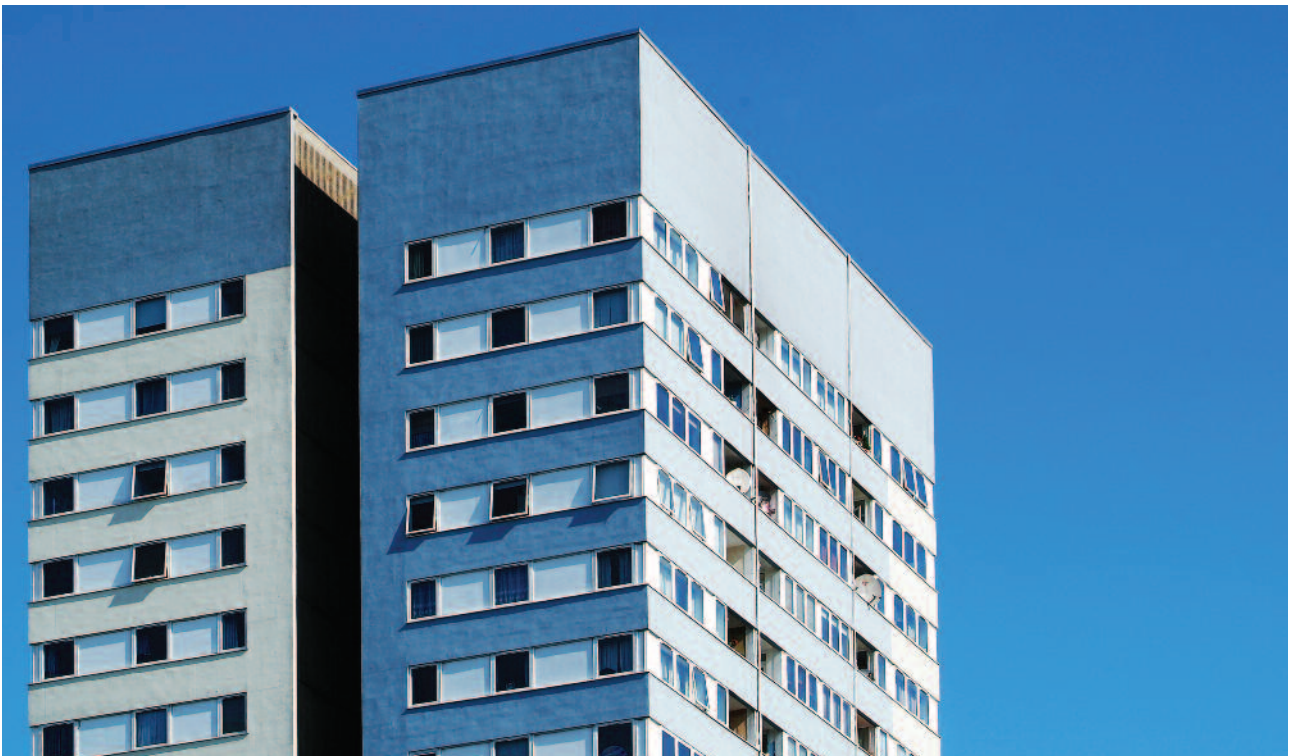


TECHNICAL & LEGAL

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Proposal Forms – Getting It Right

Last year's decision by the Court of Appeal in the case of Genesis Housing Association Limited v Liberty Syndicate Management Limited emphasises why accuracy is all important when completing proposal forms.



The roots of the case go back to 2007, when a member of the Genesis Group acquired the leasehold to a large number of flats and engaged Time and Tide (Bedford) Ltd (TTB) to renovate the properties. The contract terms placed a requirement on TTB to secure building guarantee cover for the benefit of Genesis and the future owners of the properties. To comply with this requirement, TTB approached the specialist insurance providers MD Insurance Services Ltd. for a quotation,

which was also to include an indemnity to Genesis in the event of TTB's insolvency during the build period.

The proposal form was, however, completed by an MD employee and then signed by one of the owners/directors of TTB 'for and on behalf of Genesis (as agent) and TTB'. Unfortunately, however, the name of the builder was shown on the proposal as Time and Tide Construction Ltd (TTC). Although the two companies were connected, TTC was an

established company with a reasonable credit rating, whilst TTB was a recently created special purpose vehicle, with no established credit rating. In any event, virtually all of the construction work was subcontracted to a company called 3Sixty Construction. TTB became insolvent during the construction period and whilst other contractors were engaged to complete the work, Genesis inevitably suffered a financial loss and sought indemnity under the policy.

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The proposal form had however contained a declaration that incorporated a "basis clause". Under the clause the Genesis had in effect declared that the information given on the proposal form was "correct and complete in every detail and (the claimant had) not withheld any material fact". Consequently, the Courts held that there had been a breach of warranty and that because that warranty was a "basis of contract" clause, the breach discharged the insurer from any liability under the policy.

Interestingly, the law relating to the use of basis clauses for business insurance contracts is being reviewed and has been the subject of consultation by the Law Commission and the Scottish Law Commission. That point aside, Genesis were unfortunate in that it appears from the court transcript that it is unlikely that they ever saw the proposal form until it emerged after notification of the claim. In conclusion, though, the message is clear and that is that the information given in any proposal form should be 100% accurate and complete.



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