

Body Corporate Insurance and your entitlement to payment

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Body Corporate insurance is a topic of interest in the Christchurch context as deconstruction of existing developments is pondered.



Insurance under the 2010 Act

Insurance under the Unit Titles Act 2010 ("the 2010 Act") is dealt with under Sections 134-137.

Previously, insurance was dealt with under Sections 15(1) and 39 of the Unit Titles Act 1972 ("the 1972 Act"), and required all buildings and other improvements on the land to be insured to the replacement value (including demolition costs and architect fees). It is probable therefore that cover existing at the time of the recent Christchurch earthquakes was for replacement value, plus fees.

Section 135(1) of the 2010 Act requires the body corporate to keep insured all buildings and other improvements on the base land to their full insurable value.

The term "full insurable value" is not defined in the 2010 Act. This may mean indemnity in some cases (such as historical buildings where replacement insurance cannot be obtained); however in most cases will likely mean full replacement value.

Section 135(2) of the 2010 Act requires the body corporate to take out other insurance policies required by law (i.e. specific features of individual properties, such as retaining walls, that are required to be insured for) and allows additional insurance if it considers it practical to do so.

Section 135(3) of the 2010 Act requires the Body Corporate to notify its insurer of any additions or structural alterations to any units, before the commencement of any work by the body corporate or the unit owner. There is no such explicit requirement in the 1972 Act.

Distribution of insurance payout

While parts of the 1972 Act still exist (covering rules for management, voting, administration, use and enjoyment of the units), the 2010 Act will apply to how funds can be paid out or applied.

Under Section 136(4) of the 2010 Act, insurance payouts must be used for reinstatement of the units, unless the body corporate decides otherwise by special resolution at a general meeting.

A special resolution (being 75% of the eligible voters who vote on the resolutions) not to reinstate would be expected where a rebuild is inappropriate. In this event the insurance monies should be paid to the unit owners.

The 2010 Act is surprisingly silent on what basis insurance payouts to unit owners should be calculated and made.

Section 131 of the 2010 Act allows the body corporate to distribute surplus money, however it must be in the same proportions as the money was raised, or the money that was used to pay for the property was raised. This is somewhat unhelpful for determining an insurance payout.

Under the 1972 Act, Section 15(3) allowed the body corporate "pursuant to a resolution" to distribute money according to the unit entitlement. However, insurance proceeds had to be applied to reinstatement, unless by a unanimous resolution the unit owners agreed otherwise.

Distributing insurance money, under both Acts, according to the unit entitlement will however, result in unfairness where the insurance payout is capped and the unit entitlements simply do not correctly reflect the comparable value of each unit (especially where improvements have been made and not notified to the insurer). Accordingly any resolution passed without unanimous assent will likely result in a challenge under the minority relief provisions in the 2010 Act.

If the unit owners cannot all agree, then the High Court can be called upon to determine the issue under Section 74 of the 2010 Act. This is a remedy of last resort and the Court will focus on what is fair and reasonable.

Concluding comments

In summary, the provisions under the 2010 Act dealing with insurance are not wildly dissimilar to the 1972 Act.

The issue of payouts for destroyed unit title developments remains a question that cannot be resolved with complete certainty. Ideally payouts to body corporate members should be a matter for members to agree amongst themselves or the matter will be determined by the High Court.

The issue of insurance for new developments will be increasingly topical as the redevelopment of the Christchurch CBD and suburbs gets underway.

If you would like to discuss information related to the article, please contact John Wright at MDS Law.



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