

**STRATA TITLES (REGISTRATION OF PLANS) AMENDMENT
ACT 1989 No. 173**

NEW SOUTH WALES



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**STRATA TITLES (REGISTRATION OF PLANS) AMENDMENT
ACT 1989 No. 173**

NEW SOUTH WALES



Act No. 173, 1989

An Act to amend the Strata Titles Act 1973 with respect to the registration of plans, including plans of buildings that encroach on other land; and for other purposes. [Assented to 14 December 1989]

See also Strata Titles (Leasehold) (Registration of Plans) Amendment Act 1989.

Strata Titles (Registration of Plans) Amendment 1989

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Strata Titles (Registration of Plans) Amendment Act 1989.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).

(2) Section 5 commences on the date of assent.

Meaning of "Principal Act"

3. The Strata Titles Act 1973 is referred to in this Act as the Principal Act.

Amendment of Strata Titles Act 1973 No. 68

4. The Principal Act is amended as set out in Schedules 1 and 2.

Transitional provision

5. An amendment of the Principal Act does not apply in relation to a plan lodged for registration under the Principal Act before the commencement of the amendment.

**SCHEDULE 1 - AMENDMENTS RELATING TO
COUNCIL REQUIREMENTS**

(Sec. 4)

Section 37 (Approval of proposed strata plans, certain subdivisions and conversions of lots into common property):

(a) Section 37 (1) (b) (i):

After "that Act;", insert "and".

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SCHEDULE 1 - AMENDMENTS RELATING TO COUNCIL
REQUIREMENTS - *continued*

- (b) At the end of section 37 (1) (b) (iii), insert:
- ; and
 - (iv) the land proposed to be subdivided is not the subject of any outstanding order, requirement or notice made or given under a provision referred to in subsection (1B); and
 - (v) if the local council has made an order under section 317D of the Local Government Act 1919 in relation to the land proposed to be subdivided - the order has been complied with or an objection to the order has been made under section 317F of that Act and the Land and Environment Court has refused to confirm the order.
- (c) After section 37 (1A), insert:
- (1B) For the purposes of subsection (1) (b) (iv), the provisions referred to in this subsection are:
- (a) section 61 (3) and (4), and section 65, of the Public Health Act 1902; and
 - (b) section 281 (1) (a) and (b) of the Local Government Act 1919; and
 - (c) section 281 (2) (a), (d), (j), (k) and (n) of the Local Government Act 1919; and
 - (d) section 281 (3) (a), (b) and (c) of the Local Government Act 1919; and
 - (e) section 317B of the Local Government Act 1919; and
 - (f) provisions of the ordinances made under the Local Government Act 1919 that are prescribed by regulations made for the purposes of this subsection.
- (d) Section 37 (3) (c):
- Omit "(1) (b)" where firstly occurring, insert instead "(1) (b) (i), (ii) and (iii)".

**SCHEDULE 1 - AMENDMENTS RELATING TO COUNCIL
REQUIREMENTS - *continued***

- (e) Section 37 (4) (b):
Omit "(1) (b)" where firstly occurring, insert instead "(1)
(b) (i), (ii) and (iii)".

**SCHEDULE 2 - AMENDMENTS RELATING
TO ENCROACHMENTS**

(Sec. 4)

- (1) Section 8 (**Registration of strata plans**):
- (a) Section 8 (1) (f) (iv):
Omit "referred to in section 38 (1) (b) or, where eaves or
guttering encroach on land other than a public place, that
an appropriate easement exists", insert instead "that is an
encroachment referred to in section 38 or an
encroachment by the building on to land other than a
public place".
- (b) After section 8 (1), insert:
(1A) If the certificate referred to in subsection (1) (f)
states that there is an encroachment on land other than a
public place, the strata plan must not be registered unless
the certificate also states:
(a) that an appropriate easement exists; or
(b) that it is intended to create an appropriate
easement in accordance with section 88B of the
Conveyancing Act 1919 on registration of the plan.
- (c) After section 8 (4), insert:
(5) If an encroachment referred to in subsection (1) (f)
(iv) on land other than a public place is shown on a
proposed strata plan, the provisions of this Act, other than
those relating to ownership and certification of title, apply:
(a) in the case of so much of an encroachment as is
designated for use with a lot - as if it were part of
the lot; or

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SCHEDULE 2 - AMENDMENTS RELATING TO ENCROACHMENTS - *continued*

(b) in any other case - as if it were common property.

(2) Section 8A (Subdivision of development lots):

(a) Section 8A (2) (e) (iv):

Omit "referred to in section 38 (1) (b) or, where eaves encroach, or guttering encroaches, on land other than a public place, that an appropriate easement exists", insert instead "that is an encroachment referred to in section 38 or an encroachment by the building on to land other than a public place".

(b) After section 8A (2), insert:

(2A) If the certificate referred to in subsection (2) (e) states that there is an encroachment on land other than a public place, the strata plan of subdivision must not be registered unless the certificate also states:

(a) that an appropriate easement exists; or

(b) that it is intended to create an appropriate easement in accordance with section 88B of the Conveyancing Act 1919 on registration of the plan.

(c) After section 8A (4), insert:

(5) If an encroachment referred to in subsection (2) (e) (iv) on land other than a public place is shown on a proposed strata plan of subdivision, the provisions of this Act, other than those relating to ownership and certification of title, apply:

(a) in the case of so much of an encroachment as is designated for use with a lot - as if it were part of the lot; or

(b) in any other case - as if it were common property.

(3) Section 9 (Subdivision of lots and common property):

(a) Section 9 (3) (a):

After "plan", insert "and, if required by the Registrar-General, a location plan".

SCHEDULE 2 - AMENDMENTS RELATING TO
ENCROACHMENTS - *continued*

- (b) Section 9 (3) (c) (iv):
Omit "referred to in section 38 (1) (b) or, where eaves or guttering encroach on land other than a public place, that an appropriate easement exists", insert instead "that is an encroachment referred to in section 38 or an encroachment by the building on to land other than a public place".
- (c) After section 9 (3) insert:
 - (3A) If the certificate referred to in subsection (3) (c) states that there is an encroachment on land other than a public place, the strata plan of subdivision must not be registered unless the certificate also states:
 - (a) that an appropriate easement exists; or
 - (b) that it is intended to create an appropriate easement in accordance with section 88B of the Conveyancing Act 1919 on registration of the plan.
- (d) After section 9 (5), insert:
 - (6) If an encroachment referred to in subsection (3) (c) (iv) on land other than a public place is shown on a strata plan of subdivision, the provisions of this Act, other than those relating to ownership and certification of title, apply:
 - (a) in the case of so much of an encroachment as is designated for use with a lot - as if it were part of the lot; or
 - (b) in any other case - as if it were common property.
- (4) Section 14 (**Alteration of building affecting lot boundary**):
 - (a) Section 14 (1) (d) (ii):
Omit "38 (1) (b) or, where eaves or guttering encroach", insert instead "38 or, if any part of the building encroaches".
 - (b) Omit section 14 (4), insert instead:
 - (4) If an encroachment referred to in subsection (1) (d) (ii) is shown on a building alteration plan, the provisions of

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SCHEDULE 2 - AMENDMENTS RELATING TO
ENCROACHMENTS - *continued*

this Act, other than those relating to ownership and certification of title, apply:

- (a) in the case of so much of an encroachment as is designated for use with a lot - as if it were part of the lot; or
 - (b) in any other case - as if it were common property.
- (5) Section 38 (**Encroachments**):
- (a) Section 38 (1) (a):
After "extent;", insert "and".
 - (b) Omit section 38 (1) (b).
 - (c) Section 38 (2) (b):
Omit "apply to the encroachment as if it were common property.", insert instead:
apply:
 - (i) in the case of so much of the encroachment as is designated on the plan for use with a lot - as if it were part of the lot; or
 - (ii) in any other case - as if it were common property.

[*Minister's second reading speech made in -
Legislative Assembly on 20 September 1989
Legislative Council on 15 November 1989*]