UNIT TITLES – ARE YOU PROPERLY INSURED?

Introduction

When a unit title is presented to the market for sale, any interested purchaser is likely to enquire about insurance. The level of insurance held by a Body Corporate is prescribed in the Unit Titles Act 2010 ("the Act"). At first glance, a confirmation that the Body Corporate is insured may seem all that is required. On closer analysis however it is possible some risks are simply not covered. In this article, MDS Law Associate and property specialist, John Wright, considers some of those potential risks.

Insurance under the Unit Titles Act

Section 135 of the Act requires the Body Corporate to:

1. Keep insured all buildings and other improvements on the base land to their full insurable value;

2. Take out any other insurance it is required by law to take out and may take out additional insurance if it considers it practical to do so;

3. Before the commencement of any work by the Body Corporate or the unit owner, notify its insurer of any additions or structural alterations to any units.

Section 137 of the Act states that if full replacement cover is not available, the Body Corporate may insure for indemnity value and may (by special resolution at a General Meeting) require a stand-alone unit to insure separately (the Body Corporate however remaining responsible for all improvements within the common property boundaries).

Perils

Section 135 of the Act is concerned with "full insurable value". There is however, no reference to the specific perils the insurance must cover. By comparison, the 1972 Act (repealed) listed the perils to be insured, namely: "fire, flood, explosion, wind, storm, hail, snow, aircraft and other aerial devices dropped therefrom, impact, riot and civil commotion, malicious damage caused by burglars, and earthquake in excess of indemnity value". Without a definitive list specified in the new Act it is possible some perils are not covered under a given Body Corporate insurance policy. Accordingly a proper inspection of the policy should be undertaken to identify what is actually insured and care taken that assumptions have not been made.

Older Buildings

A significant issue in New Zealand's seismic zones (Canterbury, Westland, Nelson, Marlborough, Wellington, Manawatu and Hawkes Bay) is whether insurers will continue to provide earthquake and natural hazard insurance for pre 1935 buildings constructed from unreinforced masonry. This uncertainty means a prospective purchaser should adopt a particularly cautious approach when considering an older building with masonry construction.

Excess

Insurance companies are moving towards fixed sum insurance policies. This requires the policy holder to advise a figure for how much the building will be insured for. At first blush, and assuming your mortgagee is happy with the figure, the fixed sum policy may seem okay. However a close inspection of the excess should be made.

Insurers can require minimum deductibles between 5% and 15% of the sum insured. This is significant because the Body Corporate is likely to have one policy for all units and the percentage deductible could be enormously onerous for an individual unit owner. For example; if a ten unit development is insured for say $5 million with a minimum deductible of 10% then the excess would be $500,000. If damage occurs the Body Corporate has a statutory duty to repair and then charge the unit owners who benefit from the repair. If only one unit has been damaged and the repairs benefit only that unit then presumably only that unit is responsible for paying the excess. In real terms therefore, a repair bill less than $500,000 results in the unit owner essentially being uninsured.

Additional Insurance

If the Body Corporate insurance policy is capped with a fixed sum it is important to establish what each individual unit owner's entitlement would be. The starting point is to check the ownership interest attached to each unit as compared to the other units in the development. If a unit owner has invested additional improvements to the property that are not reflected in the ownership interest then additional and separate insurance for those improvements should be considered.

Conclusion

It is not satisfactory to rely on a simple confirmation of insurance before purchasing a unit title. A proper analysis of the policy and the actual risks covered is essential before a contract can be confirmed.

If you are contemplating the purchase of a unit title we suggest you seek specialist advice from your solicitor before you enter into a sale and purchase agreement.

The information contained in this document is of a general nature and should be used as a guide only. All references to law and legislation apply to New Zealand law and legislation only. We recommend that before acting on it, you consult your legal professional