

Common Property

Newsletter for professionals in the facilities management sector.



Falling Rocks



Edition: 25th November 2011

We have currently been asked to draft a letter to a property manager whose tenant has suffered some damage.

They occupy a strata complex which is situated next to a new development site. Something which many of us have experienced. One cool Wednesday morning, a rock fell from the construction site next door landing on the balcony and smashing a very expensive glass table.

The glass table is a small loss compared to what could have happened to a human life. What we found most incredible was that the builder next door felt that they had no liability in relation to the falling rock.

It is simple law that we owe a duty of care to avoid acts which could be reasonably foreseen as likely to injure a person or damage their property. This concept of negligence has been well tried and tested throughout the last 100 years. A builder could foresee that a rock could fall from any of their construction sites. Moreover that, if it did fall, it could cause enormous harm to people and to property. Hence, the builder next door is liable for the damage to the table.

A question now arises in the mind about whether it is a strata or a property management issue. This is often where strata management and property management intersect and no one really knows the answer to the question. It is the tenant's property that has been damaged and therefore the responsibility to take action could fall to the tenant. Nevertheless, the tenant's property was on Owners Corporation property and the Owners Corporation is responsible for maintenance and control of the common property. Therefore it is arguable that the Owners Corporation could be responsible for taking the action on behalf of the tenant.

In this case, it's not an issue. The landlord is happy to write to the construction company as a means of obtaining reimbursement for

Strata CPD

~~~~~  
**Full 12 points**

#### **SYDNEY CBD**

*Thur 1<sup>st</sup> Dec  
Commercial Leasing*  
**\$199**

#### **SYDNEY CBD**

*Fri 2<sup>nd</sup> Dec  
Strata Mgmt*  
**\$199**

#### **DEE WHY**

*Fri 2<sup>nd</sup> Dec  
Property Mgmt*  
**\$199**

#### **CASTLE HILL**

*Fri 9<sup>th</sup> Dec  
Property Mgmt*  
**\$199**

### **Upgrade to a Strata Licence**

*If you are an  
experienced Strata or  
Property Agent, you  
may be eligible to  
attend our 4 day Strata  
Licence course.*

their client. If the client had approached the strata manager, we believe that it could be completely arguable that the Owners Corporation should provide all the assistance that they could to the property manager in pursuing the damages claim. Remember, if the person had been injured on common property, the person can take action against the Owners Corporation and the construction site.

What we suggest in these circumstances is to keep the line of communication open between property managers and strata managers. It is clear that the tenant is the victim, not the landlord or the strata manager. If you focus on the objective of protecting the tenant, and these issues can be discussed, you have an opportunity of avoiding an action in which the Owners Corporation may become embroiled.

**Cheers,  
Bailey Compton  
and The team at ACP/Leverage!**



## **ARE YOU PUTTING ON NEW STAFF?**

**THE AUSTRALIAN GOVERNMENT WILL PAY  
YOU \$4000 EACH TIME!  
(Conditions apply)**

**Ask Belinda How**

**For more Common Property News  
or to make a comment you can**

**[Visit our Blog](#)**

**We specialise in all aspects of Strata,  
On-Site, Facility & Property Management!**

## **Certificate of Registration (Strata)**

~~~~~  
*Combination of self-
study together with
face to face courses
available.*
~~~~~

**1 day + Self-study**  
*Thurs 1<sup>st</sup> Dec*  
**Dee Why**  
**\$595**

**2 days + Self-study**  
*Mon 5<sup>th</sup> & Tues 6<sup>th</sup>  
Dec*  
**Castle Hill**  
**\$595**

**2 days + Self-study**  
*Mon 12<sup>th</sup> & Tue 13<sup>th</sup>  
Dec*  
**Gosford**  
**\$595**

**Weekend + Self  
Study**  
*Sat 10<sup>th</sup> & Sun 11<sup>th</sup>  
Dec*  
**Newcastle**  
**\$495**

**[2012 Course  
Calendar is now  
available for  
Download.](#)**

**Mortgage Broking  
& Finance Courses  
also available.**

**Call our friendly  
staff today to find  
a course near you!**

**1300 88 48 10**