

Need to Install or Replace Smoke Alarms? Who is Liable?

Issues

Proper management of smoke alarms within strata buildings, including initial installation and ongoing maintenance, is an important safety concern, generally taken seriously by all concerned. However, depending on the equipment used, costs can be significant and issues can arise as to who is responsible for those costs.

One complicating factor is that there can sometimes be confusion as to whether a smoke alarm is common property or lot property, particularly when the smoke alarm is within a lot. Another complicating factor is that the issue is governed by multiple laws, operating in different contexts, e.g. strata development law, environmental planning and assessment law and tenancy law.

The purpose of this article is to try to reduce this to a set of guidelines on how best to approach this issue.

Common property or lot property

It is good practice, when considering maintenance obligations with respect to smoke alarms, to start with determining whether the unit is common property or lot property.

The Strata Schemes Development Act 2015 and Strata Schemes Development Regulation 2016 (“Development Laws”) define “common property” as property which is not part of a lot and “lot” as the cubic airspace within the ceiling, floor and boundary walls specified in the strata plan. In practical terms, this means that, unless otherwise indicated in the strata plan:

- A smoke alarm situated in common property areas of the building will represent common property.
- A smoke alarm situated within a lot which was installed by the owners corporation or developer or is wired to the building fire safety board will represent common property.
- A smoke alarm situated within a lot which was installed by the lot owner or a previous lot owner and which is not wired to the building fire safety board will represent lot property.

Installation Obligations

The Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulation 2000 (“Planning Laws”) require an owners corporation to install compliant smoke alarms at specified locations within the common property. Generally, a smoke alarm needs to comply with the relevant standard and be hardwired or have a non-removable battery with a life expectancy of at least 10 years.



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The Planning Laws require a lot owner to install compliant smoke alarms at specified locations within the lot. However, these may already have been installed and represent common property, in which case the owners corporation's ongoing obligations extend to those smoke alarms.

The Residential Tenancies Act 2010 and Residential Tenancies Regulation 2019 (“Tenancy Laws”) make a lessor liable to install smoke alarms in accordance with the requirements of the Planning Laws, by imposing an obligation to that effect in the standard form residential tenancy agreement. In a strata building, these may already have been installed and represent common property, in which case the owners corporation's ongoing obligations extend to those smoke alarms.

Maintenance Obligations

In a strata context, the Planning Laws impose the following obligations on the owners corporation or lot owner, depending on who is responsible for the relevant smoke alarms:

- Smoke alarms must be replaced within 10 years of the date of manufacture or earlier if specified by the manufacturer.
- Lithium batteries must be replaced within the period specified by the manufacturer and other batteries must be replaced annually.
- The smoke alarms will generally represent essential fire safety measures for the purposes of the fire safety schedule for the building, necessitating annual inspection and certification.

If the scenario involves smoke alarms situated within a leased strata lot, which are not the responsibility of the owners corporation, the Tenancy Laws require the lessor to keep the smoke alarms in good working order and for that purpose, have the smoke alarms inspected annually, replace lithium batteries within the period specified by the manufacturer and replace other batteries annually and have a defective smoke alarm replaced within two business days of becoming aware that the smoke alarm is defective.

As to who is responsible for a given smoke alarm, the broad rule is that the owner of property is responsible for maintaining it, i.e. the owners corporation responsible for maintaining common property and a lot owner is responsible for maintaining property forming part of the relevant lot. However, it's not as simple as that. In particular:

- Some schemes will have adopted the so-called common property memorandum and that memorandum specifies maintenance obligations with respect to smoke alarms. Considering the memorandum at face value, it provides that the owners corporation is responsible for maintenance, repair and replacement of “smoke detectors whether connected to the fire board in the building or not”. This has resulted in disputes as to whether this extends to battery powered smoke alarms within lots. In our view, the relevant reference in the memorandum should be limited to smoke alarms which are in fact common property.
- Some schemes will have made common property rights by-laws, which may have allowed exclusive use of parts of the common property and made the relevant lot owner responsible for maintaining that part of the common property. That could include smoke alarms, suggesting that schemes need to consider by-law provisions when determining who was responsible for maintenance of smoke alarms and also suggesting that this issue should be considered before making common property rights by-laws. Bear in mind that, where the

scheme has adopted a common property memorandum, the strata management legislation imposes some limits. In particular, a by-law provision inconsistent with the memorandum is limited to provision for an item of property to be excluded from the operation of the memorandum, if the item of property is not common property or is subject to a common property rights by-law.

- Some of the legislation (considered above) attributes maintenance and other obligations independently of ownership.

If you are having difficulties with these issues in your scheme, we have considerable experience and expertise in this area and can help you.

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