

BODY CORPORATE: OBLIGATION TO REPAIR – WHAT YOU NEED TO KNOW

With housing affordability at historic lows, high-density residential and mixed-use developments are an increasingly common investment vehicle for home buyers, and individual and corporate investors alike.

With the complexity of laws governing the 'community titles schemes', it is important that buyers understand their rights and obligations.

In particular, working out who should pay for maintenance or repairs is a common source of dispute, and may fall on the body corporate or an individual owner.

As the body corporate is comprised of all current lot owners,¹ this is essentially a question of whether costs are borne by one owner or all the owners.

Body Corporate Duty: Maintenance and Repairs

Among other obligations, the body corporate is responsible for the administration of common property.² This includes a duty to keep common property in 'good condition'.³

What is 'Common Property'?

Land and facilities, which are part of the scheme but not part of any individual lot is referred to as 'common property'.⁴ Common property is owned by all the lot owners together.⁵

Facilities like gardens, lawns, walkways, parking areas, and pools are normally common property. In the case of subdivided buildings, such as apartment complexes, the body corporate is also

responsible for external walls, railings, windows, and roofing membranes (waterproofing).⁶

As the body corporate is only responsible for maintaining common property, determining whether something is part of the common property or an individual lot determines who is responsible for maintenance or repairs.

This is not always obvious. It can be an involved process and usually requires examination of the scheme plan held on record by the Titles Registry.

Nature of the Obligation

Bodies corporate must maintain common property in 'good condition' or, for structural elements (foundations, load-bearing walls, and roofs), in 'structurally sound condition'.⁷ This is not optional: a body corporate does not have discretion to 'opt out' of its obligations.⁸

Although the term 'maintain' is used, courts consider this to include repairs and, in some circumstances, replacement of damaged property.

There are situations where a failure to perform necessary repairs to common property results in damage to individual lots. Common examples include water damage caused by leaking roofs or insufficient drainage.⁹ Depending on the circumstances, bodies corporate may be accountable for damage to individual lots, which would likely exceed the cost of initial repairs.

¹ *Body Corporate and Community Management Act 1997* (Qld) s 31.

² *Ibid* s 94(2).

³ *Ibid* s 152; *Body Corporate and Community Management (Standard Module) Regulation 2008* (Qld) s 159.

⁴ *Body Corporate and Community Management Act 1997* (Qld) s 10(2)(b).

⁵ *Ibid* s 35.

⁶ *Body Corporate and Community Management (Standard Module) Regulation 2008* (Qld) s 159.

⁷ *Ibid* s 159(1).

⁸ *Proprietors Strata Plan 159 v Blake* (1986) CCH Strata Titles Cases 30-068 [4].

⁹ *MAGOG (No. 15) Pty Ltd v The Body Corporate for the Moroccan* [2010] QDC 70.

Water, Electricity and Other Services

Water and electricity supplies, telephone services and drainage are considered part of the common property.¹⁰ Responsibility to maintain or replace damaged infrastructure would normally fall to the body corporate.

However, it is important to note some utilities installed for the occupier's sole benefit do not form part of the common property; the body corporate will not be responsible for infrastructure that:

- supplies a utility service to only one lot;
- is within the boundaries of a lot; and
- is not within a boundary structure for the lot.¹¹

Common examples include hot water systems or air conditioning units installed by the owner. If this is the case, the owner of that lot is liable for its maintenance and repair.¹²

Shared Obligations

Under a community titles scheme, lot owners are in an unusual situation where the body corporate may be obliged to organise and remit payment for repairs, but with each lot owner liable to foot a proportion of the repair cost.

Calculation of payment will be determined by reference to the interest schedule lot entitlement, which determines a lot owner's share of amount levied by the body corporate. By comparison, any long-term replacements or renovations like painting or carpeting are financed by the Sinking Fund.

It should be noted that individual lot owners also have an obligation to contact the body corporate upon becoming aware of the need for repairs.

Failure to Act: Enforcing Obligations

If a body corporate repeatedly fails to look after

common property or owners' interests and assets, owners can enforce the obligation, if necessary, with assistance of the Office of the Commissioner.

If the matter proceeds to litigation, bodies corporate may be liable to lot owners for any expenditure incurred as a result of the body corporate ignoring its statutory duty to maintain the common property. Lot owners may also be able to obtain damages resulting from economic loss, costs of repair and legal costs, under common law.

Conclusion

It is vital that bodies corporate are aware, and understand the gravity, of their statutory obligations to repair and maintain common property. Damage caused as a result of a failure to fulfil these obligations will incur serious liability.

Bodies corporate should employ strict strategies to avoid preventable liability, particularly by regular distribution of information to all lot owners and investors, including details such as the following:

- Identification of the difference between common property and individual lots;
- Body corporate obligations; and
- Lot owners' responsibilities.

It is also important to obtain a copy of the registered plan from the Department of Natural Resources and Mines to properly understand the boundaries of common property and individual lots within the community title scheme.

For further information about community titles schemes, and the obligations of bodies corporate and lot owners, please contact:

Ben Warren - Director

M: 0402 003 364
E: bwarren@ellemwarren.com.au

Richard Ellem - Director

M: 0403 464 874
E: rellem@ellemwarren.com.au

¹⁰ *Body Corporate and Community Management Act 1997* (Qld) Sch 6.

¹¹ *Ibid* s 20(1)(b).

¹² *Body Corporate and Community Management (Standard Module) Regulation 2008* (Qld) s 159(3)(b).