

Condo Smarts January 29, 2020

Paying for a Large Insurance Deductible

Dear Tony: Our strata has had a deductible of \$100,000 for several years due to a number of claims and the inability to approve a resolution to replace our piping. In November we had another claim over \$100,000. In one of your articles you indicated the strata corporation could levy that amount to the owners without approving a ¾ vote at a general meeting. Our property manager and president told the council we either had to pay this amount from our contingency or call a meeting, and they paid the amount from our contingency fund without a vote of the strata council. We are concerned about the significant reduction of our reserve funds, because we would not have any funds to pay for emergencies that are not insurable. Who has the authority to make these decisions? AJC.

Dear AJ: Decisions that relate to bylaw enforcement, major expenses, selection of contractors, when general meetings are called, the agenda and resolutions of general meetings, the recovery or back charging of damages and insurance deductibles, and when a strata decides to levy owners for an insurance deductible that is a common expense of the corporation, are all decisions of the strata council by majority vote. It is critical the decision is voted on and minuted as the decision will delegate authority to the strata manager to act on your instructions and in the event of an action to recover a deductible or proceed with further bylaw enforcement such as a tribunal or court application, the decision and minutes provide valuable evidence of the actions and authority of the strata council and the strata corporation. There is more than one benefit to the owners when you issue a special levy for an insurance deductible. In addition to reducing the pressure on your reserve fund and depleting your cash resources, owners are in a position to apply their share of the insurance deductible to their home owner policy if they qualify. This is one of the many reasons we recommend home owners purchase condo insurance. Unfortunately, we have created a culture in strata corporations where owners and tenants assume the strata corporation takes care of everything. In addition to neglecting their personal insurance obligations we see the same behaviour exhibited in use of energy. We still commonly hear from owners they use their gas fireplaces 24hrs a day to heat their units as the gas is paid by the strata, resulting in excessive energy consumption and fuel costs for strata corporations.

In your strata, the insurance claim was caused from a failed pipe, damaging 5 units, and the damages were \$138,000. The \$100,000 deductible applies as a common expense of all owners based on unit entitlement. Your options of payment are your operating fund, the contingency reserve fund or you may special levy owners directly. If a strata corporation does not have sufficient cash flow, they will have no choice and must levy the owners. The special levy of \$100,000 is approved by a resolution of the strata council at a council meeting. Like all levies there must be a due date for payment, the purpose of the levy (payment of an insurance deductible) and the method of calculating payments, which is unit entitlement, the same formula applied to all common expenses such as strata fees. The strata corporation/manager then manages a collection process like any special levy and owners may have liens applied to their units if they fail to pay the amount. Because this is a special levy, your strata corporation must also report this account separately as part of your fiscal year end reports. When in doubt of who has authority to make decisions, always err on the side of inclusion and first bring the matters to council.

Tony Gioventu, Executive Director CHOA

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