



## STRATA TITLE SCHEMES: MAINTENANCE, REPAIRS AND TERMINATION

AUTHOR // IAN MCKNIGHT

Areas of vital concern in Queensland and New South Wales are the issues surrounding maintenance and repairs of strata titled buildings, and the possibility of termination of schemes in circumstances where there has been a failure to maintain the building or there is a need for redevelopment.

### MAINTENANCE AND REPAIRS

A body corporate has the duty of maintenance and repair of common property. This duty is a “strict” duty in the sense that it must be vigorously adhered to. A body corporate must not delay in affecting repairs.

Both states provide a regime whereby the owners of the lots fund maintenance and repair by way of levies. To ensure that there are adequate funds to meet the relevant responsibilities, proper budgets must be prepared and considered by the owners. In both states, there is a requirement that planning is carried out on a long term basis to ensure that there is adequacy of funds available when the need arises.

Queensland leads the way in ensuring that funding is provided on an adequate basis. It does this by the simple mechanism of requiring the establishment of an assets register. That register sets out all building elements of the scheme. Best practice would suggest its creation in New South Wales.

Developers have a responsibility in both states of ensuring that all plans and specifications relating to the scheme are handed to the owners at the commencement of independent management. It is suggested that the development and its ongoing

management could only be enhanced by the preparation of a plan of management relating to all elements of the building, which plan would include details of maintenance manuals, warranties and other recommendations regarding the proper upkeep and consequential repairs when necessary were made apparent. Such a plan would have the advantage of ensuring that the body corporate adhered to a proper maintenance program.

From an owner’s point of view, even though a plan of maintenance may not have been prepared by the developer, it is recommended that the body corporate undertake the preparation of such a plan. This could occur at any stage in the life of the management of the scheme.

The preparation of a plan of management would have the clear advantage of ensuring that a body corporate strictly adhered to the duty to maintain and repair. In addition, a consequential advantage would be that the owners provided sufficient funding on a regular budget rather than be confronted by an unexpected event which could lead to financial hardship.

### TERMINATION

The constraints of population increase and the need for urban renewal has prompted debate about facilitating a process whereby a scheme can be terminated. Both states have similar provisions whereby if the scheme was to be terminated by a vote of the owners, then in effect it must be passed by a unanimous resolution. There have been complaints that the bar is set to high.

In both states there is another avenue available to persons wishing to terminate a scheme. It is possible for an application to be made in the appropriate court to have the scheme terminated on a "just and equitable" principle.

To avail this principle, evidence would need to be obtained that there were circumstances in existence which made the continuance of the scheme not viable (for example, the building liable to significant repair costs and/or demolition) and there was no appropriate alternative to address the situation available. Such means may involve the demolition of the building and erection of a new and enlarged building. In circumstances where the individual units have been

rebuilt and/or increased in number, current owners would commercially benefit. There certainly should be no deleterious impact on owners in circumstances where the court was prevailed upon to make appropriate orders.

FOR MORE INFORMATION, PLEASE CONTACT:



IAN MCKNIGHT //  
Consultant

T 02 8235 1250

E [i.mcknight@clarkekann.com.au](mailto:i.mcknight@clarkekann.com.au)

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**ClarkeKann**  
LAWYERS

CLARKEKANN.COM.AU

**Queensland**

Level 7, 300 Queen Street  
Brisbane QLD 4000  
Australia

T // +61 7 3001 9222  
F // +61 7 3001 9299  
E // [ck@clarkekann.com.au](mailto:ck@clarkekann.com.au)

**New South Wales**

Level 4, 9 Castlereagh Street  
Sydney NSW 2000  
Australia

T // +61 2 8235 1222  
F // +61 2 8235 1299  
E // [ck@clarkekann.com.au](mailto:ck@clarkekann.com.au)