

Responsibilities of the owners corporation

In a strata scheme

All lot owners in a strata scheme are automatically part of the owners corporation and have a right to take part in the decision making. The owners corporation is responsible for maintenance and repair of the common property. The owners corporation should hold regular meetings to decide the issues of the scheme, and has responsibility for the overall management of the scheme, including:

- financial management
- insurance
- record keeping
- repairs and maintenance of common property
- by-laws
- employment of a strata managing agent and/or a building manager (if they choose to do so)
- keeping up to date with, and adhering to, all applicable laws. This includes planning; building; fire and safety inspections and work, health and safety laws.

Strata roll

The owners corporation must prepare and keep a strata roll. The roll must be kept by mechanical, electronic or other means. There must be recorded for each lot:

- the owner's name and address/email for service of notices, or
- the owner's agent and the agent's Australian address/email for service of notices.

The following information must be recorded for the common property and the strata scheme in general:

- the strata plan number and the address of the building
- the name of the original owner and an Australian address for notices
- the name of the managing agent (if there is one) and an Australian address for notices

- the total unit entitlements for the scheme and each lot
- insurance details
- the by-laws for the strata scheme.
- Details of any tenants (name and address/email) for service of notices

Contributions and Funds

The owners corporation must levy (charge) owners in the strata scheme to raise enough funds to carry out its duties. All contributions must be worked out in proportion to the unit entitlements of each lot.

Funds must be retained in an administrative fund, for day-to-day expenses and a capital works fund for major works, maintenance or repairs.

Record keeping

The owners corporation must record all details of notices given under the Strata Schemes Management Act or any other Act. Orders under these Acts, or by a public authority, local council or a court, must also be recorded and kept for at least 7 years. Forms for the records of owners corporations can be purchased from some law stationers.

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

- details of motions passed,
- copies of all correspondence received and sent, and
- notices of owners corporation and strata committee meetings.

Proxies given to the owners corporation must be kept for at least 7 years after the proxy expires.

Financial records and statements

The owners corporation must keep accounting records and financial statements for at least 7 years. These include:

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

The owners corporation must prepare financial statements:

- for the period beginning on the date the strata plan was registered and ending no earlier than 2 months before the first Annual General Meeting (AGM)
- for each period beginning on the date the last statement was prepared and ending no earlier than 2 months before the next AGM.

Inspection of records

An owner or mortgagee (or their authorised person) can make a written request to the owners corporation to inspect the records. The request must be accompanied by the prescribed fee (currently \$31 for the first hour of work).

The inspection is to take place as agreed by both parties. If no agreement can be reached within 3 days after the owners corporation receives the application, the owners corporation may stipulate the time and date by giving written notice. The inspection date cannot be later than 10 days from the date the owners corporation receives the notification.

Documents can be inspected in person or through electronic access to the documents or any other means agreed. A person may make copies of documents but must not, without the consent of the owners corporation, remove the document from the custody of the owners corporation.

Retention of records

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

- strata roll

- information about the common property and 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
- proxies delivered to the owners corporation
- voting papers related to motions for resolution and election of officers of a strata renewal committee
- signed managing agent or building manager agreements and records provided to them
- details of motions passed.

Large schemes

A large scheme is one with more than 100 lots. Parking and utility lots are not counted in the calculation. Some special provisions apply to large schemes:

- 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 by the owners corporation for items of expenditure over \$30,000
- proxy votes for a owners corporation meeting must be provided to the secretary at least 24 hours before the meeting
- personal notice of all upcoming strata committee meetings and the minutes of these meetings must be provided to lot owners upon request (notice may not be given via noticeboards).

An owners corporation for a large strata scheme must not spend on an item or matter an amount greater than the amount specified for the item or matter (plus 10%) in estimates provided for that item or matter at an annual general meeting. This restriction may be removed by a resolution at a general meeting, and does not apply to expenditure for emergency purposes, including (but not limited to) the following;

- burst or blocked water or sewerage pipes,
- serious damage caused by fire or storm or any other natural disaster,
- unexpected electrical or security system failure,
- glass breakages that affect the security of any building in the strata scheme or could result in damage to the inside of any such building

Two-lot schemes

There are special provisions that apply to owners in a two-lot scheme. These are summarised as follows:

- accounts and finance statements are not required to be audited
- owners can obtain their own building insurance for their lot, and be exempt from having a capital works fund if the following apply:
 - the building in each lot are physically detached;
 - no building or part of a building is situated outside the lots; and
 - the owners pass a unanimous resolution for the owners corporation not to have building insurance for both buildings and/or not to have a sinking fund.
- a quorum in a two-lot scheme with two owners is always two people entitled to vote.
- the strata committee is made up of an owner, from each lot.

Insurance

The owners corporation must insure the building under a damage policy and public liability insurance with an approved insurer. The owners corporation must also maintain workers compensation insurance where required under the *Workers Compensation Act 1987*, and ensure any work conducted by volunteers is also insured as appropriate.

Fire safety inspections

The owners corporation is responsible for ensuring that access to all parts of the scheme is provided for necessary fire safety inspections.

Pesticide notification

From February 2007, the NSW Pesticides Regulation requires that residents of multiple occupancy dwellings must be notified when licensed pest controllers apply pesticides to the internal or external common areas of their residence.

The rules apply to residential strata, community and company title schemes consisting of three or more

dwellings, retirement villages, and caravan parks with long term residents.

The person responsible for organising the pest treatment must make sure that residents are given at least five working days notice. Notice of the treatment can be given in person, by fax, by email or telephone, by post, in letterboxes, under doors or by placing it on common notice boards and near the main building entrance.

Full details, fact sheets and blank notice forms are available from the NSW Office of Environment and Heritage on 13 15 55 or at www.environment.nsw.gov.au.

Swimming pools

Drowning is a leading cause of preventable death in children under 5 years of age. If a strata scheme has a swimming pool or spa pool on the premises it is the responsibility of the owners corporation to ensure that the pool is fenced and meets pool fencing requirements.

Please visit the pool safety checklists page on the swimming pool register website for further information.

Pool owners are required to register their pools with the NSW Government Swimming Pool Register. Registration of each pool only has to be done once. If required, a strata managing agent can organise this on behalf of the scheme.

In strata schemes with more than two lots, properties with a pool are subject to mandatory inspection by their local council every three years. For more information on council pool inspection programs, contact your local council.

Further information can be found on the Swimming pools page on the Fair Trading website.

Legal action

An owners corporation or strata committee must not obtain legal services for which payment may be required unless a resolution is passed at a general meeting of the owners corporation.

Legal services may be obtained without approval if:

- it is of the opinion that urgent action is necessary to protect the interests of the owners corporation, and
- the cost of the legal services does not exceed \$15,000.

Approval is not required to:

- obtain legal advice before commencing legal action
- take legal action to recover unpaid contributions, interest on unpaid contributions or related expenses.

When estimated costs have been provided under the *Legal Profession Act 2007*, the owners corporation must give a copy to each owner and the strata committee within 14 days.

Where legal action has been brought against a lot owner/s or by lot owners against the owners corporation, the court may order that any money including costs, payable by an owners corporation may be levied only to lots as specified in the order.

Should an owners corporation wish to commence legal action of any type in its administration of the scheme, (including the obtaining of legal advice), where payment of money is involved, specific steps must be taken.

When an owners corporation undertakes residential building work and a contractual dispute with the builder or tradesperson arises, the owners corporation can take the matter to the NSW Civil and Administrative Tribunal. This can happen even if the builder or tradesperson invokes the *Building and Construction Industry Security of Payment Act 1999* to claim any money they are owed under the contract.

Legal advice, services or action that concern the recovery of unpaid levies is exempt from the requirement for approval.

Other powers and obligations

The owners corporation has a range of other responsibilities under the Act and other laws. These

responsibilities can also be delegated to a strata managing agent, including:

- issuing a notice on a person to comply with a by-law, when the owners corporation or its strata committee passes a resolution that there has been a contravention of a by-law
- providing strata scheme information as required by a Section 184 Certificate for prospective purchasers within 14 days of written request.
- allowing an owner or a person with the owner's consent to inspect the records of the strata scheme.
- notifying those holding a priority vote of all meetings where there are agenda items where a priority vote may be exercised.
- ensuring access to all parts of the scheme is provided for necessary fire safety inspections.
- notifying all residents at least 5 days prior to a pesticide treatment being applied to internal or external common areas. The notice can be given in person, writing, or by placing it on common notice boards and near the main building entrance.

The owners corporation is responsible for and may not delegate the following:

- any decision that can be made by the owners corporation only
- power to grant, by special resolution, a licence to a lot owner to use common property generally or for a 'once only' purpose.
- dismissal of some or all of its strata committee.

Fast broadband connection

With the National Broadband Network roll-out, internet service providers have been proposing very fast broadband services and connection for strata buildings.

To make informed decisions about a service provider, visit the Commonwealth Department of Communications page - Broadband networks in apartment buildings.

Owners corporations should be wary of technical or contractual issues that could limit lot owners' choice of internet provider.

Check the terms and conditions in any proposed service agreement and ask about:

- the contract term and how it can be terminated
- one-off and ongoing charges (Are there monthly fees? Is there an installation charge? What are the maintenance and fault repair costs?)
- options for individual lot owners to connect to other providers
- site access arrangements (Where will equipment be located, is this inside or outside the building?).

Owners corporations may also wish to seek independent legal advice.

Enquiries or complaints about a service agreement or internet provider can be made by contacting the Telecommunications Industry Ombudsman (TIO) website or 1800 062 058.

The NBN, fire alarms and lift phones

The migration of fixed line and internet services to the NBN network may also affect monitored fire alarms and lift phones (fire and lift services).

Owners corporations should consult with their fire monitoring and lift service providers as soon as possible regarding these critical safety services. Make sure they are aware that:

- Fire and lift services should be registered on the NBN Co Limited (NBN) Fire and Lift Register to assist with the migration process
- Correctly registered fire and lift services will not be disconnected until 1 July 2017.
- Migration does not happen automatically. Even if the regular phone and internet services have already migrated to the NBN, this does not mean that the lift or monitored fire alarm service has also been migrated.

Owners corporations should access the *Good practice guide*, developed to assist all parties to understand their role in managing the transition process.

For more details visit www.communications.gov.au