy is a common expense of the strata corporation, and paid by the strata corporation until it is determined who is responsible for the claim and the amount is collected. A strata corporation is automatically authorized by the Act to pay a deductible from the contingency reserve fund, operating fund or directly special levy each owner for their share. Because insurance deductibles do not qualify for a lien priority on charges, it could be possible your strata may obtain a decision from the courts or the tribunal for a high deductible amount with no equity in the property. In the event of an order under such conditions for sale proceeding if the owner does not pay, and the strata requires an order for payment, the remaining owners may still be at risk of covering the amount. A word of caution, if a strata council or property manager indicate they have legal advice on a matter, it is beneficial to either have the lawyer attend the meeting or a copy of the written opinion on the proposed bylaw included with the notice. Managers and council members frequently wordsmith bylaws before they send out notice packages that were not the same advice provided.

Note for the Province Article to add: CHOA is hosting 2 public insurance Forums in Vancouver and New Westminster on February 11th and 13th from 7-9pm. To register email info@choa.bc.ca or call 604 515 9672. Space is limited.

Tony Gioventu, Executive Director CHOA

Sign up now for CHOA’s Spring 2020 seminars in your area. Course highlights include: 1) Risk Management & Maintenance 2) Insurance – How to Manage Increased Costs & Deductibles and 3) The BC Human Rights Code - Accommodating Occupants for Alterations and Bylaw Exemptions. Go to: <http://www.choa.bc.ca/seminars/>