

How to avoid conflicts over insurance claims

■ Inadequate cover, poor communication and unrealistic expectations are sure ways for an insurance claim to turn into a battleground. **Mike Addison** explains what bodies corporate should do to avoid “conflicting claims”.

THE SECTIONAL TITLE ENVIRONMENT works fantastically well, particularly when folk get along and nothing goes wrong ... goes wrong ... goes wrong ...

And when it does go wrong, it can go very wrong. Not every body corporate has a team of trained psychologists on board as trustees!

Insurance is an area that nobody seems to take notice of while things are running smoothly. In fact, it is often so overlooked that the time bomb grows more dangerous the longer this important aspect of sectional title is neglected. How so?

It is human nature, it seems, that when something goes wrong it must be somebody else's fault. That is the first ingredient for a conflict-filled insurance claim. The second ingredient is an unreasonable expectation that if the damage occurs today, the body corporate or its insurer will repair it today or, at the very least, tomorrow. The third ingredient for unhappiness around a claim is a lack of understanding of what is and what isn't covered. Mix in some already strained relations between owners and trustees, a touch of ignorance, a pinch of aggression and a dash of arrogance, blend in a bit of inflated ego and then stir in a bit of mistrust, and we have a serious dispute about to erupt.

In sectional title, the body corporate arranges the insurance. The body corporate is the insured; the insurance company is the insurer. The trustees have to insure the sectional title complex's buildings for

the full replacement value against certain events, all of which are set out clearly in the rules, either prescribed or as amended. The trustees are then mandated in terms of these rules to negotiate the best terms for all the owners.

The buildings are insured as a whole, and it is the body corporate's responsibility to see to it that reinstatement occurs in relation to any claim, whether for common property or an owner's section.

Walk this way

THERE IS ONLY ONE WAY TO DEAL WITH INSURANCE for bodies corporate, and that is to deal with it properly. That means following a few simple yet very important steps. Many of these steps have been discussed over the past two years in previous articles in this series (which can be found on www.pers-fin.co.za or www.addsure.co.za).

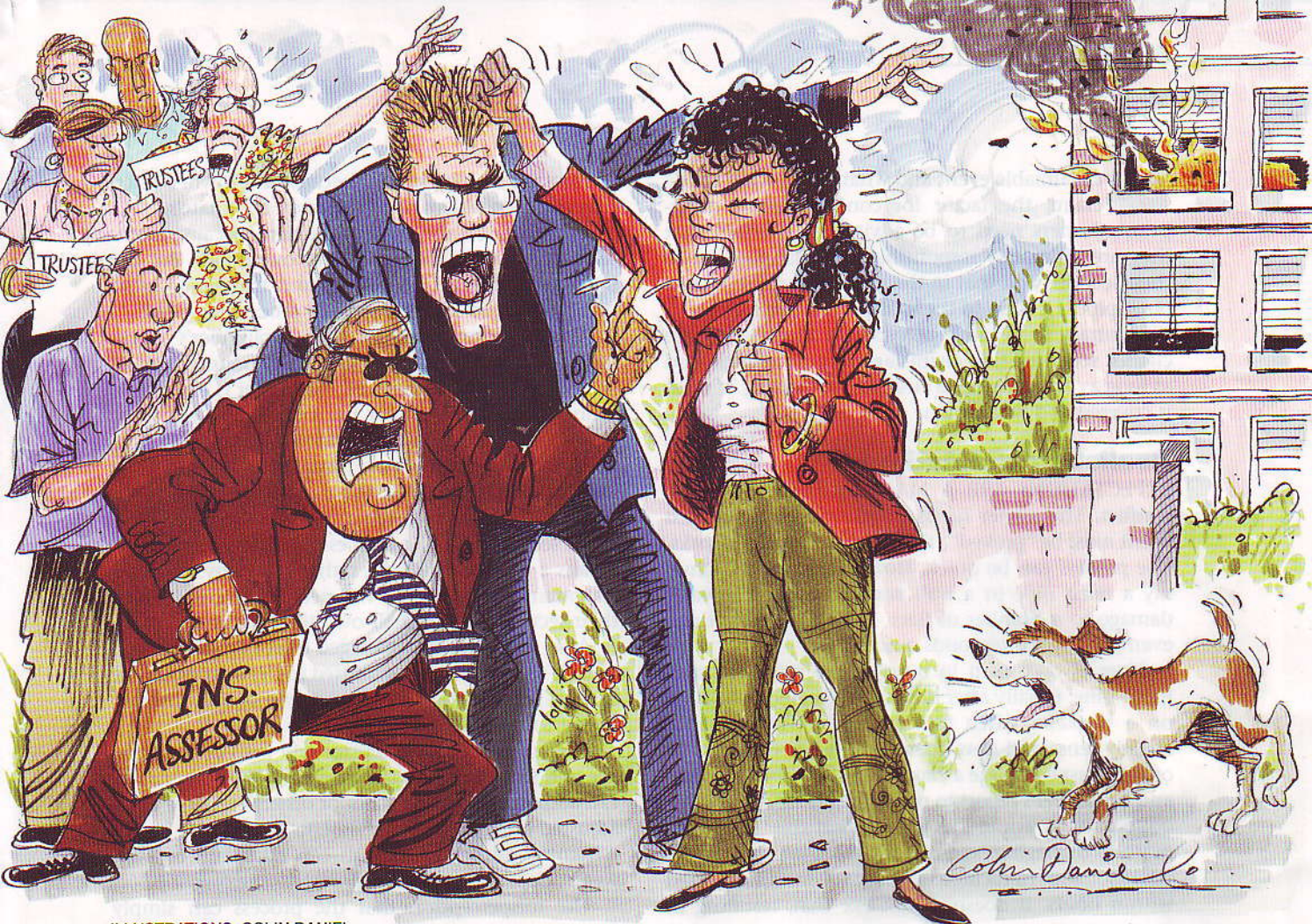
In a nutshell, the steps are:

1. The trustees should ensure the replacement value of the buildings and all improvements to common property is up to date and correct. This is done by ensuring that regular valuations for insurance replacement purposes are carried out by a suitably qualified valuer who has professional indemnity insurance.

2. A schedule of replacement values should be drawn up, clearly setting out each owner's insured value. Most importantly, owners must fully understand the schedule of replacement values.

It is a statutory requirement (in the prescribed





ILLUSTRATIONS: COLIN DANIEL

management rules) that the schedule of replacement values must be prepared annually and presented at every annual general meeting for approval.

It is important that the schedule of replacement values is not a simple photocopy of the insurance policy schedule. It should be thought out properly after an accurate valuation has been done. The policy schedule's replacement values should be drafted from the valuation. The policy schedule must reflect the body corporate's schedule, not vice versa.

3. Insure with a reputable insurer. You do this by using sectional title specialist insurance advisers who insure with underwriting managers who understand sectional title insurance and the associated risks. Make sure that the insurance adviser/broker you select carries professional indemnity cover.

4. The trustees should offer all section owners the option to increase their cover, and provide them with the procedure to follow if they want to do so.

The trustees must explain to owners the dangers of under-insurance and what happens when insurers "apply average". (An example of "applying average" is where a unit is, say, under-insured by 25 percent and the insurers reduce the payout by 25 percent in the event of a successful claim.)

The trustees must make it clear to the owners that it is their responsibility to advise the body corporate

if the insured sum should be increased. Owners should also be advised about how items such as air-conditioner units and satellite dishes are to be dealt with and who is responsible for insuring these. In some cases, it may be necessary to have written agreements that spell out who is responsible for what.

5. Trustees must advise owners about excesses and their responsibilities, especially now that owners may be responsible for any excess in respect of damage to their sections (see "Who wins the excess tug of war?" in *PERSONAL FINANCE*'s first quarter 2009 edition). Higher excess structures can come as a surprise when owners least expect it, so communication is key.

6. Manage claims via the trustees, the managing agent and an insurance specialist.

7. Always use an approved contractor to do repairs.

8. Ensure that a clear claims procedure is in place. This means that owners know what to do when an insured event occurs and to whom to refer. A claims procedure should also set out what an owner should do if his or her claim is rejected and what the dispute-resolution process should be.

It may sound obvious, but it has been proved over and over again that things can go very wrong when one or more of these eight steps has not been dealt with properly.

If everyone is told what to do in the event of >>

>> a claimable event and what is and what isn't a claim, the factor for conflict almost disappears. Owners need to be advised or coached that they are ultimately responsible for what goes on in their sections and that in the event of a claim – say a burst pipe – it is up to them to prove their claim.

Contrary to negative perceptions about insurance claims, sectional title claims are very straightforward as long as everyone has a clear understanding of what is covered and what to do.

Realistic expectations

EXPECTATIONS ARE A MAJOR INGREDIENT FOR conflict. The owner needs to know that an insured event must be “proved”. That is how insurance works. The process can be quick. However, a larger claim – say a burst pipe in a wall and consequential water damage to a number of flats – will take some time, even if everyone responds quickly.

Pipes always seem to burst at the most inconvenient time: usually after hours, on a public holiday or on a weekend when folk are away! The owner is already tense and now doesn't like to be told that he or she must complete a claim form and obtain quotes and a plumber's report to prove the claim. The owner, quite frankly, would like to hear that the “fairy god-mother managing agent and superhero insurance adviser” will miraculously have everything sorted within hours. It doesn't work like that, resulting in

“automatic unhappiness”, because the owner often expects the problem to be the body corporate's.

In reality, it is the owner's problem, because maintenance is one of the realities of ownership. But the body corporate or its trustees and managing agent must still see to it that the claim process happens.

A claim form, together with a plumber's report indicating what happened and the amount claimed, is, in reality, what a claim is. The owner is claiming a monetary value for his or her loss. This needs to be stated and proved. A claim form simply saying “flood, pipe burst” is, in my view, simply not a claim. The owner needs to complete the claim form in his or her own handwriting and sign it.

In sectional title, a successful claim most often means a monetary payout rather than physical reinstatement. Often, owners will need to oversee work in their sections within their own time frames.

After an owner has managed to obtain quotes and a claim form has been submitted to the insurer via the trustees (for vetting), the insurer will decide whether or not to send out an assessor.

The assessor or loss adjustor will inspect the damage and then report to the insurer so that the insurer can admit or reject the claim or otherwise agree to an adjusted or negotiated settlement.

Simply proving the claim can take days or even weeks, depending on how proactive the owner is.

The misperception that the process can simply

HOW TO STAKE YOUR CLAIM

A TYPICAL CLAIMS PROCEDURE MIGHT LOOK something like this:

1. Report an incident/event to the trustees or managing agent immediately and ask that your claim or possible claim is registered without delay. This must be done within 30 days, otherwise the claim is prejudiced.

2. Obtain a claim form from the managing agent and complete it with as much information as possible. Include the case number from the police (if applicable) and copies of quotes to repair the damage/loss (always get two quotes). Send the completed and signed claim form to the managing agent as soon as possible. It is typical for two trustees or one trustee and the managing agent (if authorised to do so) to sign claim forms on behalf of the body corporate. Claims for damage from within sections should also be signed by the owner.

3. If it is urgent that the damage be repaired immediately, try to convince the managing agent to obtain authorisation to effect the repair, or ask one of the trustees to use his or her discretion to authorise the repair. Retain all salvaged materials for the purposes of assessment.

4. Obtain the managing agent's opinion on the

question of excesses (for example, who would be liable), so that there is no argument about who has to pay the excess when the contractor needs to get paid.

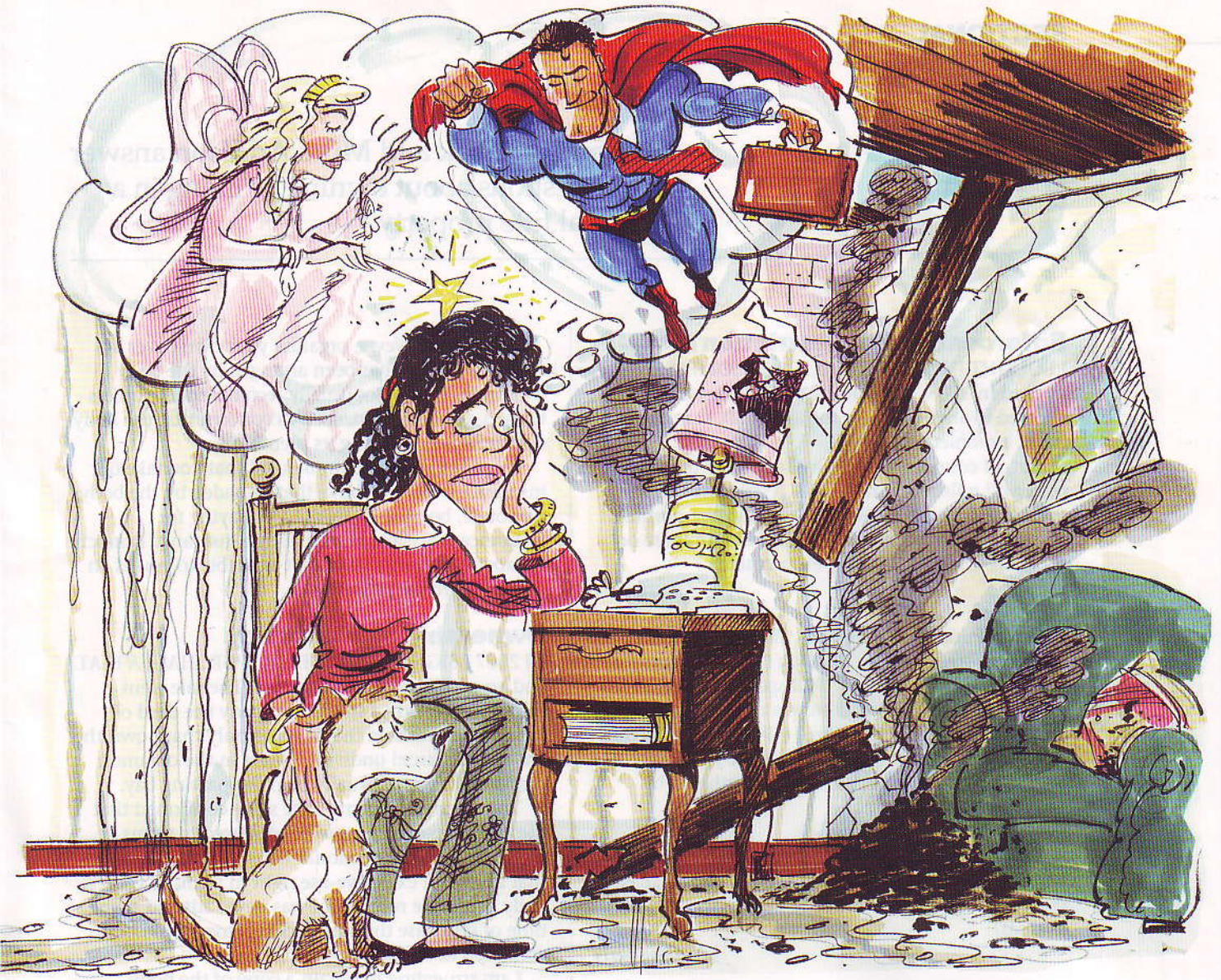
5. The insurance company will pay a claim (if accepted) less the excess amount. The owner from whose unit the loss emanated may well need to carry the excess, depending on the management rules of that body corporate.

6. The claim will be paid directly to the body corporate or the contractor who repairs the damage, depending on the express wish of the body corporate.

7. The individual owner should work via the managing agent or trustees.

8. If a claim is repudiated and the owner disagrees with the decision, the owner should write to the body corporate stating this and requesting that the trustees take up his or her disagreement with the insurer, asking that the claim be reconsidered.

9. Should the trustees disagree with the owner (in other words, agree that the claim should remain repudiated), they may advise the owner, who would then have to follow the dispute-resolution process with the body corporate.



take a few hours often causes a lot of unnecessary unhappiness and unpleasantness. A good managing agent and insurance adviser should guide owners as tactfully as possible to avoid this.

One can see then that conflict can often occur, but it is usually avoidable if everyone is reasonable and understanding. The real disputes are what should be focused on, and these occur when the body corporate and/or an owner disagree with an insurer's decision following a claim.

Remember, it is the body corporate that is in actual fact the insured person. But each owner has rights and an interest in the policy. The trustees contract on behalf of all the owners, so it follows that the trustees will decide whether a repudiated claim was a fair decision or not.

It is important that when a claim is rejected, the owner is told in writing as soon as possible so that he or she has time to agree to or dispute such a decision. It will then be up to the particular body corporate's procedure as to who will take up the issue with the insurance company. We always suggest that in an

instance where an owner disagrees with a claim decision, he or she should write to the body corporate requesting that the body corporate takes up the matter with the insurer.

My firm view is that if an owner disagrees with the insurer's decision in respect of a payout or a rejected claim and the trustees agree with the owner, the trustees or their managing agent should take up the matter with the insurer or follow through to the Ombudsman for Short-term Insurance if the issue is not resolved.

If the trustees agree with the insurer, the matter is now between the owner and the trustees to resolve. If a dispute arises, the laid-down dispute-resolution process should be followed and should exclude the ombudsman. After all, in this instance, the insured actually agrees with the insurer that the claim be repudiated, so technically no complaint exists.

Most disputes can be resolved by reasonable debate and trusting the opinion of experienced managing agents or specialist insurance advisers who can offer expert opinion and input. □