

NEW SOUTH WALES INDUSTRY UPDATE

WINDOW LOCKS – WHAT TO DO



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Window locks, the new legislation and what to do

Recently the NSW Government commenced legislation that implements a new regime when dealing with window locks in residential strata schemes that are 2 storeys or above. This legislative change is to bring into line the changes to relevant industry standards and building codes for new constructions.

The changes were brought about as a result of the Children's Hospitals Working Party on the "Prevention of Children Falling from Residential Buildings". The new laws came into effect on 11 December 2013 and apply to all residential strata schemes.

The effect of the new laws is that Owners Corporations are required to install window safety devices on all windows that are above the ground level in residential buildings. An Owners Corporation has until 13 March 2018 to carry out this task and once installed the window locks will form part of the common property and as such be required to be repaired, replaced and maintained by the Owners Corporation as part of its general obligations under the *Strata Schemes Management Act 1996* (**SSMA** and the new Act to come later in 2014).

What windows and locks are covered?

The regulations set out what type of windows are covered:

- A window that is a window within the meaning of the Building Code of Australia (in short most if not all windows in a residential building);
- It can be opened;
- The lowest level of the window opening is less than 1.7m above the internal floor space of the wall to which the window is situated;
- The internal floor is 2m or more above the external surface of the wall it abuts (ie outside of the wall);
- It is a window on common property where access is gained from a residence or a window that is part of the building that is part of a residence (presumably the entire building).

The net effect of this is that any opening window within a strata scheme (with some minor exceptions relating to ground floor lots) will be covered and need to be considered as a result of these amendments.

The regulations also set out how the locks are to work:

- Must restrict the opening to less than 125mm (preventing a sphere from passing through it – ie a small babies/infants head);
- Is able to resist 250 newtons of force (a light shove);

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- Has a child resistant release mechanism (if it can be removed, unlocked or overridden).

As can be seen the requirements are relatively wide and as such it is suggested that you obtain proper advice from a professional and licensed window installer before embarking on a system of installing new window locks.

How does it work?

The legislation only applies to residential buildings and an Owners Corporation is required to carry out the work at its own expense (section 64A). Under the transitional provisions of the SSMA, an Owners Corporation is only required to comply with the requirements after 13 March 2018, so in effect it has until then to carry out the obligations (Schedule 4).

If an Owners Corporation does not carry out the work by the required time it can be fined or have orders of the NSW Civil and Administrative Tribunal (**NCAT**) made against it.

The effect of these provisions is that an Owners Corporation needs to consider when and how it will undertake the task of installing new window locks to windows within its strata scheme. In our view Owners Corporations should first carry out an audit of window locks in its strata scheme to determine whether there are locks, what type they are and whether they comply with the new requirements. Once this is undertaken an Owners Corporation can then determine what action (if any) it intends on taking.

There are a number of questions that have been raised by owners considering this process.

Do we have to do it now? – Strictly speaking, No. The legislative requirements do not become mandatory until after 13 March 2018. However, practically, we suggest that an Owners Corporation consider the issues sooner so that costs, potential risks and occupancy mix are discussed instead of just considering the strict interpretation of the new provisions. It may be prudent that where there are a large number of occupants with young children (or visiting young children) that they may wish to commence the work earlier than required. Or, where the building is a large high-rise that a staggered process over a number of 12 month budget terms may be a cost effective approach. Each strata scheme will be different with different needs and considerations.

A further issue is the general duty of care obligations which must always be considered especially where risks are known.

Can owners or their tenants do anything? – Yes they can. An owner (and potentially an occupier with the owners' consent) can install a window safety device. In these instances they must also comply with the requirements on the type of safety device installed and also they **MUST** notify the Owners Corporation of the installation (within 7 days from installation) and be responsible for any damage to common property caused by the works.

Who has to maintain the window locks? – the legislation is unfortunately lacking on this issue. Naturally if the Owners Corporation install the locks to common property windows then they will be common property

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locks. If they are installed by owners then there is no clear indication on responsibility and in our view they may become common property even though installed by a lot owner.

Can we pass a by-law passing responsibility to lot owners? – probably not. These types of by-laws may not be valid if passed as management by-laws (section 47/62(3)) as they affect safety in the premises and as such are not permitted. If an Owners Corporation attempts to confer a special privilege over them for maintenance and repair responsibilities (section 51/2) then each and every lot owner would be required to give their written consent (again the restrictions under section 62(3) may impact on that by-law). Logically and conservatively, these safety devices should be the responsibility of the Owners Corporation to look after.

Pre 1 July, 1974 buildings – again these types of situations seem to have been missed in the legislative requirements. In our view an Owners Corporation has the obligations to ensure that the safety devices are installed (either by itself at its own cost or requiring compliance of owners). Once they are installed the repair and maintenance requirements may rest with ownership (ie lot owners). In all instances advice should be obtained before a decision is made due to the problems experienced generally with obligations of the pre 1 July 1974 buildings.

Is it special or ordinary resolution? – depends!! The new provisions require the installation of the safety devices and as such work similarly to orders from a local Council (of which there is some judicial authority that when a Council order is placed on an Owners Corporation a special resolution is not required (under section 65A adding or enhancing the common property). So, the argument would be that as it is a requirement under the SSMA to do it then only an ordinary resolution is required (this would definitely be the case if the 13 March 2018 time had elapsed).

The issue is one of practicality (until a case is determined in a Court or NCAT). The legal issue will revolve around the interpretation of section 64A(5) which allows the Owners Corporation (or an Owner) to carry out the work despite any other section in the SSMA.

What should an Owners Corporation DO?

1. Consider getting an audit done of windows in their strata scheme early.
2. Determine how many windows require safety devices.
3. Obtain quotations on the installation of those new devices.
4. Consider budget and funding issues (including staggered arrangements, priority of works etc).
5. When ready, pass the appropriate motions at a duly convened meeting (suggested motions below).

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Motion

The Owners – Strata Plan No RESOLVE pursuant to section 64A of the *Strata Schemes Management Act 1996* to install window safety devices to windows within the strata scheme.

Alternate motion

The Owners – Strata Plan No RESOLVE pursuant to section 64A of the *Strata Schemes Management Act 1996* to install window safety devices to windows within the strata scheme as follows:

- Lots 101-110 on the tenth floor to commence on
- Lots 91-100 on the ninth floor to commence on
- etc.

Motion (appointing contractor)

Subject to the preceding motion being passed, The Owners – Strata Plan No RESOLVE pursuant to section 64A of the *Strata Schemes Management Act 1996* to engage ABC Contracting to install window safety devices to windows within the strata scheme as per their quotation (and contract) dated <date> and attached to the agenda to this meeting.

Motion (delegating execution of contract)

Subject to the preceding motions being passed, The Owners – Strata Plan No RESOLVE pursuant to section 64A of the *Strata Schemes Management Act 1996* to delegate the function of entering into the contract with ABC Contracting to install window safety devices to windows within the strata scheme to the executive committee and strata managing agent.

Motion (funding works)

Subject to the preceding motions being passed, The Owners – Strata Plan No RESOLVE pursuant to section 76(4) of the *Strata Schemes Management Act 1996* to raise a levy contribution of <amount> payable in <number> instalment(s) to pay for the installation of window safety devices to windows within the strata scheme.