

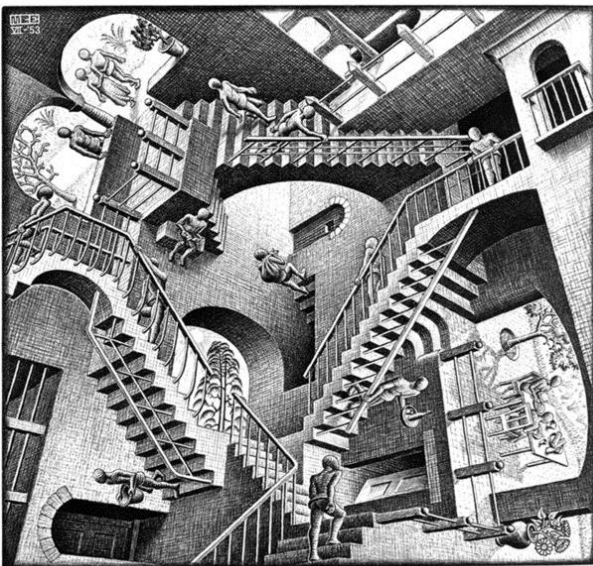
Owners Corporation & Work Flow – Part 2

In part 1 of this article, we saw that no matter how careful an OC and its manager are, the OC may be liable under the Water Act for water flows from common property.

Is this risk covered under standard OC insurance?

The short answer is – partly yes and partly no subject to the proviso within the exception to an exclusion to part of the cover.

Black and white really. Like an M.C. Escher drawing:



Most OC insurance policies cover a number of risks, including “*Building and Common Contents*” and “*Legal Liability*” (these descriptions are used in some Zurich policies).

Under the Legal Liability section, the OC is covered for liability to others (such as owners of apartments in the building) for property damage as a result of an occurrence during the period of the policy.

Exclusions for water damage or in relation to defective workmanship will not normally apply to the Legal Liability section.

Liability to an apartment owner under the Water Act for damage caused by water flow from common property into the apartment will normally be covered, whether or not caused by the negligence of OC or manager.

Because water damage often develops over time, the relevant occurrence, and therefore the applicable policy, is sometimes difficult to pinpoint. The OC manager must ensure proper insurance records are kept. A problem may not manifest itself for decades after the original cause, so insurance records must be kept for decades too.

The Building and Common Contents section covers damage to the common property itself. A flooded basement is a good example.

A typical exclusion in Building and Common Contents section is for water “seeping or percolating” through walls as a result of defects. This exclusion may be subject to the exception that it does not apply to subsequent damage, provided that (and this is the proviso to the exception to the exclusion to part of the cover) the defect was truly latent and not reasonably ascertainable.

So, if as a result of an unknown and undetectable failure of a sealant, water seeps through a wall into the basement and after seeping in, gradually fills the basement and destroys a waste disposal unit (a truly horrible scenario reminiscent of Lord Cairns’ “*cellar ... invaded by the filth of his neighbour’s privy*”), the damage should be covered.

Another typical exclusion is for flood (from a watercourse, lake or reservoir), and another for defective workmanship. The relationship between the exception to the water exclusion and the general defective workmanship exclusion is tricky.

But these exclusions normally apply *only to the Building and Common Contents cover*. They should not apply to the Legal Liability cover.

If the aforementioned basement inundation also drowns the apartment owners’ cars sitting on their on-title parking lots, the car damage should be covered by the Legal Liability section of the policy, with any issue of defects and knowledge being irrelevant.

Understanding insurance policies is rarely easy (often to the benefit of the insurer). I find that insurance claims officers often do not properly understand how they work either. If a claim is rejected, it may be prudent to obtain legal advice about the position, especially before OC funds are spent fixing the problem.

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