

[Act 2001 No 13]



New South Wales

Strata Schemes Legislation Amendment Bill 2001

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Strata Schemes (Freehold Development) Act 1973* and the *Strata Schemes (Leasehold Development) Act 1986* so as:

- (a) to allow a part strata scheme to be a component of a staged strata development, and
 - (b) to omit a provision that currently prevents a surveyor from endorsing the location plan that must be included with a strata plan lodged for registration when a second or subsequent part strata scheme is part of a development that is being built in stages, and
 - (c) to make certain initial period restrictions inapplicable if the developer still owns all of the lots in the strata scheme at the relevant time, and
 - (d) to allow a revised schedule of unit entitlements to be lodged by the owners corporation at the conclusion of a staged strata development, and
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- (e) to provide for the transfer of common property and certain other dealings by special, rather than unanimous, resolution, and
- (f) to make consequential and other minor changes, including changes by way of statute law revision.

The Bill also makes a consequential amendment to the *Strata Schemes Management Act 1996*.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Strata Schemes (Freehold Development) Act 1973*, *Strata Schemes (Leasehold Development) Act 1986* and *Strata Management Act 1996* set out in Schedules 1–3.

Schedule 1 Amendment of Strata Schemes (Freehold Development) Act 1973

Staged development of part strata schemes

Division 2A of Part 2 of the *Strata Schemes (Freehold Development) Act 1973* sets out a scheme for the development by stages of land (called “development lots”) reserved under a strata scheme for future development and subdivision. Currently, staged development of a stratum parcel (that is, a parcel created by the subdivision of part only of a building) is not permitted. Schedule 1 [1] and [8] contain amendments to permit staged development of stratum parcels.

Schedule 1 [22] and [23] contain amendments so that, if such staged development is contemplated, the strata development contract (that is, the instrument that describes the development that is permitted to be carried out within a development lot) will disclose that fact and that the strata management statement (if any) for the building or site concerned will govern both the strata and non-strata parts.

Schedule 1 [35]–[39] ensure that the covenants implied in the strata development contract for such staged development will apply to the non-strata parts of stratum parcels.

Surveyors certificates

Section 9 of the Act requires a plan intended to be registered as a strata plan to include a location plan. That plan must be endorsed with a certificate given by a registered surveyor in the approved form certifying that each applicable requirement of Schedule 1A to the Act has been met. Clause 5 of Schedule 1A currently prevents the endorsement of such a certificate if a proposed stratum parcel in a building was added after an earlier stratum parcel was created for a part of the building. This prevents a part strata development from being built in stages. Schedule 1 [33] amends Schedule 1A to omit clause 5.

Strata management statements

Section 28R of the Act prevents the creation of a stratum parcel unless a strata management statement is registered for the building and site concerned. Particulars of the statement are required to be recorded in the relevant folios of the Register kept under the *Real Property Act 1900*. The particulars cover the stratum scheme for the part of the building concerned and each part of the building or site that does not form part of the stratum parcel. Schedule 1 [28] amends the section so that, when a strata development that includes stratum parcels is developed in stages and a strata management statement relating to all parts of the development is registered on completion of one stage, it will not be necessary to register further strata management statements when, on completion of further stages, it is sought to create additional stratum parcels.

Dealings during the initial period

The initial period in relation to a strata scheme is the period that commences on the day on which the owners corporation is constituted and ends on the day on which the developer owns less than two-thirds of the unit entitlements. During the initial period the developer owns enough unit entitlements to control the owners corporation. At present, the Act includes a number of restrictions on dealings during the initial period that are designed to ensure that the interests of minority owners are not prejudiced by the developer by requiring a unanimous resolution at a meeting of the owners corporation before such dealings are undertaken. However, the restrictions are superfluous if, during the initial period, the developer owns all the lots.

Schedule 1 [9]–[12] and [18] remove the applicable restrictions concerning registration of a strata plan of subdivision (Schedule 1 [9] and [10]), registration of a notice converting a lot to common property (Schedule 1 [11] and [12]) and registration of any dealing (for example, a transfer, lease or creation of an easement) that affects common property (Schedule 1 [18]) when a developer owns all the lots during the initial period.

Resolution requirements for certain dealings

Schedule 1 [13]–[17] replace the requirement for a unanimous resolution with a requirement for a special resolution (that is, a resolution at a meeting against which not more than one-quarter in value of votes are cast) in relation to certain dealings. The provisions concern, for example, the acquisition of additional common property, the transfer or sublease of common property and the creation or variation of easements, restrictions and positive covenants.

Revised schedule of unit entitlements

Unit entitlements that are allocated to lots represent the comparative value of the lots in a strata scheme. A plan intended to be registered as a strata plan must include a schedule of unit entitlements. At the conclusion of a staged development of a strata scheme the schedule of unit entitlements registered on completion of initial stages of the development may no longer accurately reflect the comparative values of all the lots. Schedule 1 [27] provides for the substitution of the initial schedule with a revised schedule in which units are allocated entitlements on the basis of their market values on completion of the staged development.

Schedule 1 [4], [5], [7], [30] and [31] contain consequential amendments.

Miscellaneous

Schedule 1 [34] inserts an implied covenant into a strata development contract relating to the amounts the developer agrees to pay for reasonable expenses incurred by the body corporate in relation to development expenses.

Schedule 1 [40] contains savings and transitional provisions.

Schedule 1 [3] and [32] contain amendments by way of statute law revision. Schedule 1 [3] amends the definition of *public place* in section 5 of the Act to make it clear that that expression includes land that is a public road. Schedule 1 [32] amends section 158 of the Act (the general regulation-making power) to make it clear that a charge may be imposed for the supply by the Registrar-General of plans and documents under the Act.

Schedule 2 Amendment of Strata Schemes (Leasehold Development) Act 1986

Schedule 2 contains amendments to the provisions of the *Strata Titles (Leasehold Development) Act 1986* that mirror the amendments made in Schedule 1 to the corresponding provisions of the *Strata Titles (Freehold Development) Act 1973* described above.

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Schedule 3 Amendment of Strata Management Act 1996

Schedule 3 contains an amendment to the *Strata Schemes Management Act 1996* that is consequential on the amendments in Schedules 1 and 2 relating to revised schedules of unit entitlement.