

ESSENTIAL GUIDE TO NEW SOUTH WALES STRATA LEGISLATION

ADVICE FROM YOUR STRATA EXPERT

INSIDE:

STRATA SCHEME MANAGEMENT
STRATA COMMITTEE MANAGEMENT
RUNNING OF MEETINGS
BUILDING COMPLIANCE
BY-LAWS



TABLE OF CONTENTS

Strata scheme management

- 04 Appointing a building manager
- 05 Capital works fund
- 06 Collective sale and renewal of your building
- 07 Who’s responsible for your building and why
- 08 Debt recovery
- 09 Levy payment plan
- 10 Leases and licenses
- 11 Seeking legal advice or services

Strata committee management

- 12 Fiduciary duties
- 13 Election process
- 14 Absence
- 15 Strata committee
- 16 Role of a strata manager

Running of meetings

- 18 Voting rights
- 19 Everything you need to know about Proxies
- 20 A how-to guide to Adjournments
- 21 The essential guide to Quorums
- 22 Different types of resolutions
- 24 Tenant meeting rights

Building compliance

- 26 Building defects
- 27 Dividing fences and retaining walls
- 28 Window locks and safety devices
- 29 Pool safety

By-laws

- 30 Abandoned goods and vehicles
- 31 What you need to know about by-laws
- 32 By-law enforcement
- 33 Parking on common property
- 34 Renovations

The information provided is a general guide only, and is not intended as a substitute for legal advice. The company disclaims all responsibility and all liability for any expenses, losses, damages and costs which might be incurred as a result of the information provided by the company. Last updated on 1 October 2017.

STRATA SCHEME MANAGEMENT

Appointing a building manager in 5 easy steps

Determine if you're hiring a "building manager" or not.

Legislation defines a "building manager" as:
"A person who assists in exercising any one or more of the following functions of the owners corporation:

- Managing the common property;
- Controlling the use of common property by persons other than the owners and occupiers of lots;
- Maintaining and repairing common property."

If the above conditions are met, the person is a "building manager" by legislation, regardless of job title. The appointment is to be made by way of a contract and approved at a general meeting.

If the conditions are not met, a vote at a general meeting applies. The appointment can also be put to the strata committee.

Keep in mind there are also extra requirements for large strata schemes.

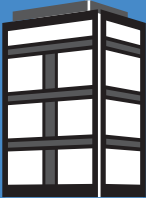


Responsibility and maximum period of agreement.

The contract must specify the responsibilities of the position, how to perform the duties, and the frequency at which they must be performed.

Some tasks may need a specific licence and should be noted as such.

A building manager agreement expires after no more than ten years.




Can we appoint a building manager at the first AGM?

Yes, you can. Keep in mind though that any previous building manager contract will be ended in this meeting.

An item must be placed on the agenda for this.


An appointment made by proxy vote is invalid if it brings any material or monetary benefit to the proxy. Be aware of this.

Personal or financial interest in the strata scheme by a building manager must be declared. This must be done before the appointment is to take place.



Are there differences for large strata schemes?

Yes there are. Schemes of more than 100 lots (excluding utility or parking lots) who are to spend more than \$30,000 on a single item of expenditure must obtain at least two quotes.



BONUS STEP – FOR ASSOCIATION SCHEMES

How do we appoint a building manager?

Appointments of building managers are not contained in the legislation, so we'd advise that you refer to the association's management statement.



Why it's important to have a capital works fund

The capital works fund (previously known as the sinking fund) covers the renewal or replacement of existing common property and the addition or acquisition of new common property. One example is when a building needs to be repainted. Without a capital works fund, the owners at the time will have to cover the full cost, often by raising a special levy.

The capital works fund acts as a cushion during such times and is usually built up as time goes by. The balance of the capital works fund shows the financial health of a strata scheme.

REQUIREMENTS

The Strata Schemes Management Act 2015 contains the following provision:

"79(2) an owners corporation must, at each annual general meeting, estimate how much money it will need to credit to its capital works fund for actual and expected expenditure:

- for painting or repainting any part of the common property which is a building or other structure, and
- to acquire personal property, and
- to renew or replace personal property, and
- renew or replace fixtures and fittings that are part of the common property, and
- to replace or repair the common property, and,
- to meet other expenses of a capital nature."

The owners corporation must prepare, or have prepared, a plan for a 10-year period commencing from the first annual general meeting, and following that 10-year period, a plan for each 10-year period thereafter as the previous plan expires. It is intended that each owners corporation must review the plan at least once every 5 years. The only exception is for certain types of two lot strata schemes who determine by unanimous resolution not to establish such a fund.

HOW MUCH SHOULD BE IN MY CAPITAL WORKS FUND?

Calculating this number is a specialised task. It's determined by looking at capital works fund forecasts.

WHAT IF THE OWNERS CORPORATION DO NOTHING?

A lot owner within the strata scheme can apply to the NSW Civil and Administrative Tribunal (NCAT) for an order instructing the owners corporation to meet its obligations.

10 things you need to know about the collective sale and renewal of your building

A strata building, where repairs and maintenance are uneconomical, can be sold or redeveloped. The new Strata Schemes Development Act 2015 has a process to allow collective sale or redevelopment of a property.

TEN IMPORTANT POINTS YOU NEED TO KNOW:

- 1) This process is long and complex, so guidance from an appointed lawyer is essential
- 2) A general meeting can be called by the strata committee or by a qualified request from 25% of owners
- 3) If renewal is preferred, a committee must be established to develop a strata renewal plan
- 4) The renewal plan must follow section 170 of the Development Act
- 5) By special resolution, the owners corporation may give the renewal plan to lot owners for further consideration (at a general meeting)
- 6) If owners of at least 75% of the lots (excluding utility lots) give support notices to the owners corporation within 60 days, a recording must be made on the common property certificate of title
- 7) After the lot owners receive the renewal plan, it will lapse after three months
- 8) Should the plan succeed, an application must be made (at a general meeting) to the Land and Environment court for an order for the plan to take effect.
- 9) The Land and Environment Court may reject the plan if:
 - The proper process wasn't followed or the proposed development is not in good faith
 - The pay-out to the dissenting owner is less than the compensation value of their lot
 - The terms of settlement are not just and equitable
- 10) If the Land and Environmental Court approves the renewal, the plan is in effect.

Who's responsible for your building and why

Maintenance and repairs: responsibility of lot owners or owners corporation?

It's a common argument. Below is a quick cheat sheet which gives the usual case scenarios.

Please keep in mind that variances may occur, and that you should always consult your strata plan and by-laws.

Lot owner

- Bathroom vanities
- Bathroom and laundry tiles (internal walls only)
- Carpets (excluding common areas)
- Ceiling paint or finish (excluding vermiculite and plaster ceilings)
- Cornices (internal walls)
- Cabling within the lot that only serves the owner
- Fire alarms/smoke detectors (standalone, below ceiling surface)
- Internal walls and doors
- Locking and safety devices on doors
- Light fittings (attached to wall or ceiling)
- Internal plumbing
- Roller-doors on garages (on lot property)

Owners corporation

- Balcony tiles and doors
- Bathroom and laundry tiles* (if installed on the boundary - common wall and on the floor)
- Boundary doors*
- Carpets (common areas)
- Piping and wiring cavities
- Ceilings (unless a false ceiling was installed)
- Cornices
- Electricity
- Floor boards and parquetry (if original installations)
- Fire alarms/smoke detectors (if connected to the fireboard)
- Light fittings (on a balcony, above a defined airspace, or recessed in a ceiling)
- Mesh between garages
- Plumbing (below the floor, within a wall or above the ceiling - unless its wholly within the lot)
- Roller-doors that give access to the common car park
- Slab dividing two levels within the same lot*
- Tiles on shower tray
- Walls that are shown as a solid line on the strata plan
- Windows and windowsills*

* If the strata scheme was registered before 1 July 1974, this may change who is responsible.

Common Property Memorandum

The Common Property Memorandum was created to eliminate confusion. It's published in the government Gazette and is available on the Department of Finance, Service and Innovation's website. This document may be adopted as a by-law.

4 simple steps to debt recovery

New strata legislation has introduced a number of changes to the debt recovery process. One change is when levies become due and payable – on a date at least 30 days after notice is given. A discount can be approved at a general meeting. Debt recovery for arrears can only begin 21 days after notice is given. Recovery must be approved as a simple motion at a general meeting.

The four steps for recovery action are typically in the form of the following type of motion on an AGM: “The owners of strata plan no. authorise the strata managing agent and/or the strata committee to collect levy contributions, interest and recovery costs, pursuant to the Act (including section 103 of the Act), in the following manner:

- Levy recovery step 1:** issue a reminder levy notice 35 days after the levy due date
- Levy recovery step 2:** issue first levy recovery letter 60 days after the levy due date
- Levy recovery step 3:** issue second levy recovery letter 75 days after the levy due date
- Levy recovery step 4:** 96 days after the original date the levy was due, and where the debt is in excess of \$2,000, appoint the services of a debt collection agency, obtain legal advice and/or retain legal representation of solicitors, barristers and/or experts on behalf of the owners.

Strata plan no. to issue a letter of demand and/ or to commence, pursue, continue or defend any court, tribunal or any other proceedings against any lot owner, mortgagee in possession and/or former lot owner.”

- Three ways to do this:
- Step 1:** Enforce any judgement obtained in the collection of levy contributions. This includes commencing and maintaining bankruptcy or winding up proceedings
 - Step 2:** File an appeal or defend an appeal against any judgement concerning the collection of levy contributions
 - Step 3:** Liaise, instruct and prepare all matters with the owners corporation’s debt collection agents, lawyers or experts.

The motion can be amended, but minimum timeframes must be obeyed.



Levy payment plan

The new strata legislation allows for payment plans for accounts in arrears. These payment plans can be over a maximum period of twelve months, but a further plan may be applied if agreed by the owners corporation by ordinary resolution unless delegated to the strata committee via the levy recovery procedure.

- Step 1:** The request for a payment plan must be made by the lot owner concerned
- Step 2:** The plan must contain specific information noted in clause 18 of the Regulations
- Step 3:** The strata managing agent can provide a proforma payment plan form that meets these requirements
- Step 4:** The owner completes and returns the form to the managing agent.



At Kemp's Petersons Receivables, our primary goal as a debt collection and process serving agency is to recover monies owed to you as quickly, efficiently and cost effectively as possible. We combine the latest in technology with a personal touch, so you can keep doing what you do best.

Visit www.kpr.com.au for more information.

The ins and outs of leases and licenses

Strata schemes

Leases

A lease provides exclusive usage rights to a piece of land or area. The process with which the owners corporation start a lease must be legally correct. If not, damage claims for a breach of contract are a risk. The process is different between strata and association schemes.

The owners corporation must be able to execute a transfer or lease of common property, should the owners pass a special resolution to do so.

Licences

A licence provides use or entry to common property, but not exclusively. The granting of a licence in strata schemes requires special resolution or a by-law.

5 things you need to know

when seeking legal advice or services

- 1

An owners corporation may obtain legal services for which payment is required, but only if a resolution for this is passed at a general meeting.
- 2

At times there are exceptions, approval by a strata committee resolutions is enough:
 - When urgent action is required and the cost of legal services does not exceed \$15,000
 - For legal advice before legal action
 - For unpaid contributions, interest and related expenses
 - Other matters prescribed by the Regulations
 - For non-urgent legal services for which the cost is less than \$3,000.
- 3

Failure to obtain approval does not affect validity of proceedings, according to legislation.
- 4

An owners corporation may not recover costs in the event of unsuccessful tribunal proceedings. These costs must be recovered by the owners corporation and may not be paid from the administrative or capital works fund through a special levy.
- 5

When legal cost disclosure requires approval of a general meeting, a copy must be given to each owner and strata committee member no later than 14 days after receipt of disclosure.



STRATA COMMITTEE MANAGEMENT

Fiduciary duties: Who does what and why it matters

The fiduciary is someone who is entrusted to act in the best interest of another. Fiduciary duties or obligations can and do arise for strata committee members, developers and strata managers.

Developer

Legislation has specific instances where conflicts of interest will arise. Developers are not allowed to vote on items where they must make a disclosure of interest.

Committee

Those entrusted should not be in positions where decisions are in conflict with their own interest. If this does happen, the conflicts must be disclosed. Such conflicts may mean they are excluded from any discussion or voting on the matter.

Strata manager

Strata managers must comply with fiduciary obligations arising from their work as an agent. Strata managers are also not allowed to vote on items where a conflict of interest is likely to happen.

A how-to guide to the election process

The election of the strata committee is an important part of schemes. Here's who can and can't be elected to the committee.



ELIGIBLE

- A sole owner of a lot in the strata scheme
- A company nominee of a corporation that solely owns a lot
- A co-owner of a lot – but only one co-owner from the same lot can be nominated
- A person nominated by the owner of a lot, as long as the lot owner is not a candidate



NOT ELIGIBLE

- An unfinancial owner
- The building manager
- A leasing agent of a lot in the strata scheme
- A connection of the original owner of the scheme, unless the connection is disclosed before the person is elected as a member
- Other as described by regulations

NOMINATION PROCESS

Nominations of the strata committee must be in writing before the AGM. Oral nominations can be made at the meeting.

Nominations must be made by the owner of a lot (unfinancial or otherwise), or any person who can vote at a general meeting of the owners corporation.

The nominee must give their consent. Sole owners of lots may nominate one person for each lot they own.

COMMITTEE SIZE

Two-lot schemes require an owner, company nominee or co-owner of each lot.

Strata schemes with less than 100 lots must have no more than nine committee members.

Large schemes require between three and nine committee members.

ELECTION PROCESS

If the candidates are equal to or less than the agreed size of the committee, they are automatically taken as elected to the committee. Where the number of candidates is less than the number decided at the AGM, the number to comprise the committee is automatically revised down.

If the candidates outnumber the positions available, an election by ballot will take place.

In case of a ballot, the following rules apply:

- You cannot vote for more candidates than the agreed upon committee size
- You cannot vote for a candidate more than once
- Capacity of voting must be indicated on the ballot paper (eg. owner, proxy, company nominee, etc.)
- Proxies must name the person who gave the proxy, as well as the capacity in which they are voting
- Ballot papers must be signed
- If a person holds a number of proxies, they may fill a ballot paper for each proxy, as well as for themselves
- Should there be a draw between two members, a show of hands from those present and entitled to vote will decide the committee member.



In the case of an absence on a strata committee

Temporary and permanent vacancies both occur.
The Strata Schemes Management Act 2015 provides guidance on what to do.



TEMPORARY ABSENCE

For temporary absence (missing a meeting), an acting member can be approved by the strata committee. The acting member must be an owner who is eligible for election. This includes being financial at the time of acting.
The acting member can only be appointed by the strata committee. This must be done at a meeting of the committee where a quorum is present.



PERMANENT ABSENCE / VACATION OF OFFICE

- Permanent absence is assumed / enforced when:
- The member is no longer eligible for the committee (excluding being unfinancial)
 - The person nominated was a company nominee and the person who nominated them ceases to be the owner
 - The person nominated resigns (written notice required)
 - A new strata committee is elected by the owners corporation
 - The owners corporation, by special resolution, determines that the person's office is vacated
 - The person dies.
- Vacancies can and must be filled by the strata committee, unless a new strata committee is elected.

Roles and responsibilities of a strata committee

The primary role of the strata committee is to act on behalf of the owners corporation. It must be noted that the owners corporation maintains the right to overturn decisions taken by the committee.
Decisions of the strata committee are typically related to the repair of common property, enforcement of by-laws, issuing receipts, etc.
There are different roles within the committee, as set out below:

Secretary

- The secretary has many roles. These include:
- Prepare and distribute minutes of meetings and include a motion at each meeting to confirm any previous minutes
 - Distribute any notices required under the Act on behalf of the strata committee or owners corporation
 - Maintain the strata roll
 - Enable the inspection of documents of the owners corporation
 - Reply to correspondence addressed to the owners corporation
 - Apart from the first annual general meeting, convene meetings of the strata committee and the owners corporation
 - Attend to administrative and secretarial matters for the strata committee and owners corporation
 - Undertake any other functions conferred on the secretary under any other Act or law.

Treasurer

- The treasurer's responsibilities include:
- Notify owners of any levies
 - Receive, acknowledge, bank and account for any monies paid to the owners corporation
 - Prepare financial information in accordance with section 184 of the Act
 - Maintain all accounting records and prepare financial statements.
- Payments can be made to committee members for services rendered. These payments are determined at a general meeting for services rendered since the last AGM.

Chairperson

The primary role of the chairperson is to preside at all general and committee meetings, and to determine quorums and procedural matters. The role, (and that of a secretary and treasurer) can, however, be delegated to the strata manager.



Role of a strata manager

A strata manager can be appointed only at a general meeting of the owners corporation.

The strata manager is appointed to assist in the management of the scheme in accordance with legislation. The strata manager does not provide legal advice, but rather guidance from their experience in managing strata schemes.

The functions of the strata manager are administrative and general financial duties. They are also responsible for the bank accounts of the owners corporation.

These responsibilities must be fulfilled in accordance with the Property, Stock and Business Agents Act 2002.

The agency agreement sets out any additional services by mutual consent, however do consult the latest strata legislation if there's any confusion.



RUNNING OF MEETINGS



Everything you need to know about proxies

A proxy vote is cast by someone on behalf of an owner.

Voting rights on behalf of a deceased owner

In the event an owner is deceased, relatives often wish to vote on behalf of the deceased owner. Is this lawful?

REPRESENTATION OF A DECEASED OWNER

The relative wishing to vote must either be a registered proprietor of the lot, or hold proxy by last Will and Testament. The latter must be proved in court, thus if a relative has arranged probate (proven in court as above) or letters of administration, they are entitled to vote. If you hold a power of attorney, you can issue a proxy to yourself or another person.

This is a complex matter and legal advice may need to be sought by the owners corporation. The chairperson should be guided by such legal advice.

APPOINTING A PROXY

This must be done by filling out a proxy form, should the owner not be able to attend a general meeting. For the proxy form to be valid, it should contain the following information:

- Date on which the proxy was made
- The names of all owners of the lot giving the proxy
- The name of the appointed person
- The period that the proxy is in effect
- Instructions on how the proxy is authorised to vote
- How the proxy is authorised to vote on a motion for appointment of continuation of a strata managing agent
- The signature of all owners of the relevant lot.

The completed proxy form must be given to the secretary or manager at or before the meeting. In the case of a large strata scheme (100 lots or more) it must be handed over at least 24 hours before the meeting.

NUMBER OF PROXIES

In a scheme that has 20 lots or less, each person may hold only one proxy.

In strata schemes that have more than 20 lots, each person may hold proxies no greater than 5% of the total number of lots in the scheme.

If the originally nominated proxy cannot fulfil their duties for any reason, another proxy must be nominated.

VOTING RIGHTS

Proxies can:

- Vote on a show of hands
- Vote on a poll vote and may call for a poll vote
- If appointed as a proxy for more than one person/lot, the proxy holder can vote separately for each lot.

Proxies cannot:

- Vote on a matter if the person appointing them is at the meeting and personally exercises a vote
- Vote in personal interest (own financial gain, for example)
- Vote in a contrary manner than what is prescribed in the proxy form
- Nominate people for the strata committee.

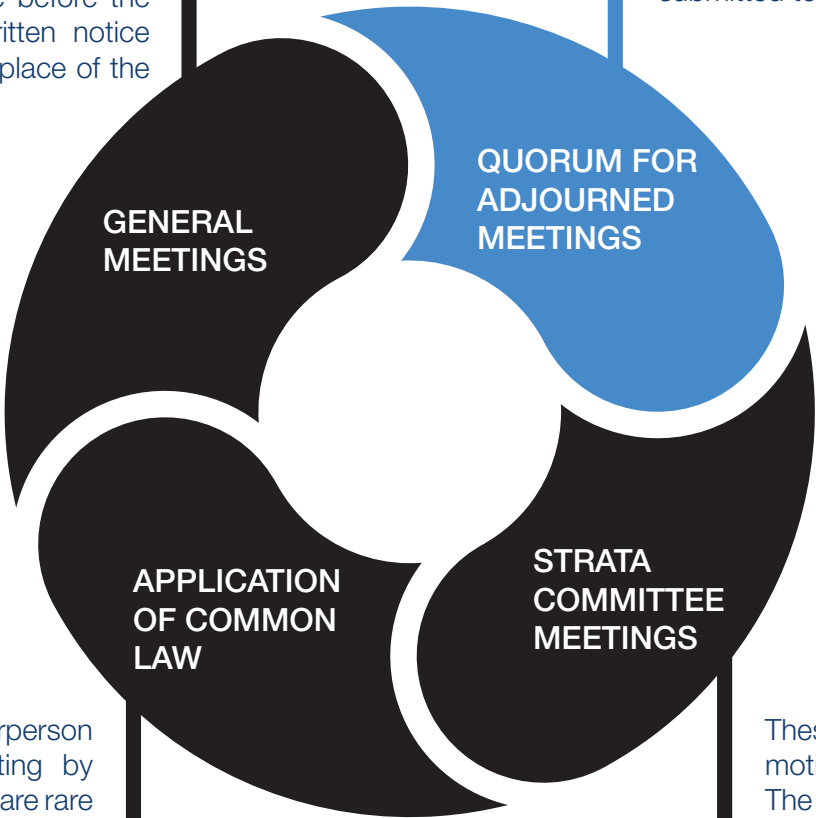
A how-to guide to adjournments

Adjournment is to delay a meeting to a later date, or to suspend it indefinitely.

Where a quorum (minimum number of members) is not achieved after 30 minutes, the chairperson can take one of two actions:

- Adjourn the meeting for at least seven days
- Declare those present to be the quorum for the meeting.

Tenants do not count towards a quorum. The meeting can also be adjourned by a motion to do so. The owners corporation must be given at least one day's notice before the resumed meeting. A written notice must state the time and place of the meeting.



When quorum is not achieved within 30 minutes at an adjourned meeting, those present are taken as the quorum.

Note that no new proxy forms can be submitted to an adjourned meeting.

In common law, the chairperson cannot adjourn a meeting by their own decision. There are rare circumstances that permit this, such as when it is impossible to maintain order.

These can be adjourned if a motion to do so is passed. The date and time of the next meeting must be put up on a notice board or given to each member at least one day ahead of the meeting.



The essential guide to quorums

WHAT IS REQUIRED TO ACHIEVE A QUORUM?

General meetings

Only lots that are paid up to date with their contributions (levies) count towards a quorum. Those entitled to vote must be present - in person or by proxy. These must represent at least 25% of the aggregate unit of entitlement of the strata scheme.

Unfinancial (behind on payments) owners cannot vote and do not count towards a quorum.

What to do when there is no quorum

If a quorum is not achieved within 30 minutes of the scheduled commencement time, the chairperson must either adjourn the meeting or declare those present to be the quorum.

Should a quorum not be achieved at the adjourned meeting, those present will be the quorum during that meeting.

Pre-meeting electronic voting

Should pre-meeting electronic voting be allowed, those who voted in this way will count as present. Therefore they count towards the quorum.

Strata committee meetings

To achieve a quorum, 50% of committee members must be present. However, members will no longer be counted towards a quorum if:

- They are unfinancial at the time of the notice of meeting, and remained unfinancial
- They are a member who was nominated by a person who is unfinancial on the date of the meeting
- They declare a financial (pecuniary) interest, and the committee determines in the circumstances they shall not be entitled to vote.

The different types of resolution and how they affect voting

A resolution must be passed at a meeting to make a decision on behalf of the strata scheme. The different types are unanimous, special and ordinary resolutions.

GENERAL MEETING:

UNANIMOUS RESOLUTIONS

This is when no votes are cast against a motion at a general meeting. These do not require an owner to be financial in order to vote. Here follows a table where unanimous resolutions are required:

Matters that require a unanimous resolution in strata schemes	Section or clause of the Act
1. To revoke or amend a previous unanimous resolution of the owners corporation. An exception is where the matter involves dealing with common property, in which case it can be amended by a special resolution	21 and 21 (2)
2. An owners corporation for a strata scheme comprising only two lots may decide only by way of unanimous resolution to not establish a capital works fund	74 (5) (a)
3. Distribution of surplus money in administrative or sinking funds	77 (1)
4. An order from the NSW Civil and Administrative Tribunal (NCAT) that has the effect of a by-law can only be amended or repealed with a unanimous resolution of the owners corporation	139 (3)
5. Subject to other provisions, an owners corporation for a strata scheme comprising only two lots may decide only by way of unanimous resolution to not affect building insurance	160 (4) (a)
6. Not to apply monies received from an insurer for the destruction of or damage to a building	163 (2)
7. An owners corporation may seek an order from the NCAT to be exempted from requirements for building insurance for the scheme, provided they have passed a unanimous resolution to do so	172 (3)
8. To revoke or amend certain orders made by the NCAT	245
9. For noting in relation to all of the above: An unfinancial owner has the right to vote on a motion requiring a unanimous resolution.	Clause 23 (8), Sch 1

SPECIAL RESOLUTIONS

This resolution must be passed at a general meeting of the owners corporation. There must be no more than 25% of votes cast (based on unit entitlement) against the motion. Below follows a table where special resolution is required:

Matters that require a special resolution in strata schemes	Section or clause of the Act
1. To revoke or amend a special resolution of the owners corporation, or to amend an unanimous resolution involving common property	21
2. Vacating of office of an elected member of the strata committee	35 and 45 (1) (d)
3. It is inappropriate to maintain, renew or repair common property	106 (3)
4. Changes to common property	108 (2)
5. Specifying ongoing maintenance by a lot owner	108 (3-5)
6. Approval for work by owners of lots affecting common property	111 (c)
7. Granting a licence to an owner/occupier to use common property in a particular manner	112 (1)
8. Transfer or lease of common property	113
9. Change of by-laws for the scheme	141 (1)
10. Insurance against the possibility of the owners becoming jointly liable in a claim against the owners corporation	164 (c)
11. To enter an agreement with council in relation to parking enforcement.	Schedule 4

Strata Schemes Management Act 2015 (SSMA)

ORDINARY RESOLUTIONS

Ordinary resolutions are straightforward – more than 50% of the vote is required to pass the motion.

Examples of when an ordinary resolution is required are:

- To determine any restrictions that are to be placed on the strata committee
- To determine levy contributions
- To decide if a discount of 10% can be applied to levy contributions
- To appoint a strata managing agent and to determine the delegation of powers.

Voting in all instances can be done by show of hands, poll vote (by unit entitlement) or by unit entitlement or

electronic vote.

STRATA COMMITTEE MEETINGS

Strata committees make decisions by ordinary resolutions. But decisions cannot be made on:

- A matter required by any Act to be decided upon at a general meeting
- Any matter that the owners corporation has determined at a general meeting must be made at a general meeting only.

Each member of the committee has one vote and cannot vote in circumstances where they were unfinancial at the time of the meeting, and remained unfinancial. Also, if they, or the person who nominated them, is unfinancial at the time of the meeting.

Guide to tenant meeting rights

If a tenant wants to be appointed as a representative, this is how it works.

TAKE NOTE

A tenant representative can attend general meetings, but cannot vote.



ELECTION

To qualify, the tenant must meet the notice periods and specific provisions relating to the notice. They must also meet the following requirements:

- The convener or nominated tenant must chair the meeting
- An eligible tenant may self-nominate or nominate another tenant
- Majority vote will decide the tenant representative
- The quorum for this meeting is one person
- The term of office starts at the end of the AGM where the nomination is received.

The tenants representative must be notified of strata committee meetings, but cannot:

- Count towards a quorum
- Vote on decisions of the committee
- Put a motion to the committee
- Nominate a person for the office bearers for the owners corporation
- Act as an office bearer.

ANNUAL GENERAL MEETING

In the case of a first AGM, ‘registered’* tenants must be notified. This is the responsibility of the owners corporation.

Other documents relating to the meeting do not need to be given to tenants.

* ‘registered’ means those tenants who have been notified under the tenancy notice as being tenants.

GENERAL MEETINGS

Notice of general meetings must be given to tenants on the strata roll. These tenants may attend general meetings and a copy of the agenda must be provided to them at least seven days before the meeting. This excludes the first AGM.

Notice can be given on the notice board or in writing. Tenants are not allowed to vote unless they hold a proxy. They may not address the meeting unless a resolution is passed granting them permission.

Tenants are not allowed to attend meetings where the following is being discussed:

- Financial statements and auditor’s reports
- Levying of contributions
- Recovery of unpaid contributions
- A strata renewal proposal
- Any other financial matter.

STRATA COMMITTEE MEETINGS

Tenants don’t need to receive notice of strata committee meetings. Only the tenant representative requires notice.

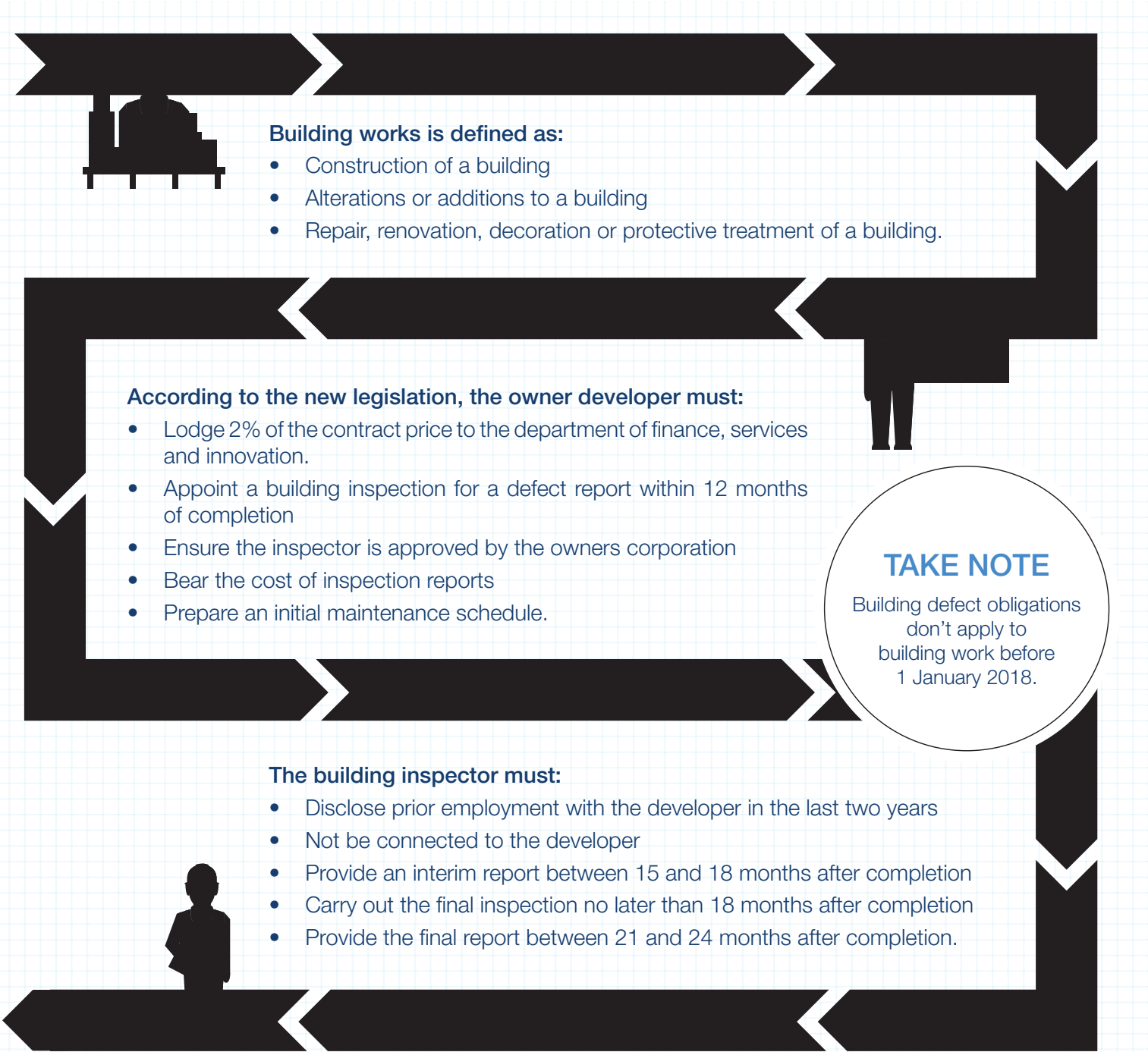
BUILDING COMPLIANCE

What you need to know about building defects

Dealing with building defects is a complex process. An appointed lawyer and engineer should provide guidance. The appointed engineer should be experienced at preparing defects reports that stand in court.

New legislation requires strata schemes to add a building defects motion to their AGM. This is to consider and possibly rectify building defects each year, until the statutory warranty period ends (six years).

Building defect obligations don't apply to building work commenced before 1 January 2018.



Everything you need to know about dividing fences and retaining walls

The Dividing Fences Act 1991 sets out rights and responsibilities in the repair and construction of dividing fences.

The Conveyancing Act 1919 sets out that the owners must provide “support for land”. In strata and association schemes this means that the land and boundaries need to be properly maintained.

Owners corporations are regarded as land owners.



THE DIVIDING FENCES ACT PROVIDES THAT:

Adjoining land owners are to contribute to the costs for repair or construction of boundary fences.

- Monies payable under the Act can be recovered in court, should the need arise
- A procedure must be in place for disputes over costs of fencing work.

IN THE APPLICATION OF THE ACT TO STRATA SCHEMES, YOU NEED TO KNOW THAT:

- A perimeter fence of the scheme is the responsibility of that scheme
- Where a strata and association scheme share a perimeter fence, the association takes responsibility for repair and maintenance
- Fences on common property must be maintained by the owners corporation
- Adjoining strata schemes that share a perimeter fence share costs associated with the fence
- A brick fence shown on the strata or association plan as a thick line is the responsibility of the owners corporation.

When a tree causes damage to a fence, the Tree (Disputes Between Neighbours) Act 2006 gives the right to seek compensation.

Essential guide to window locks and safety devices: what you need to know

Window locks and safety devices are to be installed by the owners corporation by 13 March 2018. These are to prevent a child from falling out a window. This requirement applies to windows that are less than 1.7m above the floor inside, and 2m or more above the ground on the outside.

WHICH DEVICES SHOULD I FIT?

Legislation doesn't give specifics, but the devices must fulfil the following:

- Restrict the opening so that a 125mm diameter cannot pass through, and
- Resist 250 newtons of opening force
- Must be child resistant in removal or unlocking

Should the owner of the lot repair or fit their own device, they must repair any damage caused to common property in the installation. Consent of the owners corporation is only required when installation will affect the outside appearance of the building.

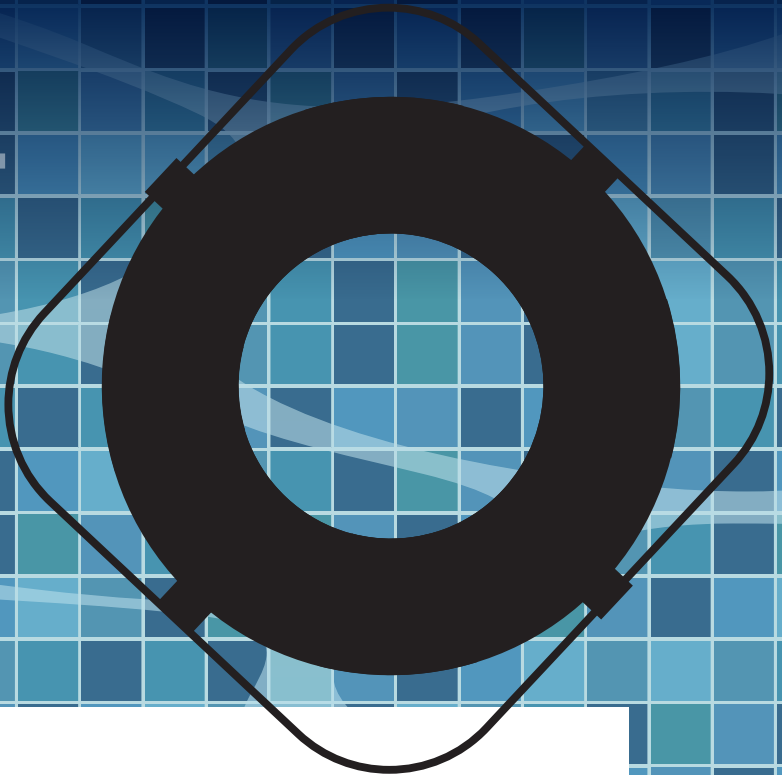
The lot owner has seven days from completion to notify the owners corporation of the installation.

TAKE RESPONSIBILITY

It is recommended that the owners corporation audit existing buildings to determine the costs involved. The owners corporation may wish to develop a plan to carry costs over time. The owners corporation should ensure that a suitably qualified tradesman performs the audit and installation of these devices.



Important changes to pool safety legislation



TAKE NOTE

From 29 April 2016, pool and spa owners are required to have a pool safety compliance certificate.

The amended Swimming Pools Act 1992 requires that swimming pools and spas be registered.

According to legislation, a swimming pool is “An excavation, structure or vessel capable of being filled with water to a depth greater than 300mm and used or designed for human aquatic activity”.

From 29 April 2016, pool and spa owners are required to have a pool safety compliance certificate. To get this certificate, child access restriction and safety standards must be met. The certificate must be applied for every three years.

From 24 March 2016, regulations regarding schemes more than two lots in size or purchased off the plan changed. A compliance certificate is not required to be attached to a sales contract or tenancy agreement for a sale or lease to proceed.

For owners in a two-lot scheme or a company title building, a pool certificate will be required to sell or lease.

Certificates are required for both common-property and lot-owned pools. Keep in mind that the regulations apply to portable pools too.

For further information, The Department of Fair Trading, your local council office or the NSW Office of Local Government can help.

NSW BY-LAWS

How to dispose of abandoned goods and vehicles

New legislation allows the owners corporation to more effectively dispose of abandoned goods and illegally parked vehicles.

DISPOSAL AND SALE OF ABANDONED GOODS

Abandoned goods can be sold or disposed of. The only time goods can be disposed of is when they are perishable goods, rubbish, or once the disposal notice period is over. A disposal notice is required in both cases.

The disposal notice must:

- Be placed on or near the goods, where weather cannot affect the notice
- Not be smaller than an A4 size sheet of paper
- Describe the goods
- State the date and time issued
- The date and time goods will be disposed of
- Give a minimum of five days' notice
- Include contact details for a committee member, strata manager or delegate of the owners corporation.

Proceeds of sale must be paid into the administrative fund. Records must be kept of sales and must include:

- Description of goods
- Date of sale
- Name and address of buyer
- Address of place of business of auctioneer, if sold by auction.

Keep in mind the Tribunal may order the owners corporation to pay the proceeds to the owner of the goods. Any costs incurred by the owners corporation will be deducted from this amount.

REMOVAL OF MOTOR VEHICLE

The owners corporation may remove a vehicle that obstructs an exit, entrance, or use of common property.

A removal notice must be given with the same terms as a notice of disposal. The only difference is that the removal notice must state that the vehicle will be removed.

The owners corporation may arrange for the vehicle to be moved to another part of common property, or to the nearest place to which it may be lawfully moved, or to a location where it no longer blocks an exit or entrance to common property.

Costs incurred by the owners corporation may be claimed from the owner of the vehicle, pending Tribunal approval.

What you need to know about by-laws

New legislation requires a review of by-laws by the owners corporation. Owners corporations are required to keep a consolidated set of by-laws. These by-laws should be relevant to the needs and requirements of both owners and tenants.

STRATA SCHEMES REGISTERED BEFORE 1 JULY 1997

These schemes are now governed by 19 by-laws in Schedule 2 of the new regulations. The owners corporation should review their by-laws and ensure no contradictions or conflicts exist with any by-laws that were registered prior to 30 November 2016.

Where contradictions or conflicts do exist, the existing registered by-laws stands.

STRATA SCHEMES REGISTERED BETWEEN 1 JULY 1997 AND 30 NOVEMBER 2016

For these schemes, the set of by-laws that apply are those adopted or lodged at the time of registration.

These may include by-laws from Schedule 1 of the 1996 Act or the by-laws adopted from the model by-laws of the 2010 regulation.

It is possible that an existing registered by-law for these schemes contains parts that conflict with new legislation. In this case the existing by-law applies, despite the provisions of the Act of 2016.

If there is any confusion, a specialist strata lawyer should be consulted.

EXCLUSIVE USE BY-LAWS & MAKING NEW BY-LAWS

Exclusive use by-laws that are currently in place remain in force.

When reviewing by-laws, owners corporations may wish to add new by-laws. New by-laws may include:

- Adopting a common property memorandum that defines what is common property and what is considered to be the responsibility of a lot owner to repair and maintain.
- Extending the lists of what are considered to be cosmetic or minor works so that no approval is required without a need for a by-law.
- Imposing limits on the number of occupants of a lot. This can be done by way of a by-law that describes a limit on the number of occupants per bedroom. The limit may not be fewer than two adults per bedroom and must not be inconsistent with any planning approval that is in place. It is also subject to a family connection rule described in the Regulations.
- Adopting a means of serving notices upon an owner in instances where there is no address recorded on the strata roll.

By-laws: enforcement

By-laws must be enforced by the owners corporation. This must be done consistently and transparently.

WHAT TO DO WHEN THINGS GO WRONG

When registered by-laws are not obeyed, the Strata Schemes Management Act 2015 lists a few possible courses of action.

- An application can be made for mediation through the NCAT
- An application for an order of compliance can be made to the NCAT
- A claim could be pursued at common law for breach of a binding by-law
- The by-law itself may contain a remedy for the breach.

APPROACH 1

1. Complaint of breach of by-law received
2. Communicate: Speak with or issue a letter to the offender, asking for compliance
3. Should step two not be effective, a strata committee resolution is needed so that a notice to comply can be issued to the offender. The notice must adhere to the Act (with an affidavit of service of the notice)
4. In case of further breach of the notice (valid for 12 months) a specific application should be lodged with the NCAT. Penalty units can be doubled in increasing value for further breach. For example, the first breach could result in 10 penalty units (currently \$1,100) and the second breach 20 penalty units
5. A breach after 28 days from serving the initial notice must be taken to the strata committee. Evidence of the breach must be presented
6. If the strata committee wants to pursue the breach with the NCAT, a resolution must be passed at a meeting
7. An NCAT application form must be filled out and sent to the NCAT.

APPROACH 2

1. Application for mediation / tribunal order: Steps 1 and the first part of 2 above are pursued. Should the breach continue, the strata committee can make an application for mediation through the Office of Fair Trading
2. Where mediation fails and breach continues, an application should be made to the NCAT
3. If an NCAT order was made and breach continues, the strata committee can make an application for penalties to be imposed of up to 100 penalty units (currently \$11,000).

Parking on common property Do's & Don'ts

Parking on common property without consent has been a problem for years. New legislation attempts to address this problem.

The owners corporation can move a vehicle that obstructs certain areas of common property, or enter a parking agreement with the local council.

When a motor vehicle is an obstruction, there is a process to follow.

DO'S

- Issue a removal notice at least five days before moving the vehicle
- Make sure the notice is no smaller than an A4 sheet of paper, and safe from weather damage
- State the date and time of issue on the notice
- State on the notice that the vehicle will be removed
- Provide contact details on the notice for a member or manager of the strata committee, or another delegate of the owners corporation
- Move the vehicle to another part of common property, or to the nearest place to which it may be lawfully moved, or to a location where it no longer blocks an exit or entrance to common property.

DON'TS

- Move the vehicle without issuing a removal notice
- Move the vehicle before the five days' notice period has passed
- Move the vehicle to an unsafe or unreasonable location.

The owners corporation may apply to the Tribunal for an order to the owner of the vehicle to compensate for reasonable removal costs.

The owners corporation may also work with the local council to demarcate strata parking areas on common property. Unlawful parking can then be fined, with the council cleared to issue and collect said fines.

This parking agreement must be approved by special resolution at a general meeting.

3 types of renovations and why they matter

There are three types of renovation and each require different approvals.

- They are:
- Cosmetic renovations
 - Minor renovations
 - Major renovations

COSMETIC RENOVATIONS

The owner of a lot may carry out cosmetic work without approval of the owners corporation.

Cosmetic work includes painting, laying carpet or installing or replacing hand rails.

Take note that the owner doing the cosmetic work is responsible for any damage to common property as a result of the renovations.

The legislation prescribes that cosmetic works do not include:

- Minor renovations
- Structural changes
- Changes to the appearance of a lot
- Works affecting the safety of a lot, including fire safety systems
- Waterproofing or plumbing or exhaust system of a building
- Reconfiguring of walls
- Works requiring consent or approval under any other Act
- Works required by the by-laws.

MINOR RENOVATIONS

Approval from the owners corporations is required for minor renovations. These include changing recessed light fittings; replacing or changing wiring, cabling or power or access points; and installing a heat pump.

The owners corporation is allowed to impose reasonable conditions on the approval of such works. The owners corporation may wish to pass obligation of maintenance for such works to the owner. A by-law is advised for this.

The legislation prescribes that minor works do not include:

- Cosmetic works that are defined in the legislation
- Structural changes
- Changes to the appearance of a lot, including an external ramp
- Works affecting the safety of a lot, including fire safety systems
- Waterproofing or plumbing or exhaust system of a building
- Works requiring consent or approval under any other Act
- Work that is authorised by a by-law or a common property rights by-law.

OTHER RENOVATIONS

Approval is required as special resolution by the owners corporation and usually takes the form of a by-law. These works include structural changes and changes to the external appearance of a lot, including the installation of an external access ramp.

In addition, it's worthwhile noting that some renovations that seem to be cosmetic or minor may fall into the "other" category for various reasons, e.g. they affect the external appearance of the building.

TAKE NOTE

Legislation allows for the owners corporation to create a by-law in which minor and cosmetic works are specified.



