



Institute of Strata Title
Management Ltd

STRATA & COMMUNITY LIVING

MAGAZINE



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For the dates and locations of our next seminar, go to the ISTM website

www.istm.org.au or call us 9904 8499

When the Police Come Knocking



Modern security intercom systems keep many people from your front door, even the Police. Police can arrive at your building for numerous reasons; they could be seeking to arrest someone, search premises or even save a life.



Stephen Goddard from OCN provides a guide to owners corporations on what to do when it's the Police knocking.

If you live in a security building and the Police ring the intercom seeking entry, what should you do? And if your building employs security staff or a concierge, how should they handle this situation?

The answer depends on why the Police are there. The Police are empowered through legislation to enter premises by force if necessary.

If the Officer has a valid warrant to arrest or detain someone in the building, it is an offence to hinder them in the discharge of their lawful duty. Owners Corporations

should instruct security staff to firstly confirm the validity of the arrest warrant and then give Police access.

Search warrants are a little different. Search warrants can only be acted upon by Police between 6.00am and 9.00pm. Outside these hours is termed as "an illegal night time search". Access is not required in this situation.

If there is no warrant, the Police have no authority to insist on access to common property.

And what if the concierge has a key to the apartment of the person named on the warrant?

The front door to every apartment is "common property" which the Owners Corporation has a duty to repair and maintain. If the Police intend to forcibly enter, staff should be directed to open the door, before the Police break it down.

The Owners Corporation can be held responsible for the actions of its staff, therefore you need to ensure that you have told staff what they should do in the event that the police demand access.

But what if it's the Police ringing the intercom of your unit seeking access

to search your neighbour's apartment? What should you do?

Simply pressing the button to give them access to your building is not an option. This represents a breach of the security that has been installed by the Owners Corporation for the protection of everyone in the building.

Hiding under the bed is also not an option. If the Police have a valid warrant and you deny them access, you could be accused of frustrating the Police in the discharge of their duty.

The most responsible action is to first verify that it is the Police, by going downstairs and checking personally. Then you should ask to see the warrant.

A warning:

All buildings are different. Given that fact is almost always stranger than fiction, these observations are meant to be a guide and no more.

Stephen Goddard strongly recommends that your Executive Committee seek legal advice on drafting a protocol that's relevant to your building.

Your Questions

Sinking Fund Forecasts

Q. *Our Strata Manager has obtained a Sinking Fund Forecast. Should the amount of the forecast go on the Notice of Meeting?*

A. Yes. The Owners Executive should consider expert advice on the amount that needs to be raised in order to carry out their duty of care to properly maintain common property. They can then consider this advice to determine the actual amount that they will raise.

Q. *Who can sign a Managing Agent's agreement?*

A. A Managing Agent's agreement must be signed by the Secretary and one other Executive member. Alternatively, the Executive can delegate authority at a meeting to sign the agreement under seal to two owners. The names of the two owners need to be recorded in the minutes.

Common Property

Q. *A lot in our strata scheme wishes to renovate their kitchen and they have found that the floor is covered with Magnesite. The Magnesite is damaged and an inspection has*

shown no damage to the concrete floor underneath. Is the Magnesite considered common property? Who is responsible for repairs to it?

A. According to the Strata Schemes Freehold Development Act (Section 5), items glued or affixed to common property such as tiles (and in this case, Magnesite) form part of common property. As the Magnesite finish is a material affixed to the floor, the responsibility for repair and maintenance falls on the owners corporation.

Unpaid Levies

Q. *An owner in our building has not paid their levies. Are we entitled to charge them interest?*

A. Under the Strata Schemes Management Act 1996 (Section 79 [3]) an Owners Corporation is entitled to charge a simple interest rate of 10% each year if the levy is not paid within one month of the due date.

An Owners Corporation can't increase or decrease the interest rate but it can make a special resolution not to charge it at all or give a 10% discount where a levy is paid before the day it is due.



Garage Door Repairs

Q. *In our complex some garage doors were installed prior to registration of the plan and some were installed after registration by individual owners. Who is responsible for repairs?*

A. The garage doors installed prior to registration of the strata scheme are on the common property boundary so they form part of the common property unless there is a By-Law or notes on the strata plan to the contrary.

The garage doors installed on the common property boundary after registration of the strata scheme would also be common property unless a By-Law was registered to the contrary.

In both instances, the owners corporation would be responsible for their repair and maintenance.

Parking on common property

Parking on common property is the cause of many disputes before the Consumer Trader & Tenancy Tribunal (CTTT). Strata and Community Living looks at how one case was decided before the CTTT.

Background

This strata scheme consisted of 4 lots. One owner owned 2 of the lots. As is the case in most schemes, parking was very difficult to obtain in and around the neighbouring areas.

In 1998, the owners unanimously decided that each owner would be able to park their cars in the driveway on a 'rotating' basis, and in front of their garages from 5pm to 9am.

These agreements were universally understood by the owners to only be possible if they were unanimously approved and complied with. The agreements functioned with little difficulty, until 2005 when the ownership structure changed.

The new owner of the 2 lots sought orders to have the agreements overturned as they were inconsistent with By-Law 2 of Schedule 1 of the

Strata Schemes Management Act. The Act provides that an owner must not stand a vehicle on common property without written authority from the Owners Corporation.

The new owner also argued that the agreement breached By-Law 3 which states that an owner must not obstruct the lawful use of common property by another person.

The other owners argued that the agreement had been unanimous and had operated successfully for a number of years. The agreement solved an important problem for all residents of the scheme.

Decision

The Consumer Trader and Tenancy Tribunal found the following:

- The terms of the agreement were not consent under By-Law 2 (parking) as this could not authorise special privileges over common property
- The arrangement was not consistent with By-Law 3 (obstruction of common property)
- The agreement was not precise enough to confer a license on the owners to park in the agreed areas
- The term 'rotating' did not designate

any particular timing schedule for each owner

- The resolution in 1998 did not comply with s52 and 54 of the Act in that it was not conferring special privileges to the owners (under a new By-Law).

The Tribunal held the arrangements were in clear breach of the By-Laws. The Tribunal expressly stated that the mere successful operation of an agreement that is contrary to a By-Law does not give it authority or validity and owners and occupiers in the strata scheme are bound to obey the By-Laws.

The Tribunal ordered that residents could no longer park on the common property driveway.

What is the impact of this decision on strata schemes?

1. The Tribunal will not enforce 'private' agreements between owners where the effect of the agreement is contrary to legislation.
2. If owners wish to have agreements, they must be passed as By-Laws, licences or leases as required under the legislation.

Elliot & Ors v Jacob Grossbard (Strata and Community Schemes) [2008] NSWCTTT 1082 (13 June 2008)

Article contributed by Colin Grace - Grace Lawyers.

Strata by Numbers

More and more people choose strata living as their preferred housing.

In fact, around 3.5 million Australians currently live in, own or work in a strata titled complex.

And within the next 25 years, strata titled apartments are likely to out-rate residential houses as the number one choice of housing in Australia.

More than 50% of greater Sydney is forecast to reside in strata titled complexes within the next 25 years.

Not including the City of Sydney, there are approximately 400,000 residential strata lots in metropolitan Sydney across more than 35,000 schemes, with an average lot size of 11.

Of the 486 suburbs in metropolitan Sydney, 157 (almost a third) have an average number of lots per scheme of 5 or less.



The reason for excluding the City of Sydney from the data is that the majority strata plans in the City of Sydney CBD are registered as "City of Sydney County Centre". This means that it's not possible to distinguish between residential, commercial, industrial and mixed use strata for comparative purposes.

The City of Sydney is defined as the area bounded north from Cleveland Street, encompassing the CBD to the harbour and bounded by Sussex Street to the West and Riley and Bourke Streets to the East.

There are also some strata plans registered as "City of Sydney County Centre" in Darling Harbour and Cowper Wharf. In the City of Sydney there are over 250 schemes encompassing approximately 19,000 lots.

The table (right) using data from the Department of Lands and Property Information NSW shows that 75% of strata schemes contain less than 10 lots.

The top 10 suburbs

(excluding the City of Sydney)

Residential strata units in metropolitan Sydney

1.	Randwick	7,449
2.	Mosman	6,693
3.	Cronulla	6,591
4.	Dee Why	6,204
5.	Manly	5,856
6.	Pymont	5,722
7.	Ashfield	5,223
8.	Coogee	4,752
9.	Lakemba	4,665
10.	Bankstown	4,423

SOURCE: City Futures Research Centre at the University of NSW from data provided by the NSW Department of Lands, September 2007.

Lots	Schemes	%
2	18808	28.0%
3-5	16069	23.9%
6-10	15495	23.1%
11-20	10409	15.5%
21-50	4884	7.3%
51-100	1030	1.5%
101-200	409	0.6%
201-500	108	0.2%
500+	6	0.0%
67,218		

SOURCE: LPI NOV 08

Owners Corporations - not as easy as just moving in

There are considerable responsibilities that come with owning a strata titled property. Strata and Community Living gives you a snapshot of your obligations as a member of the Owners Corporation.

Consider your strata scheme as a business. Your business receives revenue each year from levies, which in large schemes can total millions of dollars each year.

There are expenses including staff and contractors to be paid, insurance to be organised and the safety and amenity of the building to be managed. All of this is the responsibility of the Owners Corporation.

Some schemes employ a registered Strata Manager to navigate their way through the complexities of managing a scheme, whereas others go it alone. Either way, as a strata owner you should understand your rights and responsibilities.

Firstly, the law. There are an enormous number of Acts and Regulations that apply to how a strata scheme is managed. Here are **two** important ones.....

Strata Schemes (Freehold Development Act) 1973

As the owner of a strata property, you have exclusive ownership of part of the building you live in called the lot and you have supporting rights over other parts of the building known as common property.

Strata Schemes Management Act 1996

The Act regulates how a strata scheme should be managed including:

- Financial management
- Decision making and meetings

- Responsibilities of owners corporations to maintain, repair common property
- Insuring common property
- Keeping records of accounts
- Responsibilities of owners and occupiers
- Day to day management of the scheme and;
- Dispute resolution.

A copy of the Act is available on the NSW Office of Fair Trading website. www.fairtrading.nsw.gov.au

The Owners Corporation

As the owner of a strata property, you are part of the Owners Corporation. You have a right to participate in the corporation's decision making and the way the building is managed.

Responsibilities of the Owners Corporation

1. Look after common property and do all necessary repairs

Under Section 62 of the Act, an Owners Corporation has an obligation to keep common property in a state of good and serviceable repair.

This includes renewing or replacing the fixtures or fittings and other personal property owned by the Owners Corporation. Personal property of the Owners Corporation can include items such as lawn mowers, pool vacuum

cleaners and washing machines (if there is a common laundry).

If the Owners Corporation decides it will not maintain or repair common property, it can only do so by special resolution at a meeting. It can do this provided the decision does not affect the safety or structure of the building or detract from the appearance of the property.

2. Manage the finances of the strata scheme and administer the By-Laws

The Owners Corporation must keep accounting records and financial statements for at least 5 years.

The Owners Corporation must prepare financial statements for each Annual General Meeting. If the scheme has more than 100 lots there are additional provisions.

By-Laws are the rules governing the operation of the scheme. There are rules and procedures governing how to change By-Laws and manage non compliance.

3. Keep records

An Owners Corporation must maintain records of notices, minutes of meetings and correspondence for at least 5 years.

Notices can include notices under the Act or by a public authority, local council or court. Notices and minutes of all meetings need to include any motions passed.

Proxies given to the Owners Corporation also need to be kept for at least 5 years after the proxy expires.

4. Levy owners in the strata scheme to raise funds to carry out its duties

Levies must be decided at each Annual General Meeting (AGM). In order to make an informed decision, a budget and the financial reports should be considered at the meeting.

A motion to decide a levy must be by majority vote. It must detail the amount that will be allocated for the Sinking and Administrative funds.

After the decision is made, the Treasurer must write to the owners and tell them the amount to pay and the date to pay it by. This notice only has to be given once.

There are **two** types of funds that an Owners Corporation needs to provision for:

a/ The Administrative Fund - The Administrative Fund is for the day-to-day expenses of the scheme. These include the cost of looking after common property and the personal property of the Owners Corporation, as well as for paying insurance premiums and other regular expenses such as Caretaker's wages.

b/ The Sinking Fund - The Sinking Fund is to cover future capital needs. Under Section 75A, some schemes are required to plan ahead for at least 10 years.

The fund should contain provision for expenses such as painting common property, buying personal property for the Owners Corporation, renewing or replacing fixtures on common property and paying any debts.

5. Prepare and keep a strata roll

Under Section 96, the Owners Corporation must prepare and keep a Strata Roll. The Strata Roll records the owner's name, and an Australian address for the service of notices

6. Obtain appropriate insurance

The Owners Corporation must obtain insurance policies with an approved insurer for:

- Damage to the building, including provision for the removal of debris and professional fees in the event that the building is destroyed. The sum insured must cover the replacement cost of the building to at least the same condition it was when new. To ensure that the policy keeps pace with costs, the building must be valued every 5 years.
- Insurance for fixtures and fittings considered common property including kitchens and bathrooms, shower screens.
- A minimum of \$10million in public liability insurance.
- Workers Compensation where it is required under the Workers Compensation Act 1987 and;
- Voluntary workers insurance for when a person does voluntary work on common property or for the Owners Corporation.

7. Additional responsibilities for large schemes

If your scheme is over 100 lots, there are additional requirements you must meet. These are:

- Financial accounts must be audited each year
- A budget must be prepared
- Executive committees must not spend more than 10% above the budgeted amount for any one item
- Two quotations must be obtained for expenditure over \$25,000
- Personal notice of all upcoming executive committee meetings and the minutes of the meetings must be given to all lot owners. It is not permitted to do so just via a noticeboard.

So there's much more to owning and living in a strata titled property than just moving in.

For more information, talk to your Strata Manager. In addition, the NSW Office of Fair Trading produces a free booklet – Strata Living.



Next issue... the operation of the Executive Committee.

Consumer Awareness Seminars

The Institute of Strata Title Management holds regular seminars for consumers to provide information and education on topics of interest to strata and community living, including legislative updates and practical tips from expert speakers.

You are invited to attend our **FREE** Consumer Awareness Seminars.

For the dates and locations of our next seminar, go to the ISTM website.

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