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Common property and the lot

In a strata scheme

The lot

In most strata schemes, the lot owner owns the inside of the unit but not the main structure of the building. Usually the four main walls, the ceiling, roof and the floor are common property. The internal walls within the lot (eg. the wall between the kitchen and lounge room), floor coverings such as carpet and fixtures such as baths, toilet bowls, benchtops are all the property of the lot owner.

Airspace

A lot owner effectively owns the airspace (and anything included in the airspace) inside the boundary walls, floor and ceiling of the lot.

Lot airspace may include balconies and courtyards. Everything within the airspace must be maintained at the owner's cost.

Areas of common property

The following is a checklist for common property:

- floor includes a ramp or stairway
- wall includes any door, window or other structure within the wall and their working parts
- ceramic tiles originally attached to a common property surface (eg. the floor or boundary wall)
- pipes in the common property or servicing more than one lot
- electrical wiring in the common property or servicing more than one lot
- parquet and floor boards originally installed
- vermiculite ceilings, plaster ceilings and cornices
- magnesite finish on the floor
- balcony doors are usually common property if the strata plan was registered after 1 July 1974
- the slab dividing two storeys of the same lot, or one storey from an open space roof area or garden areas of a lot (eg. a townhouse or villa), is usually common property if the strata plan was registered after 1 July 1974, unless the registered strata plan says it is not.

When deciding on the areas of common property in a strata scheme, 'structural cubic space' must be considered. Structural cubic space includes:

- cubic space occupied by a vertical structural member, not being a wall
- any pipes, wires, cables or ducts that are not for the enjoyment of a single lot
- any cubic space enclosed by a structure enclosing any of these pipes, wires, cables or ducts.

Structural cubic space will be common property unless the registered strata plan shows that it forms part of the lot.

Responsibilities of the owners corporation

The owners corporation must look after common property and do all repairs, unless it decides by special resolution that it is inappropriate for a particular item and its decision will not affect the safety or appearance of the strata scheme. This includes replacing and renewing common property when needed.

The owners corporation can decide at a general meeting by special resolution to do or allow a lot owner to add, alter or erect a new structure that improves or enhances common property. If the ongoing maintenance for any alteration, addition or erection is to be the responsibility of a lot owner, a by-law must be created. Otherwise the owners corporation becomes responsible for the ongoing maintenance.

Clarification of common property

The registered strata plan defines the boundaries between common property and lots in a strata scheme. For enquiries about interpretations of the plan and to buy a copy, contact:
Land and Property Information NSW
corner of Macquarie Street and Prince Alfred Road
SYDNEY NSW, or phone 9228 6798.

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By-laws

All owners and residents in a strata scheme must obey the by-laws and their other responsibilities under the Act. The by-laws are a set of rules that all people living in a strata scheme must follow. Strata schemes existing before the commencement of the Strata Schemes Management Act on 2 July 1997 have by-laws set out in Schedule 1 of the Act, together with amendments made by those by-laws by the owners corporation.

A strata scheme registered after the commencement of the 1996 Act on 1 July 1997 must choose and register its own by-laws. There are six model sets of by-laws in the Regulations and the owners corporation may select any of these or prepare their own.

Tenants

All of the by-laws in place at the strata scheme apply to tenants in the same way as they apply to lot owners. Tenants must be given a copy within seven days.

Revising by-laws

The owners corporation can change or cancel any of the by-laws to help in the running of the strata scheme. A special resolution is needed. A by-law has no force or effect if it is inconsistent with this or any other Act or law. By-laws cannot prevent guide dogs or hearing dogs being in the scheme, nor prevent children under 18 years occupying the scheme.

Any exclusive-use by-law in place at the time of registration of the scheme, and that remains in place, must be disclosed to purchasers by vendors by a copy of the by-law being attached to the contract of sale.

Schedule 1 By-laws

1. Noise

An owner or occupier must not make noise at any time within your lot or on common property that is likely to disturb peaceful enjoyment of another resident or anyone using common property.

2. Vehicles

An owner or occupier must not park or stand a vehicle on common property without the written permission of the owners corporation.

That permission can be cancelled. Permission does not give you a permanent right over that part of common property.

3. Obstruction of common property

An owner or occupier must not stop lawful use of common property by another person.

4. Damage to lawns, etc on common property

An owner or occupier must not damage any lawn, garden, tree, shrub, plant or flower on the common property. You must not use any part of common property as your own garden.

5. Damage to common property

An owner or occupier must not damage any structure that is part of the common property unless you have the owners corporation's written permission. Owners are responsible for maintaining anything they have installed. This rule does not stop you from installing a locking or safety device or screens for protection against intruders or to prevent entry of animals or harm to children. They must be installed in a professional manner and be in keeping with the appearance of the rest of the building.

6. Behaviour of owners and occupiers

An owner or occupier must be adequately clothed when on the common property. You must not use language or behave in a way which might offend or embarrass others using common property.

7. Children playing on common property

An owner or occupier must make sure any child under your control does not play on common property areas inside the building. Children must be supervised by an adult when on common property laundries, car parking areas or other areas

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dangerous to children. This does not stop children from playing unsupervised on common property areas outside the building that are not dangerous (eg. a lawn).

8. Behaviour of invitees

An owner or occupier must make sure your visitors do not behave in a way which might disturb the peaceful enjoyment of another resident. This applies to behaviour in a lot and on common property.

9. Depositing rubbish, etc on common property

An owner or occupier must not throw rubbish, dirt, dust or other materials on the common property that may interfere with the peaceful enjoyment of another resident.

10. Drying of laundry items

Unless an owner or occupier has the written permission of the owners corporation, they must not hang washing, towelling, bedding, clothing or other articles on any part of the strata scheme (eg. on the balcony of your lot) so that it may be seen from outside the building. Clothing hung on the common property clothes lines must only be there for a reasonable time.

11. Cleaning windows, etc

An owner or occupier must clean all glass in windows and doors on the boundaries of your lot, even though they may be common property.

12. Storage of inflammable liquids

An owner or occupier must get written permission from the owners corporation if you want to store any inflammable materials in your lot or on common property. But you may store these materials without permission if they are to be used for domestic purposes.

13. Moving furniture, etc on, or through, common property

An owner or occupier must tell the owners corporation executive committee if they are going to

move large objects or furniture through common property areas of the building. This allows an executive committee representative to be present during the move.

14. Floor coverings

An owner must cover the floor of their lot or treat it to stop noise which may disturb another resident. This does not apply to the kitchen, laundry, lavatory or bathroom of a lot.

15. Garbage disposal

An owner or occupier must keep a clean, dry and adequately covered garbage bin in your lot or on the authorised part of the common property. You must make sure your garbage is securely wrapped and all tins and containers are properly drained. You must put your garbage out to be collected, in the area chosen by the owners corporation, no earlier than 12 hours before collection. You must return your garbage bin to the proper place as soon as possible after collection. You must not put any rubbish in another resident's garbage bin, unless you have their permission. You must make sure that any rubbish spilt from your garbage bin is removed.

16. Keeping of animals

An owner or occupier must not keep an animal unless you have the written permission of the owners corporation. The owners corporation must not unreasonably refuse permission to keep an animal.

17. Appearance of the lot

Unless an owner or occupier has the written permission of the owners corporation, they must not keep anything within their lot that is not in keeping with the appearance of the rest of the building. This does not apply to the hanging of any washing, towelling, bedding, clothing, or other articles mentioned in By-law 10.

18. Noticeboard

An owners corporation must put up a noticeboard somewhere on the common property.

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19. Notice of a change of lot usage

An occupier must give the owners corporation notice if the use of the lot changes and the insurance premium for the scheme changes. For example, change to a hazardous activity using chemicals, or change from residential use to commercial or industrial use.

20. Fire safety inspections

An owners corporation must comply with a requirement of a notice to carry out an inspection of a building or premises for purposes relating to fire safety given under the *Environmental Planning and Assessment Act 1979*.

Notice to comply with a by-law

All owners and occupiers (residents) in a strata scheme must comply with the by-laws of the scheme.

The owners corporation may issue a notice to comply requiring an owner/occupier who has breached a by-law to comply. To issue a notice to comply:

- the owners corporation must be satisfied that the person has broken a by-law
- a meeting should then be called and a motion passed to issue a notice to comply
- the owners corporation then serves the person with the notice on the prescribed form.

If the person served with the notice to comply continues to breach the by-law during the next 12 months, the owners corporation may apply to the Consumer, Trader and Tenancy Tribunal (CTTT) to fine that person. The owners corporation must attend a hearing and present evidence proving the breach. The CTTT can make a penalty order for up to \$550.

The CTTT is a specialist, independent, low cost Tribunal for the fair and timely resolution of disputes according to law. Disputes are resolved at a hearing or by alternative dispute resolution.

Other responsibilities under Section 116 and 117

You must not interfere with any support or shelter provided by your lot for another lot or the common property. You must give the owners corporation at least 14 days written notice before altering the structure of your lot. The notice must describe the alterations. The owners corporation can stop alterations to a lot if it interferes with the common property or any support to the rest of the building.

You must not interfere with the passage or provision of water, sewerage, drainage, gas or other similar services. You must not use or enjoy your lot in such a way which might cause a nuisance or hazard to another resident. You must not use or enjoy the common property in a way that may interfere unreasonably with another resident's use and enjoyment of common property or their lot.

Other information

Information about other aspects of strata schemes can be found in the following fact sheets:

- Strata scheme sinking funds (FTR47)
- Starting the owners corporation (FTR48)
- Responsibilities of the owners corporation (FTR49)
- Meetings of the owners corporation (FTR50)
- Strata scheme executive committee (FTR51)
- Managing agents and caretakers (FTR52)
- Strata and community disputes (FTR01)
- Strata and community mediation (FTR02).

www.fairtrading.nsw.gov.au
Fair Trading enquiries 13 32 20
TTY 1300 723 404
Language assistance 13 14 50

This fact sheet must not be relied on as legal advice. For more information about this topic, refer to the appropriate legislation.

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