

Can I claim a loss of rent from the Owners Corporation, CHU or SUU?

Claims against the owners corporation

Up until recently lot owners routinely claimed for any loss of rent suffered by them, due to a breach by the owners corporation of section 62 of the Strata Schemes Management Act 1996 to maintain and repair the common property.

However, a recent decision of the Court of Appeal in *Thoo's case* decided that a breach of section 62 did not sound in damages following an analysis of the purpose, wording and scheme of the Act.

However, claims in respect of loss of rent arising in negligence due to negligent repairs and maintenance or the failure to carry out such repairs when it would have been negligent not to carry them out continues unchanged.

Whilst it is tempting to think of all loss of rent claims as being the same, caution should be exercised as they can be quite different since they can be made by different parties, against different persons and rely upon different rights (not to mention differences in the amount of quantum sought).

Claims against the owners corporation's insurers

For insurance claims made by lot owners and owners corporations, against the owners corporation's insurance policy much will depend on the terms of the policy and the insurer may be able to exclude cover where the cause of loss of rent was due to:-

- The builder breaching the warranties implied by the Home Building Act 1989; or
- General wear and tear of the common property.

However, loss of rent caused by a sudden accidental event, such as, a burst pipe may be covered, subject to policy terms.

The table which follows illustrates how some CHU and SUU policies may respond:-

Occurrence	CHU Policy (Residential Strata Insurance Plan) 2011 (QM562-01/11)		SSU Policy (Residential Strata Insurance) 2009 (strata-r 0409)	
	Who Claims	Insurer liable to indemnify?	Who Claims	Insurer liable to indemnify?
1. Breach of Statutory Warranty e.g. water damage → Loss of Rent				
A. Common Property Damaged;	OC	No – Exclusion 2 b, and Special Benefits Section	OC	No – Exclusion 18
B. Lot Property Damaged.	Lot Owner	No – Exclusion 2 b, and Special Benefits Section	Lot Owner	No – Exclusion 18
2. General Wear and Tear e.g. water damage → Loss of Rent				
A. Common Property Damaged;	OC	No – Exclusion 1 c, and Special Benefits Section	OC	No – Exclusion 17
B. Lot Property Damaged.	Lot Owner	No – Exclusion 1 c, and Special Benefits Section	Lot Owner	No – Exclusion 17
3. Burst Pipe “accidental loss, or damage” (during period of insurance) <u>not</u> otherwise excluded e.g. water damage → Loss of Rent				
A. Common Property Damaged;	OC	Yes – Policy 1, and Special benefits section; up to 15% of the building sum insured for	OC	Yes –Additional Benefits section up to 15% of the sum insured
B. Lot Property Damaged	Lot Owner	Yes – Policy 1, and Special benefits section; up to 15% of the building sum insured for	Lot Owner	Yes –Additional Benefits section up to 15% of the sum insured

Key takeaways

- Lot owners can claim loss of rent due to breaches of the Strata Schemes Management Act 1996.
- Recent court decisions have clarified the limitations on such claims.
- Insurance policies may exclude coverage for loss of rent due to general wear and tear.
- Claims for loss of rent due to sudden accidental events may be covered under certain insurance policies.
- Different parties may have different rights and claims regarding loss of rent.

Bannermans Lawyers is a NSW strata law firm advising owners corporations, strata managers and lot owners.

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