

Managing property properly

Tree Problems in Sectional Title Schemes

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Residents in community schemes have many of the same property related problems as residents in traditional suburban homes, but they can be exacerbated by neighbours' closer physical proximity. Noise, tobacco smoke and cooking odours are some that spring to mind.

Some problems can be exacerbated because individuals have very strong emotional responses to them. Pets and trees are the ones that spring to mind here

The main problems with trees are encroachment, maintenance and removal, who performs these tasks and, crucially, who has to pay.

Encroachment includes overhanging branches that drop leaves or fruit, and roots that lift paving, damage drains or undermine walls. Trees cutting out light and sunshine are very often perceived as encroachment and although it is not encroachment – because we don't have a right to a view or to light – it can definitely be annoying!

Trees need maintenance, trimming and cleaning up and sometimes they need to be removed. Removing a large tree is expensive and disruptive to ordinary life in the neighbourhood.

The common law position is that if a tree on a neighbouring property encroaches on your property, either by overhanging branches or root ingress, you are entitled to ask your neighbour to trim the branches or roots and remove the off cuts. If the neighbour fails to do this, you are entitled to do it yourself, as long as you do not enter your neighbour's property to do so.

Sectional title legislation complicates this principle because the siting of a tree that needs attention governs who is responsible for the cost. There are two possibilities: the tree could either be on unregulated common property or on an exclusive use area.

If the tree is on unregulated common property, the trustees must decide what maintenance needs to be carried out, they will arrange it and the costs will be paid by the body corporate. If the tree is in an exclusive use garden, ultimately the trustees must make the decision as to what maintenance must be carried out, have it done and recover the cost from the owner holding the rights (this is assuming the maintenance is more than what could reasonably be considered "gardening").

It's worth mentioning here that although owners are obliged to allow access to their exclusive use gardens for the body corporate to perform maintenance, the maintenance must be at reasonable times and with reasonable notice.

The uncertainty comes when a tree in an exclusive use garden causes some kind of problem in a neighbouring exclusive use garden. Is it the two owners who have to resolve the matter, bearing

in mind their duty to keep the area neat and clean and their entitlement to gardening activities, or should the trustees get involved?

There are various parts of the Act that apply. Owners are required to keep their exclusive use areas neat and clean, and the body corporate is responsible for the maintenance of the common property. The Act prohibits an owner from using their sections or exclusive use areas in such a way as to cause a nuisance to the occupier of another section. If a polite request to the owner with the encroaching tree to remedy the problem yields no result, the trustees need to be informed so that they can attend to the matter on behalf of the affected own

Footnote from Compeg:

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