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STRATA PROPERTY LAW PROJECT—PHASE TWO

Backgrounder

Legislative Fact Sheet:

Report on Insurance Issues for Stratas

Date: 12 March 2019

Introduction

BCLI's Strata Property Law (Phase Two) Project Committee has made recommendations to reform the *Strata Property Act*, the *Strata Property Regulation*, and the Schedule of Standard Bylaws in its *Report on Insurance Issues for Stratas*. These recommendations are intended to improve the legal framework that governs insurance in strata properties on the following fronts: (1) the insurance mandate; (2) insurance deductibles; (3) reporting and administration. This backgrounder summarizes the content and rationale for the report's recommended reforms that call on the Legislative Assembly of British Columbia to enact legislation or on the executive council to adopt new regulations.

The insurance mandate

What changes does the report recommend?

- The *Strata Property Act* currently requires a strata corporation to have property insurance and liability insurance. The report recommends adding to these mandates a requirement to have directors-and-officers insurance.
- The minimum amount of directors-and-officers insurance should be set out in the *Strata Property Regulation*. The regulation should initially set this minimum amount of coverage at \$2 000 000.

Why should the legislature or the executive implement these recommendations?

- The role of strata-council members is becoming increasingly complex. Requiring directors-and-officers insurance would provide added protection for vulnerable council members and strata corporations. It may also make it marginally easier to recruit people to serve on strata councils.

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- The bulk of strata corporations already have this coverage, which is relatively inexpensive. So changing the law shouldn't create disruption in the strata sector. Instead, it will extend a best practice to a handful of holdouts.
- Setting the minimum amount of coverage at \$2 000 000 is consistent with what the regulation already provides for liability insurance. Placing these figures in the regulation is beneficial, because regulations are simpler to update than legislation. This approach should allow the figure to keep pace better with changing circumstances.

Insurance deductibles

What changes does the report recommend?

- The *Strata Property Act* should be amended to make it clear that a strata corporation may decide to charge back to an owner who is responsible for a loss or damage that gave rise to a claim on the strata corporation's insurance the lesser of the following amounts: (1) the cost of repairing the loss or damage; (2) the deductible limit of the insurance claim.
- A new standard bylaw should be added to the Schedule of Standard Bylaws that would require a strata-lot owner to have insurance that covers payment of a deductible under the strata corporation's insurance.

Why should the legislature or the executive implement these recommendations?

- The current law on insurance deductibles has proved to be uncertain and to breed disputes. The recommended amendment would bring greater clarity and consistency to the law. These qualities should help to cut down on litigation over responsibility for an insurance deductible.
- While most insurance deductibles are small, some (particular those relating to water damage) can be very high. An owner who ends up being responsible for such a deductible could lack the means to pay it out. Many owners already have insurance coverage against such a possibility. Making such coverage mandatory will protect all vulnerable owners. Placing this requirement in the standard bylaws gives strata corporations the means to enforce this mandate. It also gives strata corporations some flexibility in the face of this mandate, as they would be able to amend or repeal it by obtaining a resolution passed by a 3/4 vote.

Reporting and administration

What changes does the report recommend?

- The *Strata Property Act* should require that a strata corporation's property insurance must be on the basis of full replacement value as determined by the most recent appraisal.

- The frequency of appraisals should be set out in the *Strata Property Regulation*. The regulation should initially set this frequency at a minimum of three years.
- The *Strata Property Act* should require a strata corporation to inform owners and tenants as soon as feasible of any material change in its insurance coverage, including an increase in any deductible.

Why should the legislature or the executive implement these recommendations?

- The act already requires strata corporations to have property insurance “on the basis of full replacement value.” An appraisal is the best way to determine whether the insurance meets this standard, but it’s not currently required. Making it a requirement will protect strata corporations against the danger of being underinsured.
- Requiring strata corporations to, at a minimum, obtain an appraisal once every three years ties this requirement into the existing required frequency for obtaining a depreciation report. Placing this requirement in the regulations will make it easier to update to keep pace with changing circumstances.
- Strata corporations are currently required to report on insurance at each annual general meeting. But changes to insurance may take place at other times during the year. Some of these changes may be relevant to owners’ and tenants’ own insurance. Prompt reporting on material changes can help to reduce gaps in coverage.