



## New Strata Legislation & Reform

---

As you will most likely be aware after extensive reviews and in consultation with the general Public, Local Councils and Industry groups, the NSW Government passed **new legislation** for the Management and Administration of Strata Schemes in New South Wales and this came into effect on 30 November 2016.

These three pieces of legislation, including the Schemes Management Bill 2015, the Strata Schemes Development Bill 2015 and the Strata Schemes Management Regulations 2016, represent the most significant reforms to Strata Title Law in NSW since 1973.

The majority of the new reforms did commence on 30 November 2016 with others to follow from 1st July 2017.

In total there are around 90 changes to current legislation that will impact on all stakeholders within the strata industry including Owners, Tenants, Business Operators, Managing Agents, Builders and Developers.

The following pages contain a summary of the more significant changes to the legislation and how these changes will impact the management and administration of strata properties.

Further information on the new strata laws can be found on Fair Trading's website.

[http://www.fairtrading.nsw.gov.au/ftw/About\\_us/Legislation/Changes\\_to\\_legislation/Major\\_changes\\_to\\_strata\\_laws.page](http://www.fairtrading.nsw.gov.au/ftw/About_us/Legislation/Changes_to_legislation/Major_changes_to_strata_laws.page)

## **Definitions and Terms**

Whilst the majority of the terms from the old 1996 Act are unchanged, some familiar terms have changed;

- The Executive Committee will now be known as the **Strata Committee**
- The Sinking Fund will now be known as the **Capital Works Fund**;

Also Compulsory Financial Audits are now required for any scheme with an annual budget of more than \$250,000, and

Large Strata Schemes (more than 100 lots) must have a minimum of 3 Strata Committee members.

## **Meeting Process**

There are a number of new provisions that will affect the conduct of Annual General Meetings (AGM) and meetings generally. These changes include:

### **(i) Timing of AGM (Annual General Meeting)**

The Owners Corporation is no longer required to conduct their AGM one month either side of the anniversary of their first AGM, but rather 'once' in every financial year of the scheme (*Section 18*).

### **(ii) Committee Nomination Process**

*Clause 5 Schedule 1* of the Management Act outlines a new committee nomination process for election to the **Strata Committee** of the Owners Corporation.

CI 5 - Nomination of candidates for election prior to meeting

1. The written notice of an annual general meeting is to include a call for nominations for members of the strata committee at least 7 days before the annual general meeting of an owners corporation.
2. Any owner, or any person entitled to vote at a general meeting of an owners corporation, may nominate a person for election as a member of the strata committee.
3. The nomination is to be made by written notice given to the secretary of the owners corporation or, in the case of the first annual general meeting, to the convenor of the meeting, that states the name of:
  - The person nominated, and the

person making the nomination and that the person nominated consents to the nomination.

4. The secretary must include the nomination in the notice of the meeting at which the election is to take place. Notice of any subsequent nomination is to be given by the secretary at the meeting.
5. A nomination may be made at any time before the election is held and may be made at the meeting.

**Note:** *An owner or a person may make a nomination even if the owner or person cannot vote because the owner is an un-financial owner.*

### **(iii) Summary Financial Statements**

The Owners Corporation is no longer required to include detailed financial statements in the Notice of the AGM however must provide statements of 'Key Financial Information'. The format of the financial report is detailed by *Form 2 of Clause 10 Schedule 3* of the Management Act which stipulates;

- Name of fund: Reporting period:
- Balance carried forward from previous reporting period:
- Total income received during reporting period:
- Total interest earned by fund during reporting period:
- Total contributions paid during reporting

period:

- Total unpaid contributions payable for reporting period:
- Total expenditure for maintenance during reporting period:
- Total expenditure for administration costs during reporting period:
- Balance of fund at end of reporting period:
- List of principal items of expenditure proposed for next reporting period
- In the event a scheme issues summary financials an owner may request detailed financials from the Owners Corporation. The Owners Corporation must provide a copy at least 2 days before the meeting. (*Schedule 1, Clause 10 – Management Act*).

#### **(iv) Tenant Participation**

Tenants will be entitled to attend meetings of the Owners Corporation and must be provided with a copy of the agenda of the meeting at least 7 days prior to the meeting. Service of the notice may be done by placing a copy of the agenda on the common notice board.

Tenants will not be entitled to vote at meetings (unless they are a duly appointed Proxy) and will not be entitled to address the meeting unless invited to do so by the owners (*Section 21(3)*).

The Owners Corporation may determine that tenants are not allowed to be present when discussing a motion of a financial nature.

#### **(v) Tenant Representatives (Section 33)**

Where the Owners Corporation has been notified that more than half of the lots in the scheme are occupied by tenants, the Owners Corporation must conduct a meeting of the tenants for the purposes of nominating a representative for the Strata Committee.

The tenants meeting must be conducted 14 days prior to the AGM of the Owners Corporation. (*Clause 7, Strata Schemes Management Regulations 2016*).

#### **(vi) Inclusion of Additional Motions**

An owner or person who is entitled to vote may submit motions for inclusion on the agenda of the next general meeting. The motion must state the person's name and be accompanied with a brief explanation (no more than 300 words).

An owner or person entitled to vote may now make a request for a motion to be included on the agenda, even if the person cannot vote because they are un-financial (*Clause 4, Schedule 1 of the Management Act*).

#### **(vii) Service of Notices**

An owner will now have the option to provide the Owners Corporation with an **email address** for the service of notices (*Section 261 – previously a By-law was required*)

#### **(viii) The A.G.M. Agenda**

There are several new statutory motions that Owners Corporations will be required to consider at their AGM's including;

- A motion to consider how to handle overdue levies
- A motion to review the 10 Year Capital Works Fund Plan
- A motion to consider the Annual Fire Safety Statement (if applicable)
- Until the end of the warranty period, a motion to consider building defect rectification
- If a Strata Managing agent is appointed, a motion to consider a report from the agent regarding 3rd party commissions or training services that have been provided during the year

#### **(ix) Quorum Requirements**

If no quorum is present after 30 minutes of the commencement of the meeting, the chairperson may delay the meeting for 7 days or declare that those owners present constitute the quorum for the meeting. (*Clause 17, Schedule 1 – Management Act*).

**(x) Limitations on Number of Proxies Held**

The total number of proxies that may be held by 1 person will be limited to;

- If the Strata Scheme has 20 lots or less, 1 Proxy
- If the Strata Scheme has more than 20 lots, 5% of the total number of lots. (Clause 26, Schedule 1 – Management Act).

**(xi) Alternative Means of Voting & Electronic Voting**

Clause 14 & 15 of the Regulations that accompany the Act specify new methods that Owners Corporations may adopt for voting at meetings, these include;

- Tele or Video Conferencing, email or other electronic means if you are participating at the meeting from a remote location, or
- Owners may vote prior to the meeting via electronic means, such as a website or email<sup>\*\*</sup>

**\*\*Strict rules apply.**

**(xii) Secret Ballots**

Clause 29 of Schedule 1 of the Management Act specifies that either the Strata Committee or at least 25% of persons entitled to vote on a motion can determine that a vote on a particular motion or motions can be conducted by secret ballot.

**(xiii) Distribution of Minutes**

Clause 22 of Schedule 1 of the Act specifies new time frames and parameters for the distribution of minutes of a general meeting, being;

- Within 14 days after a meeting, the owners corporation must provide copies of the minutes of the meeting in the following manner:
  - a. by giving each member of the strata committee a copy,
  - b. by giving each owner a copy, if the strata scheme is not a large strata scheme,
  - c. by giving an owner a copy, if the strata scheme is a large strata scheme and the owner requests a copy within the period of 14 days.

**(xiv) Conflicts of Interest**

Members of the Strata Committee must disclose any potential conflicts of interest and any pecuniary interest in a matter to be considered at a meeting of the committee and, unless the committee otherwise determines, must not be present for any deliberations on the matter or vote on the matter (Clause 18, Schedule 2).

Clause 14 of Schedule 1 specifies that a developer of a new scheme will not be entitled to vote or exercise a proxy vote on a matter concerning building defects or rectification to which Part 11 of the Act applies (see further comments below).

## **Levying & Debt Recovery**

### ***i. Levy Notices***

Section 83(3) of the new Act obligates the Owners Corporation to issue levy contribution notices with a minimum 30 days' notice prior to the due date of the levy. This includes Special Levies, meaning Owners Corporations will have to be far more vigilant when budgeting and monitoring cash flow.

### ***ii. Debt Recovery***

Section 86 of the Act imposes far stricter provisions for Owners Corporations wishing to commence legal action for the pursuit of levy arrears. Prior to initiating legal proceedings the Owners Corporation **MUST** provide an owner with 21 Days written notice of a Pending Action. The notice **MUST** Specify;

- the amount of the contribution, interest and costs to be recovered;
- the recovery action proposed;
- the date the amount was due to be paid;
- the manner in which the amount may be paid;
- whether a payment arrangement may be entered into; and
- Any other action that may be taken to arrange for payment of the amount.

### ***iii. Payment Plans***

Section 85(5) now allows an Owners Corporation to enter into a payment plan with owners who were in arrears with their levies, but only if;

- It is passed by a resolution of the Owners Corporation
- It is limited to 12 months

\* *Clause 18* of the Regulations specifies the terms and conditions of a payment plan.

## **By-Laws**

With the introduction of this new Act there have also come many by-law reviews and additions. These new model by-laws will apply to **new developments** (i.e. those registered by the commencement of the Act, 30<sup>th</sup> November 2016).

However, these new By-laws **may be adopted by existing Owners Corporations**.

**Clause 4 of Schedule 3** of the Act imposes an **obligation on all schemes to review their By-laws within 12 months of the operation of the Act**.

The new Model By-laws include more flexible options for residents to keep pets and options to prevent smoke penetration into lots.

**Note: For existing schemes, any Special By-laws that have been passed will remain in force.**

## **Strata Managers**

Section 60 of the Act obliges Strata Managing Agents who receive 3rd party commissions or training services during the year to report the amount of commission received or value of training services at each Annual General Meeting, as well as an estimate of the commissions or training services that may be received in the ensuing year.

The maximum term of appointment of a Strata Managing Agent at a First Annual General Meeting will be 12 months and thereafter 3 years.

Owners will have the ability to apply to the NSW Civil and Administrative Tribunal (*N.C.A.T.*) for the termination or variation of a Strata Managers or Building Managers contract.

### **Maintenance of Common Property**

The Owners Corporation will still bear the ultimate responsibility to repair and maintain common property however, with the introduction of *Subclause 5 in Section 106 of the Act*, Owners may recover from the Owners Corporation any reasonable costs for failing to properly repair and maintain the common property.

There have also been new sections added to the Act to assist Owners Corporations in administering the repair and maintenance of the common property, these include;

- The ability for the Owners Corporation to adopt a *Common Property Memorandum* that specifies whether a lot owner or Owners Corporation is responsible for repairing and maintaining any part of the common property (*Section 107*).
- Definitions of Cosmetic Works that owners may complete without requiring the permission of the Owners Corporation; (*Section 109*)
- Definitions of Minor Renovations that require a majority vote approval from the Owners Corporation at a general meeting.

### **Collective Sale and Renewal**

The previous Act allowed for the termination of a strata scheme under certain circumstances, such as, when there is unanimous support from all owners for the property to be sold or re-developed.

By establishing a process for *Collective Sale and Renewal*, lot owners will be able to realise the full potential of their strata building and make their own decisions in a democratic and transparent way.

Importantly, the process will involve many checks and balances such as:

- compensating lot owners with at least the market value of their lot plus moving costs, as detailed in the *Land Acquisition (Just Terms Compensation) Act 1991*
- referring renewal plans to the Land and Environment Court for final consideration
- establishing a free NSW Government advice service for all owners in addition to a free advocacy program to assist vulnerable owners.

### ***Steps for Collective Sale and Renewal***

There are several stages that strata schemes will need to follow as part of this process.

#### ***i. Vote to opt into the process***

The new process will apply only to existing schemes if the owners corporation agrees to opt in. If the majority of owners (50% or more) don't support the decision, no further action can be taken.

#### ***ii. Begin the collective sale/renewal process***

A proposal to sell or redevelop a scheme must first be considered by the strata committee (currently known as the 'executive committee'). A general meeting of all owners is then called to consider the proposal.

### **iii. Form a Strata Renewal Committee**

If the majority of the owners (50% or more) agree to pursue a proposal, a *Strata Renewal Committee* is elected to investigate and develop the proposal. The committee can appoint professionals such as valuers, lawyers and tax experts to assist them.

### **iv. Develop a collective sale/renewal plan**

The strata renewal committee develops a plan that must set out certain information to help lot owners make informed decisions. The strata renewal committee, and the owners corporation will hold meetings to discuss and further develop the plan. The plan will need to address certain areas such as the amount that each lot owner will receive under a collective sale as well as the costs and liabilities that will be faced by the owners corporation, the proposed settlement date and arrangements for moving out of the building.

The plan must also include a full and detailed statement by the proposed purchaser or developer of their intended use of the strata parcel.

### **v. Consider the plan**

Owners will have a minimum of 60 days to consider the plan and seek independent advice. Owners in favour of the plan will sign a support notice, which will be given to the secretary of the Owners Corporation. ***The proposed plan will expire if it is not supported by 75% of owners within 12 months.***

The plan will list the compensation that is to be paid to each lot owner in dollar terms, as a formula (e.g. a percentage of the sale price) or in kind (e.g. a lot in the new building).

### **vi. Approval of the plan**

Plans for renewal will be referred to the Land and Environment Court for final consideration.

The Court will consider whether the process has been properly followed; and in the case of any disputes, these would be addressed initially through conciliation or mediation.

***The Court can reject a renewal plan*** if it was not developed in 'good faith' or due process was not followed.

The Court will also examine the amount to be received by each owner. For a collective sale or for dissenting owners in a renewal the amount must be no less than the compensation value of the lot, which is based on the principles used to determine *Just Terms Compensation*.

Importantly, the terms of settlement provided by the plan must be just and equitable.

- ***Advice for all owners and free advocacy and assistance for vulnerable owners***

The Office of Fair Trading will be establishing a Strata Renewal Advice and Advocacy Program. This program involves a **dedicated hotline** that all owners can ring for further information, advice and referrals. If a caller has specific issues they can be referred on to the appropriate agency, for example the Law Society.

## **Building Defects & Rectification**

For new strata schemes there are a number of changes that have been made to try and protect owners of **new properties** from **Building defects** and ensure that builders/developers take responsibility for statutory warranties.

For new developments that are completed after 30 November 2016, the original owner of a scheme must;

### ***i. Provide Records and Documentation***

The Strata Schemes Management Act already had requirements for the Original Owner to provide the Owners Corporation with relevant documents relating to the development, such as plans, specifications, occupation certificates etc, however there is a new obligation that these documents be delivered to the Owners Corporation 48 hours prior to the First Annual General Meeting (FAGM) and that the Owners Corporation acknowledge receipt of all plans, etc at the FAGM.

**(Section 15 and 16). The maximum penalty for non-compliance is \$11,000.**

### ***ii. Initial Maintenance Schedule (Section 115)***

There is also a new obligation for the original owner to supply an **Initial Maintenance Schedule** to the Owners Corporation at the *FAGM*. The schedule is to provide a guide to the owners regarding the upkeep and maintenance requirements of the common property. *Clause 29 of the Strata Schemes Management Regulation 2016* specifies the following;

CI 29 - Initial Maintenance Schedule: Section 115 of Act

The initial maintenance schedule for the maintenance of the common property of a strata scheme must contain maintenance and inspection schedules for anything that is on common property if the maintenance and inspection is reasonably required to avoid damage to the thing or a failure to function properly for its intended purpose.

Without limiting the matters to be included in the initial maintenance schedule, maintenance and inspection schedules must be included for the following:

- exterior walls, guttering, downpipes and roof,
- pools and surrounds, including fencing and gates,
- air conditioning, heating and ventilation systems,
- fire protection equipment, including sprinkler systems, alarms and smoke detectors,
- security access systems,
- embedded networks and micro-grids.

The following are to be included with or attached to the initial maintenance schedule:

- all warranties for systems, equipment or any other things referred to in the schedule,
- any manuals or maintenance requirements provided by manufacturers for any of those things,



## **Part 11 – Strata Schemes Management Act 2015 – Building Defects** **(commencing 1 July 2017)**

The Act has established a new part (**Part 11**) dedicated entirely to Building Defects and introduces two further procedures that the original owner (developer) of a new strata scheme will need to comply with.

### ***i. Inspection Reports***

Section 194 places an obligation on the Developer to obtain an Inspection Report on the Building from a qualified building inspector on behalf of the Owners Corporation.

- The Inspector appointed by the Developer must be approved by the Owners Corporation at a General Meeting.
- The Inspector CAN NOT be connected with the Developer nor have worked with the Developer at any time within 2 years prior to the appointment.
- If the initial period has expired within 12 months of the completion of the building, an Interim Report must be provided by the inspector not earlier than 15 months and not later than 18 months after the completion of the building work.
- If the initial period has not expired within 12 months of the completion of the building the developer must notify the Secretary of the Department of Finance, Services and Innovation.
- The interim report must be in a format identified by the regulations and where possible identify the cause of the defective work.
- A final inspection and report must be prepared not earlier than 21 months and not later than 2 years after the completion of the building work.
- The final report must identify defective work identified in the interim report that has not been rectified or not rectified satisfactorily.
- The final report must specify how the defective building work should be rectified
- The final report can only report on defects identified in the Interim Report
- The costs of all reports are to be borne by the developer
- An application may be made by the developer, Owners Corporation or Building Inspector for a variation to the time limitations imposed for the delivery of Interim and Final Reports.

### ***ii. Building Bonds***

Section 207 requires the developer to give a security or **Building Bond** to the Department of Finance prior to an occupation certificate being issued for the scheme

- The amount of the Bond is to be 2% of the contract price for the building work
- The purpose of the Bond is to secure finance for the payment of the costs of rectifying defective building work identified in the Final Inspection Report.
- The Building Bond can be a Bank Guarantee, a Bond or any form of security prescribed by the Regulations.
- The whole or part of the Bond may be claimed by the Owners Corporation to meet the costs of rectifying defective building work identified in the final report.
- The Bond must be claimed or released either 2 years after the date of completion of building work or within 60 days of the final report being issued.
- The Bond may only be used by the Owners Corporation for the rectification of defects identified in the final report. Any excess amounts must be repaid to the developer.

**Note:** *The obligation to obtain inspection reports or payment of a building bond DOES NOT apply to building work if the work is subject to the requirement to obtain insurance under the Home Building Compensation Fund in relation to the work or is not subject to that requirement only because the contract price does not exceed the amount referred to in section 92 (3) of the Home Building Act 1989.*

*These new provisions will take effect for Building Contracts that are entered into AFTER the commencement of Part 11, which is scheduled to commence on 1 July 2017 (Schedule 3, Clause 11 Strata Schemes Management Act 2015)*