

Where can I get more information on making a formal complaint?

- » NSW Fair Trading
www.fairtrading.nsw.gov.au
- » Consumer Trader and Tenancy Tribunal
www.cttt.nsw.gov.au
- » Australian Human Rights Commission
www.humanrights.gov.au
- » NSW Anti-Discrimination Board
www.antidiscrimination.lawlink.nsw.gov.au
- » Australian Centre for Disability Law
www.disabilitylaw.org.au

Who should pay for modifications?

Payment for modifications in strata schemes is not always clear. This is a general overview.

You, the owner, typically carry out and pay for:

- » Any work that is not on common property
e.g. modifications of internal doors and walls.
- » Any modifications to common property inside your unit *e.g. attaching a shower grab rail to a common property wall.*
- » Any modifications to common property outside your unit that only you will use *e.g. a ramp to your front door.* (Note that an exclusive-use by-law will need to be approved by the OC for such modifications.)
- » Maintenance of any modifications subject to an exclusive-use by-law.
- » Potentially, removing any modifications to common property you have paid for *e.g. a ramp to your unit if you sell and move out.*
- » Any expert reports the OC requests regarding modifications you propose.

The OC typically carries out and pays for:

- » Maintenance of common property outside your unit
e.g. fixing broken pavers at the building entrance.
- » Maintenance of common property in your unit
e.g. fixing windows.
- » Modifications or upgrades to common property that many or all owners can use, where the OC has voted to carry out these works, or where not upgrading would discriminate against a resident and the cost is reasonable *e.g. a ramp to the building entrance.*

The law is unclear at what point the cost of a modification becomes unreasonable (called 'unjustifiable hardship'). Unjustifiable hardship also includes, among other things, the potential cost of maintenance and the potential loss in property value (*e.g. if adding a lift reduces the privacy or amenity to the units*).

If you are prepared to, you can offer to pay for modifications to common property to overcome any unjustifiable hardship. While paid for by you, the works should be carried out by the OC.

This document is not intended to be a substitute for legal advice or guidance. The authors accept no liability for loss or damage arising from actions made based on the general information provided.

This information sheet should be read in conjunction with the document 'Home Modifications in Strata Properties' available from Leichhardt Council or the City Futures Research Centre at the University of NSW.



Never Stand Still

Built Environment

City Futures Research Centre

Organising home modifications in strata properties in NSW



When do I need approval from the owners corporation (OC)?

You need approval if you propose to:

- » Make any changes to common property *e.g. a ramp to your front door.*
- » Use common property differently during construction *e.g. parking a skip on the driveway or taking over a lift to transport materials.*
- » Disrupt other residents *e.g. creating noise or dust.*

Note that **common property** usually includes shared areas like courtyards, entranceways and stairwells, as well as windows, external walls, shared walls and waterproofing under your bathroom floor.

Some **strata schemes** have a special by-law requiring any building works to be approved by (or on behalf of) the OC. Ask a member of your building's executive committee or the strata manager for a copy of the by-laws if you are unsure.

How do I apply for approval from the OC?

You apply by writing and presenting a letter to a member of the executive committee. The letter must propose a motion, to be considered at a meeting of the OC (a 'general meeting'), that outlines the proposed building works or use of common property, preferably including drawings and clear specifications. If the motion passes, you have approval.

What about approval from the council?

Council and OC approvals are unrelated processes, and some modifications might need both. You or the OC need to get **development approval** from the council if you propose significant modifications like:

- » Major construction or excavation outside the existing building.

- » Changes to the internal layout of the building, particularly if it could affect escape during a fire; such as changes to staircases, adding or moving walls, or adding or moving a bathroom.
- » Changes to a heritage building, or changes in front of the building in a heritage conservation area.

Some minor modifications can be approved with a complying development certificate instead of development approval. Complying development certificates are quicker and cheaper, and can be issued by either the council or a private certifier. To find out if development approval or a complying development certificate is required, contact the council's duty planner.

Is it a different process if I'm renting?

People renting in a strata scheme need to obtain permission from their landlord to make changes either inside or outside of their unit. Their landlord (the property owner or agent) will then need to get any necessary approval from the OC.

Private landlords also have obligations under disability discrimination laws when providing residential accommodation. For example, refusing to allow you to make modifications could be considered discrimination, provided you cover all the costs, and can and will reverse the modifications before leaving the property.

What can I do if I'm having trouble getting approval?

1. Work with other owners and residents to find a solution that overcomes any concerns and suits everyone:
 - » Discuss alternative designs or modifications that would meet all residents' needs.
 - » Ask an occupational therapist to explain to other owners to why the proposed modifications are necessary for your safety and wellbeing.

- » Organise expert reports about the potential negative impact of the proposed modifications on the common property or other owners' lots and how these will be mitigated.
- » Offer to reduce the cost of the proposed modifications to the OC (but note that you should not feel that you have to do this).

2. If you still cannot get approval, explain to the executive committee and other owners that there are significant costs if they are found to be failing to fulfill their duties:

- » The OC has duties under state and federal discrimination laws.
- » If the OC does not make (or allow) reasonable adjustments to common property, this could be considered discrimination.
- » An OC is an unlimited liability corporation, meaning each owner has a share in fulfilling the corporation's duties, and is liable to pay a share of any costs of failing to do so (e.g. if an owner successfully sues the OC).
- » While the OC is required to have insurance for such events, if the OC cannot demonstrate that risks on common property have been identified and addressed, an insurer might refuse a claim.

3. If you still feel the OC is failing to fulfill its duties, then you can commence a formal complaint against it:

- » Apply to Fair Trading for mediation, and escalate this as far as the Consumer Trader and Tenancy Tribunal to find a resolution.
- » Apply to the Australian Human Rights Commission or Anti-Discrimination Board within twelve months of the discrimination happening and escalate this to the Administrative Decisions Tribunal or Federal Court.