



**NEPEAN BROKERS**  
*Insurance?...because things happen*

**Insurance Terminology**  

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**Some stuff you should know...**  

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by John Kinch

# Introduction

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**F**rom General Insurance to Insurance policies are loaded with perplexing terminology and clauses. There is no doubt that comparing Insurance policies or claiming insurance is best if you understand some basic Insurance terminology.

If you're spending thousands on Insurance make sure that you understand what is required from you, what your Insurance covers and under which circumstances will your Insurer 'come to your rescue'.

Avoid costly surprises or disappointment by understanding the fine print of your policies!

This eBook is designed to demystify Insurance terms and topics such as Third Parties, Subrogation, Co-Insurance Clause, Claims Made Policies, Duty of Disclosure and even Marine Insurance.

If you're not familiar with any of these terms, don't worry, this eBook will provide you with detailed examples to illustrate what is what.

**With a little help from  
Nepean Brokers, you will be  
understanding insurance  
fine print and saving yourself  
thousands in no time.**

# Third Party

A “third party” is simply a natural person or legal entity that is separate from the first two parties, typically, to a contract at law. i.e. a Contract of Insurance.

**Example :** Mr Joe Bloggs, as the registered owner of a motor vehicle takes out a private motor policy with ABC Insurance Limited. The first two parties to that contract are Mr Joe Bloggs and ABC Insurance Limited.

A third party to that contract could be a financier who is providing funds for the purchase of the vehicle. The financier would typically want to be noted on the policy as an “interested” third party in order to ensure that the vehicle is insured and that their financial interest in the vehicle is protected accordingly.

**Example :** A third party is another motorist with whom Mr Bloggs is involved in an accident. No matter who is at fault, the third party (by virtue of his/her involvement in the damage of an insured vehicle) is now a third party to the Insurance contract.

Other types of third parties can include, but are not limited to:

- The mortgagee to a home (usually noted on a Home & Contents policy),
- A government department that awards a tender for some form of public works (would usually require that they be noted as an interested third party with respect to Public Liability Insurance),
- A landlord who, in letting a property to a tenant, requires as part of the lease that the tenant meet all Insurance requirements for the property. The landlord may wish to be noted on the relevant Insurance policy (say for the building Insurance) as an interested third party.

It is also common for the notation of an interested third party, typically on the Insurance Policy Schedule, to specifically note the nature of the interest involved. i.e. mortgagee, hire purchase, landlord etc.

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# Subrogation

In virtually all general Insurance policies, and in the event of a claim, the Insurer who issues the policy may seek to exercise their “right of subrogation”.

## What is Subrogation?

Essentially, subrogation is where the Insurer is taking the legal place of the policyholder in recovering costs from a third party.

This is because the Insurer believes that a third party is responsible for the claim occurrence (either partially or wholly).

Whilst general Insurance policies accord this right to the Insurer, the Insurer may not always exercise the right. This is known as a **waiver of subrogation** and usually occurs where there is no value in pursuing a third party for the recovery of costs.

**Example:** Vehicle A driven by a third party collides with the rear of Vehicle B (the policyholder’s vehicle) which is stationary at a red light causing Vehicle B to be written off.

The Insurer of Vehicle B pays the policyholder (or replaces their vehicle) according to the terms and conditions of the policy, but then determines that the fault in this claim lies with the registered owner of Vehicle A.

The Insurer of Vehicle B may choose to exercise **their right of subrogation** against either the registered owner of Vehicle A, or as is more usual, against the Insurer of Vehicle A.

(Note : It is usual, until settlement has been received from either the owner or Insurer of Vehicle A, that the policyholder of Vehicle B will be required to pay the excess applicable)

If say the owner of Vehicle A is both uninsured and has no funds, then the Insurer of Vehicle B may elect not to pursue the matter against that owner purely due to the fact that there may be little or no chance of recovering costs.

In such an instance, the Insurer of Vehicle B can be said to be **waiving their right of subrogation**. Once waived, it is not usual for an Insurer to be able to seek recovery of costs at a later date.

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# Claims Made Policies

A claims made policy is becoming quite common, but not everyone understands the implications of being a claims made policy-holder.

A very common example of a claims made policy is a Professional Indemnity/Civil Liability policy.

Unlike a Public Liability policy which can be said to have a "long tail", meaning a claim can be made against the policy long after it's ceased to exist (through cancellation, not being required anymore, cessation of business etc.), a claims made policy requires that a claim be made during the policy period.

**In a nutshell, if a claims made policy expires, no further claims can be made against it.** Also, if a claim is not notified to the Insurer during the policy period, then the claims-made policy will not respond.

So, what does that mean for the claims made policy-holder?

- Does it mean that the policy-holder needs to keep a claims made policy in force perpetually to avoid any future claims?

No. Most claims-made policies have the option of purchasing run-off cover.

- Does it mean that the policy-holder is restricted from shopping around for a better deal when it comes to "renewal" time?

No. As long as every detail of the claims made policy history is disclosed to the prospective new Insurer, and those details are acceptable to that Insurer, they will usually underwrite a new policy with a retroactive date set at the beginning of the previous policy(s).

Another aspect of a claims made policy is that once it expires...it expires.

There is usually no provision for a hold covered or cover note period unless expressly agreed to in writing by the Insurer.

Claims made policies are usually also subject to an annual declaration prior to new terms (for the coming policy period) being offered.

It's important to note that unlike most general Insurance policies, claims made policies usually expire at the end of the policy period and a fresh contract of Insurance is then arranged for the coming 12 months.

(Note : The word "renewal" is often used when negotiating the new policy, but this is technically incorrect.)

**In a nutshell, if a claims made policy expires, no further claims can be made against it.**

# Co-Insurance Clause

The "co-Insurance clause", typically associated with marine policies, but also applicable to property Insurance policies can be defined as follows:

A clause in an Insurance policy that limits the amount payable (in the event of a claim) to a sum not in excess of the value of the property damaged or subject to the loss and that is in the same proportion to the loss as the policy is to the value of the insured property.

Co-Insurance essentially means that the policyholder bears the responsibility of ensuring that the property to be insured is not insured for a value less than a pre-determined percentage value of the true replacement value of the property.

If the policy-holder allows this to happen, then the Insurer (in the event of a claim) may choose to invoke the co-Insurance clause.

It is estimated that up to 70% of property insured in the market may be subject to a co-Insurance adjustment in the event of a claim.

**Example :** Mrs Jane Bloggs owns a house which, if totally destroyed in a fire, would cost \$500,000 to rebuild.

However, Mrs Bloggs, for reasons known only to herself, chooses to insure the house for \$200,000. The house is partially destroyed in a fire with the repairs set to cost \$100,000.

The house is insured with ABC Insurance Limited, whose House Insurance Policy specified that the co-Insurance limit is not to fall below 80% of the replacement value of the house.

In order to comply with the terms of the Insurance contract between herself and ABC Insurance Limited, Mrs Bloggs needed to insure the house for at least \$400,000. ( $\$500,000 \times 80\% = \$400,000$ )

Mrs Bloggs only has the house insured for \$200,000 (the declared value); well below the co-Insurance limit. ABC Insurance Limited could now argue that, as the sum insured is well below the co-Insurance limit, that Mrs Bloggs bears a sizeable proportion of the liability incurred and as a result ABC Insurance Limited will not pay out the total amount of the loss (\$100,000).

In fact, ABC Insurance Limited will only pay out in accordance with their proportion of the liability incurred as a result of the fire and in accordance with the co-Insurance clause contained in the policy.

This is calculated using a pre-determined formula as follows:

Adjusted Loss = (Declared Value/Actual Value) x Loss Value

Mrs Bloggs has insured for \$200,000 but the replacement value at risk was actually \$500,000 and the loss following the fire was \$100,000. So, the claim would likely be adjusted as follows.

Adjusted Loss = ( $\$200,000 / \$500,000$ ) x \$100,000

Adjusted Loss = \$40,000

# Duty of Disclosure

Essentially the Duty of Disclosure is where you inform your Insurer, prior to a Contract of Insurance being entered into, of your history and circumstances so that they may make an informed decision whether or not to insure you, and if so on what terms.

In other words, the basis of an Insurance Contract is telling the Insurer everything that they need to know on utmost good faith so they can determine if they will insure you.

A Duty of Disclosure generally takes the following form in Australia with respect to Commercial Property policies:

## Duty Of Disclosure

You have a Duty of Disclosure to tell us everything you know or should know, that is relevant to our decision to insure anyone under the policy, including you, and on what terms.

It includes matters we specifically ask about when you apply for a policy, or renew or alter your policy, and any other matters which might affect whether we insure you and on what terms.

The information you tell us can affect:

- The amount of your premium
- If we will insure you
- If special conditions will apply to your policy.

You do not need to tell us of anything which:

- Reduces the chances of you making a claim or
- We should know about because of the

business we are in or

- We tell you we do not want to know.

If you are unsure it is better to tell us. If you do not tell us something which you know or should know is relevant, we might reduce a claim, refuse to pay a claim, cancel your policy or, if fraud is involved we can treat the policy as if it had never existed.

The Insurance Contracts Act provides that an applicant for Insurance is required to disclose every matter known to them that they know to be relevant to the insurer's decision to accept the risk, or that a reasonable person in the circumstances could be expected to know is relevant to insurers.

It is also a requirement of the Act that the Insurer informs the applicant in writing of the Duty of Disclosure and the consequences in the event of non-disclosure, mis-representative disclosure, or fraudulent disclosure.

The general "Duty of Disclosure" applies to eligible contracts, as defined under the Act and as follows:

"An eligible contract of Insurance is a contract of Insurance in the following classes of Insurance:

- Motor vehicle
- Home buildings
- Home contents
- Sickness and accident
- Consumer credit, and
- Travel."



## Conclusion

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**B**y understanding Insurance terminology, you give yourself the power to avoid surprises and disappointment at the time of a claim and when you need it the most. Whether it is subrogation or co-insurance clause, these terms are complex and it is easy to 'skim over' the fine print.

We hope this eBook has provided you with confidence to not only read and understand your Insurance policies better but to open your eyes to how tricky and difficult the clauses in most general Insurance covers are.

Without the sufficient knowledge or advice you may find yourself over-insured, or worse, under-insured.

Nepean Brokers are experienced licensed General Insurance Brokers who provide general insurance services across a broad spectrum of policies. We understand the fine print, the clauses, and the terminology.

As well as providing you with the right insurance product for your requirement, we will advise you on what documents you'll need to provide, what excess may apply and we'll keep track of your claim right through its cycle.

**If you have any questions please get in touch!**

**By understanding Insurance terminology, you give yourself the power to avoid surprises and disappointment at the time of a claim and when you need it the most.**



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