My Unit has been Leaking for Years and the Owners Corporation is doing Nothing – What can I do?

Is the owners corporation required to repair and maintain the common property?

Yes. Generally speaking, there is a strict obligation for the owners corporation to repair and maintain the common property under the Strata Schemes Management Act 2015.

Some exceptions to this rule are as follows:

1. Where a by-law is in place which passes repair and maintenance obligations for common property to a lot owner.

2. Where an owners corporation has specially resolved that it is inappropriate to repair and maintain certain parts of common property and this will not affect the safety of any building, structure or common property in the strata scheme or detract from the appearance of the strata scheme.

3. If there are covenants or easements in place, there may be possible cross-claims in respect of who has a duty to repair and maintain common property.

4. When there is a strata management statement, subject to its terms, other BMC members may also be liable.

The owners corporation is saying that it can't afford to do the repairs. Does this mean that they do not have to do it?

No. If the owners corporation does not have the funds to carry out the repairs, the owners corporation must raise levies so that it will have enough money to carry out the repairs and then it must undertake the repairs.

What can I do if I am suffering a loss due to the failure of the owners corporation to repair and maintain common property?

You can apply to NSW Fair Trading for mediation regarding the issues that you are having. If the matter is not resolved by mediation, you can apply to the Tribunal for orders:

a. Seeking that the owners corporation repair the common property; and

b. Seeking damages for losses that you have suffered.

You may also seek orders for a strata manager to be appointed by the Tribunal who will take all decisions away from the owners corporation and who will have authority to undertake the repairs without the requirement of resolutions of the owners corporation.

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If you are making a claim for damages, certain time frames need to have been adhered to and you will need to determine this before bringing the claim.

The owners corporation is saying that it is my responsibility to make the repairs?

The owners corporation may only argue that a lot owner must make repairs to lot property, not common property. Please see our article What do I Own and What is Common Property?.

It needs to be determined that the item requiring repair is in fact common property. Many factors can determine this issue including the age of the building, whether there is a by-law in place passing across repair and maintenance, etc.

Once it is determined that the item in question is in fact common property, you may seek that the owners corporation repair the common property.

What about damage to my lot property that will result from the owners corporation carrying out repairs to common property?

If the owners corporation damages your lot property in the course of repairing and maintaining the common property, it is liable for the damage to your lot property.

Articles of interest:

Don't Blame it on the Rain: 5 Point Action Plan for Building Water Penetration

Growth in Mould Claims

Key takeaways

- Owners corporations are obligated to repair and maintain common property under the Strata Schemes Management Act 2015.
- If an owners corporation lacks funds for repairs, it must raise levies to cover the costs.
- Unit owners can seek mediation or Tribunal orders if the owners corporation fails to act on maintenance issues.
- Determining whether a repair is the responsibility of the owners corporation or the lot owner is crucial.
- Owners corporations are liable for damage to lot property caused during repairs to common property.

****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

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