

Legal Claims in Strata Insurance

Presented by
Chris Irons & Tyrone Shandiman



INTRODUCTION — WHAT YOU WILL GET OUT OF TODAY

- Strata Insurance 101: A Quick Refresh
- Strata Legal Proceedings
- Strata Insurance and Legal Claims
- Alternatives
- Q and A

Strata Insurance 101: A Quick Refresh

- Strata insurance is compulsory
- Part 6 of Standard Module (equivalent provisions of other modules)
- for amounts the body corporate becomes liable to pay for—
- Mandated Legal Covers: Public Risk Insurance \$10million
 - for amounts the body corporate becomes liable to pay for—
 - compensation for death, illness and bodily injury; and
 - (damage to property; and

COVERS AVAILABLE FOR LEGAL DISPUTES

- Legal Defence Expenses
- Office Bearers Liability
- Public Liability
- Management Liability (separate policy)



LEGAL DEFENCE EXPENSES

What it Covers

- Legal defence expenses
- Claims made against Body Corporate (not claims initiated by BC)
- Most Policies \$50,000-\$100,000

Things You Should Know

- Claims that have no prospect of success
- Defending a claim contrary to legal advice
- Deliberate acts

What it Covers

- Legal defence expenses
- Settlements & Judgements
- Amount Specified in Policy
most policies \$1mil - \$5mil

Things You Should Know

- Defamation (some insurers)
- Failure to maintain Statutory Insurance (some insurers)
- Fines, penalties
- Gaining personal profit or advantage
- conflicts of interest

OFFICE BEARERS LIABILITY

PUBLIC LIABILITY

What it Covers

- Legal claims for Personal Injury
- Legal claims for Property Damage
- \$10mil (min limit per BCCM Act)

Things You Should Know

- BC Failure to Maintain –
Property Damage Denial
- Defamation against BC



MANAGEMENT LIABILITY – SEPARATE POLICY

Cover

- Legal Claims Against BC & Office Bearers
- Defence costs and Settlements
- Cover up to \$20,000,000

Why?

- Concern about \$50,000 limit for defence costs
- Hostile Body Corporate Situation
- Considering a Contentious Decision
- Office Bearers Defamation.
- Can be more assertive in decision making.

Things You Should Know

- Exclusions apply for known, existing, or foreseeable issues
- Must disclosure of all relevant matters
- Best time to take out cover – No known issues
- How much does the policy cost
- Limitation on contract disputes



STRATA LEGAL PROCEEDINGS 101

– A QUICK REFRESH

- Body corporate can only start proceedings with a special resolution
- Exceptions:

prescribed proceeding, for a community titles scheme, means—

- (a) a proceeding for the recovery of a liquidated debt against the owner of a lot included in the scheme; or
- (b) a counterclaim, third-party proceeding or other proceeding, in a proceeding to which the body corporate is already a party; or
- (c) a proceeding for an offence under [chapter 3](#), [part 5](#), [division 4](#); or
- (d) a proceeding, including a proceeding for the enforcement of an adjudicator's order or an appeal against an adjudicator's order, under [chapter 6](#).

STRATA LEGAL PROCEEDINGS 101— A QUICK REFRESH

- Commissioner's Office has exclusive jurisdiction
- Qualifiers:
 - 'Complex' disputes
 - 'Damage', not 'damages'
 - Section 250 dismissals
- Appeals and enforcement of orders



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STRATA INSURANCE & LEGAL CLAIMS

- Claims process – What to expect?
- Reading policy wording
- Acting as a Prudent Uninsured
- Demonstrating Prospects of success
- Insurers Representation vs Chosen Legal Representatives
- Dispute with insurer over legal proceedings

PROCEEDINGS

PROS:

- Clarity
- Finality
- Resolving complex issues and questions of law
- Contractual disputes
- Settlements, property rights and related
- Sometimes it is the only option



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CONS:

- \$\$\$ Cost
- Time
- Emotional toil
- Reputational
- Impacts on property values
- Does not address root cause – which may lead to more disputes

THE ALTERNATIVES

- Prevention and avoidance
- Discussion, communication and engagement – ideally, structured and facilitated/convened
- Mediation
- Last-ditch attempts

BEST PRACTICE TIPS

- Don't treat insurance policy as an open cheque book
(Claims History Impact)
- Notify insurer immediately of claims
- Questionably defamatory remarks (can they be made in BC name not in personal name)
- Consider separate management liability policy
- Try to resolve claims before they are a claim
- Consider alternatives to legal (Strata Solve)
- Have a clear legal objective

QUESTIONS

Get in Touch!

- Nikki and LookUpStrata:
www.lookupstrata.com.au
- Chris:
www.stratasolve.com.au
- Tyrone:
www.stratainsurancesolutions.com.au



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