



FEATURES THIS MONTH

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1. MORE INSURANCE WORRIES

Sorry if we seem a bit "alarmist" in this month's financial statement cover page material, but we truly believe that what you are about to read may represent one of the biggest challenges ever faced by strata corporations and council members. We are worried and we think you should know what might happen by the end of this year.

1. Your current broker may not renew your policy when it expires. Why? Because "capacity" has disappeared. Capacity - what is it? Let us start by using an example from a different industry - cosmetics. We recently read a promo brochure from the W television network and it had some little fill in bits of interest. With apologies to W, one fill in said:

"...most of the 60 - 70 brands of lipstick on the market come from the same four manufacturers."

Well, that's a good way of illustrating insurance capacity. There are dozens, hundreds of insurance agents - people you buy your car insurance from, your personal lines, and so on. But they in turn buy from a much smaller pool of brokers, who in turn buy from an even smaller pool of underwriters who in turn buy insurance for themselves from what is known essentially as the reinsurance and excess market.

At the end of this chain, there are not many companies that want to, or have the ability (i.e., adequate reserves) to sell you insurance coverage. So it is not just a matter of jumping around from one agent to another to get coverage. In fact, we have learned that the stratas that do in fact jump around one year to the next (i.e., "get us three quotes") are actually limiting their ability to get coverage.

If your current broker does not offer renewal terms at the end of this year, do not assume that other agents/brokers will welcome your business. It is not beyond the realm of possibility that some strata corporations could be uninsured on January 1, 2004.

2. Underwriters will be extremely selective in accepting renewal or new business. Heads up if your strata corporation:

- (a) is a leaky condo
- (b) has ongoing, repeat claims
- (c) has a high claims experience
- (d) does not have an adequate repair and maintenance program.

3. Be prepared for

(a) Higher premiums: We have suggested at least 15% over last year's premiums but we really do not know. It could be higher.

(b) Higher deductibles: Water claim deductibles could be in the \$5,000 to \$10,000 range, or set up on a "per strata lot" basis per incident. With all the fires in BC this past year, including two major condominium properties in the lower mainland, it is quite possible to see a significant increase from the current \$1,000 fire deductible on most policies.

(c) Loss limits: Say your strata corporation is appraised at \$10,000,000. A loss limit is set at \$8,000,000. You will be uninsured for the difference. And, no, it is not a matter of just calling another broker to buy the missing \$2,000,000. You will simply be uninsured.

Why is this happening? In part it has to do with 911 as well as other major catastrophes around the world in the last few years. In part it has to do with the insurance industry evolution. There are fewer and fewer underwriters as a result of globalization - i.e., acquisitions and mergers. Whenever this occurs the aggregate risk for the underwriters increases - thus reducing capacity. Always remember that insurance company shareholders get out of bed each morning with only one purpose - to make profit. It is not to make sure you have adequate coverage.

There is one last reason and it is compelling. In recent years, the underwriters have "mapped" B.C. by municipality and by street. They now have a seismic awareness which is balanced against property value which for them is risk. Just look at Vancouver (and area). Every year for the last ten years, the buildings kept sprouting but the land mass remained the same. The property value growth has been substantial. One good quake and imagine the cost. If you were selling insurance, would you carry the risk? And if you were an insurance company in the excess market, would you want to sell insurance policies to the insurance industry? Probably not.

Ouch! Let's see what happens in the next few months.

2. A DISASTER SCENARIO

A recent event in one of our strata corporations gives rise to this discussion. A bit doomsday in nature but perhaps worthy of reflection if only for a few moments. First, here is what happened on a recent weekend.

The highrise complex was the unfortunate recipient of a sewer backup. It was ugly and, without painting you the actual picture, take our word for it - it was ugly. Meters deep of "the stuff". Thanks to the municipality and thanks to an incompetent contractor hired by the municipality to install a new sewer line in the area, the work was not done properly and when the crew went home on Friday afternoon, the stage was set for a disaster. It flowed, from the basement level, up the stairwells, into the elevator, laundry room, emergency generator and the first few floors.

The VCS emergency line was called and a restoration contractor was dispatched. Either through incompetence or greed the emergency restoration contractor did not advise VCS of the magnitude of the problem for several hours which, of course, exacerbated the problem. Needless to say the residents were not too happy with all this. As it turned out several large crews were required to clean up the mess and the cost of repairing this incident is expected to exceed \$100,000. The strata corporation's insurance underwriter is now suing (subrogation) the municipality and the contractor for recovery of the costs to restore.

The question asked by the residents and council was why VCS did not appear on site? Well, it is a good question, but there is a good answer. VCS is not under contract to show up at such incidents. In some instances we do show up anyway but we do rely on the contractors we dispatch to report to us on such incidents if they are getting out of hand. In this case the contractor



repeatedly advised us that everything was under control. In fact, it was not but, of course, this only became apparent too late.

Why are we telling you this story? It is a good example of two things. The first is "expectations" of management and on this point our position is outlined above. The second thing is of more concern - what exactly would happen in the case of a major disaster? Can the management company and/or its selected contractors handle all incidents? Recently we witnessed the fires in Kelowna and the power blackout in Toronto. No doubt both those events caused grief and consternation for a wide range of condo owners. Were the management companies able to assist everyone? Did the strata agents show up at every building to observe, console and take notes? We do not know but we are finding out. Our guess is that "no" is the answer.

Management companies are essentially administrative bodies - mostly "pushing paper" or pounding away on computers. They are not equipped or trained to jump into their vehicles and attend critical zones of disaster. We are concerned, therefore, what might happen in the Vancouver area. The biggest worry, as we all know, is earthquake. Even a relatively small quake can do a lot of damage. But just imagine what might happen if it is a larger one. There will not be any hope of immediate response from management firms, contractors and insurance adjusters.

It is our view that strata corporations are not ready to handle the impact of a small to midsize earthquake. Every once in a while there is a flurry of activity on the topic, usually following a minor shake, but there is no permanent, reliable system or infrastructure to take charge. Do not take these observations to be criticisms. Far from it. We think that what is happening (or actually not happening) is understandable given the voluntary role of council members, the severe budget limits of strata corporations, the apathy of owners, the limited role of management firms and the mind boggling exercise of dealing with an event that may not happen for the next hundred years.

All of the above reflects on an earthquake of moderate magnitude such as the kind of thing we saw in San Francisco or Kobe. Now consider for a moment, a much larger scenario - an earthquake of such magnitude that the loss of life and property damage is beyond that scale. Assume that the management company is not available for several weeks or possibly months. It is, of course, inconceivable and certainly hard to plan for. Does anyone have an answer? Likely not and we will just have to face that disaster scenario if and when it happens.

On a less apocalyptic note, we bring to your attention some provisions of the Strata Property Act which you should know about in the event of a "manageable disaster scenario". We are primarily referring to earthquake, although another unfortunate but real possibility could be a major fire. In most cases, fire insurance deductibles are \$1,000 so covering that expense is no big deal. Many residents, however, would be displaced by a fire, meaning that they would have to find accommodation elsewhere. That could be with family or in a hotel. The strata corporation's insurance policy does not provide for such expenses. You will have to deal with immense pressure from owners/tenants to provide compensation. You should, therefore, consider an education program on this topic so that you minimize the pressure. Owners and tenants must be taught to buy their own "living expenses" policies.

Earthquake deductibles are huge. It was not so many years ago that deductibles were 5% (of the value of a building). Now they are 10% and, in fact, some of our clients are seeing 15%. We understand that 20% is quite possible in 2004. These deductibles are huge! Even at 10% or 15% most strata corporations will not be able to fund the deductible. The money will have to come

from the owners - by special levy. Here is what the Strata Property Act says about such deductibles:

158 Insurance Deductible

(3) Despite any other section of this Act or the regulations, strata corporation approval is not required for a special levy or for an expenditure from the contingency reserve fund to cover an insurance deductible required to be paid by the strata corporation to repair or replace damaged property, unless the strata corporation has decided not to repair or replace under section 159.

Clearly, what this means is that the strata council simply determines how much money it needs to repair/replace (after an earthquake) and the owners are informed of their special levy "just like that". No meeting, no vote. The problem is, however, that getting that money from the owners is not going to happen "just like that". Consider the outcry, the resistance, the inability to pay etc., etc. It could take months to raise the actual cash. We continue to urge strata councils to educate their ownerships and to build up the Contingency Reserve Fund.

In Section 158 (3) printed above, did you notice the reference to Section 159? ..."unless the strata corporation has decided not to repair or replace..." Here is what Section 159 (1) says:

The strata corporation may, by a resolution passed by a 3/4 vote at an annual or special general meeting held no later than 60 days after the receipt of the money referred to in section 156, decide not to repair or replace the damaged property. (Section 156 deals with Payment of Proceeds.)

What this means is that, instead of the process outlined to restore the property outlined in 158, the owners may wish to just take their money and run. This might very well be a practical solution in the event of a major earthquake loss. Whether or not the 3/4 vote can be obtained is another matter and that high threshold requirement may negate the value of this provision of the Act. Failure to achieve a 3/4 vote would mean that the owners would be obliged to pay their special levies but if people do not have the money, it might be months or even years before there are sufficient funds to rebuild.

In the event a 3/4 vote is achieved, Section 159 comes into play. It says:

(1) The strata corporation may, by a resolution passed by a 3/4 vote at an annual or special general meeting held no later than 60 days after the receipt of the money referred to in section 156, decide not to repair or replace the damaged property.

(2) Subject to section 160, if the strata corporation decides not to repair or replace the damaged property, the insurance trustee or the strata corporation that receives the payment under subsection (1) of this section holds the money and any interest on the money in trust for each person who has an interest in the money, including the holder of a registered charge, and

(a) must distribute the money according to each person's interest, or

(b) if an application is made under section 160, must distribute the money in accordance with the order made under that section.

Note the reference to Section 160. It is quite lengthy; therefore we are not reprinting it here. If you would like it, feel free to ask your strata agent for a copy.

The content of this article is a bit depressing, we admit. The scenario might not happen for a hundred years. On the other hand, it might be tomorrow.

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3. GROW OP ISSUES

In a recent bulletin we reported on an actual incident and alerted you to the legal concerns arising from that event. Now consider this one - another true story.

An owner arrived home after being away on a two-week vacation and had just settled down for the night when she heard water dripping. She called VCS for assistance and upon considering the symptoms at hand, a plumber was dispatched who arrived on site at about midnight. No one was home in the unit above, which was believed to be the source of the water leak which by now was increasing substantially. A locksmith was called.

Upon entering the unit, it was observed to be flooded wall to wall. A bedroom door was also locked - a bit unusual - and the locksmith opened it also. Alas, a grow-op was housed in the second bedroom and a water line had come loose, causing the flood. The police were called as was BC Hydro to untangle the mess of electrical wiring that had been piggy-backed onto the building's main electrical system.

This strata corporation has a water deductible of \$2,500 per strata lot. At least seven strata lots were affected; thus, the total expense will be substantial. Under Section 158 of the Strata Property Act the insurance deductible cost is a common expense and must be paid for by the strata corporation. The strata corporation does have the right to sue the tenant for recovery. Consider the cost and hassle this will entail.

And the best part of this story? The police did not charge the tenant with any criminal activity. The tenant was not home when they arrived; therefore, they were not able to lay charges.

In next month's newsletter we will explore Bylaw 7 of the Strata Property Act which reads as follows:

7. Permit entry to strata lot

(1) An owner, tenant, occupant or visitor must allow a person authorized by the strata corporation to enter the strata lot

(a) in an emergency, without notice, to ensure safety or prevent significant loss or damage, and



- (b) at a reasonable time, on 48 hours' written notice, to inspect, repair or maintain common property, common assets and any portions of a strata lot that are the responsibility of the strata corporation to repair and maintain under these bylaws or insure under section 149 of the Act.
- (2) The notice referred to in subsection (1) (b) must include the date and approximate time of entry, and the reason for entry.

Think about it. Should or could this be a solution to discovering grow-ops?