

The new *Strata Property Act* is overwhelming. Each month we attempt to inform and educate you on different provisions and we hope this process is helpful. Following is bulletin #36. DO YOU REQUIRE BACK COPIES OF OUR FINANCIAL STATEMENT BULLETINS? IF SO, YOU MAY ACCESS THEM FROM THE NET. GO TO www.vancondo.com AND FOLLOW THE LINKS TO ARTICLES. If you have joined your strata council in recent months you should obtain a copy of previous bulletins as they are most useful. The content of these bulletins does not purport to offer legal opinions or advice. You should retain and consult with legal professionals.

FEATURES THIS MONTH

- Insurance
 - ◆ *Some Interesting Scenarios*
 - ◆ *You Be The Judge*

Bulletin #36

INSURANCE

Consider the following scenarios...

- (A) The Careless Occupant: In this strata lot resides a tenant who does not really "fit into" your strata corporation complex, which is well run, exudes pride of ownership and generally has a good reputation and market value. This particular tenant breaks all the rules, is frequently seen coming home intoxicated, drives through the parkade at excessive speeds and has a bad habit of smoking in his strata lot without due care and attention.

In fact, recently he created a situation which, fortunately, ended with little consequence in terms of life safety but he left a cigarette burning and then went out. The butt fell on the carpet and started a small fire but a neighbour smelled smoke and called the Fire Department who extinguished the fire in its early stage. No damage was done other than a burn hole in the carpet.

The non-resident owner of the strata lot wants the carpet replaced as a claim against the strata corporation's insurance policy. You are a council member in this strata corporation and your council is faced with the following questions:

1. Can the non-resident owner make this claim?
2. If so, and a claim is authorized by the insurance adjuster acting for the strata corporation's underwriter, who will pay the deductible of \$1,000?

What do you think is the answer to the first question insofar as the *Strata Property Act* ?

_____ No, the non-resident owner cannot make this claim since it is really a matter between landlord and tenant.

_____ No, because the carpet inside a strata lot has nothing to do with the common property of the strata corporation.

_____ No, because the tenant is an undesirable occupant who constantly creates problems for the strata council.

_____ No, because the tenant was clearly and obviously negligent in his conduct.

_____ No, because the owner, in this case a non-resident, should have his/her own insurance policy.

_____ All of the above.

_____ Yes to question #1.

- (B) The Elderly Couple: They are the nicest people in the strata corporation. Just an elderly couple who mind their own business, always pay their strata fees and special assessments on time even though they are on a fixed income. You wish you had more fine people like this living in your complex. One day, Mr. and Mrs. Elderly went out shopping after lunch. Unfortunately, Mr. Elderly left the kitchen tap running slowly and the stopper was in the sink, the water overflowed and by the time they got home, four hours later, there was a huge flood. Water had not only damaged their carpet but also it had seeped to two floors below damaging ceilings and walls. The water damage deductible in your strata corporation is \$5,000 and the total cost of restoration is \$4,500. Who will pay for this expense?

_____ Mr. and Mrs. Elderly, despite being so nice (as compared to that other tenant who caused the fire) were responsible and negligent.

_____ The strata corporation since it is responsible for insurance deductible expenses pursuant to Section 158 of the *Strata Property Act*.

- (C) The Moving Company: The strata lot owner, let's call her Martha Stewart, is redecorating her apartment and orders a wonderful selection of high end furniture. The furniture store hires a delivery company – a moving firm – to deliver all this fine furniture to Ms. Stewart's apartment and, of all things, they do it on a Sunday evening. Ms. Stewart did not anticipate that the elevator would have to be locked off so she did not make arrangements with VCS for elevator padding and, more importantly, the service key. The delivery guys did their best but had to jam the elevator door in the open position to prevent the door from constantly closing – especially against all that fine furniture. Unfortunately, the door is not designed to be jammed open and the electronics “blew” causing the elevator to malfunction. The elevator company had to be dispatched on Sunday evening and the cost to restore service was \$1,200.

Here are some questions:

- (1) Is this an insurable claim?

(2) If so, and the deductible is \$1,000, who will pay it?

(D) The Long-Awaited Earthquake: It finally happens – not the big one but it is 5.8 and does a lot of property damage. No one is killed or hurt but there is damage to the walls of the building, not only of common property but also inside strata lots. Ceilings are damaged, water pipes in the walls break and in some cases, kitchen cupboards are dislodged and end up on “jaunty” angles. Get the picture? Okay, who and how do we sort out this mess? The total damage is estimated at \$800,000. The insurance policy has a 10% deductible clause on earthquake coverage and in this case it amounts to \$1,000,000 since the property has an appraised value of \$10,000,000.

(1) Who will pay for the damages to common property?

(2) Who will pay for the damages to the strata lot interiors?

(E) The Plugged Deck Drain: Mr. Casual is a very pleasant and easy going kind of guy in the strata corporation but, despite repeated bulletins to the owners to make sure their patio and balcony deck drains are kept clear of leaves and debris, he just doesn't bother with it. In fact, his deck is actually a roof over another strata lot and it is registered as limited common property. LCP usually requires an owner to accept responsibility for repairs and maintenance of the area. Due to Mr. Casual's easy going, nonchalant attitude, he doesn't clean away the leaves around his drains on the patio deck, with the inevitable result that it floods, causing damage to his living room carpet and the ceiling of the strata lot below. This is a strata corporation where the water deductible is \$2,500 per occurrence per strata lot. The damage to Mr. Casual's unit is \$1,800 and the damage to the unit below is \$3,500.

Who will pay the \$1,800 and who will pay the \$2,500 deductible on the unit below?

Oh, one more thing we forgot to mention earlier. Mr. Casual is the council Treasurer.

How are you making out with the answers to these questions? Do you find yourself making judgements about the people involved? Does it influence your final decision whether the person is a good guy, bad guy, a fellow council member or whatever? Do the requirements of the *Strata Property Act* irritate you?

THE ANSWERS:

Well, first, what follows is not legal advice. VCS encourages you to consult with your lawyer for a legal opinion. Having said that, here is our opinion:

- (A) The Careless Occupant: Yes, he might be a jerk, he probably doesn't belong in your environment but it is an insurable situation and a claim against the policy is not only permissible but also mandatory. The strata council cannot deny an owner, in this case the non-resident owner, from enjoying the fruits of the insurance policy. An owner pays his/her strata fees as per the budget. That includes a portion for insurance premium – not just for the common property but for the entire building including strata lots. (Imagine for 10 seconds if insurance in a strata corporation is purchased separately for common property and each owner bought his or her own policy for the strata lot. Not workable, right?)

In this case the owner, irrespective of the personality or conduct of his tenant, has the right to utilize the policy. The carpet in the strata lot is part of the building and is, therefore, a legitimate item for a claim. As to the deductible, Section 158 of the *Strata Property Act* says that an insurance deductible is a common expense. If the strata council wants to sue the non-resident owner and/or his tenant for recovery, the *Act* permits this action, but in the meanwhile the strata corporation must pay the deductible. A bit irritating, wouldn't you say? But that is the law.

- (B) The Elderly Couple: Did you find yourself a little more forgiving because they're so nice and because we want to be kind to our elders? The answer is the same. It is a strata expense and you can sue them in court. Would a court find them negligent? Hmmm.
- (C) The Moving Company: So the strata corporation has an expense of \$1,200 to repair the elevator. First, is it an insurance claim at all? Maybe not. If someone spread graffiti on the property it would likely be called vandalism – which is covered by the policy. Does jamming the elevator door open constitute vandalism or a malicious act? Probably not. Insurance pays for resultant damage. A roof leaks, the ceiling below is damaged. The policy does not pay for repair to the roof, it only pays for the damage which results. Fixing the elevator door and its associated electronics – is that “resultant damage”? The answer might be “yes”. The door didn't just break down in the normal context of mechanical wear and tear. It broke down because something caused it to stop operating. There was a “sudden occurrence” (a term relied on by insurance adjusters) and that gave rise to damage – in this case an elevator that would no longer function. In this scenario there is a claim and the strata corporation must pay the deductible (as required by Section 158 of the *Act*). The insurance underwriter could seek to recover the expense (i.e., subrogate) from the moving company and/or the furniture store. The strata corporation could attempt to recover the deductible from the strata lot owner by an action in Small Claims Court. Would the strata have to prove that the owner was negligent?

- (D) Earthquakes: The short answer is that the deductible is paid by the strata corporation for the full amount of the damage – including common property and strata lots. As noted earlier in this bulletin, the entire property is insured by the strata corporation. Think of the strata corporation on day one of its existence – completely built but unoccupied. That’s essentially what is insured. So in an earthquake there will be damage to all property, i.e., common area hallways, piping and mechanical components and strata lot interiors. It is all one claim. Some strata lots may have no damage, some may have little damage, some may have lots of damage. It is all one “sudden occurrence”, one claim and one deductible. Who pays the deductible? Section 158 of the *Strata Property Act* says the strata corporation must treat deductibles as a common expense. If the strata corporation has money in its Contingency Reserve Fund, it can use that money. If there is not enough money in the reserve (which is likely to be the case) then a special levy has to be assessed on all the owners who would then contribute on a unit entitlement basis to the total amount of the damage, (not just for the damage within each strata lot on an owner by owner basis.) As an aside, we have not had any experience in this situation since strata corporations commenced in 1966. The next earthquake of significance will be an interesting exercise.
- (E) The Plugged Deck Drain: The same answer as before, i.e., the strata corporation must make an insurance claim and must pay the deductible. The fact that the deductible is \$2,500 and the expense in Mr. Casual’s unit is less than the deductible does not mean that no insurance claim exists. Insurance is insurance and it starts from the first dollar. Just because there is a deductible does not mean that no coverage is in place. The deductible is only a control mechanism initiated by the underwriter to limit its loss payouts.

Why did we mention the fact that Mr. Casual is the strata council Treasurer? It does not really make any difference to the topic of insurance per se but it does alert you to the frequent conflicts that arise in the administration of strata corporations. Our point is that whether you are dealing with a jerk, a nice, elderly couple or a fellow council member, you are bound by the law, not your subjective feelings about the people involved. It’s not always easy, as you well know.