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# Introduction to Insurance for Property Owners

## PROPERTY OWNERS INSURANCE

Property Owners insurance is a product designed to cover commercial property. The term 'Commercial Property' in this context refers to property purchased for the purposes of development, investment, or letting.

Common types of commercial property include:

- ◆ Let Houses
- ◆ Block of Flats
- ◆ Retail Shops/Units
- ◆ Industrial Units/Warehouses Offices

Property Owners policies include sections for Material Damage (property damage), Loss of Rent/Alternative Accommodation, Property Owners Liability, and Employers Liability.



## MATERIAL DAMAGE

Cover includes loss or damage arising from:

*fire, lightning, earthquake, explosion, aircraft, riot, civil commotion, strikers, locked-out workers, persons taking part in labour disturbances or malicious persons, storm, flood, falling trees, escape of water from any tank apparatus or pipe, falling trees or aerials, breakage or collapse of aerials or satellite dishes, impact, leakage of oil from heating installations, theft or attempted theft, accidental breakage of glass and sanitary fittings, subsidence, ground heave and landslip, and accidental damage.*

The definition of buildings includes:

*outbuildings and garages, walls, fences, paths, gates, hedges and patios, interior decorations, aerials and masts, car parks, cesspits and septic tanks, swimming pools, tennis courts, squash courts, and gymnasias on the premises.*

Property Owners policies can be issued on a 'Specified Perils' basis or an 'All Risks' basis. Specified Perils policies list the perils covered as above. All Risks policies will essentially cover the same perils, however the policy is issued to show only the exclusions rather than the inclusions.

Some Property Owners policies are on an 'Indemnity' basis. This means that the insurer will place the policy holder in the exact same economic position they were in prior to the loss. For example, if a five year old door is damaged, insurers will only pay out for the cost of a second hand door, instead of replacing it with a new one.

## THE DECLARED VALUE VS SUM INSURED



The Declared Value is the total cost to rebuild the property (including all fixtures and fittings, car parks, pavements and similar property for which you are responsible) at the inception or renewal date of the policy. It should also include an allowance for professional fees, debris removal costs and VAT.

## VAT

In the event of a property requiring a complete rebuild, VAT will not apply to the rebuild costs, however, we are now in receipt of underwriters advices and are consequently able to confirm that in the event of a partial loss, where VAT had knowingly not been included in the overall building's Declared Value, insurers would not make any payments in respect of VAT. Although unlikely to be an issue for small claims, this could lead to potentially significant reductions in payments on larger partial losses.

With this in mind, we would strongly recommend that VAT is included in the overall buildings declared value, ensuring that any contention in respect of partial losses is averted.

This Declared Value figure is then subjected to Day One Average or Day One Uplift. This new enhanced value is called a **Building Sum Insured**.

## INFLATION RATES

In the late 1970s and early 1980s the UK experienced very high inflation rates and, at times, the annual rate of inflation approached 25%. This had very serious implications for both insurers and policyholders. High inflation is a particular problem for property owners. In the event of a serious fire it is usually necessary to obtain planning permission before rebuilding commences. This can take many months and sometimes over a year.

If you fixed your Declared Value at renewal and the fire occurred on the 364th day of your policy and it took a year for planning permission, and a further year to re-build, the original sum insured would be three years out of date. If the country experienced a 20% inflation rate this would be disastrous.

For example, using an Inflation rate at 20%:

- ◆ Correct sum insured at renewal £100,000
- ◆ Re-building cost at end of year one £120,000
- ◆ Re-building cost at the end of year two £144,000
- ◆ Re-building cost at the end of year £172,800

This is a discrepancy of £72,800.

To protect policyholders from this situation, several inflation protection measures were introduced by insurers.



## DAY ONE AVERAGE

There are several variations to this additional cover, but essentially it requires you to provide a Declared Value at each renewal and this is used as a basis of cover for the coming year. The clause then states that the Declared Value can be increased by up to an additional 50% of this value - this is known as Day One Average. The usual limit is around 25-35%.



## LOSS OF RENT & ALTERNATIVE ACCOMMODATION

The policy coverage varies depending on the type of property insured.

### RESIDENTIAL PROPERTY

This refers to cover in the event that your leasehold/let premises cannot be lived in, or access to it is denied as a result of loss, destruction or damage insured under the Property Damage Section.

The standard cover is usually limited to 30% of the Building Declared Value and consists of:

- ◆ Loss of rent (including ground rent and management charges) **OR**
- ◆ Reasonable alternative accommodation for owners or lessees, including the temporary re-housing of cats and dogs belonging to any owner or lessee in a cattery or kennels
- ◆ Temporary storage of your furniture

### COMMERCIAL PROPERTY

The intention is to indemnify the insured for the reduction in rent suffered during the indemnity period as a result of damage at the insured property, taking into account the effects of any rent reviews during that period.

The rental sum insured is based on the passing rent on the first day of each insurance, then multiplied by the indemnity period required.

The indemnity period is defined in the policy as the “maximum period from the date for which the Company shall be liable to pay any loss”.

As a general rule, the indemnity period should be the higher of:

- ◆ the period mentioned in the rent cessation clause **OR**
- ◆ the time it would take to demolish and rebuild the property if it was totally destroyed allowing for planning, tendering and actual reconstruction; plus the time it would take to beyond completion of repairs to find a new tenant if the original was able to determine the lease

Insurers will not pay for alternative accommodation costs for a property occupied by commercial tenants.



## PROPERTY OWNERS LIABILITY

Protection against legal liability for personal injury to third parties (other than employees) and loss or damage to their property, including obstruction, trespass, nuisance, interference, wrongful arrest and eviction.

Cover includes:

- ◆ Contingent motor third party liability arising out of the use of vehicles not owned by you
- ◆ Liability for employees' and visitors' personal belongings
- ◆ Legal costs and expenses defending prosecutions under all relevant Health & Safety legislation
- ◆ Personal Liability for bodily injury or damage to property overseas
- ◆ Associated court attendance costs

Where required, this cover can be written in isolation e.g. the residents of an estate containing only private houses require Property Owners Liability protection for the communal grounds.



### EMPLOYERS LIABILITY

In the UK all employers, other than a few specified public bodies and, since 2004, sole traders, are required by law to take out an Employers Liability insurance policy covering the legal liability of the employer for any illness, injury or death suffered by their employees.

Potential claims made against you by other third parties will be covered under the Property Owners Liability.

### THE DEFINITION OF AN EMPLOYEE

Generally, someone is defined as your employee if:

- You deduct N.I. contributions and income tax from the salary you pay them
- You control when, where, and how they work
- They cannot employ a substitute when they are unavailable to work

They may not be an employee of yours if:

- They do not work exclusively for you (for example, if they operate as an independent contractor)
- They supply most of the equipment and materials they need to do the job; you do not deduct income tax or national insurance

If you do not have employees then you do not need to purchase Employers Liability Insurance but if you are in any doubt whether someone is an employee or not should take legal advice.

### HOW MUCH COVER DO I NEED?

If you are required to take out Employers Liability insurance, you must be covered for at least £5 million. In practice, insurers will offer £10 million of cover as standard.



### KEY EXCEPTIONS AND LIMITATIONS TO A PROPERTY OWNERS WORDING

- ◆ The first part of any claim (your policy excess)
- ◆ Escape of water from tanks and pipes or leakage of oil from heating installations whilst the premises are unoccupied
- ◆ Defective design, construction, structural alterations or repairs
- ◆ Sonic bangs
- ◆ Radioactive contamination
- ◆ War risks
- ◆ Gradual pollution
- ◆ Parts of property such as walls, fences, gates and hedges unless your buildings are damaged at the same time
- ◆ Changes in the water table and frost damage
- ◆ Accidental damage does not include maintenance and normal redecoration costs, wear and tear, gradual deterioration, corrosion, rust, rot, fungus, vermin or insects, atmospheric or climatic conditions, normal settlement or shrinkage, domestic pets
- ◆ Faulty or defective design, materials or workmanship
- ◆ Damage caused by mechanical or electrical breakdown, cracking, collapse or weld failure of boilers and equipment
- ◆ Pollution or contamination unless resulting from a loss covered by the policy

### KEY PROPERTY OWNERS POLICY CLAUSES & EXTENSIONS

- ◆ General Notice of Interest Clause
- ◆ Contracting Purchases Interest Clause
- ◆ Non Invalidation Clause
- ◆ Condition of Average
- ◆ Trace & Access
- ◆ Capital Additions
- ◆ Risk Protection Replacement Costs
- ◆ Minor Building Works
- ◆ Waiver of Subrogation
- ◆ Landscaping



reign.  
**terrorise** /təˈrɔːraɪz/. See **terrorist**  
**terrorism** /təˈrɔːrɪzəm/. Terrorism  
violence, especially murder, or  
bombing, in order to achieve  
force a government to do some

## TERRORISM INSURANCE

Currently all UK policies incorporate a “total exclusion” for loss or damage caused by terrorism. If the client decides to purchase the cover we can arrange this by either placing the insurance via the Government backed Pool Re or via Lloyd’s of London.

Terrorism is defined as “Acts of persons acting on behalf of, or in connection with, any organisation which carries out activities directed towards overthrowing or influencing, by force or violence, Her Majesty’s Government in the UK or any other Government ‘de jure or de facto’”.

Terrorism zones are set by Pool Re which is the government body that insures against terrorism, and the same zone rules apply to all Insurers that provide terrorism cover. They range from Zone A to Zone D, A being the highest risk.

If the client does not take out terrorism cover and there is a terrorist attack, any resultant damage would not be covered under the client’s buildings insurance policy.

It is worth noting that it is often a mortgage requirement to have terrorism insurance in place. In general, and based on our experience, a mortgage company will require a resident to obtain the highest level of cover possible which, by inference, includes terrorism cover and perils such as explosion. Some more modern mortgage/lease agreements may actually make specific reference to terrorism insurance, but this does vary. As stated above, if there was an explosion near or at the property which was as a result of terrorism, then there would be no cover provided under the buildings policy.

Often when people think of terrorism they think of explosions in the street (often a car bomb or suicide bomber) and usually these are targeted at busy locations (such as public transport as with the 2005 attacks in London) however there are other situations that can occur with residential risks, and it’s worth considering the below examples:

- A tenant in a flat that is rented out who unknown to the leaseholder of the flat is a suspected terrorist experiments/builds bombs in their own flat
- An aircraft brought down by terrorists lands on or near the building; the London sky is extremely busy in terms of flight traffic
- Tenants in the building may be the target of terrorists: vivisectionists, politicians, scientists involved in controversial genetic research, etc
- A random attack from an individual/group who are disturbed/discovered via an attempt to attack a more high profile building and choose a lower profile residential building due to the lower levels of security compared to public or government buildings

It is for this reason that we recommend that terrorism cover be purchased. We make this recommendation to all our clients, regardless of the properties’ location/use. The recommendation is not based on any property specific analysis or data, it is simply based on the fact that any property is at risk of terrorism related damage (the cost of repairing which will be dwarfed by the premium).





## CONTRACT WORKS

Where the Insured and/or Lessor has entered into a JCT (Joint Contracts Tribunal) Contract or similar with regard to the extension alteration and/or refurbishment of their property, cover can be extended to include contract works (including unfixed materials on site) against the perils specified in such a contract.

The interest of the contractor and sub-contractor as specified in the contract where such interests are required to be included can be shown.

Some cover is provided automatically for what are considered to be minor works, however, for major works advance notice needs to be provided to insurers, as specific extension in cover or a separate policy may be required.

The information provided should include:

- Cost of works
- JCT Clause in place
- Predicted timescales
- Contractors PL limit
- Any hot works
- Any basement excavation works



### ENGINEERING INSURANCE AND INSPECTION POLICIES

In simple terms, engineering cover consists of one or both of the following elements:

- ◆ **Insurance of the plant against mechanical breakdown and sudden and unforeseen damage** - This cover is in addition to and does not replace cover provided under a buildings; i.e. a lift may be included within the sum insured of a property and would therefore be covered if the lift were damaged by one of the applicable perils covered under a property policy.
- ◆ **Inspection contracts** - As you know, engineering plant is also subject to health and safety legislation which means that certain items of plant require regular inspection by statute and certificates are issued to show that they have been inspected (by a competent person).

Some of these items must be inspected every 6 or 12 months and others not at all. Some of the regulations/legislations under which certain items of plant fall are as follows:

<b>EAWR</b>	The Electricity at Work Regulations
<b>PUWER</b>	The Provision & Use of Work Equipment Regulations
<b>LOLER</b>	Lifting Operations and Lifting Equipment Regulations
<b>PSSR</b>	The Pressure Systems Safety Regulations

### PASSENGER/GOODS LIFT

A lift designed for moving goods and/or people from floor to floor in a building. The Lifting Operations and Lifting Equipment Regulations (LOLER) 1998 apply to all businesses in the UK that have lifting plant and undertake lifting operations.

Inspection Frequency - 6 Months

### HOT WATER BOILERS

A fired pressure vessel which (coming under the PSSR) heats water to a relatively high temperature and at a relatively high pressure. The Pressure Systems Safety Regulations (PSSR) 2000 applies to most pressure systems used at work.

Inspection Frequency - 14 Months



### DIRECTORS & OFFICERS LIABILITY

Directors and Officers Liability Insurance cover protects Directors and Officers against claims arising from decisions and actions taken whilst managing their Residents Association/Company.

### WHAT ARE A DIRECTOR'S RESPONSIBILITIES?

The duties of a director have been established through statutes, regulations and case law and can be broken down into three key areas:

- ◆ **Duty of Care and Skill** - Common law duty requires Directors to act with 'the care an ordinary man would take in the same circumstances on his own behalf' and with the skill expected from someone with their 'particular knowledge and experience'
- ◆ **Fiduciary Duty** - Directors must act honestly, in good faith and in the best interest of the company and must ensure that they do not have any conflict of interest
- ◆ **Statutory Duty** - There are many statutes that affect the conduct of Directors and Officers including the Companies Act 1985, Environmental Protection Act 1990, Health and Safety at Work Act 1974, to name but a few

These responsibilities apply, regardless of whether or not the Director is remunerated by the Company.

### WHO IS AN OFFICER?

The definition of 'Officer' is wide and can include a duly appointed trustee, governor, governing committee or governing body member, or volunteer working for the Company (whether or not such person is remunerated). They are bound by the same key three duties that a director is.



## HOW DO CLAIMS ARISE?

If a Director or Officer is perceived to have failed in any of their duties, then a claim could come from any one of a number of third parties including:

- ◆ Residents
- ◆ Creditors
- ◆ Government and Regulatory bodies
- ◆ Employees (e.g. cleaners, gardeners)
- ◆ Auditors
- ◆ Suppliers

## WHY BUY DIRECTORS AND OFFICERS LIABILITY INSURANCE?

In a claim situation (recent examples overleaf) a Director's or Officer's personal assets are at risk. They cannot rely on the Residents Association/Company indemnifying them. Often such an indemnity from the company will be in contravention of the Companies Act.

The Directors and Officers Liability Insurance Policy will pay on behalf of the Director their legal costs and expenses in defending a claim and any civil damages awarded against them.

## THE CHANGING ENVIRONMENT

Current trends, including increased regulation and a greater understanding on the part of third parties of the duties and responsibilities of a Director, together with third parties generally greater awareness of their rights, are all now contributing to the once rare occurrence of a Directors and Officers claim becoming increasingly commonplace.

