

Condo Smarts September 26 – October 1, 2020

Insuring Commercial Strata Lots

Dear Tony: I run a small retail business out of a commercial strata lot in downtown Kelowna. Our building is mixed use and divided into two sections between the residential and commercial units. We had a water claim in our building over the summer that affected several residential units and 2 commercial units including mine. The insurance claim covered the residential units and their interior finishing but did not cover our improvements of which we had invested a significant amount of money. We were of the understanding that the finishing within strata lots, whether they were commercial or residential were covered under the strata policy so we had not purchased any additional insurance and are now left with over \$75,000 in costs of restoration. Could you please explain exactly how strata corporation insurance works for sectioned strata corporations? Martin W.

Dear Martin: There is often confusion of the terms of the Strata Property Act which create misunderstandings around operations and liabilities for mixed use properties. Whether your strata lots are residential or non-residential (commercial) either in mixed use or as entire commercial entities, the Strata Property Act and Schedule Standard Bylaws and Strata Property Regulations apply. The term “tenant” that is used within the context of the Act applies both to residential tenants and lease hold or commercial tenants in the same fashion, with the exception a strata corporation cannot restrict the rental of commercial strata lots. Under the requirements of the Act, a strata corporation must insure for all original common property, assets and fixtures that were installed by the owner developer. This will basically include all the original finishing; however, the original finishing does not include lease hold improvements in commercial strata lots or improvements or betterments in residential strata lots. The leasehold improvements that you installed were not part of the original construction and not an insurable interest of the strata corporation. Review your lease hold agreement with the strata lot owner and consult your lawyer. Mixed use strata corporations that have also created sections are not “divided” by this action. The full operations of the strata corporation still require compliance with the Act and the bylaws of the corporation. The sections are created as legal entities in addition to the function of the corporation and generally carry the same obligations and duties as the corporation. While the corporation still maintains insurance for the entire building as originally constructed, betterments and lease hold improvements are the responsibility of each strata lot owner and leaseholder. In addition to the strata corporation requiring an annual general meeting, approval of budgets and election of a strata council, the sections must also meet these same conditions and depending on the section bylaws, select an executive strata council to manage the section operations. With two sections in addition to the strata corporation, there are basically 3 layers of functions every year.

It is always in the best interest of the sections and the lease holders to review their sections bylaws and the nature of the section to determine if the sections require additional insurance coverage for claims that may impact directors and officer liability, general liability for the section or certain types of businesses, additional coverage for assets purchased or owned by the section, and to inform the lease hold tenants of their obligations to insure their personal assets and any lease hold improvements. Strata corporations with sections created are often a complicated series of obligations and liabilities that require legal review of the general risks associated with the sections to determine if additional insurance coverage is required. Each section should consult an insurance broker with knowledge of strata corporations and sections, and review the sections bylaws as necessary to evaluate insurance needs. Whether it is a strata with sections, a commercial strata corporation, a residential bare land or residential detached strata, or a strata corporation as part of an Air Space Parcel agreement, I am surprised at how frequently the CHOA staff encounter strata corporations across BC that are not properly insured. There are often hidden obligations in easements, shared use agreements for facilities and obligations under Air Space Parcel agreements

that are overlooked and never addressed until a major incident occurs. Proactive engagement of your broker is the first step. Don't make any assumptions. Confirm all information in writing and consult with your lawyer to verify the insurance placed meets the needs of your type of strata lots and sections.

Tony Gioventu, Executive Director CHOA

Covid-19 Notice: As a precautionary measure to prevent the spread of COVID-19 CHOA staff are working remotely and our offices are temporarily closed. We understand these are challenging times for strata corporations and we are here to help. Even though CHOA advisors are working remotely we are only a phone call or email away and able to assist you with hosting meetings and notice preparation.

Tuesday Lunch & Learn Live with CHOA: CHOA is hosting a series of webinars once a week, for the next few months. Join us each Tuesday as we bring together industry experts to discuss the many issues affecting BC's strata community. For more information visit our website at: <https://www.choa.bc.ca/seminars/>