

# Commercial Insurance

## Body Corporate Section



### Defined events

Loss of or damage to the buildings by any of the perils described in sub-section A and public supply connections by the peril described in sub-section B, situate as stated in the schedule, and the consequences thereof resulting in loss described in sub-section C and legal liability as described in sub-section D.

### Provided that

no amount shall be payable in terms of this section except the event of actual physical loss of or damage to Insured Property, notwithstanding that the Insured Property may have been deemed to have been destroyed in terms of Section 48 of the Sectional Titles Act, No. 95 of 1986, as amended or replaced from time to time, and the provisions of that section shall not apply in regard to the application or interpretation of this Policy.

### Sub-section A - Property

1. Fire, lightning, thunderbolt, subterranean fire, explosion.
2. Storm, wind, water, hail or snow other than
  - (a) that arising from its undergoing any process necessarily involving the use or application of water.
  - (b) wear and tear or gradual deterioration.
  - (c) loss or damage
    - (i) to retaining walls.
    - (ii) caused or aggravated by
      - (1) subsidence or landslip.
      - (2) the insured's failure to take all reasonable precautions for the maintenance and safety of the property insured and for the minimisation of any destruction or damage.
3. Earthquake.
4. Aircraft and other aerial devices or articles dropped therefrom.
5. Impact by animals, trees, aerials, satellite dishes or vehicles excluding damage to such animals, trees, aerials, satellite dishes, vehicles or property in or on such vehicles.
6. Bursting or overflowing of water tanks apparatus or pipes including damage to such apparatus or pipes.
7. Theft or any attempt thereat except from a vacant unit or when the whole of the property insured is vacant.
8. Accidental breakage or collapse of radio or television aerials or masts.
9. Accidental breakage of glass or sanitaryware such as fixed glass in windows, doors, fanlights, skylights, greenhouses, conservatories and verandahs, fixed wash-basins, pedestals, sinks, lavatory pans, splashbacks and cisterns (but excluding chipping, scratching and other disfiguration).
10. Accidental damage not exceeding R1000 in all to swimming pool machinery or borehole motors in domestic use installed at the Premises caused by
  - (a) the sudden and dangerous distortion of any part of the plant caused by crushing or stress from pressure.
  - (b) the sudden breakage or burning out of any part of the plant including overheating or collapse of bearings arising from electrical or mechanical breakdown.
  - (c) loss or damage to the plant from accidental extraneous causes whilst at work or rest but excluding
    - (i) the first R100 of any claim.
    - (ii) repair or replacement necessitated by wear, corrosion, erosion, deposit or scale, sludge or other sediment or any other direct consequence of progressive or continuous influences from working or atmospheric or chemical action, rust or scratching of painted or polished surfaces.
11. Escape of oil from any fixed oil-fired heating installation or apparatus connected therewith.

### Specific condition

#### Average

If the property insured is at the commencement of any damage to such property by any peril insured against collectively of greater value than the sum insured thereon, then the insured shall be considered as being their own insurer for the difference and shall bear a rateable share of the loss accordingly. Every item if more than one shall be separately subject to this condition. This condition shall apply to the individual units (excluding the owners interest in the land and not to the property in the whole).

### **Sub-section B - Public supply connections**

Accidental damage to water, sewerage, gas, electricity and telephone connections on the property of the insured or for which they are legally responsible between the property insured and the public supply or mains.

### **Sub-section C - Rent**

#### **1. Loss of rent receivable from Tenant**

Loss of rent as a result of the property insured being so damaged by any of the perils specified in Sub-section A as to be rendered untenable but only for the period necessary for reinstatement and for an amount not exceeding 25 per cent of the sum insured on the affected unit or section of the property. The basis of calculation shall be the annual rent receivable of the unit or section unfurnished or its equivalent in rental value.

#### **2. Owners/occupiers alternative accommodation**

In consequence of the property being so damaged by any of the perils specified in Sub-section A as to be rendered untenable the company will indemnify the insured in respect of the reasonable cost of equivalent alternative accommodation up to a limit of 25 percent of the sum insured of the affected unit. The indemnity period shall be limited to the period necessary for the reinstatement of the unit. The insurance provided by this section does not cover any loss which at the time of happening of such loss is insured by or would but for the existence of this policy be insured by any other policy except in respect of any excess beyond the amount which would have been payable under that policy had this insurance not been effected.

### **Sub-section D - Liability**

Damages for which the insured shall become legally liable to pay consequent upon accidental death of or bodily injury to or illness of any person (hereinafter termed injury) or accidental loss of or physical damage to tangible property (hereinafter termed damage) occurring during the period of insurance in, on or about the property insured and arising from the insured's ownership thereof.

### **The limit of indemnity**

The amount payable inclusive of any legal costs recoverable from the insured by a claimant or any number of claimants and all other costs and expenses incurred with the company's consent for any one event or series of events with one original cause or source shall not exceed the amount of R1 000 000.

### **Specific exceptions** (applicable to sub-section D)

The company will not indemnify the insured under this sub-section in respect of

1. injury or damage sustained by
  - (a) any member of the same household as the insured.
  - (b) any person employed by the insured or under a contract of service with or apprenticeship to the insured and arising directly from and in the course of such employment by the insured.
  - (c) any other person resulting from the ownership of or use by or on behalf of the insured of mechanically propelled vehicles (except pedal cycles and lawnmowers).
2. damage to property
  - (a) (i) belonging to the insured.  
(ii) in the custody or control of the insured or any employee of the insured.
  - (b) caused by vibration or by the removal or weakening of or interference with support to any land, building or other structure.
3. liability assumed by agreement unless liability would have attached to the insured notwithstanding such agreement.
4. (a) liability in respect of injury, damage or loss of use of property directly or indirectly caused by seepage, pollution or contamination provided always that this exception shall not apply where such seepage, pollution or contamination is caused by a sudden, unintended and unforeseen occurrence.  
(b) the cost of removing, nullifying or cleaning up seeping, polluting or contaminating substances unless the seepage, pollution or contamination is caused by a sudden, unintended and unforeseen occurrence.  
This exception shall not extend the policy to cover any liability which would not have been insured under this policy in the absence of this exception.
5. fines, penalties, punitive, exemplary or vindictive damages.
6. (a) damages in respect of judgments delivered or obtained in the first instance otherwise than by a court of competent jurisdiction within the Republic of South Africa, Namibia, Botswana, Lesotho and Swaziland.  
(b) costs and expenses of litigation recovered by any claimant from the insured which are not incurred in and recoverable in the area described in 6(a) above.

#### **Memoranda to sub-section D**

1. Where more than one insured is named in the schedule the company will indemnify each insured separately and not jointly and any liability arising between such insured shall be treated as though separate policies had been issued to each provided that the aggregate liability of the company is not increased beyond the limit of indemnity stated in the schedule.
2. Provided that the aggregate liability of the company is not increased beyond the limit of indemnity stated, the company will also indemnify as though a separate policy had been issued to each
  - (a) in the event of the death of the insured any personal representative of the insured in respect of liability incurred by the insured.
  - (b) any partner or director or member or employee of the insured (if the insured so requests) against any claim for which the insured are entitled to indemnity under this insurance.
3. In respect of this sub-section only, General exception 1 is deleted and replaced by the following:  
This sub-section does not cover injury, damage or liability directly or indirectly caused by, related to or in consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, mutiny, insurrection, rebellion, revolution, military or usurped power.
4. If at the time of any event giving rise to a claim under this sub-section, indemnity is also provided under any other insurance, this sub-section shall not be drawn into contribution with such other insurance except in respect of any excess over and above the amount payable by such other insurance.

#### **Clauses and extensions**

##### **Subsidence and landslip extension to sub-section A (if stated in the schedule to be included)**

Damage caused by subsidence or landslip

provided that the insured shall bear the first portion of each and every claim up to an amount calculated at 1 percent of the sum insured on the property or R500 whichever is the greater.

For the purposes hereof any damage insured shall be deemed to have been caused by fire.

Provided that this extension does not cover

1. damage to drains, water courses, boundary walls, garden walls, retaining walls, gates, posts or fences unless specifically insured.
2. damage caused by or attributable to
  - (a) faulty design or construction of or the removal or weakening of support to any building situated at the insured premises.
  - (b) workmen engaged in making any structural alterations, additions or repairs to any building situated at the insured premises.
  - (c) excavation on or under land other than excavations in the course of mining operations.
3. consequential loss of any kind whatsoever except loss of rent.

In any action suit or other proceeding where the company alleges that by reason of the provisions of this extension any damage is not covered by this insurance the burden of proving the contrary shall be upon the insured.

##### **Security firms (applicable to sub-section D - Liability)**

Notwithstanding Specific exception 3, if, in terms of a contract with a security firm engaged in the course of the insured's business (as owner of the premises specified in the schedule) to protect the insured's property at the premises stated in the schedule, the insured becomes legally liable for the acts or omissions of the employees of the security firm in the course of their employment at these premises, then this sub-section includes such legal liability to the extent that indemnity would have been granted under this sub-section had the said employees been under a contract of service to the insured and not the security firm, but not exceeding the limit of liability stated in the schedule for this sub-section.

If, at the time of an occurrence giving rise to a claim, the security firm is entitled to indemnity under any other policy in respect of the same event, the company shall not be liable to make any payment except in respect of any amount above the amount payable under such other policy.

##### **Architects' and other professional fees clause**

The insurance under sub-section A includes professional fees (for estimates, plans, specifications, quantities, tenders and supervision) necessarily incurred in the reinstatement or replacement of the property insured following damage by a defined event, but in no case exceeding 15 percent of the amount payable in respect of such damage and provided that the total amount recoverable shall not exceed the sum insured on the property affected. The amount payable in respect of such fees shall not include expenses incurred in connection with the preparation of the insured's claim.

### Capital additions clause

The insurance under this section covers alterations, additions and improvements (but not appreciation in value in excess of the sum(s) insured) to the property for an amount not exceeding 15 percent of the sum insured thereon, it being understood that the insured undertake to advise the company each quarter of such alterations, additions and improvements and to pay the appropriate additional premium thereon.

### Cost of demolition and clearing and erection of hoardings clause

The insurance under this section includes costs necessarily incurred by the insured in respect of the demolition of property insured and/or the removal of debris and in providing, erecting and maintaining hoardings required during demolition, site clearing and/or building operations following damage to the property insured by a defined event, provided that the total amount recoverable shall not exceed the sum insured on the property affected.

The company will not pay for any costs or expenses

1. incurred in removing debris except from the site of such property destroyed or damaged and the area immediately adjacent to such site.
2. arising from pollution or contamination of property not insured by this policy/section.

### Fire extinguishing charges clause

Any costs relating to the extinguishing or fighting of fire shall be deemed to be damage to the insured property and shall be payable in addition to any other payment for which the company may be liable in terms of this section provided the insured is legally liable for such costs and the property insured was in danger from the fire.

### Mortgagee clause

1. The interest of any mortgagee(s) in the insurance under this section shall not be prejudiced by
  - (a) any act or neglect of the Body Corporate or any of the owners of units as defined in the Sectional Titles Act No. 95 of 1986, or
  - (b) any misrepresentation or non-disclosure by the Body Corporate or any of the owners of the units at the time when the insurance is effected or renewed or during the currency thereof; or
  - (c) the alienation of the property; or
  - (d) the occupation thereof for purposes more hazardous than are permitted by the policy.Provided that
  - (i) such act, neglect, misrepresentation, non-disclosure, alienation or occupation shall have been effected without the knowledge or privity of the mortgagee(s) and
  - (ii) the mortgagee(s) shall notify the company of the happening or existence of such act, neglect, misrepresentation, non-disclosure, alienation or occupation as soon as same shall come to his or her knowledge.
  - (iii) the mortgagee(s) shall on reasonable demand, pay the additional charge for any increase of hazard thereby created according to the established scale of rates, for the time such increased hazard may be, or shall have been, assumed by the company during the continuance of the Insurance; and
  - (iv) any compensation payable in terms of this section shall be payable direct to the mortgagee(s) of the particular unit in the order of preference of their bonds up to the value allocated to the particular unit in this policy or the aggregate of the amounts due by the unit owner to the mortgagee(s) under their mortgage bonds, whichever is the lesser.
2. All and any amount becoming payable by the company shall, unless otherwise resolved or ordered in terms of Section 48 of the Sectional Titles Act, be wholly applied to the reinstatement of such damage if it is resolved or ordered in terms of Section 48 of the Sectional Titles Act that such damage should not be reinstated, the proceeds of any claim applicable to a unit shall be made in the first place to the mortgagee(s) of the particular unit up to the value allocated to the particular unit in this policy or the aggregate of the amounts due by the unit owner to the mortgagee(s) under their mortgage bonds, whichever is the lesser.

### Municipal plans scrutiny fee clause

The insurance under this section includes municipal plans scrutiny fee, provided that the total amount recoverable under any item shall not exceed the sum insured on the property insured so affected.

### Public authorities' requirements clause

The insurance under this section includes such additional cost of repairing or rebuilding the damaged property incurred solely by reason of the necessity to comply with building or other regulations under or framed in pursuance of any act of parliament or ordinance of any provincial, divisional, municipal or other local authority provided that

1. the amount recoverable under this clause shall not include
  - (a) the cost incurred in complying with any of the aforesaid regulations
    - (i) in respect of damage occurring prior to granting of this clause.
    - (ii) in respect of damage not insured by this section.
    - (iii) under which notice has been served upon the insured prior to the happening of the damage.
    - (iv) in respect of undamaged property or undamaged portions of property other than foundations (unless foundations are specifically excluded from this insurance) of that portion damaged.
  - (b) the additional cost that would have been required to make good the property damaged to a condition equal to its condition when new had the necessity to comply with any of the aforesaid regulations not arisen.
  - (c) the amount of any rate, tax, duty, development or other charge or assessment arising from capital appreciation which may be payable in respect of the property or by the owner thereof by reason of compliance with any of the aforesaid regulations.
2. the work of repairing or rebuilding must be commenced and carried out with reasonable despatch and may be carried out wholly or partially upon another site (if the aforesaid regulations so necessitate) subject to the liability of the company under this clause not being thereby increased.
3. if the liability of the company under any item of this section apart from this clause shall be reduced by the application of any of the terms, exceptions and conditions of this section then the liability of the company under this clause in respect of any such item shall be reduced in like proportion.
4. the total amount recoverable under any item of this section shall not exceed the sum insured thereby.

### Railway and other subrogation clause

The insured shall not be prejudiced by signing the "Transnet Cartage (Hazardous Premises) Indemnity" or other special agreements with the Transnet Administration regarding private sidings or similar agreements with other government bodies.

### Reinstatement value conditions

In the event of the property being damaged, the basis upon which the amount payable is to be calculated shall be the cost of replacing or reinstating on the same site property of the same kind or type but not superior to or more extensive than the insured property when new provided that

1. the work of replacement or reinstatement (which may be carried out upon another site and in any manner suitable to the requirements of the insured subject to the liability of the company not being thereby increased) must be commenced and carried out with reasonable despatch otherwise no payment beyond the amount which would have been payable if these reinstatement value conditions had not been incorporated herein shall be made.
2. until expenditure has been incurred by the insured in replacing or reinstating the property, the company shall not be liable for any payment in excess of the amount which would have been payable if these conditions had not been incorporated herein.
3. if at the time of replacement or reinstatement the sum representing the cost which would have been incurred in replacement or reinstatement if the whole of the insured property had been damaged exceeds the sum insured thereon at the commencement of any damage to such property by a defined event, then the insured shall be considered as being their own insurer for the excess and shall bear a rateable proportion of the loss accordingly. Each item of this section (if more than one) to which these conditions apply shall be separately subject to this provision.
4. these conditions shall be without force or effect if
  - (a) the insured fails to intimate to the company within six months of the date of damage or such further time as the company may in writing allow their intention to replace or reinstate the property.
  - (b) the insured are unable or unwilling to replace or reinstate the property on the same or another site.

### Temporary removal clause

Except in so far as otherwise insured, landlord's fixtures and fittings are covered while temporarily removed to any other premises including transit by road, rail or inland waterway anywhere within the Republic of South Africa, Namibia, Botswana, Lesotho, Swaziland, Zimbabwe and Malawi provided that the amount payable under this clause shall not exceed that which would have been payable had the loss occurred on the premises from which the property is temporarily removed.

### Tenants clause

This insurance shall not be invalidated by an act or omission on the part of a tenant (other than the insured) provided that the Body Corporate or owner notifies the company as soon as such act or omission comes to their knowledge and pay on demand the appropriate additional premium.

### Owners clause

This insurance shall not be invalidated by act or omission of any owner of a unit except

1. if the act or omission was committed by all the owners in concert.
  2. in respect of damage to a section belonging to the owner whose act or omission caused the damage.
- Notwithstanding this exception the interest of the Body Corporate shall not be invalidated by any such act or omission of which they were not aware.

### Malicious damage extension

Subject otherwise to the terms, conditions, exclusions, exceptions and warranties contained herein, sub-sections A, B and C of this section are extended to cover loss or damage directly occasioned by or through or in consequence of the deliberate or wilful or wanton act of any person committed with the intention of causing such loss or damage other than loss or damage to

1. moveable property which is
  - (a) stolen.
  - (b) damaged in an attempt to remove it or part of it from any premises owned or occupied by the Insured.
2. moveable or immovable property which is damaged by thieves whilst breaking into or out of or attempting to break into or out of any premises owned or occupied by the Insured.
3. immovable property owned or occupied by the Insured occasioned by or through or in consequence of
  - (a) the removal or partial removal or any attempt thereof;
  - (b) the demolition or partial demolition or any attempt thereof;the said immovable property or any part thereof with the intention of stealing any part thereof provided that this extension does not cover
  - (a) loss or damage related to or caused by fire or explosion.
  - (b) consequential or indirect loss or damage of any kind or description whatsoever other than loss of rent if specifically insured.
  - (c) loss or damage resulting from total or partial cessation of work or the retarding or interruption or cessation of any process or operation.
  - (d) loss or damage occasioned by permanent or temporary dispossession resulting from confiscation, commandeering or requisition by any lawfully constituted authority.
  - (e) loss or damage related to or caused by any occurrence referred to in General exception 1(a) (i), (ii), (iii), (iv), (v) or (vi) of this policy or the act of any lawfully established authority in controlling preventing suppressing or in any other way dealing with any such occurrence.

If the Company alleges that by reason of proviso (a), (b), (c), (d) or (e), loss or damage is not covered by this section, the burden of proving the contrary shall rest on the Insured.

If any building insured or containing the insured property becomes unoccupied for 30 consecutive days the insurance in respect of this extension is suspended as regards the property affected unless the insured, before the occurrence of any damage obtains the written agreement of the company to continue this extension.

During the period of the initial unoccupancy of 30 consecutive days the insured shall become a co-insurer with the company and shall bear a proportion of any damage equal to 20 percent of the claim before deduction of any first amount payable.

### Riot and strike extension (if stated in the schedule to be included)

Subject otherwise to the terms, conditions, exclusions, exceptions and warranties contained therein sub-sections A, B and C of this section are extended to cover loss or damage directly occasioned by or through or in consequence of

1. civil commotion, labour disturbances, riot, strike or lockout.
2. the act of any lawfully established authority in controlling, preventing, suppressing or in any other way dealing with any occurrence referred to in 1 above.

Provided that this extension does not cover

- (a) loss or damage occurring in the Republic of South Africa and Namibia.
- (b) consequential or indirect loss or damage of any kind or description whatsoever, other than loss of rent if specifically insured.
- (c) loss or damage resulting from total or partial cessation of work, or the retarding or interruption or cessation of any process or operation.
- (d) loss or damage occasioned by permanent or temporary dispossession resulting from confiscation, commandeering or requisition by any lawfully constituted authority.
- (e) loss or damage related to or caused by any occurrence referred to in General exception 1(a), (ii), (iii), (iv), (v) or (vi) of this policy or the act of any lawfully established authority in controlling, preventing, suppressing or in any other way dealing with any such occurrence.

If the Company alleges that, by reason of provisos (a), (b), (c), (d) or (e), loss or damage is not covered by this section, the burden of proving the contrary shall rest on the insured.

### General definitions

#### 1. Act

The Sectional Titles Act No. 95 of 1986 as amended or replaced from time to time.

#### 2. Business

The duties of a Body Corporate in terms of the Act and the registered rules agreed by them.

#### 3. Body Corporate

The controlling body of the building(s) described in the schedule.

#### 4. Owner

All registered owners of a Unit including the owner's spouse, children and other persons normally residing with him/her.

#### 5. Scheme

The Sectional Titles Development Scheme.

#### 6. Section

A section shown as such on the sectional plan bearing the number stated in the schedule.

#### 7. Common Property

That part of the property insured which does not form a part of a section and described on the Sectional Plan stated in the schedule.

#### 8. Unit

The section designated on the Sectional Plan including its undivided share in the common property apportioned to it in accordance with its participation quota.

#### 9. Participation Quota in the Common Property

The participation quota of a section or of the owner of a section shall be at that proportion designated in the Sectional Plan and/or Rules of the Controlling Body.

#### 10. Trustees

The elected trustees of the Body Corporate.

#### 11. Employee

Any employee of the Body Corporate but excluding Managing Agents.

#### 12. The Insured

The Insured shall include all owners and all mortgagees of registered mortgage bonds over the units in the scheme for their respective rights and interests.

#### 13. Buildings

Shall be deemed to include all outbuildings thereto (constructed of brick, stone, concrete or metal on metal framework and roofed with slate, tiles, metal, concrete or asbestos unless otherwise stated in the schedule) and sporting and recreational structures, swimming pool machinery, borehole motors, landlord's fixtures and fittings therein and thereon, walls (except dam walls), gates, posts, fences, and tarred or paved roads, driveways, paths or parking areas.