

# Who's Responsible?

A guide to common property



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## Introduction

Common Property is defined in the Strata Schemes (Freehold Development) Act 1973 as 'so much of the parcel as from time to time that is not comprised in any lot.'

Generally speaking, in most strata schemes, the lot owner owns the airspace and everything in it within the boundary of the unit. They don't own the main structure of the building.

The owners corporation is responsible for the repair and maintenance of common property.

This publication provides a list of items found within a building that could generally be considered common property. However, depending on the history of the building, renovations and by-laws, determining what is and isn't common property is a complex matter. In most cases you will need to refer to the strata plan and by-laws to determine who is responsible for repairs and maintenance.

ISTM recommends that you seek legal advice.

## How to use this publication

The tables on the following pages provide a general list of who is responsible – the owner (O) or owners corporation (OC) for repairs and maintenance. Additional information on each item can be found in Appendices 1 and 2.

### Disclaimer

The information provided above is provided as a general guide only. Actual cover is dependent on the prevailing insurance policy terms, conditions and exclusions that may apply with the insurer at the time of loss and applicable law from time to time.

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Type	Item	Who is Responsible?	Additional Information Appendix 1	Insurance Claimable Appendix 2
Balcony	Door flyscreens/Security door	O/OC	20	1
Balcony	Door, window & wall	O/OC	20	1
Balcony	Painting of Balcony Ceiling	O/OC	21	1
Balcony	Columns	OC	33	1
Balcony	Railings	OC		1
Balcony	Awnings	O/OC	18	1
Balcony	Tiles	O/OC	29	1
Balcony	Water leaking through wall	O/OC	20	4
Bathroom	Bathroom Cabinet and/or mirror	O		1
Bathroom	Blocked floor drain	OC		4
Bathroom	Burst pipe general	O/OC	8	1
Bathroom	Cracked bath/handbasin	O		1
Bathroom	Dripping "S" bend under sink	O		4
Bathroom	Ducting covering stack	OC		1
Bathroom	Exhaust fans	O/OC	6	1
Bathroom	hot water service - exclusive to a lot	O/OC	31	2
Bathroom	Leaking pipes under sink	O		2
Bathroom	Main stop cock to unit	OC		2
Bathroom	Plug and waste in bath	O	9	2
Bathroom	Shower Screen repairs	O		1
Bathroom	Toilet bowl	O		1
Bathroom	Toilet Cistern	O		1
Bathroom	Water leaking from bath	O	12	4
Bathroom	Water leaking from shower	O/OC	11	4
Bathroom	water leaking from shower taps	O		4
Bathroom	Water leaking through tiles	O/OC	11	4
Ceilings/Roof	Ceiling cornices	O/OC	28	1
Ceilings/Roof	Exhaust fans	O/OC	6	1
Ceilings/Roof	False ceilings	O/OC	24	1
Ceilings/Roof	Membranes	O/OC	30	2
Ceilings/Roof	Paintwork	O	13	4
Ceilings/Roof	Plastered Ceilings	OC	13	1
Ceilings/Roof	TV aerial	OC		1
Ceilings/Roof	Vermiculite Ceilings	OC		1
Courtyard	Fencing	O/OC	16	1
Courtyard	Pavers	O/OC	18	1
Courtyard	Guttering on townhouse	OC	35	1
Courtyard	Tree trimming/removal	O	18	3
Courtyard	Deck, pergola or steps	O/OC	18	1

Type	Item	Who is Responsible?	Additional Information Appendix 1	Insurance Claimable Appendix 2
Electrical	Air conditioning systems	O/OC	7	1
Electrical	Electric Garage Door Opener	O/OC	15	1
Electrical	Exhaust fans	O/OC	6	1
Electrical	fuses	O/OC	4	2
Electrical	hot water service - exclusive to a lot	O/OC	31	2
Electrical	hot water services -communal	OC		2
Electrical	Insinkerators	O		1
Electrical	Intercom handset	OC	36	1
Electrical	Intercom wiring	O/OC	1	1
Electrical	light and power wiring	O/OC	1	1
Electrical	light fittings	O/OC	5	1
Electrical	Light switches	O		1
Electrical	Power point socket	O/OC	1	1
Electrical	Smoke detectors	O/OC	3	1
Electrical	Stoves	O		1
Electrical	Telephone (additional wiring required)	O	2	1
Electrical	Telephone sockets	O		1
Electrical	Telephone wiring broken	O/OC	1	1
Electrical	TV (Foxtel wiring required)	O	2	1
Electrical	TV aerial	OC		1
Electrical	TV cabling	O/OC	1	1
Electrical	TV socket	O/OC	1	1
Entrance Door	Door locks	O/OC	19	1
Entrance Door	Entrance door automatic closer	OC		1
Entrance Door	Entrance door to lot	OC		1
Entrance Door	Keys, Security cards etc	O		3
Entrance Door	Security door repair	O/OC	15	1
Floor	Blocked floor drain	OC		4
Floor	Floor and wall tiles	O/OC	25	1
Floor	Mezzanines within lots	O/OC	34	1
Floor	Floorboards/Parquetry flooring	O/OC	26	1
Floor	Internal Carpet	O	13	4
Floor	Skirting boards and architraves	O/OC	32	1
Floor	Lino/vinyl/cork tiles	O		1
Floor	Linoleum	O		1
Floor	Magnasite Floor Base	OC		1
Floor	Pavers	O/OC	18	1

Type	Item	Who is Responsible?	Additional Information Appendix 1	Insurance Claimable Appendix 2
General	Built-in wardrobes/cupboards	O		1
General	Cracks in Walls	O/OC	23	4
General	Damage to common property by tenant	OC	27	1
General	Skirting boards and architraves	O/OC	32	1
General	Internal Paintwork	O	13	4
General	Ducting covering stack	OC		1
General	Carpets	O	13	4
General	Floorboards/Parquetry flooring	O/OC	26	1
General	Stairs in Lot	O/OC	34	1
General	Internal Doors	O		1
General	Keys, Security cards etc	O		3
General	Letter Boxes	OC		1
Kitchen	Burst pipe general	O/OC	8	1
Kitchen	Dishwasher	O		4
Kitchen	Dripping "S" bend under sink	O		4
Kitchen	Ducting covering stack	OC		1
Kitchen	Exhaust fans	O/OC	6	1
Kitchen	Floor and wall tiles	O/OC	25	1
Kitchen	Hot water service - exclusive to a lot	O/OC	31	2
Kitchen	Insinkerators	O		1
Kitchen	Kitchen cupboards	O		1
Kitchen	Leaking pipes under sink	O		4
Kitchen	Lino/vinyl/cork tiles	O		1
Kitchen	Linoleum	O		1
Kitchen	Main stop cock to unit	OC		2
Kitchen	Stoves	O		1
Parking	Carports	OC	14	1
Parking	Door controller button	O		1
Parking	Door hinge mechanism	OC		2
Parking	Electric Garage Door Opener	O/OC	15	1
Parking	Garage door lock	OC		1
Parking	Garage Doors	OC	14	1
Parking	Garage Door auto opening mechanism	O/OC	15	1
Parking	Garage Door auto remotes	O		3
Parking	light fittings	O/OC	5	1
Parking	Line marking	OC		1
Parking	Mesh between garages	O/OC	16	1
Parking	Water ingress into garage	?/OC	17	4

Type	Item	Who is Responsible?	Additional Information Appendix 1	Insurance Claimable Appendix 2
Plumbing	Blocked floor drain	OC		4
Plumbing	Blocked sewer	OC		4
Plumbing	Burst pipe general	O/OC	8	1
Plumbing	Damage to unit after water leak	O/OC	13	1
Plumbing	Dampness in a unit	O/OC	10	2
Plumbing	Dripping "S" bend under sink	O		4
Plumbing	Leaking pipes under sink	O		2
Plumbing	Guttering on townhouse	OC	35	1
Plumbing	Main stop cock to unit	OC		2
Plumbing	Plug and waste in bath	O	9	4
Plumbing	Toilet bowl	O		1
Plumbing	Toilet Cistern	O		1
Plumbing	Water ingress into garage	?/OC	17	4
Plumbing	Water leaking from bath	O	12	4
Plumbing	Water leaking from shower	O/OC	11	4
Plumbing	Water leaking from shower taps	O		4
Plumbing	Water leaking through tiles	O/OC	12	4
Windows	Cleaning outside	O/OC	37	4
Windows	Flyscreens	O/OC	15	1
Windows	Locks	O/OC	15	1
Windows	Repairs	O/OC	22	1
Windows	Sash cord replacement	O/OC	22	2
Windows	Seal to window	O/OC	22	4

1	<p>Any pipe, cable, ducting, plug or the like that is for the exclusive use of the lot, then if it breaks:</p> <ul style="list-style-type: none"> <li>• Within the lot – Owners responsibility</li> <li>• Outside the lot or in a wall, floor or ceiling that abuts to either common property or another lot – Owners Corporations responsibility.</li> </ul>
2	<p>If not installed on the registration of the strata plan then the owners corporation are not required to install them.</p>
3	<p>If the smoke detectors are stand alone and are not connected to a fire board in the building then they are Owners Responsibility, otherwise they are Owners Corporation.</p>
4	<p>If the fuse board is within the lot, then it is the owners responsibility. If the fuse board is in the meter room then it is the owners corporations responsibility.</p> <p><i>NOTE: Because the meter room is common property, we cannot prevent owners or occupiers gaining access to it. However, we are not required to give them a key. If requested for a key, you should inform them that if we give them a key and they electrocute themselves, we could be held responsible. However, they can get a key from Sydney Electricity or the electricity supplier in your area.</i></p>
5	<p>Normally light fittings are always the responsibility of the owner, except in occasions on the balcony where the strata plan details the upper height of the balcony as being less than where the light fitting is. E.g. The strata plan reads "The upper height of the balcony extends 2.3 metres above the concrete slab" and the light fitting is 2.5 metres above the concrete slab. Then the light fitting is in common airspace and is the responsibility of the Owners Corporation. In the situation where the light fitting is in a carport or garage of a lot but is connected to communal power, the responsibility to maintain it still falls with the owner of the lot except where the light fitting is installed to also illuminate other areas within the scheme.</p>
6	<p>If it is inside the lot it is the Owners responsibility. If it is mounted within "Structural cubic space" e.g. communal ducting or a false ceiling which is designed to carry communal pipes etc or outside the lot, then it is the responsibility of the Owners Corporation.</p>
7	<p>That part of an air-conditioning system that is inside a lot and for the exclusive use of that lot is the responsibility of the owner. Parts outside the lot are the responsibility of the Owners Corporation unless they are subject to a special by-law.</p>
8	<p>Normally burst pipes are the responsibility of the Owners Corporation. However, if a pipe is for the exclusive use of the lot, then if it bursts:</p> <ul style="list-style-type: none"> <li>• Within the lot – Owners responsibility (e.g. pipe in an internal wall feeding the shower)</li> <li>• Outside the lot – Owners Corporations responsibility (e.g. the lots hot water pipes but they are in the concrete floor)</li> </ul>
9	<p>The Plug &amp; waste is within the airspace of the lot and therefore the responsibility of the Owner to repair and maintain.</p>
10	<p>If dampness (e.g. mould) is occurring in a unit, it must be first determined where the water is coming from. If the dampness is coming from condensation from the inside, then it is the owner's responsibility. Common causes of this is:</p> <ul style="list-style-type: none"> <li>• kitchen cooking</li> <li>• use of clothes dryer</li> <li>• sleeping in bedroom without opening window (The average person expels 400ml of water each night while sleeping)</li> </ul> <p>In this case mould is normally more virulent in the colder months and would normally occur on a southern wall or on flat concrete roof. Also the mould would occur on the surface of the paint with no paint lifting. If it was coming from outside, then the paint would lift with white powder under the paint.</p>

11	The tiles on the floor or on a common wall that separates 2 lots or the lot from common property are the responsibility of the Owners Corporation. This includes the shower base. However, if the water is leaking through an internal wall, it is the responsibility of the owner. An exception is where water is leaking through the 2nd floor of a townhouse that was built prior to 1st July 1974. The tiles on the floor in this case are the Owners.
12	The seal/grouting around the top of the bath is in the owners responsibility to maintain unless the leaking seal/grouting abuts an external wall. The plug and waste under the bath is still within the lots airspace and therefore is the owners responsibility to maintain if water is leaking under the bath into the lot below.
13	<p>If damage is caused to a lot owner's property while the owners corporation are effecting a repair, the owners corporation are responsible to fix the damaged property. However, if the cause of the damage to the owner's property was not made when the owners corporation were fixing the problem; instead it was caused by the problem itself, then the owners corporation are not responsible to make good the owner's property unless the owners corporation can be deemed negligent. E.g.:</p> <ol style="list-style-type: none"> <li>1. A burst pipe occurs in a wall and the owners corporation have to knock a hole in the wall to fix it. The <b>owners corporation are responsible</b> to fix the hole and repaint the wall afterwards.</li> <li>2. A burst pipe occurs in a concrete slab. The owner's corporation fix the leak, but water stained the ceiling paintwork of the unit below. Here the <b>owners corporation are not responsible</b> to repaint the ceiling because it was not the fixing of the repair that caused the damage.</li> <li>3. A burst hot water service soaked the magnasite in a unit and the owners corporation had to take up the carpet to dry the magnasite. Once the magnasite had dried, the carpet could not be re-laid because it had shrunk. The <b>owners corporation would be responsible</b> for the carpet because the carpet was damaged because they had to take it up.</li> <li>4. With example 3, if the magnasite was not damaged, the <b>owners corporation would not be responsible</b> to dry out the carpet or replace it, if it shrunk because the damage to the carpet was not caused when the owners corporation were fixing common property.</li> </ol>
14	Normally always owners corporations responsibility to maintain, this includes the spring and hinge mechanisms unless they were installed by the owner under an exclusive use by-law
15	If they were there on the registration of the strata plan, then they are the responsibility of the owners corporation ( <i>The OFT takes the view that garage controller is classified as the lock and door closer for the garage door albeit it being electric. Therefore as with the main lock and door closer to a unit's entrance door being OC responsibility, so is the controller</i> ). However, if they were installed after by the owner, then they are the owner's responsibility.
16	<p>If they are shown as a thick line on the strata plan then they are deemed a common wall and the responsibility of the owners corporation. However, if they are shown as a thin, dotted or no line on the strata plan then they are treated in accordance with the Dividing Fences Act and are treated as follows:</p> <ol style="list-style-type: none"> <li>1. <b>Divides two lots.</b> Each owner is responsible 50/50</li> <li>2. <b>Divides one lot from common property.</b> The owner is responsible 50% &amp; the owners corporation is responsible 50%</li> <li>3. <b>Divides one lot from the adjoining property.</b> The owners corporation are responsible for 100% of its share.</li> </ol>
17	A garage by definition is not a liveable area. It is therefore exempt from compliance with the waterproofing standards for habitable use set by the Building Code of Australia, that it be impervious to water penetration. Unless there is some damage to common property that is causing the water penetration, the Owners Corporation are not responsible to ensure a garage area remains dry. <b>However, the owners corporation are responsible to stop water dripping on to a car and damaging the paintwork.</b>



18	<p>Most balconies, courtyards or garden areas attached to a lot have their vertical boundaries defined on the strata plan. E.g. <i>The stratum of the courtyards are limited to a depth of 3 metres below and except where covered to a height of 10 metres above the concrete ground floor of its respective adjoining lot.</i> Therefore anything within that area that is not shown on the strata plan as a thick black line and is for the exclusive use of the lot, they are the owners responsibility to maintain. This includes timber decking, awnings and pavers. Furthermore a tree growing in a courtyard is deemed to belong to the owner and they are responsible for all pruning, removal or damage caused from the tree irrespective of whether some of the branches extend beyond that lot.</p>
19	<p>Only the original lock or its subsequent replacement is the responsibility of the owners corporation. If any additional locks are installed, they are the responsibility of the owner. If the owner replaces the original lock with a lock that prevents the door complying with fire certification, if the owner refuses to replace it with a complying lock, the owners corporation can replace the lock and charge the owner as a debt (Section 63(4) SSMA).</p>
20	<p>If the strata plan was registered before 1 July 1974 the balcony wall including the windows and door and their working parts are generally part of the lot and the lot owner's responsibility for maintenance and repairs (unless there is a notation on the strata plan or the balconies are not shown on the strata plan).</p> <p>If the plan was registered after 1 July 1974 the balcony wall including the windows and doors and their working parts are generally common property and the owners corporation's responsibility (unless the strata plan says otherwise). With the exception to flyscreens and/or security doors where they were installed by an owner after registration of the strata plan.</p>
21	<p>Unless there is a notation on the strata plan limiting the height of the balconies stratum to a height less than the under surface of the balcony above. It is nearly always the responsibility of the owner. However, the owners corporation will normally include the painting of this area when the whole building gets repainted.</p>
22	<p>With the exception where #20 applies, the owners corporation are responsible for their repair &amp; maintenance.</p>
23	<p>Walls and doors that are on the boundary of the lot are the responsibility of the owners corporation to maintain. Internal walls and doors are the owner's responsibility. If cracks appear in an owners corporations wall and/or cornice and are less than 2mm thick, they are not deemed as damage and the owners corporation are not compelled to repair them.</p>
24	<p>If the false ceiling was installed on the registration of the strata plan and were there to hide communal piping, ducting or wiring etc then the owners corporation are responsible. Otherwise they are the owners responsibility.</p>
25	<p>Tiles on a boundary wall or floor are the responsibility of the owners corporation. All other tiles are the owners responsibility. The two exceptions are:</p> <ol style="list-style-type: none"> <li>1. The tiles on the 2nd floor of a townhouse that was built prior to 1st July 1974. The tiles on the floor in this case are the Owners responsibility.</li> <li>2. The tiles were laid by the owner and are subject to a bylaw.</li> </ol>
26	<p>Except for floor coverings laid after the registration of the strata plan, these type of floor coverings are the responsibility of the owners corporation.</p>
27	<p>The Department of Fair Trading has deemed any damage to common property made by either owners or tenants as being the responsibility of the owners corporation to repair. Unless the damage was deliberate, they deem this as normal wear and tear. An example of this is the marking of the walls in the stairwell after a tenant moves in.</p>
28	<p>Cornices are generally the responsibility of the owners corporation unless they abut a false ceiling or are attached to an internal wall.</p>

29	<p>Generally, if the tiles were there on the registration of the strata plan, then they are the responsibility of the owners corporation. If they were installed after by the owners then they are the owner's responsibility. However, always refer to the strata plan for a clear indication of the balconies boundaries. <b>Be careful when reading notations on the strata plan, in accordance with the court case "Seiwa Pty Ltd v Owners Strata Plan 35042", the following example only defines the upper boundary and not the lower boundary. "BALCONY LIMITED IN HEIGHT TO 2.5 ABOVE THE UPPER SURFACE OF THE CONCRETE FLOOR THEREOF EXCEPT WHERE COVERED". Any tiles attached to the concrete floor with the above notation on the strata plan would still be the responsibility of the owners corporation if they were affixed prior to registration of the strata plan.</b></p>
30	<p>Membranes on flat roofs are generally the responsibility of the owners corporation unless the building was registered prior to the 1st July 1974 and the roof area is part of the same lot which is underneath the roof. Furthermore it should be noted that if the owners corporation are responsible to maintain the membrane, then they are also responsible to make good any structure that has to be removed when repairing the membrane.</p>
31	<p>If a hot water service is inside a lot and for the exclusive use of that lot it is the responsibility of the owner. However if situated outside the lot it is the responsibility of the Owners Corporation unless subject to a special by-law.</p>
32	<p>Skirting boards and architraves are the owners responsibility unless situated on a common wall.</p>
33	<p>A strata plan will typically not show columns. They may exist within a courtyard or balcony of a lot supporting the balcony above or within the lot supporting the slab. Either way the columns are structural cubic space as they are supporting the structure of the balcony or slab which is common property. Note: a wall whether structural or not cannot be structural cubic space. For a wall to form common property it must be shown or referred to on the plan as common property. See definition of structural cubic space. <i>(cubic space occupied by a vertical structural member, not being a wall, of a building).</i></p>
34	<p>Stairs and Mezzanines within a lot are generally the responsibility of the owner corporation unless the Strata Plan was registered prior to 1st July 1974. The Strata Schemes Freehold Development Act 1973 defines a floor to also include a stairway or ramp.</p>
35	<p>Even though they may be within the boundaries of a strata lot the down pipes and attached drainage pipes are structural cubic space as they service the roof and gutters which are common property. Again this only applies provided the pipes were in place at the time of registration of the plan. To add further pipes at a later date requires the creation of an easement. Note: The rights of the Owners Corporation to gain access to structural cubic space within a lot are provided under Section 65 of the Strata Schemes Management 1996.</p>
36	<p>As intercom handsets are part of an integrated system and a faulty handset can affect the overall workings of the intercom system, handsets are deemed to be an owners corporation responsibility regardless of whether they are mounted entirely within the airspace of a lot.</p>
37	<p>Normally the cleaning of windows is the responsibility of the owner or occupier of the lot. However always check the by-laws; if the model by-laws have been used, by-law 11 has an additional clause included. <i>11(2) The owners corporation is responsible for cleaning regularly all exterior surfaces of glass in windows and doors that cannot be accessed by the owner or occupier of the lot safely or at all.</i></p>

# Insurance Appendix

In broad terms building policies issued by insurance companies extend to include owners fixtures and structural improvements in addition to common property considerations. The degree of cover is dependent upon the insurer and type of cover held. The broadest types of cover available in the market are accidental loss or damage policies. At the other end of the market are the cheaper defined events type covers.

## **For the purposes of this exercise it is assumed;**

- cover has been issued under an accidental loss or damage type policy
- a by-law does not exist making repairs for the item the responsibility of a unit owner
- the installations are not illegal
- the said items have suffered loss or damage as a result of accidental means
- maintenance, deterioration, corrosion or other specific policy conditions or exclusions are not applicable

## **Having regard for the assumptions noted above the classification rating of 1-4 can mean;**

- 1) The item forms part of the building for insurance purposes. Cover may be available against accidental loss or damage situations.
- 2) The item forms part of the building for insurance purposes however is unlikely to be covered having regard for maintenance issues. If however maintenance is not an issue i.e. fire damage, the situation could alter into a classification rating 1.
- 3) The item may not necessarily form part of the building for insurance purposes however could be covered in certain circumstances by a special or additional benefit under the policy.
- 4) Cover is unlikely. This is probably a maintenance issue or not insured property under the building policy.

Note - this classification rating is intended as a guide only. Actual cover is dependent on the prevailing policy terms, conditions and exclusions that may apply with the insurer at the time of loss.



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