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Maria Durdan is the head of the Condominium Practice Group at SimpsonWigle LAW LLP; she specializes in condominium law, development and administration. Maria supports over 650 of the firm's residential and commercial condominium clients throughout Ontario. Maria has also obtained her Associate of Canadian Condominium Institute (ACCI) designation in law, which recognizes that she has achieved a high level of knowledge and skill of condominium law. Maria is a Director on the Canadian Condominium Institute – Golden Horseshoe Chapter and the Chair of the Education Committee. Maria's practice includes advising boards of directors, property managers and developers on all areas of condominium law.

Q I live in a high rise condominium. The hot water tank in my unit broke and caused water damage to my unit and the unit below. The Board of Directors informed me that I am responsible for payment of the condominium's insurance deductible. Why?

A Your Board is likely relying on a By-Law of the condominium that enables it to shift the obligation to pay the condominium's deductible on to the owner as the damage was caused by your hot water tank and was not caused by the condominium.

The Condominium Act, 1998 provides that if an owner (or a person residing in the owner's unit) causes damage (even inadvertently) to the owner's unit, the common expenses that the owner has to pay can be increased by an amount that is the lesser of (i) the cost of repairing the damage; and (ii) the condominium's insurance deductible. The Act also provides that a condominium has the authority to extend the circumstances in which its insurance deductible may be charged back against a unit. For example, a condominium may extend the circumstances to include any damage that occurs to a unit which is not caused by an act (or omission) of the condominium or its directors, officers, agents or employees. What this means is that as long as the damage to the unit was not caused by an act (or omission) of the condominium or its directors, officers, agents or employees, the condominium can make the owner responsible for payment of its insurance deductible, regardless of whether or not the damage to the unit was caused by the owner. This may change with the proposed amendments to the Act; however, this is currently the law.

Many condominiums have used their authority to enact By-Laws that enable it to charge back its insurance deductible to owners for damage caused to an owner's unit, other units and/or common elements. Such By-Laws hold the owner responsible for the cost of damage caused by the owner for (i) doing something (i.e. overflowing a kitchen sink), or (ii) failing to do something (i.e. repairing a leaky tap), that results in damage to the owner's unit, other units and/or the common elements. So, as long as the condominium is not responsible, the owner is responsible. Regardless of whether or not the owner did or failed to do something, provided that the event that caused the damage emanated from within the owner's unit, the owner will likely be held responsible for payment of the condominium's insurance deductible.

Unfortunately, most owners are unaware of their condominium's authority to charge back its insurance deductible until something has already happened, and that something usually has a financial impact on the owner. We recommend you review your condominium's By-Laws to see if the condominium has enacted a By-Law that allows it to do this. If it has, talk to your insurance agent to see if you can purchase rider insurance to cover any payment that you could become responsible for as a result of damage to your unit, another unit and/or the common elements of the condominium.



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