

Why a contractors all-risk insurance policy should be considered before renovating

When planning property improvements, before bringing a contractor on site, establish whether a contractors all-risk insurance policy is required, advises Fuzlin Abrahams, managing director of GIB Western Cape. Though standard buildings insurance provides coverage for property owners in many ways, property under construction can be a slightly more complicated matter when it comes to insurance and understanding the rights and obligations of the property owner in respect of property under construction.



Source: www.pexels.com

Abrahams says the onus is on the property owner to ensure that all aspects of the building and construction project are covered. “Property owners should advise their broker of any material changes to the risk prior to construction taking place to comply with the duty of disclosure condition stated in the insurance policy. Generally, the building’s insurance policy can be extended to cover losses resulting from cosmetic or minor renovations, such as painting or tiling, which would not have any impact on the structural integrity of the property.”

“However, property owners need to be aware that the building’s insurance policy excludes losses or damage resulting from alterations and additions that involve construction from the foundation or any alterations and repairs to the existing property that necessitates temporary accommodation. When the structural integrity of a building changes, it is in a fragile state until it is completed and the potential for loss is much greater.”

The contractors all-risk policy provides coverage for the construction project against physical damage to the works and third-party liability claims. But property owners are often not aware that the liability cover does not automatically include claims related to the weakening and/or removal of lateral support losses, therefore the lateral support liability extension will need to be purchased to provide additional coverage resulting from excavation activities.

Duty not to withdraw lateral support from neighbouring land

Our law provides that landowners may use and enjoy their property in a manner that does not cause harm to or

unreasonably interfere with the neighbouring landowner's right to use and enjoy their land. As a landowner, you are entitled to excavate the soil on your property for construction purposes, however you have a duty not to withdraw lateral support from any neighbouring land. This is known as the principle of lateral or subjacent support.

Where subsidence or other destabilisation occurs because of excavations on an adjacent property, the owner of the adjacent property will be liable in an action for damages, irrespective of whether they were negligent or not. That is not to suggest that an adjacent property owner is not entitled to excavate, but if the excavations result in substantial structural damage to the neighbouring property, a claim can be instituted against the property owner for damages due to the breach of the duty to provide lateral support. This is based on the principle of strict liability: liability without fault that holds an individual or organisation responsible for damage caused, whether they were negligent or not.



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Petropulos and another V Dias

A legal precedent supports this. In the Petropulos case (Petropulos and another V Dias (1055/2018) [2020]), Petropulos and Dias owned adjoining properties in Camps Bay, Cape Town. The properties were located on a steeply sloped mountainside. Petropulos commenced excavations on her property, near the boundary of Dias' property, to undertake extensive excavations and renovations to erect a three-floor structure and a lift shaft. The excavations resulted in substantial structural damage to Dias' home and he instituted a claim for damages due to the breach of the duty to provide lateral support and based it on the principle of strict liability.

The Supreme Court of Appeal (SCA) ruled that neither culpa (negligence) nor dolus (intent) is a requirement for liability for damage caused by the withdrawal of lateral support. In other words, it is now settled that liability in subsidence cases is strict. Petropulos breached the duty of lateral support owed to Dias and was responsible to make good the damage that was caused.

It is best to consult with a broker before commissioning a building contractor. Ideally, the broker should arrange insurance to ensure that the property owner's risks are adequately covered, although the contractors all-risk policy can be provided by either the property owner or the building contractor. If lateral support liability insurance is required, then the property owner should always provide developers lateral support cover as the principal of strict liability lies directly with the owner and does not extend to the building contractor.

Contractor-provided cover

It is important to note that when the building contractor provides cover for the construction project, even if lateral support

liability cover is included, it will only fall into place if the contractor was found to be negligent. Therefore, in the event where the contractor is found not to be negligent, the policy will be rejected, leaving the property owner exposed.

To address this exposure and any other possible third party liability claims that may arise, the building contractor's policy must reflect the property owner as co-insured and strict liability in respect of the weakening or removal of lateral support should be included.

"Renovations are a costly exercise, and most people budget carefully. In cases like these, knowledge is power and it's worth taking a little extra time to ensure that adequate insurance cover is in place rather than finding out too late that a property owner is liable for a claim that he or she was never aware of from the outset," Abrahams says.

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