

# So What Happens if the Owners Corporation Does Not Fix the Building? Is the 2015 Strata Reform Going to Assist?

Many owners face problems with strata schemes failing to repair and maintain the common property.

These problems include:

- Loss of rent;
- Property damage to their lot property items;
- Relocations costs; and
- Health risks, such as, mould.

There are many complicated issues to consider when trying to get the owners corporation to fix the common property, such as:

- Motions for agendas, to engage appropriate diagnostic experts or contractors;
- Getting on the executive committee to have the defects rectified properly;
- Mediated agreements arising from a mediation at the Office of Fair Trading;
- Orders against the owners corporation to undertake specific works from NCAT or the courts;
- Claims against the executive committee for breach of duty;
- Damages claims for negligent management of the problems by the owners corporations; and
- Insurance claims under policies taken out by the owners corporation.

The Strata Schemes Management Act 2015 began on November 30 2016 and has added more complication to some of these options, for instance:

- Executive committees may not be personally liable if they acted in good faith;
- Owners corporations will have a strict liability to the owners, which could make it easier to recover damages, but this may or may not be subject to the deferral below. Owners will only have a 2 year time limit from awareness to commence litigation;
- Owners corporations may be able to defer repairs if they are taking unspecified action against an owner or other person in respect of damage to the common property and the problems do not affect safety or health; and
- Owners corporations may be able to specially resolve to modify their liability when it adopts the "Common Property Memorandum" in the regulations.

It is a complex and evolving area and our specialist teams are well placed to provide advice and assistance.

**Prepared by Bannermans Lawyers**

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