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## COMMON DRIVEWAYS— MAINTENANCE ISSUES

With the onset of urban infilling it is becoming more and more common where homeowners share drive on access with neighbours. Legally this can be set up in a number of ways including by way of an Easement Instrument or a classification as “common area” if there is a cross leasing arrangement.

Issues therefore arise in time when maintenance is required to the driveway area. The questions then needs to answered as to who is responsible?

In order to answer the question the first enquiry entails the land owner having a look at the legal document that sets up the right of way/or common area driveway. Sometimes those documents set out the rules as to who is responsible for maintenance and in what proportions.

If the document is silent and there is no maintenance provisions then you must rely on the provisions of the Property Law Act 2007 (“the Act”) S297 of the Act implies covenants to a vehicular right of way. In essence owners and occupiers who have the benefit of the vehicular right of way are to make a reasonable contribution towards the cost of maintenance.

While this all sounds good in

principle what happens if your neighbour puts their head in the sand and does not wish to contribute. They may not have the financial resources to make a contribution and as such try and avoid the problem.

S313 of the Act provides that an owner may make an application to the District Court seeking a contribution to maintenance from a neighbour who also enjoys the use of the vehicular right of way.

The difficulty with the legal option of course is that it is expensive and time consuming. The Applicant must obtain an expert report and place the evidence before the Court in order to satisfy a Judge that the maintenance is in fact required. Once the report is to hand an Applicant would also need to have a quote from a contractor as evidence as to the cost of the maintenance.

The difficulty for many applicants in this situation is that it may be more economic to simply pay for the maintenance yourself rather than look at legal options.

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