

Responsibilities of the owners corporation

In a strata scheme

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 five years.

The following must be recorded for each notice:

- the date and manner of service
- the part of the strata scheme it is about
- the date for obeying the order
- the date the order was obeyed.

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

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

Proxies given to the owners corporation must be kept for at least 5 years after the proxy expires.

Financial records and statements

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

- receipts consecutively numbered
- a passbook, a bank deposit book, or a statement of deposits and withdrawals in order of date, that are bound or kept in a loose-leaf folder
- 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 two 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 two months before the next AGM.

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
- or the owner's agent and the agent's Australian address 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.

Forms for the records of owners corporations can be purchased from some law stationers.

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
- executive committees of large schemes are not permitted to spend more than 10% above the budgeted amount for any item, except for emergencies, eg blocked sewer pipes (unless the owners corporation lifts the restriction by a resolution)
- 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 executive committee meetings and the minutes of these meetings must be given to all lot owners (notice may not be given via noticeboards).

Insurances

Building insurance

The owners corporation must insure the building under a damage policy with an approved insurer. This does not apply to an owners corporation for a strata scheme comprising two lots if the owners corporation decides by unanimous resolution, and the buildings in one lot are physically detached from the buildings in the other lot, and no other building in the scheme is on common property.

Approved insurers are those authorised by the Australian Prudential Regulation Authority for general insurance.

A damage policy must cover the building for:

- replacement (where destroyed) or the reinstatement (where damaged) of the building back to the same condition it was in when new, and
- payment for removal of debris and the payment of architects and others whose services are needed for the replacement or reinstatement.

The building includes owners' fixtures and fittings. Fixtures and fittings are items like carpets in common areas, hot water systems, light fittings, toilet bowls, sinks, shower screens, cupboards, internal doors, stoves, common air conditioning systems and intercom systems.

The building must be valued every five years and insured for at least that value.

Public liability insurance

The owners corporation must insure, with an approved insurer, against damage to property, death or injury for which the owners corporation could become responsible. The minimum amount of cover is \$10 million.

Workers compensation insurance

The owners corporation must have workers compensation insurance, with an approved insurer, where it is required under the Workers Compensation Act 1987.

Voluntary workers insurance

The owners corporation must insure, with an approved insurer, against any damage that it may become liable for when a person does voluntary work for the owners corporation in the building or on the common property.

A voluntary worker is any person who does work without any fee or reward, or without expecting any fee or reward.

Levies and the administrative and sinking funds

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

Administrative fund

The administrative fund is for day-to-day recurrent expenses. The amount in it must be enough for the owners corporation to pay its expenses:

- for the cost of looking after common property and personal property of the owners corporation

- for the payment of insurance premiums
- for any other recurrent expenses other than amounts covered by the sinking fund or by a special levy.

Sinking fund

The sinking fund is to cover future capital needs. The amount in the fund must be enough to cover all the owners corporation's expenses:

- for painting of common property
- for obtaining personal property of the owners corporation (eg. mowers or washing machines)
- for renewing or replacing any fixtures on the common property and any personal property owned by the owners corporation
- to replace, repair or make good the common property
- for any debts, other than amounts covered by the administrative fund
- for other capital expenses.

Ten year sinking fund plans

All schemes are required to have a ten year sinking fund plan for the life of the scheme. The plan has to be reviewed at least every five years.

Refer to the Sinking funds page on the Fair Trading website for more information.

Transfer of money between funds

The owners corporation can transfer money from one fund to the other, or make a payment from one fund that should have been paid from the other. But the owners corporation must make a levy to repay that fund within three months after the transfer of monies.

Setting levies

Levies must be set at each AGM. When a levy is to be set, a budget must be given, showing the existing financial situation and an estimate of receipts and payments. The budget can be given out with the notice of the meeting or at the meeting before voting on the levy motion.

The motion to set the levies must show the amount for each fund and be approved by a majority vote.

The owners corporation may decide to allow payments by instalments.

After the levies are set, the Treasurer must write to the owners and tell them the amount to pay and the date to pay. This notice only has to be given once.

Extra levy

If the owners corporation has to pay a debt that was not budgeted for in the administrative or sinking fund estimates, a levy must be set at a general meeting and the amount collected paid to the administrative fund.

Interest and discounts on levies

An unpaid levy gains interest at the rate of 10% simple interest a year if not paid within one month after it is due. The owners corporation cannot increase or decrease the interest but it can make a special resolution to charge no interest. Unpaid levies, including interest, can be recovered by the owners corporation as a debt in court.

An owners corporation may make a special resolution to give a 10% discount where a levy is paid before the day it is due. Payment made on the day it is due does not attract the discount.

Legal action

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.

Firstly, the decision to commence legal action will often have to be approved by a general meeting of the owners corporation (by majority vote).

Secondly, where the estimated costs of legal action have been disclosed under the Legal Profession Act to the owners corporation this must be passed on to all lot owners and executive committee members within seven days of this information being given to the owners corporation.

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 responsibilities

Owners corporations also have the following powers and obligations:

- To issue a notice on a person to comply with a by-law, when the owners corporation or its executive committee passes a resolution that there has been a contravention of the by-law in question.
- Provide strata scheme information as required by a Section 109 Certificate for prospective purchasers within 14 days of written request.
- Allow owner or a person with the owner's consent to inspect the records of the strata scheme, and collect an inspection fee.
- Power to grant, by special resolution, a licence to a lot owner to use common property generally or for a 'once only' purpose. Adjudicators can make decisions on disputes or complaints which have not been resolved by mediation, and have power to settle disputes over the granting of licences over common property.
- To dismiss some or all of its executive committee.
- To notify those holding a priority vote of all meetings where there are agenda items where a priority vote may be exercised.

Strata scheme lot owners may be liable for land tax. For more information, visit www.osr.nsw.gov.au.

Two-lot schemes

If owners of two-lot strata schemes choose to have the scheme's accounts audited, the audit is not necessarily required to meet the Australian Auditing Standard.

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 fencing requirements page on the Fair Trading 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.

From 29 April 2016, all properties with a swimming or spa pool cannot be sold, and new residential tenancy agreements cannot be entered into, unless they have a

valid Certificate of Compliance or relevant occupation certificate. These requirements also apply to common property pools and spas, such as those in strata schemes. It is the responsibility of the owners corporation, manager or operator of the common property to ensure that the pool complies with pool safety laws.

Please visit the Swimming pools page on the Fair Trading website for further information.

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.

To enquire or lodge a complaint about a service agreement or internet provider visit the Telecommunications Industry Ombudsman website or call 1800 062 058.