



## FEATURES THIS MONTH

1. “Rolling” Fines
2. Covering Your... Deductible

## NEED GOOD SITES FOR STRATA CORPORATION INFORMATION?

Here are some sites you can access:

### **Strata U. - Continuing Education Department web site links of interest:**

- Canadian Condominium Institute: <http://www.cci.ca>
- Condominium Home Owners Association: <http://www.choa.bc.ca/index.html>
- Clark, Wilson, Barristers & Solicitors: <http://www.cwilson.com/stratafaq>
- *Strata Property Act* information web site: [http://www.qp.gov.bc.ca/statreg/stat/S/98043\\_01.htm](http://www.qp.gov.bc.ca/statreg/stat/S/98043_01.htm)
- Vancouver Condominium Services: <http://www.vancondo.com>

## 1. “Rolling” Fines

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Exactly what is a “rolling” fine?

As you know the *Strata Property Act*, at Section 130, allows the strata corporation to levy fines on an owner or tenant. Section 132 requires the strata corporation to “set out in its bylaws” the maximum amount of fines but this maximum limit cannot exceed the maximum “set out in the regulations”. Regulation 7.1 states that the maximum is “\$200 for each contravention of a bylaw”. It also states that the “maximum frequency . . . is every 7 days”. This is what is generically called a “rolling” fine.

Not many typical bylaw violations by owners fall into this category but the most common one has to do with pet bylaw infractions and there is a huge heads up here in respect of continuing or “rolling” fines. A recent legal action ought to serve this discussion adequately.

A strata corporation with a very clear and precise no pets bylaw had to deal with an owner who maintained a pet (a small dog) in her unit in clear contravention of the bylaw. The strata council invoked its bylaw and levied a fine of \$200 every seven days, as permitted by the Act and the Regulation. The owner refused to remove the pet and the fines escalated to a total of \$10,400 for a one-year period. The owner removed the dog but refused to pay all the fines. The strata council sued the owner in Small Claims Court.

Legal counsel for the dog owner challenged the weekly (rolling) fines and advocated that at times during the year the dog was, in fact, not at the owner’s strata lot in the building. For those periods, he argued, the fines of \$200 per week would not apply. Further, he advocated that the proof of the dog’s residence (in contravention of the bylaw) lay with the strata council. In other words, he asked for evidence from the strata council to show conclusively that a \$200 fine for each of the 52 weeks was justified. Such evidence would have to be more than just belief by the strata council that the dog was in residence: it would have to be fully transparent and supported by hard facts.

The lawyer’s position was very astute and this is the lesson for strata councils and property managers. The levying of fines, especially when they are “rolling” fines, must be supported by



hard, indisputable evidence. Without it, winning a lawsuit to collect those fines would be very difficult.

In this case, a settlement was reached before the matter went to trial. Everybody won.

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By The Way...

May we take this opportunity to once again remind councils that no fines may be levied and added to an owner's account until the owner has first been notified and given an opportunity to have a hearing with the council. Only after this process has been followed can a fine be added to an owner's account. We have raised this issue previously in our bulletins but on a daily basis we receive instructions from councils to "levy a fine of \$50 on his or her account...." Such direction is in violation of the Act.

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## 2. Covering Your... Deductible

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We have written all manner of articles over the previous months on various topics related to insurance. It is an extremely important and multifaceted issue and is proving to continue to be topical with respect to both strata corporations in general and the impact to the individual owner specifically. With this information from the bulletins being shared with the strata councils and, in some instances, through our minute "blurbs" to the entire ownership, people are becoming more educated on the related issues and are asking important questions.

Some of our recent articles have focused on the importance of homeowner insurance so that the contents, betterments and improvements of an owner's strata lot are covered as the strata policy does not contemplate or provide coverage for these areas. Our strata agents have noticed lately that there are more and more calls from owners wanting to know what their (the strata



corporation's policy) insurance deductible is for water leaks. We love to get these questions as it means more and more owners are heeding the call and taking steps to purchase their own personal home insurance.

The calls with questions relate to the strata corporation's water damage deductible (which ranges anywhere from \$2,500 on the newer or very few/no water claim strata's to \$50,000 and more for buildings with significant water damage claim histories) are spurred on by the owner's insurer wanting to have the owner's coverage fit "hand in glove" with the strata policy. They are trying to ensure that the policy provides coverage (with its own related deductible) for the owner in the event that a water damage deductible is charged to the owner who is found to be negligent, at fault, or otherwise responsible. Apparently insurers are going out of their way to notify clients of the recent court decision supporting the position that insurance deductibles can successfully be charged back to an owner by strata corporations. While policies from different insurers are inherently different, it appears that basic or "standard" insurance covers a \$2,500 deductible and anything beyond that would be up to the owner to pay out of their pocket... unless of course that owner purchases additional insurance to cover the larger deductible.

On a related note, we have been advising councils for years that, as insurance policies carry higher and higher insurance deductibles, there is very often a case to be made for involving an insurance adjuster even when there is no actual insurance claim. While we used to see uninsured claims because the total loss was only

\$2,000 and the deductible was \$2,500 (and the related repairs fairly easily addressed by the agent and council), we are now seeing damages that are tens of thousands of dollars that still do not reach the higher deductibles. As most of you are aware, in cases where the loss amount exceeds the deductible, the insurance firm will assign an adjuster to handle the claim. With the higher deductibles, many claims may not reach the value of the deductible portion and, in these cases, an adjuster would not be assigned.

The concern with this scenario is that, in some cases, where severe damage has occurred but the value of the loss is less than the deductible, the strata will be left to settle the claim. As you can well imagine (and some of you unfortunately know through experience) managing an unexpected, emergency repair project involving multiple units for significant amounts of money is no small



matter. This can be a huge undertaking and there is a reason why the insurance adjustment industry exists.

An adjuster is a trained individual whose priority is to protect the underwriter which, in this scenario, is the strata corporation. While there is a cost involved in bringing an adjuster into the picture, it is a very wise move and saves time and money in the long run. The adjuster will handle the work required addressing the emergency and remedial repairs from start to finish, get competitive quotes where necessary, keep management and the strata council informed, assist with subrogation where possible and they will liaise with the effected owners/tenants as they would with an insured claim. As with anything in our business, communication between the parties involved is one of the most important factors in keeping the ship sailing in the right direction.

Please speak to your agent about the benefits of this type of program if you have not already proceeded along these lines in the past. Furthermore, we would be pleased to oblige if you wish to include any of the above information in your minutes or in a separate circular for the information of your ownership to continue encouraging they make proper home insurance arrangements.

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