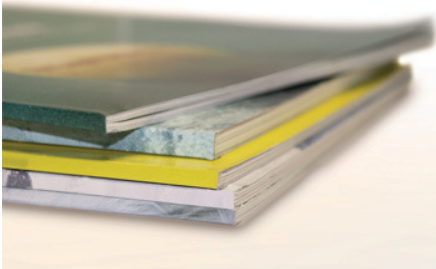


Be Sure when you Insure

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BY GEORGINA COOK

If you own a freehold property, insuring it is generally straight-forward: you usually have one policy covering the building and another covering the contents or else a policy covering both of those distinct aspects. Indeed, if talking about “Buildings” or “Contents” insurance, people tend to know what is meant by those terms. However, if you live in a flying freehold or share transfer property, the situation is not quite as clear.

The title document relating to the ownership of a flying freehold or share transfer flat, being the Declaration of Co-Ownership for flying freehold and the Articles of Association for share transfer, usually sets out what the ownership and obligations are as between the owner of the flat and the association (in the case of flying freehold), and the owner of the right to occupy the flat and the property-owning company (in the case of share transfer). This is because, unlike with standard freehold property, one person does not own the whole of the property and its contents: the association or company will usually

own the structural and common parts of the property (or the whole of the property in the case of a share transfer company), whilst the individual will usually own or have the right to occupy the internal, non-structural parts. This therefore creates potential for confusion and dispute as to who is responsible for insuring which parts. With two parties aiming to insure the whole of the flat, care needs to be taken both to ensure that all elements are covered and that none are missed, and also that there is no element of ‘double insurance’ whereby both parties are insuring the same thing, whereupon there is likely to be a dispute in the event of a claim as to which insurer is responsible for remedying the issue at hand. So, when owning or occupying a flat, an individual should always pay close regard to the Declaration of Co-Ownership or the Articles of Association as they will usually set out who is responsible for insuring what.

As an example, a declaration will generally set out what property is in the ownership of the association

(the “common parts”) and what is owned by the individual (the “private unit”). A list of matters will be included under each designation and, for example, in the case of common parts would include: the ground on which the building is constructed, the structural elements of the building, structural flooring, the roof, the facades of the building, the pipes, gutters and downpipes serving the building and all other parts that are considered to be communal to the building as a whole. On the other hand, the definition of the private unit would include matters such as: interior tiling, floor coverings, plastering, non-structural internal walls and partitions, bathroom fixtures and fittings, and kitchen units. On this basis, it would be fairly easy to ascertain who is responsible for insuring what: simply give the insurer the list of matters which comprise your private unit and seek cover for those parts. The association would do likewise with respect to insuring the common parts.

However, it is not always quite so simple! Detailed consideration needs to be given to precisely what an individual is responsible for insuring. For example, he often has the ownership of all pipes, drainage systems, mains services and cables which are within and exclusively serve his flat and would thus be wise to insure such items. The obligation of the association to insure such parts stops as soon as they enter the individual’s flat. So, if a water pipe burst in the kitchen of a flat, if the particular pipe only serves that flat, the responsibility for repairing that pipe (and thus insuring it) will fall to the flat owner. If, however, it is found that the pipe just runs through

the flat and serves other flats or the common parts, that pipe would be a common part and would be the responsibility of the association. You can appreciate how difficult it can therefore be to ascertain who is responsible for maintaining and insuring what!

There is an additional layer of complexity if you own a share transfer flat which derives from a flying freehold title. This occurs where an individual owns shares in a share transfer company but, rather than owning the whole of the property of which the flat forms part, the company simply owns one or more flying freehold lots which relate to certain apartments within a development. In this situation, there are three entities responsible for insuring: the association which owns the flying freehold common parts, the share transfer company which will own certain private units deriving from the flying freehold structure, and the individual who will own shares in the share transfer company. The issues set out above apply equally to this situation, albeit that there is the added complication of an additional party! In practice, it is recommended that the association, the share transfer company and the individual all insure their respective interests with the same insurance company. Not only will this avoid any possibility of double-insuring or some element being missed, but it also tends to generate cost-savings as the premium gets lower with multiple parties seeking insurance of a whole building.

So, when it comes to renewing your insurance policy, take a moment to consider whether your standard “Contents” policy covers all of the elements

that you actually own or are responsible for. Also bear in mind that, as well as insuring the building and contents, an occupier is often required to take out third party liability cover against injury or damage to persons or property caused by the insured. Many policies include cover of this nature automatically. If in doubt about any of the issues raised, refer the

matter to your insurer who will be well-versed in ascertaining the level of and split in cover that it likely to be needed. A few moments ensuring what you should be insuring will save a lot of hassle in the event of your needing to make a claim!

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