

# Property Manager Fact Sheet 1

Property managers often have to deal with strata corporations or their managers. This is the 1st of a series of fact sheets designed to assist PMs in ensuring they know how to get the most out of their dealings with body corporates

## 1: Who pays for what

Knowing who is legally liable for what part of a Strata property is useful for Property Managers (PM) in dealing with a body corporate or its manager (SM).

A strata plan is a plan dividing land into units and common property. The Corporation's responsibility is to maintain the common property with the owners taking care of their private property. Where common and private property stops and starts is spelt out over the page - Sections 5 Parts 5 & 6

### Common Examples:

**Blocked sewer:** The tenant contacts the PM and complains that the toilet in their rental unit is backing up. The PM rings the strata manager and asks them to get a plumber to look at. The SM states that PM should get their plumber in. Who is responsible?

In most cases a blocked toilet is the result of a blockage in the common sewer (tree roots, old earthenware drains collapsing etc.). A SM's plumber will usually be familiar with the drains at the group, (often the SM has a sewer plan) and will report on the cause of the blockage.

**Best Practice:** Corporation plumber attends, reports and charges the Corporation. If the report identifies the pipe as the owner's, or the cause of the blockage to tenant's behaviour, then the Corporation will recover all or part of the cost. The plumber's report must accompany any recovery. Section 5 (6b) applies.

**Termites and damage:** Termites are discovered by the PM on a routine inspection of the unit. The PM rings the SM and is told that the Corporation policy is that each owner pays for termite treatments and building damage. Is this true?

No. The Strata Corporation owns the floor and all space and ground beneath it and beneath the yards and common grounds. Section 5 (5b) applies. The termites come from the common property. The Corporation is responsible for protecting the units from attack by termites. The Corporation is liable to fix any resultant damage.

**Best Practice:** Corporation undertakes a regular termite inspection and ensures risks are minimised e.g. remove any soil against the building. Any infestations are treated by the Corporation.

**Leaking Gutters:** The tenant contacts the PM and complains that her rear yard is flooding as the gutters are overflowing. The PM rings the strata manager and asks them to fix the problem urgently. The SM states that PM should get their plumber in as the group have decided that each owner clean the gutters at their unit. Can the Strata Corp. do this?

No. The Strata Corporation owns the gutters and roof Section 5 (5c) applies. The gutters are above the ceiling and yard subsidiary unless the Corporation can prove otherwise on the Strata Plan.

**Best Practice:** The Corporation undertake a comprehensive gutter & downpipe clean every 2 years. More often if in a heavily wooded area. The roof could be

inspected for tile and flashing wear at the same time.

**Leaking Shower:** The tenant contacts the PM and complains that the hallway wall on the other side to the shower is peeling and wet.

The PM rings the SM and asks them to fix the problem as it must be a leaking pipe and therefore strata insurance. The SM has the Corp' plumber attend. There is no leaking pipe. The plumber's report shows that the tile grout has failed. The SM sends the bill and report to the owner. Is the owner responsible? Yes. The shower tiles are a treatment on top of the floor or on the wall. The boundary is the surface of the floor or external wall. Section 5 (5b) applies. internal walls are the owners not the Corporations.

**Best Practice:** We suggest PMs check the grout on every inspection or two. Regrout to ensure sealing around base.

**Leaking Roof - Who Benefits?** The PM rings the SM and asks for the leaking roof to be fixed. The SM explains that the owner will be charged for the work as they are the only ones to 'benefit' from the work despite it being a common property roof. The SM explains that the Corporation's policy takes advantage of Section 27(6) of the Strata Act. Is this legal?

No. In the legal case Hughes vs Strata Corporation the Judge ruled that reinstatement is not a benefit. See over page for ruling details.

**Best Practice:** The Corporation must make a detailed submission to the owner if it believes Section 27(6) applies. The Corporation cannot avoid maintaining common property as required under Section 25.

## 2: Tenant Behaviour:

The PM receives a call from the SM accusing their tenant of nuisance behaviour including late night noise, illegal parking and maybe drug dealing.

The Articles (2 & 5 see over) make it an offence to create a nuisance or park illegally. In the first instance the SM should provide written and if possible photographic evidence before any action is taken. The Corporation can take action under Section 90 RTA or Section 41a of Strata Act for continuing breaches.

If a tenant is complained about without evidence and the tenant threatens or actually leaves the unit then the owner/agent should warn the Corporation/SM of possible legal action for loss of rent etc.

**Best Practice:** Strata Corp. provide the complainant(s) with a diary to fill in over a week or so. The diary would need to be signed by residents in at least two separate units. The complainant(s) need to be made aware that they must be prepared to be witnesses in any legal action. If the diary is returned signed with multiple events then the agent should be put on notice and supplied a copy of the diary. Further breaches should then see legal action taken.

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# Supporting Legislation / Case Law

## Common Property:

### What the Strata Corporation must maintain..

**Section 25.** The functions of the strata corporation are as follows:

(a) to administer and maintain the common property for the benefit of the unit holders and, to such extent as may be appropriate, other members of the strata community.

### Boundaries - who owns what, and what is common property..

**Section 5 pt 5:** Subject to any explicit statement to the contrary in a strata plan, the following principles apply to the **definition of a unit** by strata plan (a) where a boundary is defined by reference to a wall or fence - the boundary is the inner surface of the wall or fence; (*eg the owner owns the paint on the inside wall*)

(b) where a boundary is defined by reference to a floor - the boundary is the upper surface of the floor;

(c) where a boundary is defined by reference to a ceiling or roof - the boundary is the under surface of the ceiling or roof. (*i.e. the owner owns the paint on ceiling, the Corporation owns the roof space, roof, gutters etc.*).

### Section 5 pt 6: Common Property Comprises:

(a) any land or space that is not within a unit

(b) any pipe, cable, wire, duct or drain that is not for the exclusive use of a unit; (c) any structure that is not for the exclusive use of a unit installed before the deposit of the strata plan;

(d) any structure installed by a strata corporation as part of the common property;

(e) any other structure on the site committed to the care of a strata corporation as part of the common property.

### Benefit - when an owner pays for maintenance of common property..

Section 27(6) If the strata corporation carries out work that wholly or substantially benefits a particular unit or group of units, the corporation may, subject to any agreement to the contrary, recover the cost of that work as a debt from the unit holder or unit holders of the unit or units.

In the case *Hughes vs Strata Corporation* the Judge had to rule on Section 27(6) of the Strata Titles Act. This section allows the Corporation to recover costs for work on common property where it benefits an owner or group of owners.

The case revolved around repairs to cracked walls caused by heaving soils. The Corporation argued that the owner "benefited" from the works and therefore should pay.

The Judge ruled '*The repair will not benefit the applicants ... not putting them in some more advantageous position vis-a-vis any other unit holder*' This is a welcome ruling as Section 27(6) has led to many arguments between owners. The ruling makes it clear that reinstatement is not a benefit.

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For property managers needing more detailed advice and dispute resolution services we suggest they seek legal advice and or seek assistance from UnitCare Services as a consultant



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## ARTICLES OF STRATA CORPORATION

1. A Unit holder must:

(a) maintain the Unit in good repair;

(b) carry out any work ordered by a Council or other Public Authority in respect of the Unit.

(2). The occupier of a Unit must keep it in a clean and tidy condition.

2. A person bound by these Articles:

(a) must not obstruct the lawful use of the Common Property by any person;

(b) must not use the Common Property in a manner that unreasonably interferes with the use and enjoyment of the Common Property by the other members of the strata community, their customers, clients or visitors;

(c) must not make, or allow his or her customers, clients or visitors to make undue noise in or about any Unit or the Common Property and

(d) must not interfere, or allow his or her customers clients or visitors to interfere with others in the enjoyment their rights in relation to Units or Common Property.

3. A person bound by these Articles must not use the Unit, or permit the Unit to be used, for any unlawful purpose.

4. Subject to the Strata Titles Act, 1988, a person bound by these Articles must not, without the Strata Corporation's consent, keep any animal in, or in the vicinity of, a Unit.

5. A person bound by these Articles:

(a) must not park a motor vehicle in a parking space allocated for others or on a part of the Common Property on which is not authorised by the Strata Corporation; AND

(b) must take reasonable steps to ensure that his or her customers, clients or visitors do not park in parking spaces allocated for others or on parts of the Common Property on which parking is not authorised by the Strata Corporation.

6. A person bound by these Articles must not, without the consent of the Strata Corporation: -

(a) damage or interfere with any lawn, garden, tree, shrub, plant or flower on the Common Property, OR

(b) use any portion of the Common Property for his or her own purposes as a garden.

7. A person bound by these Articles must not:-

(a) bring objects or materials onto the site of a kind that are likely to cause justified offence to the other members of the Strata Community;

OR

(b) allow refuse to accumulate so as to cause justified offence to others.

8. A person bound by these Articles must not, without the consent of the Strata Corporation. display any sign, advertisement, placard, banner or any other conspicuous material of a similar nature. -

(a) on part of his or her Unit so as to be visible from the outside of the building; OR (b) on any part of the Common Property.

9 The occupier of a Unit may, without the consent of the Strata Corporation, paint, cover or in any other way decorate the inside of any building forming part of the Unit and may, provided that unreasonable damage is not cause to any Common Property, fix locks, catches, screens, hooks and other similar items to that building.

10. The occupier of a Unit used for residential purposes must not, without the consent of the Strata Corporation, use or store on the Unit or on the Common Property any explosive or other dangerous substance.

11. A person bound by these Articles:

(a) must maintain within the Unit, or on a part of the Common Property set apart for the purpose by the Strata Corporation, a receptacle for garbage adequately covered; AND

(b) must comply with all Council By-Laws relating to the disposal of garbage.

12. A Unit holder must immediately notify the Strata Corporation of:

(a) any change in the ownership of the Unit, or any change in the address of an owner: and

(b) any change in the occupancy of the Unit.