

Condo Smarts March 10, 2020

Who is Control of Our Decisions?

Dear Tony: Our strata corporation has just renewed our insurance policy. As part of the renewal our increases were 150% for premiums, deductibles increased from \$25,000 to \$100,000, we have a loss limit now that covers only 35-million of our 55-million-dollar appraisal, and we have an earthquake deductible buy down from 15-10%. At our strata council meeting, which was 3 days after our renewal, the strata manager was explaining how they negotiated and worked with our insurance broker to obtain this coverage and this was the best they could manage with the current market. One of our council members, who has a background in construction questioned the ability and authority of the strata manager to negotiate the risks, limits and costs on our behalf. His comment which all of council agreed upon was, “we are paying the bills and assuming the risks, so why would you negotiate on our behalf without our input?”. This does raise a serious concern for our council. At what point is the strata manager required to come back to the strata council and owners to seek their approval? If they don’t and negotiate a condition that increases our risks or reduces our coverage, who is liable? CKG

Dear CKG: A strata management agreement is captured under what is commonly referred to as agency law. When you enter into such an agreement the agent is essentially acting as you, the corporation, subject to their service agreement and instructions given by the strata council. The direct supervisor is the strata council, not the owners of the corporation. The strata council is elected and act on behalf of the corporation to authorize contracts, manage budgets and approve fees, placement of insurance, bylaws enforcement, and general operations of the corporation. A strata corporation under the Strata Property Act is permitted to retain a strata management company, and may delegate a number of duties either through the service agreement or the resolutions of the council. In many strata management service agreements, you will find language that refers to the placement or renewal of insurance for the strata corporation. This generally delegates authority to the strata manager to work with the broker on your behalf and renew your insurance; however, as there is so much liability and cost associated with the renewal of the insurance policy, the strata manager/broker should be seeking instructions from the strata corporation before they negotiate different terms or conditions from the previous year’s policy. You are correct, your property, you pay, you make the decisions and you negotiate. When your strata corporation signs a strata management agreement, you have not surrendered any of your responsibility or authority. You have simply empowered an agent to act on your behalf at your instructions, and you as the council and corporation continue to be liable for the actions of the manager in the performance of their authorized duties. In this time of complicated insurance products and renewals, I encourage all strata councils to speak directly to their brokers well in advance of their renewals. Don’t leave this to the final days before your renewals, and if the broker is not responding, move to another broker. As the strata council you have the right to make decisions and negotiate. Look at the deductibles, your claims history, options that may be cost savings if they were deleted or reduced, the impact of loss limits and possible exclusions of components that are currently high risk because of a history of claims. If you are compromising your insurance coverage and not complying with the requirements of the Strata Property Act, talk to your lawyer and determine if there is any process possible to manage those risks.

Tony Gioventu, Executive Director CHOA

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