Why body corporate trustees should scrutinise their valuer

By Björn Laubscher

28 May 2021

Did you know that body corporate trustees can be held personally liable for an insurance shortfall in the case of underinsurance, as a result of a faulty valuation?

Björn Laubscher, managing director of Mrfin Valuation Services

You may ask, "How can this happen if the body corporate has trustee liability cover in place?" Let's consider a scenario that can cause such an undesirable outcome.

Do not skip your mandatory insurance valuation

Despite being considered a grudge purchase by some, having an insurance valuation done every three years is essential. Skipping this valuation means that the body corporate will not have an updated replacement value, and will be unable to accurately update its total insured value.

In appointing a valuer, it can be dangerous to simply appoint the valuer who presents the cheapest quotation. If trustees just select the cheapest quotation without verifying that their chosen valuer is suitably qualified, accredited, experienced and covered by the necessary professional indemnity insurance, this simple oversight can cause major distress further down the line.

Worst-case scenario

In this scenario, the trustees requested quotes from a number of valuers and, without scrutinising any of the suppliers, they appoint the valuer who offered the cheapest quote.

Six months after the valuation, one of the units in the complex is gutted by fire and a claim for R2m is lodged with the insurer. A loss adjuster is appointed by the insurer to investigate the claim, and they find that the body corporate is underinsured by 40%. Subsequently, the insurer applies the principle of averaging and announces that they are only paying 60% of the total claim, i.e., R1.2m.

The owner of the gutted unit consults their attorney who proposes they recover the shortfall of R800,000 from the body corporate on the basis of being underinsured. In turn, the body corporate’s legal advisor recommends a course of recovery against the valuer for providing flawed professional advice because, as it turns out, the valuer had made a calculation error in the valuation.

Luckily, the valuer has professional indemnity cover – but only for R1m. The valuer’s insurer first pays R400,000 for his legal defence fees, leaving only R600,000 left over to pay the body corporate’s claim.

As the original shortfall was R800,000 and the valuer’s insurer has compensated the body corporate with R600,000, a shortfall of R200,000 remains for which the valuer is taken to task in their personal capacity - but the valuer is out of pocket and facing liquidation.

Know your property valuation types to avoid being led astray
Schalk van der Merwe 23 Oct 2020

The final nail in the coffin

With no other route to recover the outstanding amount, the body corporate turns to the trustees in their personal capacity, as they are ultimately liable for taking all reasonable steps to protect the scheme from any unnecessary and avoidable risks. If they cannot prove a process of comprehensive scrutiny to the insurer, they will be held liable in their personal capacity for losses incurred as a result of their neglect of duty.

At this stage, the trustees may think that they are covered by the body corporate’s trustee liability policy; however, it is important to note that the insurer has the right to refute a personal liability claim on the grounds of gross negligence.

What can we learn from this scenario?

If a valuer regularly performs insurance valuations for commercial buildings and residential complexes, they should hold professional indemnity cover for at least 10% of the property's replacement value and no less than R20m - bearing in mind that a portion of this amount is reserved for settling the valuer’s defence costs.

Therefore, if your complex has a replacement value of R100m, a valuation provider with professional indemnity insurance of R5m should be considered unsuitable for the task of determining an appropriate sum insured for the body corporate.

Without realising it, trustees often put themselves at risk by appointing a poorly qualified or insufficiently covered valuer for the sake of saving the body corporate a few hundred rands.

Given the hard work trustees put into running a scheme, generally at no compensation, it certainly is not worth the enormous risk. Trustees, protect yourselves!

ABOUT THE AUTHOR

Björn Laubscher is managing director of Mrfin Valuation Services.