Drips and Disputes: Unraveling the Responsibility for Upstairs Water Leaks

It is not always clear whether water ingress results from defective common property, or whether it is originating from another lot, usually being the lot directly above. Generally, where water ingress is being caused by another lot owner, it is due to renovation works being carried out in that other lot. For a lot owner or owners corporation suffering from water ingress suspected to be coming from another lot, the correct course of action will depend on the specific circumstances in each instance of water ingress. However, below are some potential scenarios that may be applicable.

Claim against lot owner where there is a by-law for renovation works

If a lot owner is carrying out works that are authorised by a by-law and those works are causing water ingress in another lot, the by-law will transfer the repair and maintenance responsibilities for the parts of the common property affected by the renovation onto that lot owner. An owners corporation may therefore seek orders in the NSW Civil and Administrative Tribunal ("**Tribunal**") pursuant to section 132 of the Strata Schemes Management Act ("**SSMA**") that the lot owner performs work to repair the damage, or seek orders to enforce the by-law and establish that the lot owner causing the damage is liable for any associated damage to lot or common property.

Alternatively, if an owners corporation is not assisting a lot owner suffering damage as a result of renovation works being carried out in another lot, a lot owner may file an application seeking orders pursuant to sections 232 and 241 of the SSMA that the owners corporation must take steps to enforce the by-law pursuant to sections 146 and 147 of the SSMA.

Claim against lot owner where renovation works are unauthorised

If a lot owner is carrying out renovation works that are causing water ingress in another lot, and these have not been authorised by special resolution of the owners corporation at a general meeting, the owners corporation can seek orders pursuant to section 132 of the SSMA that the works be removed and the damage rectified, or that the costs of repairs of the damage and any associated costs, including insurance and legal costs, be paid to the lot owner suffering the water ingress.

Claim against lot owner in nuisance

Alternatively, a lot owner or owners corporation suffering from water ingress arising from within another lot may consider bringing a claim against that lot owner in private nuisance, or pursuant to section 153 of the SSMA. Section 153 provides that a lot owner must not use or enjoy a lot which causes a nuisance or hazard to the occupier of another lot in the scheme. This duty is interpreted by reference to general principles of common law

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

Liability limited by a scheme approved under Professional Standards Legislation

© Copyright Bannermans Lawyers 2023.

nuisance, the most significant of which being that the nuisance must be both substantial and unreasonable, pursuant to *Hargrave v Goldman* [1963] HCA 56. In the context of nuisance occasioned by damage to property, it must be reasonably foreseeable that there is a risk of damage to property if the use of the wrongdoer's land which amounts to the nuisance is continued. Further, pursuant to the Supreme Court's decision in *Melaleuca Estate Pty Ltd v Port Stephens Council* [2006] NSWCA 31, it was found that water discharge could be defined as a nuisance, and each instance of water discharge could be a separate legal wrong.

Claim against owners corporation to repair and maintain common property

Please note that in any of the above three scenarios the applicant would need to provide compelling expert evidence that the water ingress was actually being caused by renovation works or otherwise defective lot property. This is because the assumption in each case would be that there would have to be some defective element of the common property to be letting the water in, even in circumstances where there was some contribution to the water ingress by defective lot property in another lot. The waterproofing membrane, screed, concrete slab, and other structural elements in a scheme are all common property, and failure of these elements is the cause of water ingress in the majority of cases.

Insurance claim for burst water pipes

Generally speaking, the owners corporation's insurer will not cover insurance claims arising from faulty workmanship associated with renovations in the lot above. Similarly, water ingress from the lot above that arises as a result of normal wear and tear will also not be covered by the owners corporation's insurer. This leaves the owners corporation exposed to bearing the costs of dealing with any potential damage to common property caused by water ingress arising from within a lot. To read more about insurance claims for burst pipes, check out our article Burst Pipes and Strata Insurance.

In summary, water ingress will only be found to be the responsibility of another lot owner if the leak arose from within the other lot, and usually will only be another lot owner's responsibility if renovation works are being carried out in that other lot. Otherwise, the claim should usually be made against the owners corporation for its failure to repair and maintain common property in the scheme.

If you find yourself in such a strata dispute, feel free to reach out for some advice and assistance from our North Sydney Strata lawyers.

Related Articles

Failure to Repair: Guidance on Strata Committee and Strata Managing Agent Liability

Claims by Owners for Damages Caused by Water Ingress Under Section 106(5)

Don't be a Nuisance

NCAT's Dispute Resolution Power: How Far Does it Go?

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

Liability limited by a scheme approved under Professional Standards Legislation

© Copyright Bannermans Lawyers 2023.

Owners Corporation's Duty to Ensure Safety of the Common Property

This Mould is Making Me Sick: What's My Solution?

What's the Damage? Details and Damages Involved with Owners Corporations Failing to Repair and Maintain Common Property

Embedded Networks – Some Positive Developments

Key takeaways

- Water ingress can arise from either defective common property or renovation works in another lot.
- Lot owners may be held responsible for damage caused by authorised renovation works under specific by-laws.
- Unauthorised renovation works can lead to claims for damages and rectification by the owners corporation.
- Claims can also be made against lot owners for private nuisance if water ingress causes substantial and unreasonable harm.
- Expert evidence is crucial in establishing the cause of water ingress in any legal claim.

****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.*

Updated by Bannermans Lawyers
6 August 2025

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

Liability limited by a scheme approved under Professional Standards Legislation

© Copyright Bannermans Lawyers 2023.