



The New Strata Laws – Developers Beware!

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February 2016

The two new Acts affecting strata title development and management have been passed by the New South Wales parliament. The operation of the new legislation is yet to be revealed, however, it is anticipated that it will be 1 July 2016.

The changes to termination of strata schemes have been heralded and it is now clear that a strata scheme will be able to be terminated by way of a special resolution (in effect, a 75% majority). As the regulations surrounding the changes are yet to be published, further details of the process involved will be set out in a subsequent issue of Momentum.

There are other significant changes with respect to which developers should be aware. These changes are highlighted below.

Original owners and persons connected with such persons are prohibited from being strata managers for the first ten years of the strata scheme. Developers had established management firms as they wished to retain control of the strata scheme, including, quite reasonably, for ongoing development considerations. The prohibition now prevents any such connection. The reform will mean that in a development that, for instance, involves staging care, will need to be taken in preparing a strata development contract and/or bylaws to ensure that a developer has ongoing control and authority where required to complete the project without unreasonable

interference from owners and occupiers within that scheme.

There is a requirement for a developer to provide a maintenance schedule at least 2 days before the first annual general meeting. The issue of building defects was a very real one and remains so. The requirement for the provision of a proper maintenance schedule is an attempt to overcome difficulties in relation to building defects. It is considered that it will be advantageous for a developer to provide a proper maintenance schedule which will also be in the interests of the owners corporation. A developer can, provided such maintenance schedule is properly and thoroughly presented, find such a provision a great advantage with respect to ongoing problems with respect to building defects. It will, for instance, be easier to establish that a defect is a maintenance issue.

When preparing a strata plan, a schedule of the unit entitlements must be included. It is now a requirement that this schedule be determined by a registered valuer. Previously, it was possible for the original owner to provide an instruction to the surveyor to include unit entitlements. Such instruction could be based on whatever the original owner considered to be relevant, including, somewhat cynically, attractiveness to buy the unit. This practice is now being outlawed.

A building bond (being 2% of the Contract Price for the building work) must be provided. The Bond may be

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claimed by the owners corporation to rectify defective building work. It must be claimed within 2 years after the date for completion of the building work or within 60 days after the final report by the building inspector (whichever is the later). It is somewhat unclear when the unused bond should be returned.

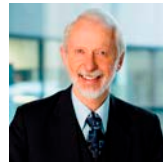
A developer must appoint a building inspector, within certain prescribed time limits, to inspect and report upon building work. The owners corporation must approve the appointment. It can refuse to approve the appointment on any grounds. It will be, therefore, in a developers interest to ensure that the Inspector chosen is reputable and competent. Interim rectification work must be carried out. The changes permit a builder to enter the building to carry out rectification of defects.

It had been an accepted course of action for a developer to provide an undertaking with respect to expenses of an owners corporation from the time the strata plan was registered until the convening and holding of the first annual general meeting.

The requirement now is that a developer must ensure that proper budgets are prepared and the levies truly reflect the expenditure.

Once again it will be to the advantage of the developer to provide such budgets and with the assistance of a competent strata manager and lawyer, ensure that transparency and good governance criteria are established and met.

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