

# BODY CORPORATE NEWSLETTER

## RIGHTS AND OBLIGATIONS FOR MAINTAINING LOTS AND COMMON PROPERTY

A body corporate has a general duty to maintain common property. On occasions, the body corporate may be required to investigate and rectify defects to common property. This may involve obtaining access to a lot for example to investigate a water leak through a window in a boundary wall separating a lot from common property. Sometimes a lot owner may be resistant to granting access to the body corporate which then begs the questions, what are the duties of the body corporate generally to maintain common property and what rights does a body corporate have to gain access to a lot in order to carry out that duty.

### **Duties and obligations of the body corporate to maintain common property**

There is an express obligation on the body corporate to maintain common property in a structurally sound condition set out in s 159 of the *Body Corporate and Community Management (Standard Module) Regulation 2008*. In particular, s.159(2) relevantly provides:

*“(2)To the extent that lots included in the community titles scheme are created under a building format plan of subdivision, the body corporate must—*

*(a) maintain in good condition—*

*(i) railings, parapets and balustrades on (whether precisely, or for all practical purposes) the boundary of a lot and common property; and*

*(ii) doors, windows and associated fittings situated in a boundary wall separating a lot from common property; and*

*(iii) roofing membranes that are not common property but that provide protection for lots or common property; and*

*(b) maintain the following elements of scheme land that are not common property in a structurally sound condition—*

*(i) foundation structures;*

*(ii) roofing structures providing protection;*

*(iii) essential supporting framework, including load-bearing walls.”*

### **Body corporate’s power of entry**

The body corporate’s power to enter a lot arises from s 163 of the *Body Corporate and Community Management Act 1997* (“**BCCM Act**”). That section relevantly states:

*“(1)A person (an “authorised person”) authorised by the body corporate for a community titles scheme may enter a lot included in the scheme, or common property the subject of an exclusive use by-law, and remain on the lot or common property while it is reasonably necessary –*

*(a) to inspect the lot or common property and find out whether work the body corporate is authorised or required to carry out is necessary; or*

*(b) to carry out work the body corporate is authorised or required to carry out.*

- (2) *The power of entry may be exercised –*
- (a) *in an emergency – at any time; and*
  - (b) *in other cases –*
    - (i) *for entry to the lot mentioned in subsection (1) – at a reasonable time after at least 7 days notice of the intended entry has been given to-*
      - (A) *the owner of the lot; or*
      - (B) *if the owner is not in occupation of the lot – the occupier of the lot; and...*
    - (iii) *in compliance with the security or other arrangements or requirements ordinarily applying for persons entering the lot or the common property.”*

The performance of rectification works to common property would represent ‘work’ for the purposes of s 163.

The power of entry to a lot by the body corporate was considered by the Court of Appeal in *Oceania on Broadbeach Community Titles Scheme 24613 v Searle* [2003] QCA, where it was found that under s 163 BCCM Act a person authorised by the body corporate was entitled access to a lot for the purposes of maintaining the windows within the common property by cleaning them.

It is an offence to obstruct an authorised person attempting to exercise their power of entry.

#### **What can the body corporate do if a lot owner obstructs entry?**

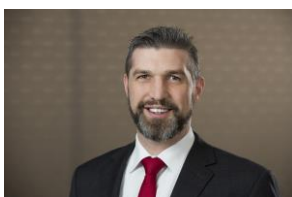
If an owner or occupier obstructs an authorised person from entering or remaining on the lot or exclusive use area, or from carrying out the necessary work or inspection, the body corporate may apply for dispute resolution in the Commissioner’s office or may file proceedings in a court of competent jurisdiction seeking a mandatory relief compelling the lot owner to allow access.

If you have any questions regarding these issues, please do not hesitate to contact either Shane or Sam at our office who will be happy to assist.

**Sam Marsh** is an Associate of Holman Webb Lawyers Brisbane, and his practice includes all aspects of Strata legislation including body corporate recovery, insolvency, and commercial litigation and dispute resolution.

**Shane Roberts** is a Partner at Holman Webb Lawyers, with over 30 years’ experience in civil litigation, dispute resolution, insolvency, and body corporate and Strata law.

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