

# Strata Titles (WA): Some reflections on the year in Strata



December 2022

**As 2022 draws to a close, I reflect on how lot owners can sometimes make assumptions that later give rise to unexpected situations. I hope you will find the reflections in this article based on actual case situations helpful in your life and for your responsibilities in a strata environment.**

## Making assumptions about the built form

One situation we were asked to consider was about a dispute over a driveway, which was very close to a lot owner's unit.

There was an exclusive use area for that lot that had been created along the driveway (but had no visible markings on it). The dispute was about how people were driving their vehicles over that exclusive use area.

The other lot owners found it inconvenient to keep their vehicles away from the exclusive use area. This was because the mature bushes and trees on the other side of the driveway encroached on the driveway. This forced drivers to drive over the exclusive use area.

To try to get some clarity on the issue, the parties checked the strata plan closely. It was the first time they had done so in many years. They discovered that the driveway had been incorrectly laid. It was too close to the lot owner's unit, thereby not allowing enough space for the exclusive use area.

The parties had assumed for years that the driveway had been laid correctly. In fact, it should have been laid further away from the lot (to enable proper marking out of the exclusive use area). However, the trees and bushes gave a different impression visually.

To rectify this issue, the bushes and trees would need to be removed to allow for the driveway to be dug up and realigned according to the strata plan.

The moral of the story here? Never assume that the boundary you see is the boundary in law.

## Getting angry before getting the facts

In another situation, a lot owner started to have disputes over a particular boundary line with their neighbours, thus angering them. The lot owner thought they were entitled to more of the land along the boundary line. The neighbours forcefully disagreed.

Relations deteriorated to the point where the lot owner could only communicate with their neighbours by email.

In the end, and to 'lay down the law', the lot owner engaged a surveyor. The survey showed that they were right; they were entitled to more of the land, as they said.

However, the same survey showed that they themselves were encroaching on the neighbours' lot a little further along the boundary. They were therefore also entitled to less of the land in that other section of the boundary than they had always believed.

The moral of this story? Get your facts right before you get angry at someone else's wrong!

## *'Never assume that the boundary you see is the boundary in law'*

## No free lunch

People sometimes make assumptions about what free benefits they might get from the structure of their strata complex.

One case we considered was where the strata owners thought that the strata company was responsible for repairing water damage to their balcony.



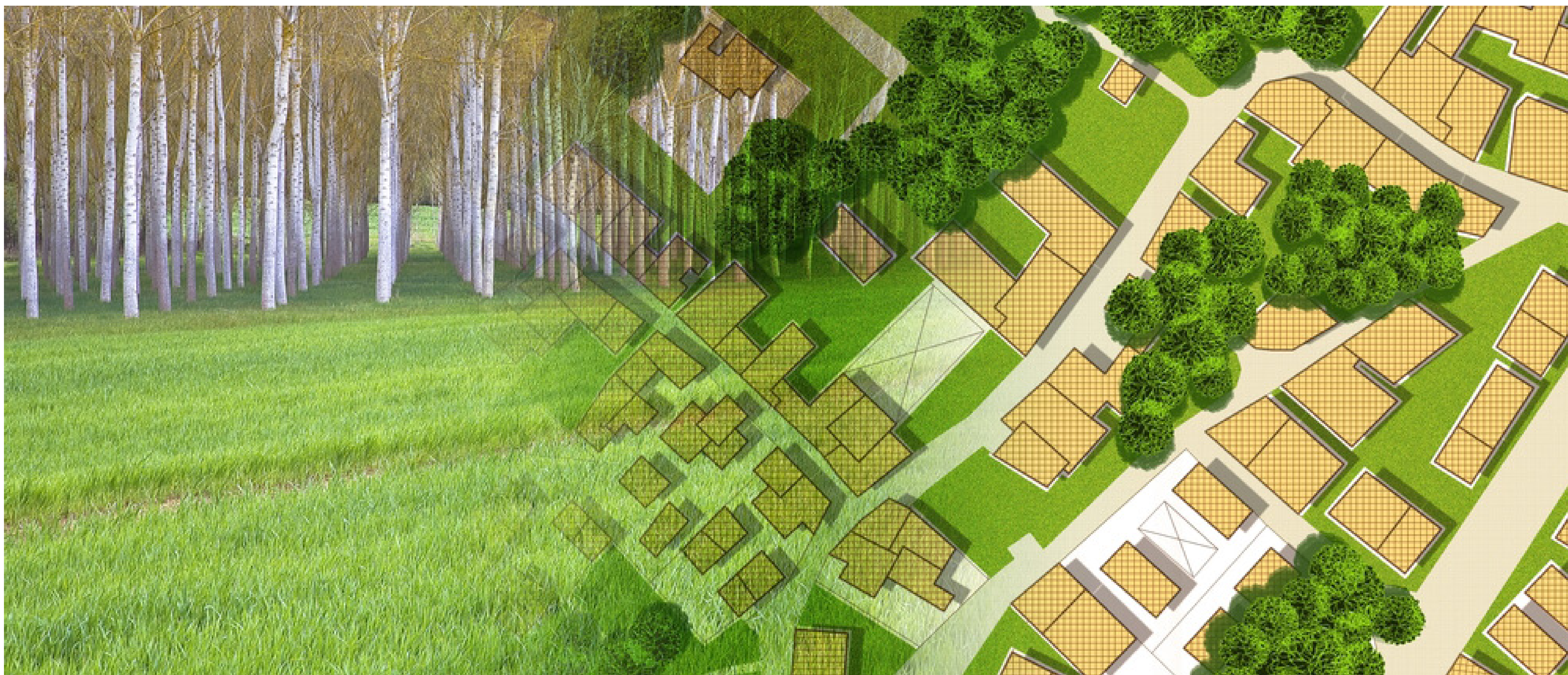


Image: Shutterstock/Francesco Scatena

The reason they took that view was that the by-laws stated that the balcony was common property.

On examining the by-laws carefully, they confirmed that the balcony of their property was indeed common property.

However, the by-laws also contained provisions that gave them exclusive use - which carried a corresponding obligation to maintain it.

The exclusive use was no 'free lunch'. They had to pay for the privilege!

### **Managing malice when managing common property**

It may seem clear-cut to assume that a council of owners can and should enforce the by-laws of the strata company.

In at least one case we saw recently, the council of owners was led by someone with a domineering personality.

They had strong opinions and were not good at listening, which resulted in tense interactions with some lot owners.

One lot owner complained about someone's laundry line not being in good repair and therefore in breach of a by-law.

After lodging the complaint, the complainant lot owner received a notice from the council of owners to clear their own balcony of clutter.

The lot owner interpreted the notice as being 'a payback' for their complaint.

There are at least three points to consider here. As the lot owner, be careful of jumping to the conclusion that the council is engaging in a personal attack on you, motivated by malice – just because you do not

like what it is asking you to do. They might just be doing what is correct.

Secondly, even if someone else is in breach of a by-law, that does not excuse you if you are in breach of the same or another by-law.

Thirdly, if you are on the council of owners, you create risks for your council, if you or others on it begin to let a sense of power dominate the thinking when performing the role on the council of owners. We have seen many disputes arise mainly because the council appeared to act more heavy-handedly than they needed to, thus generating more disputes than they needed to have.

## **Contact**

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