



Fair
Trading

Strata living

What you need to know about
living in your strata community

www.fairtrading.nsw.gov.au

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Strata living

There are currently around 65,000 strata schemes in New South Wales and the number is increasing steadily with five or more new schemes being registered each day. Strata schemes cover residential, commercial, industrial, mixed use and retirement village developments and they range in size from two lots to over 700 lots.

It is estimated that close to a quarter of the state's population live, own, or are employed within a strata scheme.

The concept of strata title, where people own and have title to individual lots (units or apartments) within buildings or complexes, was originally devised in New South Wales in the early 1960s. The laws applying to strata schemes have been updated many times over the years to keep up with the increasing complexity and sophistication of strata developments.

NSW Fair Trading administers the *Strata Schemes Management Act 1996*, which sets out a framework for the management of strata schemes by their owners and establishes a dispute resolution process.

The subdivision and registration aspects of strata developments are administered by the Land and Property Management Authority NSW under separate legislation, the *Strata Schemes (Freehold Development) Act 1973*.

This booklet has been prepared by NSW Fair Trading as a comprehensive resource for anyone interested in strata living and the management of residential strata schemes in New South Wales. Note that much of the information will also be relevant to people involved in commercial, industrial, mixed use and retirement village strata schemes.

The strata lifestyle

Strata schemes are effectively small communities where the activities and attitudes of residents can have a significant impact on the satisfaction and enjoyment of others. Therefore, it is important to be aware of your responsibilities and obligations when you own or live in a strata unit.

Whilst strata living can provide a friendly community style environment, it helps to remember that it is not the same as living in a freestanding house. Some activities may be more restricted in a strata scheme, for example, where you can park your car, hang your washing or when and how you can renovate. Understanding these differences before moving into a strata scheme can help reduce the likelihood of disputes over these activities later on.

What is different about living in a strata scheme?

- You own your unit or apartment as well as sharing ownership and responsibility for 'common property'.
- If you own your unit, you are automatically a member of the 'owners corporation' which has responsibility for common property.
- You have to contribute to the cost of running the building by paying levies.
- You also have to pay money into a sinking fund, for future long term expenses such as painting the building or replacement of guttering.
- Compared to living in a freestanding house, there will be lifestyle restrictions in a strata scheme, for example there are rules (by-laws) that may affect you doing renovations to your unit, that state where you can and cannot park your car, where you can dry washing or whether or not you can keep pets.

What is the NSW legislation covering strata schemes?

The *Strata Schemes Management Act 1996* (the Act)

The *Strata Schemes Management Act 1996* is administered by NSW Fair Trading. It provides:

1. a system of financial management and decision making by defining the rights and responsibilities of the owners corporation and each owner and occupier in a strata scheme. This includes:
 - the holding of meetings of the owners corporation and the executive committee
 - the management of funds and books of accounts
 - the responsibilities of the owners corporation to maintain common property and take out insurance
 - the responsibilities of owners and occupiers.
2. a system for settling disputes in a strata scheme, including those relating to day-to-day management.

The *Strata Schemes (Freehold Development) Act 1973*

The *Strata Schemes (Freehold Development) Act 1973* is administered by the Land and Property Management Authority NSW and provides a system of title which gives exclusive ownership of part of a building known as 'a lot', and supporting rights over other parts of the building known as 'common property'. This Act covers the registration process and other related matters concerning the creation and development of a strata scheme.

NOTE: Unless otherwise specified, all references to legislation in this document refer to the *Strata Schemes Management Act 1996*. To assist readers who want to read the Act, the relevant section number of the Act is usually included in the text, for example, [s.62] or [Schedule 2, Part 2, Clause 35]. The 'Regs' refer to the Strata Schemes Management Regulation 2005.

The role of NSW Fair Trading

Fair Trading provides help and information on strata living, the management of strata schemes and dispute resolution in a number of different ways.

Besides this publication you can find information on our website, www.fairtrading.nsw.gov.au and get help from staff at Fair Trading Centres or call Fair Trading on 13 32 20. In addition, the Fair Trading Strata Mediation Service has specialist staff who can provide help with disputes.

What is a strata scheme?

A strata scheme is a building, or collection of buildings, where individuals each own a small portion known as a 'lot' (for example, an apartment or townhouse) but where there is also common property (eg. external walls, windows, roof, driveways, foyers, fences, lawns and gardens). Every owner shares the ownership of the common property.

The original concept of strata title was to allow people to own their units in multi-level buildings. While it was originally expected that strata schemes would all be vertical blocks of flats, some strata schemes are all on the one level (eg. townhouse and villa developments). Strata schemes vary in size – some comprise only two lots, others have more than 700 lots. In addition, strata schemes do not just apply to residential developments. There are also commercial, industrial, mixed use, hotel and retirement village strata developments.

Before strata title, the most common way of buying into a high-rise building was to buy shares in the company which owned the building, which gave the right to occupy one or more of the units. This way of organising property ownership is called 'company title'. There are still some company title buildings in existence.

What do I own in a strata scheme?

The major difference between owning a house and owning a unit or apartment (known as a 'lot') in a strata scheme, is that the external walls, the floor and roof do not usually belong to the lot owner. These areas are usually common property and the maintenance and repair of these parts of the building is usually the responsibility of the owners corporation. As it is common property, the lot owner is not able to alter or renovate these areas without the permission of the owners corporation.

In effect, in most strata schemes, the lot owner owns the inside of the unit but not the main structure of the building. Usually the four main walls, the ceiling and roof and the floor are common property. The dividing walls within the lot (for example, the wall between the kitchen and lounge room), floor coverings such

as carpet and fixtures such as baths, toilet bowls, benchtops are all the property of the lot owner. The key concept to remember is that the lot owner effectively owns the airspace (and anything included in the airspace) inside the boundary walls, floor and ceiling of the lot.

Airspace can also extend to balconies and courtyards. You should get proper advice about ownership of a tree in the courtyard or responsibility to maintain a pergola covering a balcony or courtyard. They could be in your airspace and therefore, would need to be maintained at your cost.

For questions about boundaries of the lot and clarifying common property, contact the Land and Property Management Authority NSW (LPMA) at www.lands.nsw.gov.au or call 1300 052 637.

Definitions

Common property: is all the areas of the land and building not included in any 'lot'. It is jointly owned by all owners and the owners corporation is responsible for its management.

Lot: includes a unit, town house, parcel, garage that you have a right of ownership over. It is made up of cubic air space and is generally formed by the inner surface of the boundary walls, the under surface of the ceiling and the upper surface of the floor.

Lot owner: a person(s) or company that buys a lot and whose name is shown on the Register at the LPMA.

Owners corporation: is made up of all the owners in the strata scheme. Each lot owner is automatically part of the owners corporation and has a right to participate in the decision making. It has responsibility for the overall management of the scheme.

Before buying into a strata scheme

What should I look out for?

- ✓ Find out as much information as possible about the management of the scheme itself, for example:
 - is there a strata manager?
 - is the building properly insured?
 - are there enough funds to cover long term repairs and maintenance?
 - is there outstanding building work, or is any planned which could mean additional special levies?
- ✓ Organise to get a Section 109 Certificate which provides a good deal of information and organise a detailed strata search through a specialist company or your solicitor/conveyancer.
- ✓ Find out which parts of the unit will be included in the 'lot' and where the common property boundaries are. The registered strata plan defines the boundaries between common property and lots in a strata scheme. Common property boundaries are usually shown on strata plans by thick black lines. Pay close attention to items such as balcony walls, railings, sliding doors and garage doors, as strata plans may differ on whether these items are part of the common property or not.

For enquiries about interpretations of a strata plan contact the Land and Property Management Authority on 1300 052 637 or email them at plan-info@lmpa.nsw.gov.au

- ✓ Don't forget ongoing costs such as levy contributions to the administration and sinking funds. How much are they? Can you afford them? Remember that levy amounts can change, and that you may be asked to pay extra levies in some circumstances. See pages 28 and 29 for more information.

- ✓ Find out if any alterations have been done to the unit. Were these approved by the owners corporation?
- ✓ Think carefully about the impact of strata living on your lifestyle. Have you seen the by-laws (rules)? Can you keep a pet? Can you hang washing outside or will you have to buy a clothes dryer? Will it be difficult for you if there are restrictions on visitor parking or where your children can play? Also, be aware that by-laws can be changed by the owners corporation. See page 12 for more information.
- ✓ Besides looking at the unit, also have a look at the whole building. Some buildings have high quality and expensive finishes such as polished granite or marble foyers. These must be maintained along with the swimming pools, lifts and gardens and the costs will impact on your levies. Alternatively, the building may be run down and in need of repair. Find out if there is building worked planned and if it will be an extra cost to owners.
- ✓ Check if there are any restrictions on the use of the common property which could affect you, for example if you want to change the flooring, install air conditioning, or prune trees which shade your balcony. You will probably need the permission of the owners corporation.

How can I get the information I need?

Before you buy into a strata scheme you should get a Section 109 Certificate from the owners corporation.

What is a Section 109 Certificate?

A Section 109 Certificate gives information about the strata scheme including:

- the names and addresses of the executive committee members, the managing agent and caretaker (if there is one)
- the levies to be paid by the owners
- any outstanding levies
- the address where the records and financial statements can be viewed
- any special by-laws made by the owners corporation in the past 2 years.

If a levy is outstanding before the Certificate is given and it is not shown on the Certificate, the purchaser is not responsible for the payment [s. 109 (8)]. However, if any money becomes outstanding after the Certificate is given, the new owner and the old owner are both liable for payment [s. 109 (8)].

If the information is not supplied within 14 days after you ask for it, the owners corporation could be fined up to \$220 [s.109 (7)].

How to get a Section 109 Certificate

If you are an owner, or you have an owner's or mortgagee's or covenant chargee's permission, you may write to the owners corporation and ask for a Section 109 Certificate. The Treasurer must give the Certificate under owners corporation seal. The Certificate must be in the set form [Regulations – Schedule 7 Form 2]. There is a fee.

How to inspect the records of the owners corporation

It is important that you inspect the books and records of the owners corporation before buying. Sometimes your solicitor will arrange to have this done for you, but not always. There are companies which specialise in inspecting the books and can organise a 'strata search' service.

If you are an owner, or you have an owner's or a mortgagee's or covenant chargee's permission, you may ask the Secretary of the owners corporation or the managing agent to let you inspect the books and records of the owners corporation. The request must be in writing and accompanied by the required fee [s. 108].

The owners corporation must let you look at all the records and should make arrangements with you to do this.

When you are looking at the records you may make copies (for example, a copy of the strata roll). Unless you have the owners corporation's written permission you must not take any of the records away. There is a set fee to look at the records [Regs – Schedule 1A].

An inspection will show the history of maintenance of the building and provide a valuable insight into any complaints lodged by other owners. It may also show plans for future spending.

Common property

What is common property?

Common property is all the areas of the land and building not included in any lot. It is jointly owned by all owners, and the owners corporation is responsible for its management.

The lot and common property will be defined on your individual strata plan. However, common property boundaries of each lot are generally formed by:

- the upper surface of the floor (but not including carpet)
- the under surface of the ceiling
- all external or boundary walls (including doors and windows).

Generally common property includes:

- floors including a ramp or stairway
- boundary walls including any door, window or other structure within the wall and their working parts
- ceramic tiles originally attached to a common property surface (eg. the floor or boundary wall)
- pipes in the common property or servicing more than one lot
- electrical wiring in the common property or servicing more than one lot
- parquet and floor boards originally installed
- vermiculite ceilings, plaster ceilings and cornices
- magnesite finishes on the floor
- balcony walls and doors are usually common property if the strata plan was registered after 1 July 1974 (you must look at the registered strata plan)
- the slab dividing two storeys of the same lot, or one storey from an open space roof area or garden areas of a lot (eg. a townhouse or villa), is usually common property if the strata plan was registered after 1 July 1974, unless the registered strata plan says it is not.

In addition structural cubic space is usually common property unless the registered strata plan shows that it forms part of the lot.

Structural cubic space includes:

- any pipes, wires, cables or ducts that are not for the enjoyment of a single lot

- any cubic space enclosed by a structure enclosing any of these pipes, wires, cables or ducts.

Boundaries

If you are unclear about which parts of your unit are your individual 'lot' and which parts are common property, check on the strata plan. The common property boundaries are usually shown on strata plans by thick black lines. Sometimes it may be necessary to refer to the registered strata plan if the boundaries between common property and lots in a strata scheme are unclear. To obtain a copy of the registered strata plan of your scheme, contact the Land and Property Management Authority NSW (LPMA) at www.lands.nsw.gov.au or call 1300 052 637. You can also email the LPMA at plan-info@lpma.nsw.gov.au for an interpretation of the plan.

Care of the common property

The owners corporation is responsible for the ongoing maintenance of common property (unless it decides by special resolution that it is inappropriate for a particular item and its decision will not affect the safety or appearance of the strata scheme). This includes repair work and replacing and renewing common property when needed [s. 62].

In order to pay for maintenance of common property, the owners corporation has to raise funds from all individual lot owners through regular payments of levies (an amount of money decided by the owners corporation).

Alterations to common property by an individual owner

If an individual owner wants to alter or renovate any part of the common property they will also need the permission of the owners corporation.

The owners corporation can decide, by special resolution at a general meeting, to pass an exclusive use by-law which gives the owner the use (not ownership) of that area of common property and makes that owner responsible for the repair and maintenance of the area [s. 51-55]. If they fail to pass such a by-law, the owners corporation will remain responsible for that part of the common property.

An exclusive use by-law must be registered with LPMA within 2 years.

Any repairs or renovations to an individual lot that involve common property (for example, installing cable television or adding a new window) will need the permission of the owners corporation.

Frequently asked questions

- **Who is responsible for pruning trees on the property?**

If the trees are common property, it is the owners corporation's responsibility. If the trees are part of your lot – you are responsible, as the owner. There may be restrictions on how tall the trees on your lot are allowed to grow. For more information contact the LPMA.

- **Who is responsible for looking after the wheelie bins?**

The owners (or residents) are responsible for putting their own bins out, bringing them in, and keeping them clean. The owners corporation usually owns the bins.

- **I want to use the garden area outside my unit just for myself, can I do this?**

If it is part of your lot, yes. If it is common property, you will need to get the permission of the owners corporation. This usually requires an exclusive use by-law to be passed by special resolution (which means no more than 25% of votes are cast against the motion) at a general meeting.

- **I want to park in a section of the driveway that's common property. Can I get permission to do this?**

Send a written request to the secretary or strata managing agent. Permission should then be voted on at a general or executive committee meeting.

- **Can I do my own repairs to common property?**

Only if you have the permission of the owners corporation. If common property needs repair or maintenance, the owners corporation should undertake that work, not an individual owner.

- **Can I do anything I like to my backyard?**

If your backyard is part of your lot, you can do anything as long as it doesn't breach by-laws, for example, you must not damage common property or create disturbing noise.

The owners corporation

What is the owners corporation?

The owners corporation is made up of all the owners in the strata scheme. Each lot owner is automatically part of the owners corporation and has a right to participate in the decision making. The owners corporation comes into existence immediately after a strata plan is registered. At first it may only be made up of the developer, but as each person buys into the scheme, the owners corporation gains more members.

What does it do?

The owners corporation has responsibility for the overall management of the scheme which includes:

- financial management (page 28)
- keeping all necessary insurance covers up to date (page 30)
- record keeping (page 27)
- the repair and maintenance of common property (page 15)
- by-laws (page 12)
- employment of a strata managing agent and/or building manager (page 24).

NOTE: The owners corporation used to be known as the *body corporate*.

The owners corporation can only make decisions at properly convened meetings. The annual general meeting (AGM) is held once a year. Extraordinary general meetings can be held at any other time. See page 17 for more information about meetings of the owners corporation.

The owners corporation may employ a strata managing agent or caretaker to work for it. These agents are delegated some responsibilities and powers but the owners corporation has the final responsibility and can overrule them. A strata managing agent must be licensed under the *Property, Stock and Business Agents Act 2002*.

Frequently asked question

What if I do not want to be part of the owner's corporation. Can I manage my unit myself?

All owners are always members of the owners corporation. They have voting rights and obligations to pay levies and comply with by-laws. Owners cannot 'resign' from the owners corporation.

However you are free to manage your unit as you see fit. You can enter into a contract with a managing agent or caretaker to manage your unit, if you wish.

The executive committee

The owners corporation must elect an executive committee which can make many of the day-to-day decisions about running the scheme on its behalf.

However, the owners corporation can overrule executive committee decisions or limit what they can make decisions about.

Election of the executive committee

The executive committee is elected at each annual general meeting (AGM). It can have up to nine members and, once elected, decides who is to hold the office-bearer positions of chair, secretary and treasurer [s.18].

Who can stand for election?

You can be elected to the executive committee if you are:

- an owner
- a company nominee of a corporation that is an owner
- a person who is not an owner but who is nominated by an owner who is not standing for election.

Co-owners can only be nominated by:

- an owner who is not a co-owner of that lot or
- a co-owner of that lot who is not a candidate for the election [Schedule 3, Part 1, Clause 2].

If a vacancy occurs during the term of the executive committee, the owners corporation must appoint a person to fill the vacancy until the next AGM. [Schedule 3, Part 1, Clause 4(2)].

Office bearers

Chairperson

The chairperson's main duty is to preside over all owners corporation and executive committee meetings and make sure they run smoothly.

Secretary

The powers and duties of the secretary include:

- preparing minutes of meetings and putting a motion to confirm the previous minutes
- issuing notices for the owners corporation and its executive committee, that are required under the Act
- keeping the strata roll
- giving information on behalf of the owners corporation under section 108
- answering correspondence addressed to the owners corporation
- convening meetings of the owners corporation and its executive committee (apart from its first AGM)
- all the administrative and secretarial duties for the owners corporation and the executive committee.

Treasurer

The duties of the treasurer include:

- providing owners with notice of any levies
- issuing receipts, banking and accounting for any money paid to the owners corporation
- preparing any Certificates under Section 109
- keeping all accounting records and preparing the financial statements.

The responsibilities of owners and residents

Owners and residents living in a strata scheme are members of a community. To get the best out of strata living they need to:

- co-operate with their fellow residents and be considerate of their neighbours – this will help minimise disputes and conflicts
- follow their strata scheme's by-laws (set of rules) which cover many aspects of strata life
- make sure that they do not damage common property
- pay their levies.

By-laws

There is no 'mandatory' set of by-laws. Some model by-laws are set out in legislation, others are set by the original developer of the scheme.

By-laws can be made or changed to meet the needs of all owners and to assist with the running of the scheme. The by-laws mean that the owners corporation can manage the strata scheme the way they want.

Strata schemes existing before the commencement of the *Strata Schemes Management Act* on 1 July 1997 have By-laws 1-19 set out in Schedule 1 of that Act, together with amendments made to those by-laws by the owners corporation. A strata scheme registered after the commencement of the Act on 1 July 1997 must choose and register its own by-laws. There are six model sets of by-laws in the Regulations and the owners corporation may select any of these or prepare their own.

You can check your strata roll to see what by-laws apply to your strata scheme.

Some common by-laws

Keeping animals

Each strata scheme will have a by-law on this issue. Generally speaking it will provide one of the following:

- no animals can be kept (other than fish in an aquarium) unless the permission of the owners corporation is first obtained
- no animals may be kept under any circumstances
- a cat, small dog, small caged bird or fish in an aquarium may be kept.

No matter what the by-law is, keeping a guide or hearing dog is allowed. It is important to find out about the keeping animals by-law before you buy a unit, to avoid disappointment or distress later. Make sure you find out exactly what the by-law actually says.

Parking

Owners and residents cannot park on the common property without the permission of the owners corporation. Visitors can park in designated visitors parking spaces. So, if an owner invites a group of friends over for a barbeque, for example, they can't park wherever they choose – such as on the lawn at the front of the building. If there are not enough visitors car spaces available, they have to park in the street. It is important to remember that an owner cannot give permission for people to use common property for parking, as this is a matter for the owners corporation.

Noise

Most strata schemes have by-laws about noise and the behaviour of visitors. You need to take into account the peace and enjoyment of your neighbours and other people living in the strata scheme. You should also make sure your visitors do not disturb other people, especially when, for example, you have a party or entertain friends.

Activities of children

The by-laws of your strata scheme are likely to contain some restrictions on unsupervised children playing on common property within and outside the building. The purpose of these by-laws is to minimise harm to children, particularly in parts of the common property that may be dangerous such as driveways and car

parking areas. Check to see what by-laws apply in your scheme if you have children living in your unit. Other than for retirement village strata schemes, by-laws are not allowed to restrict or prevent children living in a strata scheme.

Drying of washing

Most strata schemes have restrictions on washing being dried on balconies where it would be visible from the street or adjoining buildings. Your scheme may have communal drying areas and by-laws may place limits on the use of them. Check your scheme's by-laws to find out where and how you can dry your washing.

Changing the appearance of a 'lot'

Most schemes will have a by-law about the appearance of individual lots. Owners are generally not able to change the appearance of their lot if the change would not be in keeping with the rest of the building. For instance, if you wanted to put up brightly coloured curtains or blinds, that would be visible from the outside, the other owners can insist the colour match the rest of the building.

Floor coverings

Most strata schemes have by-laws requiring floors to be either treated or covered to prevent noise being heard in other lots.

Frequently asked questions

• **I want to get a dog. Do I need the owners corporation's permission?**

Check your by-laws first. Some schemes allow pets with the permission of the owners corporation – the executive committee can give this approval. Other schemes do not allow pets at all. If your by-law allows for pets then make a written request to the owners corporation and include any information to support your request, for example, information on the type of dog, how you will look after it and so on.

• **My neighbour's boyfriend stays over and parks his car in the visitors' parking space every night. Is he really a visitor?**

That is a matter for the owners corporation to decide at a meeting. If they consider him an occupier they may be able to take action against him for a breach of by-law.

• **Someone is making a lot of noise and it's disturbing my sleep. How do I get them to stop?**

The best approach is to try to resolve the problem yourself, so talk to the person first. If that doesn't work or, if you feel intimidated, you have two choices. You can ask the owners corporation to issue them with a notice to comply with a by-law then seek a fine if they keep breaching. Or you can apply for mediation through Fair Trading to have a mediator assist you to discuss the issue with them.

• **The owners of the unit above me pulled up their carpet and put down a floating floor. The owners corporation approved this, but it is very noisy. What can I do?**

If talking to them about the noise hasn't helped, and if you believe they have broken an existing by-law, either you or the owners corporation can apply for mediation. Another option is for the owners corporation to serve them with a Notice to Comply With a By-law. If the unit is tenanted, the responsibility for treating or covering the floor still rests with the owner. However, you may have to take action against the tenants if they are making an unreasonable amount of noise.

• **Our by-laws don't deal with things I think are important. What can I do?**

You can draft your own by-law and put it on the agenda for the next general meeting. It requires a special resolution (see definition on page 18). Once it is passed, the by-law must be registered at the Land and Property Management Authority NSW. It is then an enforceable by-law that must be obeyed. You may want to get assistance from your managing agent or a solicitor.

• **Is it law to have a noticeboard?**

Only if it is required in your by-laws. If the owners corporation does not have a noticeboard it must send all meeting and other notices to each owner directly.

Breach of by-laws

If an owner or resident breaches a by-law, firstly, talk about the problem with them. If it continues, the owners corporation or managing agent (if their agency agreement gives them the authority) can serve a *Notice to Comply with a By-Law* on the person who is breaching it.

If the person continues to breach the by-law the owners corporation may apply to the Consumer Trader and Tenancy Tribunal for a penalty of up to \$550 to be imposed on them [s.45 and s. 203]. The fine is payable to the Director General of the Department of Services, Technology and Administration.

Other responsibilities of owners and residents

Besides by-laws, owners and residents have a number of other responsibilities under section 116 and 117 of the Act:

- An owner or occupier must not interfere with any support or shelter provided by their lot for another lot or the common property.
- An owner must give the owners corporation at least 14 days written notice before altering the structure of their lot. The notice must describe the alterations.
- The owners corporation can stop alterations to a lot if it interferes with the common property or any support to the rest of the building.
- An owner or occupier must not interfere with the passage or provision of water, sewerage, drainage, gas or other similar services.
- An owner or occupier must not use or enjoy their lot in such a way which might cause a nuisance or hazard to another resident.
- An owner or occupier must not use or enjoy the common property in a way that may interfere unreasonably with another resident's use and enjoyment of common property or their lot.
- An owner who rents out their lot must notify either the secretary or the managing agent within 14 days. The notice needs to give the name of the tenant, the date the tenancy agreement commenced and details of any property manager acting for the owner. If the lot is sub-let, then the sublessor has the same obligation to provide information (s. 119).

Tenants

Tenants are as much a part of their strata community as are owners. They have the same rights and responsibilities under the scheme's by-laws.

The landlord or real estate agent must provide a copy of the by-laws to new tenants within 7 days of the tenant renting the premises so they are aware of their rights and responsibilities. The owners corporation cannot prevent an owner from renting their premises.

Repairs and maintenance

Who is responsible for repairs?

Responsibility for repairs is straightforward – the owners corporation must repair common property, owners must repair anything within their lot. However, and this can be the difficult part, it is not always clear what is common property or what is the individual lot.

The basic rule is that everything inside the airspace of the unit, including all internal walls, fixtures, carpet and paint on the walls is usually the lot and therefore the responsibility of the lot owner. Everything outside that airspace including walls, windows, doors, and tiles fixed to the floor and boundary walls is usually common property and therefore the responsibility of the owners corporation. For clarification check your strata plan or contact the Land and Property Management Authority.

As a general guide, the following applies.

Damage to	Who is responsible?
Ceiling	Owners corporation must repair anything in the ceiling.
Walls	Owners corporation must repair anything in the boundary walls. The owner must repair walls within the lot.
Carpets	The owner must repair and maintain carpets in the lot. The owners corporation repairs and maintains common property carpets, such as carpets in hallways.
Tiles	Original tiles on boundary walls and floor are owners corporation responsibility. Tiles on internal walls are the owner's.
Light fittings	If it is recessed in the ceiling, it is the owners corporation's responsibility. If it hangs into the lot, it is the owner's responsibility.
Roller door of garage	Repairs to the boundary roller doors are owners corporation responsibility.
Balcony	Balconies are generally the responsibility of the owners corporation.

How do we get repairs done?

Contact the managing agent or secretary of the owners corporation and let them know the details of the problem. A managing agent may have been authorised to organise minor repairs without the need for a meeting. For larger, more expensive problems a general meeting should be convened so that the owners corporation can decide on what action to take. If no action is being taken, you can put a motion requesting repairs to the next meeting. You may also lodge an application for mediation with Fair Trading.

NOTE: All of the following answers are general starting points based on the typical common property questions. Don't assume they automatically apply to your scheme.

Frequently asked questions

• **Where does the money for repairs of common property come from?**

Levies must be raised for repairs. A motion is put to a general meeting to raise levies to cover the cost of the work. The amount will be paid by owners based on their unit entitlement.

• **What if the damage was accidental rather than caused by negligence? Is there a difference in who has responsibility?**

The owners corporation must repair common property and an owner must repair their lot – whether the damage was accidental or negligent. If someone else damages your property, then like any damages claim, you may take legal action to recover the cost of repairs from that person.

• **I have filled out a maintenance form to get a repair done which is taking time. What should I do?**

Speak to the secretary or the strata managing agent to find out how the matter is progressing. If the repairs are being delayed you can lodge an application for mediation with Fair Trading to try to settle the matter.

• **Some of my possessions were in the garage and they have been damaged. Who is responsible?**

The owner or occupier is responsible for things inside their lot. They may be able to claim on their contents insurance policy.

Common repairs

The following is a guide to who is responsible for some of the most common repairs.

Repair	Who is responsible?
There is a burst pipe in a bathroom.	If it is in a boundary wall, the owners corporation is responsible. If it is in an internal wall it is the lot owner's, unless the pipe services more than your lot, in which case it is owners corporation responsibility.
The water from the shower is not draining away.	Plumbing under the floor is the responsibility of owners corporation.
The shower head is not working properly.	It is the lot owner's responsibility.
The kitchen sink was broken and has caused water damage in both my unit and my neighbour's unit.	Problems with everything in the airspace of a bathroom or kitchen including baths, toilets, sinks and dishwashers are the owner's responsibility. However the owners corporation's building insurance may cover some of these fixtures for damage.
There is damp and mould in my unit.	The owners corporation is responsible for water penetration problems coming in through external walls or the floor. The owner is responsible for the mould on their walls.
Electricity inside my unit has been cut off or not working.	The supply of electricity is the owners corporation's responsibility. However, any cabling within the unit's internal walls that only services the individual lot, is the owner's responsibility. The owner is also responsible for paying their own electricity bill.
Water leaks onto my balcony from the unit above every time they water their plants.	If the water is running off common property, the owners corporation is responsible. If it is caused by over watering by another owner or resident, that person is responsible.
Our balcony door is damaged and won't close properly.	This depends on when the scheme was registered. In older schemes, registered before 1 July 1974, the owner is responsible. In newer schemes, registered after that date, the owners corporation is responsible.

Meetings of the owners corporation

Once every year the owners corporation must hold a general meeting, referred to as the annual general meeting. They can also hold additional general meetings (known as extraordinary general meetings) as necessary throughout the year. There are rules about how these meetings are to be called, who can attend and vote, how they must be run and how decisions are made, which are set out in the *Strata Schemes Management Act 1996*.

Annual general meetings

An annual general meeting (AGM) is a meeting for all members of the owners corporation and must be held each year.

Timing

After the first AGM, an AGM must be held each year, no more than 1 month before or 1 month after each anniversary of that first AGM [Schedule 2, Part 2, Clause 31 (1) (a)]. For example, if the first AGM takes place on 1 February 2010, the next AGM should take place between 1 January 2011 and 1 March 2011, and the following AGM should take place between 1 January 2012 and 1 March 2012 etc.

The Adjudicator can make an order varying the time when the AGM must be held [s. 152]. An owners corporation, strata managing agent or owner can apply for this order.

Agenda of the AGM

The agenda for an AGM must include:

- a copy of the financial statement of the owners corporation for that year
- a motion for accepting the financial statements
- information about all insurance policies held by the owners corporation
- a motion to consider appointing an auditor and taking out insurance for executive committee office bearers liability and/or misappropriation of money or property of the owners corporation [Schedule 2, Part 2, Clause 34]

- a motion to confirm the minutes of the last general meeting [Schedule 2, Part 2, Clause 35 (1) (a)]
- any other motion to be considered at the meeting [Schedule 2, Part 2, Clause 35 (1) (c)]
- a clear indication of any motions needing a special or unanimous resolution for their passage [Schedule 2, Part 2, Clause 35 (2)].
- a copy of the minutes of the last general meeting attached for owners who have not been given a copy before [Schedule 2, Part 2, Clause 33]
- a motion to decide if any matter for the year ahead is only to be decided by the owners corporation and not the executive committee [Schedule 2, Part 2, Clause 34 (g)]
- a motion for the election of the executive committee [Schedule 2, Part 2, Clause 34 (e)]
- a motion to decide the number of members of the executive committee [Schedule 2, Part 2, Clause 34 (f)]
- an item to prepare or review a 10-year sinking fund plan [Schedule 2, Clause 34A (b)].

Frequently asked questions

• I am an owner – what meetings do I have to go to?

While it is not compulsory for any lot owner to attend owners corporation meetings, a strata scheme operates better if those concerned take an interest in its affairs. There would usually be several meetings of the owners corporation a year, however the annual meeting, when levies are set for the coming year and the executive committee is elected, is the only meeting required to be held by law. It is helpful if people are willing to make themselves available for election to the executive committee.

• I am a tenant – do I have to go to any meetings?

Tenants are not required to attend meetings and do not have voting rights. An owner could choose to give their tenant a proxy vote on the owner's behalf.

• How do I get to have a say in the meetings?

Owners have the right to speak at any general meeting, and if you can't attend personally you can give someone your proxy. However, in order for your vote to count you must be financial - see page 18 for definition.

Extraordinary general meetings

Any general meeting of the owners corporation that is not an AGM is called an extraordinary general meeting. These meetings can be held when necessary during the year (for example, to change, cancel or make by-laws, to appoint or dismiss a strata managing agent). There is no minimum number of these meetings each year.

There are two ways to convene an extraordinary general meeting:

- by majority vote of the executive committee, or
- if owners entitled to vote, and who together hold at least one-quarter of the total unit entitlements, give a written notice to the secretary asking for the meeting to be held.

If the secretary is away, the notice can be given to another executive committee member [Schedule 2, Part 2, Clause 31 (3)].

Notice of meetings

Notice of both an extraordinary general meeting and the annual general meeting (AGM) must be given to each owner of a lot, as shown on the strata roll, at least 7 days before the meeting. If notices are to be mailed, allow an additional 4 working days for postage.

Notices for general meetings must:

- have a motion to confirm the minutes of the last general meeting
- have other motions to be considered at the meeting
- clearly show which motions need a special or unanimous resolution
- have a copy of the minutes of the last general meeting attached for owners who have not been given a copy before the meeting
- if it is the AGM, have a motion for the election of the executive committee and the number of members of the executive committee.

NOTE: Notice must also be given to a first mortgagee or covenant chargee if a motion requires a special or unanimous resolution [Schedule 2, Part 2, Clause 32].

Definitions

Amendment: an alteration or change to a motion.

Covenant chargee: a person who holds an agreement over the property which imposes certain obligations or restrictions.

Financial: an owner is financial if all their levies and financial contributions are paid up to date.

Mortgagee: a person or company who lent money to a person to buy a property.

Motion: a proposal or suggestion to be discussed at the meeting and voted on.

Poll vote: can be demanded by any owner on any motion at a general meeting. The vote will be counted by unit entitlements rather than by one person, one vote.

Proxy: an owner may authorise someone else to vote on their behalf at general meetings by completing a prescribed proxy form.

Quorum: is the minimum number of people who need to attend a meeting for it to go ahead. At a general meeting it is one quarter of people entitled to vote, or owners holding 25% or more of unit entitlement. For an executive committee meeting it is at least one half of the executive committee members.

Resolution: a decision of the meeting (made after taking a vote).

Special resolution: a special resolution is where no more than 25% of votes are cast against the motion, based on unit entitlement. This includes votes in person and also proxy votes.

Unanimous resolution: a unanimous resolution is one where no one votes against the motion. If a unanimous resolution is required, all owners can vote at the meeting or by proxy, even if their levies are not paid up to date.

Unit entitlement: each lot has a comparative value that is decided when the strata plan is registered. The unit entitlement of each lot is set out in the Schedule of Unit Entitlement on the strata plan and is used to calculate each owners contributions for levies and voting entitlements.

Chairperson's role

If present, the chairperson must run all general meetings. If the chairperson is away, the people at the meeting must elect someone to chair that meeting only. The person elected must be entitled to vote [Schedule 2, Part 2, Clause 15]. The chairperson does not have a deciding vote.

Quorum

There must be a quorum at a general meeting before any motion (including election of an executive committee) can be voted on. A quorum is:

- a) one-quarter of the total number of people entitled to vote or
- b) owners holding one-quarter or more of the total unit entitlements.

If the quorum calculated under a) or b) is less than two people, the quorum shall be two people entitled to vote on the motion [Schedule 2, Part 2, Clause 12].

If there is no quorum after 30 minutes of the scheduled start time, the meeting must be postponed (adjourned) for at least 7 days. The person chairing the meeting sets the date and time for the next meeting. If there is no quorum within 30 minutes of the time fixed for the adjourned meeting, the meeting is able to go ahead. The quorum is then the owners and proxies present who are entitled to vote [Schedule 2, Part 2, Clause 12].

How to put a motion on the agenda

Anyone who is entitled to vote at a general meeting can ask for a motion to be put on the agenda for a general meeting. Written notice must be given to the secretary. The secretary must put the motion on the agenda for the next general meeting [Schedule 2, Part 2, Clause 36]. Only motions on the agenda for that meeting can be voted on.

Amending motions

Only motions on the agenda may be amended at the meeting. Anyone who is entitled to vote at the meeting may ask the chairperson for a motion to be amended [Schedule 2, Part 2, Clause 35 (3)].

Motions out of order

At a general meeting the chairperson may rule that a motion is out of order if:

- it would conflict with the Act or the by-laws, be unlawful or not enforceable if passed or
- proper notice of the motion was not given [Schedule 2, Part 2, Clause 14].

Who can vote at general meetings

You are entitled to vote at a general meeting in person, if you are:

- an owner
- the company nominee of a corporation shown on the strata roll as the owner
- an appointed proxy, or
- a mortgagee or covenant chargee of a lot shown on the strata roll.

However, an owner's vote does not count if their levies and other financial contributions are unpaid, except on motions requiring a unanimous resolution [Schedule 2, Part 2, Clause 10].

A mortgagee or covenant chargee has a priority to vote ahead of the lot owner on motions that need a special or unanimous resolution, or motions about insurance, budgeting or levies that have expenditure over \$200, multiplied by the number of lots in the scheme.

For example: in a 10-lot scheme a priority vote can only be used on a motion where expenditure exceeds \$2000. In a 500-lot scheme, it would be \$100,000. An owner can vote when the mortgagee or covenant chargee refuses or neglects to vote, or does not give the lot owner at least 2 days written notice of the intention to use the priority vote.

Frequently asked questions

- **We discussed repairs to the garages at the last meeting and I thought we had made a decision, but then I got the minutes and it had been left out. What should I do?**

Tell the secretary or strata managing agent. The minutes should then be amended. If they are not, the matter should be raised at the next meeting. If it remains unresolved, you can apply for mediation through Fair Trading to settle the matter.

- **We spend half the meeting talking about a matter that was not even on the agenda and then people voted on it. Is this OK?**

Only matters on the agenda can be voted on and resolved. Matters not on the agenda may be discussed, but would need to be put on the agenda for the next meeting for the matter to be voted on.

- **I asked the secretary to put an issue about parking on the agenda of the general meeting but it was not included. What should I do?**

Seek to raise it at the meeting and ask again to put the motion on the agenda for the next meeting. Alternatively lodge an application for mediation through Fair Trading to resolve the matter.

Proxies

If you cannot attend a meeting, you can organise someone else to vote for you, as a substitute or 'proxy'. You must fill out a special form prescribed by the Regulations to do this. (A copy is on page 41). Proxy forms must be given to the secretary before or at the meeting.

The following conditions apply to a proxy:

- The form must state whether the persons acting as proxy can vote on all matters, or only certain matters.
- It must state how the person acting as the proxy should vote on a motion for the appointment or continuation in office of a strata managing agent.
- It has no effect if the person who gave the proxy attends the meeting and votes in person.
- The most recent proxy form is valid.

- In a large scheme (see page 31) the proxy forms must be with the secretary at least 24 hours before the meeting [Schedule 2, Part 2, Clause 11 (3)].

A proxy has effect for the period specified in the proxy form, being not more than 12 months or for two consecutive annual general meetings, whichever is the greater. If a proxy form does not clearly express the length of the proxy, it will only have effect for one meeting.

TIP: Make sure your vote counts even if you cannot attend.

A caretaker, strata managing agent or on-site residential property manager cannot be a proxy if the matter they are voting on includes anything that will give them financial or material benefit. Material benefits include the extension of a term of appointment, an increase in pay, and a decision not to proceed with or to delay legal proceedings involving the proxy holder [Schedule 2, Part 2, Clause 11].

Counting votes on motions

A motion at a general meeting is decided by the number of votes cast for or against the motion, with each owner having one vote for each lot they own. Most decisions can be made by a simple majority vote but sometimes a special resolution or unanimous resolution is needed.

Even when a simple majority vote only is needed, a 'poll' vote can be called for by any owner. When a poll is demanded, votes have a different value and are counted by the unit entitlements.

Some motions need a special resolution, which is where no more than 25% of the votes are cast against the motion, based on their unit entitlement.

Some motions need a unanimous resolution. This is where no one at the meeting votes against the motion [Schedule 2, Part 2, Clause 18].

Adjournment of meetings

A general meeting can be adjourned (postponed) for any reason if a motion is passed at the meeting for the adjournment. A general meeting must be adjourned if there is no quorum.

The person presiding must set the time and place for the postponed meeting. A written notice must be sent to each owner at least one day before the meeting [Schedule 2, Part 2, Clauses 12 & 13].

Frequently asked questions

• **When can I use a proxy to have my say?**

A proxy is where you authorise someone else to vote on your behalf when you are unable, or choose not to, attend a meeting. Use the prescribed proxy form.

• **Are there any circumstances when I cannot ask someone to act as a proxy for me?**

You will not be able to use a proxy if your name is not on the strata roll or if your levies are not paid in full. (ie. all levies and financial contributions owing for your lot at the date of the notice of the meeting). The exception is for a unanimous vote, when your vote will count even if your levies are not up to date.

• **What is the difference between a special resolution and a unanimous resolution?**

Both are votes required for certain motions at general meetings (not at executive committee meetings). A special resolution is where no more than 25% of the votes are cast against the motion, based on unit entitlement. A unanimous resolution is where everyone votes in favour of the motion.

• **Does the chairperson have the deciding (casting) vote at any meetings?**

No, the chairperson has the same voting rights as any other member of the owners corporation.

• **Do we need a quorum to hold a meeting?**

Yes. A quorum for a general meeting is 25% of people entitled to vote or owners who hold 25% or more of unit entitlement. A quorum for an executive committee meeting is at least 50% of the executive committee members.

• **How many meetings should we have a year?**

Each year the owners corporation must have one annual general meeting and also one executive committee meeting to appoint office bearers. Other meetings can be held as the need arises.

• **What can we do about people who refuse to attend meetings?**

Encourage owners to get involved in the management of their scheme. However there is no requirement for them to attend and they can choose to stay uninvolved if they wish.

• **Is there a deadline for providing minutes?**

General meeting minutes must be sent out with the notice of the next general meeting if not issued sooner. Executive committee minutes must be placed on the noticeboard, or sent to all owners if there is no noticeboard, within 7 days.

Meetings of the executive committee

The executive committee of the owners corporation is a group which represents owners or owners' nominees. It administers the day-to-day running of the strata scheme and is elected at each annual general meeting. It can have from one to nine members, but in a two-lot scheme it must have two members who are the owners of each lot [Schedule 3, Part 1, Clauses 1 & 2].

Once the executive committee is elected, the members of the committee decide who is to hold the office-bearer positions [s. 18].

The executive committee would usually meet more often than the owners corporation, as there would normally be a number of issues to deal with during the year.

Calling a meeting

The Act does not say how often executive committee meetings must be held. One-third of the executive committee members may ask the secretary to call an executive committee meeting and set a time for the meeting to be held. If the secretary is away, any other executive committee member may be asked to call a meeting [Schedule 3, Part 2, Clause 7].

Notice

If the scheme is required to have a noticeboard (check the by-laws), the secretary must put a notice about the meeting on the noticeboard at least 72 hours before an executive committee meeting is held. If the owners corporation is not required to have a noticeboard, or the scheme is a large one, the meeting notice must be given to each owner and executive committee member. The notice must have a detailed agenda. Notice can be given by email.

If the secretary is away and another executive committee member was asked to hold the meeting, that member must put the notice on the board or give a copy to each owner and executive committee member [Schedule 3, Part 2, Clauses 6 & 7].

Frequently asked question

How do I get elected to the executive committee?

The executive committee members are elected at the AGM. Your nomination must be submitted before or during the AGM. Any owner can nominate themselves. Owners can also nominate a non-owner as long as they do not nominate themselves as well. Co-owners may be nominated by another co-owner of their lot who is not standing for election, or by an owner of another lot.

Note: Anyone nominated for election to the executive committee must disclose any financial, business or family connections they may have with the original owner or caretaker. After being elected, committee members must also disclose any financial, business or family connections they may develop with the original owner or caretaker.

Owners' attendance

Owners (including a company nominee where the owner is a corporation), can attend executive committee meetings but cannot speak at the meeting unless the executive committee agrees by majority vote [Schedule 3, Part 2, Clause 14].

Chairperson to preside

If the chairperson is present they must preside at all meetings of the executive committee. If the chairperson is away, the executive committee must appoint another executive committee member to chair that meeting only. The chairperson does not have a deciding vote [Schedule 3, Part 2, Clause 8].

Quorum

The quorum for an executive committee meeting is at least half of the members [Schedule 3, Part 2, Clause 9].

Voting

Each executive committee member has one vote. The chairperson does not have a deciding vote under any circumstances. A decision on any motion at an executive committee meeting is made by a majority vote [Schedule 3, Part 2, Clause 11].

Adjournment of meetings

An executive committee meeting can be adjourned (postponed) for any reason if a motion is passed at the meeting for the adjournment. Notice of when and where the adjourned meeting is to take place must be put on the noticeboard. If there is no noticeboard, a written notice must be given to each owner at least 1 day before the meeting [Schedule 3, Part 2, Clause 13].

Non-attendance at meetings

An executive committee member can appoint another owner or company nominee, whether or not they are a member of the executive committee already, to vote for them at an executive committee meeting. This must be approved by the executive committee [Schedule 3, Part 1, Clause 3].

Voting in writing

Unlike general meetings, the executive committee can vote in writing even though the meeting was not held. A notice of the meeting and copy of the agenda must be put on the noticeboard 72 hours before the proposed meeting, or a copy of the notice and agenda given to each owner and executive committee member if there is no noticeboard. Where a meeting is to be done in writing a notice and agenda must also be given to each executive committee member. A resolution approved in writing by the majority of executive committee members is valid even though a meeting was not held [Schedule 3, Part 2, Clause 10]. These resolutions must be put in the minutes [Schedule 3, Part 2, Clause 12].

Objection to motions on agenda

Owners holding more than one-third of the total unit entitlements for the strata scheme can oppose any motion appearing on the agenda for an executive committee meeting. Written notice of the objection must be given to the secretary of the executive committee before a decision on the motion is made. Any decision made by the executive committee on that matter will have no force or effect [Schedule 3, Part 2, Clause 11 (2)].

Executive committee decisions

Any decision made by the executive committee is treated as a decision of the owners corporation although there are some matters that the executive committee do not have the power to make (for example, fixing levies) [s. 21]. No individual executive committee member can make a decision for the owners corporation. In the event of a dispute between the owners corporation and its executive committee, the decision of the owners corporation prevails [s. 21 (4)].

Restrictions of executive committee decisions

A decision of the owners corporation is required before the executive committee may commence or obtain legal advice on behalf of the owners corporation, except where the anticipated cost is less than \$750 times the number of lots in the scheme or \$10,000 (whichever is the lesser) [s. 80D].

The executive committee of a large scheme cannot spend more than 10% above the budgeted cost for any item, except in an emergency, unless agreed by resolution of the owners corporation. Specific emergencies include burst or blocked sewer pipes, serious fire or storm damage, electricity or security failures and serious glass breakages [s. 80A].

Restrictions on the executive committee

Any owners corporation can limit the powers of its executive committee if it so wishes [s. 21 (2)].

Minutes of executive committee meetings

There are two ways the executive committee minutes can be made available:

- A copy is to be given to each owner and committee member within 7 days of the meeting, or
- If a noticeboard is required (check the by-laws), a copy must be put on the noticeboard within 7 days and must stay there for at least 14 days [Schedule 3, Part 2, Clauses 16 (1) & (2)].

Large schemes (over 100 lots) must do both of the above.

Strata managing agents

The owners corporation can engage a strata managing agent to work on behalf of all owners to help manage the scheme. The owners corporation enters into an agreement (contract) with the agent, which outlines their duties and responsibilities. The owners corporation has the power to instruct the agent to do certain works and if necessary, they can overrule the agent.

Appointing a managing agent

The appointment of a managing agent can only be decided by a majority vote at a general meeting [s. 27 (1)]. Only a person who holds a strata managing agent's licence under the *Property Stock and Business Agents Act 2002* can be appointed [s. 26].

The length of the appointment should be negotiated by the owners corporation and the managing agent.

TIP: Your strata managing agent is an employee of the owners corporation.

What are the responsibilities of a managing agent?

Agents carry out some or all of the functions, duties or powers of the owners corporation including administrative matters such as calling meetings and collecting levies. They should also provide advice and guidance about legislative requirements.

A managing agent cannot be given the power to:

- delegate their powers, authorities, duties or functions to others
- make a decision on a restricted matter (a matter that needs a special or unanimous resolution or is one which the owners corporation has decided must go to a general meeting)
- set levies [s. 28 (3)].

A managing agent must write to the owners corporation and outline the duties they are doing and how they are doing them [s. 31].

They must give details of trust accounts and financial transactions when asked in writing by the owners corporation [s. 33].

A managing agent cannot transfer the management of the scheme to another strata management business without the approval of the owners corporation [s. 27 (3)].

The owners corporation and its executive committee can still carry out its duties even if it has delegated them to a managing agent [s. 28 (6)].

Use of proxy vote

A managing agent cannot act as a proxy for an owner in votes that would result in their financial or material benefit.

Dismissing a managing agent

A managing agent can only be dismissed, or have a delegation changed, by a majority vote at a general meeting. The managing agent's agreement should also be checked as termination conditions, including payments, will be detailed in it. Written notice of the decision must be given to the agent [s. 27 (2) & 28 (2)].

If the agent is in possession of the books and records of the owners corporation, then these should be returned to a designated member of the executive committee within 7 days of the written notice of termination [s. 105 (2)].

Compulsory managing agent

If a strata scheme is dysfunctional an owner can apply to the Consumer, Trader and Tenancy Tribunal for an Adjudicator to appoint a managing agent to carry out:

- all the functions of an owners corporation
- all the functions of the executive committee and/or the chairperson, secretary or treasurer
- only some of those functions [s. 162 (1) & (2)].

If an Adjudicator decides the owners corporation is not doing its work satisfactorily, or has failed to comply with an order, failed to perform one or more of its duties or owes a judgement debt, the Adjudicator may appoint a managing agent compulsorily [s. 162 (4)].

Definitions

Adjudicator: a member of a the Consumer, Trader and Tenancy Tribunal who decides on strata disputes. (See page 36 for more details.)

Consumer, Trader and Tenancy Tribunal: provides a quick, low cost dispute resolution service for strata schemes.

Frequently asked questions

- **How much influence do we have over the managing agent?**

The managing agent is the employee of the owners corporation. They can offer advice and direction, but final authority lies with the owners corporation.

- **Our strata manager is terrible. He never follows up on our requests for repairs and we think his fees are too high for the work he actually does. Sometimes we are not certain he is following the Act either. What can we do?**

You should discuss the matter with the agent. You can also hold meetings of the owners corporation to make decisions and the agent will be bound by these. If this does not change things you could terminate the agent's contract, but check first to see what termination provisions apply. The executive committee can always hold meetings to vote on carrying out the repairs themselves.

- **We sacked our managing agent – now they will not give us the financial records. What do we do?**

Write to the agent. The owners corporation can apply to the Consumer, Trader and Tenancy Tribunal for an order for the agent to return the records.

- **How do we find a good managing agent?**

Ask owners from other schemes or contact the Institute of Strata Title Management www.istm.org.au or (02) 9904 8499.

- **Are we allowed to manage our property ourselves?**

Yes, if you want to. Only about 60% of strata schemes have strata managing agents. The owners corporation will need to terminate the current agent's agreement at a properly convened general meeting, and elect a new executive committee and office bearers. This can be a complex process so call Fair Trading on 13 32 20 for more information.

Caretakers and building managers

Caretakers, sometimes called building managers, can also be employed to assist the owners corporation in carrying out its functions. They do not have the same delegated functions as a licensed strata managing agent.

Caretakers can also operate as letting agents within the building and are often referred to as the building manager. They can assist the owners corporation in:

- the management of common property
- controlling the use of common property by tradespersons and other non-residents
- the maintenance and repair of common property.

Caretakers may not enforce by-laws or carry out other similar functions of the owners corporation.

A person is not classified as a 'caretaker' if they carry out the duties of a caretaker on a voluntary or casual basis or as a member of the executive committee.

Caretaker agreements

A caretaker must be appointed in writing under a caretaker agreement (contract), which can be entered into before or after the strata scheme commenced [s. 40B (1)].

A caretaker agreement between the original owner and the caretaker entered into during the initial period, ends at the conclusion of the first annual general meeting [s. 113 (1) (c)].

The agenda for the first annual general meeting of an owners corporation must include an item to decide whether to appoint a caretaker and if appointed what functions the caretaker should exercise. [Schedule 2, Clause 3 (f1)]

A caretaker agreement can be transferred to another person with the consent of the owners corporation concerned [s. 40B (3)].

From 10 February 2003, the Act limits the period of a caretaker agreement to 10 years, but it may be renewed if the parties agree. An agreement entered into before 10 February 2003 that is for more than 10 years can run its full term.

Resolving disputes with caretakers

The Consumer, Trader and Tenancy Tribunal (CTTT) provides a quick, low cost dispute resolution service for strata schemes.

Disputes about caretaker agreements can be resolved at a CTTT hearing if they have not been resolved earlier at mediation.

Only an owners corporation can apply to the CTTT for an order to resolve a dispute with a caretaker. The following grounds apply:

- the caretaker's unsatisfactory performance under the agreement
- unfairness of charges paid
- the agreement is harsh, oppressive, unconscionable or unreasonable.

The CTTT can make an order to:

- terminate an agreement
- require payment of compensation by a party to the agreement
- change, confirm or declare invalid the terms and conditions of the agreement
- dismiss the application.

How to find information about caretaker agreements

Documents made available by the owners corporation for inspection under section 108 of the Act, must include a copy of any caretaker agreement entered into or in force [s. 108 (3) (i)].

Under section 109 of the Act, the certificate provided by the owners corporation has to include the name and address of the caretaker [s. 109 (4)].

Use of proxy vote

A caretaker cannot act as a proxy for an owner if the voting would result in their financial or material benefit for example, to extend their appointment, to increase their pay, or in a decision not to proceed with or to delay legal proceedings involving the proxy holder. (See page 20 for more details on proxies).

The responsibilities of the owners corporation

The owners corporation has responsibility for the overall management of the scheme which includes record keeping, financial management, keeping all necessary insurance up to date, the repair and maintenance of common property (page 8) and by-laws (page 12). In addition they may be responsible for the employment of a strata managing agent and/or building manager (page 24).

Keeping records

Minutes of meetings

The owners corporation must keep minutes of its meetings, including details of motions passed, for at least 5 years [s. 102 & 104].

The owners corporation must also keep:

- copies of all correspondence received and sent for at least 5 years
- notices of the owners corporation and executive committee meetings for at least 5 years
- proxies given to the owners corporation for at least 5 years after the proxy expires [s. 104].

The owners corporation must record, (by hand or computer) all details of notices given and orders made under the *Strata Schemes Management Act* or any other Act, or by a public authority, local council or a court. These must be kept for at least 5 years [s. 104].

Legal notices and orders

The following information must be recorded for each legal notice or order:

- the date and manner of service
- the part of the strata scheme it is about
- the date for obeying the order
- the date the order was obeyed [s. 101].

Financial records and statements

The owners corporation must keep accounting records and financial statements for at least 5 years [s. 103]. These include:

- receipts consecutively numbered
- a passbook, a bank deposit book, or a statement of deposits and withdrawals in order of date, that are bound or kept in a loose-leaf folder
- a cash book
- a levy register.

The owners corporation must prepare financial statements:

- for the period beginning on the date the strata plan was registered and ending no earlier than 2 months before the first AGM
- for each period beginning on the date the last statement was prepared and ending no earlier than 2 months before the next AGM [s. 106 (1)].

Strata roll

The owners corporation must prepare and keep a strata roll [s. 96]. The roll can be kept on computer or can be hand written. Records need to be kept for each lot, and should include the owner's name and an Australian address for serving notices, or alternatively the owner's agent and the agent's Australian address for serving notices. The following information must also be recorded for the common property and the strata scheme in general:

- the strata plan number and the address of the building
- the name of the original owner and an Australian address for notices
- the name of the managing agent (if there is one) and an Australian address for notices
- the total unit entitlements for the scheme and for each lot
- insurance details
- the by-laws for the strata scheme.

Printed forms to assist record keeping for owners corporations can be purchased from some law stationers.

Levies, administrative and sinking funds

An owners corporation is responsible for the same type of expenses as a conventional householder. These include council rates, water and electricity charges for common areas, building and public liability insurance, and repairs and maintenance of common property. In a strata scheme, there may also be additional costs to do with the running of the scheme such as fees for a managing agent, workers compensation insurance or building valuations.

In order to cover the costs of expenses, the law requires that each owners corporation establishes an administrative fund and a sinking fund and raises levies from owners [s.76]. All levies must be charged in proportion to the unit entitlements of each lot [s. 78].

Administrative fund

The administrative fund is for day-to-day recurrent expenses. The amount in it must be enough for the owners corporation to pay for:

- the cost of looking after common property and any other property of the owners corporation
- the payment of insurance premiums
- any other recurrent expenses other than amounts covered by the sinking fund or by a special levy [s. 75 (1)].

Sinking fund

The sinking fund is for the costs of future capital expenses. The amount in the fund must be enough to cover all the expenses for:

- painting common property
- obtaining property for the owners corporation (for example, mowers or washing machines)
- renewing or replacing any fixtures on the common property and any other property owned by the owners corporation
- replacing, repairing or making good the common property
- any debts, other than amounts covered by the administrative fund
- other capital expenses [s. 75 (2)].

The idea of the sinking fund is that there will be enough money available to pay for capital expenses when the job needs doing.

Contributions made by owners to the sinking fund are not refundable when an owner later moves out of the strata scheme (even if the money has not yet been spent on the item that the levies were collected for).

NOTE: Two-lot schemes may be exempt. See page 31.

10-year sinking fund plans

From July 2009, each owners corporation is required by law to have a 10-year sinking fund plan. The plan means that each owners corporation has to decide what work will need to be done in the future and plan when and how they will pay for it.

Quarterly sinking fund levies are one option for raising the necessary money. However, owners may agree to wait and raise a large special levy or borrow money when major work needs to be done. The financial implications of the various workable options need to be carefully considered. When decisions are made about how to raise the funds for particular expenses, these must be shown in the sinking fund plan so that all owners and prospective buyers are aware of their future liabilities and can plan their finances accordingly.

Owners corporations can put the 10-year plan together themselves or engage outside experts to do the job for them. There are businesses that specialise in preparing sinking fund plans but there is no obligation on owners corporations to use them. Some owners corporations may feel they have enough internal expertise to carry out the task. It is a matter of choice for each scheme.

Frequently asked question

Why do we need to have a sinking fund plan?

All buildings need to be maintained regularly to retain their value and stop minor damage and deterioration becoming major problems. Developing a 10-year sinking fund plan means that future repairs and maintenance are anticipated well in advance. The owners corporation can then agree on the best way to raise levies to cover these future costs.

The 10-year plan must be approved by the owners corporation at an annual general meeting and must be reviewed and adjusted as required in the first 5 years. The plan has to be reviewed at least every 5 years [s. 75A].

While there are no penalties in the legislation for owners corporations who do not develop a 10-year plan, an owner can apply to the Consumer, Trader and Tenancy Tribunal for an order instructing the owners corporation to meet its obligations to develop the plan.

Transfer of money between the two funds

The owners corporation can transfer money from the administrative fund to the sinking fund or make a payment from one fund that should have been paid from the other. But the owners corporation must make a levy to repay that fund within 3 months after the transfer of money [s. 68 (2) & (3), s. 71 (2) & (3)].

Deciding levies

In order to collect money for the two funds the owners corporation charges all owners a levy. Levies must be decided at each annual general meeting [s. 75 and 76]. Before a levy is agreed to at a meeting a budget must be provided showing the existing financial situation and an estimate of receipts and payments [s. 75 (3)]. The budget can be sent out with the notice of the meeting or given out at the meeting before the voting on the motion takes place. A motion to decide a levy must:

- show the amount for each fund
- be approved by a majority vote.

The owners corporation may decide to allow payment by instalments.

After the decision is made, the treasurer must write to all owners with details of the amount to pay and the date to pay [s. 23]. This notice only has to be given once [s. 78].

Extra levies

If the owners corporation has to pay a debt that was not budgeted for in either the administrative or sinking fund estimates, a special levy must be agreed at a general meeting and paid to the administrative fund [s. 76 (4)].

Interest and discounts on levies

An unpaid levy incurs interest at the rate of 10% simple interest a year if not paid within 1 month after it is due. The owners corporation cannot increase or decrease the interest but it can make a special resolution to charge no interest [s. 79 (3)].

An owners corporation may vote by a special resolution to give a 10% discount where a levy is paid before the day it is due. Payment made on the day it is due does not attract the discount [s. 79 (4)].

Unpaid levies, including interest, can be recovered by the owners corporation as a debt in court [s. 80].

Frequently asked questions

• What if people do not pay their levies?

The owners corporation can impose a charge of 10% simple interest for levies not paid within 1 month of their due date. The owners corporation can also take debt recovery action through the local court.

• The owners corporation keeps putting up the levies. What can I do?

Levies are decided at general meetings and must be discussed and accepted by a vote of the owners. You can vote against the increase or put up a motion for a different levy amount if you wish. A managing agent may put a motion for an increase in levies on the meeting agenda but cannot impose levies.

Levies are normally only increased if there is a need to do new works or there are additional expenses. Ask why the increase is being made if you are not sure.

If you are concerned about rising costs you could try to negotiate paying in instalments. If you think the levies are really too high, you can lodge an application for mediation with Fair Trading to try to resolve the matter.

• I did not get a levy notice so I have not paid anything for ages. Is this a problem?

Your levies must be paid whether or not you receive a notice. Unpaid levies mean you will not be able to vote at meetings. Make sure your current address is on the strata roll so you can receive notices of both levies and meetings. You can pay your levies any time up until a meeting starts, in order to be financial and therefore eligible to vote.

Insurance

The owners corporation is responsible for making sure all necessary insurance policies are in place and are up to date. All insurance policies must be with an approved insurer [s. 88A].

Building insurance

The owners corporation must make sure the building is insured under a damage policy with an approved insurer [s. 83 (1)]. Schemes with just two lots are exempt if the owners corporation decides by unanimous resolution not to take out insurance, but only if there are no common property buildings, that is, the buildings are wholly within their lots. It is then up to the individual owners to obtain their own insurances.

The policy must cover the building if damaged or destroyed by fire, lightning, explosion or any other cause identified in the policy:

- for the replacement (where destroyed) or the reinstatement (where damaged but not destroyed) of the building back to the same condition it was in when new
- for the payment for removal of debris and the payment of architects and others whose services are needed for the replacement or reinstatement [s. 82].

The building includes owners' fixtures and fittings [s. 81]. Fixtures and fittings are items like sinks, shower screens, cupboards, internal doors, stoves, common air conditioning systems and intercom systems.

The building must be valued every 5 years and insured for at least that value.

Public liability insurance

The owners corporation must make sure there is insurance cover with an approved insurer for damage to property, death or injury for which the owners corporation could become responsible [s. 87 (1) (b)]. The minimum amount of cover is \$10 million.

Workers compensation insurance

The owners corporation must have workers compensation insurance, with an approved insurer, where it is required under the *Workers Compensation Act 1987* [s. 87 (1) (a)]. Further information is available

from WorkCover NSW, www.workcover.nsw.gov.au or call 13 10 50.

Voluntary workers insurance

The owners corporation must make sure there is insurance cover, with an approved insurer, against any damage that it may become liable for when a person does voluntary work for the owners corporation in the building or on the common property. A voluntary worker is any person who does work without any fee or reward, or without expecting any fee or reward [s. 87].

Frequently asked question

Do I have to insure the contents of my strata unit?

While there is no obligation to do so, it is highly recommended that you take out adequate insurance on the contents of your unit. The insurance that the owners corporation organises covers the structure of the building and any fixtures inside lots (for example, sinks, baths, shower trays).

However other contents such as your furniture, electrical appliances, curtains and carpets would not be covered. Owners can suffer major loss if their personal property is not insured in the event of a fire or through water damage. In addition, contents insurance usually covers your paint finishes on walls and ceilings.

Fire safety inspections

The owners corporation is responsible for providing access to all parts of the scheme for necessary fire safety inspections [s. 65C].

Pest treatments

The NSW Pesticides Regulation requires that residents of multiple occupancy dwellings must be notified when licensed pest controllers apply pesticides to the internal or external common areas of their residence. The rules apply to residential strata, community and company title schemes consisting of three or more dwellings.

The person responsible for organising the pest treatment must make sure that residents are given at least 5 working days notice. Notice of the treatment can be given in person, by fax, by email or telephone, by post, in letterboxes, under doors or by placing it

on common notice boards and near the main building entrance. For more information contact the Department of Environment, Climate Change and Water.

Additional responsibilities for large schemes

A large scheme is defined as one with over 100 lots (101 lots or more). Parking and utility lots are not counted in the calculation. The following special provisions apply to large schemes:

- Financial accounts must be audited every year [s. 107 (2)].
- Annual budgets must list amounts expected to be spent on specific items [s. 75 (5)].
- At least two quotations must be obtained by the owners corporation for expenditure over \$25,000 [Section 80B & Clause 14 of Regs].
- Executive committees of large schemes are not permitted to spend more than 10% above the budgeted amount for any item (unless the owners corporation lifts the restriction by a resolution) [s.80A]. The 10% limit does not apply to emergency expenditure such as blocked sewer pipes [s. 80C].
- Forms for Proxy votes for an owners corporation meeting must be provided to the secretary at least 24 hours before the meeting concerned [Schedule 2, Clause 11 (3)].
- Personal notice of all upcoming executive committee meetings must be given to all lot owners [Schedule 3, Clause 6].
- Personal notice of the minutes of executive committee meetings must be given to all lot owners [Schedule 3, Clause 16].

Specific information for two-lot schemes

The following special provisions also apply to two-lot strata schemes.

Building insurance and sinking fund

Owners in two-lot strata schemes may in certain circumstances be able to obtain their own building insurance for their lot [s. 83] and be exempt from the requirement of having a sinking fund [s. 69]. These circumstances are as follows:

- the buildings in each lot are physically detached
- no building or part of a building is situated outside the lots
- the owners pass a unanimous resolution for the owners corporation not to have building insurance for both buildings and/or not to have a sinking fund.

Quorum

A quorum in a two-lot scheme with two owners is always two people who are entitled to vote [Schedule 2, Clause 12 (3)].

Executive committee

The executive committee in a two-lot scheme is made up of:

- the owner of each lot that has only one owner
- one co-owner of each lot that is owned by co-owners
- the company nominee of each lot owned by a corporation [Schedule 3, Clause 1].

Audit of accounts and financial statements

There are no requirements for two-lot schemes to have any audit of accounts and financial statements carried out in accordance with the Australian Auditing Standards [s.107].

Specific information for people in the initial period

The owners corporation starts when a strata plan is registered with the Land and Property Management Authority NSW. At this stage, the owners corporation will often consist of just the original owner, who is usually the builder or developer.

Definitions

Covenant chargee: a person who holds an agreement over the property which imposes certain obligations or restrictions.

Initial period: the initial period begins when the strata plan is registered and ends when one-third of the unit entitlements have been sold. This period may last only a few weeks, or may last for years. In some schemes the initial period never ends because not enough unit entitlements are sold.

Mortgagee: a person or company who lent money to a person to buy a property.

Original owner: is the owner of the scheme when the strata plan is registered and is usually the builder or developer.

Unit entitlement: each lot has a comparative value that is decided when the strata plan is registered. The unit entitlement of each lot is set out in the Schedule of Unit Entitlement on the strata plan and is used to calculate each owners contributions for levies and voting entitlements.

The initial period

Restrictions during the initial period

During the initial period, the owners corporation must not:

- change or cancel the by-laws or make extra by-laws that do not give a right or obligation to all owners or all lots [s.50]
- alter common property (except under a development contract)
- incur a debt for more than is set aside in its funds to repay

- borrow money or give securities
- appoint a strata managing agent or caretaker to continue after the first AGM [s.113]
- sell any common property.

Application to the Consumer, Trader and Tenancy Tribunal to alter any common property

The Consumer, Trader and Tenancy Tribunal (CTTT) provides a guide to low cost dispute resolution service for Strata Schemes.

During the initial period, the owners corporation can apply to the CTTT for an order to waive, vary or extinguish a restriction about the initial period.

If the restrictions are not obeyed, the original owner is liable for any debt or loss of the owners corporation or an owner [s.113 (2) & (3)].

Duties of the original owner

During the initial period the original owner is responsible for all the duties of the owners corporation, unless an executive committee has been appointed. The owners corporation may hold general meetings and appoint an executive committee before the first AGM, which may be important if the initial period is continuing for a long time. Owners will still have to pay levies during this time, and are still able to request meetings and be part of the decision making process.

First Annual General Meeting

The original owner must hold the first Annual General Meeting within 2 months of the end of the initial period. There can be a fine of up to \$1,100 if this is not done [Schedule 2, Part 1, Clause 2].

Notice of the AGM must be given to each owner and each first mortgagee and covenant chargee shown on the strata roll. This must be done at least 14 days before the meeting [Schedule 2, Part 2, Clause 27].

Distribution of books and documents

At the first AGM, the original owner must give the owners corporation:

- all plans, occupation certificates, specifications, diagrams, maintenance and service manuals, depreciation schedules and other documents and policies relating to the strata scheme
- all development consents, complying development certificates and related endorsed plans, 'as built' drawings, compliance certificates (within the meaning of the *Environmental Planning and Assessment Act 1979*), fire safety certificates and warranties obtained or received by the owner or lessor and relating to the scheme or any building, plant or equipment in it
- any other document or item relating to the scheme or any building, plant or equipment as prescribed (for example, sewer diagrams)
- the certificate of title for the common property, the strata roll and any notices or other records about the strata scheme, but only if the original owner has control of them
- the accounting records and the latest financial statement.

A penalty of up to \$11,000 can apply to a breach [Schedule 2, Clause 4].

Voting rights of the original owner

At the AGM, if you are the original owner and still own half or more of the total unit entitlement, and a vote by poll or special resolution is called, the value of your vote is reduced to one-third of your unit entitlement, ignoring any fraction [Schedule 2, Part 2, Clause 18].

If the motion is to elect the executive committee and you are the original owner and own half or more of the lots, your vote is reduced to one vote for each three lots you own, ignoring any fraction [Schedule 2, Part 2, Clause 17].

If a poll vote is called on the election of the executive committee, the value of the original owner's vote is

reduced to one-third of the total unit entitlement, ignoring any fraction [Schedule 2, Part 2, Clause 17].

First AGM agenda

As long as the set agenda is used, the first AGM is valid even if it is called or held after the fixed time. The set agenda includes the following:

- insurance cover
- the election of executive committee members
- by-laws
- appointment of a strata managing agent
- accounting records
- restricted matters and levies
- preparation of 10-year sinking fund plan
- whether a caretaker is to be appointed.

If the first AGM is held but an executive committee is not appointed, an owner, mortgagee or covenant chargee can make an application to the Adjudicator for an order to appoint a person to hold a general meeting to appoint the executive committee [s.17].

An Adjudicator can make decisions on disputes or complaints which have not been resolved by mediation.

If an executive committee has been elected at the first AGM but no office bearers have been appointed, an owner, mortgagee or covenant chargee can make an application to the Adjudicator for an order to appoint a person to call an executive committee meeting to elect those officers [s.19].

Failure to hold the first AGM

If the original owner does not hold the first AGM, an Adjudicator may appoint a person to hold the meeting. The owners corporation, an owner, or a mortgagee of a lot, may make an application to the Adjudicator for this order [Schedule 2, Part 1, Clause 5].

If things go wrong

A guide to solving disputes

Strata life often means that people of diverse interests and backgrounds are brought into close contact and sometimes disagreements and disputes arise. Hopefully, most can be sorted out by the people involved by talking about the problem and through developing tolerance and an understanding of others.

Talk about the problem

Sometimes people in dispute have not even spoken to each other about the problem. One side may not even be aware there is a issue. The first step towards resolving a problem is communication and to make every attempt to talk to the other people involved. For example if a resident is breaking a by-law they may not be aware that they are creating a problem, so speak to them first or send a letter, giving them the chance to correct the problem before moving straight into the formal dispute resolution process.

When disputes cannot be resolved informally, there is a more formal process of dispute resolution set out by the *Strata Schemes Management Act 1996*.

Two processes

The Act provides two ways of resolving disputes. One is for the owners corporation to police its own by-laws by taking direct action against owners or occupiers who breach them. The other allows an owners corporation, owner or resident to take action through the mediation, adjudication and Consumer, Trader and Tenancy Tribunal process.

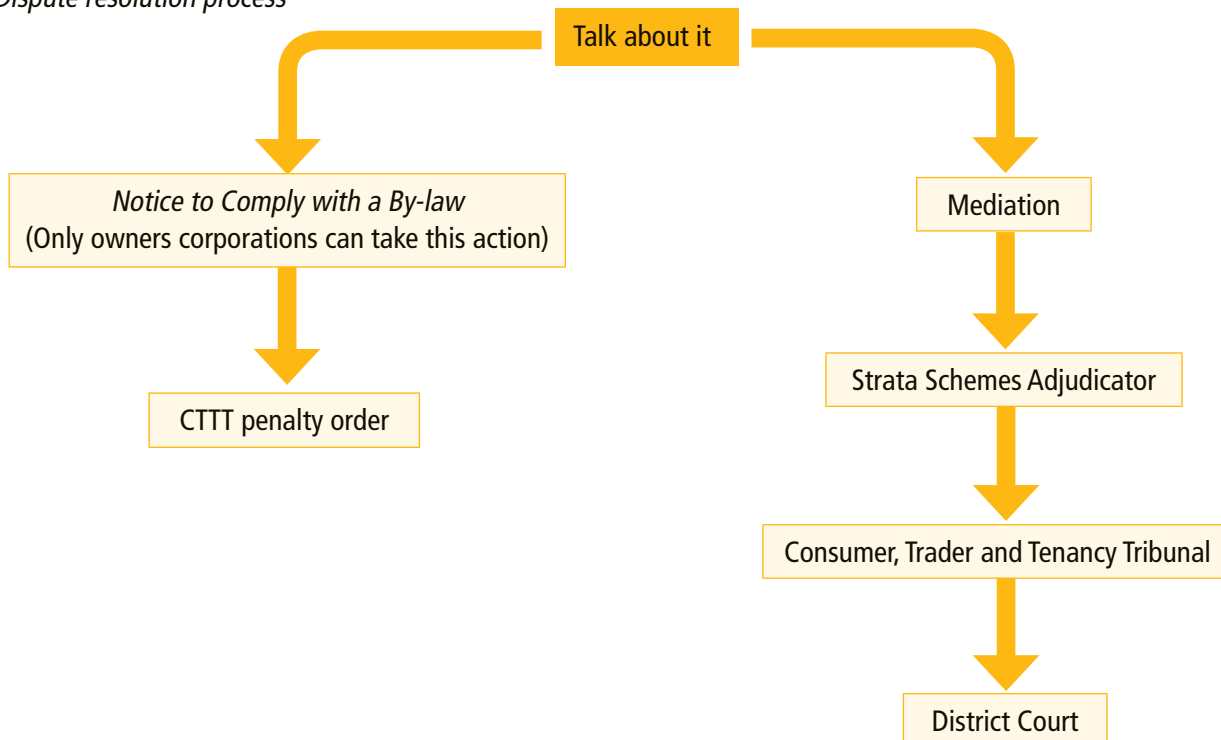
Direct action by the owners corporation

If an owner or resident of a unit breaches a by-law, the owners corporation or managing agent (if their agency agreement gives them the authority) can serve a *Notice to Comply with a By-law* on the person who is breaching it. If that person continues to breach the by-law the owners corporation may apply to the Consumer, Trader and Tenancy Tribunal (CTTT) for a penalty of up to \$550 to be imposed on them [s.45 and s.203].

Mediation, Adjudication, CTTT process

An owners corporation, owner or resident can also apply for mediation in order to resolve a problem or

Dispute resolution process



deal with a breach.

Mediation

Many disputes can be resolved through mediation, a structured negotiation process in which a neutral and independent mediator assists parties in dispute to achieve resolution. The mediator's role is to:

- help identify the issues in dispute
- assist the parties to raise and consider options and strategies by which the issues may be addressed
- assist the parties to discuss the issues and options with a view to negotiating a settlement they can all live with.

Mediation is confidential and private. Any offers or admissions made during the mediation session cannot be referred to in any later proceedings.

Mediators are impartial and do not make decisions for people. They are skilled in assisting those involved in the dispute to find their own solutions. This means that the agreement reached best suits the situation of all involved and is not based on what a 'judge' thinks is best for them. It also means a decision will not be imposed on them.

Fair Trading has qualified mediators who are skilled in dealing with community and strata schemes disputes. Other mediation services may also be used, such as a Community Justice Centre.

What disputes are suitable for mediation?

Any dispute that an order can be applied for under the Act is suitable for mediation. This includes, but is not restricted to, disputes about:

- alterations to common property
- appointment of managing agents
- repairs to walls, ceilings and bathrooms
- noise problems
- validity of meetings
- keeping pets
- water penetration problems
- use of air conditioners
- parking on common property
- insurance matters
- caretakers.

Case study - Noisy floors

Not long after the Newtons* and their two young children moved into their new home in a small strata scheme, the downstairs owner began to complain about the noise from their floorboards. The previous owner had removed the carpet and polished the timber floors which was causing a disturbance to the people living in the unit directly below.

The downstairs owner applied for mediation and a mediation session was held on-site. When the Newtons heard the noise for themselves in the downstairs unit, they realised it was actually very disturbing. Both sides were then committed to working out a solution that would overcome the bad feelings that had developed, and be acceptable to both sides.

When they began to talk, they realised there were differences in their lifestyles. The downstairs owner was a shift worker whereas the Newtons had small children at home all day. They tried to identify which specific floor areas were causing the most concern and finally reached an agreement. The main living areas were to have wall to wall carpet with industrial underlay, while the noise of other areas would be reduced through the use of floor rugs. The downstairs owner even agreed to help with the cost.

* fictional names and story based on typical mediation case

What disputes are excluded?

The following disputes are excluded from mediation:

- appointment of a compulsory strata managing agent
- compensation
- allocation of unit entitlements
- penalty disputes.

Who attends the mediation?

It is important that all the relevant people involved in the dispute attend the session. Each side may bring a support person as well as a solicitor if you feel it is necessary and will assist the discussion.

Preparing for mediation

It is important that you are fully prepared for the mediation session. This includes getting your own legal or other advice (for example, financial or technical).

Information about the legislation covering your matter is available from Fair Trading. You should consider getting legal or other advice. Fair Trading does not give legal advice.

You will also need to bring any relevant plans, documents or photographs to the mediation session.

The mediator will arrange for an interpreter to attend if required.

What happens during mediation?

Everyone involved will be encouraged to participate. It begins with each side briefly telling the mediator about the dispute and what they are hoping to achieve from the mediation.

The mediator will help those involved to discuss the issues and explore what is in dispute, and to then identify options and negotiate possible settlements.

When an agreement is reached, the mediator may help with drafting a written agreement. Agreements reached at the end of mediation are binding for those involved. In certain circumstances an Adjudicator may make the settlement into an enforceable order. This requires the consent of all the people involved in the dispute [s. 131 (2A) & (2B)].

If no settlement is reached or an agreement breaks down, one side can apply for an order by an Adjudicator or the Consumer, Trader and Tenancy Tribunal. The CTTT provides a quick and low cost dispute resolution service for strata schemes.

Adjudicator makes a decision

An Adjudicator is a member of the CTTT who can make decisions on disputes or complaints which cannot be resolved by mediation.

You must attempt mediation before applying for Adjudication. Adjudicators can rule on disputes including:

- repairs to common property
- water penetration through windows and shower floors
- enforcement of by-laws
- appointment of a managing agent
- validity of meetings
- variation of insurance.

Fair Trading can give you more information about the types of disputes the Adjudicator can rule on.

How is an Adjudicator's decision made?

Applications to an Adjudicator do not require people to appear at the CTTT.

After an application is made, a letter will be sent to the people involved in the dispute asking for written submissions (that is, the views of anyone involved). You will need to provide relevant information and documents to prove your argument. If possible, attach a copy of the strata plan, minutes of relevant meetings, resolutions and the registered by-laws for the scheme.

The Adjudicator then looks at the application and all submissions. The decision and the reasons for this are made in writing and a notice of the order (decision) is sent out to the people involved, which will include the person who applied for it, the person it is against, anyone who sent in a submission and the owners corporation.

An Adjudicator's order is binding and carries a penalty for failure to comply.

Case study - Renovating without approval

An owner in a small strata building undertook some renovation work on her unit without the owners corporation approval. She replaced the bathroom window, removed an internal wall and painted her front door a different colour to other units.

The owners corporation objected to her renovations on the basis that the changes damaged the common property and were not consistent with the appearance of other units in the scheme. The owners corporation applied to the CTTT for an order requiring the owner to return her unit to its original state.

The CTTT Adjudicator found the owner had damaged and altered the common property by removing the window and changing the colour of her front door. The owner was ordered to restore the original window and re-paint her front door. She was also ordered to obtain a report on the impact of the removal of the internal wall and its effect on the structural integrity of the building.

Adapted from the CTTT Annual Report 2008

How long does the whole process take?

To get a decision order from the Adjudicator can take between 6 and 10 weeks from the time the application is lodged.

What do I do if I am unhappy about an Adjudicator's decision?

You can appeal to the CTTT but you must do this within 21 days of the order coming into effect. In some cases, it may be possible to have the time to appeal extended to 90 days but you must have good reasons. However, if the Adjudicator dismissed your application, the 21 days cannot be extended and you must appeal within that time.

A hearing before the Consumer, Trader and Tenancy Tribunal

Fair Trading can give you more information about the types of disputes the CTTT can rule on. Some examples include:

- appeals against an Adjudicator's decision
- changes to unit entitlements
- changes to the management statement
- authorisation of certain acts in the initial period to preserve the facilities of the scheme in the early stages of a development.

When applying for an order by the CTTT, you will need to submit relevant information and documents to prove your argument. If possible, attach a copy of the strata plan, minutes of relevant meetings, resolutions and the registered by-laws for the scheme.

How is a CTTT case different from an Adjudicator's case?

The preliminary process is the same (that is, filling in the application, paying the fee) but the hearing before the CTTT is held in public. The hearing is similar to a Local Court although it is not quite as formal. The CTTT has regular hearings in Sydney and other metropolitan and country centres.

Is a legal practitioner necessary?

A legal practitioner (for example, a solicitor) is not necessary. You may present (argue) your case by yourself.

When will the CTTT make its decision?

Usually a decision is made after everyone has finished giving their evidence. Sometimes the CTTT Member might want more time to think about it and will give a reserved decision later. A notice of the order and reasons are sent out after the Member makes the decision.

Can you appeal a decision by the CTTT?

Yes, but only to the District Court. You should get legal advice about this.

How to apply for Mediation services, Adjudication or a CTTT hearing

An application form for mediation, for an order from an Adjudicator, or for a hearing before the CTTT can be obtained from the Registry of the CTTT or a Fair Trading Centre. Application forms can also be downloaded from the CTTT website at www.cttt.nsw.gov.au

After carefully reading the guide notes, complete the form and return it. There is a fee for each application.

Definitions

Adjudicator: a member of a the Consumer, Trader and Tenancy Tribunal who decides on strata disputes. (See page 36 for more details.)

Consumer, Trader and Tenancy Tribunal: provides a quick, low cost dispute resolution service for strata schemes.

Where to get more information

NSW Fair Trading

For further information about the law relating to strata schemes contact NSW Fair Trading.

Fair Trading administers the *Property, Stock and Business Agents Act 2002* and can assist with complaints against managing agents. Strata managing agents employed by owners corporations must be licensed under this Act.

Fair Trading can also assist with complaints against builders and contractors. All builders and contractors must be licensed by NSW Fair Trading.

You should always check that the builder, tradesperson or managing agent you plan to use is properly licensed, and this can be done over the phone or online.

Tel: 13 32 20

Website: www.fairtrading.nsw.gov.au

Other agencies

NSW Government Online Shop

You can download the *Strata Schemes Management Act 1996*, the Regulations and any amendments from the NSW Government Online Shop.

Website: www.shop.nsw.gov.au

Government Information Bookshop

You can purchase printed copies of the *Strata Schemes Management Act 1996*, the Regulations and any amendments from the Government Information Bookshop.

Tel: 1300 656 986

Consumer, Trader and Tenancy Tribunal (CTTT)

The CTTT provides a quick low cost dispute resolution service for strata schemes.

Tel: 1300 135 399

Website: www.cttt.nsw.gov.au

Land and Property Management Authority NSW

You can buy copies of registered strata plans, certificates of title for common property and individual lots and by-laws that have been made and registered by owners corporations.

You can email the LPMA at plan-info@lmpa.nsw.gov.au for clarification about what is common property and what is your lot.

Tel: 13000 LANDS (1300 052 637) or 9228 6666

Website: www.lands.nsw.gov.au

Community Justice Centres

Community Justice Centres can help people to work out an agreement that suits everyone concerned in a dispute.

Website: www.cjc.nsw.gov.au

Translation and interpreting services

For people who cannot speak English, telephone interpreters are available through the Translation and Interpreting Service.

Tel: 13 14 50

Institute of Strata Title Management

The Institute is the professional body representing member strata managing agents.

Tel: 9904 8499

Website: www.istm.org.au

Workcover NSW

Workcover provides information on workplace health and safety and work related insurance requirements.

Tel. 13 10 50

Website: www.workcover.nsw.gov.au

Appendix

By-laws 1-19 of Schedule 1

Most schemes have by-laws similar to this set. Individual by-laws can vary significantly from scheme to scheme. You must check your strata roll to find out which ones govern your scheme.

1. Noise

An owner or occupier must not make noise at any time within their lot or on common property that is likely to disturb peaceful enjoyment of another resident or anyone using common property.

2. Vehicles

An owner or occupier must not park or stand a vehicle on common property without the written permission of the owners corporation. That permission can be cancelled. Permission does not give an owner or occupier a permanent right over that part of common property.

3. Obstruction of common property

An owner or occupier must not stop lawful use of common property by another person.

4. Damage to lawns, etc on common property

An owner or occupier must not damage any lawn, garden, tree, shrub, plant or flower on the common property and must not use any part of common property as their own garden.

5. Damage to common property

An owner or occupier must not damage any structure that is part of the common property unless they have the owners corporation's written permission. Owners are responsible for maintaining anything they have installed. This rule does not stop an owner from installing a locking or safety device or screens for protection against intruders or to prevent entry of animals or harm to children. They must be installed in a professional manner and be in keeping with the appearance of the rest of the building.

6. Behaviour of owners and occupiers

An owner or occupier must be adequately clothed when on the common property and must not use language or behave in a way which might offend or embarrass others using common property.

7. Children playing on common property in building

An owner or occupier must make sure any child under their control does not play on common property areas inside the building. Children must be supervised by an adult when on common property laundries, car parking areas or other areas dangerous to children. This does not stop children from playing unsupervised on common property areas outside the building that are not dangerous (eg. a lawn).

8. Behaviour of invitees

An owner or occupier must make sure their visitors do not behave in a way which might disturb the peaceful enjoyment of another resident. This applies to behaviour in a lot and on common property.

9. Depositing rubbish, etc on common property

An owner or occupier must not throw rubbish, dirt, dust or other materials on the common property that may interfere with the peaceful enjoyment of another resident.

10. Drying of laundry items

Unless an owner or occupier has the written permission of the owners corporation they must not hang washing, towelling, bedding, clothing or other articles on any part of the strata scheme (eg. on the balcony of your lot) so that it may be seen from outside the building. Clothing hung on the common property clothes lines must only be there for a reasonable time.

11. Cleaning windows, etc

An owner or occupier must clean all glass in windows and doors on the boundaries of the lot, even though they may be common property.

12. Storage of inflammable liquids

An owner or occupier must get written permission from the owners corporation if they want to store any inflammable materials in the lot or on common property. But they may store these materials without permission if they are to be used for domestic purposes.

13. Moving furniture etc on, or through, common property

An owner or occupier must tell the owners corporation executive committee if they are going to move large objects or furniture through common property areas of the building. This allows an executive committee representative to be present during the move.

14. Floor coverings

An owner must cover the floor of their lot or treat it to stop noise which may disturb another resident. This does not apply to the kitchen, laundry, lavatory or bathroom of a lot.

15. Garbage disposal

An owner or occupier must keep a clean, dry and adequately covered garbage bin in their lot or on the authorised part of the common property. They must make sure their garbage is securely wrapped and all tins and containers are properly drained. They must put their garbage out to be collected, in the area chosen by the owners corporation, no earlier than 12 hours before collection. They must return their garbage bin to the proper place as soon as possible after collection.

They must not put any rubbish in another resident's garbage bin, unless they have their permission.

They must make sure that any rubbish spilt from their garbage bin is removed.

16. Keeping of animals

An owner or occupier must not keep an animal unless they have the written permission of the owners corporation. The owners corporation must not unreasonably refuse permission to keep an animal.

17. Appearance of lot

Unless an owner or occupier has the written permission of the owners corporation, they must not keep anything within their lot that is not in keeping with the appearance of the rest of the building.

This does not apply to the hanging of any washing, towelling, bedding, clothing or other articles mentioned in By-law 10.

18. Noticeboard

An owners corporation must put up a noticeboard somewhere on the common property.

19. Notice of a change of lot usage

An occupier must give the owners corporation notice if the use of the lot changes and the insurance premium for the scheme changes, for example change to a hazardous activity using chemicals or change from residential use to commercial or industrial use.

Breach of by-laws

If an owner or resident breaches a by-law, firstly, talk about the problem with them. If it continues, the owners corporation or managing agent (if their agency agreement gives them the authority) can serve a *Notice to Comply with a By-law* on the person who is breaching it.

If the person continues to breach the by-law the owners corporation may apply to the Consumer Trader and Tenancy Tribunal for a penalty of up to \$550 to be imposed on them [s. 45 and s. 203]. The fine is payable to the Director General of the Department of Services, Technology and Administration.

Form 3 - Proxy appointment

[Clause 29 (3)]

Strata Schemes Management Act 1996

Date ____ / ____ / ____

I/We _____

the owners of lot _____ in Strata Plan No _____

appoint _____

of _____

as my/our proxy for the purposes of meetings of the owners corporation (including adjournments of meetings).

Period or number of meetings for which appointment of proxy has effect _____

*1 meeting/ * _____ meeting/ *1 month/ * _____ month/ *12 months or 2 consecutive annual general meetings

*Tick or tick and complete whichever applies

(Note. The appointment cannot have effect for more than 12 months or 2 consecutive annual general meetings, whichever is the greater. If no selection is made by the person giving the proxy, the proxy is effective only for one meeting.)

*1. This form authorises the proxy to vote on my/our behalf on all matters.

OR

*2. This form authorises the proxy to vote on my/our behalf on the following matters only:

[Specify the matters and any limitations on the manner in which you want the proxy to vote.]

**Delete paragraph 1 or 2, whichever does not apply.*

*3. If a vote is taken on whether _____

(the strata managing agent) should be appointed or remain in office or whether another managing agent is to be appointed, I/we want the proxy to vote as follows:

**Delete paragraph 3 if proxy is not authorised to vote on this matter. For examples, read note 1 below.*

Signature of owner/s _____ Signature of proxy _____

Note:

- 1 A proxy is not authorised to vote on a matter:
 - (a) if the person who appointed the proxy is present at the relevant meeting and personally votes on the matter, or
 - (b) so as to confer a pecuniary or other material benefit on the proxy, if the proxy is a strata managing agent, caretaker or on-site residential property manager.
- 2 This form is ineffective unless it contains the date on which it was made and it is given to the secretary of the owners corporation at least 24 hours before the first meeting in relation to which it is to operate (in the case of a large strata scheme) or at or before the first meeting in relation to which it is to operate (in any other case).
- 3 This form will be revoked by a later proxy appointment form delivered to the secretary of the owners corporation in the manner described in the preceding paragraph.

Notice to Comply with a By-Law

Strata Schemes Management Act 1996

Section 45

Name/s of owner or occupier: _____

Address: _____

The owners corporation of strata plan number _____ has decided to issue you with this notice because it believes that you have broken by-law number _____

A copy of the by-law is attached.

The owners corporation believes that you have broken this by-law by: *(state action causing breach and give dates & details. Example: On (date) you parked motor vehicle (reg. no.) on common property without permission).*

You must comply with the by-law immediately by: *(state action required stopping breach. Example: Removing motor vehicle (reg. no.) from the common property driveway.)*

You must stop breaking this by-law and obey it now and in the future. If you do not comply with the by-law, the owners corporation may apply to the Consumer, Trader and Tenancy Tribunal to impose a penalty on you of up to \$550.

Dated ____ / ____ / ____

(Signed for and on behalf of the owners corporation)

(Place seal of owners corporation here)

Important information about this notice

- This Notice should refer to one by-law only.
- The executive committee, or owners corporation if it has decided not to let the executive committee issue this notice, must convene and hold a meeting to decide to issue the Notice and record its decision in the minutes. Alternatively a managing agent that has been delegated the function may decide to issue a Notice.
- Where an owners corporation consists of only 1 or 2 owners, the seal of the owners corporation must be affixed in the presence of the owner or owners or any strata managing agent appointed by the owners corporation. If an owners corporation has more than 2 owners the seal must be affixed in the presence of 2 persons who are owners or members of the executive committee chosen by the owners corporation for such a purpose or if no person has been chosen: the secretary and any other member of the executive committee; or the strata managing agent. Those person(s) present should sign the form at the time the seal is affixed.
- Penalty: an application to the Consumer, Trader and Tenancy Tribunal must be made within 12 months of the Notice being served.
- The secretary or managing agent should keep a copy of this notice, and a record of the date and method of service. A strata managing agent who issues a Notice must make a written record specifying that action and the manner in which it was done and serve a copy of the record on the owners corporation.

Enquiries may be directed to NSW Fair Trading 13 32 20.

Notice to Comply with a By-Law

Affidavit of Service

I, _____

(your name and address)

say on oath as follows:

I am a person authorised by the owners corporation to serve this notice.

On the _____ day of _____ 20_____

I served _____ with this Notice to Comply with
(name of owner or occupier)

a By-Law by delivering a true copy to _____
(method of service)

at _____

as required by the *Strata Schemes Management Act 1996*.

(signed)

Sworn at _____

this _____ day of _____ 20_____

before me

(Justice of the Peace/Solicitor)

How can this notice be served

1. Service on Occupier

A notice or other document may be served on the occupier of a lot:

- (a) by post at the address of the lot, or
- (b) by leaving it at the address of the lot with some person apparently of or above the age of 16 years.

2. Service where address is included in strata roll

If an address for the service of notices on a person is recorded in the strata roll, a document may be served on the person:

- (a) by post at that address, or
- (b) by leaving it at that address with some person apparently of or above the age of 16 years.

3. Service on owner of lot

A document may be served on the owner of a lot:

- (a) personally, or
- (b) by post at the address of the lot, or
- (c) by leaving it on a part of the lot that is the owner's place of residence or business (otherwise than on a part of the lot provided for the accommodation of a vehicle or as a storeroom), or
- (d) by leaving it in a place provided on the parcel for receiving mail posted to the lot, or
- (e) in any manner authorised by the by-laws for the service of notices on owners.

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For information and help on fair trading issues call NSW Fair Trading

General enquiries

13 32 20

Language assistance

13 14 50

TTY for hearing impaired

1300 723 404

Aboriginal enquiry officer

1800 500 330

Consumer, Trader & Tenancy Tribunal

1300 135 399

Registry of Co-operatives & Associations

1800 502 042

Or visit a Fair Trading Centre at:

- Albury • Armidale • Bathurst • Blacktown • Broken Hill • Coffs Harbour
- Dubbo • Gosford • Goulburn • Grafton • Hurstville • Lismore • Liverpool
- Newcastle • Orange • Parramatta • Penrith • Port Macquarie • Queanbeyan
- Sydney • Tamworth • Tweed Heads • Wagga Wagga • Wollongong

Visit our website for details

www.fairtrading.nsw.gov.au

13 32 20



**Fair
Trading**

NSW Fair Trading

1 Fitzwilliam St Parramatta NSW 2150

PO Box 972 Parramatta NSW 2124

9895 0111