

Burst Pipes and Strata Insurance

A common claim under owners corporation's building insurance policies relates to losses arising from burst pipes.

Usual uninsured losses

Generally speaking losses from the following are not covered:

- Burst pipes due to wear and tear, faulty workmanship and building defects.
- Pipes damaged by tree roots.
- Water damage to lot property paint, wallpaper and temporary wall, floor and ceiling coverings, from a burst pipe in the common property.
- Loss of income and other consequential economic loss. #

Usual insured losses

So that leaves, without limitation the following losses that should be covered:

- The call out cost of having the plumber repair the pipe.
- The cost of replacing the damaged common property carpet or skirting boards.
- Direct property damage to common property.
- The reasonable and necessary cost of rebuilding the building or repairing any damaged portions to the same condition as when they were new.
- Some policies will also cover exploratory costs reasonably incurred in identifying and locating the source of any bursting or leaking pipe.

Practical issues for owners and owners corporations

Affected owners should consider the following:

- The first priority is usually stemming the water flow and fixing the pipe to minimise the damage using one of the owners corporations emergency contractors.
- A claim is lodged for insured losses with the owners corporations broker or insurer and the claim is assessed.
- The lot owner is asked to lodge a claim for uninsured lot property losses with its insurer.

Claims against others for defective pipes

Due to the increase in the number of imported products used in construction there has been an increase in the problems caused by using those materials.

There are increasingly problems with burst imported poly-propylene plastic hot water pipes, which have led to significant losses to replace the splitting polymer pipes with more expensive copper pipes.

- It can be difficult for consulting hydraulic engineers to determine the exact cause of the split pipes, but there are known issues that can cause the splitting of some imported pipes, such as a combination of water temperature and velocity exceeding the capacity of the pipes and the presence of copper deposits causing premature degradation of the plastic pipe material.
- The cause of the loss may be attributable to the developer, builder, plumber or installer.
- It may also be attributable to the manufacturer, who may have recommended using that type of pipe in a building where the temperature and velocity of the hot water in combination with copper in the system meant that they were not suitable.
- The owners may be able to claim the costs of replacing the pipes, as well as any consequential loss from parties to whom the loss is attributable.
- Where the insurer has paid out on the claim, the insurer may also have a subrogated claim against any of those parties.

Limitation period for claims against others for defective pipes

Various causes of action may be available, including claims based on negligence, breach of contract, breach of statutory warranties, misleading and deceptive conduct and product liability. The owners may have purchased on the basis of a certificate stating the particular pipe or product complied with the relevant Australian Standards when it did not.

Limitation periods apply to such claims and warrant careful consideration such as:

- 1) From 9 July 1992 claims based on product liability, against manufacturers and importers of goods, must be commenced within three years of the date when the consumer became aware or ought reasonably to have become aware that the relevant consumer guarantee under the Competition and Consumer Act 2010 ("Australian Consumer Law") had not been complied with. However, there is a ten year "long stop" provision in the Australian Consumer Law, effectively requiring that any action be brought within ten years of the supply by the manufacturer of the particular goods.
- 2) From 1 January 2011 claims based on misleading and deceptive conduct under the Australian Consumer Law must be brought within six years after the date on which the cause of action accrued.
- 3) Claims based on breach of statutory warranties under the Home Building Act 1989 will be subject to the following limitation periods:
 - If a defect is a "major defect" under imminent amendments to the HBA, which may be proclaimed as soon as 1 December 2014, a 6 year warranty period will apply. However, it is unlikely that a burst pipe will fall within the proposed new definition of "major defect".

- Otherwise, a 2 year statutory warranty period will apply and this is likely to be the case with a burst pipe.
 - The limitation period for claims for a breach of statutory warranties under the new Home Building Amendment Act (2014) starts from the date of completion of the new building. The date of completion of a new building will be defined as the date an occupation certificate is issued that authorises the occupation and use of the whole building.
- 4) Claims based on a breach of contract (including a sub-contract) need to be brought within six years from the date of breach of the contract.
- 5) Claims brought in negligence for defective design or a negligent specification of a particular material need to be brought within six years from when the damage became or ought to have become apparent.

Consequential economic loss means the indirect economic loss caused such as business interruption or loss of income due to delays caused by having to deal with the burst pipe.

****Disclaimers****

**This article does not cover insurance policies for other group title structures such as community title, company title or other types of group title.*

** Please note this article only summarises some limited aspects of the cover. For full policy conditions, exclusions and definitions please refer to the Insurer's Product Disclosure Statement.*

** An owners corporation may have negotiated its own product, or product terms, which may differ from this summary.*

** Insurance companies regularly amend and update the insurance terms and conditions and as such the above may not apply.*

** Please note that there is a statutory obligation to advise the insurer, when taking out or renewing a policy, of any potential claims that may be made or circumstances that may lead to a claim. Most insurance policies also contractually impose this obligation on the insured. Failing to comply may result in insurance cover not applying to costs arising from matters that should have been notified to the insurer.*

**The above information is not intended to be a substitute for legal advice or a full and proper explanation of the various insurance products and no reliance should be placed on this information until you obtain full and comprehensive advice from a suitably qualified solicitor and insurance advisor about your specific situation and circumstances. The currency, accuracy, completeness and relevance of this information may need to be checked and revised so do not take any action in reliance on this information until you have obtained legal advice from Bannermans about your particular situation.*

**Prepared by Bannermans Lawyers
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