

**STRATA TITLES (COVENANTS) AMENDMENT ACT 1986**  
**No. 72**

NEW SOUTH WALES



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1973

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**STRATA TITLES (COVENANTS) AMENDMENT ACT 1986 No. 72**

**NEW SOUTH WALES**



**Act No. 72, 1986**

An Act to amend the Strata Titles Act 1973 so as to provide for the enforcement of certain covenants affecting the use of land subject to strata schemes. [Assented to, 21 May 1986]

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

**Short title**

1. This Act may be cited as the "Strata Titles (Covenants) Amendment Act 1986".

**Commencement**

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on the day appointed and notified under section 2 (2) of the Conveyancing (Covenants) Amendment Act 1986.

**Amendment of Act No. 68, 1973**

3. The Strata Titles Act 1973 is amended in the manner set forth in Schedules 1-7.

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**SCHEDULE 1**

(Sec. 3)

**AMENDMENTS TO PART I OF THE STRATA TITLES ACT 1973**

**Section 5 (Interpretation)—**

(1) Section 5 (1), definition of "mortgage"—

After "interest", insert "or a covenant charge".

(2) Section 5 (1), definition of "positive covenant"—

After the definition of "parcel", insert:

"positive covenant" means a positive covenant imposed on land under section 88D or 88E of the Conveyancing Act 1919;

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## SCHEDULE 2

(Sec. 3)

## AMENDMENTS TO PART II OF THE STRATA TITLES ACT 1973

- (1) Section 13 (**Conversion of lots into common property**)—  
 Section 13 (2) (c)—  
 After “charge,” insert “covenant charge.”
- (2) Section 16 (**Plans to be signed**)—  
 (a) Section 16 (2) (a)—  
 Omit the paragraph, insert instead:  
 (a) the mortgagee, chargee or covenant chargee under a mortgage, charge or covenant charge recorded in the Register;
- (b) Section 16 (2), (3)—  
 After “, charge” wherever occurring, insert “, covenant charge”.
- (c) Section 16 (2)—  
 After “gross”, insert “or a positive covenant”.
- (d) Section 16 (3)—  
 After “chargee” wherever occurring, insert “, covenant chargee”.
- (3) Section 18 (**Vesting of common property upon registration of strata plan**)—  
 Section 18 (1), (3)—  
 After “charge,” wherever occurring, insert “covenant charge.”
- (4) Section 23 (**Folio where common property**)—  
 (a) Section 23 (2) (d), (3)—  
 Omit “as to user” wherever occurring, insert instead “on the use of land or positive covenant”.
- (b) Section 23 (3)—  
 Omit “or restriction” wherever occurring, insert instead “, restriction or positive covenant”.

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SCHEDULE 2—*continued*

AMENDMENTS TO PART II OF THE STRATA TITLES ACT 1973—  
*continued*

- (c) Section 23 (4)—  
After “charge” wherever occurring, insert “, covenant charge”.
- (5) Section 26 (**Creation of easements, restrictions and positive covenants**)—  
Section 26 (1) (a)—  
Omit “as to user”, insert instead “on the use of land or a positive covenant”.
- (6) Section 28D (**Registration of amendment that does not exclude or convert a development lot**)—  
(a) Section 28D (1) (c)—  
After “developer”, insert “or subject to a covenant charge”.  
(b) Section 28D (1) (c)—  
After “mortgagee”, insert “or covenant chargee”.
- (7) Section 28E (**Registration of amendment whereby development lot excluded or converted**)—  
(a) Section 28E (1) (c)—  
After “developer”, insert “or to a covenant charge”.  
(b) Section 28E (1) (c)—  
After “mortgagee”, insert “or covenant chargee”.  
(c) Section 28E (3)—  
After “charge,”, insert “covenant charge,”.
- (8) Section 28K (**Misleading development statement**)—  
Section 28K (2) (c)—  
Omit the paragraph, insert instead:  
(c) where any lot is subject to a mortgage or covenant charge, the first mortgagee or covenant chargee;
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## SCHEDULE 3

(Sec. 3)

## AMENDMENTS TO PART III OF THE STRATA TITLES ACT 1973

(1) Section 50 (**Variation of strata scheme consequent upon damage to or destruction of building**)—

## (a) Section 50 (1) (a), (a1)—

Omit section 50 (1) (a), insert instead:

(a) any proprietor of a lot the subject of the strata scheme concerned;

(a1) where any such lot is subject to a mortgage or covenant charge—the mortgagee or covenant chargee; or

## (b) Section 50 (6) (c)—

After “charges”, insert “, covenant charges”.

(2) Section 51 (**Termination of strata scheme**)—

## (a) Section 51 (1) (a), (a1)—

Omit section 51 (1) (a), insert instead:

(a) any proprietor of a lot the subject of the strata scheme concerned;

(a1) where any such lot is subject to a mortgage or covenant charge—the mortgagee or covenant chargee; or

## (b) Section 51 (1A)—

After section 51 (1), insert:

(1A) An application for an order under subsection (4) may be made by an authority having the benefit of a positive covenant only when the authority applies under section 88I of the Conveyancing Act 1919 for an order that the land the subject of the strata scheme concerned be transferred to the authority.

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## SCHEDULE 4

(Sec. 3)

## AMENDMENTS TO PART IV OF THE STRATA TITLES ACT 1973

(1) Section 57 (**Meetings of body corporate**)—

## (a) Section 57 (6A)—

Omit “or mortgagee of a lot”, insert instead “of a lot or, where the lot is subject to a mortgage or covenant charge, the mortgagee or covenant charge”.

## (b) Section 57 (6A)—

Omit “or mortgagee” where secondly occurring, insert instead “, mortgagee or covenant charge”.

(2) Section 58 (**By-laws**)—

## (a) Section 58 (5)—

After “any mortgagee”, insert “or covenant charge”.

## (b) Section 58 (5)—

After “mortgagee,” insert “covenant charge,”.

(3) Section 60 (**Power of body corporate to carry out work**)—

## Section 60 (2), (3) (a)—

After “mortgagee” wherever occurring, insert “or covenant charge”.

(4) Section 62 (**Distribution of surplus moneys in administrative fund or sinking fund**)—

## (a) Section 62 (2)—

After “mortgage”, insert “or covenant charge”.

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SCHEDULE 4—*continued*

AMENDMENTS TO PART IV OF THE STRATA TITLES ACT 1973—  
*continued*

(b) Section 62 (2) (a)—

Omit the paragraph, insert instead:

- (a) where the mortgagee or covenant chargee furnishes to the body corporate a consent for the payment to be made to the mortgagee or covenant chargee in writing executed by the proprietor and each other mortgagee and covenant chargee, if any, entered in the strata roll as having the benefit of a mortgage on or a covenant charge affecting that lot—to the firstmentioned mortgagee or covenant chargee;  
or

(c) Section 62 (2) (b)—

Omit “enrolled mortgagee of”, insert instead “mortgagee and covenant chargee, if any, entered in the strata roll as having the benefit of a mortgage on or a covenant charge affecting”.

(d) Section 62 (3)—

Omit the subsection, insert instead:

- (3) Where a body corporate has passed a unanimous resolution referred to in subsection (1) and no consent has been executed as referred to in subsection (2) (a) or (b), the proprietor or any enrolled mortgagee or any covenant chargee entered in the strata roll may make an application to the appropriate court for an order under subsection (4).

(e) Section 62 (4) (b)—

After “mortgagee”, insert “or covenant chargee entered in the strata roll”.

(f) Section 62 (4) (c)—

Omit “and any enrolled mortgagee”, insert instead “, any enrolled mortgagee and any covenant chargee entered in the strata roll”.



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SCHEDULE 4—*continued*

AMENDMENTS TO PART IV OF THE STRATA TITLES ACT 1973—  
*continued*

(5) Section 67 (**Supreme Court's power to authorise certain acts during initial period**)—

Section 67 (2) (b)—

Omit the paragraph, insert instead:

- (b) each registered mortgagee and enrolled mortgagee, if any, of every such lot and any covenant chargee having the benefit of a covenant charge affecting any such lot; and

(6) Section 69 (**Strata roll**)—

(a) Section 69 (3) (c), (c1)—

After “mortgagee of” wherever occurring, insert “, or covenant chargee having the benefit of a covenant charge affecting,”.

(b) Section 69 (3) (c), (d)—

After “mortgage” wherever occurring, insert “or covenant charge”.

(c) Section 69 (3) (c)—

After “81 (3)”, insert “or (4A)”.

(d) Section 69 (3) (c)—

After “mortgages”, insert “or covenant charges”.

(e) Section 69 (3) (d)—

After “81 (4)”, insert “, (4A)”.

(f) Section 69 (3) (e)—

After “mortgagee”, insert “or covenant chargee”.

(7) Section 80 (**Duties of proprietors and occupiers of lots**)—

After “mortgagee”, insert “or covenant chargee”.

*Strata Titles (Covenants) Amendment 1986*SCHEDULE 4—*continued*AMENDMENTS TO PART IV OF THE STRATA TITLES ACT 1973—  
*continued*(8) Section 80A (**Power for individuals to act for corporate proprietors, mortgagees, etc.**)—

## (a) Section 80A (1)—

After “lot”, insert “or as a covenant chargee having the benefit of a covenant charge affecting a lot”.

## (b) Section 80A (2)—

Omit the subsection, insert instead:

(2) Where an individual exercises or performs a power, authority, duty or function with respect to a lot which the individual is authorised under subsection (1) to exercise or perform by a proprietor, mortgagee or covenant chargee, the power, authority, duty or function shall be deemed to have been exercised or performed with respect to the lot by the proprietor, mortgagee or covenant chargee.

## (c) Section 80A (3)—

After “a lot”, insert “or a covenant chargee”.

(9) Section 81 (**Notices to be given by proprietors, mortgagees, etc.**)—

## (a) Section 81 (3) (b)—

After “lot”, insert “or covenant charges affecting the lot”.

## (b) Section 81 (4A)—

After section 81 (4), insert:

## (4A) After the registration of—

(a) a covenant charge affecting a lot, the covenant chargee may give to the body corporate written notice which shall identify the lot and—

(i) specify the name of the covenant chargee in full, the address for service of notices on the covenant chargee and the date of registration of the covenant charge; and

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SCHEDULE 4—*continued*

AMENDMENTS TO PART IV OF THE STRATA TITLES ACT 1973—  
*continued*

- (ii) specify any mortgages of the lot or other covenant charges affecting the lot which have priority over the covenant charge referred to in the notice; or
  - (b) a discharge of a covenant charge affecting a lot, the proprietor of the lot may give to the body corporate written notice of the discharge which shall identify the lot and—
    - (i) specify the date of registration of the discharge; and
    - (ii) bear written confirmation by the covenant chargee of the discharge.
  - (c) Section 81 (6)—

After “mortgagee” wherever occurring, insert “or covenant chargee”.
- (10) Section 83 (**Insurance of buildings**)—

Section 83 (4)—

After section 83 (3), insert:

  - (4) Where a body corporate is required by a positive covenant to insure the building, an order shall not be made under this section until—
    - (a) at least 21 days after the Commissioner has served notice on the authority having the benefit of the covenant of the intention to make the order; and
    - (b) the Commissioner has considered any representations made during those 21 days to the Commissioner by the authority with respect to the intended order.
- (11) Section 86 (**Insurance of mortgaged lot**)—
  - (a) Section 86 (1)—

After “mortgages of” wherever occurring, insert “and any covenant charges affecting”.

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SCHEDULE 4—*continued*

AMENDMENTS TO PART IV OF THE STRATA TITLES ACT 1973—  
*continued*

(b) Section 86 (1) (a) (i)—

After “mortgagees”, insert “and any covenant chargees”.

(c) Section 86 (3) (b)—

Omit “mortgage”.

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SCHEDULE 5

(Sec. 3)

AMENDMENTS TO PART V OF THE STRATA TITLES ACT 1973

(1) Section 114A—

After section 114, insert:

**Order enforcing positive covenant**

114A. (1) Where, pursuant to an application by an authority having the benefit of a positive covenant for an order under this section, the Commissioner considers that the body corporate for the strata scheme to which the application relates or any proprietor has failed to comply with an obligation imposed by the covenant and relating to the maintenance, repair or insurance of the building, the Commissioner may order the body corporate or proprietor to comply with that obligation.

(2) Where an authority has been refused an injunction under section 88H of the Conveyancing Act 1919, the Commissioner may not make an order under this section to the same effect as the injunction refused.

(2) Section 125 (**Order varying amount of insurance to be provided**)—

Omit “or an enrolled mortgagee of a lot”, insert instead “, an enrolled mortgagee of a lot or an authority having the benefit of a positive covenant”.

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SCHEDULE 5—*continued*

AMENDMENTS TO PART V OF THE STRATA TITLES ACT 1973—  
*continued*

- (3) Section 127 (**Order appointing managing agent to exercise or perform certain powers, etc.**)—
- (a) Section 127 (1) (b1)—
- After section 127 (1) (b), insert:
- (b1) a duty is imposed on a body corporate by a positive covenant;
- (b) Section 127 (1) (f)—
- Omit “or” where lastly occurring.
- (c) Section 127 (1) (f1)—
- After section 127 (1) (f), insert:
- (f1) in the case referred to in paragraph (b1)—on the application of the authority having the benefit of the positive covenant; or

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SCHEDULE 6

(Sec. 3)

AMENDMENTS TO PART VI OF THE STRATA TITLES ACT 1973

- (1) Section 146 (**Other rights and remedies not affected by this Act**)—
- Section 146 (1)—
- After “corporate”, insert “or covenant chargee”.
- (2) Section 151 (**Apportionment of statutory charges**)—
- Section 151 (1)—
- After “Act” where secondly occurring, insert “(including the registration of a covenant charge)”.

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SCHEDULE 6—*continued*

AMENDMENTS TO PART VI OF THE STRATA TITLES ACT 1973—  
*continued*

(3) Section 153 (Service of documents on body corporate, etc.)—

Section 153 (3)—

After “a lot”, insert “or on a covenant chargee having the benefit of a covenant charge affecting a lot”.

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SCHEDULE 7

(Sec. 3)

AMENDMENTS TO SCHEDULE 2 TO THE STRATA TITLES ACT  
1973

(1) Part 1 (Meetings other than first annual general meeting)—

(a) Clause 1 (General meetings of body corporate)—

(i) Clause 1 (4) (a)—

Omit “first mortgagee of a lot”, insert instead “, where the strata roll shows that the lot is subject to a mortgage or covenant charge, each first mortgagee and covenant chargee”.

(ii) Clause 1 (4) (b)—

Omit “of a lot”, insert instead “or covenant chargee”.

(iii) Clause 1 (6) (c) (i)—

Omit the subparagraph, insert instead:

- (i) in the case of a proprietor of a lot subject to a first mortgage or a covenant charge shown on the strata roll, only if the mortgagee or, if a covenant charge is shown on the strata roll as having priority to the mortgage or there is no mortgage, only if the covenant chargee refuses or neglects to exercise the voting power conferred by this Part;

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SCHEDULE 7—*continued*

AMENDMENTS TO SCHEDULE 2 TO THE STRATA TITLES ACT  
1973—*continued*

(iv) Clause 1 (6) (c) (ii)—

After “or first mortgagee”, insert “or in respect of which the person is a covenant chargee”.

(b) Clause 2 (**Persons entitled to vote at general meetings**)—

Clause 2 (2)—

Omit “a first mortgagee of a lot, as shown on the strata roll, or, where the first mortgagee is a corporation, the company nominee, as shown on that roll, of that corporation”, insert instead:

where a lot is subject to a mortgage or a covenant charge, or to both, shown on the strata roll—

- (a) the mortgagee or, if the mortgagee is a corporation, the company nominee, as shown on that roll, of that corporation; or
- (b) the company nominee, as shown on that roll, of the covenant chargee,

under the mortgage or covenant charge shown on that roll as being first in priority.

(c) Clause 14 (**Requisition for motion to be included on agenda for general meeting**)—

Clause 14 (2)—

Omit “who but for the existence of a mortgage over his lot”, insert instead “of a lot who, but for the fact that the lot is subject to a mortgage or covenant charge,”.

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SCHEDULE 7—*continued*

AMENDMENTS TO SCHEDULE 2 TO THE STRATA TITLES ACT  
1973—*continued*

(2) Part 2 (First annual general meeting)—

(a) Clause 3 (Notice of meeting and contents thereof)—

(i) Clause 3 (1)—

Omit “first mortgagee of a lot”, insert instead “, where the strata roll shows that the lot is subject to a mortgage or covenant charge, each first mortgagee and covenant chargee”.

(ii) Clause 3 (1) (b) (i)—

Omit the subparagraph, insert instead:

- (i) in the case of a proprietor of a lot subject to a first mortgage or a covenant charge shown on the strata roll, only if the mortgagee or, if the covenant charge is shown on the strata roll as having priority to the mortgage or there is no mortgage, only if the covenant chargee refuses or neglects to exercise the voting power conferred by this Part;

(iii) Clause 3 (1) (b) (ii)—

After “or first mortgagee”, insert “or in respect of which the person is a covenant chargee”.

(iv) Clause 3 (2)—

Omit “or first mortgagee of a lot”, insert instead “, first mortgagee or covenant chargee”.

(v) Clause 3 (3)—

Omit “Where it is served on a first mortgagee of a lot”, insert instead “Where the lot to which the notice relates is subject to a mortgage or covenant charge and the notice is served on the mortgagee or covenant chargee”.



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SCHEDULE 7—*continued*

AMENDMENTS TO SCHEDULE 2 TO THE STRATA TITLES ACT  
1973—*continued*

(b) Clause 4 (**Restrictions on submitting motions**)—

Clause 4 (3)—

Omit “who but for the existence of a mortgage over his lot”, insert instead “of a lot who, but for the fact the lot is subject to a mortgage or covenant charge,”.

(c) Clause 5 (**Persons entitled to vote at meeting**)—

Clause 5 (2)—

Omit “a first mortgagee of a lot, as shown on the strata roll, or, where the first mortgagee is a corporation, the company nominee, as shown on that roll, of that corporation”, insert instead:

where a lot is subject to a mortgage or a covenant charge, or both, shown on the strata roll—

(a) the mortgagee or, if the mortgagee is a corporation, the company nominee, as shown on that roll, of that corporation; or

(b) the company nominee, as shown on that roll, of the covenant chargee,

under the mortgage or covenant charge shown on that roll as being first in priority.

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