

STRATA & COMMUNITY LIVING

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RESOLVING A DISPUTE WITHOUT LAWYERS

Having a dispute with a neighbour or even your strata committee can be difficult and uncomfortable if you live near the parties to the dispute, and costly both financially and emotionally.

Depending on the nature of the dispute there are several legal remedies, however for those who genuinely want to find a solution, an inexpensive and convenient option is offered by NSW Fair Trading in the form of mediation.

In 2018, Fair Trading established an online strata mediation portal which enables any party of the dispute to lodge an application for mediation. The service is free and Fair Trading says that it resolves around 65 percent of all disputes. Last year it received 1,800 applications for strata mediation services.

According to the NSW Fair Trading website, disputes that can be resolved via mediation include:

- keeping pets
- repairs and maintenance to common property
- car parking
- using common property

One of the reasons that people avoid mediation is the mistaken belief that a solution might be imposed on them. The mediation is simply designed to bring the parties together to talk about the issue in an environment that allows everyone to have their say.

Often, because of the emotion involved, the parties haven't

directly spoken about the reasons why they have taken a particular position. Sometimes the mediation is as straight forward as people hearing each other's position and understanding why they are distressed about a decision, or why that decision was taken in the first place. Where the parties agree and an agreement is reached between them, the adjudication can be made into an enforceable order, so the process isn't drawn out.

While the issues listed above might sound relatively insignificant to people external to the dispute, for those directly involved these issues can be hugely stressful and cause great distress.

A key benefit of mediation is that it allows the parties to start rebuilding their relationship before the dispute is so ingrained that any reconciliation is impossible.

To assist the mediator, the parties need to bring all relevant material to the meeting. It can help to write down the key points in dot form, including a chronology of events, to ensure you make your point clearly, rather than getting caught up in emotion.

If a dispute can't be resolved via mediation, either party can apply to an Adjudicator or the NSW Civil and Administrative Tribunal (NCAT) for an order.

For further information or to access the strata mediation portal go to www.fairtrading.nsw.gov.au or call NSW Fair Trading on 13 32 20 for assistance.

NEW LAWS AIMED AT PROTECTING CONSUMERS

Residential tenancies new laws

From 23 March 2020, new residential tenancies laws commence which are aimed at improving tenants' renting experience while ensuring that landlords can effectively manage their properties.

According to NSW Fair Trading, the changes to the Residential Tenancies Act 2010 and the new Residential Tenancies Regulation 2019 will reduce disputes over repairs and maintenance, increase protection and certainty for tenants, clarify the rights and obligations of tenants and landlords and improve transparency between these two parties.

Key changes include:

- NSW landlords must ensure that their rental property meets 7 minimum standards to be 'fit for habitation'
- new and improved disclosure obligations on landlords and their agents, including disclosure of material facts, and strengthening the remedies for tenants when these obligations aren't met
- landlords must ensure that smoke alarms are in working order. A penalty will apply for landlords who don't comply
- making it easier for tenants to install fixtures or make alterations, additions or renovations that are minor
- mandatory set fees when a tenant breaks their lease will apply to all new fixed-term agreements that are 3 years or less
- limiting rent increases to once every 12 months for periodic (continuing) leases
- new powers for NSW Fair Trading to resolve disputes between tenants and landlords. This includes powers to investigate and issue rectification orders to require

landlords to carry out repairs and maintenance, or tenants to fix damage.

More information is available on the NSW Fair Trading website www.fairtrading.nsw.gov.au

Protections for buying off the plan

Off-the-plan buyers now have better protections following the implementation of new laws on 1 December 2019.

The NSW Government now requires those selling new apartments off-the-plan to disclose more information. Furthermore, tighter requirements around cooling-off periods, holding deposits and sunset clauses were introduced. These come following a number of cases where buyers have been sold one thing and received something a lot different to what they were expecting.

The new laws provide the following protection for consumers:

- provide buyers with key information about the development before contracts are signed, including copies of the proposed plan, proposed by-laws and a schedule of finishes
- notify purchasers of material changes that they make
- allow buyers to end the contract or claim compensation if they are impacted by the material changes
- provide final registered plans at least 21 days before the buyer settles
- extend the cooling-off period to 10 business days, with any deposit to be held in a controlled account until settlement.

For more information head to www.registrargeneral.nsw.gov.au

WARATAH APARTMENTS WINNERS OF THE 2019 STRATA COMMUNITY ENVIRONMENTAL AND ENGAGEMENT AWARD

The 2019 Strata Community Environmental & Engagement was awarded to Waratah Apartments, Strata Plan 38936 for their commitment to reduce impact and preserve the environment as well as their engagement in the community in their strata. Located in Sydney's Potts Point district, Waratah Apartments is a lifestyle community completed in 1987. It's a self-managed scheme which has implemented a significant number of environmentally focussed projects.

"We have been early adopters of sustainability schemes like the City of Sydney (CoS) Smart Green Apartments (SGA) program, the NABERS program and waste recycle programs", said Strata Committee Chairman, Fred Tuckwell.

The Award also reflects the strata committee's high level of engagement with owners and tenants.

"We have worked to make sustainability part of our ethos," explained Fred.

In contributing to a reduction in their environmental impact and to save costs, this strata scheme has implemented several projects over the last few years, including:

1. Lighting upgrade: the LED replacement program in common property was progressively rolled out.
2. SGA program: the scheme was very active during the initial first year engagement. The actual projects that Waratah Apartments have implemented include modernising the water pressure pump, replacing and/or reconfiguring inefficient fans, updating emergency lighting, planning to replace inefficient pool and spa heaters and improving the recycling.
3. SUMS (Smart Utility Management Solutions): they have continued to use their SUMs equipment, originally installed as part of the SGA program to monitor and help

manage power and water efficiency.

4. NABERS: the strata scheme undertook the assessment process and an expert group has been initiated to discuss and conduct a development plan for continuous improvement in ratings.

According to Fred, the LED replacement program saved an estimated \$15,000 pa in energy costs, which translates directly to reducing the environmental impact. While the SGA programs have saved or will save over \$25,000 pa in energy costs.

The scheme's approach is to keep owner engagement high, provide a simple assessment and justification of projects, and take advantage of the various rebate schemes that are available.

"Environmental benefit plus cost saving is the simplest and easiest way to justify these projects and key to our approach, but we know you must be proactive to get everyone over the line" says Fred.

"We actively engage with our owners and have improved capability for and use of waste recycling, clothing recycling, collection of large household item and alternative transport. To encourage the use of bicycles we have installed bicycle racks at convenient locations in the building."

Congratulations to the Waratah Apartments.

If your strata scheme has been doing some remarkable things, then you may want to consider entering the 2020 awards which will open for nominations in March. Visit the SCA (NSW) website for more details.

CONGRATULATIONS
TO WARATAH
APARTMENTS



BUILDING SERVICES COMMISSIONER UPDATE



L-R: Kevin Anderson, David Chandler and Gladys Berejiklian

In mid-2019 the NSW Government appointed Mr David Chandler OAM to the role of Building Commissioner. A move which was very much welcomed by SCA (NSW) and the broader strata sector.

Mr Chandler is a well-respected building and construction expert with more than 40 years' experience in the industry.

The Commissioner is responsible for:

- the investigation and disciplinary action for misconduct in the building industry
- overseeing the end-to-end licensing and auditing across the building industry and
- driving legislative reforms of the building industry, including consultation with industry.

Since his appointment the Commissioner has appeared before the NSW Parliamentary inquiry at which he was highly critical of the building plans and design of Mascot Towers which he described as 'poor'.

SCA (NSW) also met with the Commissioner at the end of 2019 and discussed with him several strata related matters, with two key points forming the basis of our conversation:

- Professional Standards Scheme – professionalism for managing agents as trusted advisors to consumers.
- 2020 Strata Law Review– the duty of care owed to schemes by strata managers must be stepped up.

Early this year the NSW Government announced that dodgy developments will be a thing of the past. New plans that will see the implementation of ratings systems for professionals in the building industry are to be introduced.

The new rating system will help the building regulator determine who the risky players are in the industry and prevent dodgy apartments from being sold to unsuspecting buyers.

The changes form part of the NSW Building Commissioner's work plan which, for the first time, outlines publicly how the government plans to overhaul the building and construction industry in NSW under Six Reform Pillars.

SCA (NSW) maintains a good working relationship with the Commissioner and he continues to evolve as a key player in the strata landscape, with a potentially significant mandate to implement reform over the next year.

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