

RESIDENTIAL PROPERTY MANAGEMENT

Management Companies Directors' and Officers' Liability Insurance Cover

We are often asked what responsibilities are taken on by residents willing to stand as a director of a residents' management company. Rarely are they paid any salary or other remuneration. It is often the case that they receive criticism from some of the other lessees and it is often regarded as a thankless task.

However, someone has to do it.

Directors and officers insurance is available to give some protection against claims by lessees and others against the Directors. The cost of such insurance is generally considered to be reasonable and not excessive.

There have been a few Tribunal cases about whether or not such cost of insurance can be charged to the service charge account. Most leases provide a fairly wide extent of insurance cover which the landlord is entitled to charge to the service charge account, some are restricted to particular perils only, and some have words to the effect that best available cover must be taken. There are, for instance, mixed views as to whether some blocks of flats in areas of no discernible risk to terrorist offences need terrorism cover. As always, the actual provisions of the lease are important.

The insurance industry has collated summary details of a few claims which have been made on directors and officers liability insurance policies to give a taste of the sort of issues that do form the basis of claims made (whether or not they are successfully made/defended) and a copy of their statement is attached.

In our experience, the number of claims made against directors of resident management companies are small, the risk is remote providing directors act with commonsense and with reasonableness. However, the summary of some of the claims made against such insurance does illustrate the sort of risks which can emerge and for which directors and officers insurance is available.

Should you wish to discuss this article in further detail then please do not hesitate to contact Michael Maunder Taylor: michael@maundertaylor.co.uk.

What can go wrong? Claims examples and case studies

In today's highly litigious society, there is no shortage of potential claimants causing headaches for Directors....and you never know quite who you might upset within a block, anyone from a barrister or accountant to a squirrel! As can be seen below...

- Two Directors of a resident management company were sued for libel by a former Director. Following failure of disclosure of conflicts of interest a Director was removed from the Board. Despite the former Director dropping his libel case after a mediation hearing, over £35,000 of legal costs were incurred under the D&O policy.
- A squirrel entered the roof space of a block of flats and damaged the wiring. It gained access from nearby trees. An action was brought against the Directors alleging that they had not maintained the trees properly as if they had the squirrel wouldn't have been there in the first place! Whilst the Directors successfully defended the case – legal costs were paid under the D&O policy of over £4,000.
- A resident sued the Directors for devaluation of their flat following failure of the Directors to identify and rectify external dilapidation. Legal costs in this instance exceeded £13,000.
- A resident in an apartment block campaigned for the removal of the Board and election of a new Board. The Chairman of the Board wrote to his fellow residents to point out errors in allegations made against him. It happened that the resident making the allegations was a barrister who viewed the response as libellous! Although the barrister never followed up her allegations at the court hearing, the D&O policy funded not only the legal advice, but the legal representation costs as well, amounting to over £20,000.
- Directors of a resident management company were fined by Companies House after failing to file the annual company accounts on time. The D&O policy funded their legal costs in defending the action.
- A resident sued the Directors and Chairman of a management company when selling their flat for the diminution in the value of the property. It was alleged the management failed their duty of care in managing an unruly tenant in an adjacent flat. Legal costs exceeded £10,000.
- The Secretary of a small block of flats was asked to obtain alternative Building Insurance quotations. The contract selected (in line with the majority of policies) contained a 'small print' restriction in respect of unoccupied/unfurnished flats. A pipe subsequently burst in an unoccupied flat causing considerable damage to the property below. The Secretary was held personally responsible for failing to obtain the best available cover.
- Members of a management committee were held individually liable for failure to appoint a responsible builder to re-roof a block of flats. The work was not of a reasonable standard and the company who completed the job later went into administration. The costs associated with re-roofing the property were held accountable against the Directors for failing to appoint competent contractors.