

DUTY OF UTMOST GOOD FAITH EXPLAINED

There's no agreed industry definition of the Duty of Utmost Good Faith. Instead, it's about the behaviour of the insureds and insurers and what's considered 'reasonable' in the circumstances.

A breach of the duty allows the impacted party to sue for damages, void the insurance policy or prevent the other party from acting in a certain way.



Insurer's responsibilities

- Assess claims promptly
- Don't delay or refuse to pay claims without proper cause
- Consider the interests of the strata scheme
- Explain to the strata scheme what risks the policy covers

Strata scheme's responsibilities

- Disclose all information relevant to the insurer's decision to accept the risk
- Cooperate when making claims and don't make false or exaggerated claims
- Disclose relevant information during the claims process, even if it may weaken the case

Over time the scope of the Insurance Contracts Act 1984 (ICA) has expanded to include third-party beneficiaries. While this hasn't changed the meaning of the Duty of Utmost Good Faith, it does mean a breach of the Duty of Utmost Good Faith is now also a breach of the ICA and ASIC can take action against an insurer.

How it applies to brokers

Because a broker is generally considered to be an agent of the strata scheme, its actions could also result in the strata scheme breaching its Duty of Utmost Good Faith.

Maybe the broker made a false claim, intentionally left out information when the policy commenced or when making a claim, or even refused to help the insurer. All these circumstances would allow the insurer to cancel the policy and/or reduce the amount payable under any related claim.

The broker may also be sued by the strata scheme for negligence, so the risks are high. Brokers must be aware of the strata scheme's Duty of Utmost Good Faith to ensure it doesn't breach that duty on the strata scheme's behalf.

If you have any questions about the Duty of Utmost Good Faith, please contact your local BCB office.

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QUESTIONS?

Please contact your nearest BCB office for any queries or advice.



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