



Unlimited Liability:
What do NSW Owners
Need to Know?



When I buy a Strata unit or 'lot' what do I actually own?

When you buy a unit or 'lot' in a strata scheme you do not individually own everything within that lot. In fact, the external walls, structural floor, roof and sometimes even some internal walls and fittings do not always belong to the lot owner.

These areas are usually common property, and this means that the maintenance and repair of these parts of the building are the responsibility of the owners corporation. Many owners are unaware of this and as such cover the cost of repairs themselves. Although this can save the owners corporation money in the short-term (in that owners may pay for repairs that are the responsibility of the strata) it will also mean that the strata does not have control or visibility over the quality of tradespeople used - which can lead to issues later.

In fact, Lot owners often need permission to do things such as install services (eg. cable television, phone or internet), knock down walls, install security or other screen doors or or replace locks on doors or windows.

To add further to confusion, many owners often do not understand the exposure to liabilities they take on when purchasing a lot in a strata scheme. Many are unaware that their liability does not end with the value of the property. Owners are in fact liable to the full extent of all their assets. Whilst thankfully it rarely comes to this, it is nevertheless important that all owners are aware of the extent of their exposures.



How can insurance help?

Many of the exposures that owners face are covered by insurance, however others may not be covered under any insurance policy – such as those related to maintenance of the building, building defects, and faulty or defective workmanship. Owners may also be exposed in respect of historical issues that the owners corporation is aware, but that haven't been addressed. For this reason alone, it is crucial to do your research prior to buying into a strata scheme.

To illustrate these issues, some examples are detailed below, with references to relevant types of insurance coverage available.



1) INSURED PROPERTY

Total loss – underinsurance

- › Under most strata insurance policies, the insurer will only pay out a maximum of the sum insured for the property cover, even if the cost to replace is higher than the sum insured.
- › Any shortfall between the sum insured and the replacement costs will be payable by the owners.

In the most recent legislation changes, the NSW government took away the requirement to have strata properties valued every 5 years at a minimum. Instead, under section 161 of the *Strata Schemes Management Act 2015* (NSW) (SSMA), responsibility rests solely on the owners to ensure that the property is insured for a value sufficient to cover:

- › Removal of debris
- › Rebuild costs
- › Professional fees involved in the replacement costs (e.g. architects)
- › Escalation costs

How owners are expected to determine this without the use of a valuer is unclear, however if the building sum insured is not sufficient, owners are breaching their duties and in the event of a total loss, they as individuals may be liable for any shortfall. Given constantly increasing costs within the construction industry, best practice with respect to frequency of valuations is to obtain a new valuation no less than every 3 years.

Uninsured event – If there is an uninsured event, a special levy may have to be raised. A question you will have to ask is what is your capacity to obtain any necessary additional finances? Another consideration is around the market price of the lot. This may be impacted by the need to raise funds (because it will be listed in the strata records), and in the event of not being able to raise additional funds to cover special levies, owners may even be forced to sell their lot. Will the sale of the unit be enough to cover your debt? It is also important to realise that it doesn't have to be your lot that has been impacted. It may be a lot on the other side of the building or in a separate building on the same strata scheme. Liabilities and levies apply to ALL of the scheme.

As specialist strata policies have been developed over many years, they generally cater for the majority of events that will foreseeably impact a strata scheme. However, as discussed previously, some circumstances are typically not covered by insurance and, as such, it is crucial that owners evaluate the covers offered by each insurer by reference to their own needs and are comfortable with the covers offered and limits selected.



2) LIABILITY TO OTHERS

Regulation 40 of the *Strata Schemes Management Regulations 2016* (NSW) states that the minimum amount of liability insurance legally required is \$20 Million. Whilst this sounds like, and is, a large amount, judgments for liability can be much larger.

When personal injury is involved, there are a number of factors that are considered when determining the size of the liability payment, including the future potential earning power of the individual. If it is a child or a highly-skilled and highly-paid individual that is impacted, this can be a very large amount.

In addition to this, if there are multiple events in the policy period then each event will impact the sum insured.

As the owners corporation is the insured, the individual owners will be liable for any difference between the coverage limit selected and any settlement/judgment amount(s). It is important for owners to realise too, that the relevant incident does not need to happen in their lot for liability to extend to them. The owners corporation is responsible for the building as defined by the SSMA and, as such, all individual owners share the liability.



3) OFFICE BEARERS LIABILITY

This cover is designed to protect the strata committee for claims made against the office bearers, either individually or collectively, for 'Wrongful Acts' – including associated costs of damages, judgments, settlements, orders for costs and defence costs.

A strata committee within an owners corporation is made up of a group of owners who do not necessarily have any experience in the running of a building. The potential for being sued exists because errors, misstatements, omissions, neglect and breach of duty do occur, despite best intentions of both the individuals and the group. Where this occurs, without insurance, committee members may be personally exposed to defence costs at a minimum and, at worst, a substantial judgment against them.

Office bearers is an optional cover under the SSMA, so if the owners have chosen not to have any cover, then liability for covering defence costs and any judgments will fall to the committee member(s) personally. If there is cover, any shortfall between the amount payable and the limit in cover will also fall to the committee member(s). For this reason, it is important for committee member(s) to be satisfied that the level of cover is sufficient.

How do I manage my risk?

Although this sounds frightening, it is important to remember that thorough research will limit the exposure of individual owners – and whilst it may not be possible to remove all risk, it will at least ensure that owners are aware of, and accept, the amount of liability they are taking on.

Areas to research prior to buying a lot in a strata scheme include:



- › The strata records, minutes of previous meetings, and reports on the building. These will be available for review prior to purchase and should not be ignored, and should identify issues the owners corporation knows about, including what steps (if any) have been taken to remedy them.



- › Who is the developer? Not all developers and builders are the same or have the same standards, so it is crucial to ensure you are satisfied your standards will be met.



- › Review the insurance that is in place and confirm covers and sectional limits meet the needs of the building and the owners.

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For more information or support, please contact
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