

NAVIGATING CONDO FLOODS – WHO PAYS?

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The complicated scheme of common property, shared ownership and multiple insurance policies can make it difficult to determine who is responsible for the cost of repairing property damage at a condominium. Consider a situation where a small flood in a unit from a malfunctioning washing machine or burst pipe causes damage to the wood floors in the unit as well as the drywall and carpeting in the hallway. Which insurance policy covers the damage and who is responsible for payment of the insurance deductible? These questions were addressed in two recent decisions of the British Columbia Supreme Court, *Strata Plan KA 1019 v. Keiran* 2007 BCSC 727 and *Mari v. Strata Plan LMS 2835* 2007 BCSC 740.

The *Strata Property Act*, which applies to most condominiums in British Columbia, divides the condominium a series of individually owned strata lots (which is the space contained within the individual units) and common property, (which is everything else). The common property includes areas such as the lobby, hallways and stairwells, but will also include portions of the floors and walls which comprise the overall structure of the building. Under the *Act*, the strata corporation is required to repair and maintain common property. It is also required to maintain property insurance for both the common property and for fixtures in the units such as flooring, wallpaper and plumbing installed as part of the original construction. Despite this coverage, individual owners generally will, and certainly should, hold separate homeowners policies, to cover damage to items within their unit.

The scenario identified above involved water damage to common property and an original fixture; flooring. Therefore, it would be the strata corporation's property policy and not the individual homeowner's policy which covers the loss. Initially, the deductible payable under the strata's policy is a common expense to which all owners contribute through their strata fees. However, if a particular owner is "responsible" for the damage which gave rise to the claim, the *Act* authorizes the strata corporation to recover the deductible from that owner. In *Keiran* and *Mari*, the Court held that even where property damage is caused not by the fault or negligence, but simply by a malfunctioning appliance or defective plumbing, an individual unit owner may still be "responsible" for the damage and required to reimburse the strata corporations for the deductible portion of the insurance claim. Fortunately for condo owners, many homeowner policies provide some coverage

for assessments to pay an insurance deductible. In such as case, the strata corporation's policy would cover the cost of repairing the flood damage and the individual unit owner's policy would pay the deductible portion.