

# IMPORTANT NOTICES

## General

Many areas of insurance are complex and some implications may not be evident to you. Your Client Servicer will keep you informed, but if at any time you are unsure of any aspect of your insurances, please contact Willis Australia Ltd to discuss the matter.

## Utmost Good Faith

A contract of insurance is a contract of the utmost good faith. This means that you and the Insurer must act towards each other, in respect of any matter arising under or in relation to the contract, with the utmost good faith. For example:

- you must act with the utmost good faith when submitting any claim to the Insurer
- if you fail to act towards the Insurer with the utmost good faith, it may prejudice the claim; and
- the Insurer must act with the utmost good faith when handling the claim.

## Your Duty of Disclosure

You and everyone who is insured under your policy must comply with the duty of disclosure. Make sure you explain the duty to any other insureds you apply on behalf of.

The duty requires you to tell the Insurer certain matters which will help it decide whether to insure you and, if so, on what terms. The duty applies when you first apply for your policy and on any renewal, variation, extension or replacement of the policy. i.e. This is an ongoing responsibility throughout the duration of the policy.

The type of duty that applies can vary according to the type of policy.

If we act on your behalf, to assist us in protecting your interests, it is important that you tell us every matter that *you know or a reasonable person in the circumstances could be expected to know*, is relevant to the Insurer's decision whether to insure you and, if so, on what terms. We will then assist you in determining what needs to be disclosed to the Insurer in order to meet your duty.

If we act on behalf of the Insurer, you need to refer to the policy which will set out the duty that applies.

When you answer any questions asked by the Insurer, you must give honest and complete answers and tell the Insurer, in answer to each question, about every matter that is known to you and which a reasonable person in the circumstances could be expected to have told the Insurer in answer to the question.

Examples of matters that should be disclosed are:

- any claims you have made in recent years for the particular type of insurance;
- refusal by an Insurer to renew your policy;
- any unusual feature of the insured risk that may increase the likelihood of a claim.

If you (or anyone who is insured under the policy) do not comply with the duty, the Insurer may cancel the policy or reduce the amount it pays in the event of a claim. If the failure to comply with the duty is fraudulent, the Insurer may treat the policy as if it never existed and pay nothing.

## Material Change of Risk

Many policies require you to notify the Insurer in writing of any material change to the insured risk during the period of insurance. The Insurer can then decide whether to cover the new risk. Some examples of material changes are if you:

- change your profession or occupation;
- acquire or merge with another business;
- commence manufacturing plastics, or commence woodworking activity;
- commence manufacturing a new kind of product;
- are unable to pay your debts as they fall due and you enter into an arrangement with your creditors.

If you are in any doubt as to whether the Insurer should be told about any particular change to the insured risk, please ask us.

## Interests of Third Parties

Many policies do not cover the interests of third parties (eg co-owners, lessors and mortgagees) whose interest is not noted on the policy. If you require the interest of any third party to be covered, please let us know, so that we can ask the Insurer to note that party's interest on the policy.

## Subcontractors & Consultants

It is advisable to check all insurances held by subcontractors utilised, including Workers Compensation, Public Liability and Professional Indemnity.

## Leasing, Hiring and Borrowing Property

When you lease, hire or borrow property, plant or equipment, make sure that the contract clearly identifies who is responsible to insure. This will help avoid arguments after a loss and ensure that any claims are efficiently processed.

## Recovery Rights / Hold Harmless / Waiver of Subrogation

Many policies exclude or limit the Insurer's liability if you have entered, or enter, into an agreement that excludes or limits your rights of recovery against third parties whose acts, errors, omissions or other conduct have caused or contributed to your loss or liability. (These are often called "hold harmless" agreements.)

If you have entered, or consider entering, such an agreement, please let us know, so that we can advise you about how the agreement affects, or will affect, your cover.

## Average or Co-insurance Clauses (Underinsurance)

Many policies that cover loss of or damage to property contain what is called an "average" or "co-insurance clause" which may reduce the amount of a claim payable under the policy.

Briefly stated, an "average" or "co-insurance" clause provides that where the value declared by the insured or sum insured under the policy is less than the full value of the interest insured, the Insurer is only liable to pay a proportion of the loss or damage, i.e. you are treated as if you self-insured part of the risk.

If your policy contains an "average" or "co-insurance" clause, please read it carefully to see how it affects the amount of cover under the policy.

Areas that are of concern to our clients are the adequacy or otherwise of:

- replacement values for Assets
- values for Consequential Loss of either Gross Profit, Gross Rentals and/or Additional Increased Costs of Working. It is preferable that:
  - if your policy provides "new for old" cover, the declared value is sufficient to cover the cost of replacing any lost or damaged property with new property;
  - when reviewing building values, you make allowance for compliance with current building regulations and building cost increases since your last valuation, lead times for council approval, and the like.
  - when reviewing replacement costs for Plant and Machinery, you make allowance for currency fluctuations that can occur in the cost of imports from some countries. You should also consider technological changes, import duties and current and future inflationary trends.

We recommend that you supply us with a copy of your most recent insurance valuation(s) in respect of both Buildings and Plant and Machinery.