

Unlocking the Mysteries of

# CONDOMINIUM INSURANCE

Each unit owner has specific insurance requirements which should be discussed with an insurance broker to ensure the right protection is in place.

## Who Is Responsible?

The Condominium Property Act (CPA) tells us that when a building is divided into units, the Corporation shall place and maintain insurance on the units (other than improvements made to the units by the owners), and the common property against loss resulting from destruction or damage caused by any peril prescribed by or otherwise required by the regulations to be insured against. By-laws of each individual Corporation reiterate the Act.

The CPA also states that if insurance is placed by the Corporation and an owner against the loss resulting from damage or destruction to the units or the common property:

- a. The Insurance placed by the Corporation is deemed to be first loss insurance, and

- b. The insurance placed by the owner of a unit in respect of the same property that is insured by the Corporation is deemed to be excess insurance

## Damage that Stems from Within the Unit – Who Is Responsible?

Legislation does not mention specifics of who is responsible if damage stems from within a unit, the legislation simply states that the Corporation is responsible to place and maintain insurance on all units against loss resulting from damage or destruction.

## Two Units Are Affected; Can They Sort It out Themselves?

Once again, the legislation is clear regarding who is responsible to insure the units, and which policy is first to respond if an owner has insured the same property.

## Can the Corporation Subrogate or Recover Costs of an Entire Loss from an Owner?

No. The most a board can do is recover the Corporation's deductible, if there are provisions in the by-laws that allow them to do so. Furthermore, there is a waiver of subrogation clause found in most by-laws. This is not the case with tenants as they are not owners within the Corporation.

## Insurance Claim vs. Non-Insurance Claim

If there is damage to a unit or multiple units, and damages are below the Corporation's deductible, who is responsible? When there is non-substantial damage to a unit, units or common property (less than 25% of the replacement value of all of the units and common property {note, this percentage may vary with each set of by-laws}), the Corporation in accordance with the Act and the Corporation's by-laws, has an obligation to repair promptly, using proceeds of insurance for that purpose. Damages may be under the Corporation's deductible, but that does not relieve the Corporation from responsibility for the damages, the deductible is merely the amount the Corporation pays – the amount not covered by insurance.

## Deductible Assessment

The board may have recourse to recover a portion of the damages. Depending on how the individual by-laws read, the board may be able to assess the Corporation's deductible back to an owner.

## Unit Owner Improvements and Betterments (I&B)

Responsibility for unit owner improvement & betterments is not determined by the Act, it is determined by the by-laws. Most insurance replacement cost appraisals specifically exclude unit owner betterments & improvements. If the by-laws require the Corporation to insure these then the Corporation must add an additional limit of insurance for these items.

## Negligence vs. Responsibility

When it comes to deductible assessment, the

majority of by-laws have the verbiage "act or omission". They will read something to the effect of:

"In the event an owner incurs or suffers damage or loss to a unit, units or common property that is covered or insured under any insurance policy of the Corporation, and such owner elects to pursue recovery of such loss or damage under any insurance policy of the Corporation, such owner shall be responsible for and pay the full amount of any deductible on such claim if, in the sole opinion of the board, such damage or loss was caused by or arose out of any act or omission by such owner..."

## What Does this Mean?

Depending on the verbiage in each individual set of by-laws, and how a particular loss occurred, will depend on whether or not the board can assess back the deductible. Negligence is hard to prove in the eyes of the courts. To establish negligence, the circumstances of the loss have to be very blunt.

## What Is Negligence?

A person has acted negligently if he or she has departed from the conduct expected of a reasonably prudent person acting under similar circumstances. Conduct must be judged in light of a person's actual knowledge and observations, because the reasonable person always takes this into account. For example, if there is a line leak from a fridge, over time, this is occurring without notice because the leak is either visible only behind the fridge or under the fridge, this may be happening without a person's actual knowledge and/or observation, and this type of incident would not be construed as being negligent. In the event a unit owner suffered damage to their unit as a result of a fridge line leak, and the Corporation's by-laws had the verbiage act or omission in the deductible assessment clause, the board would not be able to assess the deductible back to this owner.

## The Importance of Unit Owners' Personal Insurance

Unit owners, whether living in the unit or as an investor, should always make sure their personal assets and liabilities are adequately protected by their own personal insurance policy.

## A Typical Unit Owner's Policy Provides a Variety of Coverage

**Personal property:** In general terms, this coverage includes all the content items a unit owner brings into the unit or keeps in a storage locker on premises, such as furniture, electronics, clothing, etc. Most policies will also cover the personal

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property while it is temporarily off premises, while on vacation for example.

**Additional living expenses:** This coverage helps unit owners and their families deal with the extra expenses which can often result if the home is made unfit for occupancy due to an insured loss or damage. Whether it is a fire or significant water damage due to no fault of their own, unit owners may have to move out while their unit is being repaired. In the case of an investment unit, this coverage helps pay the owner's rental income loss due to the tenant moving out.

**Improvements & Betterments:** Many unit owners spend considerable money making the unit their own; old carpet is replaced with hardwood flooring, cabinets and counter tops are updated and fixtures modernized to the 21<sup>st</sup> century. The unit owner's personal insurance policy provides coverage for these items, if indicated by the Corporation's by-laws.

**Condominium deductible assessment:** More and more condominium corporations have by-laws in place to facilitate charging back their insurance deductible to the unit owner responsible for loss or damage. Condominium deductibles can be as low as \$2,500 and as high as \$500,000. Unit owners' personal policies cover this exposure to a specific limit; owners need to make sure their limit is adequate to reflect the Corporation's deductible should they be assessed.

**Personal Liability:** At home or pretty much anywhere in the world, unit owners' policies also provide comprehensive protection for claims against them for property damage and bodily injury.

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