



Insured

Uninsured

# Water Damage

Damage to the common elements or to one or more standard unit(s) **AND**

It is the type of damage or expense that is covered by the corporation's property insurance.

Damage to unit improvements or to unit contents or to other property that is not insured by the condominium corporation **OR**

Damage to the common elements or to one or more standard units (or any expense) of a type that is not covered by the condominium corporation's insurance.

a) The damage must be covered by the corporation's insurance or by the corporation (if the corporation decides not to make an insurance claim)... except that ***an owner can sometimes be held responsible for the corporation's deductible.***

b) An owner can sometimes be held responsible for the corporation's deductible – ie. under Section 105 of the *Condominium Act* or under an Insurance Deductibles By-law. [NOTE: Pending amendments to the *Condominium Act* (not yet in force) will no longer permit Insurance Deductibles By-laws. Instead, an amendment to the Declaration will be required. Existing Insurance Deductibles By-laws MIGHT be grandfathered.]

c) If the damage was caused by a third party (like a tenant or contractor), the condominium corporation and/or the corporation's insurer may have the right to consider a claim **for ALL of the damage** against that third party.

a) Responsibility is determined – to begin – by referring to the responsibilities set out in the Declaration.

b) The party (owner or corporation) that is responsible under the Declaration can perhaps assert a claim against any other party that is "ultimately responsible".

**HOWEVER:**

c) Check for any provision in the Declaration or By-laws that may prevent an owner (or an owner's insurer) from asserting such a claim. [Many Declarations / By-laws contain such provisions.]

d) The Courts have confirmed that condominium corporations are not "guarantors of the common elements". The corporation's legal obligation is to take reasonable steps to maintain and repair the common elements. A condominium corporation is only "ultimately liable" to an owner if the corporation fails to meet this obligation.

**General Principle:** When dealing with **INSURED** damage: An owner is never liable for more than the corporation's deductible.

**Responsibility for the corporation's deductible is determined under Section 105 of the *Condominium Act* or an Insurance Deductibles By-law.**

**General Principle:** When dealing with **UNINSURED** damage: Declaration determines primary responsibility; but the person who is primarily responsible can consider claims against anyone "at fault".