

Strata Management Legislation Amendment Bill 2008 – Submission

Cr. Chris Harris, City of Sydney, 0407 469 384

My submission is divided into three sections: Community, Problem solving & Fair Dealing

COMMUNITY

The idea of people living and working together as a community is a fanciful dream when it comes to strata, it's an absolute necessity. We have so many people from so many different cultures all coming together in apartment blocks that clear guidelines have to be established.

The most frequent cause of problems in strata developments isn't selfishness or bad behaviour, it's a lack of understanding of how things could and should be. We have to educate everyone that the benefits of apartment life come at a small price – and that is compromise.

More power for owner-occupiers.

Although hundreds of thousands of dollars can be tied up in an apartment block, the greatest investment is from those people who pay their money then make their homes in apartments. Ironically, they have to live with the consequences of the decisions of the majority – typically investors who rarely set foot inside the building from the moment they buy it.

We propose that every lot carries two votes in the Owners Corporation – one for the owner and the second if the owner is also resident. That way owner-occupiers will have two votes in the Owners Corporation meaning buildings will be run for the benefit of the people who live there rather than to suit those whose commitment is purely financial and whose priorities are economic rather than social.

Legislate involvement of long-term tenants

Tenants are often treated as second-class citizens, especially in apartment blocks where, ironically, their involvement in the community can only be to the benefit of everyone. Even long-term tenants are treated as a commodity by their landlords and an irrelevance by many of their owner-occupier neighbours.

We propose that long term tenants who have been in residence in the same strata unit for two years or more can apply to the Owners Corporation to take up the resident vote (of the two votes as described above). This would allow them to participate in the running of the building and to vote on all matters except those of a financial or budgetary nature. Giving a voice to long-term tenants of a building will tilt the balance of power to residents and away from absentee investors.

Training for office bearers

Our laws were first enacted when apartment blocks were 12 unit walk-up blocks with an annual maintenance budget of a few thousand dollars. Now, we use the same systems to run multi-block complexes containing several buildings containing hundreds of apartments and often a mix of commercial and residential lots. Even in the simplest large blocks, there are basic services like lifts, swimming pools, heating, air-conditioning, security and concierge services to be managed.

A modern block of 100 units or more, defined as “large” by the Office of Fair Trading but actually average in terms of current building trends, could easily have an annual turnover of \$1 million or more. Yet we expect the same “enthusiastic amateurs” to manage things as they did in days gone by. The people who run our larger building need training and they need to be rewarded for the often thankless work they do.

We propose that the chair, secretary and treasurer of any building of more than 50 units should have to undertake accredited basic training in strata law (such as already provided by the Institute of Strata Titles Managers) before they can seek a second term in office. However, once they have completed this training, they will be able to receive a stipend from the Owners Corporation for their services, based on the number of lots in the strata development.

Community needs versus individual rights

There should be a recognition enshrined in strata law that the “rights” of an individual do not take precedence over the needs of the community. In fact, the opposite should always apply. This basic principal will help in the resolution of strata disputes where individual owners and their neighbours seem to have equal and conflicting claims. In such cases the needs of the community should always prevail.

PROBLEM SOLVING

With many people moving into apartments for the first time, there are bound to be conflicts when behaviour that was either acceptable or unnoticed in a free-standing home causes frictions in strata developments. Often these problems are caused by ignorance of the law, sometimes they are created by they bloody-mindedness of individuals who try to import a “my home is my castle” attitude into a strata situation.

Disputes will never be avoided but, in the interest of creating strong and viable communities, they need to be resolved quickly and as painlessly as possible.

Faster resolution of small disputes.

Regardless of the specific issue, Owners Corporations need to get swift and effective support in their efforts to curb antisocial behaviour. At present, the system works very slowly to bring an offender to book. A complaint has to be ratified by the Executive Committee, they and the offender have to undertake mediation, if and when that fails, they can apply for an adjudication and only then – often months after the initial complaint – is there any possibility of a meaningful sanction in the form of a fine for non-compliance.

A simpler, faster system needs to be created whereby the culprit is told as soon as a valid complaint has been established then they will be liable to an immediate fine for

non-compliance. If they have a problem with that – ie, they think they are being treated unfairly – they can use the mediation and adjudication system to appeal. However, continued non-compliance for no valid reason should result in increased fines.

NB: The instant sanctions would be limited to a small number of strata breaches – noise, parking, damage to common property and pet nuisance, for instance – and would require a vote by 75 percent of the EC for any complaint to move forward.

New initiatives for parking

Parking is one of the most common complaints in strata life and the government's removal of the right to tow or clamp cars parked illegally on common property or in designated spaces – and the failure to implement a system to replace those sanctions – has resulted in a lot of unnecessary anger and distress for strata residents.

We propose that the government institute a voluntary system whereby strata buildings and complexes can call local council parking wardens into their buildings so that cars parked illegally can be fined. The system would be initiated at the building's expense and would involve clear signage warning potential offenders. The revenue would be returned to the relevant council.

New laws on noise insulation in regard to flooring.

Despite most buildings having by-laws against it and there being by-laws in the relevant Act, there is a growing problem with owners removing carpet to expose and polish floorboards, or installing boards and tiles on floors, without ensuring that sound insulation is maintained. Owners can even circumvent the Owners Corporation by joining together to support any such moves. For instance, in a small 8-unit block, the owners upstairs can outvote the neighbours downstairs and convert to bare floorboards regardless of the serious noise nuisance this causes.

We propose that any owner who has done this without installing adequate sound-proofing should be made to remedy the problem immediately and that the unit declared unfit for habitation until the remedial work is complete.

Easier ways of getting levies out of non-payers.

Many investor owners refuse to pay levies even when they are making money out of their units by letting them out. The current process for recovering unpaid levies is cumbersome and not entirely effective. Even when non-payers are slugged with the 10 percent penalty, that is tax deductible and doesn't stack up with the 17 percent profit they'd have made by investing the money in the stock market last year (05-06). Meanwhile, they or their tenants (who pay levies as part of their rent) continue to use the facilities in the building. The unpaid levies can be a serious drain on a building's finances.

We propose that investor owners who are six months or more behind on their levies should have to have the rent from their investment unit paid directly to the Owners Corporation until the debt is cleared. If the property is unoccupied and they have no other means of paying their debt, it should be sold with the new owner paying the levies debt as part of the purchase price.

In the case of owner-occupiers who are six months or more behind with their levies, they should face mandatory mediation at which a binding agreement on how the debts will be cleared will be reached. Failure to do this at mediation would mean that an adjudicator would be asked to direct the owner as to how and when they should pay off the debt.

Backpacker flats and Executive Rentals

It is becoming increasingly common for people to find that neighbouring apartments have been let out to backpackers or as so-called executive rentals. This practice often destroys any hope of the affected apartment's neighbours living a normal, peaceful life in their home. Backpackers and hotel-style renters have no long-term investment in a building being a quiet and happy place as any normal home should be. Current laws are woefully inadequate meaning that residents have to endure, in the case of unofficial backpacker accommodation, months of disruption and distress before any effective action is taken – by which time the backpackers have moved on anyway, only for a new set to arrive the following summer.

We propose that, in the short term, once it has been established that an apartment has been rented out to backpackers, the EC should be able to apply for a series of immediate sanctions, including having power and water to that unit cut off. Meanwhile anyone who knowingly lets out their apartment or acts as an agent for someone letting their apartment out for that purpose should be fined and, in the case of real estate agents, have their licenses revoked.

Company Title Conversion

Company Title apartments are an anachronism whereby owners buy share in the company that owns the building, and those shares permit them to live in a specific apartment. That's all well and good until there is a dispute for which the only legal remedy is to be had through the Supreme Court with no intermediate step.

We propose a simple and cost-effective mechanism whereby a vote by 75 percent of shareholders in a company title building would be enough to transfer the building to Strata Title. The shares would equate with “Unit Entitlements” and everything outside the “skin” of each apartment would be counted as common property. NB: Many Company Title apartment blocks are converting to strata anyway but it can be a laborious and expensive process.

FAIR DEALING

As strata development has become a multi-million dollar business, the needs of the consumer have been shunted aside by legislators and developers alike. Small groups of unpaid individuals can't be expected to compete fairly with teams of highly-paid lawyers hired by unscrupulous business people whose only priority is profit.

To protect the owners and residents of strata units, the government must change the emphasis of protective legislation so that Owners Corporations no longer have to fight developers through the court system in a war of attrition that ultimately only benefits members of the legal profession. The Government of the day has to accept that its responsibility is primarily to the voters – not to the businesses that pour money into their party coffers.

Strata Ombudsman

The existing laws are complex and out of date. Current trends in strata development are outstripping any reasonable projection there might have been for the way strata life was likely to evolve. And that means problems are arising more quickly than either the Office of Fair Trading or lawmakers can deal with them.

There is a circle of silence related to strata life. Owners don't want to expose problems in case it affects their ability to sell their property, government isn't interested and journalists either don't understand or don't care. Someone or some body has to break the cycle.

We propose the creation of a Strata Ombudsman who will examine all aspects of strata life with a remit to ensure fair dealing and to expose those who are exploiting loopholes in the law to the detriment of the strata community.

Defect resolution

With defect rectification potentially costing millions of dollars, it's no surprise that developers will fight tooth and nail to avoid accepting responsibility and will resort to all kinds of bullying tactics to get owners to back down. The prospect for most ECs of fighting a defects battle in court is daunting, especially when developers have almost unlimited access to funds and legal heavyweights.

We propose a new system whereby independent assessors, appointed by the government, rule on defects without anyone having to resort to courts. Developers can still challenge them in court later if they are not happy. But then they would be taking on the Government – not a bunch of inexperienced volunteers.

Shorter contracts for managers and agents

At present building management contracts are for 10 years maximum with a 10-year option to renew. Often these contracts are signed within the first few months of a building's life when the majority of units may not have been sold and a huge proportion of new owners have no idea what they should and could be doing. Yet they and all subsequent owners are tied to 10-year contracts that are rarely good for the building or good value for the owners.

There is absolutely no justification for 10-year contracts for either building managers or strata managers. In fact, it is so counter-productive it beggars belief that it is allowed at all.

We propose that all contracts be for a maximum of one year (as they are in the USA, for instance) with an option to renew for a second year after which competitive tenders must be invited. Good managers will always be rewarded with renewed contracts.

No sale of Strata contracts without approval

Recent changes in the Strata laws saw a ban placed on the sale of Strata Management contracts without Owners Corporation approval. Strata managers have exploited a loophole whereby each contract carries a clause giving prior permission for such a

sale to take place at some point in the future.

We propose that contracts may not be sold to other parties without OC approval AT THE TIME OF SALE. Any clause in a contract that pre-empts approval (such as exists in the current Institute of Strata Titles Managers basic contract) would be invalid.

Guidelines for what constitutes an “unconscionable” contract.

At present, an Owners Corporation's only defence against bad contracts (often signed before the majority of owners have taken up residence) is to have them declared “unconscionable” – a process that is long, difficult and subject to broad interpretation.

We propose that the Office of Fair Trading establish clear guidelines for elements in a contract that would render it unconscionable. Specifically, we would establish that any existing or future contract would be likely to be deemed unconscionable if it contained:

No performance guarantees

No clear-cut cancellation process in the event of dissatisfaction

Excessive fees

No clear-cut explanation of the contractors duties

In the case of existing contracts, we would allow the contractors to present a revised contract that fixed these issue. In this case the contract would be allowed to continue for one further year.

Licensing of Building Managers and recognition of their roles in legislation.

Apart from a few passing references, the current Strata laws ignore the exponentially growing business of Building Managers. Large buildings of 100 apartments or more need full-time managers. Developers, especially, have seen a gap in the law and have established their own Building Management companies often with the intention of keeping a tight control on their buildings, even after they have sold all the apartments in them.

These contracts are often for extended periods (10 years-plus) and there is no incentive whatsoever in the building, manager, who should be a key player in the defects identification process, doing anything to help the Owners get a fair deal.

Meanwhile, unlike Strata Managers, there is no requirement for any training or certification of any kind, even though the Building Manager potentially has a much more profound influence on the well-being of a building and its residents.

The law does refer to “Caretakers” but these are as far removed from a modern building manager as multi-building, multi-storey complexes are from the walk-up blocks of a dozen units for which the law was originally designed.

We propose that the role of the Building Manager be recognised in law, that standards of minimum training and qualifications be set, that a code of conduct be set down and that a form of licence, similar to that required by Strata Managers be established. We would also establish an ongoing certification system so that the managers of larger building would have to be better qualified and have more

experience.

Mandatory cooling off periods for the sales of off-the-plan apartments.

At the height of the apartment sales boom, potential customers were being rail-roaded into signing contracts to buy off the plan – often with as little as 20 minutes allowed to peruse the contracts. Although there is little likelihood of that happening again at present, the market could go crazy at any time in the future and there is no place for these hard-sell tactics when you are dealing with people's homes and life savings.

We propose that there be a MANDATORY cooling off period of two weeks after the payment of a deposit for an off-the-plan purchase, meaning that potential purchasers can't sign this away even if they want to. At a time of high demand, when these pressure tactics are more likely to come into play, there will be no shortage of potential purchasers should the original buyers change their minds.

Establish understandable acoustic standards

The basic building standards for apartments in this State have been deliberately kept low to cut down building costs and, if you accept the industry and government's view, to ensure a supply of affordable housing. However, this means that people are paying a lot of money for apartments that they'd reasonably expect to have a higher level of materials and workmanship, including acoustic insulation.

Noise between apartments is one of the most common reasons for disputes between neighbours. In the interest of building better communities, house buyers are entitled to know how good the sound insulation is in the building into which they are buying. The Australian Acoustical Association has already established a five-star rating system for apartments (often used to help sell up-market apartments).

We propose that developers should declare how noisy or otherwise their buildings are – based on the AAA five-star system - so that apartment purchasers know exactly what they are buying into. This would ensure that the drive for affordable housing didn't compromise the liveability of more expensive apartment blocks.