

Owners' Corporation Act

The definition of common and private property



THE DIFFERENCE BETWEEN PRIVATE AND COMMON PROPERTY – BASED ON THE OWNERS CORPORATION ACT (2006)

The [Owners Corporation Act 2006 \(OC Act\)](#) is a law in Australia that governs the management and ownership of properties that are part of a strata scheme. Strata schemes are multi-unit developments, such as apartment buildings or townhouse complexes, where the individual units are owned by separate parties but the common areas, such as hallways and gardens, are owned collectively.

The OC Act sets out the rights and responsibilities of both the individual owners and the Owners Corporation (also known as Strata Corporation or Body Corporate), which is the legal entity that represents all the owners. It provides a framework for the management of common property, including the maintenance and repair of common areas, and the establishment of an administrative fund to pay for these expenses. It also establishes the rules for the election of the Owners Corporation committee, which is responsible for making decisions on behalf of the owners and managing the day-to-day affairs of the Owners Corporation.

Additionally, the OC Act sets out the procedures for meetings of the Owners Corporation and the owners, and the decision-making process for the Owners Corporation and individual owners. It also contains provisions for resolving disputes between owners, the Owners Corporation, and strata manager.

Under the OC Act, there are two types of property within a strata scheme: private property and common property.

Private property refers to the individual lots or units that are owned by individual owners within a strata scheme. This includes the inside of the unit or apartment, as well as any balconies or patios that are exclusively used by the unit owner. The unit owner is responsible for maintaining and insuring their private property.

Common property, on the other hand, refers to the areas of the strata scheme that are owned and maintained collectively by all the owners. [S3 of the OC Act defines common property as land shown as common property on a plan of subdivision or a plan of strata or cluster subdivision;](#)

This includes areas such as hallways, elevators, common gardens, and other shared facilities. The Owners Corporation is responsible for maintaining and insuring the common property, and the costs of this maintenance are shared by all the owners in the form of strata fees.

To know whether an area is considered as common property, check your Plan of Subdivision.

Some Misconceptions:

There are several common misconceptions about private and common property in a strata scheme. Some of these misconceptions include:

1. Misunderstanding of what constitutes private property: Some owners may believe that areas such as balconies or patios that are exclusively used by their unit are considered private property. However, under the Owners Corporation Act 2006, any areas that are not specifically designated as private property in the

strata plan are considered common property, regardless of whether they are used exclusively by one unit owner. Make sure to check your plan of subdivision and the by-laws of your OC.

2. Believing that they have complete control over their private property: Some owners may think they can do whatever they want with their private property, but in reality, the Owners Corporation can impose certain restrictions on the use or alteration of private property in order to maintain the appearance and structural integrity of the building. What you can and can't do will be outlined in the OC's by-laws.
3. Believing that the Owners Corporation is responsible for all repairs and maintenance: Some owners may think that the Owners Corporation is responsible for all repairs and maintenance, but in reality, the Owners Corporation is only responsible for maintaining and repairing the common property, while individual owners are responsible for maintaining and repairing their own private property. There are some cases where the damage may have come from common property. Speak with your OC Manager to clarify if this is the case.
4. Believing that strata fees cover all costs: Some owners may think that their strata fees cover all the costs of maintaining and repairing the common property. In reality, strata fees cover only a portion of these costs. Special levies may be imposed to cover additional or unexpected costs.
5. Believing that they can't make changes to their private property: Some owners may think they cannot make any changes to their private property, however, in many cases, minor changes are allowed, but it may need permission and have to comply with building codes and regulations set by the Owners Corporation, or local government.

It is important for owners to understand the distinctions between private and common property, as well as their rights and responsibilities under the OC Act in order to avoid these misconceptions. The best way to make sure is to engage with your strata manager or owners corporation manager.

Your owners corporation manager is responsible for the day-to-day management of the property on behalf of the owners corporation. This can include tasks such as collecting and managing fees, arranging repairs and maintenance, and communicating with tenants and owners. They can also assist in resolving disputes between owners, and managing any insurance claims.

Overall, having a professional and dedicated strata manager can help ensure the smooth operation of the strata property, and can help protect the interests of the owners.

Building Insurance

Section 60 of the OC Act requires that an owners corporation must take out and maintain insurance for the building or complex, including common property, as well as any fixtures or fittings that are owned by the owners corporation. This insurance must include, but not limited to:

- The cost of reinstating or repairing the property in case of accidental damage.
- Public liability insurance.
- Insurance covering the owners corporation against legal liability in connection with the death of or injury to any person or damage to any property.

It's important to note that this requirement applies to owners corporations in Victoria, Australia. Other states and territories may have different laws and regulations regarding insurance for strata schemes and owners corporations. It's always important to check the specific laws and regulations that apply to your property.

Additionally, it is also required to disclose the insurance details to the members of the Owners corporation, making it transparent and accountable to the parties involved.

Building Insurance and Private Property

While the OC Act requires that Owners Corporations have insurance, these typically covers only the common property of the Owners Corporation, such as the building structure, shared amenities, and liability for injuries that may occur on the common property.

This insurance may not cover damage to the private property of individual unit owners. For example, if a unit owner's personal possessions are damaged by a fire in the building, this would not be covered by the Owners Corporation insurance. It would be the responsibility of the unit owner to have their own insurance coverage for their personal property.

Another example are burst pipes. If a pipe bursts in the common area of a building and causes damage to the walls, flooring, or other parts of the common property, the Owners Corporation insurance would likely cover the cost of repairs. However, if the pipe burst occurs within an individual unit and causes damage to the private property of a unit owner, such as personal possessions or improvements made to the unit, the Owners Corporation insurance would not cover those damages. The unit owner would be responsible for covering the cost of repairs and any damages to their personal property through their own insurance coverage.

It's always important to check the specific policy details and understand what it covers and what not, as the coverage may vary depending on the policy and provider.