

## PUBLICATION

### WATER, WATER EVERYWHERE...NOW WHAT?

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People in Condominiums are often confused when a flood happens. Why does the Condominium Corporation have to get involved? Why isn't it up to that Owner alone to fix the problem and repair the damage?

Under section 47 of the *Condominium Property Act* (the "Act") a Condominium Corporation must place and maintain insurance against loss caused by any peril prescribed by the Regulation. Section 61 of the *Condominium Property Regulation* (the "Regulation") requires a Condominium Corporation insure for the "sudden and accidental escape of water or steam from within a plumbing, heating, sprinkler or air conditioning system or domestic appliance that is located within an insured building". A Condominium Corporation must insure not only the Common Property, but also the Units, and the fixtures and finishing contained therein.

Depending on your perspective, there is one good thing that came out of 2020 – the amendment to the *Act* and the *Regulations*. With this round of amendments came two welcome (or not so welcome depending on your perspective) additions that relate to floods in Condominium Units. First up, there is section 62.2 of *Regulation* which provides that,

A 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.

In legislation "shall" equals must, which means this isn't optional and the Condominium Corporation must handle the repairs even if the damage is isolated within a single Unit. Remember, though, that while a Condominium Corporation is responsible for insuring the Unit, it is not responsible for contents, personal effects or for providing replacement accommodation or covering lost revenue.

The Owner of a Unit is also an insured under the Corporation's policy of insurance. This means that the only amount potentially recoverable from an Owner (or the Owner's Insurer) is the amount of the Corporation's deductible. This then brings us to the other welcome addition, section 62.4 of the *Regulation*. Before the latest round of amendments, a Condominium Corporation could only recover the deductible from an Owner if specifically provided for in the Bylaws. Section 62.4 of the *Regulation* now codifies the Corporation's right of recovery, and allows for the possibility that a Condominium Corporation can recover even if the Bylaws are silent.

Under section 62.4 an Owner is absolutely liable for the deductible (up to a \$50,000 maximum) if the damage “originates in or from the owner’s unit or an exclusive possession area assigned to the owner”, so long as none of the exceptions found in (5) apply. The codification of the right of recovery does not make the Bylaws irrelevant. The Bylaws will determine how the Condominium Corporation can recover, and whether they are limited to a debt action or can recover the amount as a contribution levied against that Owner.

The Corporation’s obligation to respond is not contingent on an Owner being in good standing, but is an absolute obligation. It isn’t always fair but it is necessary. Should a water loss incident not be addressed properly, it could lead to rot, mold, and impact the structural integrity of the building. The Condominium Corporation needs to protect the other Owners and the building from the consequences that can result from a flood.

Truth be told, water loss remains a complicated and confusing area, and is not nearly as straight forward or simple as this article might make it seem. For further information about this or other issue relating to Condominium living, please contact the author or any member of the McLeod Law LLP Condominium Group and we’d be happy to help.