

# The problems with running a business from a residential strata property.



Running a small business out of a residential strata unit may cause major issues in relation to insurance. Not only can it increase the risk of a public liability claim, but it can also change the property classification from residential strata to commercial strata. A change in property classification almost always results in an increased Strata Insurance premium for ALL property owners.

After a concerned OC (Owner's Corporation) committee member came to us with the question below, we decided to address the issue in more detail to help you inform your OC clients of the potential fallout similar situations may have.

## Question:

*"Our OC has Residential Strata Insurance to cover our 8 units. This includes Public Liability Insurance. We have an owner/occupier who runs her Pilates business from her unit.*

*In speaking with the insurer, they advised that if a client of the business was injured on site we would not be covered unless the insurance was upgraded to Commercial Strata Insurance.*

*To my knowledge, the owner setup their business without notifying the strata management group and has run it from their unit for some years.*

*To move to Commercial Strata Insurance will mean an increase in the insurance fee.*

*Can you advise if the business owner can be charged the difference between Residential and Commercial Strata Insurance costs or if the business can be stopped from running out of the unit putting the other owners at risk?"*

## Whitbread's Response

**There are several important factors to address in relation to the insurance here...**

# Businesses in a Residential Strata

## 1. Duty of Disclosure – Tell the insurer and / or insurance broker

Before entering into a contract of general insurance with an insurer, the OC has a duty under the Insurance Contracts Act 1984, to disclose to the insurer every matter that they know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept the risk of the insurance and, if so, on what terms.

The OC has the same duty to disclose those matters to the insurer before they **renew, extend, vary** or reinstate a contract of general insurance.

Essentially, the OC has a duty to disclose to the insurer **anything** that may increase or change the risk at the property. For example, knowledge that an owner or tenant is running a business from their unit.

If changes like these are **not disclosed** on the insurance schedule, and a claim is made, it is very likely the insurer would deny the claim.

Denial in such instances could be based on non-disclosure, particularly if risks like this are outside the insurer's underwriting guidelines. The insurer could even go so far as to cancel the policy and refund the insurance premium paid. The OC would then be exposed to the costs and outcomes associated with a claim.

However, if the **insurer is informed** of a business being operated from a unit, and they have the opportunity to amend the policy according to their risk appetite, a claim would more than likely be covered by the insurance – subject to the terms and conditions of the policy wording.

## 2. Non-disclosure extends beyond Strata Insurance – tell your clients!

It is worth noting that the issue of non-disclosure applies to **all policies** in place at a Strata property. Therefore, it is important for **all relevant insurers** to be notified of any changes in circumstances within a property.

In this instance, in addition to the Strata Insurance, it is important for the Landlord and / or Contents Insurer to know about any business activity taking place within the insured unit. This will help to ensure that insurance cover is maintained under the relevant policy.

Often, insurers may be happy to note on the Landlords / Contents Insurance policy schedule that a business is operating within the unit, but again it is up to the individual insurer as to whether they are able to cover it. If the insurer is not satisfied with the change in circumstances, the owner in question may require a Business Insurance policy.



# Businesses in a Residential Strata

## 3. Residential or Commercial Strata Insurance?

It is the insurer's discretion as to whether they decide to keep the policy as a **Residential Strata Policy** or change it to a **Commercial Strata Policy**.

Each strata insurer has specific underwriting guidelines that determine whether the policy is rated as a Residential or Commercial Strata policy. One of the major factors taken into consideration by insurers, is the **percentage of commercial floor space** versus **percentage of residential floor space**.

Based on specific circumstances assessed on a case by case basis, insurers may still be content to rate the property as a residential risk, but that does not appear to be the case in this instance.

## 4. Potential premium increase

Whether the premium increases or not is up to the individual insurer. It is important to note however that **if the policy does change from a Residential Strata Policy to a Commercial Strata Policy, this will almost definitely attract an increase in the insurance premium.**

### So, who absorbs the cost...?

In general, the Strata Insurance premium is **shared by all of the units** based on the lot liabilities outlined on the plan of sub division. As such, any premium increase should be shared according to the plan of subdivision.

**For further advice on how operating a business in a residential strata property can affect Strata Insurance, please contact Whitbread Insurance Brokers. Ph. 1300 424 627 or email: [info@whitbread.com.au](mailto:info@whitbread.com.au).**

*Please note this Q&A response is not intended to be personal advice and you should not rely on it as a substitute for any form of advice. Please contact Whitbread Associates Pty Ltd ABN 69 005 490 228 Licence Number: 229092 trading as Whitbread Insurance Brokers for further information.*

## 5. Setting up a business in an OC

If a unit owner is looking to conduct **any** business from their strata unit, they must contact the Strata Manager, prior to commencing. It is then up to the Strata Manager to review and refer this matter to the OC Committee.

## 6. Stopping a resident from carrying out business activities in their unit

This is a matter for the Strata Manager, or the OC Committee to handle. Legal advice may also help to provide guidance here.



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