

HANDLING UNINSURED CLAIMS WITHIN A STRATA CORPORATION

by Allyson Baker

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One of the most common questions that we get asked as lawyers to strata corporations is who is responsible to pay for repair and replacement costs for damaged property when the cost to repair or replace is below the deductible on the policy of insurance taken out by the strata corporation under section 149 of the Act or is excluded from coverage for some other reason. The short answer is: *if there is no insurance coverage, responsibility for the repair or replacement falls to the party (be it the strata corporation, a separate section or an owner) that is ordinarily responsible for the repair and maintenance of the damaged property under the strata corporation's bylaws.*

In general, the strata corporation has no legal obligation to conduct repairs to any strata lot that has suffered damage that is not insured under the strata corporation's insurance policy in the absence of an express bylaw requiring it to do so or damage deliberately caused by the strata corporation to the owner's strata lot while repairing the common property that is the source of the leak. For example, if the strata corporation must cut a hole into the drywall of a strata lot to gain access to a leaking pipe, the strata corporation will typically be required, based on decisions from the BC Civil Resolution Tribunal, required to repair the drywall that has been damaged to facilitate access to a paint-ready state.

Further, in the absence of negligence on the part of the strata corporation in repairing and maintaining common property or any other items that form part of the strata corporation's repair and maintenance obligations under the bylaws, the strata corporation has no obligation to indemnify the owner for or contribute to costs incurred by the owner in repairing the owner's strata lot.

This article will work through some common scenarios to identify responsibility for the repair or replacement. For the purposes of this article, the reader should assume that Strata Plan XYZ 007 has the standard bylaws, including Standard Bylaws 2 and 8ⁱ, and that the strata corporation's insurance policy has an insurance deductible of \$5,000 for water damage claims.

Scenario 1

The bathtub in strata lot 10 overflows when left running and unattended by a resident, resulting in water damage to the strata lot below. The cost of repairing the damage to strata lot below, strata lot 5 (which has not had any alterations), is \$4,000. The damage to strata lot 5 consists of water-soaked carpets and ceiling drywall.

As the cost to repair strata lot 5 does not exceed the insurance deductible, this is not an insured claim. As a result, we look to the bylaws to determine who is responsible for addressing the carpets and ceiling drywall. Standard Bylaw 2(1) provides that an owner is responsible for the repair and maintenance of their strata lot, other than repair and maintenance that is the responsibility of the strata corporation under the bylaws. The items that the strata corporation is responsible to repair within a strata lot are identified in Standard Bylaw 8(d) – these items do not include the carpets or the ceiling drywall.

As a result, it is the owner of strata lot 5 who is responsible for carrying out and paying for the work necessary to address the water-soaked carpets and ceiling drywall, and for paying for all of the costs associated with the repair work. The strata corporation has no obligation to become involved in the

repair of strata lot 10, whether in respect of undertaking the repair work or paying for the cost of the repairs.

The owner of strata lot 5 may have a claim against the owner of strata lot 10 for the damage to strata lot 5. However, that is not a matter for the strata corporation as the Strata Property Act places no obligation on the strata corporation to advance claims for one owner against another owner.

Scenario 2

A water supply pipe that is located in the ceiling above strata lot 107 suddenly breaks, causing water damage to the strata lot. The cost of repairing the damage to strata lot 107 (which has not had any alterations) is \$4,000. The damage to strata lot 107 consists of water-soaked carpets and ceiling drywall. The strata corporation has to cut a hole in the ceiling of strata lot 107 to gain access to the broken pipe in order to repair it.

As the water supply line forms part of the common property of the strata corporation (see section 1(1)(b)(i)(A) of the definition)ⁱⁱ, the strata corporation is responsible for the repair and maintenance of the water supply line. As part of that repair obligation, the strata corporation is responsible to reinstate the ceiling to a paint-ready state where it cut into the ceiling to gain access to the broken pipe.

However, as with Scenario 1, the water-damaged property does not fall within the strata corporation's repair and maintenance responsibilities under Standard Bylaw 8(d). As a result, it is the owner of strata lot 107 who is responsible for carrying out and paying for the work necessary to address the water-soaked carpets and ceiling drywall, and for paying for all of the costs associated with the repair work. The strata corporation has no obligation to become involved in the repair of the strata lot 107, whether in respect of undertaking the repair work or paying for the cost of the repairs.

The strata corporation would only be liable to indemnify the owner of strata lot 107 for the cost to repair if the strata corporation has been negligent in repairing and maintaining the water supply line.

Scenario 3

A water supply pipe that is located in the ceiling above strata lot 42 has pinholes and slowly leaks, causing water damage to the strata lot. The cost of repairing the damage to strata lot 42 (which has not had any alterations) is \$4,000. The damage to strata lot 42 consists of water-soaked carpets and ceiling drywall. The strata council was not aware of a pinhole leak problem in any of the water supply pipes in the building prior to the leaks into strata lot 42. The strata corporation has to cut a hole in the ceiling of strata lot 42 to gain access to the broken pipe in order to repair it.

The fact that the water damage was caused by a slow water leak, instead of a sudden break, does not change the allocation of responsibility for the necessary repair work: the strata corporation is responsible for repairing the water supply line while the owner of strata lot 42 is responsible for repair of the water-damaged property in their strata lot. As part of that repair obligation, the strata corporation is responsible to reinstate the ceiling to a paint-ready state where it cut into the ceiling to gain access to the leaking water supply pipe.

Beyond the repair of the ceiling to the extent of the hole cut into the ceiling to facilitate access to the leaking pipe, the strata corporation has no obligation to become involved in the repair of the strata lot 42, whether in respect of undertaking the repair work or paying for the cost of the repairs.

The strata corporation would only be liable to indemnify the owner of strata lot 42 for the cost to repair if the strata corporation has been negligent in repairing and maintaining the water supply line.

Scenario 4

A water supply pipe that is located in the ceiling above strata lot 52 has pinholes and slowly leaks, causing water damage to the strata lot. The cost of repairing the damage to strata lot 52 (which has not had any alterations) is \$4,000. The damage to strata lot 52 consists of water-soaked carpets and ceiling drywall. This is the fourth strata lot in the building damaged by pinhole leaks.

The strata corporation received a report from a consultant two years ago, advising that the plumbing in the building needs to be replaced because of a systemic problem with pinholes. The owners have been asked to approve a special levy for the plumbing replacement work but two attempts to pass the necessary $\frac{3}{4}$ vote resolution have failed.

In this scenario, there is a reasonable likelihood that a court would find the strata corporation negligent in discharging its duty to repair and maintain common property as a result of the failure of the owners to approve the $\frac{3}{4}$ vote resolution to raise the special levy funds. However, the fact that the strata corporation *may* have been negligent does not mean that the strata corporation must repair the owner's strata lot – only that the owner is entitled to advance a claim against the strata corporation for indemnity for the costs that the owner incurs repairing their strata lot as a result of the strata corporation's negligence.

Charging back costs incurred by the strata corporation

When a water leak arises, it is not always immediately obvious as to the source of the water leak or whether the claim will be covered under the strata corporation's insurance policy. As well, there may be more than one strata lot, plus common property, affected by the water leak. In any of these cases, it will often be the strata corporation that initiates identification of the source of the leak, emergency response work and repair of property. Once the source of the leak and the scope of the repair has been identified, the strata corporation will often proceed to incur the repair costs by directing that work be undertaken, without regard for whether the strata corporation actually has to undertake the work – often on the misapprehension that it can just charge back expenses to owners where the council feels appropriate.

Based on decisions released to date by the courts and more recently the BC Civil Resolution Tribunal, strata corporations are strongly recommended to adopt bylaws to permit the strata corporation to charge back any costs incurred to, as appropriate, the strata lot in which the water leak arose and/or the strata lot affected by the water leak. In the absence of such a "charge back" or "indemnity" bylaw, a strata corporation may not be able to recover back repair costs (including investigation costs) from an owner – even where the strata corporation had no legal obligation to undertake the work. Strata corporations that already have such bylaws should have them reviewed by legal counsel on a regular basis as the law in this area continues to develop.

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ⁱ Standard Bylaws 2 and 8 of the *Strata Property Act* state:

- 2(1) An owner must repair and maintain the owner's strata lot, except for repair and maintenance that is the responsibility of the strata corporation under these bylaws.
- (2) An owner who has the use of limited common property must repair and maintain it, except for repair and maintenance that is the responsibility of the strata corporation under these bylaws.
- 8 The strata corporation must repair and maintain all of the following:
- (a) common assets of the strata corporation;
 - (b) common property that has not been designated as limited common property;
 - (c) limited common property, but the duty to repair and maintain it is restricted to
 - (i) repair and maintenance that in the ordinary course of events occurs less often than once a year, and
 - (ii) the following, no matter how often the repair or maintenance ordinarily occurs:
 - (A) the structure of a building;
 - (B) the exterior of a building;
 - (C) chimneys, stairs, balconies and other things attached to the exterior of a building;
 - (D) doors, windows and skylights on the exterior of a building or that front on the common property;
 - (E) fences, railings and similar structures that enclose patios, balconies and yards;
 - (d) a strata lot in a strata plan that is not a bare land strata plan, but the duty to repair and maintain it is restricted to
 - (i) the structure of a building,
 - (ii) the exterior of a building,
 - (iii) chimneys, stairs, balconies and other things attached to the exterior of a building,
 - (iv) doors, windows and skylights on the exterior of a building or that front on the common property, and
 - (v) fences, railings and similar structures that enclose patios, balconies and yards.

ⁱⁱ Section 1(1) of the Act defines "common property" as follows:

"**common property**" means

- (a) that part of the land and buildings shown on a strata plan that is not part of a strata lot, and
- (b) pipes, wires, cables, chutes, ducts and other facilities for the passage or provision of water, sewage, drainage, gas, oil, electricity, telephone, radio, television, garbage, heating and cooling systems, or other similar services, if they are located
 - (i) within a floor, wall or ceiling that forms a boundary
 - (A) between a strata lot and another strata lot,
 - (B) between a strata lot and the common property, or
 - (C) between a strata lot or common property and another parcel of land, or
 - (ii) wholly or partially within a strata lot, if they are capable of being and intended to be used in connection with the enjoyment of another strata lot or the common property;