

NEWSLETTER ISSUE 14 July 2014

There is a lot happening, that may already, or will affect those who live in a strata scheme.

In this issue we will summaries these and will provide you with further updates in subsequent editions.

* At the bottom of the page we have a link to a website which sets out what is common property and what it is you own.

* On page 2 we cover a CTTT decision regarding an owner who undertook renovations without permission and the costly consequences of not following process.

- You have probably heard that the new Strata Legislation will not be released any time soon. The Government has decided to review the community title legislation, which can tie into strata, and pass them together at a later date. At this stage, there is no date set as to when consultation and submissions by entities such as Strata Community Australia (NSW) will begin. So for now things will remain unchanged for the foreseeable future. Stay tuned for further updates.....
- We are looking into a company that has a 100% environmentally friendly means of storing solar energy, which would mean that a scheme can become 100% free from needing their electricity supply from the grid. As most solar power is generated during the day when most people are at work, the ability to store the power and use it at times of demand will stop scheme's paying for power when it is at its most costly. It is hoped that a trial of this will be undertaken in the second half of 2014 and we can report on how this is progressing.
- From 1 September 2014 new buildings will be required to have individual meters for water supply to units. This will see those who are not water-wise pay, rather than the cost being shared by all the owners in a scheme. We see this will drive older scheme's that do not currently have individual meters install them, otherwise a purchaser – when comparing the levies between properties will see a marked difference in what they will have to outlay. On our 2015 agenda's we will place a motion on your AGM to prompt discussion about installing them in your building so you can remain competitive when selling. The new requirements also include that individual stop cocks must be installed for each lot and must be on the common property, so these can be easily accessed to turn off should a unit start to flood with water and no one is home to deal with the issue and prevent damage to other units and the common property.
- We have seen a demonstration in the past month of an invention called PipeBurst Pro. It is attached to the water supply into a property, and if the detectors detect a leak – it shuts off the water supply till you can investigate. The detectors, which are around the size of a cake of soap, are placed in key locations – such as under the fridge, washing machine and dishwasher. Once the water is shut off, then you have time to take steps as necessary, eg call a plumber to fix the issue, or reset it (push of a button) if there is no risk of damage (eg a spilt glass of water). Burst pipes, or issues with washing machine's overflowing etc often happen when you are not at home or around to see it, and before we know it there is damage to not just your property, but neighbours – who may try to claim on your 3rd party insurance. Water damage claims create a huge amount of damage and cost to rectify– so the opportunity to avoid such is likely to be taken up by insurance companies in Australia, as they have in the US – where it is a mandatory requirement by some insurers that a policy holder have such a system. When this product is released into Australia we will update you in a later edition.

How do you know what is common property and what is your responsibility to repair?

We were recently sent this update by Bannermans Lawyers which may be helpful to you when trying to determine what is yours to repair and what you should report to us because it is common property. The diagram which you will find if you follow this link is helpful, and is kept updated on their website – visit this link. <http://www.bannermans.com.au/articles/strata-and-development/213-what-do-i-own-and-what-is-common-property>

Reinstatement of Common Property - CTTT prepared to get tough on owners who do work without permission (or bylaw as required)

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The Owners Strata Plan no 13389 v Blackmore (NSW CTTT) 13 July 2011

Facts

In July 2009 the respondents sought consent from the Strata Manager for various alterations to the lot which included the removal of an internal wall between the kitchen and living area of the lot and the removal of the sliding balcony doors that separated the balcony from the living area. The Owners Corporation, whilst approving of some of the works (subject to certain conditions), the proposed works which sought to remove the internal wall and sliding balcony doors were refused.

Various correspondences then passed between the Respondents and the Owners Corporation in relation to concerns over fire safety and the structural integrity of the building being affected. Ultimately, the Owners Corporation did not approve of the works and the Respondent proceeded to carry out all of its intended alterations.

Upon discovery by the strata manager of the unauthorised works that had been carried out to the lot, the respondents were requested to reinstate the common property immediately. The respondents argued that a neighbouring lot carried out the same works to their balcony some years before and on that basis they should be allowed to do the same.

The matter proceeded to mediation (which failed). The Owners Corporation subsequently lodged an Application for Orders by an Adjudicator seeking orders for the Respondent to reinstate the unauthorised works back to their original condition before the works were carried out.

Decision

The Adjudicator, found in favour of the Owners Corporation and made orders that the Respondents were not to carry out any further alterations to the common property without further written consent and ordered the common property wall dividing the balconies of the lot and the works carried out to the remainder of the lot were to be replaced and reinstated back to their original condition.

Whilst the Adjudicator noted that not all of the works carried out on the lot had to be reinstated (as this work affected the gyprocking and painting of internal surfaces) the adjudicator found that the respondent had not obtained prior consent of the Owners Corporation in general meeting and that some of the works involved alteration and destruction of common property.

As some level of discussion had taken place previously between the Respondent and the Owners Corporation, the Adjudicator gave the Respondents 6 months in order to reinstate the common property. This was on the basis that it would allow the Respondent to submit a by-law to the Owners Corporation for approval of the totality of the works it had carried out.

What does this mean?

Despite the Adjudicator granting 6 months during which the respondents were to reinstate common property back to its original condition, the result of this case shows that the Consumer Trader & Tenancy Tribunal are prepared to make reinstatement orders (which involve substantial works) of which the practical consequences of such orders for a Respondent can have adverse consequences, both financially and emotionally. This decision highlights and reinforces the position that lot owners can expect tough sanctions being made against them when they are not prepared to follow due process.