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Office Bearers Insurance



## Is life fair for Strata Committee members?

The straight and simple answer most of the time – No!

And especially if you happen to be an Office Bearer on a Strata Committee and, through no fault of your own, a mistake occurs that results in a financial loss for the lot owners.

Those who serve on Strata Committees do so in a very selfless, but often, simplistic manner. This even extends to a surprising number of Officer Bearers, who are simply unaware of the legislation and the inherent risks that they assume from the moment they are formally voted onto the Strata Committee.

For the purposes of this Fact Sheet, the term 'Office Bearer' is used broadly and could refer to the Strata Committee members, office bearers, strata managers acting in the capacity of an Office Bearer (or any term that is similar). The information here represents general advice only.

## Nowhere to hide

Just imagine for a moment how you would feel if, whilst fulfilling your duties as an Office Bearer, you are faced with the very real prospect of having ALL of your personal assets on the line and up for grabs.

The potential for error which can lead to some form of legal action is very real. When there is a financial loss, situations can change and Office Bearers can very quickly be confronted with having to defend against legal action brought against you and/or other Committee members. This can occur even if you, personally, are innocent of any wrong doing. So ultimately, you can be drawn into any action brought about by any member of the Owners Corporation where they feel you or the Strata Committee have let them down.

Being caught up in a legal action as a result of another Officer's decision or action may appear to be unfair, but often you are left with little choice other than to defend your position. It's a difficult situation to be placed in as often, it means appointing specialist legal help just to lay out the facts and hopefully clear you of any wrong doing. But this could be a fairly complex and time consuming affair so substantial legal costs can and do mount up. Who would pay these legal defence costs?

## Simple solutions - education and the correct level of protection

How many Office Bearers, and Managers, are aware of the full extent of their potential exposure?

Part of the issue, and solution, is **'education'**.

The potential for being sued for wrongful acts exists because errors, mis-statements, omissions, neglect and breach of duty do happen in real life. Put it this way. In this day and age, could you imagine anyone agreeing to be a Company Director without some form of adequate protection in place, in the form of Directors and Officers Liability insurance? Would you put your hand up to sit on any company board after witnessing some of the very public multi-million-dollar liability battles, without first ensuring you have the correct insurance in place to protect you as an officer or director?

## Hidden risks for Office Bearers

Office Bearers Insurance is available and most specialist strata insurance policies will offer this as an optional cover within their insurance plan. So it's not all doom and gloom for those who take on the very critical and important duties of an Office Bearer.

Each situation would be judged on the material facts behind the particular case but the point is, Strata Managers and Office Bearers are squarely caught and therefore exposed to the risk of litigation and legal costs.

A common scenario could be where the Strata Committee is delegated defined responsibilities, including insurance matters, for a Strata Plan consisting of 12 units.

The policy also includes \$20 million Public Liability cover as part of the insurance plan. The reason behind the change was driven by a desire to save money and the new policy was preferred because the premium on offer was cheaper than their existing insurance cover. When changing to the new policy, the Strata Committee failed to understand the limits of cover provided under the old and new insurance policies and were unsure about the legal requirements for insurance.

Next are examples of some very real exposures for Office Bearers.

### Scenario One

An example of where the Owners Corporation could face a financial shortfall is a situation where at a party on the premises, an over-crowded balcony collapses, seriously injuring many people.

**Exposure:** Under-insurance by failing to have sufficient Public Liability cover.

The Strata Committee has cover in place in line with the minimum local statutory amount of \$20 million. But the lot owners are upset that this amount is well under the \$25 million being claimed, which exceeds the cover in place by \$5 million. The lot owners believe the amount of insurance is unreasonable and well under the level required for their particular block. They bring legal action against the Strata Committee members themselves to make up the \$5 million shortfall themselves.

### Scenario Two

Consider the potential exposure that may exist if a Strata Committee fails to assess the number and extent of defects within a building. Compounded by the fact that the Office Bearer concerned, or Strata Committee fails to lodge a full claim, or any claim, within the time constraints of the legislative framework.

**Exposure:** Funds required to rectify defects are no longer available but could have been covered by 2% defect bond.

### Scenario Three

Another example of where the Owners Corporation could face a financial shortfall is a situation where a Strata Committee member pays a contractor with Strata Committee funds before the works have started. This was done because the Strata Committee member was going away and wanted to settle the account before their break. Subsequently, the contractor absconds with the money, never to be seen again.

**Exposure:** Loss of Owners Corporation funds due to mistake made by Strata Committee member.



## Scenario Four

Having received Owners Corporation consent, consider the potential risk of the Strata Committee progressing in good faith the building of a pontoon for their Strata Plan that faces a waterway. This decision was made with the best intentions but the Strata Committee failed to get Local Council and Waterways Authority approval. After completion, the Council instructed the Owners Corporation to remove the pontoon. The owners are understandably upset and decide to chase the Committee Members for the loss of funds.

**Exposure:** Another loss of Owners Corporation funds due to a mistake made by the Strata Committee.

## Scenario Five

A Lot Owner in a townhouse complex asks a Strata Committee member if they can replace their fences. Thinking they are performing a good deed, the Strata Committee member agrees and the Lot Owners pays for the removal of the old fence and replacement of a brand new fence. The Owners Corporation disagrees with the decision as the new fence is too high and does not blend in with the look and feel of the townhouse complex.

They instruct the Lot Owner to remove the fence and replace it with a fence that is the same as the rest of the Strata Plan. The Lot Owner decides to sue the Strata Committee member.

**Exposure:** A potential financial loss exposure of Strata Committee member due to an honest mistake.

For a long time now, some strata experts have been advocating to Government Regulators that Office Bearers liability insurance be made mandatory. Currently it is not compulsory which seems extraordinary given the potential risk exposures involved.

Putting aside the question of compulsory cover being automatically in place for Office Bearers, there is a strata industry view that limits of cover need to be increased well up from the current average which sits at around \$500,000, which could be shared between say 3 and 12 people in the Office Bearer's role.

As the examples above illustrate, in this day and age this amount may prove to be insufficient. Although the appropriate amount of cover is a matter for the Owners Corporation to decide, it is recommended that the Owners Corporation insure for the maximum they can afford and to review this amount regularly.

In some situations, life can appear very unfair for Office Bearers but ignorance of the law is no excuse. A significant part of the solution is to ensure Strata Committee members and Office Bearers are educated in their duties and responsibilities.

But most importantly, it makes good business sense to have protection in place for when things do go wrong. With adequate levels of cover in place to safeguard the interests of Office Bearers, including honest mistakes made whilst carrying out their duties and responsibilities, means everyone can sleep a little easier.

An Insurance Broker or Strata Manager cannot tell you how much you require. This cover should be discussed at your AGM when you are considering insurances and the decision needs to be made by the Owners Corporation.

If you would like a quote to include Office Bearers Cover on your policy or would like further information, please contact CRM Brokers on **1300 880 494** or [crmstrata@crmbrokers.com.au](mailto:crmstrata@crmbrokers.com.au) and one of our Account Executives will be more than happy to help.