

Condo Smarts July 27, 2022

Who pays when the strata damages a unit?

Dear Tony: This situation must occur in every strata. An owner upstairs overflows their toilet, or there is a water stain indicating a leak, or a washing machine overflows, but where does the line get crossed when a strata corporation investigates a leak and causes damages to a strata lot? We have a wall that showed significant water damage to the base area. The strata called a restoration company to look at it, they cut open the wall and found there was a drain line that had become disconnected. The company resolved the problem and repaired the drywall. We heard nothing for 6 months and then the management company sent us a bill for \$2,800 claiming it was in our unit and below the strata insurance deductible, therefore, we must pay. We didn't cause the damage, we didn't order the construction, we didn't order the repairs. Why do we have to pay? Mitchell V.

Dear Mitchell: There is a liability condition for strata corporations known as above and below the deductible. Every owner and tenant is a named insured on a strata corporation policy. If a claim on the insurance is above the deductible amount, it is a claim on the strata policy, and the deductible is a common expense. That deductible may be the responsibility of an owner and may be recovered under certain circumstances. When the amount is below the deductible, and there is damage to a strata lot, the owner is responsible for the repairs and maintenance to the strata lot, and files a claim on their homeowner insurance; however, the costs associated with strata corporation repairs may be different. When there is a report of water escape or other conditions where the strata corporation orders repairs and the resulting repairs cause damages, the strata corporation is generally responsible for those costs. Basic rule here for common property and assets: the strata breaks, the strata pays. A recent decision in the Civil Resolution Tribunal affirms this obligation. *Naryan v. The Owners, Strata Plan BCS 3832 citing Manak (BCCRT 2020)*, "strata is responsible to repair damage intentionally caused to a SL when inspecting/repairing CP". While this may not apply to all circumstances and every condition, it is a general application where a strata corporation is required to investigate damages, with the result being demolition and repairs, the cost is the strata responsibility. The strata corporation will not be responsible for your personal property or any betterments such as hard wood flooring, upgraded carpets, tiling or cabinetry. Betterments remain the responsibility of each owner. Tribunal decisions are based on common law, recent decisions and more specifically the evidence presented in each application. While decisions provide an indication of outcomes under these principles, applications may result in a different outcome, based solely on the facts of that case. Go to civilresolutionbc.ca to search decisions.

Tony Gioventu, Executive Director CHOA

Registration opens soon for CHOA's Fall 2022 Education Program. Course highlights this season focus on Council Meetings, BC Human Rights Tribunal, The CRT, *The Accessibility Act* and Alterations. Go to: <https://choa.bc.ca/seminars/>

Kindly note CHOA is a member-based, non-profit association. If your strata is not currently a CHOA member please consider joining – membership details are posted on our website at: <https://www.choa.bc.ca/about-choa/join-choa/>

We bring together industry experts to discuss the many issues affecting BC's strata community. Click here for a link to our archived webinars: <https://choa.bc.ca/resources/webinars/>

COVID-19: To prevent the spread of COVID-19 CHOA staff may be working remotely. During this time we are online and available by phone and email to assist with your strata questions. Please stay safe and healthy.