

# Repairs, maintenance and replacement of capital items

**Note:** This information does not apply to common property in a strata scheme or association property in a community scheme. See the Strata and community scheme villages page on the NSW Fair Trading website.

Items of capital owned by the operator must be maintained by the operator. In most cases, the operator is responsible for the following:

- buildings and structures
- machinery or equipment used in the village
- the village infrastructure
- fixtures, such as built-in cupboards, stoves, hot water systems and floor coverings
- fittings, such as taps and light fittings
- furnishings, such as curtains and blinds
- non-fixed items, such as whitegoods, tables and chairs.

However, the operator is not responsible for:

- items owned by a resident
- any items that are part of or owned by a strata or community scheme.

## What are the operator's responsibilities?

The village operator is required to maintain the capital items for which they are responsible in a reasonable condition.

What is 'reasonable' depends on:

- the age of the item
- the prospective life of the item
- the money paid to the operator by the residents under a village contract.

If it is not practical or cost effective to maintain or repair an item, it may need to be replaced.

## Who pays for maintenance and repairs of capital items?

In most villages, the cost of maintenance and repairs is included in the recurrent charges paid by residents. Each year the operator will include amounts for capital maintenance and repairs in the village budget and provide a copy to residents. The budget must list the proposed items of work and their expected costs, and include any quotes obtained. See the Village budgets page on the NSW Fair Trading website for more information.

If the residents agree that some of their recurrent charges are to be put aside for longer term maintenance in a future financial year, the operator must set up a separate capital works fund to hold that money.

In general, examples of maintenance may include:

- cleaning carpets
- servicing air conditioners
- painting the village
- servicing the village bus
- fixing cracks in paths
- fixing leaky taps
- repairing stoves.

Recurrent charges and the capital works fund cannot be used to:

- substantially improve a capital item beyond its original condition or
- maintain or repair an item of capital that it would be more cost effective to replace.

## Who pays to replace capital items?

The operator pays for the cost of replacing capital items for which they are responsible. Examples include replacing carpets that have worn out or replacing hot water systems and stoves.

The operator must arrange and pay for the replacement of such items out of its own funds. Proposed annual budgets cannot include an allowance for replacing such items, either directly or through depreciation. There are some exceptions to this in villages where residents did not pay an ongoing contribution.

### Capital items in a resident's premises

From time to time an item of capital in a resident's unit, such as the hot water system or stove, may need to be repaired or replaced. Residents are not responsible for arranging for this (unless the resident owns the item).

A village operator is required to attend to residents' requests within a reasonable time. What is considered to be reasonable will depend on the circumstances and the nature of the repair. Residents and operators are encouraged to discuss and agree on when work should be done.

### Urgent repairs

Certain repairs must be treated as urgent including:

- a burst water service
- a blocked or broken toilet
- a serious roof leak
- a gas leak
- a dangerous electrical fault
- flooding or serious flood damage
- serious storm or fire damage
- a breakdown of essential services for hot water, cooking, heating or laundering
- a fault or damage causing an urgent safety or security risk.

For urgent repairs, the resident must notify the operator and give them a reasonable opportunity to carry out the work.

If the repair cannot be done in a reasonable time, the resident can arrange for the work to be done and the operator has to reimburse the reasonable costs. Any work arranged by a resident must be done by a person with the proper qualifications for the work, such as a licensed electrician or plumber. A resident can apply to the NSW Civil and Administrative Tribunal (the

'Tribunal') for orders if the operator does not reimburse them.

### Residents' responsibilities

Residents are required to notify the operator when an item in their premises needs to be repaired or replaced. If a resident causes damage (other than fair wear and tear) they may be required to reimburse the operator.

Residents are responsible for repairs or replacement of items they personally own, such as fridges, microwave ovens or an air conditioning unit the resident has installed.

In a strata or community scheme, the resident is responsible for fixtures and fittings they own, and the strata owners corporation or community association is responsible for common property or association property.

### What if repairs are not done?

If the operator does not maintain or replace items of capital they are responsible for when necessary, a resident can apply to the Tribunal. The Tribunal has the power to order the operator to carry out repairs, maintenance or replacement within a specified time. The Tribunal can also make an order as to whether work is 'maintenance' or 'replacement' if there is a disagreement between the residents and operator.

### Residents' alterations

Residents need the written consent of the operator before they can add or remove fixtures or make alterations to their premises.

The operator can refuse consent if there is a good reason. The operator may also impose reasonable conditions when giving consent. For example, a condition may be that the resident has to return the premises to the previous condition when they leave. Any conditions must be in writing as part of the consent or attached to it.

If the resident believes the operator is being unreasonable, they may apply to the Tribunal for orders permitting the work or changing the conditions of consent.

After a resident has added fixtures or fittings, they do not need the operator's consent to remove them, unless doing so would cause significant damage. The resident is responsible for having any damage repaired.

In a strata or community scheme village, residents do not need the operator's consent for alterations. However, there are rules under the strata and community scheme laws restricting changes that can be made to common property. Approval may be needed from the owners corporation or community association. See the Strata and community scheme villages page on the NSW Fair Trading website for more information.