

Insurance for pre-existing buildings during alteration works

Whose responsibility is it to arrange cover?

This is a question regularly posed by both builders and property owners alike and the answer is really quite simple.

It is the responsibility of the **property owner** to effect and maintain insurance on their own property, unless the building contract states otherwise.

And it is vitally important that both the builder and the property owner sort this matter out prior to the works commencing, because if it isn't and the owner's property is damaged, a dispute is almost certain to follow.

This, of course, is a predicament neither party wants.



Policy	Summary of Cover	Responsibility
1. Construction Works	Comprehensive cover for damage to the works in progress. It is important to note that this policy only covers the new works, not other property at the site unless it is specifically extended to do so.	Builder
2. Public Liability	Legal liability for third party personal injury or property damage, including the builder's liability to an owner's property (but take note of the issues below).	Builder
3. Owner's Property	Depends on whether the owner's current policy on the property is maintained, or the owner organises cover by extension of the construction works policy.	Owner

To avoid this happening, both parties should start by checking the insurance clauses in the building contract. These clauses will clearly set out who has what obligation to arrange the various insurance policies needed.

If you find that the contract is silent in respect of insurance for pre-existing property, it will continue to be the property owner's responsibility just as it was prior to the works, due to the fact that the building contract has changed nothing in this regard.

The most common contractual requirements however, are shown below. It is recommended that if these obligations are adhered to, the possibility of uninsured damage and a subsequent dispute is very unlikely.

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All too often both builders and owners mistakenly assume that the builder's public liability policy will be sufficient to protect the owner's property, as this policy covers the builder's liability for damage to third party (which includes owner's) property.

The flaw in this presumption is that public liability cover does not directly insure the owner's property. As the name implies, public liability only insures the builder's legal liability to it and it does not automatically follow that all occurrences of damage will be determined to be the liability of the builder from a legal perspective.

A consistently recurring situation is storm water entry during housing extension works, with the owner's home and contents being damaged. Whether or not the builder is legally liable will depend on interpretation of law, as to whether the builder is negligent. Remember that the builder's public liability policy only responds if the builder is legally liable for the damage and as previously mentioned, this generally requires that there is some degree of negligence on the part of the builder.

Consider a cause of damage such as water entry during a severe storm. The builder has taken all professional care in respect of generous roof coverage by tarpaulins, correct ties and adequate overlapping of tarpaulins, the tarpaulins used were in excellent condition, ample weights were in place and appropriate consideration was given to the foreseeable weather.

Is the builder legally liable in these circumstances?

Has the builder met all proficiencies, with no negligence identifiable in performance of the works and therefore is not liable? Is the public liability policy activated due to negligence?

Answers to these questions are uncertain, but what is certain is that if the public liability insurer believes the builder is not negligent, they will deny responsibility for the damages in terms of the public liability policy and defend any claim from the owner against the builder.

Certainly this is a position no builder or owner wants to find themselves in and a dispute may not be far away. The simple fact is, when only public liability insurance is relied upon, this outcome is a very real risk that is being taken.

If the owner's insurance company will not assist with appropriate cover for the owner's building, we can help.

If appropriate insurance is put in place to cover the owner's property and damage to it occurs, it is this policy that is claimed upon. As it is direct insurance, the need to pre-establish negligence is not a factor and the claim is settled like any other home or property insurance claim.

If, after the claim is paid, the owner's property insurer identifies some degree of negligence on the part of the builder, that insurer will instigate recovery action. The builder can then pass any recovery demand on to the public liability insurer, who may defend or pay the recovery claim.

What eventuates is that the two insurance companies can argue liability to their heart's content, while the owner can get on with enjoying their new extension and the builder can get on with the next job.

For more information contact MBIB Ph: 1800 150 888