Disability Access – Adjustments May Be Required

Issues often arise in strata buildings in relation to improvements requested by lot owners and others for the purpose of improving access for persons with special needs. Such issues can result in personal animosities building up over time and if not approached sensibly from the outset, can disrupt harmony within the building and result in considerable expense for all concerned.

The most common sources of disputes are access across common property to lots, access to common property facilities such as mailboxes and garbage collection, parking and participation in meetings.

For new buildings and some modifications to existing buildings, standards apply and deal with some of these issues.

For existing buildings, a number of laws are relevant, including the Strata Schemes Management Act 2015, the Commonwealth Disability Discrimination Act 1992, the NSW Anti Discrimination Act 1977, the Work Health and Safety Act 2011 and the law of negligence.

Under the anti-discrimination laws, an owners corporation could be subject to substantial penalties if it fails to take measures requested by a person who can establish that they are required by law. The case law suggests that refusal of approval to modify common property may be sufficient.

We suggest that owners corporations and their strata managing agent and persons seeking such adjustments should at first instance try to resolve these issues by negotiation, as they can quickly escalate to proceedings, which can be expensive and acrimonious and potentially lead to substantial penalties.

It will likely be necessary to propose a resolution and/or by-law, with supporting material, for consideration by the owners corporation. If that is unsuccessful, the person could take legal advice about commencing proceedings, which would typically be brought in the Civil and Administrative Tribunal or the Australian Human Rights Commission.

Key takeaways

- Disputes over disability access in strata buildings can disrupt community harmony and incur costs.
- Relevant laws include the Strata Schemes Management Act 2015 and various anti-discrimination laws.
- Owners corporations may face penalties for failing to accommodate requests for access adjustments.
- Negotiation is the preferred first step to resolve access issues before escalating to legal proceedings.
- Legal advice may be necessary if negotiations fail, potentially leading to action in the Civil and Administrative Tribunal.

BANNERMANS LAWYERS

T: (02) 9929 0226 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

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Prepared by Bannermans Lawyers

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BANNERMANS LAWYERS

T: (02) 9929 0226 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

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