

Strata and community disputes

Strata and community living often brings people of diverse interests and backgrounds close together. Disagreements and disputes sometimes arise. Tolerance, understanding of others and communication are essential to harmonious living.

The *Strata Schemes Management Act 1996* and the *Community Land Management Act 1989* set out processes for resolving disputes.

Talk about it

Sometimes people in dispute have not even spoken to each other about the problem. This makes it very hard for people to continue living together happily. The first step towards resolving a strata issue is to make every attempt to do so by discussing it with the other party. It might help to have the owners corporation discuss the problem at a meeting.

Mediation

Many disputes can be resolved through mediation - a structured negotiation process in which a neutral and independent mediator assists parties in dispute to achieve resolution. The mediator's role is to:

- help identify the issues in dispute
- assist the parties to raise and consider options and strategies by which the issues may be addressed
- assist the parties to discuss the issues and options with a view to negotiating a settlement they can all live with.

Any agreement reached at the end of mediation is binding for those involved. The agreement may be made into an enforceable order by an Adjudicator in certain circumstances. More information about mediation and details of what is involved can be found in the *Strata and community mediation* fact sheet. Fair Trading provides a mediation service through its Mediation Services Unit.

Notice to comply with a by-law

Where the owners corporation is satisfied an owner/ occupier has breached a by-law, it can issue a notice requiring that person to comply with the by-law. If it is not complied with, the owners corporation may ask the NSW

Civil and Administrative Tribunal (Tribunal) to impose a penalty of up to \$550. This must be done within 12 months of issue.

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 or by alternative dispute resolution.

View or download the prescribed *Notice to comply with a by-law* form in PDF format (size: 57k) from the Fair Trading website or call 13 32 20 for a copy.

Orders by an Adjudicator

An Adjudicator can make decisions on disputes or complaints which have not been resolved by mediation. You must attempt mediation before applying for Adjudication. Adjudicators can rule on disputes including:

- repairs to common property
- water penetration through windows and shower floors
- enforcement of by-laws
- appointment of a managing agent
- validity of meetings
- variation of insurance.

The types of disputes an Adjudicator can rule on in a community scheme depends on the management statement provisions of the Act. Community scheme disputes an Adjudicator can rule on include:

- repairs to association buildings
- enforcing restrictions on use of association property
- enforcement of by-laws
- internal fencing
- storage and collection of garbage.

How is an Adjudicator's decision made?

Applications to an Adjudicator do not require parties to appear at the Tribunal. A letter is sent by the Tribunal to interested parties asking for submissions (the views of anyone involved). The Adjudicator looks at the application and all submissions, as well as decisions made in similar cases. The decision and the reasons for it, are given in writing.

When applying for an order by an Adjudicator or the Tribunal, you need to submit relevant documents to prove your argument. If possible, attach a copy of the strata plan, minutes of relevant meetings, resolutions and by-laws.

Notice of the order is sent out to the people involved (the person who applied, the person it is against, anyone who sent in a submission and the owners corporation). An Adjudicator's order is binding and carries a penalty for failure to comply.

It can take between 6 to 10 weeks after an application is lodged for an order to be made.

Appealing an Adjudicator's decision

You can appeal to the Tribunal but you must do this quickly (within 21 days of the order coming into effect). In some cases it may be possible to extend this to 90 days but you must have good reasons. If the Adjudicator dismissed your application, the appeal must be made within 21 days.

Tribunal hearings

Some examples of disputes that the Tribunal can rule on are:

- appeals against an Adjudicator's decision
- changes to unit entitlements
- changes to the management statement
- authorisation of certain acts in the initial period to preserve the facilities of the scheme in the early stages of a development.

How is a Tribunal case different from an Adjudicator's case?

The preliminary process is the same (ie. filling in the application, paying the fee) but the hearing before the Tribunal is held in public. The hearing is similar to a Local Court although it is not quite as formal. The Tribunal has regular hearings in Sydney and other metropolitan and country centres.

Is a legal practitioner necessary?

A legal practitioner is not necessary. You may present (argue) your case by yourself.

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 might want more time to think about it and will give a reserved decision later. A notice of the order is sent out after the Tribunal makes its decision.

Can you appeal a decision by the Tribunal?

Yes, but only to the District Court. You should get legal advice about this.

How do you apply to the Tribunal?

You need to complete a Tribunal application form. For a copy, go to the Tribunal website, pick one up from a Fair Trading Centre, or call 13 32 20 and one will be posted to you. After carefully reading the guide notes, complete the form and send it to the Tribunal with your application fee.