

# **C F STRATA MANAGEMENT**

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## **Brief overview of Strata Title Reforms 2016 for use by our Strata Committees / Owners**

### **OVERVIEW -**

- |   |                                |
|---|--------------------------------|
| 1) New Strata Laws                      | 5) Renovations to Units        |
| 2) The Strata Committee                 | 6) Meetings, Quorums & Proxies |
| 3) By-laws                              | 7) Tenants                     |
| 4) Maintaining the Building's Condition | 8) Updates/further info        |

### **1) NEW STRATA LAWS :**

- a) After nearly 5 years of consultation, new strata laws will commence on 30 November 2016.
- b) First major overhaul of NSW strata laws in 20 years.
- c) Aim of new strata laws is to deal with new technologies and the "changing face" of strata in NSW.
- d) Half of NSW residents will live or work in strata by 2020.
- e) Over 90 changes – many will affect the day to day management of an owners corporation's affairs.
- f) Four pieces of legislation:
  - Strata Schemes Management Act, 2015;
  - Strata Schemes Development Act, 2015;
  - Strata Schemes Management Regulation, 2016;
  - Strata Schemes Development Regulation, 2016;
- g) Court and Tribunal interpretation of the new provisions is yet to come.

### **2) STRATA COMMITTEE'S :**

- a) Executive Committee = Strata Committee.
- b) Strata Committee is group of people elected to represent the owners in a strata scheme.
- c) Duty to act for the benefit of the owners corporation with "due care and diligence".
- d) Elected at each AGM.
- e) Administers the "day to day" running of the strata scheme in conjunction with the strata agent.

#### **STRATA COMMITTEE MEMBERS -**

- a) Must have no more than 9 members.
- b) Large schemes (over 100 lots) must have at least 3 members.
- c) 2 lot schemes must have 2 members – a representative from each lot.
- d) Strata Committees will (in some cases) now have a tenant representative who may speak/address the meeting but will not have any voting power.

#### **STRATA COMMITTEE – OFFICE HOLDERS -**

- a) The SC must appoint a chairperson, secretary and treasurer at their first meeting after assuming office.
- b) Chairperson's functions: to preside at meetings and make determinations as to quorums and procedural matters.
- c) Secretary's functions: to prepare and distribute minutes, notices of meetings, maintain the strata roll, handle correspondence and attend to administrative functions.
- d) Treasurer's functions: levy notices, maintain accounts, keep accounting records.

#### **STRATA COMMITTEE MEETINGS –**

Please see attached Schedule 2 of the Act– Meeting Procedures of Strata Committees, for your information.

### 3) BY-LAWS :

- a) A strata scheme has the by-laws that are adopted for it upon creation of the strata plan, plus any by-laws it creates from time to time.
- b) By-laws adopted on registration may either be "model by-laws" or "developer by-laws".
- c) An owners corporation adds to, amends or repeals by-laws by passing a special resolution at a general meeting of the owners corporation and subsequently registering that change with Land and Property Information. In certain cases, the written consent of an owner or owners may be required.

#### BY-LAWS – WHICH BY-LAWS APPLY TO YOUR STRATA PLAN -

The by-laws for your scheme might be changing.

- a) For pre-July 1997 Schemes: Schedule 2 to the 2016 Regulations (plus any changes). A reproduction of the old Schedule 1 by-laws with some updating for new sections and language.
- b) 1 July 1997 to 30 November 2016: By-laws adopted on registration (plus any changes). By-laws adopted on registration may be contained in older Regulations.
- c) After 30 November 2016: By-laws adopted on registration (plus any changes). By-laws adopted on registration may be contained in the 2016 Regulations.

#### NEW MODEL BY-LAWS -

- a) The new model by-laws (Schedule 3 of the 2016 Regulations) include two key changes.
- b) Pets- 2 by-law options about animals, Option 1) Pets are allowed automatically. Option 2) Pets are allowed but only with the consent of the owners corporation. Note, There is **no** option for no pets, this will require a special By Law. The default is that pets are allowed with notice.
- c) Smoking - 2 by-law options about smoking, Option 1) Smoking is not allowed on common property or in a manner which penetrates to the common property or another lot. Option 2) Smoking is only permitted in designated areas and with approval, but smoke must not penetrate to the common property or another lot.
- d) These will only apply to new schemes and only if adopted.
- e) Existing schemes can adopt these new by-laws.

#### BY-LAWS – NEW PROVISIONS

- a) Existing schemes must review their by-laws within 12 months.
- b) Must register within 6 months (shortened from 2 years).
- c) A by-law can set occupancy limits. Limit can not be fewer than 2 adults per bedroom.
- d) Can not be inconsistent with planning controls.

#### BY-LAWS - ENFORCEMENT

- a) An owners corporation enforces its by-laws by serving a Notice to Comply with a by-law.
- b) If an owner fails to comply, the owners corporation may commence proceedings seeking payment of a penalty - now payable to the owners corporation.
- c) First offence – up to \$1,000.
- d) Can be doubled for a repeat offence within 12 months of a penalty being issued.
- e) Penalties for breach of occupancy limit by-law – up to \$5,000 for first offence and can be doubled for repeat offence within 12 months.

### 4) COMMON PROPERTY – MAINTENANCE & REPAIR :

- a) Owners corporation has a duty to maintain and repair its common property – section 106 of the 2015 Act (formerly section 62 of the 1996 Act).
- b) Court and tribunal interpretation has confirmed the strict nature of this duty. It is not simply a duty to "fix" – but rather a duty to ensure that property does not fall into disrepair.
- c) Owners corporation can now delay compliance while it pursues a builder or developer (unless there is a safety risk).
- d) An owner may bring an action against an owners corporation for damages. Must be within 2 years of the owner becoming aware of the loss.



## **5) RENOVATION WORKS TO UNITS :**

New procedure for lot owner renovations.

Three categories: Cosmetic Work, Minor Renovations and Works Affecting Common Property.

COSMETIC WORK does not require approval and includes (but is not limited to):

Replacing hooks for hanging paintings; Painting; Installing handrails; Installing built-in wardrobes; Filling minor holes and cracks in internal walls; and Laying carpet. Owners corporation can create a by-law to include more works in this category.

MINOR RENOVATIONS can be approved by ordinary resolution at a general meeting. Special resolution is not required. Minor Renovations include but are not limited to: • Renovating a kitchen; • Changing recessed light fittings; Installing or replacing wood or other hard floors; • Reconfiguring walls (not structural). Owners corporation can create a by-law to include more works in this category.

WORKS AFFECTING COMMON PROPERTY: require a "common property rights" by-law in order to be lawfully performed. • Works affecting common property include but are not limited to: • structural changes (including internal load bearing walls); • removing and replacing bathroom floor tiling; Works changing external appearance (eg. installing an access ramp). This is similar to the current exclusive use or special privilege by-laws under section 52 of the 1996 Act.

## **6) GENERAL MEETINGS / QUORUMS / PROXIES:**

a) In order to increase lot owner participation in strata schemes, the new legislation allows for new methods of electronic voting. Owners corporation can approve (by resolution), Voting by e-mail prior to the meeting

### **NEW MEETING PROCEDURES – QUORUMS**

- a) Historically, a meeting requires a quarter of persons entitled to vote for a quorum.
- b) A lot owner may be present at a meeting personally, by proxy or by voting in the new electronic methods (if approved by resolution).
- c) A lot owner who votes electronically is present for the purposes of a quorum.
- d) If there is no quorum within half an hour, the chairperson can: Opt 1 adjourn the meeting for 7 days, or declare that those owners present and entitled to vote are the quorum, and commence the meeting.

### **NEW MEETING PROCEDURES - PROXIES**

- a) Total number of proxies that may be held by a person voting on a resolution are:
- b) If a scheme has 20 lots or less: 1 proxy; or If a scheme has more than 20 lots: not more than 5% of the number of lots.
- c) Proxies held as co-owner are not included in calculation.

## **7) TENANTS**

### **NEW MEETING PROCEDURES - TENANTS**

- a) If registered tenants occupy more than half of the lots, they can elect a tenant representative to attend strata committee meetings (but not vote).
- b) Tenant representative to be appointed at a "Tenants Meeting" – Reg 7, 2016 Regulations.
- c) Tenants can attend general meetings and must be given notice. Notice can be by noticeboard. They May not speak at general meetings, unless authorised.
- d) Can be excluded from meetings if sensitive matters are discussed.

**8) UPDATES /FURTHER INFO:** As time goes on and with further information in hand we will provide additional updates and information to our Strata Committees.

## Schedule 2 Meeting procedures of strata committees

(Section 40)

### Part 1 Preliminary

#### 1 Meetings to which Schedule applies

This Schedule applies to meetings of the strata committee of an owners corporation.

#### 2 Application to large strata schemes

The provisions of this Schedule are subject to the regulations, but only to the extent that the regulations relate to large strata schemes.

#### 3 Definitions

In this Schedule:

**owner** means an owner of a lot in the strata scheme for which a meeting is held or proposed to be held.

**tenant member** means a tenant representative nominated for a strata committee under section 33.

### Part 2 Notices of meetings

#### 4 Notice of meetings for large strata schemes

- (1) The secretary of the owners corporation of a large strata scheme must give notice of a meeting to each other member of the strata committee (including any tenant member) at least 3 days before the meeting and to each owner.
- (2) Notice is to be given in accordance with section 263 and by displaying the notice on the notice board (if any) maintained by the owners corporation.

#### 5 Notice of meetings for other strata schemes

- (1) The secretary of the owners corporation of a strata scheme that is not a large strata scheme must give notice of a meeting to each other member of the strata committee at least 3 days before the meeting and to each owner.
- (2) Notice is to be given by displaying the notice on the notice board maintained by the owners corporation or in accordance with section 263.

#### 6 Owner not required to serve notice on self

Nothing in this Part requires an owner to give notice of a meeting to himself or herself.

#### 7 Matters that must be included in notice of meetings

The notice of a meeting must include a detailed agenda for the meeting.

### Part 3 Meeting procedure

#### 8 Chairperson to preside

##### (1) Chairperson to preside

The chairperson of the owners corporation is to preside at any meeting at which the chairperson is present.

- (b) requires the purchaser to give a proxy at the direction of another person for the purpose of voting at a meeting of the owners corporation.

### **Division 3      Manner of voting**

#### **28      Manner of voting**

- (1) A vote at a meeting by a person entitled to vote or by a proxy must be cast in person unless the owners corporation, by resolution passed at a general meeting, determines that a vote may be cast by some other specified means.
- (2) The regulations may make provision for or with respect to the following:
  - (a) the means of voting (other than in person) that may be adopted by an owners corporation,
  - (b) without limiting paragraph (a), procedures for voting by those means,
  - (c) prohibiting or requiring the use of specified means of voting.

#### **29      Secret ballots**

- (1) Voting on a motion or for an election at a meeting may be carried out by a secret ballot if:
  - (a) the strata committee determines that the motion or matter is to be so determined, or
  - (b) at least one-quarter of the persons entitled to vote on the motion or election agree that the motion or matter is to be so determined.
- (2) The regulations may make provision for or with respect to the procedures for a secret ballot.



(2) **Presiding member where chairperson absent**

In the chairperson's absence from a meeting, the members of the strata committee present at that meeting may elect one of their number to preside at that meeting and the person so elected is, while so presiding, taken to be the chairperson.

(3) **Chairperson does not have casting vote**

The chairperson does not have a casting vote in relation to any motion but may vote in his or her own right if otherwise entitled.

(4) **Chairperson may be only person present**

A meeting is, subject to the provisions of this Schedule relating to the quorum, validly held even though the only person present at the meeting is the chairperson of the owners corporation.

**9 Decisions at meetings**

(1) **Voting at meetings**

A motion put to a meeting is to be decided according to a majority of the number of the votes cast for and against the motion by the members present (other than any tenant member) or in the manner set out in subclause (2). If there is only one member of the strata committee, the decision of the strata committee is the decision of that member.

(2) **Voting in writing**

A motion proposed to be put to a meeting is taken to have been validly passed even if the meeting was not held if:

- (a) notice was given of the meeting in accordance with this Schedule, and
- (b) a copy of the motion was given to each member of the strata committee, and
- (c) the motion was approved in writing by a majority of the members of the committee (other than the tenant member).

(3) **Decisions to have no effect if opposed by more than specified owners**

A decision of a strata committee has no force or effect if, before the decision is made, notice is given to the secretary of the owners corporation by one or more owners, the sum of whose unit entitlements exceeds one-third of the aggregate unit entitlement, that the making of the decision is opposed by those owners.

(4) **Voting rights cannot be exercised if contributions not paid**

A member of the strata committee is not entitled to vote on any motion put or proposed to be put to the strata committee if the member was, or was nominated as a member by a member who was, an unfinancial owner of a lot in the strata scheme at the date notice of the meeting was given and the amounts owed by the unfinancial owner were not paid before the meeting.

(5) **Tenant member not entitled to vote**

A tenant member of a strata committee is not entitled to vote on any motion put or proposed to be put to a strata committee.

**10 Manner of voting**

- (1) A vote at a meeting by a person entitled to vote must be cast in person unless the strata committee, by resolution, determines that a vote may be cast by some other specified means.

**Note.** A person may be present at a meeting even if not actually at the meeting (see section 4 (1), definition of *person present*).

- (2) The regulations may make provision for or with respect to the following:
  - (a) the means of voting (other than in person) that may be adopted by a strata committee,
  - (b) without limiting paragraph (a), procedures for voting by such means,
  - (c) prohibiting the use of specified means of voting.

**11 Chairperson's declaration of vote**

The declaration of the chairperson of the result of the voting on any motion at a meeting is conclusive without proof of the votes recorded for and against the motion.

**12 Quorum**

**(1) Quorum required for motion**

A motion submitted at a meeting of a strata committee must not be considered unless there is a quorum present to consider and vote on the motion.

**(2) When quorum exists**

A quorum is present at a meeting only in the following circumstances:

- (a) in the case of a strata committee which has only one member, if the member is present,
  - (b) in any other case, if not less than one-half of the persons entitled to vote on the motion are present.
- (3) A person who has voted, or intends to vote, on a motion or at an election at a meeting by a permitted means other than a vote in person is taken to be present for the purposes of determining whether there is a quorum.
  - (4) The quorum for meetings of a strata committee is to be calculated on the basis of the number of members last determined by the owners corporation for the committee.

**13 Non-member owner may attend**

An owner or, if the owner of a lot is a corporation, any company nominee of that corporation is entitled to attend a meeting but is not entitled to address the meeting unless authorised to do so by resolution of the strata committee.

**14 Only person who may vote can move motion**

A person is not entitled to move a motion unless the person is entitled to vote on the motion.

**15 Chairperson may rule certain motions out of order**

The chairperson at a meeting may rule a motion out of order if the chairperson considers that the motion, if carried, would conflict with this Act or the by-laws of the strata scheme or would otherwise be unlawful or unenforceable.

**16 Adjournments**

- (1) A meeting may be adjourned for any reason if a motion is passed at the meeting for the adjournment.
- (2) The time and place at which a meeting adjourned under this Part is to be resumed must be fixed by the person who was presiding at the meeting.
- (3) The secretary of the owners corporation must give to the members of the owners corporation, at least 1 day before the resumed meeting, a notice specifying the time and place of the meeting.



- (4) Notice is to be given by displaying the notice on the notice board maintained by the owners corporation or, if there is no notice board, in writing (including by email or other electronic means).

#### **17 Minutes and other records**

##### **(1) Records to be kept**

A strata committee must cause to be kept a record of its decisions, any notices given under this Schedule and full and accurate minutes of its meetings.

- (2) The minutes must include minutes of all resolutions passed in accordance with this Schedule.

##### **(3) Distribution of minutes and records of motions**

Within 7 days after a meeting of a strata committee or the passing of a resolution by the strata committee, the strata committee must provide copies of the minutes of the meeting or of the resolution in the following manner:

- (a) by giving each member of the strata committee a copy,
- (b) by giving each owner a copy, if the strata scheme is not a large strata scheme,
- (c) by giving an owner a copy, if the strata scheme is a large strata scheme and the owner requests a copy within the period of 7 days.

#### **18 Disclosure of pecuniary interests**

##### **(1) If:**

- (a) a member of a strata committee has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the strata committee.

Maximum penalty: 10 penalty units.

- (2) A disclosure by a member at a meeting of the strata committee that the member:

- (a) is a member, or is in the employment, of a specified corporation or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified corporation or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that corporation or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

- (3) Particulars of any disclosure made under this clause must be recorded by the strata committee in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the strata committee.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the strata committee otherwise determines:
  - (a) be present during any deliberation of the strata committee with respect to the matter, or
  - (b) take part in any decision of the strata committee with respect to the matter.



- (5) For the purposes of the making of a determination by the strata committee under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
  - (a) be present during any deliberation of the strata committee for the purpose of making the determination, or
  - (b) take part in the making by the strata committee of the determination.
- (6) A contravention of this clause does not invalidate any decision of the strata committee.
- (7) Without limiting subclause (1), a person has an indirect pecuniary interest in a matter if a person connected with the person has a direct interest in the matter.