

Repairing Damage in a Strata Lot When the Cost is Less Than the Deductible

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An area that is very confusing for strata councils is determining who is responsible to repair a strata lot that has been damaged when the strata corporation's insurance company is not involved. Where an insurance claim is made, the strata corporation will pay the deductible and the insurance company will arrange for the repair. However, when the cost of the repair is less than the deductible and no insurance claim is made, there is often uncertainty about who is responsible to carry out the repair.

Although we can imagine any number of scenarios where a strata lot may be damaged, the answer is actually quite simple. The responsibility for repair is determined by the strata corporation's bylaws.

When a strata lot is damaged, if the cost of the repair is less than the amount of the deductible and, as a result, an insurance claim is not made by the strata corporation, the responsibility for repair is not related to the cause of the damage. Rather, the party who is responsible for the repair is the party who is identified as having that responsibility in the strata corporation's bylaws. A strata corporation is responsible to repair common property and, generally speaking, owners are responsible to repair their strata lot. The responsibility to repair is not affected by the reason why the repair is necessary. In all cases it is necessary to review the strata corporation's bylaws to determine who is responsible to carry out the repair.

In understanding the responsibility for repair, it is helpful to distinguish between responsibility to insure and responsibility to repair.

The strata corporation is responsible to insure the common property, and, other than in a bare land strata development, the buildings and all fixtures installed by the developer in a strata lot. The strata corporation's insurance would therefore cover, in addition to common property, the repair of floors, walls, ceilings, and original cupboards, counters, sinks, toilets, etc. within a strata lot. If any of these items are damaged by a peril for which the strata corporation has insurance, such as water escape or fire, and if a claim is made on the strata corporation's insurance policy, the repairs are carried out and paid for as a consequence of the strata corporation's insurance policy. A claim will only be made on the strata corporation's insurance policy in situations where the cost to repair the damage is greater than the amount of the deductible.

In circumstances where the total cost of the repair is below the strata corporation's deductible, the strata corporation's insurance will not be involved and it is then necessary to review the strata corporation's bylaws to identify what the owners, and the strata corporation must repair.

Under the Standard Bylaws of the *Strata Property Act* (the "SPA"), bylaw 2 requires an owner to repair and maintain their strata lot other than repair and maintenance taken on by the strata corporation. With respect to the strata lot, the strata corporation's obligation is addressed in bylaw 8 and is limited to portions of a strata lot that comprise the structure or exterior of the building, chimneys, stairs and balconies and other things attached to the exterior, doors, windows and skylights on the exterior, and fences, railings and similar structures that enclose patios and

balconies. The obligation of the strata corporation to repair a strata lot as set out in bylaw 8 does not include responsibility to repair items such as floors, walls, ceilings, cupboards, counters and other such fixtures contained within a strata lot. As a result an owner must repair these items. Even though items such as floors, walls, ceilings, and original fixtures are insured by the strata corporation's insurance and would be repaired as a result of the insurance if an insurance claim was made, if there is no insurance claim the responsibility to repair does not fall to the strata corporation but rather, is an owner's responsibility assuming the strata corporation is governed by bylaw 2 in the Standard Bylaws, or a similar bylaw.

To illustrate, if a wall within a strata lot is damaged, an original cupboard door falls off, or the original kitchen tap begins to drip, an owner knows that the owner is responsible for the repair. An owner would not expect that the strata corporation would carry out the repair, even though these items are covered by the strata corporation's insurance policy. The responsibility for repair arises as a result of the bylaws. If a repair to these items is required as a consequence of a broken common property pipe, an overflowing washing machine in the owner's strata lot, or an overflowing bath tub from the strata lot above, if no claim is made on the strata corporation's insurance, the owner remains responsible to repair these items for the same reason - because the responsibility is determined by the bylaws. The fact that the cause of the damage originated in another strata lot or common property does not change the fact that the owner is responsible to repair their strata lot and the items within it. Thus, in all cases where a strata lot suffers damage and there is no involvement by the strata corporation's insurer, the responsibility for repair is determined by the bylaws of the strata corporation which in most cases will require the owner to repair and maintain the interior of their strata lot.

The Standard Bylaws of the SPA, as do most strata corporation's bylaws, require the strata corporation to repair and maintain the structure of the building. Thus

the strata corporation is obligated to ensure that the structure is sound and, in the case of water damage, dry.

Where there has been water escape, the strata manager or strata council member often get the initial call since, in many cases, the source of the water is unknown. It is therefore necessary for the strata manager or strata council member to identify the source of the water escape even if the amount of damage appears small and the only property that is damaged is portions of the strata lot. If the water escape is determined to be coming from a common property pipe, the strata corporation must repair the common property. It is also necessary for the strata corporation to ensure that the structure is dry. For this reason, when there has been water escape, it is usually the strata corporation that carries out the initial remediation. Once that work is completed, the strata corporation's only responsibility is to repair and maintain common property and any new damage caused by the strata corporation to the strata lot in order to repair common property. Unless the bylaws specifically require a strata corporation to repair and maintain a strata lot, the strata corporation has no obligation and in fact no right to enter into the repairs within a strata lot.

Many owners and some insurance companies and adjusters have disagreed with this conclusion particularly if the owner has not caused the damage. In such cases, because the owner is an "innocent victim", there is often a view that someone else, such as the strata corporation, should carry out the repair. Additionally, insurance companies and adjusters often get confused by the fact that "original fixtures" may be damaged which, in their view, means the strata corporation must carry out the repair. However, the fact that the owner may be an innocent victim or the fact that the items needing repair are original fixtures does not change the responsibility for repair as determined by the bylaws. It may be challenging for strata council members to explain to owners, and their insurance companies and adjusters that the strata

corporation will not repair damage occurring with the strata lot, however, once all parties understand that the responsibility to carry out repair is determined by the strata corporation's bylaws, and the bylaws are closely examined, the explanation should become easier.

An owner who is an innocent victim should be advised to seek legal advice if they wish to recover the repair costs from the owner who caused the damage.

If a strata corporation has historically repaired the interior of strata lots in cases where the cost of the repair was below the deductible, and now wishes to alter its practice, the strata council should ensure that the owners are appropriately notified of the change in policy. If a strata corporation has carried out such repair on numerous occasions, and then, on the next occasion of damage refuses to carry out the repair, the strata corporation may be accused of acting in a manner that is significantly unfair to the owner who suffered the recent damage. Because the strata corporation paid for the repair for other owners, it is reasonable for owners to continue to believe that their damage will also be repaired by the strata corporation. Thus, if a strata corporation intends to change its practice, it should advise the owners, in writing, of the change. The information can appear in the strata council meeting minutes, a notice can be sent to all owners, and the matter can be discussed and recorded in the minutes of the annual general meeting when the topic of the strata corporation's insurance is discussed. In addition to notifying owners about the change in practice, the strata council may wish to encourage owners to speak with their insurer about obtaining insurance that will protect them in the event of damage to their strata lot that will not be covered by the strata corporation's insurance policy.