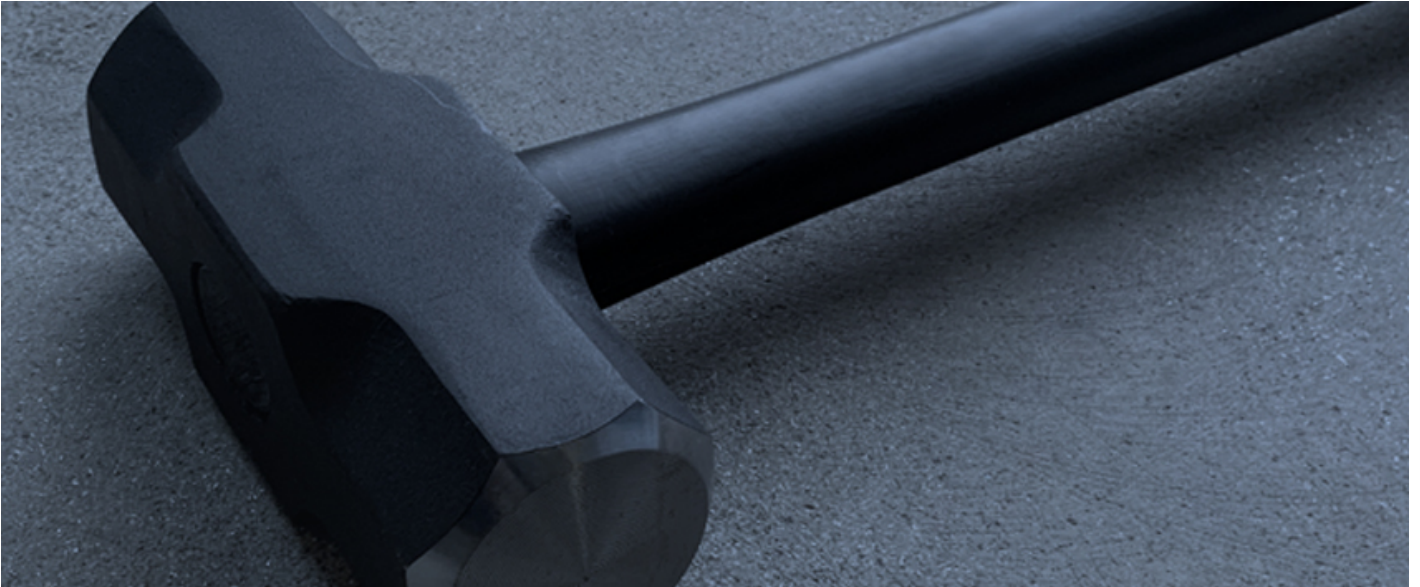




BREAKING BAD: THE CIVIL CONSEQUENCES OF BREAKING THE WRONG WALL

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An article in last week's [Standard](#) regarding the knocking down of a load-bearing wall at a LOHAS Park apartment spurred an interesting reaction to unauthorized building works and their legal ramifications. The transgression was first uncovered when a video posted on social media showcasing the renovation of the flat went viral. This video boasted of how “daring” such a renovator was in merging three rooms into one, and Netizens noticed a part of the load-bearing wall was demolished to achieve the transformation. This led to a [response](#) from the Buildings Department by investigation and issuing of a statutory order.

It transpired that a part of a 200mm thick structural wall, which was about 720mm wide by 2150mm high, was removed. The owner was required to appoint an Authorised Person to submit a remedial proposal, including an assessment of the overall effect on the building's structure due to the alteration works and proposed remedial works plans. On the criminal side, prosecution for breach of the [Buildings Ordinance \(Cap. 123\)](#) might ensue. And, on the civil side, one can also envisage multiple possible problems facing the owner, even if one rules out further structural damage to the building.

This is where mortgages are important. Most flat purchases in Hong Kong are funded by a mortgage, with the flat charged to a bank in return for a loan with a repayment term spanning years, if not decades. The mortgage terms invariably include prohibitions in respect of the property against the flat purchaser in protection of the bank's interest. These include assurances such as not to pull down, remove or alter any part of the property, do anything rendering any policy of insurance void or voidable, do anything which shall contravene the law, and do anything which may in any way depreciate, jeopardise or prejudice the value of the bank's security. Breach of such prohibitions would usually be an event of default, which could lead to the

bank's requiring immediate repayment of the full loan (known as "call loan") or failing repayment to enforce the mortgage by taking possession of and selling the property under O.88 mortgage actions. By usual terms of a mortgage, the flat owner will also have to indemnify the bank for any further cost for repairs and legal charges. The totality of the above could easily lead to bankruptcy.

The Deed of Mutual Covenant ("DMC") also needs to be considered. A load-bearing wall is listed in schedule 1 of the Building Management Ordinance, which means it will be a common part of the building, unless it has been expressly assigned to a flat owner for his exclusive use. As such, the act of demolition of a load-bearing wall would likely constitute a breach of both the DMC and s. 34(1) of [the Building Management Ordinance \(Cap. 344\)](#), which may lead to legal action by the management company/incorporated owners against the flat owner.

The final key point here is the potential difficulty in selling the flat. Any statutory order concerning unauthorized building structure issued by the Buildings Department will be a registrable instrument affecting land under the Land Registration Ordinance (Cap. 128), which will remain in place until the flat owner satisfies the Buildings Department that remedial works have been completed. Purchasers' lawyers would also check the flat against the title papers and spotting structural changes may challenge the flat owner's title pointing out the real risk of enforcement action by the authorities. This means any prospective purchaser will likely raise requisition as to title of the flat owner, the flat owner will not be able to show and give good title rendering any on-sale impracticable.

A flat owner in this situation is therefore stuck between a rock and a hard place. They cannot escape the problem by selling and clearly will have to commence remedial works as soon as possible to the satisfaction of the Buildings Department lest criminal consequences. However, this would not necessarily alleviate all the troubles. Remedial work takes time. The bank will be fully entitled to immediately call in the loan and the price of the flat will have likely depreciated irrespective of remedial works. The publicity also affects prices of units of the same building.

Moral of the story? Hire the right renovator, don't break the wrong wall, and don't boast about it on social media if you did.

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