



Changes to Strata Laws

The purpose of the following paper is to outline the number of important changes to the *Strata Schemes Management Act 1996* and *Strata Schemes Management Regulation 1997* (“**the Strata Laws**”) which came into effect on 7 February 2005.

1. Provisions for strata schemes with over 100 lots

Strata schemes with over 100 lots (not counting parking, storage or other utility lots), now have specific rules which apply **in addition** to each of the other changes explained in this paper.

The owners corporations of such schemes must now:

- Have the Schemes financial accounts audited every year;
- Specifically identify in the annual budget an amount expected to be spent on individual items;
- Obtain at least two quotations for any expenditure of over \$25,000.00;
- Give all lot owners at least seventy two (72) hours personal notice of upcoming executive committee meetings; and
- Give all lot owners personal notice of the decisions of the executive committee within seven (7) days of the meeting taking place.
- The executive committees are limited in what they can spend ie other than in the case of an emergency the executive committee may not spend more than 10% above the budgeted amount for any item.
- The 10% limit may, however, be lifted by passing a majority vote at a general meeting.

2. Provisions which relate to all strata schemes (including those with over 100 lots)

A. Sinking Funds

Owners corporations of *all* strata schemes have new sinking fund obligations.

All strata schemes will now be required to specifically plan ahead for the estimated sinking fund expenditure over the ensuing 10 year period. Accordingly, levies will have to be set to meet the 10 year sinking fund estimates.

For new schemes, the first 10 year sinking fund plan must be on the agenda on the first Annual General Meeting (“AGM”) and completed by the next AGM. The plan must be reviewed within 5 years of the first AGM.

Owners corporations will be required to have 10 year sinking fund plans in place for the entire life of the scheme.



B. Fire Safety Inspections

The owners corporation has the responsibility to arrange access to all parts of the building for the purpose of fire safety inspections.

Owners corporations are subject to a penalty of up to \$2,200.00 for not complying with a notice given to them about access.

C. Strata Managing Agents

i. Transfer of Management

A strata managing agent will not be able to transfer the management of a strata scheme without obtaining the approval of the owners corporation. This means that if a managing agent decides to sell his or her business to another agent, the continuing right to manage a particular strata scheme will be subject to the agreement of the owners corporation.

ii. Delegation of Functions

An owners corporation may choose to carry out all its own functions, or alternatively, delegate these functions to someone else. However, if these functions are delegated there are limits on who can be responsible for certain tasks.

The services of a strata managing agent will be required if the following functions which are to be delegated:

- The preparation of the administrative and sinking fund estimates;
- Levying contributions;
- Receiving, receipting, banking, having custody of, and spending money;
- Taking out insurance;
- Conducting meetings and handling correspondence;
- Maintaining records;
- Arranging fire safety inspections;
- Ensuring compliance with Occupational Health and Safety requirements;
- Entering into common property maintenance and service contracts; and
- Arranging for s108 inspections and s109 certificates.

iii. Appointment of Managing Agent by Adjudicator or Tribunal



Under certain circumstances, a strata schemes Adjudicator may appoint a strata managing agent to carry out some or all of the functions of an owners corporation

The amendments also provide that a strata managing agent that holds a corporation license under the *Property, Stock and Business Agents Act* may be appointed by an Adjudicator or the Tribunal to carry out functions of the owners corporations.

Managing agents will no longer be appointed from a panel of nominees. They will be able to be appointed as long as they have given written consent to the appointment, even where no application has been made.

D. Common Property Alterations and Additions

The changes to the Strata Laws make it clear that the owners corporation has the authority to do the following:

- Add to the common property;
- Alter the common property; and
- Erect a new structure on the common property

However, any additions, alterations or new structures must be for the purposes of improving or enhancing common property and must be first approved by a special resolution at a general meeting of the owners corporation.

E. Executive Committees

The powers of strata executive committees will change, particularly in connection with commencing legal action on behalf of the owners corporation:

i. Legal Action

In many instances, executive committees will no longer be able to commence legal proceedings or obtain legal advice on behalf of owners corporations. The matters will have to be decided by the owners corporation in a general meeting. Any legal matter involving anticipated expenditure of less than \$750.00 times the number of lots in the scheme or \$10,000.00, whichever is the lesser, will still be able to be dealt with by executive committee. For example, in a 5 lot strata scheme the executive committee would be able to spend \$3,750.00 on legal matters (ie 5 x \$750.00).

ii. Other Matters

Where there is a disagreement between an owners corporation and its executive committee on any issue, the decision of the owners corporation prevails.

F. Legal Action by Owners Corporation



LEGAL UPDATE

PIGOTT STINSON

COMMERCIAL

CLUBS

PROPERTY

LITIGATION

PRIVATE CLIENTS

FAMILY LAW

Should an owners corporation wish to commence legal action of any type in its administration of the scheme, where payment of money is involved, specific steps must be taken.

Firstly, the decision to commence legal action will often have to be approved by a general meeting of the owners corporation by a majority vote.

Secondly, where the estimated costs of legal actions have been disclosed under the Legal Profession Act to the owners corporation this must be passed on to all lot owners and executive committee members within seven days of this information being given to the owners corporation.

G. Documents and Information to be Provided by Developers

From 7 February 2005, "original owners" of strata schemes (usually a developer) are required to hand over the following documents at the first annual general meeting of the owners corporation:

- 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;
- warranties obtained or received relating to the complex and any building, plant or equipment;
- occupation certificates;
- sewerage line diagrams;
- maintenance and service manuals; and
- depreciation schedules

The maximum penalty for failing to hand over the necessary documentation has been increased from \$1,100.00 to \$11,000.00"

H. Owners Corporation – Powers and Responsibilities

The following refinements have been made to the general powers and obligations of owners corporations:

- All records (ie financial accounts, minutes of meetings, correspondence etc) must be kept by owners corporations for a minimum of five years;
- Before issuing a notice on a person to comply with a By Law, the owners corporation or its executive committee must pass a resolution that there has actually been a contravention of the by law in question;



LEGAL UPDATE

PIGOTT STINSON

COMMERCIAL

CLUBS

PROPERTY

LITIGATION

PRIVATE CLIENTS

FAMILY LAW

- If a prospective purchaser makes a written application, the owners corporations will be able to accept verbal, electronic or written consent from a lot owner to permit the prospective purchaser to inspect records connected with the lot and the scheme;
- Whenever an owners corporation takes out insurance for any purpose (both mandatory and optional insurance) an approved insurer must be used (ie insurance company authorised by the Australia Prudential Regulation Authority);
- Owners corporations have a specific power to grant, by special resolution, a licence to a lot owner to use common property either generally or for a 'once only' purpose (eg. a roof garden for New Year's eve celebrations).

I. By-laws

It has been made clear that a by law may not be used by owners corporations in an attempt to extend powers beyond those given in the Strata Laws and that any such any law is invalid.

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

J. Mediation of Disputes

The following types of disputes have been removed from the range of matters where mediation must be attempted before going to adjudication:

- Applications for appointment of managing agents;
- Applications for interim orders or stays;
- Applications for variations or revocations of previous orders;
- Applications authorizing acts in initial period;
- Applications about allocation of unit entitlements; and
- Applications for imposition of civil penalties.

K. Retirement Village Issues

In addition to specific retirement village information that must be given by the village operator, prospective residents of a village that is also a strata scheme, must also be given information about strata laws including the amount of any strata levies that would be payable by them.

L. Miscellaneous

In addition to the above changes to the Strata Laws the following miscellaneous reforms also apply:



LEGAL UPDATE

PIGOTT STINSON

COMMERCIAL

CLUBS

PROPERTY

LITIGATION

PRIVATE CLIENTS

FAMILY LAW

- An additional mandatory item for the first annual general meeting of an owners corporation is consideration of whether a caretaker is to be appointed;
- Treasurer's functions may be carried out by both members of CPA Australia and the Institute of Chartered Accountants in Australia;
- New regulation – making powers have been provided for in regard to the administration of large schemes; and
- Adjudicators and the Tribunal are able to vary previous orders for the purpose of correction, clarification or extending a time without a party necessarily having to make a specific application.

For further information regarding the changes to the strata laws you can contact our office on (02) 8251 7777.

Clients should not act only on the basis of material in this article because the contents are of a general nature only and may be liable to misrepresentation in particular circumstances. Do not act on any of the contents of this article without first obtaining advice from our firm.