

Strata Insurance Update

CHU and SUU Special Benefits - Legal Defence Costs

CHU and Strata Unit Underwriters (SUU) provide legal defence cover for defending claims from third parties (like owners or contractors) in addition to the cover provided for legal expenses for the more usual categories of insurance covered by a strata policy.

The cover varies between CHU and SUU. This article discusses the typical notifications and claims process for such legal expense cover and explores some of the variations in the cover provided.

The usual process of making a claim upon legal defence cover involves:

1. The managing agent receives correspondence relevant to the threat of proceedings, or actual proceedings. This could be a letter of demand, service of a request for mediation, or of tribunal or court proceedings. The managing agent must notify the insurer in accordance with the terms of the policy.
2. Managing agent liaises with the executive committee to determine whether to obtain specialist legal representation for the dispute.
3. The managing agent seeks a legal services fee proposal, which ideally details the prospects of success, the steps required, and an estimate of fees.
4. The managing agent submits a claim to the insurer and provides further particulars as the insurer requires to process the claim.
5. In our experience the insurer is usually not in a position to assess a claim before any legal steps are required, and the consent of the insurer should then be sought to proceed with the legal steps required while the insurance claim is being determined.

The table below sets out some of the differences between the insurance policies that provide this cover.



T: (02) 9929 0226 M: 0403 738 996 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

Summary of key points and differences

Name of insurer and type of plan	Amount of cover	Residential / Commercial	Type of claims included	Special comments
CHU <ul style="list-style-type: none"> Residential strata insurance plan Commercial strata insurance plan 	Typically \$50,000	<ul style="list-style-type: none"> Residential Residential and commercial components of mixed use and commercial schemes 	Damages claims Arbitration OFT & CTTT mediations CTTT proceedings	<p>Are pre-commencement costs covered? The policy covers Legal Defence Expenses incurred with the insurer's consent in connection with litigation arising out of a Claim. Claim is defined broadly and includes a written or verbal advice of intent to initiate legal proceedings or a civil or criminal action.</p> <p>Expert witnesses costs Expressly included.</p> <p>Are CTTT mediation costs covered? Subject to consent being provided for cover for the Claim.</p> <p>Choice of solicitor The policy does not give the insurer a choice of solicitor or express approval rights.</p> <p>Appeals If unsuccessful in defending legal proceedings, the insurer will pay for an appeal, but only if the insurer is dissatisfied with the decision of the Court or Tribunal.</p>
SUU – Residential Strata Insurance	Typically \$50,000	Residential schemes and also mixed use schemes with less than 20% commercial use.	Damages claims Arbitration OFT & CTTT mediations CTTT proceedings	<p>Are pre-commencement costs covered? The Policy provides cover for Legal Expenses which the insured is liable to pay following legal proceedings brought against it. Thus pre-commencement costs may not be covered.</p> <p>Expert witnesses costs Not expressly covered, however, may be covered provided the cost is a legal disbursement reasonably and</p>

				<p>necessarily incurred in connection with a claim.</p> <p>Are CTTT mediation costs covered? Not unless legal proceedings follow.</p> <p>Choice of solicitor The policy does not give the insurer a choice of solicitor or express approval rights.</p> <p>Appeals If unsuccessful in defending legal proceedings, the insurer will pay for one appeal, but only if the insurer considers that there are reasonable prospects of success.</p>
SUU – Commercial Strata Insurance	N/A	Commercial, and also mixed use schemes with more than 20% commercial use.	N/A	No applicable cover under this policy

All policies have a range of exclusions, including (but not limited to):

1. Defamation;
2. Deliberate acts, such as fraud or dishonesty; and
3. Costs and expenses where you have not sought the insurer's consent.

Prepared by Bannermans Lawyers
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