

## Legislative Changes – Condominium Insurance Deductibles

Once proclaimed into force, the [Protecting Condominium Owners Act, 2015](#) (the “PCOA”) will amend the provisions governing the responsibility for the condominium corporation’s insurance deductible.

Under the current legislation, the deductible amount under the corporation’s insurance policy covering the common elements and the units is included in the corporation’s common expenses and thus shared by all the owners, except in the following circumstances:

- if the unit owner or tenant or resident of the unit **causes damage to the owner’s unit through an act or omission**, then the lesser of the deductible and the actual cost of repair will be added to the common expenses for the owner’s unit, and
- where the corporation has enacted a by-law that provides that the lesser of the deductible and the cost to repair will be added to the common expenses for the unit if the damage to the unit was not caused by an act or omission of the corporation or its directors, officers, agents or employees.

Corporations that have passed such a by-law are transferring to the unit owner responsibility for the deductible where the cause of the damage is not discernable, as long as it was not caused by any act or omission of the corporation or its directors, officers, agents or employees. The financial impact of this on a unit owner could be substantial, depending on the amount of the deductible under the corporation’s policy. By choosing a higher deductible the corporation can reduce the annual premium cost for the corporation’s insurance.

Under the PCOA, the circumstances in which a unit owner will be responsible for the deductible under corporation’s insurance policy will be extended. The lesser of the cost of repair and the deductible will be added to the unit’s common expenses if the unit owner or a tenant or resident of the unit **causes damage to the unit, the common elements or assets of the corporation through an act or omission** and the damage has not been caused by an act or omission of the corporation or its directors, officers, agents or employees. However, corporations will no longer have the ability to enact an insurance deductible by-law to amend the circumstances in which responsibility for the deductible can be transferred to an individual unit owner. Under the PCOA such changes can only be done by an amendment to the corporation’s declaration.

Amending the corporation’s declaration is difficult to do, as it requires the written consent of the owners of at least 80% of the units. Enacting a by-law, on the other hand, only requires the approval of the owners of a majority of the units. Until the PCOA comes into force, which is projected to be on July 1, 2017 corporations will still be able to enact an insurance deductible by-law under the current legislation. The draft regulations to the PCOA indicate that any existing insurance deductible by-law enacted prior to the PCOA coming into force will still be valid.

Until July 1, 2017 corporations that do not currently have an insurance deductible by-law in place will still have the opportunity to enact such a by-law if they act quickly. For those corporations that are content with the insurance deductible provisions in the PCOA, nothing needs to be done. In either case, corporations should be advising unit owners that their unit

owner's insurance policy should include coverage that will pay the deductible amount of the corporation's insurance policy in those situations where the deductible is charged to the unit's common expenses.