Duty to Make a Fair Presentation

Why checking your statement of fact and the information on it is so important

How to Ensure Your Insurer Receives the Correct Information

Please read this document carefully as any failure to comply with the duty to make a fair presentation of the risk may entitle the insurer to void the insurance contract or to seek some other remedy, for example charge a higher rate for your block and therefore an increased premium.

Duty of Fair Presentation

The Insurance Act 2015 imposes an obligation on all policyholders to 'make a fair presentation of the risk' prior to the policy commencing. A fair presentation is one that discloses, in a manner that is reasonably clear and accessible, every material circumstance which is known or ought to be known by the policyholder's senior management, or those responsible for arranging insurance, following a reasonable search.

The key elements of this obligation are explained below:

Material Circumstance – this is anything which would influence the opinion of an insurer in determining whether to insure the property and, if so, what the premium will be and what the cover of the policy may include. A material circumstance would typically include any factors relating to the property to be insured such as prior claims, construction of the block, financial history (CCJ's) of directors and your business activities.

Known or ought to be known – you are obliged to disclose material circumstances that you actually know but also those that you ought to know. This means that if the information is readily available to you but you fail to disclose it by lack of inquiry you will have breached your duty to fairly present the risk. All information disclosed will be presented to insurers.

Directors – your knowledge, for the purposes of the Act, includes (but is not limited to) that of those that sit on the board or any residents that may have previously been directors of your residents' management company.

Reasonable search – you are obliged to undertake reasonable searches when providing details to us and we can assist you with what may be reasonable. The following examples are common areas where the full details may not be to hand and a little investigation may be required. These are a few things your insurer will need to know:

- Checking the accuracy of your claims experience
- Are the construction details provided correct; perhaps the property is timber framed and notifying us has been overlooked
- Providing details of the extent of flat roof areas, or the type of roofing materials used

Reasonably clear and accessible – all information must be provided to us in a reasonably clear and accessible manner. This means that information must not be provided in an ambiguous way. The new rules also prevent policyholders from concealing key facts amongst large volumes of less relevant or immaterial information.

Presentation of Information

It is your responsibility to make sure that the information to be submitted to the insurer is presented in a way that the insurer will find reasonably clear and accessible. All statements and facts disclosed on proposal forms, statement of fact forms, claim forms and other documents should be full, true and accurate and must be given after undertaking a reasonable search, including consulting with your senior management.

When to disclose

You are required to disclose the relevant information to insurers during the negotiations preceding the conclusion of the original contract of insurance and all subsequent renewals of that policy. During the period of the policy you are also required to disclose relevant information:

- if there is an increase or alteration at the block;
- an extension to the policy period is required

What happens if you do not fairly present the risk?

If you fail to comply with your obligations, insurers have differing remedies depending upon the nature of the breach and what would have happened had you fairly presented the risk.

If you deliberately or recklessly (i.e. without care) fail to present the risk fairly, insurers may void the policy. This means they can retain all premiums and treat the policy as if it never existed and refuse to make any claims payments. You could also be obliged to repay any claims payments that had already been made.

If you fail to present the risk fairly, but your failure was neither deliberate nor reckless, the insurer's response will depend upon what would have happened if you had complied with your obligations:

a) if insurers would not have provided the policy, they may treat the policy as if it never existed, refuse to make any claims payments and demand the return of any claims payments already made. However, insurers would have to return any premium payments already made;

b) if insurers would have provided the policy but on different terms, the policy will remain in force but will be treated as if those different terms applied from the start of the policy. This could result in a claim not being met in part or in full (e.g. if insurers would have excluded that particular activity or imposed additional conditions which you did not comply with);

c) if insurers would have provided the policy but charged a higher premium, insurers may reduce any payment in proportion to the difference between the premium charged and the premium that would have been charged if you had fairly presented the risk. This could result in a significant reduction to the amount of any payment under the policy. By way of example, if a fair presentation would have resulted in the premium doubling, any claims payment under the policy would be halved. This remedy applies regardless of whether there is any connection between the shortcoming in the presentation of the risk and the subject matter of the claim.

Examples of material information:

- change to the block's construction - for example the addition of cladding;
- changes in how the properties are used, some examples are provided below:
  - Notify us if any flats are used as 2nd homes or holiday lets
  - If any parts of the property are used as student accommodation
  - If a business is being run from one of the properties
- if any significant extensions, renovations, alterations or other work affecting the property is planned
- loss history / experience including potential claims circumstances / incidents. This could apply to uninsured as well as insured matters;
- criminal conviction / regulatory investigation or enforcement / Health and Safety investigation or prosecution;
- if insurer previous declinature, refusal to renew, imposed terms / restrictions in cover, mid term cancellations.

ALWAYS INCLUDE ANYTHING YOU THINK MAY BE RELEVANT - if you have any questions, please speak with your account manager, as they will be able to assist you.

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