

**Publication Date: 04 August 2022**  
**YSP Podcast Transcript: Episode 323. What's so scary about 2-lot strata plans?**

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**Intro:** Welcome to Your Strata Property. The podcast for property owners looking for reliable, accurate, and bite-sized information from an experienced and authoritative source.

**Amanda Farmer:** Hello, and welcome to this week's podcast episode. I am your host, Amanda Farmer, and it's my job here each week as a strata lawyer, to help you demystify some of the legal complexities of apartment living.

Now this week, I'd like to have a discussion, if I may, about very small strata plans, in particular plans with only two lots. Some of you I know are living in, have invested in these types of properties. Many of you are managing these properties. Two-lot schemes, we might call them. They could be duplexes, townhouses, villas, maybe older style houses, pre-20th century that have been converted to strata in recent years.

Now, I've been thinking about these types of setups a lot lately, as I've had a couple of clients working with me who live in two-lot schemes and are encountering some difficulties. I also recently had a call with a member inside our online community who had lots of very savvy questions about some of the legal requirements, obligations for two-lot schemes in New South Wales.

This is also a topic that I'll be getting into when I deliver my education session for Conveyancers this weekend, that's happening at their conference in Orange. I think it's set to be a frosty weekend there. I'm looking forward to it.

So with these communities front of mind today, I have pulled out four things, I believe you must know about two-lot strata plans or strata schemes. If you're living in one, investing in one, certainly if you're thinking about buying into one and indeed, if you are a strata manager managing a two-lot scheme. Today, I'm going to cover unit entitlements, insurance, capital works funding, the strata committee.

So let's start with the first on my list here, unit entitlements. Put very simply, a unit entitlement is a number that represents each lot's value as a percentage of the value of the whole development.

A unit entitlement is allocated on registration of the strata plan, and it determines important things like your share of the total levies for the community, the value of your vote on special resolutions that are put to general meetings. And it's a really important number to be aware of when you're purchasing into a building, especially a small building.

If for example, the building has four lots and the total unit entitlement is represented by the number 100. Each lot in the building may have a unit entitlement of 25, 25 times 4 is 100. So each lot has an equal unit entitlement. Everyone's going to be paying the same amount in levies. Everyone has a 25% share in that obligation.

In a larger building, your unit entitlement is diluted a little bit simply because of the fact that there are many other owners. But in a smaller building, unit entitlements have an important role to play. And when we're looking at two-lot schemes in particular, this is where I see a lot of the unique problems that these communities face finding their source. When a two-lot scheme is set up, the lots will very often have an equal unit entitlement.

So the total might be 100 and each lot has a unit entitlement of 50. The total unit entitlement might also be represented by the number two and each lot has one. The number itself is not that important. It's about a single lot's percentage share of that number.

When unit entitlements are equal in a two-lot scheme, in order to make decisions pretty much about anything, both owners must agree. That's because no single owner holds the majority. So decisions about repair and maintenance, decisions about levies, about the engagement of a strata manager must be made jointly. And where there is conflict, poor communication, personality clashes perhaps, that's where we see our two-lot schemes struggle to be functional. And the community may end up with a compulsory managing agent appointed to make decisions on their behalf.

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But a two-lot scheme with unequal unit entitlements, for example, where one owner may have a 60% share and the other a 40%, is a very interesting situation indeed. It means that one owner can make decisions about the day-to-day running of the owners corporation. Any decision that requires a majority vote only can be made by that one owner with the higher unit entitlement.

Decisions about repairs and maintenance of the common property, decisions about the levies to be raised, whether or not a strata manager should be appointed. Some of the clients that have been consulting with me in my legal practice recently are in precisely this situation. One that I'm thinking of has the smaller unit entitlement and is finding it very hard to get their neighbour to agree to repair common property that desperately needs repair. The other is in the opposite position, holding the majority of the unit entitlement and able to make those kinds of decisions without having to bring their neighbour on board.

Now, some owners in two-lot schemes don't realise that their unit entitlements may be unequal and that one of them may have more power or greater scope to make decisions than the other. When I was chatting to John, one of the members in our online community on our member call that I referred to earlier, he explained to me that he had been debating for some time through their lawyer, actually, trying to get decisions made about convening a meeting, appointing a strata manager, setting levies, getting insurance in place. And he was frustrated because his neighbour, he felt was holding up that decision-making process.

And after chatting with me and having it pointed out to him that he actually had 60% of the unit entitlement, and he did not need to wait for his neighbour's agreement to make these decisions, he was quite relieved and empowered to move ahead with items that he felt were in the best interest of the community.

Now I mentioned special resolutions earlier, some matters in our New South Wales owners corporations can only be determined, decided by way of special resolution passed at a general meeting. A special resolution will pass if no more than 25% of the unit entitlement votes against it.

So where you have a two-lot scheme and one owner has at least more than 25% of the unit entitlement, they do have the power to block a special resolution if they vote against the motion. What kinds of matters require special resolutions? The making of by-laws is a big one. So even if an owner has 60% of the unit entitlement or 70% of the unit entitlement, they cannot make by-laws if the other owner attends the meeting and votes against the motion to make the by-law.

Now, if you were buying into a two-lot scheme, this is something I'm sure you'd really want to have an understanding of. Unfortunately, I'm not sure that unit entitlement and explaining what that is, what it means and the consequences of an unequal unit entitlement is something that's explained often at all or clearly to our strata purchasers.

And it can come as a surprise when someone buys into a dysfunctional small community or over time that community becomes dysfunctional because of differences of opinion and differing priorities.

Another issue and the second on my list today is that of insurance. Now, I'm told by conveyancers when I asked them about their experience advising purchases in two-lot strata plans, that insurance is a big issue that comes up when a question is asked of the vendor, the seller, what insurance is in place in the name of the owners corporation. The answer is often, well, there's no insurance or each owner has their own insurance. There's no insurance in the name of the owners corporation.

Well, does there have to be insurance in the name of the owners corporation when we're dealing with a two-lot strata plan? In New South Wales, we have a look at Section 160 of our Strata Schemes Management Act. That's where the obligation on an owners corporation to ensure a building is located. And that section tells us that this obligation does not apply to an owners corporation for a two-lot strata scheme if three conditions are met.

Firstly, if the owners corporation has passed a unanimous resolution, number two, the two lots are not physically connected to each other. They stand separately. And number three, there is no other building comprising part of the strata plan. If those three conditions are met, then an owners corporation for a two-lot strata scheme does not need to have insurance under Section 160 of our New South Wales legislation. And that's building insurance. The requirement for building insurance is otherwise mandatory.

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So when we're talking about duplexes, attached villas, attached townhouses, absolutely, there is a legal obligation for the owners corporation to have building insurance in its own name. Who pays the premium for that insurance? Well, it's an owners corporation expense. So each lot owner contributes to that expense in proportion to their unit entitlement. If the unit entitlements are 50-50, then each owner has an equal responsibility to contribute to that insurance premium.

I often find that when I come across two-lot strata plans, the insurance premium is the only thing that each owner contributes to. There isn't otherwise funds raised for payment of other expenses. The insurance premium is recognised as one of the important legal obligations and that is arranged and paid for by the owners, but not much else.

That leads me to the third issue, capital works funding. Does a two-lot strata plan have to establish a capital works fund and contribute to that fund to pay for the repair and maintenance of the common property? Well, once again, we can have a look at our legislation, Section 74 in our New South Wales Strata Schemes Management Act tells us that an owners corporation for a two-lot strata scheme does not need to establish a capital works fund if three conditions are met.

And yes, indeed, they are the same three conditions as those applying to the insurance exemption that I mentioned earlier. If you don't want to establish a capital works fund in a two-lot strata scheme, you have to determine not to do that by passing a unanimous resolution. And you have to make sure that your lots are physically detached from each other. And there is no other building on the site.

Unless you meet those three conditions, you should as a two-lot scheme, have a capital works fund in place together with a 10-year capital works fund plan. Anticipating major expenditure that you may have to meet repairing the common property over a 10-year-period, that is a requirement of Section 80 of our New South Wales legislation. I will make sure we have links to all of these sections that I'm mentioning today over in the show notes for this episode. You'll find those under the podcast episode, over at [yourstrataproperty.com.au/podcasts](http://yourstrataproperty.com.au/podcasts). That's also where you can get a copy of the transcript for this episode.

Now, there is a way for owners in two-lot schemes to determine that they will each look after the structure of their lot, even though that structure may be common property and take on all repair and maintenance obligations for that structure, their windows, their waterproofing in their bathrooms, their external walls, that part of the roof that's above their lot.

For some communities that make sense, they'd prefer to look after their own side and have their neighbour look after theirs. If that's what you want to do, you will need to take a couple of steps to make sure the decision to do that is legal. Firstly, you should pass a special resolution confirming that the owners corporation is not going to repair and maintain those parts of the common property. And hand in hand with that special resolution, you should make a by-law confirming that it is the responsibility of each owner to repair and maintain that common property, which should be clearly defined, identified in the terms of the by-law.

I've had a number of communities ask me about that process so much so that I developed a template by-law for two-lot schemes wishing to shift responsibility for repair and maintenance of specified parts of the common property over to lot owners. That template by-law is available on the website. If you'd like to check it out, I'll put a link to access that one in the show notes as well.

But it is really important to remember that the by-law goes hand in hand with the owners corporations special resolution, deciding not to repair and maintain those parts of the common property. You really can't make that decision as an owners corporation to relieve yourself of that legal duty to repair and maintain the common property without shifting that duty over to owners by way of by-law.

Moving on to the fourth, big issue that I have identified when it comes to two-lot strata plans, the strata committee. An important point to note, a strata committee for a strata scheme of two-lots consists of the owner of each lot. You're automatically on the strata committee. Congratulations, how exciting. If you're a sole owner, then you're it. If the lot is owned by a company, then the company nominee is the committee member.

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And if a lot is owned by co-owners, then there is a nomination process. One of the co-owners can be nominated to the committee, or if there's no nomination, then whoever is the first person named on the strata role becomes the committee member. That's all set out in Section 30 of our New South Wales Act. So when you're buying into a two-lot scheme, it's important to be aware that you also automatically become a committee member with all of those functions, duties, obligations, some rights too.

Those are just four big issues that I want to make sure you are well aware of when it comes to two-lot strata plans, whether living in, investing in or managing those communities.

I do welcome your comments, your shared experiences if you'd like to post under this episode, what your experience has been living in or managing a two-lot scheme, what additional issues have come to your attention. I know there's a few more of them that we haven't covered here today. I'll look forward to hearing from you. That's it from me this week. I'll catch you next time.

**Outro:** Thank you for listening to Your Strata Property, the podcast which consistently delivers to property owners reliable and accurate information about their strata property. You can access all the information below this episode via the show notes at [www.yourstrataproperty.com.au](http://www.yourstrataproperty.com.au). You can also ask questions in the comment section, which Amanda will answer in her upcoming episodes. How can Amanda help you today?