



NSW OFFICE OF

Fair Trading

DEPARTMENT OF COMMERCE

for consumers
& traders

Strata living

What you should know about
residential, commercial and
other strata schemes

www.fairtrading.nsw.gov.au

ISBN 0 7347 6038 8

This publication can be viewed or printed from the Publications page of our website at www.fairtrading.nsw.gov.au

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Revised August 2007



New South Wales
Government

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Introduction

There are currently around 65,000 strata schemes in New South Wales and five or more new schemes are registered each day. They range in size from two lots to 700 lots and cover residential, commercial, industrial, mixed use and retirement village developments. It is estimated that close to a quarter of the State's population live in, own or are employed within or have some other direct connection with a strata scheme.

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

The subdivision and registration aspects of strata developments are now administered under separate legislation – the *Strata Schemes (Freehold Development) Act 1973* – by the Department of Lands. The Office of 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.

This *Strata Living* booklet has been prepared by the Office of Fair Trading to provide a useful resource for owners and other persons interested in the management of strata schemes in New South Wales.

Checklist

How much do you know about your rights and responsibilities?

Do you:

- Know how to have a motion included on the AGM Agenda?
- Know who is eligible for election to the executive committee?
- Know that the chairperson does not have a deciding vote?
- Know that meetings can be adjourned?
- Understand how the managing agent is appointed and dismissed?
- Know that certain conditions apply to a proxy?
- Know what records the owners corporation has to have?
- Know what insurances are compulsory?
- Know that the scheme's building insurance covers your fixtures and fittings?
- Know how levies are set and what happens if you don't pay them?
- Understand the effect of decisions made by the executive committee?
- Understand how much power the executive committee has?
- Know what by-laws are and how they are made or changed?
- Know how to find out which by-laws apply to your scheme?
- Know how to enforce the by-laws?
- Want to know how to resolve disputes in your strata scheme?
- Know how to inspect the records of the owners corporation?
- Know what is common property and what is a lot?

If you can't say yes to questions like these, you need to read this guide.

The Office of Fair Trading and the Act

The Office of Fair Trading provides the following services:

- information and help on management and dispute resolution under the Strata Schemes Management Act
- a mediation service for disputes is provided by the Mediation Services Unit.

The *Strata Schemes (Freehold Development) Act 1973*

The *Strata Schemes (Freehold Development) Act 1973* 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'.

The *Strata Schemes Management Act 1996*

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

- 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 management of funds and books of accounts
 - the holding of meetings of the owners corporation and executive committee
 - the responsibilities of the owners corporation to maintain common property and take out insurance
 - the responsibilities of owners and occupiers
- a system for settling disputes in a strata scheme, including those in the day-to-day management.

Unless otherwise specified, all references to legislation in this document refer to the *Strata Schemes Management Act 1996*.

How does the owners corporation start?

The owners corporation starts when a strata plan is registered with Land and Property Information NSW. In most cases the owners corporation will initially be the original owner.

Definitions

Owners corporation - the owners of the lots (formerly referred to as the body corporate) constituted under Section 11 of the Act and known as 'The Owners – Strata Plan No. X'.

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

Initial period - begins when the strata plan is registered and ends when one-third of the total unit entitlements have been sold.

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 additional by-laws that do not give a right or obligation to all owners or all lots (however, a by-law can be made authorising an owner to park a vehicle on part of the common property if the local council has given written approval) [s. 56]
- alter common property (except under a development contract)
- incur a debt for more than is set aside in its funds to repay it
- borrow money or give securities
- appoint a strata managing agent or caretaker to continue after the first Annual General Meeting (AGM) [s. 113]
- sell any common property.

Application to the Tribunal to alter any common property

The Consumer, Trader and Tenancy Tribunal (Tribunal) is a specialist, independent, low cost Tribunal for the fair and timely resolution of disputes according to law. Disputes are resolved at a hearing or by alternative dispute resolution.

During the initial period, the owners corporation can apply to the Tribunal for an order to waive, vary or extinguish a restriction about the initial period. This can be whether or not the restriction is imposed by the Strata Schemes Management Act, the Strata Schemes (Freehold Development) Act or the Strata Schemes (Leasehold Development) Act [s. 182].

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, even if there has not been a first AGM.

First Annual General Meeting (AGM)

Convening the first AGM

The original owner must hold the first AGM within 2 months of the end of the initial period, that is, when one-third of the total unit entitlements have been sold. There can be a fine of up to \$1,100 if this is not done [Schedule 2, Part 1, Clause 2].

Notice of first AGM

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 (including insurance policies) about 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 parcel or any building, plant or equipment as prescribed (eg. sewerage diagrams) [Schedule 2, Clause 4 (d)]

- 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.

There can be a penalty of up to \$11,000 if the original owner does not give the owners corporation all of these items [Schedule 2, Clause 4].

Voting rights of 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 for electing 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 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].

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. If you are the owners corporation, an owner or a mortgagee of a lot you may make an application to an Adjudicator for this order [Schedule 2, Part 1, Clause 5].

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 [Schedule 2, Part 1, Clause 1]. 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 ten-year sinking fund plan (applies to schemes registered from 7/2/2005) [Schedule 2, Clause 3 (b1)]

- whether a caretaker is to be appointed [Schedule 2, Part 1, Clause 3].

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].

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].

Meetings of the owners corporation

Annual General Meetings (AGMs)

After the first AGM, the next AGM must be held between 11 to 13 months after the date of the first AGM [Schedule 2, Part 2, Clause 31 (1) (a)]. 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.

AGM agenda

The agenda for an AGM must have:

- 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 ten-year sinking fund plan (applies to schemes registered from 7/2/2005) [Schedule 2, Clause 34A (b)].

Extraordinary general meetings

Any general meeting of the owners corporation that is not an AGM is called an extraordinary general meeting. These meetings should be held when necessary during the year (eg. 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 for convening extraordinary general meetings:

- by majority vote of the executive committee
- 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)]

How to put a motion on the agenda

Any person 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].

Notice of meetings

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.

Notices must be given to each owner of a lot, as shown on the strata roll, at least 7 days before the meeting. Notice need only be given to a first mortgagee or covenant chargee if a motion requires a special or unanimous resolution [Schedule 2, Part 2, Clause 32].

Chairperson to preside

If present, the Chairperson must preside at 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 people entitled to vote or
- b) owners entitled to vote holding one-quarter or more of the total unit entitlements.

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

If a quorum has not assembled within 30 minutes of the scheduled start time, the meeting must be put off for at least 7 days. The person presiding sets the date and time for the adjourned meeting. If there is no quorum within 30 minutes of the time fixed for the adjourned meeting, it can go ahead. The quorum is then the owners and proxies present who are entitled to vote [Schedule 2, Part 2, Clause 12].

Amending motions

Only motions on the agenda for a meeting can be voted on but motions on the agenda may be amended at the meeting. A person who is entitled to vote at the meeting may ask 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 meeting was not given [Schedule 2, Part 2, Clause 14].

Persons entitled to vote at general meetings

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

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

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. Example: in a ten-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.

An owner cannot vote if levies are in arrears, except on motions requiring a unanimous resolution [Schedule 2, Part 2, Clause 10].

Proxies

A valid proxy must be on the form prescribed by the regulations. An owner can make any person their proxy. Proxies must be given to the Secretary before or at the meeting. In the case of large schemes the proxy must be given to the Secretary at least 24 hours before a scheduled meeting [Schedule 2, Clause 11 (3)].

The following conditions apply to a proxy:

- It must state whether the proxy can vote on all matters, or only certain matters.
- It must state how 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 is valid.
- In a large scheme (see page 17) a proxy must be in the hands of 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 (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).

A proxy cannot be used by a caretaker, a strata managing agent or an on-site residential property manager to obtain a financial or material benefit for the proxy holder. Material benefits include the extension of a term of appointment, an increase in remuneration, 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 can be called for. When a poll is demanded, votes have a different value and are worked out by counting the unit entitlements.

Some motions need a special resolution, which is one against which not more than one quarter in value of votes is cast. The value of the vote is the 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 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 adjourned meeting.

A written notice must be sent to each owner at least one day before the meeting [Schedule 2, Part 2, Clauses 12 & 13].

Executive committee of the owners corporation

Definition

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 has 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].

Who is eligible for election to the executive committee?

The following are eligible:

- 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].

Meetings of the executive committee

Holding an executive committee 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 [Schedule 3, Part 2, Clause 7].

Notice

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 doesn't 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.

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. In a large scheme, notice may be given by email. [Schedule 3, Part 2, Clauses 6 & 7].

Owners' attendance

An owner or where the owner is a corporation, the company nominee of the corporation, can attend executive committee meetings but they 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 casting 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 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 notice board 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 notice board. 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)].

Effect of 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 (eg. 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 on executive committees

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

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 costs is less than \$750 times the number of lots in the scheme or \$10,000 (whichever is the lesser) [s. 80D].

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

Minutes of executive committee meetings

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

- A copy can be given to each owner within 7 days of the meeting.
- A copy can 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)] (but not if the scheme is a large one).

If there is no noticeboard the executive committee must give a copy of the minutes to each owner within 7 days [Schedule 3, Part 2, Clause 16].

Powers and duties of the Secretary

The powers and duties of the Secretary of an owners corporation include:

- preparing and giving minutes of meetings and putting a motion to confirm the previous minutes
- giving notices for the owners corporation and its executive committee that are required under the Act
- keeping the strata roll
- giving information to a person for 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)
- doing all administrative and secretarial duties for the owners corporation and the executive committee.

Powers and duties of the Treasurer

The Treasurer must:

- give owners notice of any levies under the Act
- give receipts, do the banking and account for any money paid to the owners corporation
- prepare any certificates under section 109
- keep all accounting records and prepare the financial statements.

Caretakers and building managers

Caretakers are a new category of persons who may 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 may also operate as letting agents within the building and are often referred to as the building manager. They may assist the owners corporation in:

- the management of common property
- controlling the use of common property by tradespersons and suppliers 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.

Caretaker contracts or agreements

A caretaker must be appointed in writing under a caretaker agreement, 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.

Tribunal dispute resolution

Only an owners corporation can apply to the Tribunal for an order. They apply on any of these grounds:

- the caretaker's unsatisfactory performance under the agreement
- unfairness of charges paid

- the agreement is harsh, oppressive, unconscionable or unreasonable.

Applications may be made in relation to agreements entered into before 10 February 2003.

The Tribunal in dealing with a caretaker dispute 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.

Disclosure of information about caretaker contracts

The certificate provided under section 109 of the Act by the owners corporation to any person will have to include the name and address of the caretaker [s. 109 (4)].

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

Use of proxy vote

A caretaker cannot use a proxy vote to obtain a financial or material benefit (eg. the extension of a term of appointment, an increase in remuneration, or a decision not to proceed with or to delay legal proceedings involving the proxy holder).

Strata managing agents

A strata managing agent may carry out some or all of the functions, duties or powers of the owners corporation. Managing agents are licensed under the Property, Stock and Business Agents Act. Owners corporations must make sure that any managing agent they engage is licensed under the Property, Stock and Business Agents Act.

Appointment

The appointment and giving of powers to 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 agents licence under the Property Stock and Business Agents Act can be appointed [s. 26]. The length of the appointment should be negotiated by the parties. Owners corporations should make themselves aware of the terms of any agency agreement they enter into.

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 (ie. 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 tell them what duties they are doing and how they are doing them [s. 31].

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

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)].

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

Dismissing a managing agent

A managing agent can only be dismissed, or have a delegation changed, by a majority vote at a general meeting. You must also check the terms of the contract. Written notice of the decision must be given to that agent [s. 27 (2) & 28 (2)].

Appointment of an agent by an Adjudicator

An Adjudicator may appoint a nominated person as a managing agent to:

- carry out all the functions of an owners corporation
- carry out all the functions of the executive committee and/or the Chairperson, Secretary or Treasurer
- carry out only some of those functions [s. 162 (1) & (2)].

If an Adjudicator is satisfied 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)].

Use of proxy votes

A strata managing agent cannot use a proxy vote to obtain a financial or material benefit. For example, for the purpose of extending the term of their appointment, increasing their remuneration or in a decision about legal proceedings involving the proxy.

The responsibilities of the owners corporation

Books and records the owners corporation must keep

Notices, meetings and correspondence

The owners corporation must record, by mechanical, electronic or other means, all details of notices given under the Strata Schemes Management Act or any other Act. Orders under the Strata Schemes (Freehold Development) Act and Strata Schemes (Leasehold Development) Act, or by a public authority, local council or a court, must also be recorded. These records must be kept for at least 5 years [s. 104].

The following information must be recorded for each notice:

- 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].

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 keep:

- copies of all correspondence received and sent for at least 5 years
- notices of 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].

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 must be kept by mechanical, electronic or other means. There must be recorded, for each lot, the owner's name and an Australian address for the service of notices, or the owner's agent and the agent's Australian address for service of notices.

The following information must 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 each lot
- insurance details
- the by-laws for the strata scheme.

Printed forms for the records of owners corporations can be purchased from some law stationers.

Insurance the owners corporation must have

Any insurance the owners corporation is required to have must be with an approved insurer [s. 88A].

Building insurance

The owners corporation must insure the building under a damage policy with an approved insurer [s. 83 (1)]. sS. 83 (1) does not apply to an owners corporation for a strata scheme comprising two lots if the owners corporation decides by unanimous resolution, and the buildings comprised in one of those lots are physically detached from the buildings comprised in the other lot, and no other building in the scheme is on common property.

A damage policy must cover the building if damaged or destroyed by fire, lightning, explosion or any other thing 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 carpets in common areas, hot water systems, light fittings, toilet bowls, 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 insure, with an approved insurer, against 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)].

You may get further information on the Workers Compensation Act from WorkCover NSW, 92-100 Donnison Street, Gosford NSW 2250, Tel. 13 10 50.

Voluntary workers insurance

The owners corporation must insure, 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].

Levies and the administrative and sinking funds

The owners corporation must levy owners in the strata scheme to raise enough funds to carry out its duties. All levies must be worked out 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 its expenses:

- for the cost of looking after common property and personal property of the owners corporation
- for the payment of insurance premiums
- for 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 to cover future capital needs. Some schemes are required by law to plan ahead for at least 10 years [s. 75A]. The amount in the fund must be enough to cover all the owners corporation's expenses:

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

Ten-year sinking fund plans

All schemes that came into existence on or after 7 February 2005 are required to have a ten-year sinking fund plan for the life of the scheme. The plan has to be reviewed at least every 5 years [s. 75a].

Older schemes were also required to begin ten-year sinking fund planning from 1 May 2006, although these schemes have been given more time. Check with Fair Trading for details.

Transfer of money between funds

The owners corporation can transfer money from one fund to the other 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 three months after the transfer of monies [s. 68 (2) & (3), s. 71 (2) & (3)].

Deciding levies

Levies must be decided at each annual general meeting [s. 75 (1) & (2) and 76 (1)]. When a levy is to be decided at a meeting a budget must be given showing the existing financial situation and an estimate of receipts and payments [s. 75 (3)]. You can give the budget with the notice of the meeting or at the meeting before voting on the motion. 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 the owners and tell them the amount to pay and the date to pay [s. 23]. This notice only has to be given once [s. 78].

Extra levy

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

Interest and discounts on levies

An unpaid levy gains interest at the rate of 10% simple interest a year if not paid within one 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)].

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

Fire safety inspections

The owners corporation is responsible for ensuring that access to all parts of the scheme is provided for necessary fire safety inspections [s. 65c].

Large schemes

A large scheme is defined as one with over 100 lots (ie. 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 of over \$25,000**. [Section 80B & Clause 14 of Regulation].
- **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). The 10% limit does not apply to emergency expenditure such as blocked sewer pipes (s. 80a).
- **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 (notice may not be given via noticeboards) [Schedule 3, Clause 6].
- **Personal notice** of the **minutes of executive committee meetings** must be given to all lot owners and not via noticeboards. [Schedule 3, Clause 16].

Common property and the lot

When you want to find out the boundaries between common property and lots in a strata scheme, you must look at the registered strata plan. For enquiries about interpretations of the plan and to buy a copy, contact Department of Lands at 1 Prince Albert Road, Sydney NSW 2000, Tel. 9228 6798.

Common property is all the areas of the land and building not included in any lot. The common property boundaries of each lot are generally formed by:

- the upper surface of the floor
- the under surface of the ceiling
- all external or boundary walls (including doors and windows).

Common property

The owners corporation must look after common property and do all repairs (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 replacing and renewing common property when needed [s. 62].

The following is a checklist for common property:

- **floor** includes a ramp or stairway
- **boundary wall** includes 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 are common property
- **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 finish** on the floor
- **balcony 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.

The owners corporation can decide at a general meeting by special resolution to do or allow a lot owner to add, alter or erect a new structure that improves or enhances common property. If the ongoing maintenance for any alteration, addition or erection is to be the responsibility of a lot owner, a by-law must be created. Otherwise the owners corporation becomes responsible for the ongoing maintenance [s. 65A].

When deciding on the areas of common property in a strata scheme, you must look at 'structural cubic space'. Structural cubic space includes:

- cubic space occupied by a vertical structural member, not being a wall
- 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.

Structural cubic space will be common property unless the registered strata plan shows that it forms part of the lot.

Getting information from the owners corporation records

Before you buy into a strata scheme you should get a Section 109 Certificate.

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 on the set form [Regulations – Clause 26 (2). Form 2 in Schedule 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 this for you, but not always. There are companies which specialise in inspecting the books and they know what to look for.

If you are an owner, or you have an owner's or a mortgagee's or covenant chargee's permission, you may write to the Secretary of the owners corporation and ask the Secretary to let you look at the records [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 (eg. 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 fee to look at the records [Regulations – Clause 16 (2)].

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

The responsibilities of owners and residents

All owners and residents in a strata scheme must obey the by-laws and s. 116 & s. 117 of the Act.

The by-laws are a set of rules that all people living in a strata scheme must follow. 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.

The matters that were previously contained in By-laws 1-11 in Schedule 1 to the Strata Schemes (Freehold Development) Act and Schedule 3 to the Strata Schemes (Leasehold Development) Act have been included as provisions of the *Strata Schemes Management Act 1996* and are no longer by-laws.

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.

By-laws

The owners corporation can change or cancel any of the by-laws to assist with the running of the strata scheme. A special resolution is needed.

A by-law has no force or effect if it is inconsistent with this or any other Act or law [s. 43 (4)].

By-laws cannot prevent guide dogs or hearing dogs being in the scheme, nor prevent children (persons under 18 years) occupying the scheme.

Any exclusive-use by-law in place at the time of registration of the scheme, and that remains in place, must be disclosed to purchasers by vendors by a copy of the by-law being attached to the contract of sale.

By-laws and tenants

All of the by-laws in place in the strata scheme apply to tenants in the same way as they apply to lot owners. Tenants must be given a copy of the by-laws within seven days of beginning a lease.

By-laws 1-20 of Schedule 1

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. (Note: This by-law was previously By-law 12 in Schedule 1 to the Freehold Act and By-law 13 in Schedule 3 to the Leasehold Act).

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. (Note: This by-law was previously By-law 13 in Schedule 1 to the Freehold Act and By-law 14 in Schedule 3 to the Leasehold Act).

3. Obstruction of common property

An owner or occupier must not stop lawful use of common property by another person. (Note: This by-law was previously By-law 14 in Schedule 1 to the Freehold Act and By-law 15 in Schedule 3 to the Leasehold Act).

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. (Note: This by-law was previously By-law 15 in Schedule 1 to the Freehold Act and By-law 16 in Schedule 3 to the Leasehold Act).

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. (Note: This by-law was previously By-law 16 in Schedule 1 to the Freehold Act and By-law 17 in Schedule 3 to the Leasehold Act).

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. (Note: This by-law was previously By-law 17 in Schedule 1 to the Freehold Act and By-law 18 in Schedule 3 to the Leasehold Act).

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). (Note: This by-law was previously By-law 18 in Schedule 1 to the Freehold Act and By-law 19 in Schedule 3 to the Leasehold Act).

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. (Note: This by-law was previously By-law 19 in Schedule 1 to the Freehold Act and By-law 20 in Schedule 3 to the Leasehold Act).

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. (Note: This by-law was previously By-law 20 in Schedule 1 to the Freehold Act and By-law 21 in Schedule 3 to the Leasehold Act).

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. (Note: This by-law was previously By-law 21 in Schedule 1 to the Freehold Act and By-law 22 in Schedule 3 to the Leasehold Act).

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. (Note: This by-law was previously By-law 22 in Schedule 1 to the Freehold Act and By-law 23 in Schedule 3 to the Leasehold Act).

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. (Note: This by-law was previously By-law 23 in Schedule 1 to the Freehold Act and By-law 24 in Schedule 3 to the Leasehold Act).

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. (Note: This by-law was previously By-law 24 in Schedule 1 to the Freehold Act and By-law 25 in Schedule 3 to the Leasehold Act).

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. (Note: This by-law was previously By-law 25 in Schedule 1 to the Freehold Act and By-law 26 in Schedule 3 to the Leasehold Act).

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. (Note: This by-law was previously By-law 26 in Schedule 1 to the Freehold Act and By-law 27 in Schedule 3 to the Leasehold Act).

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. (Note: This by-law was previously By-law 27 in Schedule 1 to the Freehold Act and By-law 28 in Schedule 3 to the Leasehold Act).

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. (Note: This by-law was previously By-law 29 in Schedule 1 to the Freehold Act and By-law 30 in Schedule 3 to the Leasehold Act).

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. (Note: This by-law was previously By-law 3 in Schedule 1 to the Freehold Act and By-law 3 in Schedule 3 to the Leasehold Act).

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.

20. Fire safety inspections

An owners corporation must comply with a requirement of a notice to carry out an inspection of a building or premises for purposes relating to fire safety given under the *Environmental Planning and Assessment Act 1979* [s. 65C].

Other responsibilities under section 116 and 117

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.

A guide to solving disputes in a strata scheme

Strata living often brings people of diverse interests and backgrounds close together. Disagreements and disputes sometimes arise. Hopefully, most disputes can be sorted out by the people involved, simply by talking about it. Tolerance and understanding of others is essential to harmonious living. Proper communication is also vital.

The *Strata Schemes Management Act 1996* sets out a process for resolving disputes. Before starting this process, a good first step is to talk to each other about the problem.

Talk about it

Sometimes people in dispute have not even spoken to each other about the problem. This makes it very hard to continue living together happily.

Have you made every attempt to resolve the dispute with the other party? Would it help to have the owners corporation discuss the problem at a meeting?

Notice to comply with a by-law

Where the owners corporation is satisfied an owner/occupier has breached a by-law it can decide by majority decision at a general or executive committee meeting, to issue a Notice to that person requiring future compliance with the by-law. If it is not complied with, the owners corporation may, within 12 months of serving the Notice, ask the Tribunal to impose a penalty of up to \$550. The Act does not require mediation before issuing the Notice, or applying for a penalty [s. 45].

Mediation

Mediation is a structured negotiation process in which a neutral and independent mediator assists parties in dispute to achieve their own resolution.

Where a mediated settlement has been reached, it may be ratified as a binding order by the Strata Schemes Adjudicator. This requires the consent of the parties [s. 131 (2a) & (2b)].

The Office of Fair Trading provides a mediation service through the Mediation Services Unit. Other mediation services, which are approved by the Commissioner for Fair Trading, can be used. Many disputes can be resolved

through mediation. The mediator's role is to assist the parties to:

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

Mediation is the preferred way to resolve a dispute. If mediation is not successful, an application to the Strata Schemes Adjudicator or the Consumer, Trader and Tenancy Tribunal can be made.

In many situations mediation must be attempted before an application for adjudication can be considered. The registrar of the Tribunal will decide which matters do not need mediation although some matters are automatically exempt (eg. Interim orders, variation of unit entitlement, appointment of managing agents).

Orders by an Adjudicator

Disputes an Adjudicator can rule on

Fair Trading will give you information about this. Here are some examples of disputes the Adjudicator can rule on if other attempts at resolution fail:

- repairs to ceilings, walls, bathrooms
- water penetration through windows, shower floors
- parking on common property without approval
- keeping pets without approval
- alterations to common property (eg. closing in balconies)
- use of air conditioners
- insufficient floor coverings
- noisy residents
- appointment of a managing agent
- invalidation of meetings
- variation of insurance.

How does the Adjudication process work?

A letter will be sent to interested parties asking for submissions (the views of anyone involved). When applying for an order by an Adjudicator, 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 long does the whole process take?

An Adjudicator's order can take between 6 - 10 weeks from the time the application is lodged.

How is an Adjudicator's decision made?

Applications to an Adjudicator are dealt with in the office and the people in dispute do not have to appear before anyone. The Adjudicator looks at the application and all submissions, as well as decisions made in similar cases. The decision and the reasons for that decision are made in writing.

Notice of the order is sent out to the people involved (the person who applied, the person it is against, anyone who sent in a submission and the owners corporation).

What do you do if you're unhappy about an Adjudicator's decision?

You can appeal to the Tribunal, but you must do this quickly (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 Tribunal

Fair Trading can give you more information about the types of disputes the Tribunal can rule on. Here are some examples:

- appeals against decisions of the Adjudicator
- change unit entitlements
- authorisation of certain acts in the initial period to preserve the facilities of the scheme in the early stages of a development
- terminate a caretakers' agreement.

When applying for an order by the Tribunal, 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 Tribunal case different from an Adjudicator's case?

The preliminary process is the same (ie. filling in the application, paying the fee, sending in of submissions) but this time there is an open hearing before the Tribunal.

The hearing is similar to a Local Court although it is not quite as formal. There is one Tribunal for NSW which has regular hearings in Sydney and in other metropolitan and country locations.

Is a solicitor necessary?

A solicitor is not necessary. You may present (argue) your case by yourself.

When will the Tribunal make its decision?

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

Office of Fair Trading

The Office of Fair Trading provides information to all people connected with strata schemes in NSW about the *Strata Schemes Management Act 1996* and the services provided by the Commissioner, the Adjudicator and the Tribunal. The Office can be contacted between the hours of 8.30am and 5.00pm Monday to Friday on 13 32 20.

How do you apply?

An application form for mediation, an order from an Adjudicator, or a hearing before the Tribunal can be obtained from the Registry of the Tribunal or a Fair Trading Centre. Tribunal hearing application forms can also be downloaded from the Consumer, Trader and Tenancy Tribunal 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.

Can you appeal a decision by the Tribunal?

You can make an appeal to the Supreme Court. You should get legal advice about this.

Definitions

adjudicator – Strata Schemes Adjudicator appointed under the *Strata Schemes Management Act 1996*.

covenant chargee – a person who holds an agreement over a property which imposes certain obligations or restrictions.

fixture/fitting – see building insurance on Page 15 for examples.

levy – an amount of money, set by the owners corporation according to unit entitlements, which has to be paid by the owners to the owners corporation. It is for the general running of the scheme and includes payments for such things as maintenance and upkeep of common property and services.

large strata scheme – a scheme comprising of more than 100 lots, not including parking or utility lots.

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.

mortgagee – a person or company who lent money to a person to buy a property. The property is mortgaged to the mortgagee in case the person who borrowed the money does not repay it.

occupier/resident – people who live in the property. They may be tenants, children, relatives, husband, wife, defacto, licensee or any other person who lawfully lives in the property.

owner – a person(s) or company that buys a lot and whose name is shown on the Register at Land and Property Information NSW.

simple interest – interest payable only on the principal amount of the debt.

special resolution – a resolution passed at a general meeting of the owners corporation against which no more than one-quarter of votes (calculated by unit entitlement) is cast.

unanimous resolution – a resolution passed at a general meeting of the owners corporation against which no vote is cast.

tribunal – Consumer, Trader and Tenancy Tribunal.

unit entitlement – set out in the Schedule of Unit Entitlement and based on the comparative value of each lot at the time the strata plan is registered. It is used to calculate each owner's contributions for levies.

utility lot – a lot designed primarily for storage or accommodation of boats, motor vehicles or goods and not for human occupation as a residence, office, shop or the like.

Where to get more information

Office of Fair Trading

For further information about laws relating to strata schemes, contact the Office of Fair Trading.

All builders and contractors must be licensed by the Office of Fair Trading. We can also assist with complaints against builders and contractors.

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

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

Tel: 13 32 20

Hours of opening: 8.30am – 5.00pm Monday to Friday

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 [shop.nsw](http://shop.nsw.gov.au) - the NSW Government Online Shop.

Website: www.shop.nsw.gov.au

NSW Government Information Service

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

Tel: 1300 729 396

Consumer, Trader and Tenancy Tribunal

GPO Box 4005, Sydney NSW 2001

Tel: 1300 135 399

Fax: 1300 135 247

Department of Lands

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.

Land and Property Information Division

1 Prince Albert Road, Queen Square, Sydney NSW 2000

Tel: 1300 052 637

Community Justice Centres

Community Justice Centres can help people to work out an agreement that suits everyone concerned in a dispute. Look in the New South Wales Government section of the telephone book for the centre nearest to you or visit the website.

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.

Suite 311, 3rd Floor

71-73 Archer Street, Chatswood NSW 2067

PO Box 129, Chatswood NSW 2057

Tel: 9904 8499

Fax: 9904 8409

Website: www.istm.org.au

Home Purchase Advisory Service

This service provides information and advice on all aspects of buying your own strata unit, including the free booklet titled *The A-Z of Home Purchase*.

Tel: 1800 806 653

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

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For information and help on fair trading issues call the Office of 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

Motor Vehicle Repair Industry Authority

9712 2200

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

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