

Common Property Maintenance – New Laws May Resolve Some Old Problems

A common problem for investment property owners, whose investment property is a strata apartment, is getting the owners corporation to properly maintain and repair the common property. This can involve an owners corporation lacking the funds required to undertake the works or simply involve inertia.

This is a particular problem for investment property owners, who don't want to be unable to rent out their apartment or to realise its maximum potential rental. Further, they have obligations to tenants under residential tenancy laws and could be exposed to compensation orders for failing to ensure that the apartment meets habitability requirements under those laws, even if lack of maintenance by the owners corporation is the real cause of the problem.

The new strata legislation commenced on November 30 2016. Broadly, the owners corporation is responsible for repair and maintenance of common property and can be compelled to undertake such works by an adjudicator's order, but:

- Can negate its obligation in respect of specific property:
 - a) where it is inappropriate to undertake such works in relation to such property and the decision will not detract from the safety or appearance of the common property; or
 - b) where the property is the subject of an exclusive use by-law, in respect of which the maintenance obligation has been allocated to the lot owner.
- Is not liable to compensate lot owners for lost rental income or the cost of repairs undertaken by a lot owner who has lost patience waiting for the owners corporation to undertake the repairs.

The key changes relevant to investment property owners under the new legislation are:

- Where the works involve repair of damage in relation to which the owners corporation has commenced proceedings against another party, the owners corporation can defer the works pending completion of the proceedings, provided that safety is not adversely affected.
- The owners corporation may be liable to compensate lot owners for losses resulting from failure to comply with its statutory duty, but the action must be brought within two years of becoming aware of the loss.

- Provision is to be made in the regulations for disposal of abandoned goods, e.g. items left behind when a tenant vacates.

If you are having problems with these issues, you have options under the new legislation. We have considerable expertise in relation to such issues and can assist you.

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