

Episode 3: Summary



Episode name: This is STRATA!

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What area(s) of law does this episode consider?

Strata law – the way in which strata schemes are managed and organised, and how disputes regarding strata schemes are adjudicated and resolved.

Why is this topic relevant?

Strata title is the fastest form of property ownership in Australia. A 2018 study showed that about 9% of the population live in strata title property.¹ It is predicted that over half of the new dwellings built in Australian metropolitan areas over the next few decades will be strata titled.

As the use and prevalence of strata title grows, so too will the need for specialised advice in this area.

What legislation is considered in this episode?

Strata Schemes Management Act 2015 (NSW)

Section **9** of the *Strata Schemes Management Act 2015* (NSW) – outlines the roles and duties of the owners corporation. Generally, the owners corporation is responsible for the management of the scheme, such as: managing control and use of the common property (s 9(2)(a)); managing the finances of the strata scheme (s 9(3)(a)); and maintaining and repairing the common property (s 9(3)(c)).

Section **29** of the *Strata Schemes Management Act 2015* (NSW) – Provides that the owners corporation is to appoint a strata committee, the members of which are to be elected at the first annual general meeting of the owners corporation.

The general function of the strata committee is to assist the owners corporation in administering the day-to-day running of the strata scheme. **Section 36** of the *Strata Schemes Management Act 2015* (NSW) provides that a decision of the strata committee is taken to be a decision of the owners corporation. However, where there is a disagreement between the two, the decision of the owners corporation prevails.

Section **49** of the *Strata Schemes Management Act 2015* (NSW) – allows for the appointment of a strata managing agent.

Section **52** of the *Strata Schemes Management Act 2015* (NSW) – allows the owners corporation to delegate some or all of its function to the strata managing agent.

Section **74** of the *Strata Schemes Management Act 2015* (NSW) – requires the establishment of a capital works fund.

Section **80** of the *Strata Schemes Management Act 2015* (NSW) - requires the owners corporation to prepare a 10-year capital works fund plan.

¹ University of New South Wales, 'Australian National Strata Data 2018' p 5.

Section **52** of the *Strata Schemes Management Act 2015* (NSW) - Under s 52 of the Act, the owners corporation may delegate some or all of its powers to a strata manager.

Section **216** of the *Strata Schemes Management Act 2015* (NSW) - provides that an owners corporation may establish a voluntary process for resolving disputes between any one or more of the owners of the lots in the scheme, other interested persons, the owners corporation, the strata committee, the strata managing agent and the building manager.

Section **218** of the *Strata Schemes Management Act 2015* (NSW) – provides for matters that may be subject to mediation.

Section **227** of the *Strata Schemes Management Act 2015* (NSW) – states that certain applications will not be accepted by the Tribunal without prior mediation.

Section **237** of the *Strata Schemes Management Act 2015* (NSW) – The Tribunal may make orders for the compulsory appointment of a strata managing agent where the owners corporation is not functioning satisfactorily, has failed to perform one or more of its duties under the Act etc.

Section **260** of the *Strata Schemes Management Act 2015* (NSW) - Section 260 of the Strata Schemes Management Act provides that a matter or thing done or omitted, in good faith, by an officer of an owners corporation or a member of a strata committee is free from personal liability.

Part 2, section 4 of Schedule of the *Strata Schemes Management Act 2015* (NSW) – Any owner, or person entitled to vote at an AGM of the owners corporation can put forward a motion to be included in the agenda for the next general meeting of the owners corporation. The motion must be set out in writing and given to the secretary of the owners corporation. It must state the name of the person making the motion and explain the motion in no more than 300 words.

What are the main points?

- The Strata Scheme Management Act 2015 (NSW) is highly prescriptive legislation.
- In advising clients with strata disputes, the first key thing to establish is their rights and obligations under their particular strata scheme – rights can vary greatly from scheme to scheme under by-laws. Secondly, if a dispute escalates, it is important to remind the client that they will likely have to wear their own costs. The cost of the dispute should be weighed against their issue.

What are the practical takeaways?

- Practical, engaged and active ownership is key. Having an active strata committee will not only help with the efficient resolution of disputes but assists with maximising a commercial return on the property.
- In the event of a dispute, clear communication, and understanding rights under the particular strata scheme is key.