Everything You Would Like to Know

The Insurance of Jointly-Owned Buildings

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EVERYTHING YOU WOULD LIKE TO KNOW ABOUT THE INSURANCE OF JOINTLY-OWNED BUILDINGS

by Miltiades Miltiadou

This paper has been compiled to provide interested persons with a simple overview of insurance of jointly-owned buildings. It does not intend to be a comprehensive or full analysis of the legislation, nor does it constitute legal advice. The views expressed are the author's own and do not bind the company that employs him or any other company of the group that it belongs. If there are any mistakes, they are the author's. Readers are urged to seek independent legal or insurance advice before applying the information contained herein to any particular circumstances.

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THE LEGISLATION GOVERNING JOINTLY-OWNED BUILDINGS

(1) What is a jointly-owned building

The Immovable Property (Tenure, Registration and Valuation) Law (Cap. 224) as amended by L.6(I)/93 provides for the way how to specify the ownership rights on a jointly-owned building, the possibility of possession and enjoyment of the units and for the method of registration in accordance to which the exclusive ownership of the units co-exists with the necessary co-ownership of the jointly-owned property.
Under the law a "building under joint ownership" is a building consisting of at least five units, even if the building with all its units belongs to a single owner. Every jointly-owned building is registered as such with the Land Register.
Buildings consisting of two to four units may be considered as jointly-owned buildings if the interested parties submit an application to the Director of Lands and Surveys.
Separate structures or a complex of structures existing on the same plot of land may be considered as jointly-owned buildings even if they are not separated horizontally.
A jointly-owned building consists of the units and the jointly-owned property.

(2) What is a unit of a jointly-owned building

"Unit" means a storey or part of a storey, a room, an office, an apartment, a shop or any other part, or space of a jointly-owned building which may be appropriately and conveniently possessed and enjoyed as a complete, separate and self-contained unit for any purpose. Every unit of a jointly-owned building is registered separately as private property with the Land Register.
The area of a unit consists of the covered area surrounded by the outer walls of the unit and the covered and uncovered verandas and balconies of the unit. Where common walls exist between units or between a unit and the jointly-owned property, the area of these walls is distributed equally among the units which have common boundaries or between the unit and the jointly-owned property, as the case may be.

(3) What is jointly-owned property

"Jointly-owned property" means every part of a jointly-owned building which has not been registered as a unit. The law does not enumerate the individual parts of the building that constitute the jointly-owned property, but the jointly-owned property generally includes:

(a) common-use areas / corridors / yard,
(b) staircases,
(c) roof,
(d) foundations,
(e) common structural elements,
(f) main walls supporting the whole jointly-owned property,
(g) common walls between units and the jointly-owned property,
(h) electrical installation,
(i) plumbing and drainage systems and engine room,
(j) lifts.

The jointly-owned property belongs, is possessed and enjoyed by all the unit-owners in undivided shares, according to the proportion of the value of each unit to the total value of the units of the jointly-owned building, and belongs to the units according to this proportion.

(4) What is limited jointly-owned property

“Limited jointly-owned property” means a part of a jointly-owned building allocated for the exclusive use of one or more but not all the units. For example a specific parking space or a warehouse may be allocated to a specific unit of the jointly-owned building and shall be described as limited jointly-owned property in the certificate of registration of the unit.
The staircases, the roof, the foundations, the main walls supporting the whole jointly-owned property, the lifts, the corridors and the spaces or the installations intended to serve all or some of the owners may not be registered as limited jointly-owned property.

(5) Regulations

Jointly-owned buildings are regulated and governed by regulations which provide for the control, operation, management, administration, use and enjoyment of the units and regulate the relations between the owners of the units and their rights and obligations in relation to the jointly-owned building and the joint ownership.
The regulations are drawn up by the owners of the units and are registered with the Land Register. The law includes in an Appendix standard regulations which apply to jointly-owned buildings for which a building permit has been issued and which have not yet been filed as such in the Land Register and for jointly-owned buildings for which no regulations have been registered. Also if the registered regulations do not provide for a certain issue, this issue is governed by the respective provision of the standard provisions.
The regulations refer in detail to the rights and obligations of the unit-owners as well as to the way of contributing to the expenses for the maintenance of the jointly-owned property (in proportion to the area of each unit) and of participating in the making of decisions for the administration of the jointly-owned building.

(6) Management Committee

Every jointly-owned building must have a Management Committee for the regulation and management of its affairs. The Management Committee acts on behalf and for the benefit of the owners of the units, is responsible for the implementation of the regulations, has powers and obligations prescribed by law and regulations and carries out the duties prescribed thereof.
The Management Committee has legal hypostasis and capacity (Civil Appeal No. 10964, dated 28.01.2002). Under the law it may sue and be sued in relation to any matter concerning the joint ownership or the jointly-owned building and to enter into contracts in relation to any matter concerning the maintenance and management of the jointly-owned building.

THE INSURANCE OF THE JOINTLY-OWNED BUILDING

(1) Compulsory insurance

The Management Committee has an obligation under the law to insure and always keep insured the jointly-owned building against fire, lightning and earthquake with a licensed insurance company and to pay the premium.

It is underlined that the obligation under the law is to insure the entire jointly-owned building and it is not limited only to common areas or the jointly-owned property. This provision is aiming at avoiding doubts and misunderstandings between insurers and insureds.

Disputes difficult to resolve may arise where the jointly-owned building is not insured in its entirety with on insurance company and damage is caused (e.g. from fire or earthquake) to the structure, the main walls or the common walls between the jointly-owned property and the units. Examples of such disagreements are the following:

 The insurer of the jointly-owned property argues that the policy issued is in respect only of the common areas and thus he does not offer any amount for repairs.

 The insurer of a unit argues that the damage on the common wall is in respect of the half of the wall on the side of the jointly-owned property and does not offer any amount believing that the insurer of the jointly-owned property should foot the bill.

 The insurer of another unit argues that the damage is in respect of a main wall and not a common wall between the jointly-owned property and the unit he insures and thus he refuses to pay any amount
.
 The owner of another unit has not insured his unit and is not willing to contribute for the repair of the common wall between the jointly-owned property and his unit.

Evidently the law provides the most satisfactory solution. Since the jointly-owned building is to be insured in its entirety with one insurance company, the disputes that appear in cases where one insurer insures the jointly-owned property and different insurers insure the units, or in cases where not all units are insured, are avoided.

(2) Who is the insured

Under insurance law only the person who has an insurable interest in the property can be an insured. One could argue that the Management Committee has insurable interest only in the jointly-owned property and, therefore, it should not insure the jointly-owned building in its entirety. The law, using a rather ineffective phraseology, clarifies that the Management Committee is considered as having an insurable interest in the jointly-owned property and in any other object insured under an insurance which is permitted by the law or regulations. Even if the law does not say it explicitly, the owners of the units of the jointly-owned building have an insurable interest in their units as well as in their portion of the jointly-owned property.

In case of damage, an issue arises as to who is entitled to the indemnity from the insurance company. If the damage is to the jointly-owned property, the indemnity will be received by the Management Committee, who is required to dispose of the insurance money for the reconstruction, repair or restoration of the jointly-owned building. If the damage is to a specific unit, the indemnity will be received by the owner of the unit, who is obliged to take measures for the reconstruction, repair or restoration of the unit and reinstatement to its previous state.

In cases where there are disagreements as to how much will be paid to the Management Committee and how much to each owner of the damaged units, the insurance company has the option under the terms of the policy to assign the repairs to contractors and pay directly the bills.

The contracting party in the insurance contract is the Management Committee and thus the insured in the policy schedule will be referred to as follows:
"The Management Committee of the jointly owned building known as [name of block of flats]"
.
Since property belonging to the owners of the units is being insured, they should be mentioned as co-insureds in an endorsement as follows:

"ADDITIONAL INSUREDS ENDORSEMENT
The insurance provided by this Policy in respect of material damage is extended to include the owners of the units of the jointly-owned building as Insured for their respective rights and interests:
Provided always that the owners of the units shall be subject to the terms of this Policy as far as they can apply."

As a matter of good practice it is suggested to issue a certificate of insurance in the name of each owner of a unit in which there will be a reference of the sum insured of the unit including the value of any limited jointly-owned property belonging to the unit and the value of the undivided share of joint ownership belonging to the unit.

In case where a specific unit is mortgaged to a financial institution, the insurance company must issue a mortgage clause mentioning expressly the mortgaged unit.

(3) The sum insured

The law provides that the sum insured of the jointly-owned building shall be the one which the Management Committee considers as corresponding to its replacement value.
Apparently the intention of the legislature is to establish the reinstatement value (the current rebuilding cost) as the basis of settlement. In other words the sum insured should be the amount that would be paid today to rebuild an identical building. Thus, the policy should include the relevant reinstatement clause.
If the reinstatement clause is not incorporated in the policy, the insurance company will pay on an indemnity basis, i.e. they will pay the value that the property had immediately before the damage. In practice the loss adjuster will calculate the current rebuilding cost and will deduct wear and tear depreciation in accordance with the age of the building.

(4) Optional covers

As we have seen the compulsory insurance concerns only three risks: fire, lightning and earthquake. The law provides that for any other risks the insurance will be compulsory, only if this is decided by the majority of the owners of the units.

A prudent Management Committee and the owners of the units who wish to protect properly their property would opt to insure the jointly-owned building also against the following risks

(a) Explosion of boilers or gas used of domestic purposes only.
(b) Aircraft or other aerial devices or articles dropped therefrom.
(c) Riot, civil commotion, malicious persons or vandals.
(d) Storm or flood.
(e) Escape of water from any tank, apparatus or pipe.
(f) Impact by any road vehicle or animal.
(g) Accidental glass breakage.

THE INSURANCE OF THE MANAGEMENT COMMITTEE'S PUBLIC LIABILITY

(1) Where does public liability arise from

The Management Committee has an obligation under the Immovable Property Law:
(a) to control, operate, manage and administer the jointly-owned property and to do any act which is necessary for the implementation of the regulations and for securing the services prescribed by the law and the regulations;
(b) to maintain in good condition and operation and to preserve the jointly-owned property and such other parts of the jointly-owned building and the improvements, constituent parts and fixtures as may be assigned to it by the law and the regulations;
(c) to perform the duties imposed upon it by the law and the regulations;
(d) to comply with every notice, order or other decision of any competent administrative body, authority or person in relation to the jointly-owned property.

As the occupier of the jointly-owned property, the Management Committee has a duty under the Immovable Property Law not to be negligent to any person lawfully in or upon the common areas or near to the jointly-owned building. Lawfully present are deemed not only the residents, but also their visitors and all the others who enter the jointly-owned building for lawful work. Also it has a duty to warn of any concealed danger or hidden peril in the common areas of which the Management Committee knows or is presumed to know.

The infringement of the above obligations has relevant consequences. In accordance with the Civil Wrongs Law a person who suffers injury or damage by reason of a civil wrong is entitled to recover from the tortfeasor the remedies which the court has power to grant, i.e. mainly damages.

The following are examples where the court could impute liability to the Management Committee and adjudicate damages in favour of the victim of an accident:

 Whereas the elevator needs maintenance once a month, the Management Committee decides for reasons of cutting expenses, to call the maintenance company once every three months. An accident occurs in the elevator and a visitor is injured. The visitor sues the Management Committee for failure to keep the elevator in good condition and operation and to maintain it properly.

 The Management Committee has never assigned the inspection of the electrical installation of the jointly-owned property to a qualified electrician. An electric shock occurs and someone dies. His heirs sue the Management Committee for failure to keep the electrical installation in good condition and operation and to maintain it properly.

 The marble tiles that are glued on the external walls come unstuck and fall. The Management Committee is not convened and does not take any action. One more tile comes unstuck and injures a passerby walking on the pavement. The injured person sues the Management Committee for its failure to exercise care in respect of a person that was lawfully near the jointly-owned building.

 The worn cables of the jointly owned property create a short circuit which causes fire. The fire causes damages to the jointly-owned building and to cars parked in the visitors' parking lot. The owners of the cars sue the Management Committee for not exercising care in respect of their property which was lawfully with the boundaries of the jointlyowned building.

 The cleaner of the common areas asked to buy a yellow sign board with the warning "attention – wet floor" and the Management Committee did not take this seriously. Immediately after sweeping the floor is wet, someone slips and suffers a fracture in the leg. The injured person sues the Management Committee for failure to warn him about the slippery floor.

 In the yard of the jointly-owned property there is a well covered with a temporary cover. A legal visitor steps on the temporary cover which subsides and he falls into the well. He is seriously injured and sues the Management Committee for failure to ensure that the temporary cover was in good condition and safe.

 The jointly-owned building has a swimming pool for the private use of the unit-owners. The Management Committee, in violation of the Public Swimming Pools Law, does not hire a lifeguard. A swimmer is drowned and his heirs sue the Management Committee for negligent administration and management of the jointly-owned swimming pool.

 The unit-owner indicates to the Management Committee that the walls of the jointlyowned property are wet and, therefore, there is a leak of water from the pipes of the jointly-owned property. The Management Committee does not repair promptly the damage, the pipes burst and the flat of the complainant is flooded causing serious damage to the furniture and the wooden floor of the unit. The unit-owner sues the Management Committee for negligence in respect of the maintenance of the plumbing system of the jointly-owned property.

(2) The insurance of the public liability

In cases where public liability is imputed on the Management Committee and damages are awarded in favour of the plaintiff, the Management Committee will pay the damages using the money kept in the common fund. The fund is supported by the contributions of the unitowners and, therefore, the cost of the damages will be ultimately be born by the unit-owners.
Of course there is an alternative solution – the transfer of the risk to an insurance company. The public liability policy covers third party claims against the Management Committee in respect of bodily injury or death or property damage. Also it can cover claims in respect of specific torts: nuisance, trespass or interference with any easement right of air light water or way. For the terms and exclusions of the cover you are advised to study the policy wording. Although the insurance of the Management Committee's public liability is not compulsory by law, it is important for the proper management of the risks and the protection of the personal property of the unit-owners of the jointly-owned building (since they bear the cost of damages).

THE INSURANCE OF THE PERSONAL LIABILITY OF THE MANAGEMENT COMMITTEE'S MEMBERS

(1) Where does personal liability arise from

In accordance with the Immovable Property Law the Management Committee acts on behalf and for the benefit of the unit-owners. Applying the rules of company law we could consider that each member of the Management Committee has duties of care, skill and diligence to the Management Committee as well as to the unit-owners as follows:
(a) to exercise his powers in good faith and for the purposes they were assigned to him;
(b) not to place himself in a position in which there may be a conflict between his personal interests and his duties;
(c) to exercise his powers for a proper purpose;
(d) not to obtain secret profit.

Liability may arise at common law (without any dishonest intent) out of a Management Committee member's lack of care and skill in the performance of duties.

The following are examples where the court in a personal action against a Management Committee member could impute to him liability and award damages in favour of a unitowner:

 Neglecting to maintain the jointly-owned property resulting in the reduction of the market price of the units.
 Insuring only the common areas - in case of an earthquake the unit-owners would be responsible to pay out of their own pocket for the damage to the foundations, the structure and the main walls.
 Underinsuring the jointly-owned building (i.e. insuring at al value lower than the current rebuilding cost) - in case of damage the insurance company would invoke the average clause and the unit-owners would pay out of their own pocket their proportionate share damage.
 Acting beyond the limits of the regulations of the jointly-owned building, however innocently made.
 Unauthorised payments from the common fund.
 Selection of incompetent contractors for repair of the jointly-owned property.
 Negligent supervision of delegated responsibility (e.g. for cleaning of the common areas).

(2) The insurance of personal liability

In cases where personal liability is imputed on someone in his capacity as a Management Committee member (not public liability for bodily injury or property damage) and damages are awarded in favour of the plaintiff, the Management Committee member will pay the damages using personal funds.
Here also there is an alternative solution – transfer of the risk to an insurance company. The personal liability policy covers third party claims for damages against the Management Committee member. For the terms and exclusions of the cover you are advised to study the policy wording.