

## **PUBLICATION**

### **Floods in Condominium Units: Who handles the repair?**

*Stephanie D. Whyte*

July 28, 2015

**Floods in Condominium Units: Who handles the repair?**

People in Condominiums are often confused when it comes to water loss. Many don't understand what role the Corporation has or why they even need to be involved. If a flood occurs within a Condominium Unit 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 on the Units and on the Common Property against loss resulting from destruction or damage caused by any peril prescribed by the Regulations. Section 61 of the Regulation requires the 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". Note that the obligation to insure is with respect to the Unit and Common Property. The Corporation does not have an obligation to insure the contents of a Unit, the personal property of an Owner or to obtain or provide replacement accommodation or rental income insurance. None of those things are mandated by statute nor are they included under a standard Condominium Policy of Insurance.

With the obligation to insure comes the obligation to repair. When a loss occurs, under section 47(6) of the Act the Corporation's insurer is first loss insurance while an Owner's insurance is deemed to be excess insurance. The effect of this is that the Corporation and the Corporation's Insurer have the first and primary obligation to handle the repairs and to pay for the cost of that repair, even if the damage is isolated within a single Unit. If the loss is under the Corporation's deductible, the Corporation must handle the repairs and pay for the cost of repair directly.

When a flood occurs, the only amount that is potentially recoverable from an Owner (or the Owner's Insurer) is the amount of the Corporation's deductible. It is a general principle that the party with the obligation to carry insurance has the financial obligation for the deductible. It is possible, though, for the parties to assign responsibility through contract, namely the Bylaws. If the Bylaws are sufficient and the circumstances match, the Corporation may be able to charge the deductible to an Owner. If the Bylaws are silent no recovery is possible.

The Corporation's obligation to respond is not contingent on the affected Owner being in good standing or having insurance of their own, 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.

For further information about this or other issues relating to Condominium living, please contact the author, Stephanie Whyte at 403.254.3687 or any member of our Condominium Law Group.