

Owners in unit title developments need to work together to settle EQC and insurance claims. Christchurch lawyers RICHARD LANG and JANINE BALLINGER look at the complexities.

You can't pick your neighbours and you may not even like them, but when you own a property in a unit title development, as opposed to a cross lease, you and your neighbours are covered by the same insurance policy.

Unit title developments aren't just large apartment complexes. Smaller blocks of flats and small to medium-sized commercial blocks are often unit title developments, especially where individual properties share common facilities such as driveways.

With a unit title development, the body corporate takes out insurance for all the units. If a unit or common area suffers earthquake damage, the body corporate lodges the claim with the Earthquake Commission and their private insurer, and deals with inspections, completion and scope of repairs costings.

Ultimately, the body corporate makes decisions about repairs or rebuilds.

Body corporates are funny things. They are created by law, and owners of a unit title properties are bound by the Unit Titles Act 2010 plus any of a body corporate's own rules. Each unit is a member, represented by an owner at body corporate meetings, so all owners make decisions collectively. When there are 10 or more units, the body corporate must establish a committee for the daily running of the complex on the behalf of all owners.

Body corporates facing significant earthquake issues

need to ensure all owners are actively involved in the process and understand the outcome.

One of the biggest issues now is the lack of insurance cover.

Unit title developments that are heavily underinsured are leaving body corporates scrambling to apportion cover and deal with any shortfall. If the body corporate resolves to rebuild, even without all owners agreeing, it can legally force owners to pay any shortfall.

Another issue is how damage is assessed from unit to unit. Inspectors may look at a few units, scope the damage and apply the average cost of repairs to all the units. The body corporate must decide whether that is appropriate for their situation.

Serious decisions are needed if the damage is uneconomic to repair and everyone needs to agree on what to do.

The first question is whether the owners want to repair or rebuild. If there is a shortfall in the insurance payout, all owners must contribute to make it up.

Such agreement is difficult. Owners tend to want their money out rather than put more in.

There are also hoops to jump through when an insurer offers a cash settlement.

Accepting the money may seem easy, but it's not. The amount needs to be approved by the owners. Once approved, the cash comes to the body corporate and then the biggest hurdle is agreeing on how it is split among owners. There are no set rules here – it is simply what the owners agree.

A related issue is that damage



Near neighbours: Owners must work together

COMMENT

may vary widely from unit to unit, and owners may dispute the allocation of insurance proceeds. This can also be an issue when the complex is uneconomic to repair because the insurance proceeds will be divided in proportion to each unit owner's ownership interest (based on pre-quake values), not the damage to each unit.

Unit owners may contest this and ownership interests can be reassessed after revaluing and may change.

As there is only so much interest to go around, if one goes up, another must go down.



gether on insurance issues where they are in a body corporate.

Photo: FAIRFAXNZ

Owners who lose entitlements may fight back.

There are no hard and fast rules on allocating insurance money. At the moment, various methods are being used by body corporates to split funds, based on ownership interest, market value, or something else agreed upon.

If your body corporate is making this decision and you may be disadvantaged, make sure you are aware of your rights.

If the body corporate votes on something not all unit owners agree on, there are minority rights unit owners may pursue.

To get a result, all owners must work together and agree on the final method of payment.

Compromises may be needed to

get everyone on board. The last thing you want is some owners holding out and everyone suffering.

Once an insurance settlement is distributed, owners still must work together. After demolition, titles are still based on where the units were. So unless the units are being rebuilt as they were, owners must agree on the changes.

Will the land be marketed and sold? If so, who by? What is an appropriate price? Should the body corporate get a valuation?

All these decisions require the input of unit owners. The body corporate needs to be confident that all owners will sign a sale agreement if they get the right price, as any delays in signing

could jeopardise the offer.

The issues are many and varied. If you own a unit title property and the body corporate is conducting insurance negotiations, seek legal advice.

If you are buying a unit title property, ask your lawyer for thorough due diligence on the insurance situation as well as the inner workings of the body corporate. Assess your risk, as well as your neighbours, before buying.

■ Richard Lang is a partner and Janine Ballinger is an associate at Duncan Cotterill. R.lang@duncancotterill.com. This article is not a substitute for professional advice.