

LOSS OR DAMAGE IN STRATA PROPERTIES: GENERAL GUIDELINES

Whether it's a kitchen fire, a burst pipe or overflowing washing machine, many people tend to ask "Who's fault is this?", when the initial question should be "Who insures the damaged property?".

In the case of strata corporations, the Strata Property Act in British Columbia clearly sets out the requirements with regards to purchasing insurance. The bottom line is that strata corporations must purchase insurance to full replacement cost on the product as delivered by the developer or general contractor at time of construction completion. This notably includes common property, common assets, buildings shown on the strata plan and original fixtures installed inside strata lots. However, one must also keep in mind that in the Act, the duty to insure differs from the duty to maintain and repair.

The Act does not require strata lot owners to buy insurance, but all prudent unit owners know personal insurance is essential to cover not only personal property, but also betterments and improvements to the strata lot, additional living expenses or rental income, personal liability and assessments, some made necessary by the application of an insurance deductible on the strata corporation's insurance policy.

In the event of loss or damage, the Strata Property Act in its entirety, specific strata by-laws and insurance policies may come into play to determine who pays for what, to which extent and who is ultimately responsible for the loss or damage.

Example 1:

A washing machine overflows in unit A; there is water damage to the source unit and unit B below. Water damage in unit A is limited to original linoleum and sub-floor only; water damage to unit B includes insulation, ceiling drywall and paint. Emergency work is authorized as soon as possible to minimize the damage and help prevent the development of mold. In this example all the water damaged property is insured under the strata insurance policy. The strata policy will pay for the loss or damage, subject to deductible. The deductible is a common expense, which the strata may recover from the unit owner responsible for the loss or damage.

In the event the loss or damage does not exceed the strata deductible, there is no duty on the strata corporation to repair or maintain within the strata lots; each strata lot owner is responsible for the loss or damage in his/her unit. Unit B owner may have an avenue for recovery from unit A owner, depending on circumstances.

Example 2:

A pipe bursts in a wall within a unit, there is resultant water damage to drywall and paint, original cabinets and upgraded flooring within this unit only. Emergency work is authorized as soon as possible to minimize the damage and help prevent the development of mold. The drywall and

paint, cabinets and value of original flooring (before upgrade) are insured under the strata corporation's policy, while the value of the upgraded flooring is insured by the unit owner's personal insurance. The strata policy will pay for the loss or damage to property insured, subject to deductible, while the unit owner's insurer will pay for the loss or damage to the improved flooring, subject to deductible. The strata deductible is a common expense, which the strata may recover from the unit owner responsible for the loss or damage.

In the event the loss or damage does not exceed the strata deductible, there is no duty on the strata corporation to repair or maintain within the strata lot; however, the unit owner involved may benefit from coverage from his/her personal insurer.

Example 3:

A pot is accidentally left unattended on a stovetop, a fire starts and spreads to the rest of the building. The source unit suffers extensive fire, smoke, soot and water damage while neighboring units are damaged by smoke, soot and water. Damaged units are no longer tenable and residents are forced to evacuate. The building is relatively new and no betterments or improvements are involved within the units. Emergency work is authorized as soon as possible to minimize the damage and help prevent the development of mold. The strata insurance policy will pay for the loss or damage to walls, ceilings, flooring, cabinets and the like, subject to deductible. Individual unit owners will rely on their personal insurer to pay for any loss or damage to personal property; additional living expenses or rental income losses incurred due to the evacuation will also be at the personal insurer's discretion, subject to deductible. The strata deductible is a common expense, which the strata may recover from the unit owner responsible for the loss or damage.

Example 4:

A plumber is hired by a unit owner to install a new sink with permission from strata council. The plumber forgets to turn the water off and there is water damage to the unit where he was working and other units below. Emergency work is authorized as soon as possible to minimize the damage and help prevent the development of mold. The water damage affects both strata insured property and betterments/improvements insured by the unit owners. Each insurer will pay for the loss or damage to the property they insure, subject to deductible. Once settlement is concluded, the property insurers turn their attention to the plumber and his liability insurer, looking to recover the amounts paid and their respective clients' deductibles.