

## *Managing property properly*

### **Common property maintenance versus improvement and their authorisation** **By Anton Kelly**

As with some other aspects of sectional title scheme management, the distinction between maintenance of land improvement to the common property is not always crystal clear.

A rule of thumb could be: **maintenance keeps the common property in its original state of appearance and functionality**, while **improvements add to or upgrade it in some way**. The arguable point could be when some part of the common property reaches the end of its functional life and it makes more sense to replace it with something perhaps more modern, efficient and economical yet different. Is that maintenance or an improvement? The answer to this question is important because maintenance and improvements are authorized differently.

**Maintenance of the common property**, especially in schemes that have been running for a few years, should hold no surprises. The regular items are included in the budget and are dealt with routinely, long term items are also included in the budget and effectively saved for. There should also be a contingency amount in the budget that will cater for any maintenance item that could not be foreseen. The trustees normally have the discretion to authorise spending on these items.

**Improvements to the common property**, on the other hand, are not routine. The common property of a scheme is owned by all owners in undivided shares. One of the basic principles of co-ownership that all owners must agree to any significant change to their property, has been codified but made slightly less demanding in the prescribed rules.

The prescribed rules distinguish between **luxurious** and **non-luxurious improvements** but do not suggest any criteria for their definition. What makes an improvement luxurious or not will therefore depend on the individual scheme and will probably change from time to time, depending on the opinions of the individuals that own the units and the financial state of the scheme. A rule of thumb that can be applied to this quandary is, an improvement that is a "must have" is likely to be non-luxurious but one that is a "nice to have" is probably luxurious.

This uncertainty is unfortunate because while a non-luxurious improvement must almost always be authorised by a special resolution of the body corporate, a difficult thing to achieve, authorising a luxurious improvement always requires a unanimous resolution, an exceptionally difficult thing to achieve.

The trustees are entitled to suggest a non-luxurious improvement but there is a specified procedure that must be followed to get the authorisation. The owners must be notified of the trustees' suggestion. Must be fully informed of the financial implications and, if any owner requests a meeting to discuss the improvement, a meeting must be held and the special resolution taken at the meeting. If the resolution is not taken, the improvement cannot be made. There are two implications to this provision. The first is that if no owner requests a meeting within the required thirty day notice period, the meeting need not be held and no special resolution is required to authorise that particular improvement. The second is that this is one special resolution that must be taken at a meeting and cannot be taken by round robin.