*Cindi Marsden*

## STRATA CLAIMS:

# An Insurance Adjuster's Point of View

The *Strata Property Act* replaced the *Condominium Act* in 1998.

In the new Act, a number of changes altered the way we handle insurance claims, from the vantages of both the strata and the owners.

Typically, it's when a loss occurs that people really see what their insurance coverage provides. It is very important to address any shortfall or lapses in coverage ahead of time. In 95 percent or more of the claims we adjusters handle, the unit owners have no idea what the strata's deductible is. They are often unclear whose policy should respond to the losses, and at what point. And they are not alone.

When a loss occurs in a strata complex, a number of insurance policies may come into play to respond to the damages. There is an urgency to deal with mitigation of damages and restoration of property, which can be impeded by conflicting information at the outset. A rented condominium unit may very well have three insurers involved to respond to myriad classes of coverage that one loss may trigger.

Some leading case law has broadened the interpretations of relevant *Strata Property Act* sections. Regardless of the interpretations, a number of misconceptions prevail and can cause some frustration when handling claims.

**When a loss occurs in a strata complex, a number of insurance policies may come into play to respond to the damages.**

### Truths

1. Improvements made to the unit are insured under the personal policies of owners, whether or not they are made by the current owner or a previous owner. They are not insured by the strata corporation. (*Strata Property Act,* section 161)
2. Contingent coverage for damage to the building (not improvements) inside the insured unit, where such damages would not exceed the applicable strata deductible, is commonly, though not always, available by the owners, and can be limited.
3. Provisions for payment of assessments of a deductible made by the strata—where valid—is sometimes, though not always, available through the owners' policy.
4. Some unit-owner policies limit the coverage available for recovery of deductible assessments. Likewise, some bylaws restrict recoverability. Coverage for this is available only for insured losses as would be covered by the owner's policy. That can be at issue in cases where the strata's coverage is broader than the owner's—for instance, water entering through a roof.

Some owner policies do limit the amount recoverable by way of a strata deductible assessment, which should be a concern for owners who live in stratas that carry high deductibles.

Following are some commonly held myths that we adjusters face daily.

### Myth #1

**The strata policy does not cover damages within the walls of an individual unit.**

**False:** Section 149 of the Act requires that the strata insure the building, which includes all original fixtures installed by the developer within a unit.

### Myth #2

**Damages between owner-owner are not the responsibility of the strata and do not fall within the scope of coverage provided by the strata's policy.**

**False:** Section 149 requires that insurance be in force against loss or damage within a unit—any unit. The cause is irrelevant as long as it is a peril insured by the policy. The responsibility to maintain—and the responsibility to insure—are not synonymous.

### Myth #3

**Losses originating from nonoriginal fixtures are not covered by the strata's insurance.**

**False:** The insurance policy provides coverage arising out of causes/perils as discussed within the coverage. Whether or not the fixture or items giving rise to the claim are original to the development is irrelevant.

### Myth #4

**If a loss originated from Unit A, causing damage to Unit B, it is Unit A's responsibility to repair Unit B.**

**False:** If a loss falls under the scope of coverage provided by the strata's policy (that is, the property damaged is insured as original to the development), then the strata is required to address repairs under its policy. Should the loss be minor, such that it would not warrant a claim in view of the deductible, then it is the responsibility of the owner **whose unit is damaged** to report a claim to his or her insurers.

### Myth #5

**If an owner files a claim under his or her own policy for damages in his/her unit that originated from another unit, the owner can recover from the other owner.**

©iStockphoto.com/Mangostock

### False . . . and True:

An individual owner does not have section 158(2) available to recover his or her deductible in the way the strata does. If the cause of the loss was a **result of negligence** on the part of the source unit, the owner of the damaged unit (through his or her insurers) can recover/subrogate against the source unit upon settlement of the first party loss. In both cases, the payment from the source unit is **recovery-based**. It is a reimbursement.

With the widespread misperceptions about whose policy should respond, sadly it is often the owners—as laypersons—who are caught in the middle. In many cases, restoration contractors are caught in the crossfire because they have no clear guidance on where to send their billing for services.

It is essential that all insurers are notified promptly. Adjusters are capable of sorting out the coverages very quickly so that restoration is not delayed and claims progress. In fire and water situations, time is of the essence to mitigate the loss and control exposures to rot, mould, rodents, and so on.

From an underwriting perspective, it is also important for property managers and strata councils to communicate their coverages to the owners—particularly when there might be a higher-than-average deductible. That will help owners confirm that their own policies provide the necessary coverage before a loss occurs . . . not after. ▲

*This article is not intended to be complete in description of strata insurance. Please consult your insurance professional.*

**Cindi Marsden,** FCIP, CRM (Hons), is a Fellow Chartered Insurance Professional. She holds a Canadian Risk Management designation of the Global Risk Management Institute. Currently a company road adjuster who has been handling claims within the insurance industry since 1980, Cindi has handled both sides of strata claims for decades.

Telephone: 778 372-6148

# *Civil Resolution Tribunal Act*

*Tony Gioventu, Executive Director of CHOA BC (Condominium Home Owners Association)*

**In the strata corporation industry, some disputes are perceived as trivial in nature.**

They cannot be trivialized and ignored because they frequently have such a significant impact on property use, compliance with legislation, and the overall well-being of a strata community.

In Spring 2013, the provincial government introduced Bill 44, the *Civil Resolution Tribunal Act*, which will be brought into effect over the coming years. The mandate is to deliver dispute-resolution services that are accessible, timely, economical, informal, and flexible. While the principles of fairness and law will be applied, the obligation will be to recognize the continuing relationships between and among parties after a tribunal proceeding is concluded.

The tribunal will have the authority to award settlements for costs and the ability to order the enforcement of relevant legislation and local governance. Cheryl Vickers is the interim Chair; several working committees on all facets of the dispute process will help develop frameworks for the drafting of regulations, rules, and operations of the tribunal system. By 2014–2015, the first tribunal proceedings should be commencing. ▲