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NSW Consumer Protection Agency

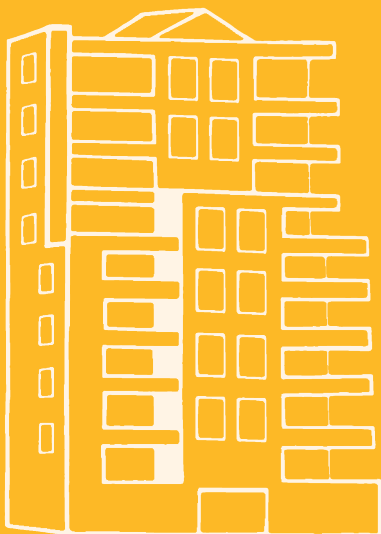
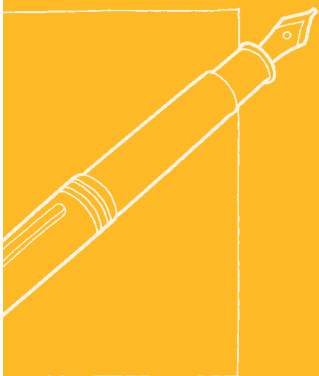
Department of Commerce

Changes to strata laws

Commencing
February 2005

FT277

February 2005



A number of important changes to the *Strata Schemes Management Act 1996* and *Strata Schemes Management Regulation 1997* and related laws come into effect on 7 February 2005.

This brochure summarises the changes.

Special provisions for large schemes

Strata schemes with over 100 lots (not counting parking, storage or other utility lots) now have specific rules applying to them. These provisions apply **in addition** to each of the other changes explained in this brochure. The owners corporation of any scheme with 101 or more lots (excluding parking or utility lots) must now:

- have the scheme's financial accounts audited every year (to the requirements of the Australian Auditing Standards) before the annual general meeting
- specifically identify in the annual budget amounts expected to be spent on individual items
- obtain at least two quotations for any expenditure of over \$25,000
- give all lot owners at least 72 hours personal notice (which may be by email) of upcoming executive committee meetings
- give all lot owners personal notice (which may also be by email) of the decisions of the executive committee within seven days of the meeting taking place.

Other new provisions applying to large schemes are:

- Lot owners wanting to utilise a proxy vote at an owners corporation meeting must give the secretary the written proxy arrangements at least 24 hours before the scheduled meeting.
- Executive committees of large schemes are limited in what they can spend. Other than in the case of an emergency, the executive committee may not spend more than 10% above the budgeted amount for any item. Specific emergencies are described to include:
 - burst or blocked sewer pipes
 - serious fire or storm damage
 - electricity or security system failures
 - serious glass breakages.

However an owners corporation may lift the spending restrictions on its executive committee (either completely or just in relation to specific items) by passing a majority vote at a general meeting.

The following changes apply to *all* strata schemes, including those with over 100 lots.

Sinking funds

Owners corporations of all strata schemes, registered from 7 February 2005 have new sinking fund obligations.

When devising the annual budget each year, these schemes will be required to specifically plan ahead for the estimated sinking fund expenditure over the ensuing ten-year period. Levies will have to be set accordingly to meet the ten-year sinking fund estimates. In other words, owners corporations will need to work out the likely expenditure on items of a capital nature over the next ten-year period.

For new schemes, the first ten-year sinking fund plan must be on the agenda of the first annual general meeting (AGM) and completed by the next AGM. The plan must be reviewed within five years of the first AGM. However, there is flexibility for owners corporations to review their plan annually to facilitate a 'rolling' ten-year plan.

Sinking funds are intended to provide sufficient reserves for the long term maintenance and repair of the building as well as replacement of common property items. Expenditure on painting and replacement of guttering, roofing and fencing are examples of the items that sinking funds should provide for. The aim of the new provision is to ensure owners corporations better plan their finances to minimise the risk of having insufficient funds when, for instance, expensive building repairs need to be carried out.

Owners corporations will be required to have ten-year sinking fund plans in place for the entire life of the scheme. Sinking fund plans can be developed with independent expert assistance but this will not be compulsory.

Fire safety inspections

From 7 February 2005 it is the owners corporation's responsibility to arrange access to all parts of the building for the purpose of fire safety inspections. Owners corporations are subject to a penalty of up to \$2,200 for not complying with a notice given to them about access. However, an owners corporation can defend itself against prosecution if individual lot owners or tenants within a strata building refuse to give access after being requested by the owners corporation to do so, or are unable to be contacted.

Where there is a dispute about a lot owner or tenant not giving access, the owners corporation may apply to an Adjudicator for an order against the person in question. The Adjudicator has the power to order that access be provided for a fire safety inspection.

Strata managing agents

Transfer of management

A strata managing agent will not be able to transfer the management of a strata scheme to another strata management business without obtaining the approval of the owners corporation concerned. If a managing agent

sells his or her business to another agent, any continuing right to manage a particular strata scheme will be subject to the agreement of the owners corporation involved.

Delegation of functions

An owners corporation may choose to carry out all its own functions. However, when these functions are delegated to someone else there are limits on who can be responsible for certain tasks.

It is necessary to use the services of a strata managing agent if the following functions are to be delegated:

- the preparation of administrative and sinking fund estimates
- levying contributions
- receiving, receipting, banking, having custody of, and spending money (certain accountants can also be authorised to carry out these duties)
- taking out insurance
- conducting meetings and handling correspondence
- maintaining records
- arranging fire safety inspections
- ensuring compliance with occupational health and safety requirements
- entering into common property maintenance and service contracts
- arranging for section 108 inspections and section 109 certificates.

Appointment of managing agent by Adjudicator or Tribunal

From 7 February 2005 a Strata Schemes Adjudicator may appoint a strata managing agent to carry out some or all of the functions of an owners corporation under the following circumstances:

- the owners corporation is not functioning satisfactorily or not functioning at all, or
- the owners corporation has failed to comply with a requirement imposed on it by an order made under the *Strata Schemes Management Act*, or
- the owners corporation has failed to perform one or more of its duties, or
- the owners corporation owes a judgement debt.

The amendments also make clear that strata managing agents that hold a corporations licence under the *Property, Stock and Business Agents Act* may be appointed by an Adjudicator or the Tribunal to carry out functions of owners corporations.

Managing agents will no longer be appointed from a 'panel of nominees'. They will be able to be appointed as long as they have given written consent to the appointment.

An Adjudicator or the Tribunal may appoint a managing agent to carry out the functions of an owners corporation even when no application has been made by anyone for this purpose. Should an application be made on another issue (including an appeal to the Tribunal), and during consideration of the

matter it becomes evident to the Adjudicator or the Tribunal that the scheme is not operating satisfactorily, a managing agent may be compulsorily appointed.

Common property alterations and additions

From 7 February 2005, the owners corporation has the authority to do the following or to allow a lot owner in the scheme to:

- add to the common property
- alter the common property
- erect a new structure on the common property.

This removes previous uncertainty over this issue. The additions, alterations or new structures must be for the purposes of improving or enhancing common property and must first be approved by a special resolution at a general meeting of the owners corporation.

The question of ongoing maintenance for any alteration, addition or erection is to be addressed and if a by-law making a particular lot owner responsible is not made, the owners corporation becomes responsible for the ongoing maintenance.

Adjudicators can make an order to settle a dispute over the new powers of the owners corporation relating to alterations and additions to common property.

Executive committees

From 7 February 2005, the powers of strata executive committees will change, particularly in connection with commencing legal action on behalf of the owners corporation.

Legal action

In many instances, executive committees will no longer be able to commence legal proceedings or obtain legal advice on behalf of owners corporations. These matters will have to be decided by the owners corporation in a general meeting. However, some legal matters will remain within an executive committee's decision-making powers. Any legal matter involving anticipated expenditure of less than \$750 times the number of lots in the scheme or \$10,000, whichever is the lesser, will still be able to be dealt with by the executive committee. For example in a five-lot strata scheme the executive committee would be able to spend \$3,750 on legal matters. In a 200-lot scheme the executive committee would be limited to spending no more than \$10,000.

Other matters

In the event of a disagreement between an owners corporation and its executive committee on any issue, the decision of the owners corporation prevails. So, an executive committee cannot overrule the owners corporation it represents.

The issue of whether or not any limitations will be placed on the decision making powers of the executive committee for the coming year must be included on the agenda of each owners corporation annual general meeting. The owners corporation does not have to limit its executive committee but it must discuss the issue every year.

The owners corporation has the authority to dismiss some or all of its executive committee.

Legal action by owners corporations

Should an owners corporation wish to commence legal action of any type in its administration of the scheme, (including the obtaining of legal advice), where payment of money is involved, specific steps must be taken.

Firstly, the decision to commence legal action will often have to be approved by a general meeting of the owners corporation (by majority vote). Executive committees will not be able to make all decisions about legal action (see paragraph above headed legal action).

Secondly, where the estimated costs of legal action have been disclosed under the *Legal Profession Act* to the owners corporation this must be passed on to all lot owners and executive committee members within seven days of this information being given to the owners corporation.

Documents and information to be provided by developers

From 7 February 2005, 'original owners' of strata schemes (usually a developer) are required to hand over the following documents at the first annual general meeting of the owners corporation:

- development consents
- complying development certificates and related endorsed plans
- 'as built' drawings
- compliance certificates (within the meaning of the *Environmental Planning and Assessment Act 1979*)
- fire safety certificates
- warranties obtained or received relating to the complex and any building, plant or equipment
- occupation certificates
- sewerage line diagrams
- maintenance and service manuals
- depreciation schedules.

The maximum penalty for failing to hand over the necessary documentation has been increased from \$1,100 to \$11,000.

Owners corporation – powers and responsibilities

Several refinements have been made to the general powers and obligations of owners corporations. These are:

- All records (ie. financial accounts, minutes of meetings, correspondence etc) must be kept by owners corporations for a minimum of five years (previously,

retention periods ranged between one year and seven years, depending on the nature of the record).

- Before issuing a notice on a person to comply with a by-law, the owners corporation or its executive committee must pass a resolution that there has actually been a contravention of the by-law in question. The provision is to ensure that individual office-bearers do not issue notices to comply with by-laws without the action being authorised by the owners corporation. Managing agents may issue notices to comply with by-laws if they have been specifically delegated by the owners corporation to do so.
- Owners corporations will be able to accept verbal, electronic or written consent from a lot owner to permit a prospective purchaser to inspect records connected with the lot and the scheme. However, the prospective purchaser must still make a written application to the owners corporation for the inspection or certificate.
- Whenever an owners corporation takes out insurance for any purpose (whether mandatory or optional insurance), an approved insurer must be used (an insurance company authorised by the Australian Prudential Regulation Authority). Previously the requirement to use an approved insurer had only applied to mandatory insurance.
- Owners corporations have a specific power to grant, by special resolution, a licence to a lot owner to use common

property either generally (eg. a paved area for a cafe) or for a 'once only' purpose (eg. a roof garden for New Year's eve celebrations). Adjudicators have power to settle disputes over the granting of licences over common property.

- Owners corporations are obliged to notify those holding a priority vote of all meetings where there are agenda items where a priority vote may be exercised.
- Two-lot strata scheme schemes, if choosing to have their accounts audited, are not necessarily required to have the audit meet the Australian Auditing Standard.

By-laws

It has been made clear that a by-law may not be used by owners corporations in an attempt to extend powers beyond those given in the *Act* and that any such by-law is invalid.

Any exclusive-use by-law in place at the time of registration of the scheme, and that remain in place, must be disclosed to purchasers by vendors by a copy of the by-law being attached to the contract of sale.

Mediation of disputes

From 7 February 2005, the following types of disputes have been removed from the range of matters where mediation must be attempted before going to adjudication:

- applications for appointment of managing agents
- applications for interim orders or stays

- applications for variations or revocations of previous orders
- applications authorising acts in initial period
- applications about allocation of unit entitlements
- applications for imposition of civil penalties.

The Registrar has wider discretion to decide when any application for an order does not need to have prior mediation.

Mediated settlements are able, with the agreement of the parties concerned, to be ratified by an Adjudicator thus converting the agreement to a binding order.

Retirement village issues

In addition to specific retirement village information that must be given by the village operator, prospective residents of a village that is also a strata scheme, must also be given information about strata laws and the amount of any strata levies that would be payable by them.

The owners corporation must provide to a strata village operator details of the strata levies applying, if so requested by the operator.

Miscellaneous

The following miscellaneous reforms also take effect on 7 February 2005:

- An additional mandatory item for the first annual general meeting of an owners corporation is consideration of whether a caretaker is to be appointed.
- Treasurer's functions may be carried out by both members of CPA Australia and the Institute of Chartered Accountants in Australia.
- New regulation-making powers have been provided for in regard to the administration of large schemes and in regard to the exclusion of certain classes of strata schemes from the dispute-resolution mechanism of the *Strata Schemes Management Act*.
- Adjudicators and the Tribunal are able to vary previous orders for the purpose of correction, clarification or extending a time without a party necessarily having to make a specific application.

For more information

The Office of Fair Trading can give you more information about the laws applying to strata schemes. Contact the Office on 13 32 20 or visit the website at www.fairtrading.nsw.gov.au



13 32 20

For help on any fair trading issue call your nearest Fair Trading Centre or Government Access Centre or call the service listed below which is relevant to your inquiry.

Fair Trading Centres – call 13 32 20

Albury	Dubbo	Newcastle	Sydney
Armidale	Gosford	Orange	Tamworth
Bathurst	Grafton	Parramatta	Tweed Heads
Blacktown	Hurstville	Penrith	Wagga Wagga
Broken Hill	Lismore	Port Macquarie	Wollongong
Coffs Harbour	Liverpool	Queanbeyan	

Specialist services

Rental bond9377 9000 ..1800 422 021(*outside Sydney*)

Tenancy9377 9100 ..1800 451 301(*outside Sydney*)

.....9377 9099 (**TTY*)

Strata schemes9338 7900 ..1800 451 431(*outside Sydney*)

Aboriginal tenancy.....9377 9200 ..1800 500 330(*outside Sydney*)

REVS9633 6333 ..1800 424 988(*outside Sydney*)

.....1300 369 889 (**TTY*)

Business licences.....9619 8722 ..1800 463 976(*outside Sydney*)

Registry of Co-operatives and Associations

.....6333 1400 ..1800 502 042(*outside Bathurst*)

Consumer, Trader and Tenancy Tribunal (CTTT)

.....1300 135 399

TTY9338 4943

(*telephone service for the hearing impaired*)

Language assistance ..13 14 50

(*ask for an interpreter in your language*)

Office of Fair Trading

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www.fairtrading.nsw.gov.au

This brochure must not be relied on as legal advice. For more information about this topic, please refer to the appropriate legislation.