

Directors' and Officers' Insurance

Those who serve on a Residents' Management Company (RMC) committee often do so in a very selfless way. They work with the best interests of the individual residents at heart but are often unaware of the inherent risks that they assume from the moment that they join the board of their RMC.

Nowhere to hide

Just imagine for a moment how you would feel if, whilst fulfilling your duties as an RMC director, you are faced with the very real prospect of having all of your personal assets at risk.

The potential for error that can lead to a legal action is very real. When there is financial loss, situations can change and RMC directors can very quickly be confronted with having to defend legal action brought against them and/or other committee members. Ultimately you can be drawn into an action brought by any lessee where they feel you or the RMC has let them down.

Being caught up in a legal action may appear to be unfair when you have been managing your block to help your neighbours, however, in these situations often you are left with little choice other than to defend your position which could be a fairly complex and lengthy affair so substantial legal costs can and do mount up. Who would pay these defence costs?

Simple solutions – the benefits of education and the correct level of protection

How many RMC officers are aware of the full extent of their potential exposure? Part of the issue and the solution is education.

The potential for legal action against individual RMC officers exists because errors, misstatements, omission, neglect and breach of duty do happen in real life. Consider this from a different perspective - could you imagine anyone agreeing to be a Company Director without (some form of) adequate protection in the form of Directors and Officers Liability insurance? Would you even consider sitting on the board of BP after witnessing the company incur a multi-billion dollar oil spill, without first ensuring that you have the correct insurance in place to protect you as an officer or director?

Hidden risks for RMC members

Directors and Officers liability cover is available and most specialist flats insurance policies will offer this as an optional extension to the policy, subject to an additional premium.

Each potential claim is judged on the material facts behind the particular incident. But the point to remember is that RMC officers whether legally liable, or not, are exposed to the potential risk of litigation and legal costs. Consider a typical scenario where RMC officers are delegated defined responsibilities, including insurance matters, for their block of flats.

During its annual insurance review, the Committee takes the decision to change their existing insurance arrangements and obtains cover with a different provider. The new policy includes a reduced £5 million Property Owners Liability cover. The reason behind the change was to save money and the new policy was chosen because the premium on offer was cheaper than their existing insurance cover.

At a party in one of the flats an over-crowded balcony collapses, seriously injuring several people. A claim against the Insurance Company is accepted with a potential cost of £7.25 million, however the RMC only has £5 million Property Owners Liability cover in place. The individual flat owners are distressed as this amount is well below the potential cost of the claim. The flat owners believe that the RMC was wrong to reduce the cover and they bring legal action against the responsible director to make up the shortfall.

Or perhaps-

An officer pays a contractor to fix their roof with RMC funds before the works have started. Subsequently, the contractor absconds with the money, never to be seen again. There is an exposure to potential legal action being brought by the individual flat owners following the loss of RMC funds due to a mistake made by an RMC member.

Finally-

Consider the potential exposure that may exist if an RMC officer fails to assess the number and extent of defects within a building, compounded by the fact that the RMC officer fails to lodge a claim within the time constraints of the NHBC framework. Funds required to rectify defects are no longer available but could have been covered by the NHBC guarantee. Once again there is an exposure to potential legal action being brought by the individual flat owners due to an error on the part of an RMC officer.

In certain situations life may appear to be very unfair for RMC officers. However a significant part of the solution is to ensure RMC officers understand and are educated in their duties and responsibilities. It also makes good business sense to put protection in place for when things do go wrong. By arranging Directors & Officers Liability Insurance with Residentsline, means everyone can sleep a little easier.

Exclusively flats, it's our policy.

