

'Wear and Tear' and 'Failure to Maintain' Exclusions in insurance policies

WORKER ADVICE LINE
(03) 9602 3326

What are exclusions in the insurance policy?

Terms and conditions, and exclusions

1. Policyholders (**clients**) can often be surprised or disappointed when their claims are denied, particularly after extreme weather events like hailstorms, floods, or bushfires.
2. A policy of insurance (**policy**) will often include terms and conditions which a client must adhere to, in order to be eligible for cover under the policy and receive payment after making a claim under the policy. The details of the policy and terms and conditions are often set out in a Product Disclosure Statement, or **PDS**. Insurers will often cover things like accidental damage or unexpected loss, but will rarely cover damage to property caused by gradual damage or deterioration over a period of time.
 - Examples of conditions that must be adhered to for house or car insurance are things like maintaining their house or car, and keeping them in a reasonably good condition.
3. A failure to adequately maintain their house or car, for example by failing to fix a leaking roof or by not changing the car tyres when they are severely flat and worn, can mean that an insurer may deny their claim later on when more severe damage occurs to the property.
4. Policies may also include specific situations or events which insurers will not agree to cover. These are called '**exclusions**'.
 - For example, some insurers will not agree to cover situations where property is damaged due to a high sea tide, corrosion or gradual land subsidence (movement). Others may not cover damage arising from a riot or a event that has been declared an act of terrorism.

Recommendations

- ▶ When taking out a policy of insurance, clients should ensure that they have read their policy to understand what specific situations or events are excluded from cover. Not all insurance policies have the same exclusions and it is important that a client takes out cover that its appropriate for their specific situation.
- ▶ Clients should also ensure that they have read and understood the terms and conditions of their policy, which will include steps that they are required to take when making a claim and if an excess must be paid (the amount a client has to pay before the insurer will pay the rest of a claim).

'Proximate cause'

▶ **There can be complicated situations where there are two or more causes of loss.**

- For example, a client may have a situation where they are covered for water damage to their house if caused by stormwater but are not covered for damage to their house caused by flood. Often those are words that have specific meanings set out in the PDS. When they make a claim under their policy, their insurer will need to investigate the extent to which of the stormwater or the flood caused the majority of the damage. This is known as the 'proximate cause', or the dominant cause of loss.

▶ **There can also be complex scenarios, like the above, where one proximate cause of loss is covered by a policy and where one cause of loss is an exclusion. In situations like this, an insurer can and may deny a claim. The AFCA approach to 'Proximate cause of damage' explains this principle in detail.**

- For example, a client may have a situation where they have suffered damage to their carpet due to stormwater leaking through their roof. They lodge a claim for replacement of the carpet under their policy. However, the insurer determined through its investigations that the client knew that their roof was leaking for months beforehand due to broken roof tiles and did not repair it. Due to the failure to maintain their roof, which was an exclusion under the policy, the client had their claim denied.

Recommendations

- ▶ Clients should understand that they have responsibilities under a policy of insurance to maintain their insured property. They should regularly inspect and maintain their property and ensure that they keep records of the maintenance in the event of a claim.
- ▶ Clients should also understand that situations of loss can have multiple causes. Factual investigations to disentangle multiple causes of situations of loss can be time-intensive, costly and complex. Experts will often need to examine damaged property to determine the cause of the loss. Clients should consider obtaining legal advice in circumstances where claims under policies are significant or where there are multiple causes.
- ▶ If a client does not agree with the insurers decision to rely on an exclusion or to reject a claim because of lack of maintenance or fair wear and tear then they are entitled to:
 1. Get their own expert reports and evidence;
 2. request an internal review of that decision;
 3. lodge a complaint with the Australian Financial Complaints Authority, if they are still dissatisfied with the outcome made after the internal review process.

The Insurance Contracts Act

▶ In certain circumstances, the law will make insurers pay claims even where they may be entitled to rely on an exclusion. This is because of section 54 of the *Insurance Contracts Act 1984* (Cth). This section means that insurers must pay a claim even though an act by a client means an exclusion might apply, if that act did not cause the situation of loss.

- For example, a client may lodge a claim for water damage to a property after a storm caused a tree to fall and damage the roof. In this scenario, the client had failed to ensure that they had maintained their roof, as it was missing roof tiles. Although the missing tiles may have allowed water to penetrate into the ceiling space and cause damage, the tree falling onto the roof and severely destroying it means that the insurer could not deny the claim based on fair wear and tear, as the failure to maintain the property (i.e. the missing tiles) did not cause the water damage.

▶ In other situations, disputes will arise between an insurer and a client over the interpretation of a term in the policy wording. Disputes may also arise if a term of a policy is unfair.

Recommendations

- ▶ Clients should consider obtaining legal advice to assist them understand what an exclusion or term means, and whether an insurer can rely on that exclusion or term when denying a claim.
- ▶ You should not rely on any information provided here as legal advice. For advice specific to your situation, you should consult a qualified legal practitioner.

If your client has any of these issues, call our worker advice line for advice and support

WORKER ADVICE LINE (03) 9602 3326

Monday - Friday 10am - 1pm & 2-5pm

✉ advice@consumeraction.org.au

