

Notice to Owners...

Your Board is recommending the adoption of By-Law No. 4.

Please find attached: (a) a "Summary Explanation Note" prepared by your Board; b) a more detailed "Explanation Note" prepared by the legal firm Nelligan, O'Brien Payne, LLP; and (c) the proposed By-Law No. 4...

(a) Summary Explanation Notes from your Board

The new By-Law establishes that:

- i) if you are negligent and cause damage to your own unit, you pay the deductible (*);*
- ii) if you are not negligent, but damage is caused from a source within your unit you pay the deductible; and*
- iii) if you are negligent and cause damage to other units and/or to common elements you pay the deductible...*

("deductible" means the lesser of the deductible amount of the condo corporation's insurance policy (currently \$5,000) or the cost of the damage.*

.....

Q & A

Does the new By-Law shift more insurance responsibilities to owners?

No.

Why do we need a new By-law?

Owners' liability for damage caused to other units and/or to common elements was not adequately provided for under Ontario's Condominium Act, nor under Sections 13(1) and 13(2) of By-Law No. 1 of our Condominium Declaration. The new By-Law addresses these shortcomings.

Does this impact our own unit insurance policies?

There is typically a clause in condominium unit policies to cover the liability of having to pay the condo corporation's deductible. The Board recommends that owners, if they have not done so when they bought their unit, confirm with their broker that their unit policy includes this clause.

Ottawa-Carleton Standard Condominium Corporation No. 769

Explanation Note

Insurance Deductibles Bylaw

Condominium Corporations must arrange insurance on their own behalf and on behalf of all owners. The insurance covers the common elements and also the units (not including betterments or improvements). In addition, the insurance is always subject to a deductible. The deductible is simply an amount of each loss which is not covered by the insurance.

The question is: When damage results from an insured event, who should pay the deductible?

Under the new *Condominium Act*, the general rule is that the deductible on the Corporation's policy is a common expense, which accordingly must be paid by the Condominium Corporation (and therefore shared by all owners) - except for damage caused by an owner or tenant to their own unit.

This is a big change to the law. Under the old Condominium Act, the situation in most condominiums was as follows:

1. An owner was responsible for the deductible where the owner, or an occupant of the unit, or a guest or agent of the owner, caused damage to any part of the property.
2. An owner was responsible for the deductible in the case of damage to the owner's unit caused by an accident.

Most condominium corporations and condominium owners thought that this made good sense, based upon the following reasoning:

1. Owners should be responsible for all uninsured damage which they cause or which is caused by the occupants, guests or agents of the owner.
2. Owners should be responsible for uninsured, accidental damage caused to the owner's unit. (Owners are responsible for their own units.)
3. Owners can buy their own insurance covering these risks (i.e., the risks that the owner may be responsible for the deductible on the Corporation's policy). In fact, we have reviewed many condominium unit owner insurance policies and many such policies provide standard coverage for these risks. (Most unit policies include basic liability protection for the owner, as well as "additional" or "contingent" property insurance coverage for the owner's unit.)

In summary, unit owners can buy insurance covering these risks and many unit policies currently provide for such. Note that this is also consistent with the Guiding Agreement which applies to most insurance companies. In any event, each unit owner should confirm this with his or her own broker. (In some cases, the owner may have to pay a small additional premium to obtain this coverage.)

Again, however, we note the following: **If owners are generally paying for these insurance risks, it makes sense to utilize that insurance. This reduces the overall uninsured loss. This is possible only if owners are held responsible for the deductible.**

Under the new *Condominium Act*, these concepts can be retained only if the corporation passes a by-law for this purpose. That is the purpose of the proposed By-law.

The Bylaw says that owners are responsible for the deductible on the corporation's policy in the following circumstances:

1. Where the owner, or an occupant of the owner's unit, or a guest or agent of the owner, causes damage to any part of the property.
2. Where the damage is caused to the owner's unit by an accident. **Note, however, that the by-law also says that owners will only be held responsible for accidental damage to their units if the source of the damage is also within that unit.**

The By-law also says that the Corporation is responsible for the deductible if the Corporation causes the damage.

Schedule "A"

OTTAWA-CARLETON STANDARD CONDOMINIUM CORPORATION NO. 769

BY-LAW NO. 4

BE IT ENACTED as By-law No. 4 (being a By-law respecting insurance deductibles) of Ottawa-Carleton Standard Condominium Corporation No. 769 (hereinafter referred to as the "Corporation") as follows:

**ARTICLE I.
DEFINITIONS**

All words used herein which are defined in the *Condominium Act*, 1998, or any successor, ("the Act") shall have ascribed to them the meanings set out in the Act as amended from time to time.

In this By-law, the term "deductible" means: The amount that is the lesser of the cost of repairing the damage and the deductible limit of the insurance policy obtained by the Corporation (in the case of an insurable event under the said policy).

**ARTICLE II.
SECTION 105(3) OF THE ACT**

This By-law is passed pursuant to Section 105(3) of the Act, to extend the circumstances under which a deductible loss, as described in Article III, shall be added to the common expenses payable for an owner's unit.

**ARTICLE III.
INSURANCE DEDUCTIBLES**

- (1) Property insurance for the units and common elements (excluding improvements) is obtained and maintained by the Corporation (the "Master Policy"), but is subject to a loss deductible clause.
- (2) The Master Policy accordingly does not cover any loss, or portion of a loss, falling within such deductible. Responsibility for any such loss shall be determined as follows:
 - (a) Any deductible loss relating to damage to a unit (whether or not there has been an act or omission by the owner or lessee of the unit) shall be the responsibility of the owner of the unit, and shall be added to the common expenses payable for the owner's unit [in accordance with Article III (4)], provided the source of the damage is also within that unit.
 - (b) Any other deductible loss shall be the responsibility of the Corporation.
- (3) Notwithstanding the foregoing,
 - (a) each unit owner shall indemnify and save harmless the Corporation and all other owners from any deductible loss (under the Master Policy) related to damage resulting from an act or omission of the owner, or his or her guests, agents or occupants of the unit. (Accordingly, if any such damage is caused to any part of the property, any related deductible loss under the Master Policy shall be added to the common expenses payable for the owner's unit, in accordance with Article III(4)).
 - (b) the Corporation shall indemnify and save harmless each unit owner from any deductible loss resulting from an act or omission of the Corporation or its directors, officers, agents or employees.

- (4) Any amounts owing to the Corporation by a unit owner by virtue of the terms of this by-law shall be added to the common expenses payable by such unit owner and shall be collectible as such, including by way of condominium lien.
- (5) Each owner shall obtain and maintain insurance, including personal liability insurance, covering the owners' risks as set forth in this by-law.
- (6) The Corporation shall promptly provide written notice of any change in the deductible related to the Master Policy to all owners.

**ARTICLE IV.
REPEAL OF SECTIONS 13.1 AND 13.2 OF BY-LAW NO. 1**

Sections 13.1 and 13.2 of By-Law No. 1 are hereby repealed.

**ARTICLE V.
MISCELLANEOUS**

- (1) **Invalidity:** The invalidity of any part of this By-law shall not impair or affect in any manner the validity and enforceability or effect of the balance hereof.
- (2) **Waiver:** No restriction, condition, obligation or provision contained in this By-law shall be deemed to have been abrogated or waived by reason of any failure to enforce the same irrespective of the number of violations or breaches thereof which may occur.
- (3) **Headings:** The headings in the body of this By-law form no part thereof but shall be deemed to be inserted for convenience of reference only.
- (4) **Alterations:** This By-law or any part thereof may be varied, altered or repealed by a By-law passed in accordance with the provisions of the Act, and the Declaration.
- (5) **Preparation:** This document was prepared in the year 2010 by Nelligan O'Brien Payne LLP in conjunction with the corporation.

The foregoing By-law is hereby passed by the Directors and confirmed by the owners pursuant to the *Condominium Act, 1998*, of Ontario.

DATED this day of , 2010.

**OTTAWA-CARLETON STANDARD
CONDOMINIUM CORPORATION NO. 769**

Print Name:
Print Title:

I have authority to bind the Corporation