

Condo Smarts March 1-7, 2021

Who Decides if an Owner Should Pay the Deductible?

Dear Tony: Three years ago, my washing machine hose ruptured causing a flood in my unit and the two units below me. It was managed well by the strata insurance provider without any delays and as expected I was responsible for the deductible, which at the time was \$5,000. Six months ago, one of our council members had renovation done to her suite and her contractor punctured a water line resulting in damages to 5 units, and an insurance deductible of \$25,000; however, the strata council have paid the deductible out of the contingency fund and the newly elected strata council has discovered there was no effort to make the owner responsible as a result of her contractor causing the loss. This has raised a question we cannot find an answer. The Strata Property Act says the strata corporation may recover the deductible if the owner is responsible for the claim. So, we are a bit unclear on what “responsible” means, but more critically, how do strata councils apply this obligation to pay the deductible fairly against all owners, whether they are on council or not? Carla D.

Dear Carla: When there is a claim on the insurance policy of the strata corporation, the deductible portion is a common expense of the corporation. All owners pay either through the funds of the strata corporation from the contingency fund, operating fund or a special levy that may be issued by council as it does not require a 3/4 vote of the owners in this one circumstance. The requirement ensures the strata corporation repairs are conducted and the deductible is paid to the insurers. If an owner is responsible for the claim, the strata council then decides to send a notice of claim to the owner. In most situations the owner’s home insurance provider will cover the cost of the deductible. The value of the deductible pressured by the recent dramatic increases in deductible rates, will often determine whether homeowners have sufficient insurance coverage or have purchased insurance, but that is purely for their protection, and has no affect whether they are responsible. If the owner refuses to pay the claim personally or through their insurance provider, the strata council then decides on a collection proceeding. An application to the Civil Resolution Tribunal is sufficient to obtain a decision ordering the payment of the deductible. The decision may then be registered against the strata lot until the owner pays or the strata corporation seeks an enforcement order for payment. This part of the process is generally handled by your lawyer acting for the strata corporation. The best method of evaluating responsibility, is in understanding your responsibilities as a strata lot owner for the maintenance and repairs of your strata lot, any of your appliances and fixtures in the strata lot, those services that are part of your strata lot and not common property, the actions of your occupants, tenants, guests and in this case, contractors hired by the owner. For example, except for your personal property and improvements to your strata lot, if a common property pipe or common property building system fails, the claim is a common expense of the corporation and an owner is not responsible for the deductible. The decision of a strata council to proceed with collection is in most cases a bylaw enforcement issue. Your strata corporation has a registered bylaw that clearly states if an owner is responsible for the claim the strata corporation must recover the amount of the deductible from the owner. Insurance bylaws are common, and I would recommend strata corporations consider bylaws to address damages and insurance deductibles. The clarity and authority defined in the bylaws sets a common standard for strata councils and provides authority and support when a strata corporation is making an application to the CRT or the courts to recover costs. Your strata council has not reviewed your bylaws and have not applied the bylaws fairly. A council member who has an incident that results in an insurance claim where they may be responsible for the deductible, must not participate in the bylaw enforcement process. They would have a direct interest in the outcome of the decision and be in conflict of interest.

Tony Gioventu, Executive Director CHOA

Covid-19 Notice: As a precautionary measure to prevent the spread of COVID-19 CHOA staff are working remotely and our offices are temporarily closed. We understand these are challenging times for strata corporations and we are here to help. Even though CHOA advisors are working remotely we are only a phone call or email away and able to assist you with hosting meetings and notice preparation.

Tuesday Lunch & Learn Live with CHOA: CHOA is hosting a series of webinars once a week, for the next few months. Join us each Tuesday as we bring together industry experts to discuss the many issues affecting BC's strata community. For more information visit our website at: <https://www.choa.bc.ca/seminars/>