



Strata Living

Get involved

13 32 20
fairtrading.nsw.gov.au



NSW Fair Trading

13 32 20

ISBN 978 1 921938 10 8

Disclaimer

Information on this topic may have changed since this booklet was published. You can check our website for the latest information.

This publication is a plain language guide to your rights and responsibilities. It must not be relied on as legal advice.

For more information please refer to the appropriate legislation or seek independent legal advice.

Copyright

© State of New South Wales (NSW Fair Trading), 2016

The State of New South Wales, acting through NSW Fair Trading, supports and encourages the reuse of its publicly funded information. This publication is licensed under the Creative Commons Attribution 4.0 licence. For more information visit fairtrading.nsw.gov.au/ftw/Copyright.page

Revised December 2016

CONTENTS

| | | | |
|---|-----------|--|-----------|
| INTRODUCTION | 3 | | |
| • Who are we? | 3 | | |
| • Symbols in this guide | 4 | | |
| • Quick reference guide | 4 | | |
| • For owners | 4 | | |
| • Additional topics for landlords | 4 | | |
| • For tenants | 4 | | |
| HOW STRATA WORKS IN NSW | 5 | | |
| 1. Understanding the basics | 5 | | |
| • Key concepts in strata | 5 | | |
| – Strata scheme | 5 | | |
| – Common property | 5 | | |
| – Unit entitlement | 6 | | |
| – Contributions | 6 | | |
| – General meeting | 6 | | |
| 2. How a strata scheme operates | 7 | | |
| • The owners corporation | 7 | | |
| • The strata committee | 8 | | |
| • Eligibility for the strata committee | 9 | | |
| 3. Strata managing agents | 10 | | |
| • What is a strata managing agent? | 10 | | |
| • What are their responsibilities? | 10 | | |
| • Strata managing agent appointments | 11 | | |
| • Extending the term of appointment | 11 | | |
| • Ending a strata managing agent agreement | 11 | | |
| • Gifts, benefits and commissions | 12 | | |
| 4. Building managers | 13 | | |
| • What does a building manager do? | 13 | | |
| • Building manager appointments | 13 | | |
| 5. Owners corporation responsibilities | 15 | | |
| • Management responsibilities | 15 | | |
| – Strata roll | 15 | | |
| – Record keeping | 15 | | |
| – Financial records | 15 | | |
| | | – How long records must be kept | 16 |
| | | – Arranging for records to be inspected | 16 |
| | | – Legal action | 16 |
| | | • Requirements for large schemes and two lot schemes | 17 |
| | | 6. Managing Finances | 18 |
| | | • Contributions | 18 |
| | | • Special levies | 18 |
| | | • The administrative fund and the capital works fund | 18 |
| | | • Examples of expenditure from the funds | 19 |
| | | • Fund transfer | 19 |
| | | • Funds for specific purposes | 19 |
| | | • Unpaid contributions | 20 |
| | | • Recovering unpaid contributions | 20 |
| | | • Financial statements | 21 |
| | | • Audited accounts | 21 |
| | | • Insurance | 22 |
| | | – Building insurance | 22 |
| | | – Public liability insurance | 22 |
| | | – Workers compensation insurance | 22 |
| | | – Voluntary workers insurance | 22 |
| | | LIVING IN A SCHEME | 23 |
| | | 7. By-laws | 23 |
| | | • What are by-laws? | 23 |
| | | • Tenants | 23 |
| | | • Breaching the by-laws | 24 |
| | | • Pets | 25 |
| | | • Assistance animals | 25 |
| | | • Nuisance smoking | 25 |
| | | • Abandoned goods | 26 |
| | | • Parking | 27 |
| | | • Council enforcement of parking | 27 |
| | | • Vehicles obstructing common property | 27 |
| | | • Occupancy limits | 28 |
| | | • Short-term (holiday) letting | 28 |

CONTENTS

| | | | |
|--|-----------|--|-----------|
| GET INVOLVED - MEETINGS AND DECISION-MAKING | 29 | IF THINGS GO WRONG | 38 |
| 8. Owners corporation meetings and voting | 29 | 11. If things go wrong | 38 |
| • Meetings | 29 | • Building defects | 38 |
| • Notice for meetings | 29 | • Defects bonds | 38 |
| • Raising a matter to be decided on | 30 | • Resolving disputes | 39 |
| • Quorum | 30 | – Steps to resolve a dispute | 39 |
| • Voting | 31 | – Step 1. Talk about it | 39 |
| • Attendance, voting methods and proxies | 31 | – Step 2. Approach the secretary of the owners corporation | 39 |
| • Minutes | 31 | – Step 3. Mediation | 40 |
| • Tenants at meetings | 32 | – Step 4. The Tribunal | 40 |
| 9. The collective sale process | 34 | • Complaints about strata managing agents | 41 |
| • What is the process? | 34 | • Common disputes | 42 |
| • Assistance to dispute a proposed sale | 34 | | |
| GETTING THINGS FIXED OR CHANGED | 35 | | |
| 10. Getting things done | 35 | | |
| • Raising concerns within a scheme | 35 | | |
| • Responsibility for repairs | 35 | | |
| • Getting repairs to common property done | 36 | | |
| • Renovations | 37 | | |

INTRODUCTION

NSW strata laws are designed to help strata schemes run effectively. If you own, live in or rent a strata property, such as a townhouse or apartment, understanding how strata works will help you to get the most from your property and lifestyle, and resolve issues before they result in disputes or financial problems.

Strata schemes are small, self-governing communities operating as a democracy. The owners decide collectively how best to manage the property that they share. For instance, each individual strata scheme can decide on and enforce its own rules – called by-laws – to suit the way owners want to live together and restrict unwanted behaviour.

Under the *Strata Schemes Management Act 2015* (the Act), each lot owner has the right to vote on decisions affecting the strata scheme. Equally, owners have responsibilities, like sharing the costs for the upkeep of the common property. The owners may appoint a licensed strata managing agent to perform certain duties. If so, owners should be aware of what strata managing agents' legal obligations are and make sure they deliver a professional service in line with the contract they have negotiated with them.

This *Strata Living* publication will guide you through what you need to know if you rent or own a strata property. Use this guide to:

- understand how a strata scheme works; including the roles, rights and responsibilities of owners, tenants and strata professionals
- deal with common issues and practical matters in strata.

For more strata information visit the NSW Fair Trading website or call our strata hotline (free call) on **1800 214 023**.

Who are we?

NSW Fair Trading is a NSW Government consumer protection agency. We administer laws for a fair and effective marketplace and provide services and free information to consumers and the industry professionals we license, such as strata managing agents. Visit our website to find out more.



Symbols in this guide



New strata laws



Fact sheet available on the Fair Trading website

Quick reference guide

For owners

- Understand how by-laws (strata rules) work from p. 23
- Raise a matter to be put to a vote p. 30
- Take steps to resolve common issues in strata p. 42
- Gain approval for renovations to your property p. 37
- Learn about strata finances from p. 18
- Know your 'owners corporation' key duties p. 7
- Give input into key decisions affecting your property and lifestyle from p. 29
- Know the alternatives to attending meetings in person p. 31
- Know what to consider when appointing a strata manager p. 10
- Learn how the collective sale of a strata scheme works p. 34
- Find out about options to manage problem parking p. 27
- Monitor and act on building defects p. 38

Additional topics for landlords

- Notify the secretary of a tenancy within 14 days p. 32-33
- Give your tenant the strata rules (by-laws) within 14 days p. 23

For tenants

- Understand how by-laws (strata rules) work from p. 23
- Be 'in the know' about what's happening in your strata block p. 32
- Check if you can have a tenant representative p. 32-33
- Understand how renovations are approved p. 37

For more information about being a tenant more generally and your specific rights and responsibilities, refer to your tenancy agreement or contact Fair Trading for more details.

If you are or want to become a **chairperson, treasurer or secretary** - read through this guide to make sure you understand how strata schemes operate in NSW, using the contents section to refer back to key matters.

Note: In this guide, the abbreviation 's' is used for section, referring to the relevant section in the Act.

Key concepts in strata

Strata scheme

A strata scheme is a building, or collection of buildings, where:

- the property that each individual owns is called a 'lot' (for example, an apartment, villa or townhouse)
- all the owners share ownership of and responsibility for the 'common property', such as external walls, foyers and driveways.

Some strata schemes sit within the 'umbrella' of a community scheme. As the name suggests, a community scheme is essentially a community containing a number of individual strata schemes. Each scheme is managed individually, and also has representation on the community scheme committee, which manages shared spaces such as community halls and parks.



Common property

The owners corporation, which all owners automatically belong to, is responsible for managing the strata scheme.

The basic rule is that everything inside a lot is the owner's property. This generally includes all internal walls, fixtures, carpet and paint on the walls.

Common property boundaries of each lot are generally formed by:

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

Common property can include such things as:

- pipes in the common property or servicing more than one lot
- electrical wiring in the common property or servicing more than one lot
- originally installed parquet floors, ceramic tiles, floor boards, vermiculate ceilings, plaster ceilings and cornices
- most balcony walls and doors.

It is crucial to know where the common property boundaries are, as lot owners cannot make alterations to common property in their townhouse or apartment without first getting approval from the owners corporation (see our information on 'Renovations' in this guide).

Being sure of the common property boundaries

To know exactly what is common property and what is an individual's lot, you will need to look at the strata plan for your strata scheme.

The boundaries are usually marked by thick black lines.

If you don't have a copy, you can obtain one from the NSW Land and Property Information.

Unit entitlement

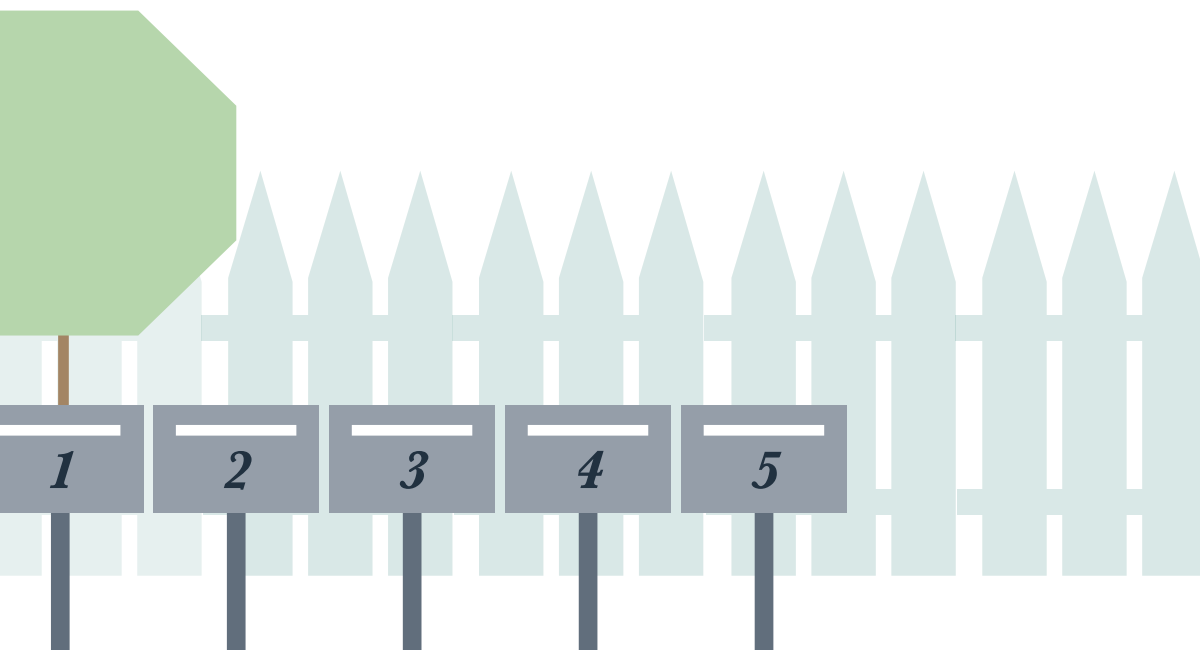
The strata plan for your strata scheme, which is registered with the NSW Land and Property Information, shows the unit entitlement for each lot. The unit entitlement represents lot owners' share of ownership in the strata scheme. It is used to calculate the contributions (levies) each owner pays and how much their vote is worth.

Contributions

Contributions are the fees paid by all lot owners in a scheme to cover the projected costs and expenses of the strata scheme. They are paid into funds administered by the owners corporation, which include the **administrative fund** and the **capital works fund** (see: 'The administrative fund and the capital works fund' in this guide).

General meeting

Any meeting of the owners corporation that is not an annual general meeting (AGM) is referred to as a general meeting. In this guide, 'a meeting of the owners' refers to a general meeting of the owners corporation.



How a strata scheme operates



The owners corporation

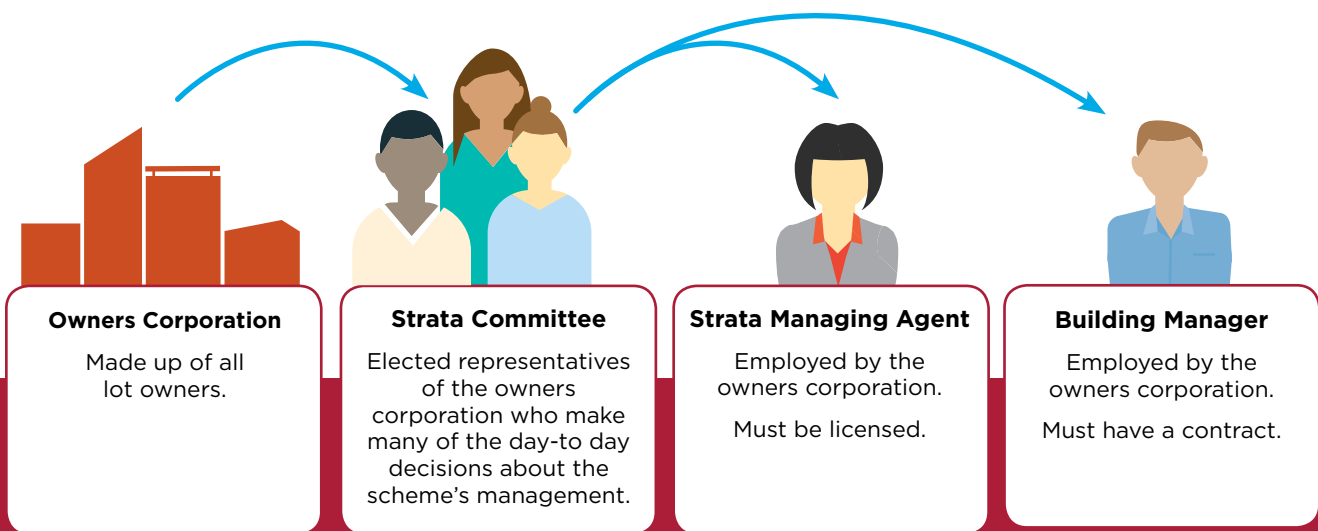
All lot owners in a strata scheme are automatically part of the owners corporation (previously the 'body corporate') and have a right to take part in the decision making.

The owners corporation should hold regular meetings for the owners to decide on issues affecting the strata scheme. It is responsible for overall management of the scheme, including:

- financial management
- insurance
- record keeping
- repairs and maintenance of common property
- by-laws
- employing a strata managing agent and/or a building manager (if they choose to do so)
- keeping up-to-date with and following all relevant laws. Apart from strata laws, this includes planning, building, fire and safety inspections, and work, health and safety laws.

Among the specific responsibilities of the owners corporation are:

- issuing a **notice to comply** with a by-law to someone who has breached a by-law. This could only happen once the owners corporation or its strata committee had resolved that a by-law has been breached by that person
- arranging for **inspections of the strata scheme's records**
- responding to written requests for a **Section 184 Certificate** from prospective purchasers of property in the strata scheme. The Certificate provides certain strata scheme information and must be provided within 14 days
- where agenda items for a **meeting involve a priority vote**, those holding a priority vote must be notified in writing at least 2 days in advance. These agenda items include matters relating to insurance, budgeting, expenses over a certain amount (\$1,000 times the number of lots in the strata scheme), setting the contributions to be levied on (paid by) the owners and matters that require a special resolution (75% of the owners who are at a meeting agreeing) or unanimous agreement (all the owners who are at a meeting agreeing)
- ensuring access to all parts of the scheme for necessary **fire safety inspections**
- notifying of a **pesticide treatment** 5 days before it is carried out. The notice must be given to all residents and can be done in person, in writing, or by put up on noticeboards and near the main building entrance.



The owners corporation may delegate a number of responsibilities to a strata managing agent (see 'Strata managing agents' in this guide). However, there are several responsibilities and powers that cannot be delegated, including:

- the power to dismiss some or all of the strata committee members
- the power to grant use of the common property to a lot owner for a 'once only' purpose or on an ongoing basis (which would require a special resolution vote of the owners corporation) that can only be made by the owners corporation under NSW strata laws.
- certain other decisions that can only be made by the owners corporation under NSW strata laws.

The strata committee

The owners corporation must elect a strata committee (previously the 'executive committee'). The strata committee enables quicker decision making on many of the day-to-day decisions about running the scheme. The owners corporation, being all lot owners, can vote to overrule its strata committee's decisions or put limits on what they can make decisions about.

The strata committee is elected at each AGM. Up to nine members can be elected. The minimum number of members for a strata committee depends on the size of the strata scheme. A strata committee must have at least:

- three members, if it is a large scheme (more than 100 lots)
- two members, if it is a two lot scheme, which include the owner, or one co-owner, of each lot.

Strata committee members must act with due care and diligence and must disclose any conflict of interest at a meeting, which must also be recorded. If a strata committee member does not disclose a conflict of interest, this may result in them receiving a penalty of up to \$1,100.

Eligibility for the strata committee

Individual owners may nominate themselves, or another eligible person, to stand for election to the strata committee. People eligible to be appointed to the strata committee include:

- an individual who is the sole owner of a lot in a strata scheme
- generally, only one co-owner of a lot, unless they own more than one lot
- a company nominee of a corporation that is the sole owner of a lot
- a non-owner, if nominated by an eligible owner who is not themselves on the committee or hasn't been nominated for election.

Where an owner or co-owner has more than one lot, they are eligible for nomination for each lot.

People who are **not eligible**, unless they own a lot in the strata scheme, include:

- the building manager for the strata scheme
- an agent who leases one or more lots in the strata scheme to tenants
- a person connected to the original owner (developer) of the scheme or the building manager (unless this is disclosed in writing to the secretary or chairperson before they are appointed).

Importantly, any owner of a lot who was unfinancial (owing unpaid contributions) when notice is given for the next meeting of the strata scheme, and who remains unfinancial before the meeting, is not eligible to be nominated to the strata committee. However being unfinancial does not prevent a lot owner from making a nomination.

The strata committee members are responsible for electing the office bearers. This generally takes place at the first committee meeting. An individual committee member may take on more than one position. Officer bearers usually perform the following duties:

- **Chairperson:** runs all general meetings and oversees all procedural matters
- **Secretary:** arranges meetings by providing advance notice of them, prepares and distributes meeting agendas and minutes, and maintains the strata roll
- **Treasurer:** notifies owners of levy contributions and keeps accounting records. (s103)(s105) (s90)

What is a strata managing agent?

The owners corporation may engage a licensed strata managing agent to help manage their strata scheme. Only a person who is licensed under the *Property, Stock and Business Agents Act 2002* can be appointed. Owners corporations should periodically ensure that the licence remains current by checking the property licence register at fairtrading.nsw.gov.au

To choose the best fit for their strata scheme, the owners corporation should investigate and interview a range of agents. They should determine which services they can provide and the cost involved, and they can negotiate these with the agent.

**IMPORTANT!**

Like any contract, the agency agreement between the owners corporation and the strata managing agent can include terms and conditions that can be negotiated between the parties.

What are their responsibilities?

The owners corporation can choose the responsibilities of their appointed strata managing agent in negotiating the contract with them (apart from where the owners corporation's powers cannot be delegated). For instance, an owners corporation may wish to handle their own financial affairs, but have meetings arranged by the strata managing agent.

The strata managing agent should keep the owners corporation informed of what they are doing and how they are performing their duties. The managing agent must provide details of any trust accounts and financial transactions when requested by the owners corporation. They must also provide an annual account of their activities performed on behalf of the strata scheme in the previous 12 months.

The owners corporation and the strata committee can still carry out their duties even if the owners corporation has delegated them to a strata managing agent.

A strata managing agent **cannot:**

- delegate their powers, authorities, duties or functions to others
- set the contributions to be paid by the owners
- make a decision on a restricted matter (a matter that needs a special or unanimous resolution, or which the owners corporation has decided must go to a general meeting).



Strata managing agent appointments

A managing agent can only be appointed by the owners corporation by a general resolution (see p. 31 for an explanation of the different voting thresholds that apply in strata meetings). If a strata managing agent has been appointed by the developer before the first AGM, then that appointment ends at that meeting. If a strata managing agent is appointed at that meeting, then they can only be appointed for a maximum of 12 months. After this, any future appointment of them, or another strata managing agent, can only be for a maximum of 3 years, and after this time, a new contract must be entered into.

Extending the term of appointment

The strata committee can extend the appointment of the strata managing agent for successive blocks of up to 3 months after their term would have otherwise expired, but not past the next AGM. This allows the owners corporation time to seek a new strata managing agent, if they wish. If the strata committee does this, and then decides not to re-appoint them, then they must give the strata managing agent at least 1 month's notice of that decision before their services can be terminated.

If an agent is **appointed for the maximum allowed period of 3 years**, then their contract automatically includes an option for them to extend their appointment for a further 3 months. The agent has to advise in writing that they will do this, but this is overruled if the owners corporation has given the agent 3 months' notice that it will not be reappointing them.

Before ending your strata managing agent's contract, the owners corporation must give advance written notice as follows:

- 3 year term about to expire - 3 months' notice before the expiry of the term
- 3 month extension - 1 month's notice must be given
- Less than 3 year term about to expire - the Act doesn't specify a set notice period. Check your agreement which may contain a notice term in it.



Ending a strata managing agent agreement

When an agency agreement is due to end, a strata managing agent can be dismissed by a majority vote at a meeting of the owners.

An owners corporation may at any time resolve at a meeting to terminate the agreement based on its terms, or apply to the NSW Civil and Administrative Tribunal (the Tribunal) for an order to:

- terminate the agreement
- require compensation to be paid
- vary the term or a condition of the agreement, or declare a term of appointment void
- require a particular action to be taken, or not taken, by a party to the agreement.

Gifts, benefits and commissions

A strata managing agent must not request or accept a gift or benefit valued at more than \$60 through their role in the strata scheme. Otherwise, they could be fined up to \$2,200, or disciplinary action could be taken. (s57)

At the AGM of the owners corporation, the strata managing agent must also report if their current role in the strata scheme has earned them any commissions (not disclosed in the agency agreement) or training service benefits:

- during the last 12 months
 - likely to be received or paid for in the next 12 months.
- (s60)





What does a building manager do?

A scheme may engage a building manager (also called a caretaker or resident manager) to help with the day-to-day running of the building. They may assist the owners corporation to:

- manage common property
- control the use of common property by people other than owners and residents
- maintain and repair common property.

The building manager may also perform duties such as concierge, security and cleaning. Building managers may not enforce by-laws or carry out other similar functions of the owners corporation. A person is not a building manager if they perform those functions voluntarily, on a casual basis or as a strata committee member.

If the building manager also acts as an onsite residential property manager handling the rental of properties for lot owners, they must be licensed under the *Property, Stock and Business Agents Act 2002* and live onsite to fulfil the conditions of this licence.



Building manager appointments

An owners corporation can vote at a general meeting to have a building manager.

The appointment must be in writing under a building manager agreement. Before they are appointed, a building manager must disclose to the owners corporation:

- if they are connected with, or providing services on behalf of, the original owner (the developer), since this would present a conflict of interest where the owners' interests may not come first
- any direct or indirect benefit – called a pecuniary interest – in the strata scheme (other than them benefiting from the prospective appointment itself).

A building manager cannot use a proxy vote to obtain a financial or material benefit. For example, they cannot use a proxy vote to extend the term of their appointment, or increase the fees paid to them.

The agenda for the first AGM must include an item to decide whether to appoint a building manager, and if so, what functions they should exercise. Sometimes a building manager is already appointed by the original owner before the first AGM. If so, their existing contract ends after the first AGM.

A building manager agreement expires:

- at the conclusion of the first AGM of the owners corporation if appointed before that meeting (unless the Tribunal has ordered otherwise), or
- after 10 years (or a shorter period as indicated in the building manager agreement).

An owners corporation may, at any time during the agreement, make a resolution at a general meeting to terminate it in line with the terms of the agreement, or apply to the Tribunal for an order to:

- terminate the agreement
- require compensation to be paid
- vary the term or conditions, or declare a term of appointment void
- require a particular action to be taken, or not taken, by a party to the agreement.

Apart from terminating a contract, the owners corporation can also resolve to transfer a building manager agreement to another person.

Disputes relating to building manager agreements may be resolved by formal mediation (see the last section in this guide: 'If things go wrong').



IMPORTANT!

Before engaging a building manager, an owners corporation should:

- research a number of prospective building managers
- negotiate the contract before signing it, after seeking independent legal advice.



Management responsibilities

Strata roll

The owners corporation must prepare and keep a strata roll. The roll must be kept electronically or in writing. To serve notices for each lot, the roll must include:

- each owner's name and address (or email address), or
- the name of the agent managing the property for the owner, and the agent's Australian address
- each tenant name and address, or email address (where the landlord has provided a tenancy notice to the owners corporation, as required).

The following information must be recorded for the strata scheme:

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

Requirements for window and pool safety

Strata buildings in NSW must be fitted with devices that enable windows to be locked at 12.5cm.

Owners corporations are responsible for installing them on all common property openable windows above the ground floor by 13 March 2018. The safety devices must be robust and childproof.

Strata schemes with a swimming or spa pool must also follow NSW Government swimming pool laws (See: swimmingpoolregister.nsw.gov.au)

Record keeping

The owners corporation must record all details of:

- notices given
- any orders (enforcing a particular ruling on a matter under strata laws) handed down from the NSW Civil and Administrative Tribunal, or a public authority, local council or a court.

The records need to include:

- the date and manner of service of a notice and the part of the strata scheme it is about
- the date for obeying the order
- the date the order was obeyed.

Forms for the records can be purchased from some law stationers.



Financial records

The owners corporation must keep accounting records and financial statements. These include:

- receipts consecutively numbered
- a statement of deposits and withdrawals for the account of the owners corporation
- a cash record
- a levy register.

Strata schemes may decide to maintain electronic records rather than keeping paper-based ones.



How long records must be kept

The owners corporation must keep the following information for at least 7 years:

- strata roll
- information about the strata scheme including insurance, the original owner of the scheme, any strata manager appointed and by-laws
- notice and minutes of meetings of the owners corporation and strata committee
- financial statements and accounting records
- authorisation for proxies delivered to the owners corporation
- voting papers for motions put forward for consideration, as well as for electing officers to a strata renewal committee, as part of the process involved in a collective sale of a strata scheme
- signed agreements with a strata managing agent or building manager, and records provided to them (generally, those provided by the original owner/developer before the first AGM)
- details of motions passed.

Arranging for records to be inspected

An owner or mortgagee (or their authorised person) can write to the owners corporation to ask to inspect the records. They must pay the fee prescribed in the regulations for this.

Both parties can agree on a time for the inspection. If there is no agreement within 3 days of the application being received, the owners corporation can respond in writing with the time and date when the inspection can take place. The inspection date cannot be later than 10 days from the date of the owners corporation receiving the initial request.

Documents can be inspected in person, through electronic access to the documents or by another means agreed upon. The person inspecting the documents can make copies but must not remove any documents from the premises without permission.



Legal action

In many cases, owners need to pass a resolution at an owners corporation meeting before they can engage legal services.

The owners corporation or strata committee may obtain legal services **without approval** if:

- urgent action is needed to protect the owners' interests and the cost of the legal services is no more than \$15,000, or
- the cost is under \$3,000.

Approval is not required to:

- obtain legal advice before starting legal action
- take legal action to recover unpaid contributions (that is, strata fees owed by a lot owner), interest on unpaid contributions or related expenses.

If the owners corporation has received estimates of how much the legal services will cost, it must give a copy to each owner and the strata committee within 14 days.

Where legal action has been brought against one or more lot owners, or by lot owners against the owners corporation, the court may order for specific lots to be levied to pay costs. This would be based on what the court has determined, and which parties are liable for paying expenses.

Requirements for large schemes and two lot schemes

Strata laws require **large schemes** to fulfil extra requirements. A large scheme is one with more than 100 lots. Parking and utility lots are not counted. In large schemes, the additional requirements include:

- Financial accounts must be audited every year
- Annual budgets must list amounts expected to be spent on specific items
- At least two quotes must be obtained for proposed expenditure that will exceed \$30,000
- At least 24 hours before an owners corporation meeting, the secretary must have received authorisation for anyone acting as a proxy (voting on behalf of someone who has allowed them to use their voting rights)
- Personal notice of all upcoming strata committee meetings and the minutes must be given to all lot owners. Now, individuals on the strata roll may receive this notice by email. Notice may not be given using noticeboards
- Having given an estimated cost for a particular item or matter at an AGM, the owners corporation must not spend more than 10% of the cost estimated. This is unless they decide to go ahead with the purchase after a majority vote at a general meeting. This does not apply if spending is needed in an emergency. Examples include an unexpected electrical or security system failing, or urgent repairs needed due to burst or blocked water or sewerage pipes; serious damage from extreme weather or a natural disaster; or broken glass that is a security risk or could lead to damage to the building's interior.

To support the practical needs and operation of **two lot schemes**, the following laws apply:

- Accounts and finance statements do not need to be audited
- Owners can obtain their own building insurance for their lot and do not need to have a capital works fund if both of them vote in favour of this and:
 - the buildings in each lot are physically detached
 - no building or part of a building is situated outside the lots
- The strata committee includes both the owners of the lots.





Contributions

To set the contributions to be levied on the owners, a budget must be given showing the existing financial situation and an estimate of payments to be made and received. The budget must be:

- distributed when notifying of the upcoming AGM, or
- tabled at the meeting before voting on the levy motion.

The motion to set the contributions must show the amount for each fund and be approved by a majority vote.

Generally, the contribution can be paid by instalments, and the laws allow for the payment amount and due date to be varied.

Special levies

Owners corporations can vote to introduce a special contribution or 'levy' where there are insufficient funds to cover expenses such as large capital works or unforeseen work.

The administrative fund and the capital works fund

All strata schemes must establish an **administrative** fund and a **capital works** fund to administer the finances of the strata scheme.

The administrative fund is used to manage the day-to-day expenses of running the scheme, such as maintaining and repairing the common property and personal property owned by the owners corporation, ongoing maintenance (such as garden care) and insurance. The capital works fund enables major work to be undertaken to common property.

The capital works fund is to ensure there is enough money to pay for capital expenses when the job needs doing. Contributions made by owners to the capital fund are not refundable if an owner moves out of the strata scheme, even if the money has not yet been spent.

The owners corporation must prepare a plan of anticipated major expenditure to be met from the capital works fund. This also helps determine the contributions that the owners need to pay. The plan is for a 10 year period starting on the first AGM of the owners corporation, and must be reviewed at least every 5 years. After the 10 year period is up, there should be a new 10 year plan completed.

Surplus funds in each account can be distributed among the owners. (s77)

Examples of expenditure from the funds

| Administration fund | Capital works fund (sinking fund) |
|---|--|
| <p>Day-to-day expenses of running the scheme including:</p> <ul style="list-style-type: none"> • maintenance of the common property • insurance • recurrent expenses such as electricity, water and rates • pest control • window or carpet cleaning and lawn mowing services. | <p>One off, or major expenditure, such as:</p> <ul style="list-style-type: none"> • painting or repainting the common property • acquiring, renewing or replacing personal property for the scheme • renewing or replacing fixtures and fittings that are part of the common property • replacing, repairing or upgrading the common property • any debts, other than amounts covered by the administrative fund • other capital expenses. |



Fund transfer

The owners corporation of schemes with more than two lots can transfer money from one fund to the other, or make a payment from one fund that would normally come from the other. But the owners corporation must levy a contribution on the owners to repay that fund within 3 months after using that money. (s76)

Funds for specific purposes

A fund may be created for a specific purpose for a group of the lot owners who opt in. For example, some lot owners may want Pay TV services and have a fund established for this purpose. Interested lot owners would pay costs into this fund and use the service without passing costs on to other lot owners who do not wish to have the service.

Unpaid contributions

An unpaid contribution attracts interest at the rate of 10% simple interest a year if not paid within 1 month after it is due. The owners corporation cannot change the rate of interest, but can make a special resolution to charge no interest.

The owners corporation may vote by a general resolution to give a 10% discount where a contribution is paid before the date it is due.

The owners corporation can choose to enter into a payment plan with a non-paying lot owner to pay off their overdue contributions in periodic instalments. The payment plan must be in writing and contain specific information, including:

- the full details of the lot owner
- the details about the amount outstanding, including any interest accrued
- the manner in which the outstanding levies are to be paid.

The owners corporation must provide a monthly statement to the lot owner. Entering into a payment plan does not restrict the owners corporation from taking debt recovery action.



Recovering unpaid contributions (s86)

To recover unpaid contributions, the owners corporation can either go to the Tribunal or the Local Court. For more details about this process, visit the Fair Trading website.





Financial statements

Each reporting period, the owners corporation must prepare full accounting financial statements and a **statement of key financial information**.

The statement of key financial information provides all lot owners with an overview of the financial management of the strata scheme's funds. It must be sent out when notification is given of an upcoming AGM, and must include the following information:

- Name of fund
- Reporting period
- Balance carried forward from previous reporting period
- Total income received during reporting period
- Total interest earned by fund during reporting period
- Total contributions paid during reporting period
- Total unpaid contributions payable for reporting period
- Total expenditure for maintenance during reporting period
- Total expenditure for administration costs during reporting period
- Balance of fund at end of reporting period
- List of principal items of expenditure proposed for next reporting period.

A statement of key financial information for other funds established for specific purposes must also be provided, including the following information:

- Name of fund
- Reporting period
- Balance carried forward from previous reporting period
- Total income received during reporting period
- Total interest earned by fund during reporting period
- Balance of fund at end of reporting period.

A lot owner may also request the full financial statements from the owners corporation and they must be provided at least 2 days before the AGM.

Audited accounts

For schemes of more than 100 lots, or with a budget of over \$250,000, the financial accounts must be audited annually to meet Australian Auditing Standards. Other schemes may choose to have their accounts audited.





Insurance

The owners corporation is responsible for making sure all necessary insurance policies are in place and up-to-date. Policies must be with an approved insurer authorised by the Australian Prudential Regulation Authority.



IMPORTANT!

Strata managing agents delegated to arrange insurance on behalf of an owners corporation must obtain three quotes, unless it is not reasonable to do so. This helps you know if the policy is value for money. Check exactly what cover you will be provided under the policy and any limitations of the policy.

Types of insurance needed include building insurance, public liability insurance, workers compensation insurance and voluntary workers insurance.

Building insurance

The building must be insured under a damage policy. Schemes with just two lots may be exempt (See: 'Requirements for large schemes and two lot schemes' in this guide). The policy must cover the building if damaged or destroyed, and pay for:

- replacing (where destroyed) or reinstating (where damaged but not destroyed) the building back to the same condition it was in when new
- removing debris
- the services of architects and others needed to repair the building.

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



Public liability insurance

This insurance covers damage to property, death or injury for which the owners corporation could become responsible. The minimum amount of cover is \$20 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*.

Further information is available from SafeWork NSW, safework.nsw.gov.au or call 13 10 50.

Voluntary workers insurance

This is needed to provide cover for any damage that the owners corporation 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.

Who insures the contents of an owner's property?

It is highly recommended that residents, whether an owner or a tenant, take out adequate insurance on the contents of their property. Even where damage is caused by a common property issue, personal items such as furniture, electrical appliances, curtains and carpets may not be covered. Landlords should also consider specific landlord insurance to suit their circumstances.



What are by-laws?

All strata schemes have a set of by-laws (rules) that owners, occupiers and, in some cases, visitors must follow. By-laws cover issues such as whether or not pets are permitted on the scheme, how smoking is regulated, parking, noise, and the conduct of residents and visitors.

The owners corporation can enforce these rules through the Tribunal, which may penalise a person who breaches a by-law.

Owners corporations can determine the by-laws that suit the preferred lifestyle of the strata scheme. By-laws cannot be harsh, unconscionable or oppressive, restrict children from the scheme, or restrict dealings in a lot, such as the owner renting out their lot.

You can access a set of **model by-laws** from the Fair Trading website, which provide 'sample rules' to guide the owners corporation in setting their own by-laws.

These may be adopted as is, or with changes to suit the individual scheme's requirements.

To make or **change a by-law**, the owners corporation must agree to a motion put forward on the proposed new by-law with no more than 25% of votes cast against it.

All strata schemes must review their by-laws by 30 November 2017. This helps make sure the by-laws are up-to-date.

Tenants

All residents, including tenants, must follow a strata scheme's by-laws. If someone is breaching a by-law, tenants can inform the secretary of the owners corporation or strata managing agent of the strata scheme. The tenant can ask for a 'notice to comply' to be served on the person responsible for the breach.

Landlords, or the property manager acting on their behalf, must provide their tenants with a copy of the by-laws within 14 days of renting out the property.

TOP TIP!

The owners corporation can delegate approval for minor renovations to the strata committee by passing a by-law to permit this.

Breaching the by-laws

If a resident breaches a by-law, the strata committee can first contact the resident to advise of the breach, and ask that they stop the conduct that is causing the breach.

If this is unsuccessful, the owners corporation may issue the person responsible for the breach with a *Notice to comply with a by-law*. If they have the delegated authority, a strata managing agent may also issue a notice to comply.

If there is a breach after the notice has been issued, the owners corporation may apply to the Tribunal to impose a penalty, after resolving to do so at a general or strata committee meeting.

If the Tribunal has already fined the owner or occupier within the last 12 months for a breach of the same by-law, the penalty imposed by the Tribunal can double to a maximum of \$2,200. In this case, the owners corporation does not have to issue another notice to comply before applying to the Tribunal to impose the fine.

A 'Notice to comply' form is available on the Fair Trading website.

Other responsibilities

Besides by-laws, other responsibilities for owners and residents include to:

- not interfere with or impact another person's lot, including services provided to them or the common property. This includes doing anything to affect another lot owner's water, sewage, drainage, gas, electricity, garbage, air conditioning, heating or telecommunications services
- not causing a nuisance or hazard to another resident, such as playing loud music
- not using the common property in a way that interferes unreasonably with others in the scheme using and enjoying it.



Pets

The model by-laws provide owners corporations with options to control whether pets are allowed, and on which terms. Owners can adopt a model by-law as their own or make their own by-law.

For example, the owners corporation may choose to have a by-law which:

- bans pets on the property altogether (other than assistance animals)
- allows owners to keep a pet and simply provide 14 days' notice from when the pet has started living on the lot owner's property
- allows a pet with the written permission of the owners corporation. This particular model by-law states that the owners corporation cannot unreasonably refuse the request. If they do refuse, they must give the owner written reasons outlining why the pet is not being permitted.

In all cases, if pets are allowed, the lot owner must still supervise their pet, clean any common property that is soiled, and ensure their pet is not noisy or negatively impacting on other residents.

Even if a strata scheme allows pets, a tenant always needs their landlord's permission first.



Assistance animals

Even if the strata scheme has a by-law that bans pets, assistance animals must be allowed.

The owner must, if required to do so by the owners corporation, provide evidence to it demonstrating that the animal is an assistance animal, as defined in the *Disability Discrimination Act 1992* of the Commonwealth. Examples of evidence could include:

- accreditation from a recognised assistance animal training body, or
- a signed statement that the animal has been trained to assist a person with a disability and meet hygiene and behaviour standards for an animal in a public place.

A current or prospective resident can apply to the Tribunal if an owners corporation refuses to approve an assistance animal.



Nuisance smoking

The model by-laws provide the owners corporation with options to deal with nuisance smoking drifting to neighbours' lots and common areas. Owners corporations can pass a by-law to ban smoking on the common property and require an owner or occupier to ensure that second-hand smoke does not enter other lots or the common property.

Alternatively, the owners corporation can pass a by-law to designate smoking areas within the common property.

The owners corporation may also choose to adopt a variation of these model by-laws as their own, or may choose not to have a specific by-law restricting smoking.

Abandoned goods

The owners corporation may dispose of goods, other than vehicles, left on the common property if a disposal notice has been left on or near the goods to be disposed of. A disposal notice is not needed if the items are perishable goods (such as food) or consist only of rubbish.

A disposal notice (at least A4 size, and resistant to weather), containing certain information must be placed on or near the goods before any items can be removed. The written notice must include:

- a description of the goods
- the date and time the notice was issued
- the date and time the goods will be moved from the common property if the goods are not moved or collected (not earlier than 5 days after the notice was placed on or near the goods)
- contact details of a member of the strata committee, the strata managing agent, or a nominee of the owners corporation that can be used if necessary.

The owners corporation can move goods which are obstructing common property to another area of the common property before placing the disposal notice on or near the goods. Care should be taken not to damage the goods in doing so. No notice is required before moving the goods in this circumstance.

An owners corporation can dispose of goods by selling them or in any other lawful manner. The proceeds of any sale must be paid into the administrative fund of the owners corporation.

Anyone who purchases the goods receives a title to the goods, freed and discharged of any interest of any person who would otherwise have an interest in them. A written record of the goods sold must be kept for at least 12 months. The person who owned the goods originally may apply to the Tribunal to seek to be paid the funds.





Parking

Residents or their visitors are not entitled to park in other lot owners' spaces, on common property or in spaces allocated to emergency vehicles. Visitors can only park in allocated visitors' spaces for a reasonable time, or as indicated in any signage. If an individual's lot does not come with a car parking space, then that resident cannot park in the strata scheme.

A resident may negotiate with the owners corporation to obtain exclusive use of part of the common property to park a vehicle.

The owners corporation may wish to control parking on the common property through the use of signage, security guards or parking barriers, such as bollards or key card systems.



Council enforcement of parking

Council rangers may inspect strata schemes in their area to ensure the number of emergency and visitor parking spaces allocated in the development consent is complied with. They may fine the owners corporation if these requirements are not met.

The owners corporation may also enter into a commercial agreement with the local council for council rangers to oversee parking on the strata scheme. Under the agreement, rangers would be empowered to issue parking infringement notices like for parking offences on public streets. If someone was issued a notice, and disagreed with it, they could make representations to the council or have the matter dealt with by the Local Court.

To arrange for council parking management services in the strata scheme, the local council must first agree to entering into an agreement. Next, the owners corporation must pass a by-law to enter into the agreement and pay for the service. The agreement should set out all the terms clearly, and the council may retain all, or the majority of fines issued. The owners corporation would need to provide access for the council to install the required parking signage, and address any maintenance and work, health and safety issues.

Vehicles obstructing common property

An owners corporation can move a vehicle that blocks an exit or entrance or otherwise obstructs the use of common property. An owners corporation can only move the vehicle after it has placed a notice on the vehicle (which is at least A4 in size and weather-proof and contains the same content as the notice required for removing abandoned goods).

The owners corporation can move the vehicle to another area of the common property or to the nearest place that it may be lawfully moved. The owners corporation should take due care not to damage the vehicle. The owners corporation can apply to the Tribunal to recover the costs that would typically be involved in moving the vehicle.

Occupancy limits

A by-law may limit the number of adult residents in a lot. The limit cannot be fewer than two adults per bedroom, and cannot contravene any planning approval or any other applicable law.

Short-term (holiday) letting

The owner or occupier of a lot must ensure that it is not used for any purpose that is prohibited by council planning regulations and other laws. They must also ensure that the lot is not occupied by more people than are allowed, and that the use of the lot does not create a nuisance or hazard to others in the strata scheme.

Sometimes, short-term stays may result in disruption to long term residents. The model by-laws require people in a strata scheme to not make excess noise or behave in a way that disrupts other occupants' 'quiet enjoyment' of the strata scheme. Owners corporations are able to enforce these by-laws and apply to the Tribunal to impose penalties.

If adopted, there is a model by-law that requires lot owners and occupants to notify the owners corporation at least 21 days before changing the use of their lot, such as short-term letting to holiday makers. This allows the owners corporation to make security, insurance and other necessary arrangements.

The law also allows lot owners or the owners corporation to apply to the Tribunal to vary the contribution paid by a lot owner where their activities may affect the amount of the premium paid by the owners corporation for the scheme's insurance. Owners corporations may wish to seek expert advice on this issue if they have been informed that their insurance premiums have been affected by short-term letting.



Owners corporation meetings and voting



Meetings

The owners corporation must meet at least once each year at its AGM. Additional general meetings can be held when necessary to decide on the general running of the strata scheme and any issues which arise. A lot owner, or owners, who hold jointly at least a quarter of the unit entitlements, may request a meeting to be held at any time.

The agenda of the AGM must include:

- a copy of the financial statement for that year
- a motion for accepting the financial statements
- information about all insurance policies held
- a motion to consider appointing an auditor and taking out liability insurance for office bearers
- a motion to confirm the minutes of the last general meeting
- a copy of the minutes from the last general meeting
- any other motion to be considered at the meeting
- information on motions needing special or unanimous resolution
- a motion to decide what may be decided by the strata committee
- a motion for the election of the strata committee
- a motion to decide the number of members of the strata committee
- an item to review the 10 year capital works fund.



Notice for meetings

All owners, and tenants whose name is on the strata roll, must get 14 days' written notice for the first AGM, and 7 days' written notice for subsequent AGMs and general meetings.

There are specific items that are included on the agenda of the **first AGM** of a strata scheme. Visit the Fair Trading website for details.

Meeting procedures for owners corporations are set out in Schedule 1 of the Act. Schedule 2 of the Act sets out the meeting procedures for strata committees. Information is also available on the Fair Trading website.

Raising a matter to be decided on

Anyone who is entitled to vote at a general meeting can ask for a motion to be put to a general meeting. Written notice must be given to the secretary who must put the motion on the agenda for the next general meeting. The written notice must:

- set out the motion
- name the owner who made it
- have an explanatory note of up to 300 words.

The agenda will include details of the motions for that meeting. Only motions provided in the agenda can be voted on. You cannot put forward new motions in a meeting other than to amend a motion or allow a tenant to speak at a meeting. They must be left until the next meeting.

Particular requirements for meetings and notices apply to schemes of more than 100 lots. See: 'Requirements for large schemes and two lot schemes' in this guide.

What is a quorum?

A quorum is the minimum number of people needed at a meeting so that decisions can be put to a valid vote.

Quorum

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

- one quarter of the people entitled to vote, or
- owners entitled to vote holding one quarter or more of the total unit entitlements.

If the quorum calculated is less than two people, the quorum shall be two people entitled to vote on the motion.

If a quorum has not assembled within 30 minutes of the relevant motion or business arising, the chairperson must:

- put off the motion or business for at least 7 days, or
- declare that the persons present (in person or by way of a valid proxy), and who are entitled to vote, make up a quorum for the purpose of deciding motions or business at the 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.

Voting

To be entitled to vote, lot owners (or a nominee in the case of a company-owned lot) must first give a notice of a right to vote to the secretary of the owners corporation. The notice must be shown on the strata roll.

The owners corporation can decide how meetings are to be held and the method of voting. This includes enabling voting and/or meeting participation through technology such as email, teleconference, video conference calls and the use of voting websites. Pre-meeting electronic voting is another option that owners corporations can choose to allow (through a general resolution vote). Electronic voting cannot be used for elections.

A **general resolution is a one lot/one** vote format, which requires a majority vote to pass (greater than 50%).

A **special resolution** is a vote by unit entitlement. A motion can only be passed by special resolution at a properly convened general meeting, with no more than 25% of the votes cast against it.

A **unanimous resolution** is where everyone votes for the motion.

Not all lot owners have the same unit entitlement, as this can vary for each unit in a scheme and usually depends on the size of the lot. The unit entitlement for each lot is outlined in the strata plan.

Owners who have outstanding levies due at the time of the meeting are classified as 'unfinancial' and are not entitled to vote.



Attendance, voting methods and proxies

If agreed to by the owners corporation, meetings can be attended remotely by phone or another means. Alternatively, owners who are unable to attend meetings may choose to appoint a proxy to vote on their behalf. For large schemes, a proxy form needs to be given to the secretary of the owners corporation at least 24 hours before the meeting. For other schemes, the proxy form can be given at or before the meeting. The number of proxy votes able to be held by one person is:

- one proxy vote only for schemes with 20 lots or less, or
- a number no more than 5% of the total number of lots, for schemes with more than 20 lots.

Minutes

Minutes of general meetings are to be given out within 14 days to all owners and committee members. Large schemes only need to give the minutes to the committee, and any owners who request them, within 14 days.

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

A: Seek to raise it at the meeting and ask again to put the motion on the agenda for the next meeting. Another option is applying for free mediation with Fair Trading to help resolve the matter.



Tenants at meetings

Tenants (whose landlords have provided a tenancy notice to the owners corporation, as required) have the right to attend meetings of the owners corporation, but not to speak without the permission of the owners, or vote unless they hold a proxy. They may be excluded from the meeting when certain matters are discussed, such as financial matters or a proposal for the collective sale of the strata scheme.

In certain strata schemes, the tenants have the right to nominate a tenant representative as a member of the strata committee (the committee that looks after the day-to-day running of the strata scheme). This applies in strata schemes where tenants (whose landlords have provided a tenancy notice to the owners corporation, as required) live in at least half of the number of lots in a scheme.

The owners corporation is then responsible for calling a meeting of the eligible tenants at least 14 days before the next AGM. The meeting can either be chaired by the chairperson, or someone nominated, including a tenant. The tenants then nominate one tenant to be their representative on the strata committee. The tenant representative is introduced at the AGM, and holds office until the next AGM concludes.

While the tenant representative can attend and speak at strata committee meetings, they do not have a vote, and cannot make up the quorum of a meeting. The representative can also be asked to leave the meeting if certain financial issues are to be discussed. The tenant representative, as a member of the strata committee, is entitled to a copy of the agenda and any minutes of meetings held.

Use the chart on the following page to understand the steps for nominating a tenant representative to the strata committee.



IMPORTANT!

The strata roll should indicate how many of the lots are being rented out to tenants. This is because, if a landlord rents out their property, they must give the owners corporation a tenancy notice within 14 days. Landlords commit an offence if they fail to do so.

After receiving notice of the tenancy, the secretary of the owners corporation will need to record the tenant's name on the strata roll, with the option of including their email address.



| | | |
|--------------------------|---|--|
| <p>STEP 1</p> | <p>Each landlord must advise the owners corporation that the property is leased within 14 days of a new lease commencing</p> | <ul style="list-style-type: none"> • The notice must be in writing and include: <ul style="list-style-type: none"> - The name of the tenant and address or email for sending correspondence - The date the lease started - The name of any real estate agent looking after the lease. • The landlord commits an offence by not notifying. |
| <p>STEP 2</p> | <p>The strata committee must convene a meeting of eligible tenants at least 14 days before the next AGM</p> | <p>The meeting must be chaired by either the secretary of the owners corporation, the strata manager or an eligible tenant (that is, a tenant who has been registered on the strata roll by their landlord or an agent acting on the landlord's behalf).</p> |
| <p>STEP 3</p> | <p>Tenants nominate one tenant to act as the tenant representative of the strata committee</p> | <p>The tenants at the meeting can choose how they nominate one of them as their representative. The owners corporation are notified of their choice at the AGM.</p> |
| <p>STEP 4</p> | <p>The tenant representative can attend and speak at strata committee meetings</p> | <ul style="list-style-type: none"> • The tenant representative is not entitled to vote. • The tenant representative is not counted in the quorum for the meeting (that is, the minimum number of attendees needed for a vote to occur). • The tenant can be asked to leave a meeting when some matters are to be discussed, such as financial issues or a collective sale proposal. |



What is the process?

The law now provides for a 'collective sale and renewal' procedure if owners want to sell or end their scheme. The collective sale or renewal (redevelopment) of a scheme may be proposed for a number of reasons, but commonly in circumstances where the building may be aging, and the vast majority of residents would prefer to sell their scheme instead of having to pay the costs of extensive repairs.

To protect the rights and interests of all lot owners, there is a set process that applies. Ultimately, for a collective sale to go ahead, owners of at least 75% of the lots in the scheme must agree to the scheme being sold for redevelopment, and the Land and Environment Court must be satisfied that the sale is just and equitable. For more detailed information, visit the Fair Trading website.

Assistance to dispute a proposed sale

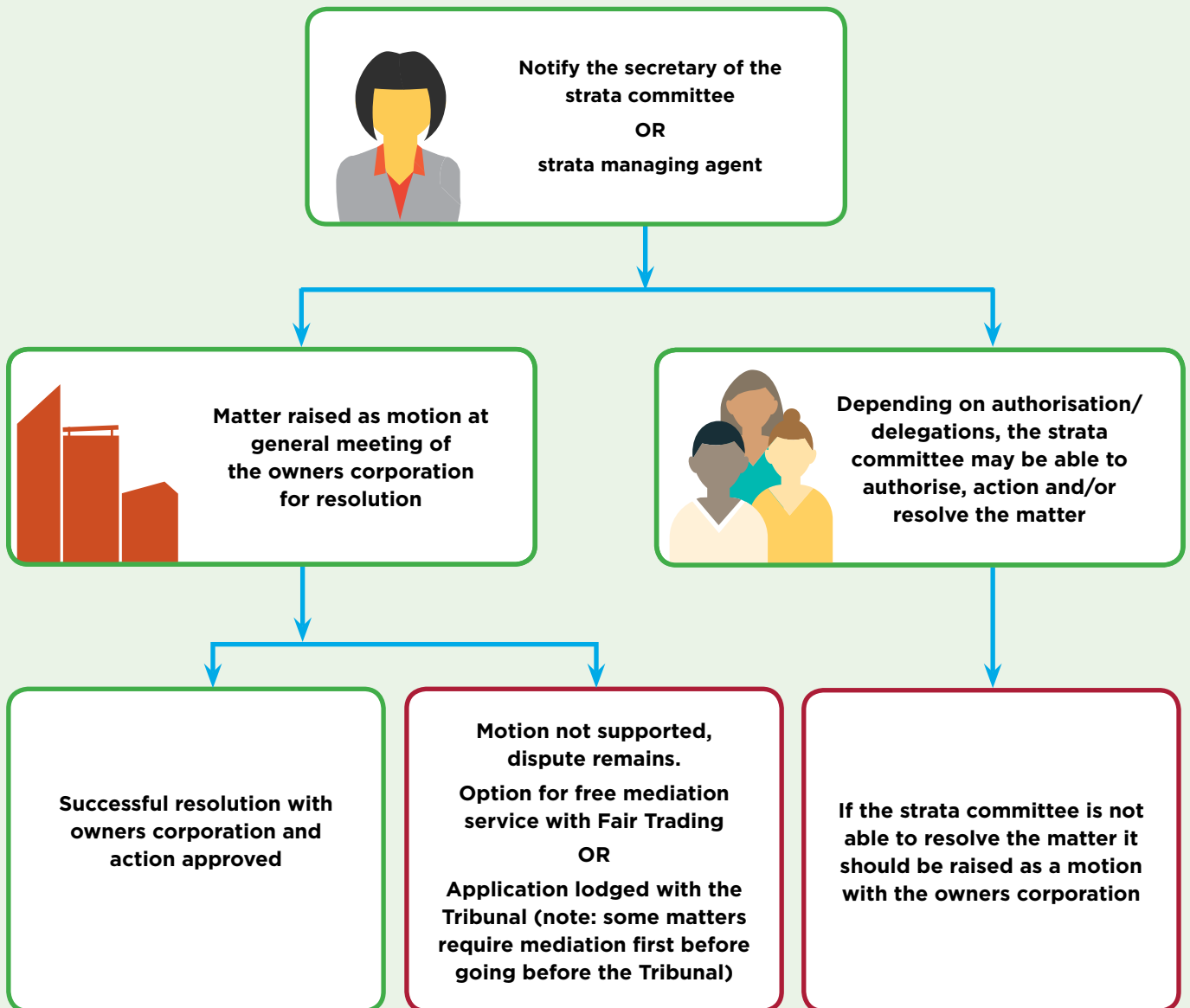
Owners who require assistance in a collective sale process can contact Fair Trading. Additional support is available to eligible owners who are vulnerable or elderly through the Collective Sale Advice and Advocacy program, coordinated by Fair Trading. The program includes referrals to support services, such as legal aid.



Getting things done

Raising concerns within a scheme

Under the laws, strata schemes are self-governing and there are arrangements for owners or occupants who want to raise an issue (see also: 'Owners corporation meetings and voting'). Whether it is a raising a maintenance issue, the intention to seek permission for renovations (for owners), or raising concerns regarding potential breaches of by-laws, the process to follow is generally the same.





Responsibility for repairs

The owners corporation is responsible for the repair and maintenance of common property, and owners must repair and maintain anything within their lot.

The owners corporation may also be responsible for repairing damage to a lot caused by a problem in the common property. For example, water damage from a leaking roof or a pipe that services more than one lot.

Lot owners can decide to clarify responsibility for the repair and maintenance of the common property by either adopting a Common Property Memorandum such as the one available on the Fair Trading website, or through common property rights by-laws. An example may be if a lot owner wants exclusive use of part of the common property such as a parking space, or to store goods. The lot owner would then be responsible for repairs and maintenance of that space, rather than the owners corporation.

Getting repairs to common property done

Lot owners should advise the strata managing agent or secretary of the owners corporation of the problem. If the problem is a minor repair, it may be able to be fixed without the need for a meeting. However, if it is a major problem, a meeting of the owners corporation may be needed to authorise expenditure, or decide what action to take.

If no action is being taken, a lot owner can put forward a motion requesting the repairs, to be voted on at the next meeting. If the matter remains unresolved, you can apply to Fair Trading for mediation.





Renovations

As individual lots also have areas within them that are common property, owners wanting to make changes or undertake renovations may require approval from the owners corporation and this will depend on the type of renovation required.

Remember

Any work must be carried out in a competent and proper manner. Any damage to the common property caused by the work must be repaired. All electrical, air conditioning and plumbing works must be carried out by a properly licensed tradesperson. Check a tradesperson's licence at fairtrading.nsw.gov.au

Renovations fall into three categories:

- **Cosmetic changes** - Includes installing or replacing hooks, nails or screws for hanging paintings or other things on walls; installing or replacing handrails within your lot; painting; and filling minor holes and cracks in internal walls. Lot owners can do cosmetic work within their lot without seeking approval from the owners corporation.
- **Minor renovations** - Includes renovating a kitchen; changing recessed light fittings; installing or replacing wood or other hard floors; and reconfiguring internal walls. Other items usually considered to be minor renovations are sustainability measures, such as clothes lines and air conditioners. Lot owners must get the approval of the owners corporation by general resolution (50% of those entitled to vote at a meeting) before any work can commence. Lot owners may need to provide details of the work including:
 - the work, such as any plans
 - the duration and times of the work
 - the people who will carry out the work, including their qualifications.

- **Renovations other than cosmetic work or minor renovations** require the permission of the owners corporation by a special resolution. Major renovations need a higher level of approval because such work may seriously affect the common property. This applies to structural changes; waterproofing; work that changes the external appearance of your lot, such as an access ramp; and any work for which approval is required under other laws.

Renovations to a bathroom require a special resolution to be passed.

For any structural change to a lot, advance notice must be given by providing a written description of the proposed alteration to the owners corporation at least 14 days before the work is to start.

Tenants need their landlord's written permission to make any changes to the lot.

TOP TIPS!

The owners corporation can delegate approval for minor renovations to the strata committee by passing a by-law to permit this.

The owners corporation can also make a by-law to define specific types of work as being 'cosmetic' or 'minor' renovations. This is as long as it doesn't conflict the categories of renovation as defined in the Act. For example, waterproofing would fall into the category of major renovations. The owners corporation could not decide that this is a minor renovation.



Building defects

Builders are required to provide statutory warranties on the construction of residential premises. The warranty period for new residential building work is 2 years for all defects and 6 years for 'major' defects from the date the building work was completed.

The owners corporation must notify the developer or builder of a potential defect as soon as it becomes aware of it. To secure rights under the warranties, legal proceedings must commence within the relevant warranty period (2 years or 6 years).

If the defect only becomes apparent in the last 6 months of the warranty period, the law provides a further 6 months (from the end of the warranty period) to commence legal proceedings. Further information on home building laws can be found on the Fair Trading website.

Defects bonds

From July 2017, developers will be required to lodge a 2% defect bond on all new residential developments. Visit the Fair Trading website for details.





Resolving disputes

Steps to resolve a dispute



STEP 1

TALK ABOUT IT

Discuss the issue with the other party, and use the strata scheme's dispute resolution process where available

STEP 2

APPROACH THE SECRETARY OF THE OWNERS CORPORATION

Request the matter be put on the agenda. Owners corporations are empowered under strata laws to make many decisions about how the scheme is managed

STEP 3

MEDIATION

If the matter is unable to be resolved internally, or if there are safety or other concerns, apply to NSW Fair Trading for free formal mediation

STEP 4

THE TRIBUNAL

If the matter is unable to be resolved by formal mediation, apply to the Tribunal for a hearing.

Step 1: Talk about it

Most disputes in strata can be dealt with effectively in the early stages by discussing the issue.

Many strata schemes have their own internal process for resolving disputes that occur between lot owners, the owners corporation, the strata committee, the strata managing agent, the building manager and/or other third parties.

If you are unsure of your rights and responsibilities you can contact Fair Trading.

Step 2: Approach the secretary of the owners corporation

Many issues can be considered, decided and actioned by the owners corporation. These include by-law breaches, inappropriate use of common property, issues with repairs and maintenance and concerns about a strata managing agent. Refer to 'Common disputes' in this chapter for a list of common issues and the process for dealing with them.



Step 3: Mediation

From time to time disputes between a lot owner and other lot owners or the owners corporation will not be resolved through the governance and decision-making powers of the owners corporation.

Fair Trading provides a free dispute resolution service and mediation may assist in achieving a resolution. Mediation is an informal negotiation process in which a neutral mediator assists those involved in a dispute to achieve their own settlement.

Mediation must generally be attempted before a dispute is taken to the Tribunal except in the circumstances outlined in Step 4: The Tribunal.

Lot owners or the owners corporation can lodge certain disputes directly with the Tribunal without needing mediation first. These include matters seeking an order:

- to appoint or require the appointment of a strata managing agent
- allocating unit entitlements
- for access to a lot by the owners corporation to inspect or repair common property
- seeking records from a former strata managing agent to be provided to an owners corporation
- for inspection of records
- imposing fines, such as for a by-law breach.

Application forms and the fee schedule can be obtained from the Tribunal website at ncat.nsw.gov.au or by calling 1300 006 228.



Step 4: The Tribunal

Where an issue is not resolved by mediation, an application can be made to the Tribunal. This allows the matter to be heard and determined by a member of the Tribunal, even if one of the parties is absent. All hearings in the Tribunal are public hearings and members of the public may attend in the same way as other courts. In some instances, lot owners or the owners corporation can take their dispute directly to the Tribunal.

Be aware that...

Strata schemes are empowered to make decisions about the rules and governance of their scheme. Generally, government and courts cannot intervene or overrule properly exercised decisions.

Complaints about strata managing agents

Agents act on behalf of the owners corporation that has appointed them. However, the owners corporation retains responsibility for the operation of the strata scheme at all times.

Apart from the agency agreement between the agent and the owners corporation, the *Property, Stock and Business Agents Act* sets out responsibilities and rules of conduct for agents in their dealings. Lot owners concerned about the actions or conduct of a strata managing agent should first raise these matters with the owners corporation.

If an owners corporation is concerned that a managing agent has not complied with their responsibilities under the *Property, Stock and Business Agents Act*, a complaint can be lodged with NSW Fair Trading at fairtrading.nsw.gov.au. An owners corporation can also seek an order from the Tribunal to end or change an agreement.



Common disputes

The following table identifies some common issues in strata and how to resolve them. It serves as a guide only.

If you raise a motion, remember that a resolution made by the owners corporation is binding, as long as it follows the correct procedure. If your motion is rejected and you believe the decision did not follow the correct procedure, or there are extenuating circumstances, you may consider applying for mediation. This is possible for matters including renovations, requesting exclusive use of the common property, changing a by-law and other issues listed on the Fair Trading website.

| Common issues | Steps to resolve the issue |
|--|---|
| <p>A resident is breaching by-laws Eg. unauthorised parking, excess noise, nuisance smoking</p> | <ol style="list-style-type: none"> 1. Talk about it with the person who is responsible for the breach and/or advise the owners corporation (OC) 2. The OC can serve a notice to comply on an owner or occupier (page 24) 3. If the conduct continues, the OC can make an application with the Tribunal seeking an order to impose a penalty. |
| <p>How to obtain exclusive use of common property</p> | <ol style="list-style-type: none"> 1. Submit a motion to the secretary requesting exclusive use of common property (page 30) 2. A common property rights by-law must be passed by special resolution. Your written consent (as an owner) is also required. |
| <p>How to do a renovation</p> | <ol style="list-style-type: none"> 1. If the work is cosmetic, the lot owner may undertake the work with no approval from the OC 2. If the work is classed as a minor or major renovation, write to the secretary requesting a motion to be put on the agenda of the next meeting. |
| <p>How to have a by-law changed</p> | <ol style="list-style-type: none"> 1. Request a motion for a special resolution with the secretary 2. If the decision of the OC supports the motion the by-law is adopted and must be registered with the NSW Office of the Registrar General. |
| <p>Disagree with a decision by the owners corporation</p> | <ol style="list-style-type: none"> 1. Talk about it: write to the strata committee or strata manager or access the schemes internal dispute resolution process 2. Submit a motion to the secretary for inclusion on the agenda of a general meeting for consideration. |

| Common Issues | Steps to resolve the issue |
|--|---|
| Dissatisfied with the strata managing agent | <ol style="list-style-type: none"> 1. Talk about it: write to the strata committee or OC 2. Submit a motion proposing to terminate the strata manager's contract or to address the conduct of the strata managing agent to the secretary so it may be included on the agenda of a general meeting 3. If supported the OC can apply to the Tribunal for an order 4. Complaints about the strata managing agent's responsibilities and conduct required as part of their licence conditions should be directed to NSW Fair Trading. |
| Prospective collective sale | <ol style="list-style-type: none"> 1. The established process must be followed before a collective sale may proceed (refer to the Fair Trading website for the full details) 2. Read all documentation and seek independent advice before signing any agreement 3. Know your rights and contact Fair Trading if you require further information. |
| Damage to a lot | <ol style="list-style-type: none"> 1. Talk about it: write to the strata committee or strata manager or access the scheme's internal dispute resolution process 2. Submit a motion to the secretary so it can be included on the agenda of a general meeting for consideration 3. If not resolved, apply to Fair Trading for mediation 4. If the matter remains unresolved, apply for a determination by the Tribunal. |
| Getting repairs to common property done | <ol style="list-style-type: none"> 1. Talk about it: write to the strata committee or strata manager or access the scheme's internal dispute resolution process 2. Submit a motion to the secretary for inclusion on the agenda of a general meeting for consideration 3. If not resolved, apply to Fair Trading for mediation 4. If the matter remains unresolved, apply for a determination by the Tribunal. |
| Building defects | <ol style="list-style-type: none"> 1. Submit a motion to the secretary for inclusion on the agenda of a general meeting for consideration 2. If not resolved, apply to Fair Trading for mediation 3. If the matter remains unresolved, apply for a determination by the Tribunal <p>Remember: Strict timeframes apply to your right to have action taken against those responsible for defects under the statutory warranties for the building work.</p> |

For information and help on fair trading issues

NSW Fair Trading enquiries

13 32 20

Language assistance

13 14 50

TTY for hearing impaired

1300 723 404

Aboriginal enquiry officer

1800 500 330

Visit our website for details

fairtrading.nsw.gov.au



**Fair
Trading**

NSW Fair Trading

PO Box 972 Parramatta NSW 2124