

Warranties - What you need to know

Many insurance policies will contain additional endorsements or warranties – often imposed by insurers over and above the standard policy wording to identify, or control, a specific risk element. There are important facts which need to be understood in connection with the application of a warranty - facts which need to be understood by the Trustees and also by the occupiers/tenants of the respective properties. Failure to adhere to the strict wording of a warranty will invalidate the policy cover.

In ordinary commercial contracts a warranty is a promise, subsidiary to the main contract, a breach of which would leave the aggrieved party with a right to sue for damages only. Warranties in insurance contracts however are fundamental conditions which go to the root of the contract and allow the aggrieved party to repudiate the contract. A warranty is an undertaking by the Insured that:

- a) something will be done, or shall not be done; or
- b) a certain state of fact exists, or does not exist.

Warranties are imposed by insurers for the following reasons:

1. To ensure that some aspect of management or “good housekeeping” is observed. For example in respect of fire insurance, that rubbish is cleared up each night, or in respect of theft insurance that an intruder alarm system is kept in good order under a contract of maintenance and is switched on when the premises are left unoccupied.
2. To ensure that certain features of higher risk are not introduced without the insurers knowledge. An example of this would be that no oils are stored within the premises (thus effectively reducing the risk of fire and the premium level charged). In such circumstances the policy would be warranted that no oils are kept.

Where the imposition of warranties occurs it is crucial that they are understood by the property owners (in this case the trustees or company directors) and the trustees will need to take into account their exposure for the failure to follow the wording of a warranty. Furthermore it is of the utmost importance that the warranty terms are passed onto the occupiers of the premises. For example beneficiaries living in a private residence or a commercial tenant occupying industrial premises purchased for investment purposes.

Where full details of the warranty are not passed on to tenants (as well as an explanation of the importance of following such a condition of the insurance policy) and a claim occurs and it was proven that the requirements were not met, then insurers would be within their rights to repudiate the contract of insurance and avoid any claim payment. If the trustees had not conveyed the importance of a policy warranty to the property tenants then they may be exposing themselves to allegations of negligence by an aggrieved settlor or beneficial owner.

Warranties can be either Express or Implied. Warranties are usually expressed in insurance contracts as they would appear as a specific wording within the policy document or on the policy schedule. The wording of the warranty needs to be understood as even a slight deviation from the facts contained in the warranty will create the right of insurers to avoid the contract in law. In certain circumstances a warranty may be implied. For example in marine insurance there are implied warranties or undertakings that the vessel is seaworthy. It is generally held that implied warranties do not exist in other classes of insurance.

Vantage have a great deal of experience in the identification and explanation of insurance policy wordings, conditions and warranties and can provide assistance to Trustees for their client insurance responsibilities. Insurance policies will appear to contain industry “jargon” and it is crucial that a full understanding of the precise wording is understood and, if necessary, broken down into “layman’s” wording so that all parties can understand their responsibilities.

As often occurs with insurance cover, a small amount of work at the inception or renewal of an insurance policy to understand the obligations of the policyholder can save a great amount of time, cost and