

ALBERTA CONDO REGULATIONS - OVERVIEW OF INSURANCE PRESENTATION

- Condominium Property Act
 - Section 47(6) the Corporation's policy is Primary.
- January 1, 2020 Regulations:
 - Recovery of amount of deductible 62.4(1)
 - Standard insurable unit description process 61.2(1)
 - Repairs to units 62.2(1)
 - Urgent repairs by the corporation 62.3(1)
- Doctrine of Paramountcy
- Claims examples

CONDOMINIUM PROPERTY ACT

47 (1) The Corporation's insurance policy is required by the Condominium Property Act to insure: all units, other than unit owner improvements and betterments, common property, common assets and any other property both real and personal.

47(6) Notwithstanding the Insurance Act or any policy of insurance, if the insurance is placed by a corporation and an owner against the loss resulting from destruction of or damage 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.

CONDOMINIUM PROPERTY REGULATIONS

Insurance requirements imposed by corporation

60.2 A corporation may, by bylaw,

- (a) require owners to purchase insurance with respect to deductibles that may be payable to a corporation under section 62.4 in respect of a corporation's insurance policy
- (b) specify the particulars of insurance to be purchased for the purposes of clause (a), and
- (c) specify the proof an owner must provide to the corporation respecting the insurance purchased.

CONDOMINIUM PROPERTY REGULATIONS

- Regulations changes – January 1, 2020
- No longer rely on bylaws
- Only applies to: water, sewer back-up and all risk deductibles on Corporations policy
- Maximum recovery \$50,000
- Corporation's responsibilities when there is damage to property the Corporation is responsible to insure

- Corporation is responsible for the deductible in three instances:
 - Defect in the construction of the unit or exclusive use area
 - Damage attributable to an act or omission of the Corporation, Board member, employee
 - Normal structural deterioration of the common property, managed property or real property of Corp, other than property owner is responsible to repair or maintain
- Owner's insurance policy
- Legal Expense Insurance

CONDOMINIUM PROPERTY REGULATIONS

Who should insure Unit Owner Improvements and Betterments (I&B)?

- Current bylaw provisions determine who is responsible to insure unit owner improvements and betterments (I&B)
- Upgrades made to a Unit over and above the SIUD
- Upgrades to Unit only, does not apply to common element improvements
- By past or present owner(s)

Standard Insurable Unit Description (SIUD)

■ What is an SIUD:

- Provides clarification when there's damage as to who is responsible to repair/replace what property (ie. unit vs. I&B)
- Unit only
- How is a claim handled when a Corporation doesn't have a registered SIUD?
- Things for Boards' to consider:
 - Basements
 - What to do if the majority of units are renovated in an older property

CONDOMINIUM PROPERTY REGULATIONS

Items included in an SIUD:

- (a) Floor coverings, wall coverings and ceiling coverings;
- (b) Electrical lines and fixtures, including lighting fixtures;
- (c) Plumbing lines and fixtures;
- (d) Natural gas lines and fixtures;
- (e) Fixtures with respect to air exchange and temperature control;
- (f) Walls that do not form the unit's boundaries, and any windows and doors located in those walls
- (g) Cabinets and counter tops;
- (h) Non-chattel appliances.

CONDOMINIUM PROPERTY REGULATIONS

Repairs to units:

- Regulation changes – January 1, 2020
- Purpose – to provide clarification on who is responsible to repair/replace what property
- Urgent repairs – the Corporation can step in to make repairs:

- In the event the failure poses a safety risk;
- Repairs by owner not commenced within a reasonable amount of time;
- Corporation has provided reasonable notice

THE DOCTRINE OF PARAMOUNTCY

Where there is a conflict between the requirements or stipulations set out in the various documents affecting the condominium, these should be dealt with in the following descending order of authority:

- Condominium Property Act
- Condominium Property Regulation
- The Plan
- The By-Laws of the Condominium

It is also vital to be aware that a subordinate document cannot change a superior one (unless allowed) although in practice it is sometimes attempted.

CLAIMS EXAMPLES

CLAIMS EXAMPLE #1

Scenario:

- Townhouse style condominium – 16 units.
- Fridge line leak resulting in damage to the kitchen floor, living room floor, ceiling and walls in the basement. No damage to neighbouring units.
- Property was built in 1982.
- Owner responsible to insure I&B.
- SIUD indicates the following:
 - o Kitchen floors – vinyl roll
 - o Living room floors – builder grade carpet
 - o Ceiling – standard ceiling
 - o Drywall – standard gyproc
- Type of flooring in kitchen – ceramic tile
- Type of floor in living room – engineered hardwood
- Ceiling – standard
- Drywall - standard
- Total amount of damages \$42,000
- Total amount of damages attributed to I&B \$36,000
- Corporation's deductible \$25,000

Questions:

1. Can the Board recover anything from the Owner?
2. If yes, how much can the Board recover from the Owner?
3. What is the Corporation responsible for?
4. What is the Owner responsible for?
5. Who's responsible for the repairs?

ANSWER for CLAIMS EXAMPLE #1 – fridge line leak

Can the Board recover anything from the owner? **Yes.**

o Reg's 62.4 (2) – Subject to subsections (3) and (5) an owner, on demand by the corporation, is absolutely liable to the corporation for the amount of the deductible in the corporation's insurance claim for damage that originates in or from the owner's unit or an exclusive possession area assigned to the owner. **The Board can recover up to the deductible.**

o Corporation's deductible is \$25,000

o Owners are responsible for I&B, therefore **Corporation's portion is \$6,000 (\$42,000 - \$36,000)**

o What is the Corporation responsible for: **up to the SIUD, in this case \$6,000**

o What is the owner responsible for: **I&B - \$36,000**

o Who is responsible for the repairs? **Per 62.2(1) – Repairs to units – Corporation shall make repairs or arrange for and supervise repairs to a unit and fixtures and finishing in a unit after damage where the corporation is responsible for insuring the property affected by the damage. (2) A corporation is not responsible for making or arranging for repairs after damage where the damage is in respect of property that the corporation is not required to insure, including improvements made by an owner or to property covered by insurance specified by corporation bylaws as being the responsibility of an owner.**

CLAIMS EXAMPLE #2

Scenario:

- 4 storey, wood frame, apartment style condominium
- Improper disposal of a cigarette in a plant pot on the balcony by an owner
- Property was built in 2018
- Owner responsible to insure I&B.
- SIUD indicates the following:
 - o Kitchen floors – vinyl plank
 - o Living room floors – vinyl plank
 - o Ceiling – standard ceiling
 - o Drywall – standard gyproc
 - o Cabinetry – maple (bathroom & kitchen)
- Materials have not changed
- Total amount of damages \$15,000,000
- Total amount of damages attributed to I&B \$0
- Corporation's deductible \$10,000

Questions:

1. Can the Board assess the Corporation's deductible back to the owner?
2. Can the Board recover more than the deductible from an owner?
3. How much can the Board assess back to the owner?
4. Who is responsible to undertake the repairs?

ANSWER for CLAIMS EXAMPLE #2 – Improper disposal of a cigarette on a balcony by an owner

- o Can the Board assess the Corporations deductible back to the owner? – YES – 62.4 (2) - Reg's 62.4 (2) – Subject to subsections (3) and (5) an owner, on demand by the corporation, is absolutely liable to the corporation for the amount of the deductible in the corporation's insurance claim for damage that originates in or from the owner's unit or an exclusive possession area assigned to the owner. THE BOARD CAN RECOVER UP TO THE DEDUCTIBLE, maximum \$50,000.
- o Can the Board recover more than the deductible from an owner? NO
 - o Per the above clause, 62.4(2), the Board can only recover up to the Corporation's applicable deductible.
 - o All owners are insured's under the Corporation's policy:
 - o There is a waiver of subrogation in bylaws (in essence you can't sue yourself)
 - o Condominium legislation is a mechanism to protect all owners.
 - o If Boards could recover more than a deductible from an owner, and we have this scenario of a \$15mm loss due to improperly disposing a cigarette, most owners only have a \$1mm or \$2mm liability limit, this would leave a single owner having to pay \$13mm or \$14mm recovery – that would destroy a person.
- o How much can the Board Assess back to the Owner? – MAXIMUM \$10,000 (DEDUCTIBLE)
- o Who is responsible to undertake the repairs? As there are no I&B, the Corporation would be responsible for ALL repairs/replacement

CLAIMS EXAMPLE #3

Scenario:

- 24 storey high rise apartment style condominium
- Bathtub overflow by tenant on the 22nd floor
- Property was built in 2001
- Corporation responsible to insure I&B.
- SIUD indicates the following:
 - o Kitchen floors – vinyl roll
 - o Living room floors – builder grade carpet
 - o Ceiling – standard ceiling
 - o Drywall – standard gyproc

- o Cabinetry – oak (bathroom & kitchen)
- Unit floors – hardwood throughout
- Cabinetry – maple (kitchen & bathroom)
- Total amount of damages \$375,000
- Total amount of damages attributed to I&B \$275,000
- Corporation’s deductible \$100,000

Questions:

1. Can the Board assess the Corporation’s deductible back to the owner?
2. Can the Board recover more than the deductible from an owner?
3. Can the Board/Unit Owner recover anything from the tenant?
4. How much can the Board assess back to the owner?
5. Who’s responsible to handle the repairs?

ANSWER for CLAIMS EXAMPLE #3 – Bathtub overflow by tenant on 22nd floor

☑ Can the Board assess the Corporation’s deductible back to an owner? **YES**, this is why it’s so important for landlords of condominium units to have property insurance with condominium extensions (such as deductible assessment).

☑ Can the Board recover more than the deductible from an Owner? **Per the last example – NO However, limited to \$50,000.**

☑ Can the Board recover anything from the tenant? **YES. – Potentially!** Tenants do not have the same rights under the Corporation’s policy as Owners. The Corporation’s Insurer(s) can subrogate against a tenant, but they will typically only take on subrogation if the tenant has insurance.

If they have insurance, they can only subrogate up to the liability limit.

☑ Who’s responsible to handle the repairs? As discussed previously – **the CORPORATION.**

CLAIMS EXAMPLE #4

Scenario:

- Duplex style condominium
- Water damage to the interior of 4 units caused by a roof leak
- Property was built in 1995
- Owners responsible to insure I&B.
- SIUD indicates the following:
 - o Kitchen floors – vinyl roll
 - o Living room floors – builder grade carpet
 - o Ceiling – standard ceiling
 - o Drywall – standard gyproc
 - o Cabinetry – oak (bathroom & kitchen)

- Bathroom & kitchens – vinyl roll
- Living room, hallways & bedrooms - hardwood
- Cabinetry – oak (kitchen & bathroom)
- Total amount of damages \$100,000
- Total amount of damages attributed to I&B \$65,000
- Corporation’s deductible \$50,000

Questions:

1. What is the Corporation responsible for?
2. What are Owners responsible for?
3. Can the Board assess the deductible back to the owner(s)?
4. Who’s responsible to repair/replace damage?

ANSWER for CLAIMS EXAMPLE #4 – water damage to the interior of 4 units caused by a roof leak

☐ What is the Corporation responsible for? **The property they are required to insure (units, common property etc.)**

☐ What are Owners responsible for? **I&B**

☐ Can the Board assess the deductible back to the owner(s)? **NO – damages did not originate within the unit or an exclusive possession area.**

☐ Who’s responsible to repair/replace the damage? **CORPORATION is responsible for property up to the SIUD, OWNERS are responsible for I&B**