

INSURANCE IN A STRATA SETTING: AN OVERVIEW

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The strata corporation has certain essential duties under the *Act* to maintain common property, common facilities and assets of the strata corporation. These are fundamental duties, and, I perceive, their execution by the strata corporation is critical to the realization of the condominium concept - that is people living together in individually owned units within a common shell. The mix of personal fee simple title and co-operative living necessitates a vehicle by which maintenance and repairs of the common property will be undertaken and payment shared and forthcoming from the individual owners. The vehicle created by the *Act* is, of course, the strata corporation.

Royal Bank v. Holden 1996 CarswellBC 2536 (BCSC)

GOVERNANCE OF A STRATA CORPORATION

The *Strata Property Act* [SBC 1998] c. 43 (the "*Act*") is designed to "lay the foundation for a fair and workable system for the ownership and management of strata property in British Columbia" and sets out the essential duties, obligations and responsibilities inherent in the management of a strata corporation.

A strata corporation is "responsible for managing and maintaining the common property and common assets ... for the benefit of the owners" [s. 3]. In general, the powers and duties of a strata corporation must be exercised and performed by a council [s. 4]. In exercising and performing the duties of the strata corporation each council member must act honestly and in good faith with a view to the best interests of the strata corporation and exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances [s. 31].

A strata corporation must have bylaws re: "control, management, maintenance, use and enjoyment of strata lots, common property and common assets" [s. 119]. If bylaws are not registered then standard bylaws from the *Act* apply. A bylaw is not enforceable to the extent that it "contravenes [the] *Act*", the *Regulations*, the *Human Rights Code*, or any other enactment or law [s. 121(1)]

OWNERSHIP OF PROPERTY

Despite having the obligation to repair and maintain, the strata corporation does not own the common property or common assets, rather they are actually owned by the unit owners as "tenants in common" in proportionate shares [s. 66]. However, the *Act* deems the strata corporation to have an insurable interest in certain property including the common assets and common property [s. 153].

An individual unit owner of a strata lot owns the following:

- In his or her strata lot:
 - a) usually a strata lot's boundaries are at the center of walls, ceilings and floors, but these boundaries will be different if the strata plan shows a different boundary.
 - b) in a bare land strata plan, the strata lot will consist of the land and not the building situated on the strata lot; and,

- a share, as a tenant in common with other strata lot owners, of the common property and assets of the strata corporation based on their unit entitlement.

REPAIR OF PROPERTY

A strata corporation has the obligation to repair and maintain common assets and common property:

Responsibilities of strata corporation

3. Except as otherwise provided in this Act, the strata corporation is responsible for managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners.

The Act defines common assets and common property as:

“common asset” means

- (a) personal property held by or on behalf of a strata corporation, and
- (b) land held in the name of or on behalf of a strata corporation, that is
 - (i) not shown on the strata plan, or
 - (ii) shown as a strata lot on the strata plan;

...

“common property” means

- (a) that part of the land and buildings shown on a strata plan that is not part of a strata lot, and
- (b) pipes, wires, cables, chutes, ducts and other facilities for the passage or provision of water, sewage, drainage, gas, oil, electricity, telephone, radio, television, garbage, heating and cooling systems, or other similar services, if they are located
 - (i) within a floor, wall or ceiling that forms a boundary
 - (A) between a strata lot and another strata lot,
 - (B) between a strata lot and the common property, or
 - (C) between a strata lot or common property and another parcel of land, or
 - (ii) wholly or partially within a strata lot, if they are capable of being and intended to be used in connection with the enjoyment of another strata lot or the common property;

...

“limited common property” means common property designated for the exclusive use of the owners of one or more strata lots;

The standard bylaws contained in the Act provide that a unit owner has the responsibility to repair and maintain their strata lot as well as any limited common property they have the use of.

INSURANCE REQUIREMENTS

Part 9 of the *Act* in conjunction with the Regulations set out the type and amounts of insurance required to be obtained by a strata corporation.

Property Insurance

As the strata corporation does not actually own property, the *Act* gives them an insurable interest in any property required by the *Act* to be insured [s. 153].

Section 149(1) sets out the scope of insurance coverage required to be obtained by the strata corporation:

Property insurance required for strata corporation

149 (1) The strata corporation must obtain and maintain property insurance on

- (a) common property,
- (b) common assets,
- (c) buildings shown on the strata plan, and
- (d) fixtures built or installed on a strata lot, if the fixtures are built or installed by the owner developer as part of the original construction on the strata lot.

(2) For the purposes of subsection (1) (d) and section 152 (b), “fixtures” has the meaning set out in the regulations.

(3) Subsection (1) (d) does not apply to a bare land strata plan.

(4) The property insurance must

- (a) be on the basis of full replacement value, and
- (b) insure against major perils, as set out in the regulations, and any other perils specified in the bylaws.

Regulation 9.1(1) and (2) defines fixtures and major perils to mean:

(1) For the purposes of sections 149 (1) (d) and 152 (b) of the *Act*, “fixtures” means items attached to a building, including floor and wall coverings and electrical and plumbing fixtures, but does not include, if they can be removed without damage to the building, refrigerators, stoves, dishwashers, microwaves, washers, dryers or other items

(2) For the purposes of section 149 (4) (b) of the *Act*, “major perils” means the perils of fire, lightning, smoke, windstorm, hail, explosion, water escape, strikes, riots or civil commotion, impact by aircraft and vehicles, vandalism and malicious acts

Liability Insurance

Section 150(1) of the *Act* requires a strata corporation to obtain and maintain liability coverage as follows:

Liability insurance required for strata corporation

150 (1) The strata corporation must obtain and maintain liability insurance to insure the strata corporation against liability for property damage and bodily injury.

(2) The insurance must be of at least the amount required in the regulations.

By virtue of section 9.2 of the *Regulations*, a strata corporation must have at least \$2 million in liability insurance coverage.

Named Insureds

The *Act* provides that the named insureds in a strata corporation's insurance policy are deemed to be:

Named insureds

155 Despite the terms of the insurance policy, named insureds in a strata corporation's insurance policy include

(a) the strata corporation,

(b) the owners and tenants from time to time of the strata lots shown on the strata plan, and

(c) the persons who normally occupy the strata lots.

This has an impact on both the any potential subrogation and on the extent of coverage available under a liability policy. It is a long standing principle of insurance law that an insurer cannot subrogate as against its own insured. Accordingly, anyone who is a named insured by virtue of s. 155 of the *Act* is immune from an insurer's subrogated claim.

Errors and Omissions Insurance

Section 151 provides that a strata corporation may obtain E&O coverage for council members:

Errors and omissions insurance

151 The strata corporation may obtain and maintain errors and omissions insurance for council members against their liability and expenses for errors and omissions made in the exercise of their powers and performance of their duties as council members.

DEDUCTIBLES

The *Act* makes specific provisions for insurance deductibles as follows:

Insurance deductible

158 (1) Subject to the regulations, the payment of an insurance deductible in respect of a claim on the strata corporation's insurance is a common expense to be contributed to by means of strata fees calculated in accordance with section 99 (2) or 100 (1).

(2) Subsection (1) does not limit the capacity of the strata corporation to sue an owner in order to recover the deductible portion of an insurance claim if the owner is responsible for the loss or damage that gave rise to the claim.



(3) Despite any other section of this Act or the regulations, strata corporation approval is not required for a special levy or for an expenditure from the contingency reserve fund to cover an insurance deductible required to be paid by the strata corporation to repair or replace damaged property, unless the strata corporation has decided not to repair or replace under section 159.

According to the British Columbia Court in *The Owners, strata corporation VR 2673 v. Commissiona et al.* 2000 BCSC 1240 the Act does not prohibit lawsuits by a strata corporation to recover an insurance deductible from an owner and a lawsuit will be allowed to proceed where a strata corporation has a bylaw/rule authorizing such suits.

The wording of the Act permitting strata corporations to recover an insurance deductible from a “responsible” owner does not require that the owner be negligent or legally liable for the damage. Rather, a unit owner is “responsible” by virtue of their responsibility for what occurs within their unit: *Mari v. Strata Plan LMS 2835*, 2007 BCSC 740; *Wawanese Mutual Ins. Co. v. Keiran*, 2007 BCSC 727; *Strata corporation LMS 2723 v. Morrison*, 2012 BCPC 300.

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