

BODY CORPORATE NEWSLETTER

DOES A BODY CORPORATE OWE ANY DUTIES TO A LOT OWNER FOR DEFECTS ON COMMON PROPERTY?

Given the rise in the level of people living in strata communities in Australia, there will inevitably be an increase in issues relating to common property and the potential responsibilities of body corporates with respect to same. This article is a short refresher on the question of what duties are owed by a body corporate to lot owners when it comes to defects on common property, particularly in relation to defects that may cause issues with a lot owner's own property such as a water penetration issue.

WHAT IS COMMON PROPERTY?

The common property of each body corporate is individual. In Queensland, common property will be defined in part by the type of plan the body corporate is registered under, either Building Format Plan or Standard Format Plan.

Some examples of common property are:

- access roads and paths, stairways, lifts and foyers;
- gardens, pool areas, gyms;
- services such as electricity cables, water and sewer pipes;
- roofs, and building walls.

Occasionally, common property is described as being 'everything on the scheme which is not contained within a lot'. Sometimes though, areas of the common property are allocated as exclusive use to a particular lot owner. Such allocations must be recorded, either on the title itself or within the Community Management Statement.

The only way to be certain as to whether something is Common Property or not, is to review the registration of the scheme and the Community Management Statement. Even then, questions can arise as to what is common property. For example, how much of a wall is common property - is it measured to the inside of the lot's wall, the outside, or somewhere between? This can be important when deciding who is responsible for attending to maintenance or fixing defects of the common property.

DUTIES OWED

Section 152 of the *Body Corporate and Community Management Act 1997*, provides:-

- “(1) The body corporate for a community titles scheme must –*
- (a) administer, manage and control the common property and body corporate assets reasonably and for the benefit of lot owners; and*
 - (b) comply with the obligations with regard to common property and body corporate assets imposed under the regulation module applying to the scheme...”*

The above refers to compliance with the “regulation module applying to the scheme”. In this regard, Section 159 of the *Body Corporate and Community Management (Standard Module) Regulation 1997* provides that:-

“(1) The body corporate must maintain common property in good condition, including, to the extent that common property is structural in nature, in a structurally sound condition...”

“(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 - ...

iii.) roofing membranes that are not common property but that provide protection for lots or common property.”

The applicability of these statutory duties to cases involving waterproofing issues was considered in *MAGOG (No.15) Pty Ltd (ACN 001 745 286) v The Body Corporate for the Moroccan CTS 17574 [2010] QDC 70 (“Moroccan”)*. In *Moroccan* a defective water membrane in a building caused a leak onto a particular lot. The body corporate failed to repair the leak or take sufficient steps to rectify the defects and consequently damage occurred to the lot owner’s lot. In *Moroccan*, Newton DCJ (the Judge) made the following statement relating to the duty:-

“The defendant had a duty to maintain common property in good condition, including, to the extent that common property is structural in nature, in a structurally sound condition. The duty to maintain a common property in good condition required the defendant to maintain and manage and control the common property so that water did not leak from the common property...”

STEPS TAKEN BY THE BODY CORPORATE

In light of the above, the body corporate has a duty to *“maintain and manage and control the common property so that water (does) not leak from the common property”*. It follows that if there is a defect in the common property that allows water ingress, the body corporate should look to have that defect rectified so that it can comply with its general duty specified in the BCCMA and as confirmed in the *Moroccan* decision.

This then leads to further questions such as what options are available to a body corporate when it comes to having defects to common property rectified? Another question that might arise is what (if any) personal liability might a person serving on a body corporate attract from an issue such as a defect to common property. Due to the limits of this article, those questions will be dealt with in a future Holman Webb strata article.

For legal advice or assistance with any Strata or Body Corporate matters, contact Sam or Shane using the contact details below.

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