

3 key challenges that impact Strata Insurance, and how you can tackle them.

The role of a Strata Manager is continually increasing in complexity and responsibility. Below we address some key challenges affecting properties that can also impact the Strata Insurance - asbestos, non-compliant cladding, and property defects.

Unfortunately the frequency Strata Managers are faced with these issues is growing, and none are a problem that can be brushed aside. Strata Managers may either be held liable or joined in legal action if they have failed, or been alleged to have failed to disclose true information in relation to the strata properties they manage, or, neglected to act with due diligence in taking appropriate actions to rectify the problem.

Below we provide some tips on how you can best manage the presence of asbestos, non-compliant cladding, and property defects, to minimise the impact they can have on a property, as well as reduce the risk of any potential legal fallout.

1. Asbestos

In its prime, asbestos was seen as a highly adaptable mineral, and perfect for use in construction due to its efficiency as a heat and electrical insulator, physical flexibility, strength, and cost effectiveness.

Nowadays however, asbestos is notorious for being a carcinogen. It is well known that breathing in fibres can cause a number of life threatening

respiratory diseases - asbestosis, mesothelioma, pleural and lung cancers.

Australia was one of the highest users of asbestos per capita up until the mid-1980s, before the health dangers of asbestos were truly realised, and the Australian Government banned its use due to concern over related diseases and deaths.

Unfortunately, despite legislated bans, a significant number of asbestos products still sit within our 'built environment', including both residential and commercial strata.

The World Health Organisation has declared that there is 'no identified safe threshold' for asbestos exposure. Based on this, the presence of existing asbestos in strata properties must be managed very carefully, as the danger of potential exposures can endure for a very long time into the future.

It is for this reason, that insurance companies are concerned about insuring properties of this nature, and why strict insurance policy conditions may be enforced for buildings that are known to contain asbestos ([Asbestos Safety and Eradication Agency, Australian Government](#)).

3 key challenges

What issues can asbestos cause in relation to Strata Insurance?

If one of the Strata buildings you manage contains asbestos, insurers may not be in a position to provide insurance coverage, as the presence of asbestos may sit outside their underwriting guidelines.

It is incredibly important to disclose the presence or possible presence of asbestos. If it is not disclosed to the insurer, serious difficulties could be experienced when it comes time to make a Strata Insurance claim i.e. claims could be denied, or the policy cancelled in its entirety for breaching the insurance contract.

Before entering into a contract of general insurance with an insurer, the OC has a duty under the Insurance Contracts Act 1984, to disclose to the insurer every matter that they know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept the risk of the insurance and, if so, on what terms.

How can insurers respond to the known presence of asbestos?

Insurers may;

- decide not to insure the property as it could sit outside underwriting guidelines,
- increase the insurance premium significantly in order to take on the risk,
- impose higher insurance excesses,
- agree to insure the property, but under a set of strict conditions e.g. the OC must have a plan in place to remove the asbestos from the property.

If any of your clients' buildings have asbestos, what should you do?

- Get an Asbestos Risk Assessment Report done on the property by a qualified professional.
- Disclose the presence of asbestos to the insurance company or insurance broker, and provide the asbestos report.

- Commence a discussion with the OC to put in place a plan for asbestos removal.
- Follow recommendations provided within the asbestos report as a matter of urgency.



2. Non-Compliant Combustible Cladding

Since the horrific Grenfell Tower fire in London, and the Lacrosse building fire in Melbourne in 2014, there has been heated debate, publicity and government enquiries with respect to non-compliant building materials used in new strata developments.

To date, it has emerged that around 40 buildings in the Melbourne CBD area alone have been deemed non-compliant due to building materials used in the construction (Victorian Building Authority).

Considering the fact that many of Whitbread's strata clients manage properties comprising non-compliant cladding, this has been identified as an ongoing and growing issue that all Strata Managers need to be educated on. The presence of cladding can have a significant impact on a Strata Manager's ability to arrange and renew Strata Insurance programs in the future.

3 key challenges

What issues might non-compliant cladding cause in relation to Strata Insurance?

- Many insurers may not be in a position to provide insurance on these properties, as the presence of non-compliant cladding may be outside their underwriting guidelines. However, once detailed information on the cladding is provided to insurers, together with the building's fire rating, insurers will be in a better position to assess whether the property fits within their risk appetite, and they are able to cover a risk of this nature.
- If the presence of non-compliant cladding is not disclosed to the insurer, and the insurer is later made aware of potential cladding at the building, they are well within their rights to come off risk and cancel the insurance policy.

How can insurers respond to the presence of non-compliant cladding?

- Insurers will generally request additional information such as - make/brand and model of the cladding in place, as well as the fire rating of panels used on the building façade and awnings.
- Insurers will request information on the percentage of the building that features cladding, and whether the cladding is within Australian standards and regulations.
- If the information provided does not meet insurers' underwriting guidelines, they will either cancel the policy, or decline to provide cover for buildings of this nature.
- If the insurer agrees to provide cover, it is likely they will impose high premiums, high policy excesses, and/or the insurance policy will be subject to very strict policy conditions and exclusions.

If any of the buildings you manage have non-compliant cladding what should you do?

- Advise the insurer or your insurance broker immediately.
- Request the exact details of the cladding from the developer or builder to ensure the correct information is relayed to the insurer.
- Depending on the type of cladding used, the insurer may impose risk recommendations that the OC will need to action immediately to avoid potential losses, but also to ensure insurance can be placed for the property.

Facts for thought...

11,667

The number of people diagnosed with asbestos related disease, Mesothelioma, between 1982 and 2009 ⁱ

More than

20

high-rise residential buildings in Melbourne are covered in potentially flammable cladding ⁱⁱ

85%

of apartment blocks built since 2000 in New South Wales have defects ⁱⁱⁱ

Source:

i: Asbestos Diseases Research Institute (ADRI) - Mesothelioma in Australia

ii: News.com.au - Fire-prone cladding on Vic CBD buildings

iii: Choice.com.au – Apartment Building Defects

3 key challenges

3. Building Defects

Strata building defects can be costly and time-consuming to handle. As time goes on, it becomes harder to distinguish genuine defects from ordinary 'wear and tear' or maintenance issues, whether on the common property or within the individual lots.

The majority of building defects have been found to occur as a result of the design of the building, the construction process or the materials used. Some of the most common defects discovered, are internal water leaks, cracking to internal / external structures and water penetration from the outside.

Research has unveiled that of 1,011 strata title property owners surveyed, 72% had experienced one or more building defect. This figure increased to 85% for strata properties built since 2000 (MyBodyCorpReport.com.au).

Owners Corporations need to identify and act on potential defects early to meet warranty timeframes, and ensure they are rectified quickly.

Insurance policies have a defects exclusion and therefore defects claims are generally not covered under Strata Insurance. When applying for insurance, the Owners Corporation has an obligation under their 'Duty of Disclosure' to disclose any known defects.

How can insurers respond to the presence of defects?

- Insurers may decide not to insure the property.
- Insurers can increase the insurance premium or impose higher insurance excesses.
- Some insurers will give Owners Corporations a fixed period of time to get a defect corrected, and agree to insure the building but with certain restrictions until works are completed.

If any of your clients' buildings have defects what should you do?

- Obtain a Defects Report from a qualified professional.
- Disclose the presence of defects to the insurance company or insurance broker, and provide a copy of the Defects Report.
- Commence discussion with the Owners Corporation or the builder/developer to put in place a plan to address the defects. Alternatively, follow the recommendations provided within the Defects Report as a matter of urgency.

For more detail surrounding Strata property defects and insurance, [click here](#) to view an article published by Whitbread – '[No double dipping on property defect claims](#)'.

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If any of these 3 issues are concerning you in relation to Strata properties you manage, please get in touch with your Whitbread Strata Insurance broker.

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