

WHO'S RESPONSIBLE?

A guide to common property

version 3 0124



PROFESSIONAL
STRATA
MANAGER
Strata Community Association (NSW)

INTRODUCTION

Common Property is defined in the Strata Schemes Development Act 2015 as ‘so much of the parcel as from time to time that is not comprised in any lot’.

Generally speaking, in most strata schemes, the lot owner owns the airspace and everything in it within the boundary of the unit. They don’t own the main structure of the building.

The Owners Corporation is responsible for the repair and maintenance of common property.

This publication provides a list of items found within a building that could generally be considered common property.

However, depending on the history of the building, renovations and by-laws, determining what is and isn’t common property is a complex matter. In most cases you will need to refer to the strata plan, certificate of title and by-laws (sometimes referred to by strata managers as ‘the holy trinity’) to determine who is responsible for repairs and maintenance.

If in doubt, the SCA (NSW) recommends that you seek legal advice.

HOW TO USE THIS PUBLICATION

The tables on the following pages provide a **general list** of who is responsible the owner or owners corporation (OC) for repairs and maintenance. Additional information on each item can be found in Appendices 1 and 2.

To help you determine if something is actually common property you need to inspect a copy of your registered strata plan and a current search of the most recent common property title. Copies of the strata plan and searches of the common property title can be purchased through LPI. Check your registered by laws as these all come into effect when determining if something is common property or not.

DISCLAIMER

The information provided above is provided as a general guide only.

While every effort is made to ensure that the above information is generally accurate and correct, no warranty or guarantee is given by SCA as to the accuracy or correctness of such information, and SCA accepts no liability for loss or damage arising out of the use of such information.

The information provided is not a substitute for individualised professional advisory or legal advice. No person should act or refrain from acting on the basis of the information provided by SCA.

SCA disclaims all responsibility and all liability for any expenses, losses, damages and costs which may be incurred for any reason whatsoever as a result of the information provided by SCA.

The tables on the following pages provide a general list of who is responsible, the Owner or Owners Corporation for repairs and maintenance.

| TYPE | ITEM | WHO IS RESPONSIBLE | ADDITIONAL INFORMATION APPENDIX 1 |
|----------|--|--------------------|--------------------------------------|
| Balcony | Door, flyscreens/ Security door | O/OC | 20 |
| Balcony | Door, window & wall | O/OC | 20 |
| Balcony | Painting of Balcony Ceiling | O/OC | 21 |
| Balcony | Clothesline | O | |
| Balcony | Columns | OC | 33 |
| Balcony | Railings | O/OC | 39 |
| Balcony | Awnings | O/OC | 18 |
| Balcony | Tiles | O/OC | 29 |
| Balcony | Water leaking through wall or floor | O/OC | 20 |
| Bathroom | Bathroom Cabinet and/ or mirror | O | |
| Bathroom | Blocked floor drain outside of lot | OC | |
| Bathroom | Burst pipe general | O/OC | 8 |
| Bathroom | Cracked bath/handbasin | O | |
| Bathroom | Dripping "S" bend under sink | O | |
| Bathroom | Ducting covering stack | O/OC | 42 |
| Bathroom | Exhaust fans | O/OC | 6 |
| Bathroom | Hot water service | O/OC | 31 |
| Bathroom | Leaking pipes under sink | O | |
| Bathroom | Main stop cock to unit | O/OC | 44 |
| Bathroom | Plug and waste in bath | O | 9 |
| Bathroom | Shower Screen repairs | O | |
| Bathroom | Toilet bowl | O | |
| Bathroom | Toilet Cistern | O/OC | 45 |
| Bathroom | Water leaking from bath | O/OC | 12 |
| Bathroom | Water leaking from shower | O/OC | 11 |
| Bathroom | Water leaking from shower taps | O | |
| Bathroom | Water leaking through tiles | O/OC | 11 |

| TYPE | ITEM | WHO IS RESPONSIBLE | ADDITIONAL INFORMATION APPENDIX 1 |
|----------------|---|--------------------|--------------------------------------|
| Ceilings/ Roof | Ceiling cornices | O/OC | 28 |
| Ceilings/ Roof | Exhaust fans | O/OC | 6 |
| Ceilings/ Roof | False ceilings | O/OC | 24 |
| Ceilings/ Roof | Membranes | O/OC | 30 |
| Ceilings/ Roof | Paintwork | O | 40 |
| Ceilings/ Roof | Plastered Ceilings | OC | 40 |
| Ceilings/ Roof | TV Aerial | O/OC | 41 |
| Ceilings/ Roof | Vermiculite Ceilings | OC | 40 |
| Courtyard | Fencing | O/OC | 16 |
| Courtyard | Pavers | O/OC | 18 |
| Courtyard | Clothesline | O | |
| Courtyard | Guttering on townhouse | OC | 35 |
| Courtyard | Tree trimming/removal | O/OC | 18 |
| Courtyard | Deck, pergola or steps | O/OC | 18 |
| Electrical | Air conditioning systems | O/OC | 7 |
| Electrical | Car Lift and Car Lift Operating Systems | OC | |
| Electrical | Electric Garage Door Opener | O/OC | 15 |
| Electrical | Electric Cars | O/OC | 46 |
| Electrical | Electric Car Charging | O/OC | |
| Electrical | Exhaust fans | O/OC | 6 |
| Electrical | Fuses | O/OC | 4 |
| Electrical | Hot water service - exclusive to a lot | O/OC | 31 |
| Electrical | Hot water services -communal | OC | |
| Electrical | Insinkers | O | |
| Electrical | Internet Cabling | O/OC | 1 |
| Electrical | Intercom handset | OC | 36 |
| Electrical | Intercom wiring | O/OC | |
| Electrical | Lift and Lift Operating Systems | OC | |
| Electrical | Light and power wiring | O/OC | |
| Electrical | Light fittings | O/OC | |
| Electrical | Light switches | O | |

| TYPE | ITEM | WHO IS RESPONSIBLE | ADDITIONAL INFORMATION APPENDIX 1 |
|---------------|--|--------------------|--------------------------------------|
| Electrical | Power point socket | O/OC | 1 |
| Electrical | Smoke detectors | O/OC | 3 |
| Electrical | Stoves | O | |
| Electrical | Telephone (additional wiring required) | O | 2 |
| Electrical | Telephone sockets | O | |
| Electrical | Telephone wiring | O/OC | 1 |
| Electrical | TV (Pay TV wiring required) | O | 2 |
| Electrical | External TV aerial | OC | |
| Electrical | TV cabling | O/OC | 1 |
| Electrical | TV socket | O/OC | 1 |
| Entrance Door | Door locks | O/OC | 19 |
| Entrance Door | Entrance door automatic closer | OC | |
| Entrance Door | Entrance door to lot | OC | |
| Entrance Door | Keys, Security cards etc. | O | 19 |
| Entrance Door | Security door repair | O/OC | 15 |
| Floor | Blocked floor drain | OC | |
| Floor | Floor and wall tiles | O/OC | 25 |
| Floor | Mezzanines within lots | O/OC | 34 |
| Floor | Floorboards/Parquet flooring | O/OC | 26 |
| Floor | Internal Carpet | O | 13 |
| Floor | Skirting boards and architraves | O/OC | 32 |
| Floor | Lino/vinyl/cork tiles | O | |
| Floor | Linoleum | O | |
| Floor | Magnesite Floor Base | OC | |
| Floor | Pavers | O/OC | 18 |
| General | Built-in wardrobes/cupboards | O | |
| General | Carpets | O | 13 |
| General | Clothesline on Common Property | OC | |
| General | Cracks in Walls | O/OC | 23 |

| TYPE | ITEM | WHO IS RESPONSIBLE | ADDITIONAL INFORMATION APPENDIX 1 |
|---------|--|--------------------|--------------------------------------|
| General | Damage to common property by tenant | OC | 27 |
| General | Ducting covering stack | O/OC | 42 |
| General | Floorboards/Parquetry flooring | O/OC | 26 |
| General | Internal Doors/Walls | O | |
| General | Internal Paintwork | O | 13 |
| General | Keys, Security cards etc. | O | |
| General | Letterboxes | O/OC | 43 |
| General | Lift and lift operating systems | OC | |
| General | Pipes within a lot servicing only that lot | O | |
| General | Stairs in Lot | O/OC | 34 |
| General | Skirting boards and architraves | O/OC | 32 |
| Kitchen | Burst pipe general | O/OC | 8 |
| Kitchen | Dishwasher | O | |
| Kitchen | Dripping "S" bend under sink | O | 38 |
| Kitchen | Ducting covering stack | O/OC | 42 |
| Kitchen | Exhaust fans | O/OC | 6 |
| Kitchen | Floor and wall tiles | O/OC | 25 |
| Kitchen | Hot water service - exclusive to a lot | O/OC | 31 |
| Kitchen | Insinkerator | O | |
| Kitchen | Kitchen cupboards | O | |
| Kitchen | Leaking pipes under sink | O | |
| Kitchen | Lino/vinyl/cork tiles | O | |
| Kitchen | Linoleum | O | |
| Kitchen | Main stopcock to unit | O/OC | 44 |
| Kitchen | Stoves | O | |
| Kitchen | Washing Machine | O | |
| Kitchen | Water Filtration Systems | O | |

| TYPE | ITEM | WHO IS RESPONSIBLE | ADDITIONAL INFORMATION APPENDIX 1 |
|----------|---|--------------------|--------------------------------------|
| Parking | Carports | OC | 14 |
| Parking | Door controller button | O | |
| Parking | Door hinge mechanism | OC | |
| Parking | Electric Garage Door Opener | O/OC | 15 |
| Parking | Garage door lock | OC | |
| Parking | Garage Doors | O/OC | 14 |
| Parking | Garage Door auto opening mechanism | O/OC | 15 |
| Parking | Garage Door auto remotes | O | |
| Parking | Light fittings | O/OC | 5 |
| Parking | Line marking | O | |
| Parking | Mesh between garages | O/OC | 16 |
| Parking | Water ingress into garage | O/OC | 17 |
| Plumbing | Blocked floor drain | OC | 8 |
| Plumbing | Blocked sewer | OC | 8 |
| Plumbing | Burst pipe general | O/OC | 8 |
| Plumbing | Damage to unit after water leak | O/OC | 13 |
| Plumbing | Dampness in a unit | O/OC | 10 |
| Plumbing | Dripping "S" bend under sink | O | |
| Plumbing | Laundry Tub | O | |
| Plumbing | Leaking pipes under sink | O | |
| Plumbing | Guttering on townhouse | OC | 35 |
| Plumbing | Main stop cock to unit | O/OC | 45 |
| Plumbing | Plug and waste in bath | O | 9 |
| Plumbing | Storm water and On-Site Detention systems (OSD) below ground without DA Condition | OC | |
| Plumbing | Toilet bowl | O | |
| Plumbing | Toilet Cistern | O/OC | 46 |
| Plumbing | Water ingress into garage | O/OC | 17 |

| TYPE | ITEM | WHO IS RESPONSIBLE | ADDITIONAL INFORMATION APPENDIX 1 |
|----------|--|--------------------|--------------------------------------|
| Plumbing | Water leaking from bath | O/OC | 12 |
| Plumbing | Water leaking from shower | O/OC | 11 |
| Plumbing | Water leaking from shower taps and shower head | O | |
| Plumbing | Taps and Associated Hardware | O | |
| Plumbing | Water leaking through tiles | O/OC | 12 |
| Windows | Cleaning outside | O/OC | 7 |
| Windows | Flyscreens | O/OC | 15 |
| Windows | Locks, Window Safety Devices | O/OC | 15 |
| Windows | Repairs | O/OC | 22 |
| Windows | Sash cord replacement | O/OC | 22 |
| Windows | Seal to window | O/OC | 22 |

| ITEM | DESCRIPTION |
|------|---|
| 1. | <p>Any pipe, cable, telephone, television, internet wires, ducting, plugs, electrical wiring, light fitting, power point sockets or the like that is for the exclusive use of the lot, then if it breaks within the lot it is an Owners responsibility to repair.</p> <p>Any pipe, cable, telephone, television or internet wiring, ducting, plugs, electrical wiring, light fitting, power point sockets or the like that services more than one lot, if it breaks outside the lot or in a wall, floor or ceiling that abuts to either common property or another lot it is an Owners Corporations responsibility to repair</p> |
| 2. | <p>If not installed on the registration of the strata plan then the Owners Corporation are not required to install them.</p> <p>Any extra pipe, cable, television, internet, ducting or electrical wiring, plug and their connection sockets or the like that is for the exclusive use of the lot, if not installed on the registration of the strata plan the Owners Corporation is not required to install them.</p> |
| 3. | <p>If a battery-operated smoke alarm has been installed within a lot owners air space of the lot then, prima facie, it is not common property and is the responsibility of the lot owner to maintain (inclusive of the replacement battery).</p> <p>If a lot owner has installed their own internal stand-alone hard-wired smoke alarm then it falls into the same category as a battery smoke alarm.</p> <p>Any hard-wired smoke alarms that are connected to the overall building fire safety system will be the Owners Corporation responsibility to repair and maintain. Please note that section 106 (3) (b) of the Strata Schemes Management Act 2015 explicitly precludes the Owners Corporation absolving itself from maintaining common property where it may effect safety.</p> <p>When the annual fire safety inspection is undertaken in some cases the inspecting officer may check the operation of battery and stand-alone smoke alarms. If they are faulty then the Owners Corporation should direct the lot owner to properly maintain (install a new battery) or replace the smoke alarm unit so as not to compromise the fire safety measures installed throughout the building.</p> |
| 4. | <p>The supply of electricity is the Owners Corporation's responsibility. However, any cabling within the unit's internal walls that only services the individual lot, is the owner's responsibility. You need to check with your supplier if your electricity is cut off and then you need to check the fuse board.</p> <p>If the fuse board is within the lot, then it is the owners responsibility. If the fuse board is in the meter room then it is the Owners Corporations responsibility.</p> <p><i>NOTE: Because the meter room is common property, the OC cannot prevent owners or occupiers gaining access to it. However, the OC is not required to give them a key. If requested for a key, the OC should inform them that if given a key and they electrocute themselves, the OC could be held responsible. However, they can get a key from Sydney Electricity or the electricity supplier in your area.</i></p> |

| ITEM | DESCRIPTION |
|------|--|
| 5. | <p>If the light fitting is recessed in the ceiling, it is the Owners Corporation's responsibility to maintain. If the light hangs into the lot, it is the owner's responsibility. Normally light fittings are always the responsibility of the owner, except if it is recessed and on two other occasions:</p> <ol style="list-style-type: none"> 1. On the balcony where the strata plan details the upper height of the balcony as being less than where the light fitting is. E.g. The strata plan reads "The upper height of the balcony extends 2.3 metres above the concrete slab" and the light fitting is 2.5 metres above the concrete slab. Then the light fitting is in common airspace and is the responsibility of the Owners Corporation. In the situation where the light fitting is in a carport or garage of a lot but is connected to communal power, the responsibility to maintain it still falls with the owner of the lot except where the light fitting is installed to also illuminate other areas within the scheme; and 2. The light fitting is located in common areas like garages or hallways and is then deemed common property. |
| 6. | <p>Owners Corporation must repair anything in the ceiling. However, there may be circumstances where the owner is liable if they have made improvements to the ceiling. If it is inside the lot it is the Owners responsibility. If it is mounted within the common infrastructure" e.g. communal ducting or a false ceiling which is designed to carry communal pipes etc. or outside the lot, then it is the responsibility of the Owners Corporation (see definition of "common infrastructure" in Section 4 of the Strata Schemes Development Act 2015).</p> |
| 7. | <p>That part of an air-conditioning system that is inside or outside of a lot and for the exclusive use of that lot is the responsibility of the owner. Parts outside the lot are the responsibility of the Owners Corporation unless they are subject to a special by-law.</p> <p>If the air-conditioning system services more than one lot it is the responsibility of the Owners Corporation.</p> |
| 8. | <p>Normally burst pipes are the responsibility of the Owners Corporation. However, if a pipe is for the exclusive use of the lot and is located in an internal wall, then if it bursts within the lot – Owners responsibility (e.g. pipe in an internal wall feeding the shower).</p> <p>If a burst pipe is in a boundary wall, or outside the lot this is the Owners Corporation responsibility to maintain (e.g. the hot water pipe bursts they are in the concrete floor, floor drains or sewer pipes with common property). If it is in an internal floor and the pipe services more than one lot, it is the Owners Corporation responsibility to maintain that burst pipe or any plumbing under the floor.</p> <p>If the Strata Plan was registered before 1st of July 1974 Townhouses with two levels which has a middle level may not be shown on the registered Strata Plan. In these cases the floor, bathrooms plumbing/drains etc. are an Owner responsibility.</p> |
| 9. | <p>The Plug and waste is within the airspace of the lot and therefore the responsibility of the Owner to repair and maintain.</p> |

| ITEM | DESCRIPTION |
|------|--|
| 10. | <p>If dampness (e.g. mould) is occurring in a unit, it must be first determined where the water is coming from. The Owners Corporation is responsible for water penetration problems coming in through external walls or the floor. The owner is responsible for the mould on their walls. If the dampness is coming from condensation from the inside, then it is the owner's responsibility. Common causes of this is:</p> <ul style="list-style-type: none"> • kitchen cooking; • use of clothes dryer; and • sleeping in bedroom without opening window (The average person expels 400ml of water each night while sleeping); <p>in this case mould is normally more virulent in the colder months and would normally occur on a southern wall or on flat concrete roof. Also the mould would occur on the surface of the paint with no paint lifting. If it was coming from outside, then the paint would lift with white powder under the paint.</p> |
| 11. | <p>The tiles on the floor or on a common wall that separates 2 lots or the lot from common property are the responsibility of the Owners Corporation. This includes the shower base.</p> <p>However, if the water is leaking through an internal wall, it is the responsibility of the owner.</p> <p>An exception is where water is leaking through the 2nd floor of a townhouse that was built prior to 1st July 1974. The tiles on the floor in this case are the Owners.</p> <p>Any original floor tiles that are replaced and associated waterproofing affixed to common property floors after the registration of the strata plan is the lot owners responsibility.</p> |
| 12. | <p>The seal/grouting around the top of the bath is the owners responsibility to maintain unless the leaking seal/ grouting abuts an external wall. The plug and waste under the bath is still within the lots airspace and therefore is the owners responsibility to maintain if water is leaking under the bath into the lot below.</p> |
| 13. | <p>The owner must repair and maintain carpets in the lot. The Owners Corporation repairs and maintains common property carpets, such as carpets in the hallways. If damage is caused to a lot owner's property while the Owners Corporation are effecting a repair, the Owners Corporation are responsible to fix the damaged property - including any damaged internal paintwork of the lot.</p> <p>However, if the cause of the damage to the owner's property was not made when the Owners Corporation were fixing the problem; instead it was caused by the problem itself, then the Owners Corporation are not responsible to make good the owner's property unless the Owners Corporation can be deemed negligent. E.g.:</p> <ol style="list-style-type: none"> 1. A burst pipe occurs in a wall and the Owners Corporation have to knock a hole in the wall to fix it. The Owners Corporation are responsible to fix the hole and repaint the wall afterwards. 2. A burst pipe occurs in a concrete slab. The owner's corporation fix the leak, but water stained the ceiling paintwork of the unit below. Here the Owners Corporation are not responsible to repaint the ceiling because it was not the fixing of the repair that caused the damage. |

| ITEM | DESCRIPTION |
|------|---|
| 13. | <p>CONT.</p> <ol style="list-style-type: none"> 3. A burst hot water service soaked the Magnesite or any soundproofing floor base in a unit that was installed at the time of registration of the strata plan and the Owners Corporation had to take up the carpet to dry the Magnesite or any soundproofing floor base. Once the Magnesite or any soundproofing floor base had dried, the carpet could not be re-laid because it had shrunk. The Owners Corporation would be responsible for the carpet because the carpet was damaged because they had to take it up. 4. With example 3, if the Magnesite or any soundproofing floor base was not damaged, the Owners Corporation would not be responsible to dry out the carpet or replace it, if it shrunk because the damage to the carpet was not caused when the Owners Corporation were fixing common property. |
| 14. | <p>Repairs to the boundary garage doors are Owners Corporation responsibility. If the garage door does not form part of the boundary (determined by a thin line on your registered strata plan) or there is a by-law in place then this garage door is the lot owners responsibility.</p> <p>Carports are normally always the Owners Corporation responsibility to maintain, this includes the spring and hinge mechanisms unless they were installed by the owner under an exclusive use by-law after the registration of the strata plan or they are a lot owners responsibility on the registered strata plan.</p> |
| 15. | <p>If the garage doors are on the registration of the strata plan, and shown by a thick black line then they are the responsibility of the Owners Corporation (Fair Trading takes the view that garage controller is classified as the lock and door closer for the garage door albeit it being electric. Therefore as with the main lock and door closer to a unit's entrance door being Owners Corporation responsibility, so is the controller). However, if they were installed after by the owner, and show a thin line on the strata plan then they are the owner's responsibility.</p> <p>The Owners Corporation is responsible for the installation and maintenance of window safety devices. Please note that section 106 (3) (b) of the Strata Schemes Management Act 2015 explicitly precludes the Owners Corporation absolving itself (e.g., through a by-law) from maintaining common property where it may effect safety. It is prudent for the Owners Corporation to have these safety devices regularly inspected.</p> |
| 16. | <p>If the garage door mesh are shown as a thick line on the strata plan then they are deemed a common wall and the responsibility of the Owners Corporation. However, if they are shown as a thin, dotted or no line on the strata plan then they are treated in accordance with the Dividing Fences Act 1991 and are treated as follows:</p> <ul style="list-style-type: none"> • Divides two lots. Each owner is responsible 50/50 • Divides one lot from common property. The owner is responsible 50% & the owners corporation is responsible 50% • Divides one lot from the adjoining property. The Owners Corporation are responsible for 100% of its share. <p>Mesh between storage cages can also divide the ownership of two lots. In this case if the line on the strata plan is a thick line then this is deemed common property. If it is a thin line or dotted line or no line on the strata plan then it is treated as dividing of two lots and each owner is responsible for the maintenance of this mesh between the storage cages. The mesh is almost always registered as an Owners Corporation responsibility.</p> |

| ITEM | DESCRIPTION |
|------|---|
| 17. | <p>A garage by definition is not a habitable space and therefore dampness may occur. As the garage is not a habitable space it is therefore exempt from compliance with the waterproofing standards for habitable use set by the Building Code of Australia, that it be impervious to water penetration. Unless there is some damage to common property that is causing the water penetration, or existing membranes have failed the Owners Corporation are not responsible to ensure a garage area remains dry. However, the Owners Corporation are responsible to stop water dripping on to a car and damaging the paintwork or damaging personal property.</p> |
| 18. | <p>Most balconies, courtyards or garden areas attached to a lot have their vertical boundaries defined on the registered strata plan. E.g. The stratum of the courtyards are limited to a depth of 3 metres below and except where covered to a height of 10 metres above the concrete ground floor of its respective adjoining lot. Therefore anything within that area that is not shown on the strata plan as a thick black line and is for the exclusive use of the lot, is therefore the owners responsibility to maintain. This includes timber decking, awnings and pavers.</p> <p>Furthermore a tree growing within a courtyard is deemed to belong to the owner and they are responsible for all pruning, removal or damage caused from the tree irrespective of whether some of the branches extend beyond that lot with the exception of that part of the tree which exists within common property via a notation on a strata plan or registered by-law.</p> <p>For trees outside the boundaries of the lot, for example, a tree outside the notation of a strata plan, the airspace above and below as noted on the Strata Plan are an Owners Corporation issue.</p> |
| 19. | <p>Only the original lock or its subsequent replacement is the responsibility of the Owners Corporation. If any additional locks are installed, they are the responsibility of the owner. If the owner replaces the original lock with a lock that prevents the door complying with fire certification, if the owner refuses to replace it with a complying lock, the Owners Corporation can replace the lock and charge the owner as a debt.</p> <p>The Owners Corporation is responsible for any common property entrance door lock that services more than one lot including all furniture and automatic closers, other than those installed by an owner after the registration of the strata plan and not including any related remote controller. Keys, security swipe cards and access passes is the responsibility of the Owners Corporation to maintain. Replacement of keys, access cards etc is usually at the cost of the owner and commonly addressed by way of a by-law.</p> |
| 20. | <p>Balconies are generally the responsibility of the Owners Corporation unless the strata plan was registered before 1 July 1974 the balcony wall including the windows and door and their working parts are generally part of the lot and the lot owner's responsibility for maintenance and repairs (unless there is a notation on the strata plan or the balconies are not shown on the strata plan). A check should be made of the certificate of title as some schemes have adopted the new boundary definition detailed in the Strata Schemes Management Act 1973 effective from 1 July 1974.</p> <p>If there is water penetrating between two floors the cause needs to be determined. If the water is running off common property, the Owners Corporation is responsible. However if, for example, the water is caused by over watering by another owner or resident, that person doing the overwatering is responsible.</p> <p>If the plan was registered after 1 July 1974 the balcony wall including the windows and doors and their working parts are generally common property and the Owners Corporation's responsibility (unless the strata plan says otherwise). With the exception to flyscreen's and/ or security doors which are always the lot owners responsibility.</p> |

| ITEM | DESCRIPTION |
|------|---|
| 20. | <p>CONT.</p> <p>An exception to this rule is when a flyscreen is located on a common property window, this will be the responsibility of the Owners Corporation.</p> <p>If a flyscreen is installed after the registration of a strata plan, the lot owner is responsible for this flyscreen.</p> <p>If there is a flyscreen that was an original flyscreen and each lot owner has the same flyscreen this is an Owners Corporation to maintain.</p> <p>Any awning, deck, pergola, privacy screen, louvres, retaining walls, planter walls, steps or other structures within the cubic space of a balcony or courtyard and not shown as common property on the strata plan are the responsibility of the lot owner.</p> |
| 21. | <p>Balconies are generally the responsibility of the Owners Corporation unless there is a notation on the strata plan limiting the height of the balconies stratum to a height less than the under surface of the balcony above. It is nearly always the responsibility of the owner. However, the Owners Corporation will normally include the painting of this area when the whole building gets repainted. Balcony doors that are registered after 1 July 1974 are the Owners Corporation responsibility to maintain.</p> |
| 22. | <p>Balconies are generally the responsibility of the Owners Corporation with the exception where #20 applies</p> |
| 23. | <p>Walls and doors that are on the boundary of the lot are the responsibility of the Owners Corporation to maintain.</p> <p>Internal walls and doors are the owner's responsibility. If cracks appear in an Owners Corporations wall and/ or cornice and are less than 2mm thick, they are not deemed as damage and the Owners Corporation are not compelled to repair them. The owner must repair all internal walls within the lot.</p> |
| 24. | <p>If the false ceiling was installed on the registration of the strata plan and were there to hide communal piping, ducting or wiring etc. then the Owners Corporation are responsible for this false ceiling (other than painting, which shall be the lot owners responsibility).</p> <p>Otherwise all false ceilings installed to hide the piping and ducting or wiring for the services of one lot are the lot owners responsibility.</p> |
| 25. | <p>Original tiles and associated waterproofing affixed at the time or registration of the strata plan and on a boundary wall or floor are the responsibility of the Owners Corporation. All other tiles in any area in the lot are the owners responsibility. The two exceptions are:</p> <ol style="list-style-type: none"> 1. The tiles on the 2nd floor of a townhouse that was built prior to 1st July 1974. The tiles on the floor in this case are the Owners responsibility. 2. The tiles were laid by the owner and are subject to a by-law. |
| 26. | <p>Except for floor coverings in communal areas, all internal carpeting, floor coverings and floating floors within a lot are the responsibility of the lot owner. The Owners Corporation are responsible for the original floorboards and parquetry installed in a lot.</p> |

| ITEM | DESCRIPTION |
|------|--|
| 27. | Owners Corporation must repair anything in the boundary walls. The Department of Fair Trading has deemed any damage to common property made by either owners or tenants as being the responsibility of the Owners Corporation to maintain and repair. Unless the damage was deliberate, they deem this as normal wear and tear. An example of this is the marking of the walls in the stairwell after a tenant moves in unless there is a by-law in place to recoup the costs of the damage or an NCAT order has occurred. |
| 28. | Ceiling cornices on external walls are generally the responsibility of the Owners Corporation unless they abut a false ceiling or are attached to an internal wall and the lot owner has made improvements to the ceiling in these cases they are the responsibility of the lot owner. |
| 29. | <p>Generally, if the tiles were there on the registration of the strata plan, then they are the responsibility of the Owners Corporation. If they were installed after by the owners then they are the owner's responsibility.</p> <p>However, always refer to the strata plan for a clear indication of the balconies boundaries.</p> <p>Be careful when reading notations on the strata plan, in accordance with the court case "Seiwa Pty Ltd v Owners Strata Plan 35042", the following example only defines the upper boundary and not the lower boundary. "BALCONY LIMITED IN HEIGHT TO 2.5 ABOVE THE UPPER SURFACE OF THE CONCRETE FLOOR THEREOF EXCEPT WHERE COVERED".</p> <p>Any tiles attached to the concrete floor with the above notation on the strata plan would still be the responsibility of the Owners Corporation if they were affixed prior to registration of the strata plan.</p> |
| 30. | Membranes on flat roofs are generally the responsibility of the Owners Corporation unless the building was registered prior to the 1st July 1974 and the roof area is part of the same lot which is underneath the roof. Furthermore it should be noted that if the Owners Corporation are responsible to maintain the membrane, then they are also responsible to make good any structure that has to be removed when repairing the membrane. |
| 31. | A hot water service is inside a lot and for the exclusive use of that lot it is the responsibility of the owner. However if situated outside the lot and services more than one lot it is the responsibility of the Owners Corporation unless subject to a special by-law. |
| 32. | Skirting boards and architraves are the owners responsibility unless situated on a common wall and are original to the strata plan. |
| 33. | <p>A strata plan will typically not show columns. They may exist within a courtyard or balcony of a lot supporting the balcony above or within the lot supporting the slab. Either way the columns are "common infrastructure" (previously called: "structural cubic space") as they are supporting the structure of the balcony or slab which is common property.</p> <p>Note: A wall whether structural or not cannot be common infrastructure. For a wall to form common property it must be shown or referred to on the plan as common property.</p> <p><i>The definition of "common infrastructure" in the Strata Schemes Development Act 2015 means "cubic space occupied by a vertical structural member of a building, other than a wall, ..." (Section 4).</i></p> |
| 34. | Stairs and Mezzanines within a lot are generally the responsibility of the owner corporation if shown as a separate level in the strata plan unless the Strata Plan was registered prior to 1st July 1974. The Strata Schemes Development Act 2015 defines a floor to also include a stairway or ramp. |

| ITEM | DESCRIPTION |
|------|---|
| 35. | Even though they may be within the boundaries of a strata lot the down pipes and attached drainage pipes are common infrastructure as they service the roof and gutters which are common property (see definition of “common infrastructure” in Section 4 of the Strata Schemes Development Act 2015. Again this only applies provided the pipes were in place at the time of registration of the plan. To add further pipes at a later date requires the creation of an easement. |
| 36. | As intercom handsets are part of an integrated system and a faulty handset can affect the overall workings of the intercom system, handsets are deemed to be an Owners Corporation responsibility regardless of whether they are mounted entirely within the airspace of a lot provided that this intercom services more than one lot. If there are separate intercoms for each lot i.e. a 2 lot strata scheme and they are not connected then each lot owner is responsible for the maintenance of that intercom. |
| 37. | Normally the cleaning of windows is the responsibility of the owner or occupier of the lot. However always check the By-Laws of the strata scheme; even if model By-Laws have been used, The Owners Corporation is still responsible for cleaning regularly all exterior surfaces of glass in windows and doors that cannot be accessed by the owner or occupier of the lot safely or at all. |
| 38. | Everything in the airspace of a bathroom or kitchen including baths, toilets, sinks and dishwashers are the owner’s responsibility. However the Owners Corporation’s building insurance may cover some of these fixtures for damage if the water was to penetrate between two floors, you would need to check your PDS to confirm if this is covered. The owners corporation must insure owner fixtures and fittings under Section 161(3) of the Strata Schemes Management Act 2015, the Owners Corporation insure but do not repair. |
| 39. | Railings are the responsibility of the Owners Corporation unless these railings are within a lot then they are the responsibility of the lot owner. |
| 40. | Prior to 1st July 1974 any plastered ceilings and vermiculite ceiling, shall be the lot owners responsibility. If these exist at the time of registration of the strata plan they are the Owners Corporation responsibility to maintain, unless noted in the strata plan or there is a by-law in place. If installed by a lot owner this lot owner is responsible to maintain. Internal paintwork is almost always the responsibility of the lot owner. |
| 41. | If the television aerial, or satellite dish or any cable or internet wiring servicing more than one lot, regardless of it is contained in a lot or not is the responsibility of the Owners Corporation. If the aerial services only one lot it is the responsibility of the lot owner. |
| 42. | Ducting covering stack or structure covering a services that services more than one lot or common property is the Owners Corporation responsibility to maintain. |
| 43. | Letterboxes are the Owners Corporation responsibility unless within a lot and then this is the lot owners responsibility. |
| 44. | Stopcock only serving that lot not within any common property wall is the lot owners responsibility. If this stopcock is in a common property wall then this is an Owners Corporation issue. |

| ITEM | DESCRIPTION |
|------|--|
| 45. | Bathroom Toilet Cistern – A Bathroom Toilet Cistern is lot owner responsibility however In some apartments the cistern is located in a common duct therefore in these circumstances only this is an Owners Corporation responsibility. |
| 46. | On 24 February 2021, an amendment to the Strata Schemes Management Act 2015 put in place section 132B that deals with “sustainability infrastructure”. This new section, together with a new type of resolution - a “sustainability infrastructure resolution” [see section 5 (1) (b) and section 141], has the practical effect that if there is a change to common property that relates to sustainability infrastructure, a special resolution is not required for the change to be passed by the Owners Corporation. Instead, a simple majority vote in favour of the change to common property is all that is required. Section 132B requires the Owners Corporation to consider who will own, install and maintain the item of sustainability infrastructure. While it is not required, a by-law could be passed to indicate that it was the Owner (or group of Owners) or the Owners Corporation who would be responsible. Again, section 132B makes it clear that a simple majority vote in favour is all that is required, rather than a special resolution, to change the by-laws of the strata scheme for the purposes of the installation or use (or both) of sustainability infrastructure. In relation to electric car chargers, single lot user devices and communal devices may have different responsibilities for the relevant Owner and Owners Corporation depending upon whether the original motion or a by-law makes the position clear but, in their absence, may depend upon other factors such as where the charging device is located. |

INSURANCE APPENDIX

Legislation

There is a set of Legislation sitting behind insurance principles affecting Strata. This is outlined under Part [9] of the Strata Schemes Management Act 2015 (SSMA 2015). Complementing this legislation is Part [6] of the Strata Schemes Management Regulation 2016.

The applicable legislation determines the type and minimum of covers required. For the purposes of this document, we will focus on Building related issues.

Building Insurance

In the preceding 17 pages of this document, there is a clear attempt to differentiate “who is responsible” for common property vs owners responsibilities. For insurance purposes, this is not one and the same thing.

The reason this occurs is by virtue of the SSMA 2015. The legislation notes a requirement to cover common property considerations plus owners improvements and fixtures forming part of the building.

In broad terms, Building policies issued by include common property and owner fixtures within Lots as “Insured Property.” This does not include content items within Lots or illegal installations.

Examples of internal Lot fixtures may include kitchens, fixed timber flooring, hard wired appliances such as stoves, bathroom fit out, built ins, doors, walls, electricals, plumbing etc. Examples of Lot contents include carpet, personal belongings and anything not permanently attached to the building. Floating floors and internal Lot paint are generally deemed to be content items, but many policies may include this or offer to include it as optional covers. Bylaws in place may determine items to be the Lot owners responsibility to cover.

It is essential owner occupiers, landlords and tenants ensure they have personal contents insurance in place to protect their own interests. There is a common misconception that because damage was caused by outside influences, the Strata insurance will cover the loss. Strata policies will only respond to loss or damage to their Insured Property from an admissible claim.

Principles

Building Insurers will define what they cover under headings such as Insured Property. The policies will define when cover is triggered or activated. It is important to note policies do not cover all contingencies. The type of instances not covered will be outlined in policy terms, conditions and exclusions.

Examples of claimable events may include fire, storm, water, vehicle impact, malicious damage, theft, and vandalism. Examples of common exclusions include maintenance, wear and tear, deterioration, rotting, rectification of building defects and flood.

Insurers will generally be looking at the following considerations in the claim triage process;

- Is the subject matter Insured Property under the policy
- When did the incident occur
- How did the incident occur
- Is the loss covered
- Are there any special conditions or excess
- What is the loss
- What is the urgency
- Next steps

As each and every circumstance is different, enquiries should be made via the Strata or Insurers when an incident occurs in order to determine the potential policy response.

If the subject matter of the insurance claim is not “admissible,” the issue about who is responsible will essentially revert back to information outlined on pages 1-17 of this document.

Policy Excess

An excess is an amount of money paid by the Strata or Lot owner towards a claim made on the insurance policy. There is a growing trend for Insurers to have higher excesses with a view to ensuring sustainable and affordable premium levels.

When a Strata pays the excess there is no apparent issue. If a Lot owner is to pay the excess, it must not create an “unreasonable burden” on Lot owners. This is best discussed with the Committee, Strata Manager or Broker.



CONTACT US

Level 1, Suite 102, 845 Pacific
Highway, Chatswood NSW 2067
.....
(02) 9492 8200
.....
enquires.nsw@strata.community
.....
nsw.strata.community

ABN 74 001 767 997