

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: What Owners Need to Know

Presented by Amanda Farmer

5 April 2017

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

The legislation numbered 4 to 9 above was repealed and replaced on 30 November 2016.

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

The legislation which took 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

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

Terminology changes

“Executive committees” are now “strata committees”.

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

“Sinking funds” are now “capital works funds”

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

These changes in terminology are designed to reflect more modern and flexible schemes.

Meetings

Electronic attendance and voting

Meetings (whether general meetings or committee meetings) can now 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 previous requirement that AGMs may only be held between 11 and 13 months from the anniversary of the last AGM.

Explanatory notes for motions put forward by owners

If a person entitled to vote at a general meeting requires the owners corporation to include a motion on the agenda of the next general meeting, that person must give written notice to the secretary that:

- (a) sets out the required motion; and
- (b) states the name of the person making the requirement; and
- (c) includes an explanation of the motion of not more than 300 words in length.

The secretary must place the motion and explanation on the agenda of the next general meeting.

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 previous 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 previous law provided that a by-law was required if correspondence, such as notices of meetings, was to be emailed.

Limit on proxies

There is now 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.

Election of strata committee

The following people are eligible for election to the strata committee:

- (a) an individual who is a sole owner of a lot in the scheme;
- (b) a company nominee of a corporation that is a sole owner of a lot in the scheme;
- (c) an individual who is a co-owner of a lot, or a company nominee of a corporation that is a co-owner of a lot, if the person is nominated for election by an owner who is not a co-owner of the lot, or by a co-owner of the lot who is not a candidate for election to the strata committee.
- (d) an individual who is not an owner of a lot in the scheme, if the person is nominated for election by an owner of a lot who is not a member, or is not seeking election to the strata committee.

An individual who is a sole owner of a lot may self-nominate, and an owner that is a corporation may nominate the corporation's company nominee.

A sole owner may not nominate more than one person for election, unless that owner owns more than one lot. Owners of more than one lot may nominate one person for election for each lot they own.

Only one co-owner of the same lot may be a member of the strata committee at the same time.

Schemes with more than 100 lots ("large schemes") must have at least 3 committee members.

Strata committee meetings

Voting rights

A member of the strata committee is not entitled to vote on any motion if the member was, or was nominated by a member who was, unfinancial at the date notice of the meeting was given, and the amounts owed by the unfinancial owner were not paid before the meeting.

A tenant member of a strata committee is not entitled to vote on any motion put or proposed to be put to a strata committee.

Disclosure of pecuniary interests

If a member of a strata committee has a pecuniary interest (whether direct or indirect) in a matter being considered at a meeting, and the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter, the member must disclose the nature of the interest at a meeting of the strata committee.

Particulars of any disclosure made must be recorded by the strata committee in a book kept specifically for that purpose.

After a member has disclosed the nature of an interest in any matter, the member must not, unless the strata committee otherwise determines:

- (a) be present during any deliberation of the strata committee with respect to the matter, or
- (b) take part in any decision of the strata committee with respect to the matter.

Financial Matters

Auditing

Large strata schemes (more than 100 lots) must ensure that the accounts and financial statements of the owners corporation are audited before presentation to the annual general meeting.

Statements of Key Financial Information

An owners corporation must cause financial statements, and a statement of key financial information, to be prepared for each reporting period for the administrative fund, the capital works fund and any other fund kept by the owners corporation.

The "reporting period" is:

- (c) the period that commences on the date of registration of the strata plan and ends on a date that is not earlier than 2 months before the date of the first annual general meeting, and
- (d) each period that commences on the date up to which those statements were last prepared and ends on a date that is not earlier than 2 months before the next succeeding annual general meeting.

The statement of key financial information for an administrative fund or capital works fund must be set out as follows:

Statement of key financial information-capital works fund and administrative fund

Strata Schemes Management Act 2015

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:

Recovering unpaid levies

Owners corporations may enter in to payment plans with lot owners in respect of unpaid levies.

The payment plan must be in writing and contain:

- (a) the name of the lot owner and the title details of the lot
- (b) the address for service of the lot owner
- (c) the amount of the overdue contributions
- (d) the amount of any interest payable for the overdue contributions and the way in which it is calculated
- (e) the schedule of payments for the amounts owing and the period for which the plan applies
- (f) the manner in which the payments are to be made
- (g) contact details for a member of the strata committee or a strata managing agent who is to be responsible for any matters arising in relation to the payment plan
- (h) a statement that a further plan may be agreed to by the owners corporation by resolution
- (i) a statement that the existence of the payment plan does not limit any right of the owners corporation to take action to recover the amount of the unpaid contributions.

The strata committee must, at the request of a lot owner who has entered into a payment plan, give the lot owner a written statement for each calendar month (or any longer interval specified by the lot owner) of the plan that sets out the payments made during that month and the amount of unpaid contributions and interest owing.

At least 30 days' notice of levies due

Levies are due and payable to the owners corporation on the date set out in the levy notice. The date must be at least 30 days after the notice is given.

Regular contributions to the administrative fund and capital works fund (ie: not special levies) are taken to have been duly levied on an owner of a lot even though notice levying the contributions was not given to the owner.

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 does 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 had 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 previous 2 year window.

Adoption of common property memorandum

A scheme may specially resolve a by-law which adopts the ‘Common Property Memorandum’.

The Memorandum has been developed by Land and Property Information. It sets out, in general terms, whether a lot owner or the owners corporation is responsible for a particular part of the common property.

The Memorandum is available for purchase from the LPI Online Shop.

An owners corporation may, by way of by-law, modify the Memorandum, to stipulate that it does not apply to specified items, being items that are not common property or that are the subject of a separate common property rights by-law.

Parking

There are now 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 applies 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

Previous strata law prevented 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 legislation 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 applies 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 the previous strata law, residents who breach a by-law face a maximum fine of \$550 for each offence.

The new legislation 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 are 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:

- (a) the owners corporation or committee is of the opinion that urgent action is necessary to protect the interests of the owners corporation, **and**
- (b) 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.

Circulating costs agreements

If a lawyer issues a costs agreement (also called ‘costs disclosure’) to an owners corporation in respect of legal services for which general meeting approval is required, the owners corporation must give a copy of the disclosure to each owner and strata committee member within 14 days of the disclosure being made.

This is an extension of the former 7-day period, but note that only those costs agreements that are to be put forward for approval at a general meeting need be circulated.

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') are now 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.

For agreements currently on roll over, on 30 November 2016 those agreements were automatically extended 6 months (to 30 May 2017) to give the owners corporation time to consider the terms of a new engagement.

More on strata managers...

NCAT now has 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

Previously, a strata community could not 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.

NSW Fair Trading has established the [Strata Collective Sale Advocacy Service](#) to assist owners from vulnerable groups affected by a strata collective sale or renewal proposal, such as those on the aged or disability pension.

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