

**Note:** One of ARMA's key roles is to provide its members with technical support. However, from time to time, technical or other issues arise where guidance for lessees as well as their property manager is deemed appropriate. Such guidance is contained in these Lessee Advisory Notes (LANs) which ARMA members can copy and distribute to their clients and lessees as appropriate. Readers' attention is specifically drawn to the boxed note at the end of the LAN regarding its use.

### SUMMARY

This Lessees Advisory Note:

- Looks at the legal rights of lessees regarding insurance
- Explains the RICS's (Royal Institution of Chartered Surveyors) Code's requirements
- Explains the regulation of agents with regard to insurance
- Explains the different sorts of insurance that are usually required for a block of flats
- Advises on how to reduce the number of claims

**NOTE:** Where reference is made to RMCos this also includes Right to Manage Companies (RTMcos).

### LESSEES' LEGAL RIGHTS ABOUT INSURANCE

Any lessee and recognised residents' associations have the right to request a summary of the current insurance cover, and the right to inspect the policy document and evidence of receipt of premium or alternatively to ask for copies of the policy document and payment of premium to be sent to them. The landlord, residents' management company (RMCo) or their agent have 21 days to allow inspection which shall be free of charge to the enquirer but a reasonable amount may be charged as part of the costs of management. If documents are copied and/or sent then a charge can be made for copying policy documents to the person raising the request.

Lessees have the right to notify the insurer direct of any damage to their home or the block in which they live if there is a time limit on claims being made in the insurance policy.

Lessees have the right to challenge the payability and/or reasonableness of costs of insurance at a Leasehold Valuation Tribunal.

If an agreement for insurance for a period of more than 12 months is planned, then landlords and resident management companies may be required to consult with all lessees and residents associations.

The rights of lessees regarding insurance are in S30A and the Schedule to the Landlord and Tenant Act 1985, as amended by the 1987 Landlord & Tenant Act and the Commonhold and Leasehold Reform Act 2002.

### THE RICS CODE OF PRACTICE AND INSURANCE COMMISSIONS

This is what the Code says about insurance commissions.

***"Insurance commissions and all other sources of income to the managing agent arising out of the management should be declared to the client and to tenants." Para 2.6.***

### REGULATION OF AGENTS AND INSURANCE

General insurance is regulated by the Financial Services Authority (FSA) and this affects managing agents who advise on, arrange or administer insurance. 'Administering' includes claims handling. So if lessees expect their agent to handle insurance matters the agent needs to be regulated to do so.

The options for agents are to become:

- an Authorised Firm which can transact insurance business with insurers or brokers
- an Appointed Representative of a single insurer or broker (although remember that some brokers will still offer you a choice as they are themselves authorised firms and in turn work with many insurers)
- an Introducer whereby the agents only involvement would be introducing his client to an insurer or broker
- part of a designated professional bodies scheme (DPB) such as the one run by the RICS

The requirement to be regulated by the FSA does not apply to residents' management companies that arrange their own insurance through a broker or where the managing agent acts as the company secretary.

## THE USUAL INSURANCES FOR A BLOCK OF FLATS MAIN TYPES OF INSURANCE REQUIRED

The risks associated with blocks of flats are significantly different to individual freehold dwellings. A standard buildings or contents insurance policy will not usually cover all the risks. It is desirable that blocks of flats be protected by policies covering the following:-

- Buildings insurance
- Communal contents
- Property owners' liability
- Employers' liability where staff are engaged
- Directors and Officers' liability where there is a residents' management company in place
- Plant inspection and breakdown repair (engineering insurance for lifts for example)
- Terrorism cover

### BUILDINGS INSURANCE

The sum insured should represent the full re-building cost of a property - not its market value. Older properties, for instance, in the lower priced areas in the UK may cost much more to re-build than their market value might suggest.

### COMMUNAL CONTENTS INSURANCE COMMUNAL CONTENTS

Blocks of flats insurance policies will provide limited cover for contents of common parts - typically a limit of around £10,000 is found to be sufficient. Such contents should include furniture, carpets and curtains.

### PROPERTY OWNERS' LIABILITY

It is also essential that a policy includes Property Owners' Liability cover to cover injury, death or damage to third party individuals on or adjacent to your property e.g. postman, meter reader or council employee.

### EMPLOYERS' LIABILITY

Some insurance providers will offer Employers' Liability cover as standard, other companies may charge an additional premium for this. It is therefore important to check this cover is included if your RMCo or your landlord has a contract of employment with any individuals such as caretakers or gardeners.

### DIRECTORS' AND OFFICERS' INSURANCE

The law makes no differentiation between a volunteer director and officer of a residents' management company

and someone running a large commercial business. The actions or inactions of the volunteer directors or officers can have a serious impact on lessees' property. This can result in the directors being sued personally and they can face potentially unlimited personal liability. Remember that an aggrieved party will sue where he expects to get the best result. Make sure the policy covers both the management company and the individual directors.

### PLANT INSPECTION

Any building with one or more lifts will need to comply with statutory requirements for inspection and maintenance. A broader plant inspection and engineering policy will cover lifts alongside other plant in the building under a single, administered 'umbrella' policy.

### TERRORISM INSURANCE

If the government declares an incident to be related to terrorism, then any loss will only be covered if specific terrorism cover has been taken out. Under a block of flats or any commercial buildings policy, terrorism cover as defined in the (Acts of Terrorism) Act 1993 is usually excluded and will need to be purchased as a separate section or addition to the standard policy. There is a strong case for terrorism cover because normal policies will not provide for reinstatement costs if the peril is a terrorism incident. Further, some mortgagees insist upon terrorism cover as part of any loans to flat owners.

### UNOCCUPIED FLATS

Some insurance policies will contain exclusions where a flat is unoccupied for longer than 30 or 60 days. So a claim arising from an unoccupied flat under certain risks such as water damage, theft or vandalism may not be covered. It may be necessary to advise the broker/insurer and/or arrange for regular inspections of such flats to maintain cover. The exclusions may affect others, particularly in the case of escape of water claims where there may be no cover if the leak emanates from an unoccupied flat, irrespective of how many flats are affected.

Lessees who intend to be absent for extended periods should make inquiries as to whether they need to advise the insurer of their absence.

### SUBLETTING OF FLATS

The buildings insurance policy may or may not have conditions about subletting of flats. Lessees who sublet should be aware that the buildings insurance policy for

the block may not cover them for any loss of rent if their flats are not habitable for any period. Neither may that policy provide alternative accommodation for any tenant if the building cannot be occupied for example by a flood or fire. It is up to the lessee who sublets to arrange their own insurance for such risks.

Lessees that seek to sublet need to check on the insurance arrangements for the building before doing so.

### INSURING LESSEES' HOUSEHOLD CONTENTS

The normal insurances taken out by a landlord or agent do not include insuring lessees' or tenants' household contents and personal effects, although the building insurance policies will normally cover fixtures such as baths, basins and toilets. It is important that lessees are clear that they need to obtain contents cover. For example if a water leak from one lessee's flat causes damage to the contents of the flat below, the items can only be replaced if the lessees hold current contents policies. Individual contents policies may not allow for third party damage but should be sought by lessees. Where contents are damaged by a leak from above and there is no third party cover, the affected owner will have to claim from their own contents policy however unjust this may seem to them.

### EXCESSES

It is common for insurance policies to contain excesses in respect of some risks. These amounts are not payable in respect of the claim, and may be, for example, the first £100 in water damage claims, or the first £1000 in subsidence claims. The excesses may be higher if the block has a poor claims record. If your flat has been damaged and an insurance claim is being made, the managing agent or freeholder may not be able to recover the excess on your behalf, even if the damage was caused by another flat, and you may be asked to pay the excess yourself in order for the claim to go ahead. It may not be appropriate, or lawful, for the excess to be paid from the service charge account.

### HOW TO REDUCE INSURANCE CLAIMS

A low or good claims record will usually result in a lower insurance premium and it is in the interests of all parties to reduce the number of insurance claims. In addition, people's homes are involved and dealing with damage to lessees' property can cause lessees great inconvenience, distress and expense. Insurers report year after year that the greatest number of insurance claims result from water damage originating from within lessees' flats.

Simple steps you can take to reduce claims include:

- Turn off the water mains supply to the flat if leaving the property unoccupied for any length of time
- Have the flat's stop tap checked annually for example when a boiler is serviced
- Check taps are turned off when you leave your home
- Do not leave plugs in basins, baths and sinks when you go away
- Check hose connections to washing machines and dishwasher regularly
- Make sure someone has a key - or at least contact details for a key holder if you go away
- Do not leave running taps unattended
- Ensure bath and shower sealants are in good order and effective shower screens or curtains are installed

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