

A GUIDE

INSURANCE FOR BLOCKS OF FLATS, RESIDENTIAL MANAGEMENT COMPANIES and RIGHT TO MANAGE COMPANIES



in association with

DEACON

Registered office: Box 10271, Epping CM16 9DB

The Federation of Private Residents' Associations Ltd is a non-profit company limited by guarantee, registered under number 1992130

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This guide is the latest update of guides which has been issued for over two decades, with regular updates by FPRA volunteers, who have used their experiences and expertise to help fellow leaseholders.

We would also like to thank Lord Coleraine for reviewing it; Sarah Phillips for designing this guide and Diane Caira for proof-reading it.

But most of all, we would thank our members without whom, this guide could not be published.

Robert Levene, co-ordinator of this guide 2015

***A MESSAGE FROM DEACON**

Please be aware this document is designed as a helpful introduction to insurance provided for information purposes only. It is not intended to be comprehensive nor does it constitute legal or other professional advice, or a recommendation of any product. You should always seek independent legal or other professional advice before acting or relying on any of the content of this document and before making any financial purchasing decision.

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INTRODUCTION

INSURANCE FOR BLOCKS OF FLATS, RESIDENTIAL MANAGEMENT COMPANIES AND RIGHT TO MANAGE COMPANIES

If you live in a block of flats then we hope you will find this guide helpful. Prepared in association with Deacon, specialists in blocks of flats insurance for 25 years, it explains the most common insurance policies for blocks of flats and serves as a check list to ensure you have the right level of cover for your block.

A block of flats can be a conversion or purpose built and there are many essential 'add-on' policies that are often not included in blocks of flats buildings insurance. It can be confusing and on the face of it, some cover may appear to overlap.

Under the Financial Conduct Authority (FCA) rules, these 'add-ons' are offered as separate policies. This ensures transparency and helps to ensure each block has the right policies in place, to protect residents as well as visitors.

Whether you are responsible for buying cover for your block, or simply want to understand what it is your managing agent or freeholder is recommending, please read on...

SECTION 1

ABOUT THE FEDERATION OF PRIVATE RESIDENTS' ASSOCIATIONS LTD

FPRA advice to member associations includes:

- Setting up a Residents' Association
- Legal matters
- The interpretation of leases
- Freehold ownership
- Setting up a Residents' Management Company
- Help with specific problems
- Right to manage
- Health & safety
- Other problems experienced by Residents' Associations and the lessees they represent.

FPRA funding

FPRA is funded by subscriptions and the sale of literature. Expenditure goes mainly on running the office, the FPRA website and producing a quarterly newsletter, which is free to member associations. This is both a digest of legal, legislative and lobbying news, as well as a forum for exchange of ideas and information among members.

FPRA lobbying

In its role as a lobbying group, FPRA seeks to influence and bring about legislative and practical changes. It brings the concerns of its member associations to the attention of government, MPs and the media. It is represented on government working parties advising on legislative reform.

FPRA achievements

Influence on drafting of the following Acts:

- Housing, 1974, 1980, 1996
- Landlord and Tenants, 1987
- Leasehold Reform Housing and Urban Development, 1993
- Commonhold and Leasehold Reform, 2002.

- Statutory recognition of Residents' Associations and statutory authority for specific performance of a landlord's repairing covenants.

FPRA has an on-going dialogue with government departments, as well as many other organisations in the sector, helping achieve the best result for leaseholders.

FPRA publications

FPRA publishes advice for flat owners on the advantages of having a Residents' Association; on how to set up a Residents' Association; and on how to set up a Residents' Management Company. See Section 14.

FPRA history

The FPRA began in 1971/2, as a group of Residents' Associations in private-sector flats. It remains a non-political, non-profit making, voluntary organisation. In 1986 it became a company limited by guarantee. Some of its unpaid executive committee comprise the team of experts offering impartial advice to FPRA member associations.

Membership of FPRA

Membership rates are extremely low and are per association, not per leaseholder, and are kept at this low level because the FPRA is run by volunteers, which helps keep costs down.

For more details on the current membership rated and an application form, please visit the Federation of Private Residents' Associations website at www.fpra.org.uk or contact the admin office on 0871 200 3324.

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SECTION 2**WHO IS RESPONSIBLE FOR INSURING MY BLOCK?**

Typically, the lease on a block of flats requires the freeholder to provide the insurance, with each leaseholder paying a proportion of the premium as part of their service charge. This is often the single most expensive item on the service charge, so every leaseholder has a vested interest in understanding the level of cover in place and how insurance costs can be kept as low as possible.

Insurance is usually arranged by:

- the freeholder (which might be a company jointly owned by the leaseholders or one or more individual leaseholders), or
- a Right to Manage Company (RTM) or Residents' Management Company (RMC) set up by the leaseholders, or
- the block of flat's managing agents on behalf of either of the above.



SECTION 3

BLOCKS OF FLATS AND CONTENTS OF THE COMMON PARTS

Buildings insurance is essential for every block of flats. Get it right and, hopefully, insurance is something that will only need to be considered once a year at renewal time. A good insurance broker will be able and willing to offer extensive advice specific to each block's individual circumstances.

Most leases include covenants defining what must be covered in the insurance and how to account for the premiums paid. Whoever arranges insurance has a duty of care to ensure it complies with the requirements of the lease.

What insurance policies might a block of flats need?

- Buildings
- Communal contents
- Plant inspection and breakdown
- Terrorism
- Property owners' liability
- Employers' liability
- Directors' and officers' liability
- Legal expenses

A buildings insurance policy must provide cover for everything specified in the lease, and the sum insured (declared value) must represent the current full rebuilding cost. If it does not, then payment of a claim, even if only for a few hundreds of pounds, could be reduced. This is likely to be proportionate to the amount under-declared, and therefore underinsured.

Insurers offering cover for block of flats will always claim their insurance is comprehensive, but it is always worth comparing the summaries of cover for the different insurers. Check that the policy has been specifically written for blocks of flats. Insurers classify blocks of flats, whether conversions or purpose built, as commercial risks. It is important to know that standard commercial buildings insurance policies will rarely offer the level of cover needed for a block of flats.

Make sure the information provided, whether or not this includes a proposal form, is accurate. This particularly applies to questions about the building's

construction, past losses and occupancy, for example are the flats let or left empty?

Modern methods of construction sometimes are a higher risk to insurers because damage from common incidents, like water leaks and small fires, can be more expensive to repair than would be the case in an older, traditionally built property. This is reflected in the cost of the insurance premium and it is important always to declare the construction of the building to the insurer or broker and, if in doubt, seek their advice.

While buildings insurance covers communal areas, the building and its fabric, including fixtures and fittings such as kitchens and bathrooms, it will not include removable items such as furniture and carpets in individual flats. It is important that every leaseholder is made aware of their responsibility to insure their own contents. The buildings insurance communal contents cover stops at their front door.

Other things worth checking on policies written for blocks of flats include:

- provision of alternative accommodation
- replacement keys for each flat should one neighbour lose theirs
- the costs of tracing a fault or leak following damage to property (many involve more than one flat and hours of labour to resolve)
- any outhouses or expensive gardening equipment
- limits for communal contents

It may be sensible for smaller blocks of flats to cut some of this cover but this should only be considered after taking advice.

Change of cover?

When things change mid-way through a policy the insurer or broker will arrange what is known as a mid-term adjustment. Depending on the nature of the change, there may be increased premiums, higher excesses imposed, or other amendments to the cover. There should not, however, be any administration charge unless the insurer or broker had stated before the policy was taken out that they

would make a charge for such adjustments. Always keep a written record of what changes have been notified, to whom and when.

As ever, if in doubt about anything, including whether or not something constitutes a notifiable change, the insurer or broker will be able to advise.

Unoccupied flats and holiday homes

Most policies will allow for a flat to be unoccupied for a specified period, 30 or 60 days is not uncommon. If a flat is left empty for longer periods, it may be viewed as a higher risk and some insurers will want the buildings manager's to inspect the property at regular intervals. It is essential to comply with any inspection requirements and additional security measures requested by an insurer; otherwise any claims may be rejected.

Let properties

An increasing number of flats are purchased by leaseholders with a view to letting the property out for a rental income. Most insurers do not have a

problem with this provided the property is let on an Assured Shorthold Tenancy agreement of at least six months duration. However, some insurers take a different view so it is important to advise your insurer if there are let properties in the block.

They will ask about the type of tenants and nature of their contracts. Some types of tenants are perceived as a higher risk, such as students, and the insurers may load the premium, apply higher excesses or even refuse to cover the block.

It is also advisable to make sure the cover is correct and comprehensive. Two particularly important areas to check are:

1. Does the policy include cover for malicious damage by tenants?
2. Does the policy cover alternative accommodation for tenants and loss of rent following damage?

The leaseholder who is letting out the property should, of course, be reminded that the block policy does not cover their own contents if they are letting it out furnished.

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SECTION 4 STORM FLOODING AND FLOOD RE

Most policies today automatically cover storm and flood, but the rules are changing in respect of flood insurance.

As we went to press (January 2015), the industry was still debating whether or not to include flats in Flood Re, a scheme designed to ensure that householders will continue to have affordable insurance for flood risks. This may result in insurers taking a different view on whether or not they will insure flood on a block considered high risk.

We cannot say at this stage what impact exclusion from Flood Re will have on premiums, nor do we know what precautionary measures insurers will require of buildings deemed to be at risk, which might make flood cover prohibitively expensive.

SECTION 5

TERRORISM COVER

Most blocks of flats buildings policies do not include cover for incidents related to terrorism. As flats are classed as commercial buildings by insurers, the government will not cover such losses either, unless specific insurance cover has been taken out.

While the likelihood of a terrorist incident may seem very small, uninsured losses could be massive and it may not be worth the risk. It's also worth being aware that some mortgage providers will not lend on a flat unless terrorism cover is in place, so it can help if individual leaseholders want to sell their flat.

In 2014, the High Court determined that if the insurance clause includes a requirement to insure against explosion, then this should include terrorism. Following this ruling it now seems clear that this cover is a requirement of most leases.

SECTION 6

PROPERTY OWNERS' PUBLIC LIABILITY

This is essential cover and is normally included in the buildings insurance automatically. It is not the same as Directors' and Officers' insurance cover.

This cover is for legal costs and damages should a visitor to the building – tradesman, postman or even a leaseholder's friend – be injured on the premises. If it is found that the incident could or should have been prevented by the managers of the building, then the residents or right to manage company could be sued.

When insuring multiple blocks, common access roads and parking areas probably won't be covered by block insurance and separate cover should be arranged.

Individual residents (leaseholder) will not be covered for the consequences of their personal actions, and need to check that their contents policy also provides public liability cover.

Employers' liability

Most good policies also include Employers' Liability. A director of a company is also an employee, and this includes unpaid volunteers, so by law this cover must be in place. It becomes even more important if the block has paid employees: gardeners, concierges, etc. It is normally free cover (but check) unless employees are undertaking heavier manual labour. There is no need for Employers' Liability for contractors as they are covered on the public liability.

SECTION 7

INSURANCE FOR DIRECTORS AND OFFICERS

These policies indemnify the volunteer directors and officers of an RMC (Residents' Management Company) or RTM (Right to Manage Company), for any action taken against them, by a third party, to recover monetary loss and legal fees as a result of something they have done, or failed to do.

What is covered?

- Legal defence costs including representation
- Damages awarded or any out of court settlements agreed
- Claimants costs and expenses

Who is at risk?

Many blocks of flats are run by RMCs or RTMs. These companies are made up of individual resident leaseholders who volunteer their time to run the companies.

A director is anyone holding the position of director (including shadow and non-active directors).

An officer of the company is anyone who has any control over affairs of the company.

The law makes no difference between these volunteer directors and someone running a big business. They owe their fellow residents a duty of care because anything they do or fail to do, can impact on individual flats and their owners.

A typical scenario is a flat losing value because of failure by the directors to identify and rectify building dilapidation, or losses arising from failing to insure the building adequately.

In such circumstances, directors can be held personally liable for these costs, whether this is the result of a simple mistake or negligence. It is important to insure against this risk.

There is a choice of cover available, and directors' and officers' liability cover is inexpensive. Typically a few pounds per leaseholder per year is enough to safeguard the financial security of the people who give their time to help run the building. Such a policy should also include cover for past directors and officers, who may be held accountable for issues that arose during their tenure. Do check whether or not the lease precludes sharing such costs and recovering them through the service charge. If it

does, then alternative voluntary arrangements can be made between neighbours.

Premiums are usually based on the number of flats in the building and the limit of cover requested. The application should involve no more than a few qualifying questions about the individual directors and the financial records of the company.

Entity insurance

Entity insurance should be included as it provides protection if the residents' management company itself, rather than an individual, is sued. Should an individual have cause for litigation, their lawyers will consider whose decision resulted in the loss and act accordingly. If a decision to delay repair works was taken collectively by all directors, for instance, the logical choice would be to pursue the company through the courts. In effect, it plugs a gap to ensure that complete cover is in place. It is often included in directors' and officers' cover, but be sure to check.

Legal expenses cover

This policy, written specifically to help Residents' Management Companies, is not expensive. It usually provides access to knowledgeable advice by phone, and an online library of relevant, downloadable, legal documents that can help resident management companies and associations to avoid legal proceedings.

As well as advising on day-to-day management issues, these policies provide cover for legal and other professional costs that may arise.

Typically, cover is available up to £250,000 and includes:

- Contract disputes – with builders and other contractors
- Property disputes – such as nuisance and trespass
- Tax disputes – following submitting the RMC tax return
- Compliance disputes – such as health and safety prosecutions
- Employment disputes with staff
- Debt recovery
- Some also provide cover for certain First Tier Tribunal costs

SECTION 8

PLANT INSPECTION AND BREAKDOWN

Every building with a lift should have a maintenance contract in place; this may be stipulated in the lease. By law, an *independent safety inspection is carried out twice a year on a lift.*

Specialist insurers may arrange regular inspections and reporting as an additional service, as well as cover for costs associated with unforeseen breakdown and damage. It is usually a condition of

such cover that the block's managers have complied with any remedial work identified during inspections.

These policies also enable other items of plant in the block to be covered, all in one single policy. This can range from window cleaning gantries and boilers to garage gates and even swimming pool filters and pumps. It may be worth asking for a quote as many blocks are often surprised at how little extra it adds to the cost of the policy.

SECTION 9

SURVEYS EXPLAINED

There are two types of surveys which are very specific to blocks of flats insurance.

Inception surveys

If a policy is taken out with a new insurer, they may require an inception survey. It may be some time before they arrange such a survey but once they do, and once they have advised on any works to be done and given a timescale, it is necessary to comply within the period specified or cover may be invalidated.

If the timescale for any remedial works and improvements seems unreasonable, a broker may be able to negotiate an extension. Remember, a broker works for the landlord, Right to Manage Company or Residents' Management Company, not the insurer and should always be ready to help.

It is important not to confuse the inception survey with a valuation survey – it serves an entirely different purpose.

Valuation surveys

A block of flats valuation survey will determine the declared value of a building(s). This figure is based on the cost to totally re-build the block in the event of a catastrophic event. It is not a valuation survey for the purpose of a mortgage, which is something entirely different.

It is the responsibility as the insured party to make sure that the declared value is accurate, and insurers and brokers will take you at your word (although the more experienced ones may spot an anomaly and advise you to check your figures).

Most policies include index-linking to help keep the value up to date, but relying on index linking is not a good idea, especially if there is no way of knowing whether or not the original valuation was correct. This can be a particular problem with new blocks where the original valuation was a reflection of the developers' costs, i.e. where the costs exclude VAT, and where the developer had the benefit of buying materials and labour in bulk. Six figure under-valuations are not unknown!

Older properties with lower market values can also be more expensive to rebuild, so it is equally important not to rely on index linking of a very old valuation.

Most agents will arrange for a building survey when they take over a new block. If a block has not been surveyed and valued for more than three years, it is probably time to consider arranging a revaluation soon. Insurers or brokers can advise and even arrange these surveys.

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SECTION 10

MANAGING COSTS

The key to managing insurance costs is to make sure the right cover is in place: read the lease to check what is mandatory, know the current re-building costs and have good advice from a trusted insurer or a broker offering policies written specifically for blocks of flats.

Some freeholders and managing agents have been known to inflate costs for insurance and services by taking excessive commission or other charges, which are often hidden from leaseholders. While this practice has significantly reduced following action by FPRA, RICs, ARMA and others, it does still occur and can add up to 50 per cent to the overall premium. Be aware of this; member associations can contact the FPRA if they have concerns.

Leaseholders have the right to challenge insurance costs if they believe them to be unreasonable. This needs to be done before the First Tier Tribunal, part of the UK court system, which aims to provide easier

and cheaper access to settling disputes. It has replaced the Leasehold Valuation Tribunal in England. Scotland and Wales have their own tribunal systems for hearing private rented and leasehold property disputes.

FPRA believes it would be rare for a challenge to arise in a self-managed block. Nevertheless, member associations should be aware that all leaseholders and recognised residents' associations have the right to request a summary of the current insurance cover in place for their block. They can also inspect the policy document and ask to see evidence that the premium has been paid.

In the unlikely event that insurance is being placed for a period of more than 12 months, then freeholders and RTMCos may be required to consult formally with all leaseholders under Section 20 of the Landlord and Tenant Act (1985).

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SECTION 11

LIMITING CLAIMS AND REDUCING PREMIUMS AND EXCESSES

Where there have been repeated claims, insurers will almost inevitably seek increased premiums or excesses. In these circumstances, it is usually a broker who can negotiate the best package of cover. Some insurers flatly refuse to insure properties for escape of water after multiple claims, and here the services of a good broker to find cover come into their own.

Excesses are a means of reducing premiums and it is important to understand how they are funded. For example, if a leak arises in one flat, causing extensive damage to other flats, how will this cost be shared? Will the flat owner where the water originated cover the cost of the excess and any increase in premiums

that arise as a result, or will be it divided equally between all the lessees via the service charge?

This may already be defined in the lease but, if not, it is worth ensuring all the leaseholders are aware of their potential liabilities, before the situation arises, and agree how the excess for any such claims, and subsequent increase in premiums, will be paid.

If a block has a low or good claims record, then premiums and excesses will be lower, so all the leaseholders have a vested interest in being 'water aware'. Water is the main cause of damage in blocks of flats and prevention – checking taps, stop cocks, pipes to washing machines, dishwashers and showers – is much cheaper than cure.

SECTION 12

WHO CAN SELL INSURANCE

General insurance is regulated by the Financial Conduct Authority (FCA), which means that any managing agent that arranges or administers insurance must be authorised to do so.

FPRA member associations, who have the right to manage their block, may prefer to research and organise insurance themselves. This can be done direct with some insurers or through an insurance broker. Whichever route you decide, you need to be sure that the insurer or broker understands the special needs of blocks of flats.

When dealing with a managing agent be aware there are different levels of authorisation, and it's worth knowing their status. This is the only way to understand the level of advice and service they are able to provide:

- An Authorised Firm can deal with insurers or brokers to arrange quotes, take out policies and

process claims. They can search their panel of insurers to find the policies that best fits your needs for each block of flats.

- An Appointed Representative, as the name suggests, is probably only able to offer the same products as the Authorised Firm it represents. This may mean it only offers products from one company or broker. They can also help with policy and claims administration.
- Managing agents who are neither an Authorised Firm nor an Appointed Representative can only introduce an insurer. They cannot advise, administer the policy or deal with the insurer over claims.

Another alternative for managing agents who want to arrange insurance is to be part of a designated professional body scheme such as that of RICS (The Royal Institution of Chartered Surveyors).

SECTION 13

RECOMMENDATIONS FROM THE FPRA

The FPRA committee has decided, over many years, that we should not recommend any particular suppliers, as experience has shown us that what one member considers a good supplier another member may have a different view.

The Leasehold Advisory Service on their website, www.lease-advice.org, has a list of some professionals who specialise in blocks of flats insurance as part of paid advertising, not as a recommendation. In the same way as we accept paid advertising in our newsletters etc.

It is not unreasonable to hope that people who advertise their services to the leasehold sector have some interest in that sector and hopefully knowledge behind it, in the same way that our many Honorary Advisers and Consultants come from commercial suppliers in the sector. The fact that someone

advertises or does not advertise, does not mean they will be suitable for you.

You should therefore make your own enquiries, take up references, check they are authorised with appropriate regulators (if this applies), and more than anything else, interview them and ask searching questions to see if they are appropriate to help you.

As a final option you can use the forums available from the members' area of our website, including our social media facilities. We have a LinkedIn group – just search Federation of Private Residents' Associations – which is an open discussion forum for FPRA members and non-members with an interest in the leasehold sector. We also have a Facebook page or you could follow us on Twitter @FoPRA.

SECTION 14

FURTHER READING

CURRENT LIST OF PUBLICATIONS BY FPRA

For prices see www.fpra.org.uk. Most are free to FPRA members.

- Variation of Leases
- A Guide to Formation, Recognition and Running your Association (Residents' associations in blocks of flats)
- Summary of Rights
- Insurance for Blocks of Flats and Residential Management Companies and Similar
- FPRA Guide to the Prevention of Mould, Damp and Condensation
- Guide to Transferring Essential Documents when Changing Agents
- Tenants' Collective Rights to Buy the Freehold and a Tenant's Individual Right to Extend a Lease
- Regular newsletter – annual subscription available
- Rights and Duties of Leaseholders (and Directors) – flow chart
- Enfranchisement Chart – flow chart
- Ground Rent Notice 2013 (standard form)
- Service Charges – Summaries of Rights and Obligations for England only – Summary of Tenants' Rights and Obligations – 2013 (standard form)
- Form LPE1 Leasehold Enquiries Form (standard form)
- Communal Area No-smoking sign

SECTION 15

USEFUL CONTACTS

FEDERATION OF PRIVATE RESIDENTS' ASSOCIATIONS

PO Box 10271
EPPING
CM16 9DB
t: 0871 200 3324
e: info@fpra.org.uk
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100 Holdenhurst Road
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Other useful contacts

LEASEHOLD ADVISORY SERVICE – LEASE

Fleetbank House
2-6 Salisbury Square
London EC4Y 8JX
t: 020 7832 2500
f: 020 7383 9849
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FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

Residential Property
10 Alfred Place
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T: 020 7446 7756
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DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT

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89 Albert Embankment
London SE1 7TP
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