

STRATA & COMMUNITY LIVING

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SUMMER 2013



New year, new laws

In case you missed it or have forgotten, the NSW Government released a position paper as part of the next phase of the NSW Strata Law Review, in mid-November 2013. The paper outlines the changes the government will be making to the NSW Strata Laws when it drafts and introduces the new legislation into State Parliament sometime early next year.

The position paper is the latest phase in what has been a comprehensive two year review of the laws that govern strata title in this state. Community association laws have also been under review but these will be released separately at a later date.

Five different areas have been identified as needing change, these are:

- governance
- managing the built environment
- budgets and levies
- by-laws
- managing disputes

Within these areas are some proposed key changes that residents should be aware of because once they become law it is a very long and difficult process for them to be changed.

Some of the key changes are:

- strata schemes will be able to hold meetings using social media, video and teleconferencing or any other methods which become available in the future
- postal or electronic votes will be accepted from owners who are unable to attend the meeting
- voting processes will be changed to allow for secret ballots
- tenants will be allowed to attend and participate in meetings of the owners corporation and be able to appoint a representative to the executive committee in certain circumstances
- defect rectification will be a compulsory agenda item for discussion at each AGM until the expiry of the statutory warranty periods as defined by the Home Building Act 1989

- an independent defects report is prepared for the owners corporation
- the developer of a high-rise strata building (that is, buildings with more than three storeys) must pay a bond as assurance that defects will be rectified. This money will be held in trust until the independent inspector agrees that any identified defects have been fixed
- developers will be required to set realistic levies in the first year of a scheme and the budget must also account for the supplied maintenance schedule
- schemes with an annual budget of more than \$250,000 will also be required to have their accounts audited each year
- introduce a model by-law dealing with smoke drift and make it clear that cigarette smoke can be a nuisance or a hazard to other residents
- the residential model by-laws will be amended to require owners corporation approval to install wooden or other hard floors (other than in a kitchen or bathroom) in any lot
- certain pets to be allowed and all other pets allowed with permission, which can not unreasonably be refused
- schemes will be able to adopt a by-law to limit the number of people who can occupy a lot even where this is not provided for under other laws
- attendance by parties at mediation will be encouraged, allowing the Tribunal to issue cost orders against the party that does not attend

This is just a snap shot of changes. To access the Position Paper or to find out more information go to www.fairtrading.nsw.gov.au

Strata owners flock to SCA (NSW) Convention

Almost 200 strata owners attended the annual Strata Owners day at the NSW Convention at the beginning of November. Now in its sixth year, the event keeps going from strength-to-strength and this year we had the Minister for Fair Trading, Mr Anthony Roberts, MP, address the audience giving them first insights into what the new NSW legislation might look like.

This attracted a lot of media attention during the following week but we heard it first!

Once again Jimmy Thomson of Flat Chat in the Sydney Morning Herald hosted the Flat Chat Live panel where owners

could ask questions from strata managers, strata lawyers, a representative from the CTTT and one from Tenants NSW plus a building specialist. It was a lively and fun session with some serious questions and (hopefully) some great answers.

Other sessions included working with your strata manager, a renovation rescue panel and preparing for change.

Enjoy the images below of the day and if you've never been then look out for our 'save the date' later in 2014.



Protect your super and property

By Ollie Hogue

Property scams disguised as financial advice are costing hundreds of investors millions in lost superannuation. The Australian Securities and Investments Commission and the ATO warn that too many people are getting themselves into risky investments on the advice of unscrupulous salespeople.

The superannuation scams generally promise a comfortable retirement by recommending investors set up a self-managed super fund (SMSF) to purchase an investment property.

Scammers then proceed to sell you overpriced property, take large commissions or may even steal the entire amount for themselves. You may even be unintentionally caught up in tax penalties or exposed to fines if the scammers get you to sign false documents.

Scams targeting real estate agents are on the radar again with NSW Fair Trading

The scams sometimes start with a simple text message that reads, 'Have you ever thought of buying an investment property with your super?' or you could hear the same message coming from a real estate spruiker at a seminar.

One such property spruiker was recently charged with fraud after he convinced investors to establish SMSFs and each invest over \$600K in the development of house and land packages in Queensland.

Another victim was convinced to set up an SMSF by a futures trader 'expert', who promised him untold riches and moved over \$83,000 into his new fund. The entire \$83,000 soon disappeared.

Scam ATO letter targeting real estate agents

Scams targeting real estate agents are on the radar again with NSW Fair Trading issuing a warning about a scam Australian Tax Office letter that is currently circulating in NSW. The letter refers to the Non-Resident Landlord Scheme and is designed to obtain details from real estate agents about Australian properties they manage on behalf of non-residents.

NSW Fair Trading Commissioner Rod Stowe said, "People should ignore this letter and warn their colleagues and report incidences of the scam to Fair Trading."

A man was recently arrested in Nigeria relating to the attempted false sale of a house in Falcon, south of Perth managed by Mandurah Estate Agency. The agent spent eight months helping police to flush out a Nigerian property scammer following a request by the so-called owner for a quick sale on the house.

There have been two successful and five attempted similar frauds reported in WA in the past five years. Six of the seven cases involved owners who lived in South Africa, had investment properties in Perth that were rented and had their identities stolen.

This article first appeared in Inside Strata, October 2013.

Strata snippets

There's a lot happening at the moment in strata so here is a round-up of things you need to know.

Window locks now law

The NSW Government has passed through Parliament new window safety laws to help prevent children falling from residential strata buildings. The Minister for Fair Trading Anthony Roberts announced the new measures in mid-October.

"Owners corporations must have window safety devices installed above the ground floor that allow windows to open no more than 12.5cm when the lock is engaged," Mr Roberts said.

"Residents will still be able to open their windows as they do now, however they will have the security of knowing that when the lock is engaged, children in their care will be protected."

By 13 March 2018 all owners corporations must have installed safety devices that allow windows above the ground floor to open to a maximum of 12.5cm when the lock is engaged.

Does your pool comply?

Time's up to register your pool so if you haven't done so you could be facing a fine. Since mid-November authorised officers may fine pool owners if their pool is not registered on the NSW Swimming Pool Register. The fine is \$220.00. In the event that an inspector refers the matter to court, a fine will likely be imposed.

The next step is that from 29 April 2014 you will need a pool compliance certificate to sell or lease your unit. Your strata manager will hold the compliance certificate on behalf of all unit holders and make it available to pool owners when or if required.

For more information go to www.nsw.swimmingpoolregister.nsw.gov.au

Japanese delegation

Earlier this year SCA (NSW) representatives met with Japanese Government officials from the Japanese Ministry of Land, Infrastructure, Transport and Tourism as well as a professor of property law and two property lawyers who were in Australia to learn about our strata laws.

NSW being the home of strata law their first port of call was to Sydney. They were interested in discussing the strata law review, which they had been following in Japan, and more to the point the SCA policy around termination of strata schemes.

The delegation were warmly welcomed and both sides came away from the meetings with some invaluable insight.

For example, Japan is struggling to resolve issues related to strata scheme terminations and administration. In particular, the delegation were interested in the mechanisms and processes available for termination of strata schemes in circumstances where apartment blocks and other strata title property were nearing the end of their life. Like us, in Japan, you can't terminate without 100% agreement. As the delegation advised us, you have to rebuild like for like and ensure it does not impact adversely on the scheme's environment.

The Japanese delegation was also interested in lot entitlements and how the voting works for the scheme where potential termination issues arise. Like Australia, Japan is battling an ageing population and its condominium management scheme needs review to meet the challenges of that demographic. In Japanese society it is common to see two or three generations under one roof, whereas, in Australia, retirement villages are a popular alternative for elderly people. Our holistic approach doesn't match the Japanese culture at present so the aging buildings have to be retro-fitted for that purpose.

What we have learned from the Japanese delegation was very valuable and stimulated a few new thoughts which will also form part of our conversations with the Government in the near future.

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