

INSURANCE

Property insurance

99. (1) The corporation shall obtain and maintain insurance, on its own behalf and on behalf of the owners, for damage to the units and common elements that is caused by major perils or the other perils that the declaration or the by-laws specify. 1998, c. 19, s. 99 (1).

Definition

(2) In subsection (1),

“major perils” means the perils of fire, lightning, smoke, windstorm, hail, explosion, water escape, strikes, riots or civil commotion, impact by aircraft or vehicles, vandalism or malicious acts. 1998, c. 19, s. 99 (2).

Exclusion ineffective

(3) An exclusion in the insurance required by this section is not effective with respect to damage resulting from faulty or improper material, workmanship or design that would be insured, but for the exclusion. 1998, c. 19, s. 99 (3).

Improvements not included

(4) The obligation to insure under subsection (1) does not include insurance for damage to improvements made to a unit. 1998, c. 19, s. 99 (4).

Determination of improvements

(5) For the purpose of this section, the question of what constitutes an improvement to a unit shall be determined by reference to a standard unit for the class of unit to which the unit belongs. 1998, c. 19, s. 99 (5).

Standard unit

(6) A standard unit for the class of unit to which the unit belongs shall be,

- (a) the standard unit described in a by-law made under clause 56 (1) (h), if the board has made a by-law under that clause;
- (b) the standard unit described in the schedule mentioned in clause 43 (5) (h), if the board has not made a by-law under clause 56 (1) (h). 1998, c. 19, s. 99 (6).

Amount of recovery

(7) Subject to a reasonable deductible, the insurance required under this section shall cover the replacement cost of the property damaged by the perils to which the insurance applies. 1998, c. 19, s. 99 (7).

Breach of policy

(8) Despite anything in an insurance policy issued under this section, no act of any person shall be deemed to be a breach of the conditions of the policy if the act is prejudicial to the interests of the corporation or the owners. 1998, c. 19, s. 99 (8).

Termination

(9) An insurance policy issued under this section shall be deemed to include a clause that the insurer shall not terminate the insurance contract unless the insurer gives the corporation and the insurance trustee, if any, at least 60 days notice by registered mail. 1998, c. 19, s. 99 (9).

Proceeds

100. (1) Despite anything contained in an insurance trust agreement that the corporation has entered into with an insurance trustee, if the proceeds of an insurance policy issued under

section 99 are less than 15 per cent of the replacement cost of the property covered by the policy, the insurer shall pay the proceeds to the corporation or the person whom the corporation specifies. 1998, c. 19, s. 100 (1).

Use of insurance proceeds

(2) Upon the proceeds being available, the corporation shall promptly use them for the repair or replacement of the damaged units and common elements, unless the owners have voted to terminate because of substantial damage in accordance with section 123. 1998, c. 19, s. 100 (2).

Payment from Ontario New Home Warranties Plan

(3) A corporation that receives a payment out of the guarantee fund under subsection 14 (3) or (4) of the *Ontario New Home Warranties Plan Act* for remedial work to the common elements shall promptly use the payment for the remedial work, unless,

- (a) the owners have voted to terminate because of substantial damage in accordance with section 123; or
- (b) the corporation has already completed and paid for the remedial work. 1998, c. 19, s. 100 (3).

Limitation, mortgage

(4) Despite any provision in a mortgage or subsection 6 (2) of the *Mortgages Act*, a mortgagee may not require that proceeds received under an insurance policy on the property or on a part of the property or a payment received out of the guarantee fund under subsection 14 (3) or (4) of the *Ontario New Home Warranties Plan Act* be applied towards the discharge of the mortgage; a requirement that contravenes this subsection is void. 1998, c. 19, s. 100 (4).

Double coverage

101. (1) Insurance that a corporation obtains and maintains under section 99 shall be deemed not to be other insurance for the purpose of any prohibition of or condition against other insurance in a policy of an owner insuring against loss of or damage to the owner's unit or the owner's interest in the common elements and covering only to the extent that the insurance placed by the corporation is inapplicable, inadequate or ineffective. 1998, c. 19, s. 101 (1).

No reciprocal contribution

(2) Despite section 150 of the *Insurance Act*, an insurance policy issued under section 99 and any other insurance policy, except another policy under section 99, are not liable to be brought into contribution with each other. 1998, c. 19, s. 101 (2).

Other insurance

102. The corporation shall obtain and maintain,

- (a) insurance against its liability resulting from a breach of duty as occupier of the common elements or land that the corporation holds as an asset; and
- (b) insurance against its liability arising from the ownership, use or operation, by or on its behalf, of boilers, machinery, pressure vessels and motor vehicles. 1998, c. 19, s. 102.

Capacity to maintain insurance

103. (1) Nothing in this Act shall be construed to restrict the capacity of a corporation, an owner or any other person to obtain and maintain insurance in respect of an insurable interest. 1998, c. 19, s. 103 (1).

Same

[\(2\)](#) For the purposes of sections 99 and 102, the corporation shall be deemed to have an insurable interest in the units and common elements. 1998, c. 19, s. 103 (2).

Disclosure by insurer

[104.](#) An insurer under an insurance policy required by this Act shall provide the corporation with a certificate or memorandum of insurance declaring the coverage carried by the corporation on behalf of all owners. 1998, c. 19, s. 104.

Deductible

[105. \(1\)](#) Subject to subsection (2) and (3), if an insurance policy obtained by the corporation in accordance with this Act contains a deductible clause that limits the amount payable by the insurer, the portion of a loss that is excluded from coverage shall be a common expense. 1998, c. 19, s. 105 (1).

Owner's responsibility

[\(2\)](#) If an owner, a lessee of an owner or a person residing in the owner's unit with the permission or knowledge of the owner through an act or omission causes damage to the owner's unit, 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 shall be added to the common expenses payable for the owner's unit. 1998, c. 19, s. 105 (2).

Same, by-law

[\(3\)](#) The corporation may pass a by-law to extend the circumstances in subsection (2) under which an amount shall be added to the common expenses payable for an owner's 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. 1998, c. 19, s. 105 (3).

Owner's insurable interest

[\(4\)](#) The amount payable by an owner under this section or as a result of a by-law passed under this section constitutes an insurable interest of the owner. 1998, c. 19, s. 105 (4).

Act prevails

[106.](#) If any provision of an insurance policy required by section 99 or 102 or any part of the *Insurance Act* conflicts with anything in this Act, the provisions of this Act apply. 1998, c. 19, s. 106.