

Directors and Officers Insurance

for Residential Management Companies

Directors and Officers Insurance provides directors and officers with an indemnity against a wide range of potential legal actions which they can face in the course of carrying out their duties. The policy also protects a company against costs and expenses arising in connection with such actions.

Why do Management Company Directors need cover?

People appointed as directors or officers of a Management Company hold positions of trust and must act accordingly. They will be liable for any act which is negligent, outside their authority, or in breach of duty or trust.

Directors and officers without insurance are effectively risking their personal wealth, since the financial implications of a legal action can be disastrous. There is no limit on liability, and legal costs, which are payable in addition, can sometimes run into hundreds and sometimes thousands of pounds.

Directors & Officers Insurance provides the financial security which officials and companies need. The policy covers the legal liability of the directors and officers for such matters as breach of trust, breach of duty, breach of contract, neglect, omission, misstatement, misleading statement, breach of warranty of authority and wrongful trading, committed in their capacities as directors or officers.

Directors and officers can be liable in the event of a breach of:

- Fiduciary duties to the company
- Duties of skill & care to the company
- Contract
- Statutory Duty
- Duty to Shareholders
- Common Law

Additionally in the event of the compulsory winding up of a company, there may be personal liability of the directors to people who have dealt with the company.

The probability of a claim being brought against the directors and officers of a company has been increased in recent years due to development in legislation, such as the Companies Act 1985, The Insolvency Act 1986, The Company Directors Disqualification Act 1986 and Health & Safety at Work Act 1974.

Our Managing Agent already purchases Professional Indemnity Insurance, so why do we need Directors & Officers Insurance as well?

Directors & Officers Insurance relates specifically to the breaches of duty by directors and officers in managing and directing a company's affairs. It provides personal cover to the individual directors and officers.

A Professional Indemnity policy of the managing agent relates to claims arising from his normal professional duties and applies to the company as a whole.

A third party can hold an individual director personally responsible for his actions.

Is the Company covered as well as individuals?

Entity/Corporate Legal Liability cover provides additional protection for the company (the 'entity') where an action is brought against the company rather than an individual. In these circumstances, standard D&O policies would not pay the claim. The policy covers the entity's legal costs and expenses in defending such claims.

Does this policy cover criminal or fraudulent actions?

Whilst it is not the intention of the policy to respond in relation to fraudulent, dishonest or malicious acts, cover is provided for defence costs incurred in successfully defending such claims.

Directors & Officers Residents' Associations claims examples

Claims example 1

The directors of a Residents Association were held personally liable for failure to appoint a responsible builder to re-roof a large block of flats. The firm concerned botched the job and went into liquidation shortly afterwards. The work was so poor that most of it had to be done again.

Claims example 2

A Residents Association Director wrote a cheque for £15,000 to cover services provided by a building contractor, however the cheque bounced as the association was insolvent. It was found, that the Director either knew or should have known, that this was the case and he was found to have been unlawfully trading and was held personally liable for the amount plus costs.

Claims example 3

An unruly family bought a flat in an otherwise select Block. The owner of an adjacent flat immediately put her property on the market and alleged that she had been forced to sell for £20,000 less than the true price. She is suing the Chairman and Secretary of the Residents Association on the grounds that they have failed to discipline the family, who had clearly intimidated them.

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Claims example 4

The Secretary of a small block of flats was asked to obtain alternative Building Insurance quotations. The contract he 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.

Claims example 5

A chairman of a Block of Flats misinterpreted the instructions of a loss adjuster in the removal of asbestos in a kitchen, and insurers only agreed to pay the removal costs of asbestos in the area affected by a leaking pipe and not the entire kitchen. As a result, the chairman is being held personally liable for the bill.

Claims example 6

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.

How can we help?

In our experience, the number of claims made against directors of resident management companies are small, the risk is remote providing directors act with common sense 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.

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