

# DUTY OF UTMOST GOOD FAITH EXPLAINED

There is no formal definition of the Duty of Utmost Good Faith. Instead it's about the behaviour of the insureds and insurers and what's considered to be '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.

## RESPONSIBILITIES OF THE INSURER

- Assess claims promptly
- Don't delay or refuse to pay claims without proper cause
- Consider the interests of the Strata Plan
- Advise the Strata Plan about what risks the policy covers

## RESPONSIBILITIES OF THE STRATA PLAN

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

There have been some recent changes to the Insurance Contracts Act 1984. While they haven't altered the meaning of the Duty of Utmost Good Faith, the scope has expanded to include third party beneficiaries. This means a breach of the Duty of Utmost Good Faith is also now a breach of the ICA and ASIC can take action against an insurer.

### How it applies to brokers

Because an Insurance broker is generally considered to be the agent of the Strata Plan, their actions could also result in the Strata Plan breaching its duty of good faith.

Perhaps the broker has made a false claim, intentionally left out information when the policy commenced or when making a claim, or even refuses to assist 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 find themselves being sued by the Strata Plan for negligence, so the risks are high. Brokers must be aware of the Strata Plan's duty to ensure it doesn't breach that duty on the Strata Plan's behalf.

If you have any questions about the Duty of Utmost Good Faith, please get in touch with your local BCB office.



The information provided is general. It does not constitute legal advice and should not be relied upon as legal advice. Body Corporate Brokers recommends seeking advice from a qualified lawyer on any legal issues affecting you before acting on any legal matter. Whilst Body Corporate Brokers endeavour to ensure that the content of this information sheet is accurate, it does not represent or warrant its accuracy, adequacy or completeness and is not responsible for any loss suffered as a result of or in relation to the use of this information sheet.

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