



Explanation Note – Insurance Deductibles Bylaw

By James Davidson

Condominium Corporations must arrange insurance on their own behalf and on behalf of all owners. The insurance covers the common elements and also the units (not including betterments or improvements). In addition, the insurance is always subject to a deductible. The deductible is simply an amount of each loss which is not covered by the insurance.

The question is: When damage results from an insured event, who should pay the deductible?

Under the new *Condominium Act*, the general rule is that the deductible on the Corporation's policy is a common expense, which accordingly must be paid by the Condominium Corporation (and therefore shared by all owners) - except for damage caused by an owner or tenant to their own unit.

This is a big change to the law. Under the old Condominium Act, the situation in most condominiums was as follows:

- An owner was responsible for the deductible where the owner, or an occupant of the unit, or a guest or agent of the owner, caused damage to any part of the property.
- An owner was responsible for the deductible in the case of damage to the owner's unit caused by an accident.

Most condominium corporations and condominium owners thought that this made good sense, based upon the following reasoning:

- Owners should be responsible for all uninsured damage which they cause or which is caused by the occupants, guests or agents of the owner.
- Owners should be responsible for uninsured, accidental damage caused to the owner's unit. (Owners are responsible for their own units.)
- Owners can buy their own insurance covering these risks (i.e., the risks that the owner may be responsible for the deductible on the Corporation's policy). In fact, we have reviewed many condominium unit owner insurance policies and many such policies provide standard coverage for these risks. (Most unit policies include basic liability protection for the owner, as well as "additional" or "contingent" property insurance coverage for the owner's unit.)

In summary, unit owners can buy insurance covering these risks and many unit policies currently provide for such. Note that this is also consistent with the Guiding Agreement which applies to most insurance companies. In any event, each unit owner should confirm this with his or her own broker. (In some cases, the owner may have to pay a small additional premium to obtain this coverage.)

Again, however, we note the following: **If owners are generally paying for these insurance risks, it makes sense to utilize that insurance. This reduces the overall uninsured loss. This is possible only if owners are held responsible for the deductible.**

Under the new *Condominium Act*, these concepts can be retained only if the corporation passes a by-law for this purpose. That is the purpose of the proposed By-law.

The Bylaw says that owners are responsible for the deductible on the corporation's policy in the following circumstances:

- Where the owner, or an occupant of the owner's unit, or a guest or agent of the owner, causes damage to any part of the property.
- Where the damage is caused to the owner's unit by an accident. **Note, however, that the by-law can also say that owners will only be held responsible for accidental damage to their units if the source of the damage is also within that unit, if desired. This is an optional revision to the by-law.**

The By-law also says that the Corporation is responsible for the deductible if the Corporation causes the damage.