

NSW FAIR TRADING RULES FOR TODAY'S COMPULSORY CPD TRAINING

- A working camera and microphone at all times
- No mobile phones
- Take notes!
- Access the assessment via your own computer
- All other windows on your screen should be closed . No distractions.
- You are not permitted to leave the training once it has commenced (no phone calls)
- Breaks, plus lunch
- Failure to return on time will result in you being removed from the session and no CPD Certificate can be issued

Failure to observe the rules will mean you are removed from the session



Your
**STRATA
PROPERTY**
THE CPD EVENT
2025

Compulsory Strata CPD

The NEW Supervision Guidelines 2024

with Amanda Farmer | 10 April 2025

New Supervision Guidelines 2024 – Strata Managers

Strata CPD Compulsory Topic - 2024/2025

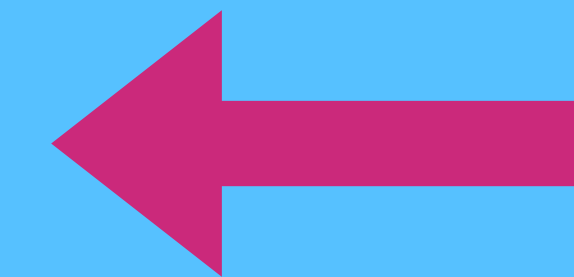
Learner Guide

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Your Learner Guide



PROPERTY AND STOCK AGENTS ACT 2002 - SECT 32 Duty of licensee and person in charge to properly supervise business

PROPERTY AND STOCK AGENTS ACT 2002 - SECT 32

Duty of licensee and person in charge to properly supervise business

32 DUTY OF LICENSEE AND PERSON IN CHARGE TO PROPERLY SUPERVISE BUSINESS

(1) A licensee must properly supervise the business carried on by the licensee.

(2) A licensee employed by another licensee ("the principal licensee") as the person in charge of business at a place of business of the principal licensee must properly supervise the business of the principal licensee carried on at that place.

(3) The requirement to properly supervise the conduct of business includes the following requirements--

(a) a requirement to properly supervise persons engaged in the business,

(b) a requirement to establish procedures designed to ensure that the provisions of this Act and any other laws relevant to the conduct of that business are complied with,

(c) a requirement to monitor the business in a way that is as practicable that those procedures are complied with.

(4) The Secretary may from time to time issue guidelines for the proper supervision of the business of a licensee, such guidelines in connection with the duty of a licensee to properly supervise the business.

: Maximum penalty--

(a) 200 penalty units in the case of a corporation, or

(b) 100 penalty units in any other case.

Supervision Guidelines

Property and Stock Agents Act 2002

in force commencing 1 July 2024



- 1. People Leadership**
- 2. Legal Compliance**
- 3. Professional Conduct**

Why?

“An empowered, accountable, and trusted property services sector in NSW”

“Serious consumer harm can result from failures of supervision, as well as large penalties for those failures”

“Property services practitioners deal with some of the most important moments in peoples’ lives...the financial and personal well-being of your clients and customers is at stake”




Australian Broadcasting Corporation

<https://www.abc.net.au> › news › the-strata-trap

The Strata Trap - ABC News

9 Sept 2024 — This program raises tough questions about the dearth of government intervention and lack of meaningful consumer protection.

 Australian Broadcasting Corporation

Exorbitant fees and undisclosed kickbacks in unregulated strata management industry

Many strata managers know that in the long absence of government, the industry has become addicted to

1 Apr 2024

 Australian Property Investor Magazine

Bad press for strata managers shines light on strata costs and service

Strata fees are high and apartment owners deserve value for money, but for various reasons that is not always the case and changes need to be made.


10 May 2024

 The Sydney Morning Herald

Strata law reform on the cards as NSW Fair Trading swamped with complaints

Reforms of the state's strata laws are set to address poor behaviour of strata agents as sector advocates call for the commissioner to...

7 July 2024

 Australian Broadcasting Corporation

Strata managers come under the spotlight as apartment living becomes more popular

Thomas Ockenfels bought his Canberra apartment more than two years ago, and then realised water was prone to seeping into his bedroom when...

2 weeks ago

Supervision Guidelines

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- 1. People Leadership**
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1. People Leadership

- Principal licensees must ensure that all parts of the business are supervised by a licensee in charge (LIC)
- A single LIC can supervise multiple places of business, as well as multiple streams of the business (if there are any)
- The progress of assistant agents and class 2 agents towards a class 2 or class 1 licence must be monitored
- There must be inductions and training in operational procedures used in the business
- People in the business must have a means of reporting operational misconduct, including breaches of the law



McGrathNicol

McGrathNicol

Scope item 5b. Does Netstrata have in place appropriate supervision in accordance with section 32 of the PSAA? If the answer is no, please specify why?

8.2 Netstrata has in place appropriate supervision and oversight functions in accordance with Section 32 of the PSAA, which is supported by:

- Inhouse 'Operational Procedure and Checklists' to ensure compliance with guidelines issued by the Commissioner of Fair Trading;
- An established segregation of duties and responsibilities for Strata Managers (i.e. Level 1 – Trainee Strata Manager to Level 5 – Associate Director) that sets out training and oversight;

4.12 Netstrata's Whistleblower Policy was not readily available to staff members. Section 1317A1 of the Corporations Act 2001 requires that large proprietary companies have a Whistleblower Policy that is made available to officers and employees. During discussions with Netstrata, the Whistleblower Protection Officer was not identified nor could Netstrata staff locate the policy in Netstrata's information technology environment.

- Audits performed on administrative teams and assessed against job role and key performance indicators.

Some of the McGrathNicol Recommendations

1. implement firm wide Conflict of Interest and Code of Conduct training to all staff and subsidiaries
2. require all staff to sign annual Conflict of Interest declarations identifying any potential and actual conflicts of interest
3. implement version control processes for all policies and procedures
4. enhance the current Whistleblower Policy to identify the name of the Whistleblower Protection Officer and make the policy readily available to staff
5. update the Employee Handbook to include additional key policies including the Code of Conduct, Whistleblower and Conflict of Interest Policy.

Some of the McGrathNicol Recommendations

6. improve the complaints section of the company website to provide customers with a greater understanding of the dispute resolution process and escalation pathways
7. include customer complaints as a standing agenda item in the monthly executive meetings and quarterly Board meetings so that senior executives have transparency and visibility over the level and nature of the complaints.
9. implement a process whereby staff perform an annual attestation of compliance to key policies and procedures so that they are aware of their personal and professional obligations.

Some of the McGrathNicol Recommendations

13. enhance existing disclosures around its fees and disbursements within its Strata Management Agency Agreements to include how Strata Managers are remunerated including the receipt of a percentage of any fees generated from add-on fees charged to customers and generated through new building acquisition commissions
14. rotate auditors and consider implementing a panel of auditors from which it randomly selects auditors engaged for strata plans.
16. include additional explanatory material in their meeting agenda that clearly outlines the obligation under Section 102 of the SSMA requiring a Strata Manager to obtain at least two quotes for non-urgent work exceeding \$30,000 and affording the Owners Corporation the option to either approve the engagement of the selected contractor or request Netstrata to undertake further attempts to obtain additional quotes.

Some of the McGrathNicol Recommendations

20. undertake a review of all agreements with contractors inherited from arrangements entered into by predecessor Strata Managers or developers to determine the services provided represent fair market value and are in the best interests of respective Owners Corporations.

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- 1. People Leadership**
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Principal licensees must establish procedures that ensure the provisions of the Act and any other laws relevant to the conduct of the business are complied with

Laws relevant to the conduct of the business

- Property and Stock Agents Act 2002
- Strata Schemes Management Act 2015
- Strata Schemes Development Act 2015
- Community Land Management Act 2021
- Community Land Development Act 2021
- Residential Tenancies Act 2010
- Conveyancing Act 1919

- Real Property Act 1900
- Retail Leases Act 1994
- Swimming Pools Act 1992
- Electronic Transactions Act 2000
- Uncollected Goods Act 1995
- Work Health and Safety Act 2011
- Environmental Planning and Assessment Act 1979
- Design and Building Practitioners Act 2020
- Australian Consumer Law, under the Competition and Consumer Act 2010 (Commonwealth)
- Fair Trading Act 1987
- Anti-Discrimination Act 1977
- Privacy Act 1988 (Cth)
- Prevention of Cruelty to Animals Act 1979
- Biosecurity Act 2015 (NSW and Commonwealth)
- Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Commonwealth)

Operating Procedures Must Address:

1. **Financial risks in the business and how they will be mitigated:** trust accounting procedure, security on accounts, banking procedures, cash handling. Only the LIC can authorise withdrawals from the trust account/s
2. **Licensing requirements and compliance:** documenting the certificate/licence each employee holds, ensuring immediately replacement of a LIC, notifying Fair Trading of a LIC's appointment within 5 business days
3. **Adequate education and training for everyone:** preparation of a training plan incl. CPD training, monitoring and recording completion of training, tracking assistant and class 2 agents' completion of the NSW Fair Trading Logbook to verify work experience completion.

Mitigating Financial Risks:

Maree Kylie Lane pleaded guilty to 29 offences of being an accessory to fraudulent conversion of trust money by misappropriating 31 transfers from Parramatta's Prestige Strata accounts to her personal bank account. The funds were used for personal expenses including renovations, living costs and medical treatments.

A NSW Fair Trading investigation into Ms Lane, who was the licensee in charge of Prestige Management Pty Ltd between 2013 and 2019, revealed the offending took place between October 2017 and November 2018.

Ms Lane, who has surrendered her real estate and strata managing agent licence, was also ordered to make payment of \$100,000 to the Property Services Compensation Fund – the maximum allowed, and to pay legal costs in the amount of \$30,000.

Operating Procedures Must Address:

Complaint Handling

2.5.1.1 Requirements

The operational procedures must include a procedure for handling formal written complaints against the business and include:

- a. a register of complaints including actions taken to resolve complaints and the outcomes,
- b. a procedure for notifying complainants how to pursue their complaint with the appropriate regulator, if they wish to do so – for example, a complaint to NSW Fair Trading, and
- c. a requirement that allegations of financial misconduct must be reported to principal licensee or a licensee in charge.

Operating Procedures Must Address:

Gifts, benefits and other conflicts of interest

2.5.2.1 Guidance

The Act and the Strata Schemes Management Act prohibit an agent or assistant agent from requesting or accepting a gift or benefit for themselves or another person in the exercise of their functions as an agent, with certain exceptions. The Act narrows the prohibition to circumstances that may reasonably be considered to give rise to a conflict of interest.

Gifts, benefits and other conflicts of interest

Strata Schemes Management Act 2015

57 Breaches by strata managing agent

(2) A strata managing agent must not, in connection with the provision of services as a strata managing agent or the exercise of functions as a strata managing agent, request or accept a gift or other benefit from another person for himself or herself or for another person.

Maximum penalty—

- (a) for a corporation—500 penalty units, or
- (b) otherwise—100 penalty units.

(3) Subsection (2) does not apply to—

(d) a gift or other benefit that has a value that is less than the amount prescribed by the regulations for the purposes of this subsection.

Strata Schemes Management Regulation 2016

63 Limit for gifts to strata managing agents

For the purposes of section 57(3)(d) of the Act, the amount prescribed is \$60.

Proof of identity: UPDATE

2023

2024

4. Identification check for the purposes of fraud prevention

- 4.1. A principal licensee must prepare and maintain written procedures for the verification of the identity of a party with whom it is proposed to enter an agency agreement.
- 4.2. Without prejudice to 4.1, the written procedures must include for the following:
 - 4.2.1. a process to verify that the identity of a person entering into an agency agreement is the owner of the property or the person otherwise has the legal right to act on behalf of the owner,
 - 4.2.2. if applicable, a process to ensure that in the case of a person who has the legal right to act on behalf of the owner — where that person is not listed on the certificate of title, the original or an electronic copy of the document which confers the power of sale or management on that person must be produced (including by electronic means and excluding by audio-visual means), and a copy of the document must be retained,
 - 4.2.3. if applicable, a process to ensure that where there is no mortgagee listed on the certificate of title, written confirmation of the power of sale or management is sought from all registered owners of the property,
 - 4.2.4. where a process is required to comply with 4.2.1, a reasonable attempt is made to verify the power of sale or management with the registered owner of the property and a record is retained of each attempt,
 - 4.2.5. a record must be kept of all documentation relied upon to verify an individual's identity,
 - 4.2.6. the confirmation of identity check must meet all provisions of clause 4.3 of the supervision guidelines.

2.5.4.2 Requirements

Operational procedures maintained in accordance with Supervision Requirement 2 must include a procedure for the verification of the identity of property and livestock vendors and residential landlords before entering into an agency agreement with that person.

Identity verification procedure – general requirements

The procedure for verification of identity must include:

- a. a process to verify that the person entering into an agency agreement is the owner of the property that is subject to the agreement or, the person otherwise has the legal right to act on behalf of the owner,
- b. a process to ensure that in the case of a person who has the legal right to act on behalf of the owner — where that person is not listed on title, the original, an electronic copy of the original or a certified copy of the document which confers the power of sale or management on that person must be produced (including by electronic means and excluding by audio-visual means), and a copy of the document must be retained,
- c. a process to ensure that where there is no mortgagee listed on title, written confirmation of the power of sale or management, noting this is not required in the case of a person holding a valid power of attorney,
- d. a process to ensure that reasonable attempts are always made to verify the power of sale or management with the registered owner of the property, and a record is retained of each attempt,
- e. a process to ensure records are kept of the documentation relied upon to verify an individual's identity, but a copy of the documentation itself relied upon to verify an individual's identity is not required to be kept,
- f. a process to ensure the confidential destruction of all copies of proof of identity

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Proper supervision means: monitoring conduct

1. LICs must establish adequate systems to monitor the conduct of the business in the critical areas of risk (being the areas identified in Supervision Requirement 2)
2. LICs must make a record of each instance of non-compliance with the operational procedures maintained
3. Records must be kept for a minimum of 3 years

Case Study...

Kelly Varnsen is managing director and **licensee in charge (LIC)** of KV Pty Limited trading as Sensation Strata.

The business has **three registered offices**: one each in Brighton-le-Sands, Bondi Junction and Burwood.

KV Pty Ltd holds a corporation licence under the Property and Stock Agents Act 2002, while Kelly holds a class 1 strata managing agent's licence.

The business has **35 staff** operating out of the branches, 30 of whom hold a class 2 licence in strata management and five are assistant agents.

Unfortunately, Kelly suffers a severe heart attack and efforts to revive her are not successful. Her untimely passing leaves the corporation **without a licensee in charge**.

Questions:

1. Who holds the legal obligation for proper supervision of the business following Kelly's death?
 - The principal licensee remains responsible for overall supervision
 - If the LIC was an employee, a replacement must be appointed immediately
 - Staff members must be informed about transitional leadership arrangements
 - The business must ensure compliance does not lapse during the transition

Questions:

2. What are the compliance steps that must be taken in the days following Kelly's death, and when, under the *Property and Stock Agents Act* and the Supervision Guidelines?
 - Immediately appoint an interim licensee in charge - consider whether exemption should be applied for via Fair Trading
 - Notify NSW Fair Trading of changes in business leadership
 - Conduct a rapid compliance check to verify continued supervision of staff and financial governance.
 - Ensure that trust accounts and legal documents remain accessible

Questions:

3. What steps could Kelly Varnsen and KV Pty Ltd have taken prior to Kelly's death to ensure risks of a failure of supervision would be minimised in the event of the sudden and unexpected departure of a sole licensee in charge?

- Have more than one LIC across the branches
- Designate secondary leadership roles, with leaders ready to step up
- Ensure staff are cross-trained in supervision responsibilities
- Establish a business continuity plan with step-by-step compliance actions in case of sudden departures

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ASSESSMENT TIME!

