

LANDLORD, LESSEE AND LIABILITY

BY HARLOCKS PTY LIMITED

Many owners of property who become Landlords because they have been posted overseas are unaware of the extra Liability they acquire. The new Landlord is further exposed as his standard Building Insurance policy may not provide protection for him as the owner of the property, as distinct from owner occupier of the property, which was his previous role.

Added to this, some Real Estate Agents advise their Landlords that they should effect "Landlord's Insurance". These policies contain certain exclusions, such as the exclusion of "damage to property for which the Tenant is liable under the terms of the lease or similar agreement". The standard lease in the ACT, for example, contains clauses which make the Tenant responsible to repair to the Landlord's satisfaction any damage to the premises resulting from the Tenant's negligence or a deliberate or careless act. As most accidental breakages or damages result from either negligence or carelessness, you will see the obligation that the Tenant has for the majority of the Landlord's fixtures and fittings is quite high, and should your insurance policy exclude damage for which the Tenant is responsible under the terms of his lease, then neither the Tenant nor yourself are covered.

The standard lease also requires the Tenant to indemnify the Landlord in respect of Liability claims, and this indemnity could again create a problem, unless the Landlord has arranged his insurance on the Building and Contents in a satisfactory manner. As all forms of insurance policies are designed not to overlap, it is quite common for the majority of Insurance Companies in Australia to issue a Contents policy to Tenants which provides protection as per the terms of their lease for the Landlord's fixtures and fittings. This form of Contents insurance and the Landlord's Building insurance work in harmony provided of course that both parties have arranged cover!

It has been our experience that Real Estate Agents do not police their Tenants to ensure that they have Contents insurance cover which will provide protection as per the terms of the lease, not only for damage to Landlord's fixtures and fittings but also in respect of Liability. Most Real Estate Agents will assume that the Landlord's insurance policy will provide protection, and again will assume that the Tenant's bond would be sufficient. Whilst we agree that for minor claims the Landlord's policy may operate, in major losses this may not be sufficient to protect the Landlord or the Tenant if neither have the correct cover.

Bearing the above in mind, the majority of general insurance companies issue a cover under a Defined Events type policy, which provides protection for you as the owner of the property or as the owner/occupier of the property, and these policies work adequately. Again, however, we note that the majority of these policies still contain an exclusion for property for which the Tenant is liable under the terms of his lease or similar agreement. It is this exclusion that places the Owner at risk, and the Owner should establish via their Real Estate Agent that the Tenant has insurance to cover his liabilities under his lease, in an endeavour to avoid this exposure.

Harlocks have been administering the World Wide Multiple Cover Insurance Scheme for almost three decades and during this time the overwhelming number of officers posted overseas simply leave their Building Insurance as it is with the same company, and do not establish whether protection is provided to an adequate level, not only as far as sum insured, but that items such as Loss of Rent are covered should the property be destroyed or damaged. With Loss of Rent, some insurance policies are designed to provide protection to the Owner as an occupier, and they will provide the cost of temporary accommodation whilst the property is being reconstructed, but will not automatically include the payment to the Owner for rent that he is not receiving whilst the property is not occupied during reconstruction. Bearing this in mind, we point out that the majority of insurers do provide adequate protection.

However, certain policies are issued on the assumption that you will occupy your premises as an owner-occupier, and it is these policies that will not operate adequately unless altered to provide protection for you as the Owner non-occupier. We strongly recommend that you contact your Insurer and advise them of the changed circumstances and ascertain what action you need to take or what alteration they need to make, to provide the adequate level of cover.