

98 Riley Street Darlinghurst
NSW 2010
P: 02 8262 6100
F: 02 8262 6101
enquiries@lawyerschamber.com.au
www.lawyerschambers.com.au

New Strata Laws: Preparing for the Future

Presented by Amanda Farmer
for
The Owners Corporation Network

17 October 2016

History of Strata Law in NSW

- | | |
|---|--|
| 1. Conveyancing (Strata Titles) Act 1961 | 6. Strata Schemes (Leasehold Development) Act 1986 (a renaming only) |
| 2. Strata Titles Act 1973 | |
| 3. Strata Titles (Leasehold) Act 1986 | 7. Strata Schemes Management Regulation 2010 |
| 4. Strata Schemes Management Act 1996 | 8. Strata Schemes (Freehold Development) Regulation 2012 |
| 5. Strata Schemes (Freehold Development) Act 1973 (a renaming only) | 9. Strata Schemes (Leasehold Development) Regulation 2012 |

The six pieces of legislation numbered 4 to 9 above are **currently in force**.

These six pieces of legislation will be repealed and replaced on 30 November 2016.

The new law: out with the old, in with the new

The legislation which will take effect on 30 November 2016 is:-

1. Strata Schemes Management Act 2015
2. Strata Schemes Management Regulation 2016
3. Strata Schemes Development Act 2015
4. Strata Schemes Development Regulation 2016 (at the time of publishing this paper, this Regulation is still in *draft*.)

This paper largely deals with items arising under the Management Act and Management Regulation.

Litigation / Strata / Property / Commercial / Building and Construction / Estates / Local Government / Employment

Terminology changes

“Executive committees” are becoming “strata committees”.

“Sinking funds” are becoming “capital works funds”

“Exclusive use by-laws” are becoming “common property rights by-laws”.

These changes in terminology are designed to reflect more modern and flexible schemes. The new terminology automatically applies from 30 November 2016.

Meetings

Electronic attendance and voting

Meetings (whether general meetings or committee meetings) will be able to be held:

- By video conference (eg: Skype)
- By tele conference
- Email
- Other electronic means.

Attendees may vote electronically, using software specifically designed for the purpose. See for example: stratavote.com.au.

Buildings wishing to conduct meetings by video or teleconference, and to incorporate electronic voting, must resolve to do so. A majority vote in favour of the new regime is required.

Timing of the AGM

Under the new law, AGMs may be held at any time, as long as there is one AGM in each financial year of the building. This is a change from the current requirement that AGMs may only be held between 11 and 13 months from the anniversary of the last AGM.

Change to quorum rule

In the absence of a quorum for a general meeting, the chairperson may determine whether to proceed with the meeting, or adjourn the meeting for at least 7 days. This is a change from the current requirement that, in the absence of a quorum, the meeting must be adjourned. The new law provides for this to be a matter entirely within the discretion of the chairperson.

Email notices

The new law expressly confirms that a lot owners may provide an address for service of notices that is an electronic address only (eg: an email address). This means that correspondence between an owners corporation and its owners may be sent by email only. The current law provides that a by-law is required if correspondence, such as notices of meetings, is to be emailed.

Limit on proxies

There will now be a limit on the number of proxies one person can hold. In the case of buildings with 20 lots or less, one person may only hold one proxy. In the case of buildings with more than 20 lots, one person may only hold the number of proxies that is equivalent to

5% of the number of lots. For example, in a 100 lot building, one person may only hold 5 proxies.

Strata managers, secretaries and chairpersons who are used to having proxies directed to them prior to a meeting will need to establish their own procedures for how to deal with these proxies to ensure their compliance with the legislation. If time permits, proxies that are unable to be exercised should be sent back and the owner directed to appoint someone else so that they may still have their vote counted at the meeting.

Streamlined approval for owner renovations

There is now a three-tiered system:

- A. for cosmetic changes (like installing a picture hook, painting, laying carpet, installing or replacing built-in wardrobes) the owner will not need to seek approval. The by-laws can specify additional work which can be considered 'cosmetic'.
- B. for minor renovations (including kitchen renovations, installing hard floors, installing split system air conditioners, reconfiguring walls), an ordinary resolution at a general meeting is required (simple majority of those present and entitled to vote). The by-laws can specify additional work which can be considered 'minor'.

The by-laws may permit the owners corporation to delegate the task of approving minor renovations to the strata committee.

Before obtaining the approval of the owners corporation, an owner of a lot must give written notice of proposed minor renovations to the owners corporation, including the details of the work and any plans, the duration and times of the work, the details of the persons carrying out the work.

The legislation places responsibility on owners to ensure that any damage caused to any part of the common property by the carrying out of minor renovations is repaired.

- C. for renovations that change the external appearance of a lot or are likely to affect waterproofing or are structural changes, special resolution at a general meeting is required (75% of those present and entitled to vote, calculated on a unit entitlement basis).

The by-laws you have in place for your building as at the commencement of the new Act remain in force and continue to have full effect.

More on by-laws...

There is a new requirement in the new law that by-laws must not be "harsh, unconscionable or oppressive". This applies to any by-laws in place at the commencement of the new law.

Owners corporations are required to review their by-laws within 12 months of the commencement of the legislation (so, by 30 November 2017). A by-law review may reveal by-laws that require repeal, amendment or addition. This is an opportunity for owners corporations to consider whether any of their by-laws are "harsh, unconscionable or oppressive" or whether they might like to adopt any of the new model by-laws (some of which are referred to below).

The secretary of the owners corporation must keep a consolidated, up to date copy of the by-laws for the scheme.

Changes to the by-laws must be registered with Land and Property Information within 6 months of the resolution approving the change. This is a significant change from the current 2 year window.

Better parking control

There are more options for owners corporations to control unauthorised parking on common property:

- Enter into an agreement with the local council, pursuant to which the council installs signage and its inspectors patrol the area. Drivers must observe and comply with council's signs and directions, at risk of a fine.
- A motor vehicle left on the common property that is blocking an exit or entrance or otherwise obstructing the use of common property may be moved by an owners corporation.

The owners corporation must first place a removal notice on or near the motor vehicle. The notice must:

- (i) not be less than the size of an A4 piece of paper;
- (ii) be placed in a position or be in a material so that the contents of the notice are not likely to be detrimentally affected by weather;
- (iii) describe the motor vehicle and state the date and time the notice was issued;
- (iv) state that the motor vehicle will be removed if it is not moved from the common property, or so that it no longer obstructs common property, before the date and time specified in the notice (being not earlier than 5 days after the notice was placed on or near the motor vehicle); and
- (v) specify contact details for a member of the committee, the strata managing agent or a delegate of the owners corporation in relation to the notice.

If the requirements of the notice are not complied with within the period specified in the removal notice, the owners corporation may cause a motor vehicle to be moved to another place on common property or to the nearest place to which it may be lawfully moved, or moved so that it no longer blocks an exit or entrance or otherwise obstructs the use of common property. For that purpose the owners corporation is taken to be the owner of the motor vehicle.

The Tribunal may, on application by the owners corporation, order that the owner of a motor vehicle moved to another place, pay to the owners corporation the reasonable costs incurred by the owners corporation in moving the motor vehicle.

Abandoned Goods on Common Property

Where any goods are left on common property (other than motor vehicles - which are dealt with separately, per the above), the owners corporation may dispose of those goods if:

- (a) a **disposal notice** has been placed on or near the goods and the goods have not been removed from the common property within the period specified in the disposal notice,

or

- (b) they are perishable goods, or
- (c) they consist only of rubbish.

A **disposal notice** must:

- (a) not be less than the size of an A4 piece of paper, and
- (b) be placed in a position or be in a material so that the contents of the notice are not likely to be detrimentally affected by weather, and
- (c) describe the goods and state the date and time the notice was issued, and
- (d) state that the goods will be disposed of if they are not removed from the common property before the date and time specified in the notice (being not earlier than 5 days after the notice was placed on or near the goods), and
- (e) specify contact details for a member of the strata committee, the strata managing agent or a delegate of the owners corporation in relation to the notice.

If the goods are placed so that they block an entrance or exit, the owners corporation may move the goods to another place on the common property before placing a disposal notice on or near the goods, and for that purpose the owners corporation is taken to be the owner of the goods.

The owners corporation may dispose of the goods by selling them, or in any other lawful manner, and for that purpose is taken to be the owner of the goods.

A purchaser of goods sold by an owners corporation acquires a good title to the goods.

The proceeds of a sale of goods under this clause are to be paid to the administrative fund of the owners corporation.

The owners corporation must make a record of goods sold and keep the record for at least 12 months after the disposal.

The record must contain the following particulars:

- (a) a description of the goods,
- (b) the date of the sale,
- (c) the name and address of the purchaser,
- (d) if sold by auction, the address of the principal place of business of the auctioneer.

Measures to prevent overcrowding

Owners corporations can make a by-law limiting the number of people who can reside in a lot (but schemes must still allow no fewer than two adults per bedroom).

The by-law has no effect if all of the adults who reside in the lot are related to each other. The by-law cannot apply to children and cannot be inconsistent with the planning approval for the building.

In dealing with a contravention of this by-law, the Tribunal may impose penalties of up to \$5,500 for the first offence and \$11,000 for each and every subsequent offence detected

within 12 months of the imposition of the earlier penalty. These penalties are significantly higher than penalties for breaches of other by-laws.

Model by-laws about pets

New model by-laws no longer reference a ban on pets. The default option under the new model by-laws is that owners may keep an animal if the owners corporation is given written notice that it is being kept. This new model by-law will apply to new buildings registered from the commencement of the new law, where the developer has opted to adopt the model by-laws. Existing buildings can also take up the model pets by-law, by passing a special resolution and registering the by-law.

A by-law cannot ban an owner from keeping guide dogs and other assistance animals. A by-law may require a person who keeps an assistance animal to produce evidence to the owners corporation that the animal is an assistance animal as referred to in section 9 of the *Disability Discrimination Act 1992* (Cth).

Strengthening the ban on nuisance or hazardous smoke

Current strata law prevents residents from causing a nuisance or hazard that can interfere with another person enjoying their lot or common property.

These powers are strengthened in the new Act by specifically noting that smoking can be considered to be a nuisance or hazard.

New model by-laws prohibit a resident from allowing smoke to drift into another person's lot or into the common property, from their own lot. This new model by-law will apply to new buildings registered from the commencement of the new law, where the developer has opted to adopt the model by-laws. Existing buildings can also take up the model smoking by-law, by passing a special resolution and registering the by-law.

Increase in penalties

Under current strata law, residents who breach a by-law face a maximum fine of \$550 for each offence.

The new Act doubles the maximum penalty to \$1,100 for each offence.

If the Tribunal believes a person has breached a by-law within 12 months of the Tribunal issuing a fine for breaching the same by-law, the Tribunal will have the power to issue a fine of up to \$2,200 for each offence.

Fines will be payable to the owners corporation, unless the Tribunal instructs otherwise.

Legal services

An owners corporation or strata committee must not obtain legal services for which any payment may be required unless a resolution approving those services is passed at a general meeting of the owners corporation.

This requirement does not need to be complied with if:

-
- (e) the owners corporation or committee is of the opinion that urgent action is necessary to protect the interests of the owners corporation, **and**
 - (f) the cost of the legal services does not exceed \$15,000 (this amount is prescribed by the regulations and may change from time to time).

Approval is not required for:

- (a) obtaining legal advice before commencing legal action,
- (b) taking legal action to recover unpaid contributions, interest on unpaid contributions or related expenses,
- (c) legal services where the cost is less than \$3,000.

A failure by an owners corporation or the strata committee of an owners corporation to obtain an approval under this section does not affect the validity of any proceedings or other legal action taken by the owners corporation.

Increased involvement of tenants in the building

The owners corporation of a strata scheme where any lots are occupied by tenants must, at least 7 days before any general meeting:

- Give a copy of the agenda for the meeting to each tenant OR
- Where a notice board is required to be maintained under the by-laws, prominently display the copy of the agenda on the notice board.

Tenants may attend a meeting, but are not entitled to vote in their own right (they can vote as a proxy holder).

The owners corporation may determine that tenants (other than proxy holders) are not entitled to be present when the following matters are being discussed or determined:-

- Financial statements and auditor's reports
- Levying of contributions
- Recovery of unpaid contributions
- A collective sale or renewal proposal, or any related matter.

Lessors must give notice of leases to the owners corporation via a "tenancy notice", not later than 14 days after the commencement of the lease. The notice must include:

- the name of the tenant/s
- the tenant/s' address for service
- the name of any agent acting for the lessor.

If there are tenants for at least half of the number of lots in the scheme, the tenants may nominate one tenant representative to sit on the strata committee. The tenant representative is:

- Not entitled to vote or to put a motion or nominate a person for office; and
- Not entitled to act as an officer of the owners corporation; and
- Is not counted in determining the quorum.

If there are tenants for at least half the number of lots in the scheme, the owners corporation must hold a meeting of tenants. The purpose of the meeting of tenants is to nominate a person for the position of tenant representative on the strata committee. Notice of the meeting of tenants must be sent to tenants at least 14 days before the date of the Annual

General Meeting. The meeting of tenants must be held before the AGM. The meeting can be held at any time before the AGM, as long as tenants have received at least 7 days' notice of the meeting.

The convener of the tenants meeting (usually the secretary or strata manager with delegated authority), OR a tenant nominated by the tenants present at the meeting, is to chair the tenants meeting.

New rules for strata management agreements

Strata management contracts (or 'agency agreements') will now be subject to maximum 3 year terms. Where a strata manager is appointed at the First AGM, the maximum term is 1 year.

Automatic roll overs are no longer permitted. Once an agreement has expired, it can only be extended by resolution of the committee and then only for successive periods of three months, but not past the next AGM.

This change is retrospective, so if you're currently in the second year of a five year agreement, on 30 November 2016 the agreement is automatically shortened so it only has one year left to run, not three.

Where agreements are currently on roll over, on 30 November 2016 those agreements are automatically extended 6 months to give the owners corporation time to consider the terms of a new engagement.

More on strata managers...

NCAT will now have power to make orders about a strata manager's failure to perform. NCAT can also make orders about unreasonable or unfair payment terms. Applications for such orders can only be made by owners corporations, not lot owners.

Strata managers must disclose at each AGM the commissions that have been paid to them in the past 12 months, and that are likely to be paid in the upcoming 12 months (eg: insurance commissions).

There must be a motion on each AGM agenda to 'consider' the report on commissions by the strata manager. This probably presents an opportunity for owners corporations to elect to move to a 'fee based' system only, rather than approving their strata manager's continued receipt of commissions.

Regime for the collective sale or renewal of a building

Currently, a strata community can't decide to sell and redevelop their scheme without unanimous consent from all owners.

The new law permits 75% of owners to agree to sell or overhaul the building. The 75% calculation is based on the number of lots in the building. Unlike a special resolution, it is not a calculated based on unit entitlements.

Where at least 75% of lot owners agree to end their strata scheme, the new law requires all lot owners to receive compensation based on just terms. This will cover the market value for their property plus an amount to cover any loss caused by the disturbance. This includes legal and valuation costs and moving costs, as well as compensation for stamp duty.

Fair Trading is putting together “A Strata Renewal Advice and Advocacy Program” to provide targeted support for elderly and vulnerable owner-occupiers. It will include a dedicated hotline to provide advice and assistance to people and provide referrals to services including information on alternative housing choices.

Plans for renewing a scheme will be reviewed by the Land and Environment Court to ensure the process has been properly followed and is 'just and equitable' (eg. fairly compensating all lot owners and taking into account their needs in the plan's development, as well as enabling each owner to consider and seek advice on the plan over a minimum period of 60 days). The Court can resolve disputes and make minor adjustments to the plan, or reject it.



Amanda Farmer

(02) 8262 6100

amanda@lawyerschambers.com.au