

**Autumn
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- ▶ Responsibility to Repair and Maintain Common Property
- ▶ Removing the Gaps from Your Insurance
- ▶ Lots and Common Property
- ▶ Newsletter Q and A's

stratachoice
Associates

Welcome from Strata Choice Associates



The new year promises much for Strata Choice. Over the last nine months we have been working hard at developing new systems and processes that will streamline the performance of many of the routine administrative functions that we perform.

The aim is to provide our

strata managers with the opportunity to focus all their energies on the delivery of quality customer service, confident that the “back office” will provide them with effective and efficient support.

During 2009 we also launched our Customer Service Charter (CSC) and the surveying of committee members on a regular basis to provide a channel for advising us of any areas where we might improve service.

The CSC requires any service variation reported by an Executive Committee to be subjected to a rigorous internal investigation. In the coming year we will be actively

encouraging clients to let us know where we can improve and where we are excelling.

This edition of Strata Choice contains interesting articles that take us back to some of the basics of strata. Ian McKnight from Mackinson & d’Apice provides a useful reminder regarding obligations to repair and maintain common property, CHU Underwriting Agencies outline gaps in cover that can leave strata schemes and Executive Committee members exposed to risk and Colin Grace from Grace Lawyers identifies the differences between common property and lot property.

Happy new year to all!

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Strata Associates Pty Ltd trading as

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Responsibility to Repair and Maintain Common Property

In considering an Owners Corporation's responsibility to repair and maintain common property, a starting point is section 62 of the *Strata Schemes Management Act 1996*. That section provides that an Owners Corporation must properly maintain and keep in a state of good and serviceable repair the common property and any personal property vested in the Owners Corporation. The section goes on to provide that an Owners Corporation must renew or replace any fixtures or fittings comprised in common property and any personal property vested in the Owners Corporation. That duty is not one to use reasonable care or best endeavours to maintain and keep in good repair the common property, but a strict duty. This duty was stated to be so by Brereton J in *Seiwa Australia Pty Limited v Owners SP 35042* [2006] NSWSC 157. The duty, being a strict one, involves an obligation to keep the element of common property in a proper order by acts of maintenance before it falls out of condition and in a state which enables it to serve the purpose for which it was intended. This may well involve:

- ▶ taking preventative measures to ensure that there is no malfunction;
- ▶ rectification of defects in the original construction of the common property;
- ▶ the repair and maintenance of elements of the common property which may not be for the benefit of all proprietors in the strata scheme, or even a majority of them.

It follows that as soon as something in the common property is no longer operating effectively or at all, or has fallen into disrepair then there will be a breach of the duty.

If there has been a breach of the duty, then damages may well be applicable. This was seen most graphically in the recent case of *Trevallyn-Jones v Owners Strata Plan 50358* [2009] NSWSC 697 where the plaintiff was awarded damages for rent in circumstances where she had been obliged to move out of her unit because of a failure to repair common property which permitted water entry into the unit.

A prudent manager, therefore, will ensure that clear advice is given to an Owners Corporation that it must repair and maintain common property. Once informed of a problem, he must swiftly act to rectify the problem.

Ian McKnight
Makinson &
d'Apice



Removing the Gaps from Your Insurance

Common Property v Personal Property

Who's responsible for what?

As a Lot Owner and member of an Owners Corporation, it is important that you have some understanding of 'common property' versus 'personal property'. This is because the *Strata Schemes Management Act 1996* (Act) makes it a statutory requirement to insure the strata 'building', or common property.

Under the 'building and contents insurance policy' for strata plans are included common area contents such as fences, letter boxes, swimming pools and landscaping. In fact, any article owned by the Owners Corporation as a whole is covered by strata insurance including paint, wallpaper and carpet in foyers, stairwells and corridors, or garden and pool furniture.

Fixtures and improvements

Also included under the definition of 'building' are lot owners' fixtures and improvements and these are covered under the terms and conditions of the strata insurance policy. These items include kitchen and bathroom fittings, built in wardrobes and bookcases, pergolas and awnings.

But remember that these same items will remain the responsibility of the lot owner to repair and maintain.

THE STRATA POLICY

The cover provided under a good strata policy will be for accidental loss or damage and is on a replacement (new for old) basis.

The events covered include, but are not limited to fire, lightning, explosion, storm, water damage, burst pipes, earthquake, malicious damage (including damage caused by tenants), vehicle impact, vandalism and glass breakage.

Other accidental breakage and any other events are covered except where they are specifically excluded under the policy.

What's not covered

Examples of exclusions under strata policies include flood, wear and tear, corrosion, king tides and damage caused by tree roots and vermin.

Strata policies also exclude cover for paint, wallpaper, and temporary wall, floor and ceiling coverings within the lot. Also excluded are personal items belonging to the resident such as curtains, blinds, washing machines, driers, refrigerators, microwaves and dishwashers which are not hard wired or plumbed into the building i.e. they are not considered a fixture of the building.

Other insurance

The strata policy also provides for Public Liability cover, Voluntary Workers insurance, and Workers Compensation cover, where wages are expected to exceed \$7,500 in any financial year.

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PERSONAL PROPERTY

The lot owner, landlord and tenant are responsible for their own respective contents and should therefore take out the appropriate insurance cover. Not all policies are full accidental policies but some are defined events policies. This means only certain types of damage such as fire, storm, water and theft (but not by tenants) are covered.

Gaps in cover pose a real risk if the correct level of contents insurance is not in place for furniture, personal clothing, bedding, artwork, rugs and any other personal belongings or valuables.

Attached to the personal contents policy should be a Public Liability component to protect the owner within the lot.

Landlords

A landlord should take out specific landlords insurance to cover their contents and loss of rent. This provides coverage for paint, wallpaper, carpets and any other items within the unit which do not form part of the building. Public Liability insurance should again be attached to the landlord's policy.

Tenants

Tenants should also take out personal contents insurance for their furniture and personal belongings. Public Liability should be included as the resident may be held liable if personal injury or property damage occurs due to negligence.

Avoid gaps and lower your risks

When considering your insurance requirements, think about who owns what and the potential underlying risks. A comprehensive strata policy from a good strata insurance specialist will give you the majority of coverage required for worry free strata living but to fill any gaps, you should also consider the personal insurance needs of the unit owner, landlord and tenant.

This is general advice only and you should always check the extent of the coverage on offer and if it is right for you.

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Lots and Common Property

Common property and lot property in a strata scheme is distinguished by reference to the strata plan, the provisions of the Strata Schemes (Freehold Development) Act, 1973 (SSFDA) and the Strata Schemes Management Act, 1996 (SSMA)¹.

“**Common property**” means so much of a parcel as from time to time is not comprised in any lot. So, common property is what is left after all of the lots in the strata scheme have been identified.

Generally, the SSFDA provides that an owners lot is bounded by the inner surface of the walls, upper surface of the floor and under surface of the ceiling, excluding structural cubic space² as shown on the strata plan as boundary lines subject to any notations on the strata plan at the date of registration of the strata plan.



In practice a basic lot will have thick lines that run in the same place as the walls of the apartment, and the lot will be the inner surface of those walls (so the paint will be within the lot owners apartment). Next, various Court cases have held that the floor includes the things affixed to it at the

date of registration of the strata plan (ie tiles, flooring but not carpet). Finally, the ceiling is the under surface of that ceiling (being the ceiling there at registration of the plan).

What to do with courtyards, terraces and external gardens? In these cases the same principles apply, determine the boundaries by the lines on the plan (thin or thick) and then the upper and lower boundaries. In the case of the upper and lower boundary there is generally a notation on the plan like the following:

“THE STRATUM OF THE COURTYARD IS LIMITED IN DEPTH TO 1 METRE BELOW AND IN HEIGHT, WHERE NOT COVERED TO 2.5 METRES ABOVE THE UPPER SURFACE OF THE FLOOR OF THE ADJOINING APARTMENT”.

The boundary is 1 metre below the upper surface of the floor level of the Apartment and 2.5 metres above (where not covered by any balcony or other structure above for in these cases the boundary is the under surface of that structure above).

In conclusion to determine boundary definitions (and ultimately responsibilities for repairs and maintenance) strata schemes need to walk through a process to determine ownership first and responsibility second.

Colin Grace

Lawyer, Director
Grace Lawyers Pty Ltd

¹ There are exceptions to strata schemes registered prior to 1 July 1974 under the Conveyancing (Strata Titles) Act 1961.

² Structural cubic space is pipes, wires, cabling, ducting (serving more than 1 lot) and any structural column regardless of its location within the strata scheme.

Q and A's: Damage to Paintwork and Carpet

Question:

Water has been leaking through my ceiling from the unit above and has caused damage to the paintwork on the ceiling and to my carpet. As this damage has occurred through no fault of mine I don't see why I should have to pay for any of the repairs. Who is responsible for payment for the repairs?

Answer:

Firstly, the ceiling is generally common property and the owners corporation's responsibility to repair (Section 62). The lot owner is responsible for the paintwork and carpet except where it is damaged by the owners corporation while carrying out work to the common property. (Section 65(6))

The owners corporation must insure the building and keep the building insured under a damage policy with an approved insurer s 83(1) of the Strata Schemes Management Act 1996 ("the Act").

Under Section 81 of the Act the building includes:

- ▶ owners' improvements and owners' fixtures forming part of the building other than paint, wallpaper and temporary wall, floor and ceiling coverings, and
- ▶ a building consisting entirely of common property, and anything prescribed by the regulations as forming part

of a building for the purposes of this definition, but does not include:

- ▶ fixtures removable by a lessee or sublessee at the expiration of a tenancy or
- ▶ anything prescribed by the regulations as not forming part of a building for the purposes of this definition.

The following items are excluded from the definition of "building" and so not required to be insured by the owners corporation:

- ▶ paints, varnishes, stains and similar treatments;
- ▶ carpets and underlay;
- ▶ wallpaper, fabric or similar soft wall and ceiling finishes;
- ▶ coverings of vinyl, cork or similar material which are not fixed with an adhesive to the floor;
- ▶ curtains and blinds within a lot;
- ▶ light fittings or other electrical appliances which are not built into the lot and which can be removed without interference to the electrical wiring.

It is generally recommended that the owners corporation and owners and occupiers should each effect a contents policy of insurance to cover personal property owned by each of them.

In this case repairs to the paintwork and carpet within your lot are your responsibility. (You may be able to make a claim on your home contents insurance policy if you have one.)

Alternatively, you may seek independent legal advice about the possibility of compensation from either the owners corporation or the other lot owner.



Executive Committee Seminars

Q and A's (cont)

Question:

There is timber ductwork around the sewage pipe in the toilet area of my apartment and it is leaking. The sewer pipe comes from the unit above and my toilet connects into it. Do I have to repair the ducting and the pipe as it is in my apartment?

Answer:

The owners corporation is responsible for repair as the ducting encloses structural cubic space. Structural cubic space is automatically common property even though it may exist within the cubic space of a lot, unless the strata plan specifically states otherwise.

Structural cubic space means:

- ▶ cubic space occupied by a vertical structural member, not being a wall, of a building (e.g. column, post, pole, etc);
- ▶ any pipes, wires, cables or ducts that are not for the exclusive enjoyment of one lot; and
- ▶ any cubic space enclosed by a structure enclosing any such pipes, wires, cables or ducts.

On this basis the owners corporation is responsible for repair and maintenance of the timber ductwork and the sewer pipe. In the event that the owners corporation damages your property i.e. paintwork, tiles, etc then the owners corporation must restore your private property to its original condition.

Executive Committee members are invited to attend an evening seminar, at no charge, to be held at Strata Choice St Leonards offices.

The presentation, delivered by the company education Consultant will provide participants with information regarding:

- ▮ Meeting conduct;
- ▮ The duties and obligations of the Executive Committee;
- ▮ The powers of the Owners Corporation;
- ▮ The role of the Strata Managing Agent;
- ▮ Issues relating to risk management for Owners Corporations.

Yes I am interested in receiving EC Seminar dates

Name

Strata Plan Number

Email address

Phone.....



If you would like to attend an Executive Committee Education Seminar please direct your request to education@stratachoice.com.au