



Spring
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Welcome from Strata Choice Associates



Welcome to the Spring 2010 edition of "Strata Choice".

The first article in this edition aims to assist clients in forming a better understanding of some of the issues that surround the operation of a home business in a strata scheme. One area

that is not explored in the article is the potential impact on the owners corporation of a business operating from a residential unit, requiring clients of that business to attend the unit in question for business purposes. If this were the case, it potentially changes the use of common property areas such as corridors and lifts in the building from residential to commercial use, which may lead to increased occupational health and safety and insurance risks.

The University of NSW City Futures Centre is actively involved with research around the strata sector. Dr Hazel

Easthope and Prof Bill Randolph have provided us with a brief history of Strata Title and commentary regarding this continuing growth of the strata sector.

It is important that any lot owner contemplating making alternations to their lot seek appropriate approvals before commencing works. The final article in this edition reminds lot owners of their obligations in this regard.

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Strata Choice Associates has a new website. View it at www.stratachoice.com.au/associates

Home Businesses in a Strata Scheme

Occasionally we receive queries from residents relating to a neighbour running a business from a strata lot. "Running a business" is a pretty broad term and therefore it is necessary to determine exactly the type of business and if it is legal or permissible in a strata scheme.

Owners corporations should first ascertain if the business is an "Exempt Development". That means the business does not require Development Consent from Council and is permitted under the requirements of Council's Development Control Plan (DCP) relating to Home Business activities Residential zoned areas.

The type of restrictions generally placed on "Home Office" or "Home Occupation" type businesses, which would make them an "Exempt Development" and legally entitled to operate include:-

- ▶ Office type activities eg computer work, use of telephones, activities of a professional nature, etc;
- ▶ Does not require registration by Workcover under the Factories, Shops and Industries Act 1962;
- ▶ No employment of persons other than residents;
- ▶ No window displays;
- ▶ Restriction of square meters required;
- ▶ No advertising signage except sign to indicate the name and occupation of the resident subject to owners corporation permission; and
- ▶ Does not interfere with building amenities or adjoining neighbours.

Councils are usually quite supportive of owners corporations if they can genuinely show Council that the occupants of a lot are in breach of the above "Exempt Complying" requirements. In fact, quicker results are quite often obtained when Council serves a Notice on the person in breach, rather than an owners corporation taking steps through the Strata Mediation and Adjudication system.

If occupants wish to run a Home Business that does not fully satisfy the above, then that person would be required to submit a Development Application to Council. It would be at this stage that the owners corporation would have to say as to whether it approved such an activity, as Council would normally require evidence of owners corporation approval to be submitted with DA.



A Brief History of Strata Title

The trend towards higher density developments has been a long one in Australia. In Sydney, the process of higher density residential development has been in progress since at least the 1930s, when the first major wave of higher

density urban renewal took place in Sydney's eastern suburbs. The development of higher density housing was given a substantial boost in the early 1960s through the passing of strata titling legislation in most States which enabled, for the first time in Australia, the possibility of individual apartments being sold to individual owners. The New South Wales (NSW) strata legislation was the forerunner to legislation in other Australian states and territories. The *Conveyancing (Strata Titles) Act NSW (1961)* also formed the basis of strata title legislation in many other countries, including Canada (Strata Titles Act 1966), Singapore (The Land Titles Act 1972), Indonesia (Strata Title Act 1985), Malaysia (Strata Titles Act 1985) and Brunei (Strata Title Law 2006).

In NSW, urban consolidation has become a central instrument of metropolitan planning policy since the late 1980s and was a key feature of the 1988 (*Sydney into its Third Century*), 1995 (*Cities for the 21st Century*), 1999 (*Shaping our Cities*) and 2005 (*City of Cities*) metropolitan plans. NSW is not alone in this regard. The metropolitan strategies of all five major Australian cities (Sydney, Melbourne, Brisbane, Perth and Adelaide) include plans for increasing urban consolidation. This higher urban density will come in the form of strata titled properties.



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Resulting incentives to build apartments (such as changes in planning controls) have contributed to a significant increase in the number of strata titled properties in Australia. Indeed, the population living in strata properties in Australia is estimated to exceed three million people, and in Greater Sydney over one quarter of the population live in strata properties.

The growing number of strata properties has also produced a growing market for professional support services. According to *Owners Corporations Victoria Inc's* website, the industry now employs an estimated 20,000 Australians who service and manage property assets worth around \$500 billion.

So what does the future hold? Recently, two documents have been released by the NSW government which propose major changes that will affect strata title developments. These are *Sydney Towards 2036* and the *Metropolitan Transport Plan*. Both documents mention the NSW Government's intention to establish a Sydney Metropolitan Development Authority to manage urban renewal and pave the way for more higher density developments. Additionally, the government has proposed two significant legislative reforms to make it easier to undertake higher density development in identified urban renewal sites. The first of these proposals is to change the laws relating to the termination of strata schemes so that it is no longer essential for 100 per cent of the lot owners, mortgagees and lessees to agree to a termination. This is the first step towards creating a new development on a site currently occupied by a strata development. The second is for the

state government to have the power to compulsorily acquire land for development by private developers.

In the future, this means that we are likely to see ever increasing numbers of strata title developments in our cities, coupled with rapid growth in the strata services sector and increasing calls for industry professionalisation. We are also likely to see significant debate surrounding these most recent planning proposals by the NSW government, the outcomes of which will have a great impact on the future of both strata title and urban development in NSW.

Dr Hazel Easthope & Prof Bill Randolph

City Futures Research Centre,
University of NSW



Making Alterations to Your Lot or Unit

A lot owner owns airspace (and everything included in the airspace) inside the boundary walls, floor and ceiling of the lot. Airspace also includes balconies and courtyards, possibly making your tiles and/or pergola your responsibility to maintain.

The owners corporation owns the boundary walls, ceilings, floors, etc. and all common airspace outside a lot. This includes the front doors of a lot (or



garage doors) which many owners do not realise. As such an owner does not have the right to do anything to those doors, e.g. install peepholes, extra deadlocks, garage remote control operators, etc. Permission is required from the owners corporation before any of these installations can be carried out. Owners should also keep in mind Fire Regulations whereby the installation of the wrong type of deadlock or peephole, may damage the door to the extent that it reduces the fire rating. Should this occur the owner or resident would be responsible for causing the damage and will become liable for the replacement or repair costs.

Owners should also be aware that the tiles affixed to the floor or boundary wall are also common property and cannot be removed or replaced without the consent of the owners corporation. In obtaining approval to renovate your bathroom, kitchen or laundry you may need the owners corporation to approve a by-law at a general meeting. This by-law will give consent to the renovation and place the responsibility for repair and maintenance on the respective lot owner.

Another area of dispute relates to air-conditioning systems. Prior to installation, either in your courtyard, on your balcony or in the roof space, consent will be required from the owners corporation. This consent may be able to be obtained from an Executive Committee meeting rather than a general meeting. Your Strata Manager will be able to give expert advice on any proposed changes or additions within your lot.

Q and A's

Question:

I have a water leak in my unit from what appears to be a leaking pipe. Who is responsible to repair a burst pipe in my bathroom?

Answer:

If the burst pipe is in a boundary wall, the owners corporation is responsible. If it is an internal wall it is the lot owner's unless the pipe services more than one lot, in which case it is owners corporation responsibility. In most cases a burst pipe will be an insurance claim.

Question:

The shower in my unit is not draining properly will the owners corporation fix it or is it my responsibility?

Answer:

The plumbing under the floor is the responsibility of the owners corporation to repair and maintain. If, on the other hand, the waste line is under the vanity (not in the floor), it is the owners responsibility. Any blockage after the pipe goes into the floor is the owners corporation responsibility.

Question:

The shower head in my bathroom is leaking and not working properly? Is this the responsibility of the owners corporation?

Answer:

As the shower head is within the confines of the unit it is the owner's responsibility to repair and maintain.

Question:

What if the kitchen sink breaks and causes water damage in both my unit and my neighbours unit?

Answer:

Any damage within the airspace of either unit is an owners responsibility. The owners corporations insurance should cover any owners fixtures or fittings but not damage caused over time. The damage must be caused by a definable event as detailed in the insurance policy. The neighbour may have some recourse for any damage to their unit under common law. Damage to common property will be the responsibility of the owners corporation.

Question:

I have a lot of dampness in my unit and, as a result, the clothes and shoes in the wardrobe are covered in mould. I approached the owners corporation and they said it was not their problem. Why should the owners corporation not fix the problem?

Answer:

The owners corporation is responsible for water penetration problems entering through external walls, roof or floor. Most problems in bedrooms are caused by lack of ventilation or on the other side of the wardrobe is the shower/bathroom. Ventilation will reduce the mould

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and anti mould paint will also help. This is not the owners corporations responsibility.

Question:

The tree roots from a rather large tree in the common grounds of a strata scheme have extended underneath the concrete driveway and pushed the concrete up, splitting it, which will require the driveway to be removed and replaced. Is this covered under the owners corporation insurance policy.

Answer:

The owners corporations insurance policies cover the common property only for accidental loss or damage. Root damage will not be covered in the policy, and in fact, may be specifically excluded. The owners corporation would need to carry out replacement using it's own funds. Failure to repair may create an issue of compliance with Occupation Health and Safety as the uneven surface may be a trip hazard.

Executive Committee members are invited to attend an evening seminar, at no charge, to be held at Strata Choice St Leonards offices.

The presentation, delivered by the company education Consultant will provide participants with information regarding:

- Meeting conduct;
- The duties and obligations of the Executive Committee;
- The powers of the Owners Corporation;
- The role of the Strata Managing Agent;
- Issues relating to risk management for Owners Corporations.

**Yes I am interested in receiving
EC Seminar dates**

Name

Strata Plan Number

Email address

Phone.....

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If you would like to attend an Executive Committee Education Seminar please direct your request to education@stratachoice.com.au