ANZRPGN 7 PROPERTY INSURANCE MANAGEMENT

1.0 Introduction

1.1 Purpose

The purpose of this Guidance Note is to assist Members to understand the essential elements of managing insurance programs in relation to existing buildings by broadly outlining issues relating to the insurance environment and risk management.

1.2 Status of Guidance Notes

Guidance Notes are intended to embody recognised 'good practice' and therefore may (although this should not be assumed) provide some professional support if properly applied. While they are not mandatory, it is likely that they will serve as a comparative measure of the level of performance of a Member. They are an integral part of the Valuation and Property Standards Manual.

1.3 Scope

This Guidance Note applies to Members who are called upon to advise clients in matters pertaining to the insurance of their properties and, in some cases, arrange the relevant insurances on their behalf. It deals with the management of risk and protection from risk using Insurance as an important element in achieving these objectives. Specifically, the Guidance Note deals with:

- a general background to insurance;
- aspects of risk management;
- relevant classes of insurance; and
- other relevant matters

1.4 Not Technical Advice

This Guidance Note does not seek to provide technical advice on specific valuation issues.

1.5 Beyond the Scope

Similarly, issues associated with insurances for new construction or major refurbishment projects are beyond the scope of this Guidance Note. Members will need to be aware of these types of insurance from other sources.

1.6 Consultation

Whilst a guidance note of this nature can address the broad issues, it cannot be definitive and you are, therefore, urged to consult with the insurer, an insurance broker or your legal adviser to discuss any aspects requiring clarification or expansion.

1.7 Disclaimer

This paper was produced by the Australian Property Institute to provide general information, in summary form to its Members. The contents do not constitute legal advice and should not be relied on as such. Formal legal/insurance advice should be sought in particular matters.

2.0 Preamble

2.1 Protect From Risk of Loss

Since the beginning of commerce and trade, humankind has sought to protect itself from the risk of loss, be that loss associated with property (real or personal), life or the ability to provide food and shelter for the individual, family or community.

2.2 Convey Risk to Another

The need to convey the risk of loss to another party has seen the development of a number of risk transfer mechanisms, the most notable probably being the concept of insurance.

2.3 Insurance is a Contract

Insurance is a contract between two parties where, for a consideration (premium), one party agrees to pay for a stipulated loss suffered by the other party. The payment of the claim simply fulfils the contract

2.4 Risk Transfer and Risk Combination

Thus, at the heart of insurance is the principle of both risk transfer and risk combination. Risk combination allows the risk to be spread, usually via an insurance fund, over a very large number of individuals or corporate entities.

2.5 Common Pool

The combination of many potential risks into a common pool or fund allows the law of averages of large numbers to operate to the benefit of the unfortunate few who suffer loss.

2.6 Statistical Data to Predict

With a large number of homogenous items (be they motor vehicles, lives, units or real property, etc) grouped together, it is possible from statistical data to predict within reasonable limits the number and cost of losses that will occur within the group. With this knowledge premiums can be calculated that are needed to pay the losses and the expenses of operating the fund and to provide an acceptable profit.

2.7 Offer Long Term Security

So that the insurance fund is able to offer long term security to its policyholders, premiums must be sufficient to enable it to meet both immediate claims and those that arise well into the future. The fund's long term viability is also dependent upon the level of investment income generated, operating expense levels and the sum of returns paid to investors (be those investors shareholders or owners in a mutual organisation).

2.8 Premium Rates

Whilst premium rates are determined by many complex factors, most of which are outside the direct control of the purchasers of the insurance protection, property owners can, however, take some actions that will affect the premium they are required to pay.

2.9 Modern Risk Management Practices

Modern risk management practices, careful analysis of the risks to be covered, and the level of the risk that the property owner will retain, are but a few of the factors that will determine the amount of money that will be spent on loss prevention and insurance protection.

2.10 Insurance Issues

This paper deals with some of the insurance issues that face Members in their management and development of real property.

3.0 General Insurance Environment

3.1 Premium Rates Fluctuate

Premium rates available to companies and individuals seeking the protection of insurance fluctuate in accordance with both local and international insurance market conditions, the level of natural and man made disasters (ie. claims), the economic climate and business cycles.

3.2 Management of Insurance Programs

The management of insurance programs has thus taken on an increased importance for professionals involved in producing satisfactory returns from property investments.

3.3 Amount Spent

With the development during the 1980s of very large property assets which in themselves require insurance cover of many hundreds of millions of dollars, the amount spent on property insurance has become very significant, both in aggregate terms and as a cost of operating property portfolios.

3.4 Insurance Necessary

Insurance is necessary because it offers:

- security to lenders and other stakeholders;
- comfort to customers;
- continuing of business operations; and
- safeguards to employees' jobs (ie. financial protection following a loss)

3.5 Insurance Costs Controlled

To ensure that insurance costs are controlled, it is important that owners and their asset managers are able to demonstrate to underwriters the qualities of their buildings and management controls they maintain.

3.6 Risk Management

This is best done by risk management and 'anticipation of risk, rather than by reaction to loss.'

3.7 Control Premiums

If this is observed, it will not only assist all property owners to control their risk but also their premiums.

4.0 Risk Management Responsibility of Officers and Directors to Owners

4.1 Some Have a Legal Obligation

Practising effective risk management procedures is not simply a matter of good management, some people have a legal obligation to their employer.

4.2 Legal Responsibility

The officers and directors of a business have a legal responsibility for the proper management of pure risks. Pure risk is the loss of, or damage to, property or injury or death of persons using the property. It can be accidental or fortuitous, foreseen or unforeseen. They have an overall legal duty and a specific obligation to use care and be diligent in the administration of the affairs of the corporation and in the use and preservation of its assets. Courts have recognised that the failure to effect proper insurance coverage, to pay premiums when due, or to keep coverage in force, may well be the basis for personal liability suits against the officers or directors of a business. The legal standard of performance is that officers and directors must exercise the care that an ordinary prudent person would exercise under similar circumstances.

5.0 Risk Management

5.1 Process to Identify and Quantify Exposures

Risk Management of Real Property is the process through which an organisation can identify and quantify its exposures to loss, access priorities and develop strategies to avoid losses or, if they do occur, deal with them effectively.

5.2 Benefits

The benefits of the Risk Management approach are:

- Prior recognition of Real Risks to an Organisation;
- Optimal Insurance/Self Insurance;
- Increased Management Awareness;
- Effective Reporting Mechanism;
- Helps Avoid or Minimise Losses;
- Reduced Cost of Risk;
- Satisfies Due Diligence Requirements;
- Conforms with Best Practice;
- Facilitates Corporate Governance;
- Increased profits;
- Better Management of resources;
- Improved Productivity.

5.3 One Objective

Risk Management has one objective; i.e. to ensure the economic continuity of the goods and services of an organisation whilst minimising the costs of both expected and unexpected losses. The activities of the Risk Manager are influenced by the Owner's general insurance philosophy which can be summarised:

- Eliminate or reduce as far as practicable the conditions and practices may cause insured or uninsured losses'.

Note:

- outsource non-core functions or inappropriate activities;
- transfer contractual liability of consequences, eg. tenants take public liability risk; insurance and/or indemnity is required of contractors working on site or supplying services or goods;
- imposition of insurance, indemnity and hold harmless conditions in agreement with contractors; and
- when premises are rented risks may be transferred from owners to tenants or from tenants to owners, depending on the lease conditions.
- The extent of elimination or reduction affects insurance costs;
- When risk cannot be eliminated or reduced to workable levels;
- Purchase commercial insurance that will provide indemnity for catastrophic losses;
- Either insure or assume those risks not considered to be of major importance to the operating or financial position of the Owner.

5.4 Importance and Complexity

The risk management function continues to grow in importance and complexity. Management is becoming more cost conscious and more aware of how sound risk management helps to minimise expenses.

5.5 Strategy

For this reason, it is always important to have a risk management strategy which can protect tenants as well as the owner and also assist by demonstrating to insurers that the business is aware of potential exposures and is implementing procedures to ensure such exposures are controlled. This will benefit all parties and lead to more economical insurance premiums.

5.6 Identifies & Controls Potential Loss

The risk management process identifies and controls potential loss situations which can affect an organisation's financial security, reputation and viability.

5.7 Identify Risks

In order to identify the risks, it is important for the owner of the property to be aware of potential hazards and to implement a control to enable management to always be conscious of changes in tenants and likely hazards.

5.8 Procedure

The procedure should include risk identification, risk management and risk control.

5.9 Specific Risks – Risk Identification

Process Systematically and Continuously Identifies

This is the process by which a business systematically and continuously identifies property, liability and personnel exposures as soon as they emerge. Unless these risks are identified, all potential losses will unconsciously be retained by the company.

Most Risks Easily Recognised

Most risks are easily recognised, and would be known within an organisation. These should be identified by either the insurance broker or the ownership entity, after discussions with staff and staff should be given on-going support from Management in the identification of risk. The risks shown below are normal within the property industry, and it is in order to insure against perils such as these that an insurance policy is purchased.

- Fire
- Lightning
- Storm and Tempest
- Water Damage
- Flood (not readily available in flood prone areas)
- Sprinkler Leakage
- Explosion
- Business Interruption (including loss of rent)
- Loss of Machinery/Boilers
- Demolition and removal of debris
- Earthquake
- Impact by Vehicles or aircraft
- Malicious Damage
- Theft
- Accidental Damage
- Legal liability to third parties
- Workers' Compensation (compulsory) called 'WorkCover' in some States
- Motor Vehicle (Third Party injury insurance is compulsory).
- Breach of professional duty
- Liability of directors and offices arising out of a wrongful act
- Consultants fees
- Contract works (principal controlled contractor's liability policy)
- Environmental damage
- Pollution

Check List

However, to identify all the potential losses, a check list of all assets of the company should be drafted, and a systematic approach used to discover which of the potential losses provide the most exposure to the company. This is best done internally by the person whose responsibility it is to control insurance, or can be carried out by an independent firm, such as a broker/risk management company. Any independent firm should work in liaison with the firm's internal risk Manager when conducting a risk identification survey.

Risk Profile

As each property is unique, both as to its operation, usage, location, construction and cash flow pattern, it is important that a risk profile be developed for each property, ie. Pro-forma profiles may overlook some feature unique to a particular property.

Exercise Will Correctly Inform

Although this is a time consuming exercise, it is the only means which will correctly inform the company of the risks/exposures it carries, and will:

- identify exposures which can be insured, therefore the exposure is transferred from the company to an insurer;
- where the exposure cannot be insured, management controls can be implemented which will diminish the risk to the company.

Risks Prioritised

Risks should be prioritised by analysing both the probable frequency of an occurrence and the impact (ie. severity) on the company. Risks that are assessed as having a high likelihood (ie. frequency), together with a high impact, should be fully insured.

Excess

The starting point is the excess under the policy. This indicates the level of risk the company can absorb.

5.10 Risk Management

Potential Losses Measured

After the risk has been identified, the potential losses must be measured in order to determine their relative importance.

NB. Replacement/reinstatement costs do not necessarily equal market value.

Calculated Periodically

Asset values should be calculated periodically by consulting professionals who will assess the dollar value at risk to ensure, at the time of a major loss, the value of both property (ie. physical structures excluding land value) and business interruption is adequately insured. This will ensure that the business does not need to fund part of the loss, which could impact on the viability of the organisation. Extra costs may be incurred if regulatory changes are triggered.

Quantity Surveyor

A quantity surveyor can be used to establish replacement cost estimates. It is generally believed studies reveal that a significant number of buildings are underinsured. The impact of averaging insurance [GN 22: 9.5] means that exposure previously thought to be insured is now only partially so.

Engineering Survey

Specialist risk management engineering surveys can be engaged to identify specific, or peculiar exposures at each location.

Physical Survey

A physical survey, implemented by both management or a risk management consultant, should include a review of:

- management controls
- fire protection systems
- inspection programs for fire hazards and other exposures
- general housekeeping
- staff training
- environmental risks
- security
- emergency evacuation
- bomb threats

Note: extra costs are referred to later in this Guidance Note.

Loss recording is a vital step in the risk management process. If an organisation does not record all losses, it is unable to take an informed decision to carry a risk, ie. higher deductibles, which can minimise premiums.

5.11 Risk Control

Elimination or Minimisation

The aim of risk control is elimination or minimisation. After risks are identified, practical and cost effective recommendations can be made regarding the physical protection of assets.

Monitored and Investigated

If all losses are monitored and investigated, the organisation is in a position to take effective measures to either eliminate or reduce recurring losses.

Familiarity Contributes

The organisation is well placed to effectively contribute to risk control due to their familiarity with the property.

Tenancy Supervision

Tenancy supervision is also an aspect of risk control and a procedure should be implemented whereby there is regular liaison with tenants to ensure that their standards, or physical protection and housekeeping, are in line with that provided in common areas.

Controls Influence Premiums

If these controls are achieved, the risk of losses is minimised, which significantly influences premiums.

6.0 Risk Financing, Rrisk Transfer and Insurance

6.1 Total Cost of Risk

The Total Cost of Risk includes such items as:

- Capital expenditure on fire protection and security equipment;
- Upgrades to electrical and mechanical plant;
- Repairs and maintenance;
- Insurance policy excesses or deductibles;
- Risk management consultancy fees;
- Insurance premiums; and
- Associated administration costs

The way in which the Total Cost of Risk is absorbed or otherwise paid for can be referred to as Risk Financing.

Risk Transfer

Risk Transfer of the operational or financial consequences of an event can be effected in several ways, eg:

Lease Agreements

Requirement in Lease Agreements that tenants effect Glass and Public Liability insurance.

Note:

- The amount of the policy excess can be greater than the value of the glass;
- Public Liability insurance will generally be restricted to the tenant's operations unless that tenant is the sole occupant;
- Policies should be in the joint names of the Lessor and Lessee;
- Lessor may effect insurance if Lessee fails to insure;
- Lease documents should reflect Lessor's requirements.

Service Providers

Contacts with service providers to include insurance, indemnity and hold harmless provisions in favour of the owner.

Purchase of Insurance

Purchase of insurance, ie. transferring the ultimate risk to an insurance company per medium of effecting an insurance policy or policies.

7.0 Types of Insurance

7.1 Type of Policy Depends on Value

The types of policy or policies of insurance to be effected will to some extent depend on the value of the property. The criteria as to which insurances are appropriate for a given property vary from insurer to insurer but as a general rule:

- Properties with values less than, say, $1-2,000,000 and perhaps up to $5,000,000 will be insured under Business Insurance or similarly titled package policies; and
- Properties with values greater than these amounts will generally be insured under individual policies for each category of risk to be covered.

7.2 Business Insurance

Business Insurance policies generally offer a range of cover choices and those most relevant to the insurance of property are likely to be as follows:

- Fire, lightning, explosion and other specified perils to cover physical loss or damage to the property caused by those nominated perils;
- Consequential Loss, i.e. loss of gross rentals and increased costs of work arising as a result of a peril insured by the preceding section;
- Breakdown of electrical and mechanical plant and machinery and consequential losses arising there from; and
- Public Liability, i.e. legal liability in respect of claims by third parties for personal injury or death or damage to property arising out of an occurrence in connection with the ownership or occupancy of the property.

7.3 Separate Policies for Higher Value Property

The kind of separate insurance policies likely to be effected in the case of a higher value property are as follows:

- Industrial Special Risks (ISR) which insures 'Physical loss or damage (and consequential losses arising there from) not otherwise excluded' - the ISR policy therefore combines and expands upon the first two elements of the Business Insurance policy as above;
- Breakdown of electrical and mechanical plant and machinery and consequential losses arising there from (which are exclusions under the standard ISR policy); and
- Public Liability, i.e. legal liability in respect of claims by third parties for personal injury or death or damage to property arising out of an occurrence in connection with the ownership or occupancy of the property.

7.4 Specific Policies

In addition to industrial special risks (ISR) policies on a full reinstatement basis, other specific policies in relation to property can be adopted to suit specific requirements or specific loss categories. The requirement for these will vary according to individual circumstances. These polices include:

- Insurance of contents;
- Loss of master key insurance;
- Capital works insurance as an addition to conventional contract to cover such works as tenancy fit outs or refurbishments.
- Fidelity Guarantee, i.e. misappropriation of money or goods by employees;
- Credit Insurance, i.e. bad debts following tenant insolvency;
- Key person Insurance;
- Professional Indemnity; and
- Directors and Officers Liability;
- Any other appropriate insurance.

7.5 Workers Compensation

The requirement for Workers Compensation insurance differs from State to State and Territory to Territory. Care must be exercised to ensure that, if there are any employees, the appropriate insurance or statutory arrangement is put into place.

8.0 Issues to Consider in Choosing Insurance Cover

8.1 Assessing a Building's Risk

The main criteria for an insurer when assessing a building's risk is:

- The materials used in the construction of the building.
- Compliance with ordinances. For obvious reasons insurers will not provide competitive quotations where a site does not comply with ordinances as the insurer would postulate that the lack of compliance would increase the risk.
- Fire Protection, eg. sprinklers, are always an advantage, as it assists with minimising the risk for insurers and, hence, results in lower premiums.
- Tenancy of buildings. Insurers will always assess the exposure of tenants and quote accordingly, eg. a mechanic is a higher exposure than a bank - this will be reflected in the premium.
- Building security.
- Neighbouring environment - eg. explosives/chemical plant, bushland, etc.
- Limitation of road access.
- Location of premises (eg. on an existing flood plain).
- Compliance with ordinances eg. asbestos contamination (authorised removal is required following an asbestos audit).

8.2 Comments at the Planning Stage

Most major insurance brokers and insurance companies are able to provide comments on building design, fire protection and security. Ideally this should be provided at the planning stages, but later if need be. They will also be able to advise on risk management techniques tailored to the individual property.

8.3 Three Basic Functions

A core insurance program as discussed fulfils three basic functions for a property owner/manager:

- Conservation of all assets (Property insurance)

- Preservation of income/profits (Consequential loss)
- Protection against liabilities(Public liability)

Note: The extent to which insurance fulfils these functions is subject to the terms, conditions and exclusions of the policy, e.g.

- generally a liability policy will only cover sudden and accidental pollution;
- asbestos is generally an exclusion unless it is in static form.

8.4 Extensions to Policies

Taking the above into consideration, there are some extensions to Business Insurance and ISR policies which should be compulsory to any prudent property owner. These are:

Indemnity Period

The indemnity period should be long enough to provide for the following in the event of destruction (e.g. by fire):

- planning
- tendering
- approvals
- construction
- letting

8.5 Removal of Debris

Removal of debris. At times, the local council tip will not be able to handle all the debris from a building due to either the content (asbestos) or due to the bulk. This may incur very large charges/ costs where the debris may need to be removed by specialists and sent to a processing plant which will accept the waste. Always ensure that the insurance limit will adequately reflect the cost of disposal. As a rule 10% of the value of the asset would be a minimum but this varies dramatically depending on factors such as the height and construction of the building. (Note: Removal of asbestos has extraordinary cost implications and may involve 50-100% of the value of a building).

8.6 Reinstatement and Replacement

Always ensure that the policy provides for reinstatement and replacement conditions - including the ability to rebuild on the site where development controls may have changed.

8.7 Extra Costs

The policy should include the extra costs of reinstatement, which is the extra costs incurred to comply with any requirement of any Act of Parliament or Regulation, By-Law or Regulation of any Municipal or other Statutory Authority

8.8 Increases in Cost of Working

Increases in the costs of working, which covers any reasonable expenses incurred in order to minimise any long-term effect of a loss on profit/ revenue, eg. Overtime wages, the costs of leasing other premises, including fees, advertising and promotional expenses.

8.9 Flood Insurance

Flood insurance - to cover damage to property caused by flooding. This may be provided subject to strict underwriting guidelines.

8.10 Policy Excess

Most policies will be subject to an excess or deductible, i.e. the amount of each loss which must be met by the insured following a claim.

8.11 Excess will Vary

The amount of the excess or deductible will vary from insurer to insurer and the nature of the property being insured.

8.12 Can Elect Higher Excess

Property owners can elect to assume higher excess or deductible than that being imposed by the insurer although it is recommended that this only be entertained where the insurer is prepared to offer a substantial premium discount in return.

8.13 Policy Exclusion

Policy Exclusions: All insurance policies contain exclusions and it is important that owners/ managers familiarise themselves with those exclusions applicable to their own policies.

9.0 The importance of Valuations and Insurance Average Clauses

9.1 Definitions

In the context of insuring property it is important to be cognisant of the definitions which apply to the various types of policy.

9.2 Business Insurance

Business Insurance policies generally require separate sums insured to be specified for:

- Buildings, including architects and professional fees (the term 'Buildings' is understood to include the structure itself together with fixed electrical and mechanical plant, sprinkler and fire alarm systems and landlord's fixtures and fittings).
- Contents - in this regard the insurer should be asked to advise if carpeting and floor coverings, for example, would be considered as part of the building or would require a separate sum insured.
- Computer and electrical equipment.
- Costs of demolition and removal of debris.

9.3 ISR Policy Covers

An ISR policy covers 'all real and personal property of every description' under a single declared value for each property. Care should however be taken to ensure that the value declared takes all the above items into account.

Land Not Included

The value of land is not to be included in either case.

Under-insurance

Business Insurance and ISR Insurance are quite different in the way they deal with under-insurance and, irrespective of which policies operate for a particular property or portfolio, care will need to be taken in assessing the sums insured or limit of liability as applicable. Generally properties are insured for their replacement cost and the following aspects should be taken into account.

Sum Insured

The sum insured under Business Insurance is the insurer's limit of liability in the event of loss or damage. It is therefore necessary to project the sum insured nominated at the commencement of the policy period to cater for inflation and other cost variables during the policy period.

ISR Policy

An ISR policy does not contain a sum insured per se but has:

Declared Value

Declared Value, ie. the estimated value of the property insured at the commencement of the period of insurance - as well as being relevant to the test of coinsurance or average, this amount is utilised for the purpose of premium calculation; and

Limit of Liability

Limit of Liability, ie. the maximum liability of the insurer in the event of loss or damage - this need not and should not be the same as the declared value but should represent what the replacement value of the property would be if, for example, it was totally destroyed on the last day of the period of insurance. (Sub-limits are also generally applied to contingencies such as accidental damage, burglary and demolition/removal of debris costs).

Coinsurance or Average

However, both Business Insurance and ISR Insurance contain Coinsurance or Average clauses which permit the insurer to reduce the amount of loss if the:

- Sum Insured at the time of loss or damage in the case of Business Insurance; or
- Declared Value at the commencement of the period of insurance in the case of ISR Insurance.

is less than 100%, 90%, 85% or some other specified percentage depending on the insurer's policy wording and/or the value of property concerned.

Example

Assuming that there was a 100% Coinsurance or Average Clause in the policy, the following example demonstrates how under-insurance can reduce the amount of a claim.

$$\frac{S \times A}{P} = \text{Claimable Amount}$$

Where

S = the sum insured or declared value in the policy

A = the amount of the loss

P = the correct value of all property

In this example
S = $ 50,000
A = $100,000
P = $200,000

$$\frac{\$50{,}000 \times \$100{,}000}{\$200{,}000} = \$\ 25{,}000 \text{ (Claim settlement)}$$

This has occurred because, in this example, only 25% of the values were selected as either the sum insured or declared value as applicable. Note that the equation would vary in the case of, for example, a 90% or 85% Coinsurance or Average Clause although the underlying principles are the same.

Ensuring Fully Insured

The best way of ensuring that a property is fully insured is to have the property valued and the policy figure updated on a regular basis. The valuer should be instructed to prepare the valuation so that the valuation accords precisely with the basis of insurance eg. Reinstatement, replacement and extra costs insurance or indemnity value as applicable and include costs of demolition and removal of debris and professional fees. At the very least, if a professional valuer is not to be utilised, it is recommended that reference publications such as Rawlinsons Australian Construction Handbook or Cordells be consulted.

Sum Insured or Declared Value for Consequential Loss

It is similarly important to direct considerable attention towards assessment of the sum insured or declared value for Consequential Loss insurance - generally thought of as Loss of Rents insurance in the context of the insurance of property. This insurance is also subject to coinsurance or average provisions.

Indemnity Basis

It is also possible to seek insurance cover on an indemnity basis being either the market value of the building less the land value or the depreciated value of the property. This can, under certain circumstances, provide greater flexibility in the event of a catastrophic loss but may lead to complications in regard to a partial loss.

Different Levels of Insurance Within One Complex

It should also be noted that different levels of insurance cover can be taken for structures within one property complex but at different levels of risk, eg. a factory and its outbuildings on the same site where the factory might be under reinstatement conditions, and the outbuildings insured for their indemnity values.

Public Liability

Public Liability insurance is subject to a limit of liability for any one occurrence ie. the maximum amount the insurer will pay for all claims arising out of the one event. This means that the limit of liability selected must:

- be sufficient to cover all claims from all claimants arising out of the one occurrence;
- recognise that injuries can take several years to stabilise to the point where some claims can be taken to Court - there can be both inflation and escalation in the amounts of damages awarded in the intervening period; and
- take account of the possibility that at least some of the potential claimants will be juveniles and that claims in respect of such persons cannot be finalised until a juvenile reaches the age of 18.
- The most appropriate limit of liability will be to some extent, influenced by both location and occupancy of the property concerned.

Contract Waivers Recover Loss Against a Third Party

Contract Waivers: When an insurer has agreed to indemnify a company for a loss, it retains the right to recover its loss against a third party if they caused the loss. If the insured party has contractually waived the insurer’s right of recovery against another party, the insurance policy can become null and void. The insured party should ensure that he has neither accepted nor waived liability.

Hold Harmless

At present there are many contracts that are regularly utilised in the commercial environment that contain ‘hold harmless’, ‘waiver of subrogation’ or warranty clauses. These can be found predominantly in maintenance agreements and some lease agreements.

Negotiate a Wording

Prior to signing or recommending any of these agreements, always refer to either the insurance broker or insurer who will either negotiate a wording which is acceptable to all parties or, if this is not possible, will endorse the contract on either the property or liability policy.

10.0 Conclusion

Not All Exposures Are Insurable

Not all exposures are insurable events, eg. wear and tear, damage by vermin.

Read Insurance Contract

It is surprising the number of persons who do not read their insurance contract and/or obtain either legal advice or advice from a professional insurance adviser as this is perhaps the only contract that will ensure the ongoing viability of the business if a major catastrophe occurs. Although an insurance policy can be complex to read, it is important to understand, at the very minimum, the policy exclusions and conditions. If any part of the insurance contract causes concerns to the purchaser, they may be able to negotiate changes to policy conditions and wording. However, this can only be accomplished where the insurance purchaser understands the contract.

Very Large Programs

For very large insurance programs, it may be advisable to recommend that the insurance adviser/broker to meet with the owner, the owner's solicitor and the insurer to design (draft) policy wordings and conditions. It is also reasonably common for a nominated loss assessor acceptable to both the owner and insurer to be agreed, as this can facilitate claims settlement when losses occur.

New Products and Changes to Taxation Provisions

Finally, Members should be aware that as with all market sectors, the insurance industry is subject to continual review and there is the potential for significant change in the future. New insurance products regularly become available, and changes to taxation provisions or other Government regulation can effect the utilisation of insurance.

Ensure Insurance Covers are Specifically Tailored

As indicated, this Guidance Note addresses broad issues, relating to the property insurance environment and risk management. However, just as the property market is not homogeneous and each property has different characteristics, so it is with the insurance market and individual policies of insurance. Thus the professional adviser needs to ensure that the insurance covers are specifically tailored to individual properties and their risk profile.