

Strata and community disputes

Strata and community living often brings people of diverse interests and backgrounds close together, and disagreements can sometimes arise.

The *Strata Schemes Management Act 2015* and the *Community Land Management Act 1989* both set out processes for resolving disputes.

Step 1: Talk about it

The first step towards resolving a strata issue is to try and discuss it with the other party. Many disputes can be resolved quickly in the early stages through discussion.

Owners corporations are encouraged to set up their own dispute handling mechanism for lot owners. Lot owners or residents should contact a member of the strata committee to find out if the scheme has a dispute handling process already set up to help work out the issue.

Step 2: Decision by 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.

Step 3: Mediation

If a resolution has not been able to be achieved, Fair Trading provides a free mediation service, which may assist in achieving a resolution.

Mediation is an informal negotiation process in which a trained and neutral mediator assists the parties achieve their own resolution. The mediator's role is to:

- help identify the issues in dispute and
- assist the parties to raise and consider options and strategies by which the issues may be addressed.

You can download the Application for Mediation form from the Fair Trading website. Applications can also be obtained through Service NSW or by calling Fair Trading on 13 32 20.

Read the Strata and community mediation page on the NSW Fair Trading website for more information.

Step 4: The Tribunal

The NSW Civil and Administrative Tribunal (the Tribunal) is a specialist, independent, low cost tribunal for the fair and timely resolution of disputes according to law. Disputes are resolved at a hearing and are legally binding on both parties.

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. 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. It is in your best interests to attend the hearing. If you attend the hearing, your side of the story will be heard and you can ask questions of the other person. If you are unable to attend in person, you may request a telephone hearing or to be allowed to present your case in written form.

Certain applications cannot be accepted by the Tribunal without the parties attempting formal mediation. However, the Registrar may agree to hear the matter in instances where one of the parties has refused to participate in mediation or the Registrar considers that mediation would be inappropriate in the circumstances.

Tribunal hearings

Some examples of disputes the Tribunal can rule on without requiring mediation include:

- appointment of a compulsory strata managing agent
- allocation of unit entitlements
- access to a lot by an owners corporation to inspect or repair common property
- penalty disputes
- access to strata records.

Is a legal practitioner necessary?

A legal practitioner is not necessary. You may present (argue) your case by yourself. It is important to note that lawyers can only appear with the consent of the Tribunal.

When will the Tribunal make its decision?

Usually, a decision is made by the Tribunal after everyone has finished giving their evidence. Sometimes the Tribunal may want more time to think about its decision and will give a reserved decision later. A notice of the order is provided to all parties after the Tribunal makes its decision.

How do you apply to the Tribunal?

You must complete a Tribunal application form. Applications and the fee schedule can be obtained from the Tribunal website at www.ncat.nsw.gov.au or by calling 1300 006 228.

Can you appeal a decision by the Tribunal?

In certain circumstances parties can appeal a decision to the NSW Civil and Administrative Tribunal Internal Appeal Panel.

Complaints about strata managing agents

It is important to remember that agents act on behalf of the owners corporation, which can determine what roles the agent will undertake. However, the owners corporation retains responsibility for the operation of the strata scheme at all times. The Tribunal can make decisions about disputes with a strata agent, including the agency agreement, if they are not resolved at mediation or determined inappropriate for mediation.

Strata managing agents are required to hold a certificate or licence under the *Property, Stock and Business Agents Act 2002* (the 'PSBAA'). This Act sets out responsibilities and rules of conduct for agents in relation to their dealings.

Lot owners concerned about the actions or conduct of a strata managing agent should raise these matters with the owners corporation in the first instance.

If an owners corporation is concerned a managing agent has not complied with their responsibilities under the PSBAA, a complaint can be lodged on the Fair Trading website or in person at any Service NSW centre.