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# Buying into a strata scheme?

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## Checklist

How much do you know about buying a unit in a strata scheme?

Do you:

- know what a strata scheme is?
- know what you own in a strata scheme?
- know about the laws covering strata schemes in NSW?
- know about by-laws?
- know how decisions are made about the building?
- know how much your levies are?
- know what your levies pay for?
- know the rules about parking your car?
- know about the rules for keeping pets?
- understand you are responsible for your guests' behaviour?
- understand what you should insure?
- know there may be lifestyle changes when you move into a strata scheme?
- know what the owners corporation is?
- know how the finances for the building are managed?
- know there may be rules about noise and drying laundry?
- understand rules that may stop you renovating your unit?

*If you can't say yes to questions like these, you need to read this guide.*

## Introduction

This booklet has been prepared to help people gain an understanding of the concept of strata schemes and to highlight some of the important aspects of living in a strata scheme with others. The booklet has been particularly designed to assist those with no previous experience in the strata lifestyle and who may not be fully aware of the differences between strata living and residing in a house.

Strata schemes are in effect small communities where the activities and attitudes of residents can have a significant impact on the satisfaction and enjoyment of others. It is important for people to be aware of their responsibilities and obligations when owning a strata unit.

## What is the NSW legislation covering strata schemes?

The *Strata Schemes Management Act 1996*, which is administered by the Office of Fair Trading, deals with the administration and management of the 62,000 plus strata schemes in existence in NSW.

The *Strata Schemes (Freehold Development) Act 1973*, which is administered by the Department of Lands, covers the registration process and other related matters concerning the creation and development of a strata scheme.

## What is a strata scheme?

A strata scheme is a building, or collection of buildings, where individuals each own a small portion (eg. an apartment or townhouse) but where there is common property (eg. external walls, windows, roof, driveways, foyers, fences, lawns and gardens). Every owner shares ownership of the common property.

The original concept of strata title was to allow people to own their flats in multi-level buildings. It is a means by which a person can buy and own 'property' which might be a substantial distance above ground level. Before strata title, the most common way of buying into a high-rise building was to buy shares in the company which owned the building, thus giving a right to occupy one or more of the flats. This is commonly called 'company title'. There are still many company title buildings in existence.

While it was originally expected that strata schemes would all be vertical blocks of flats, some strata schemes are all on the one level (eg. townhouse and villa developments). Some comprise only two lots. In addition, strata schemes do not only apply to residential developments. There are also commercial, industrial, mixed use, hotel and retirement village strata developments.

## What would I actually own in a strata scheme?

One of the major differences between owning a house and owning a unit (known as a 'lot') in a strata scheme is that the external walls, the floor and roof do not usually belong to the lot owner. These areas are usually common property and the maintenance and repair of these parts of the building is usually the responsibility of the owners corporation. As it is common property, the lot owner is not able to alter, renovate

or damage these areas without permission of the owners corporation.

Before purchasing a strata lot, it is essential that the prospective buyer is clear on where the common property boundaries are. This information is available from the strata plan, which shows the layout of the strata scheme and the common property details. Close attention should be paid to items such as sliding doors leading to balconies, garage doors and balcony railings as strata plans may differ on whether these items are part of the common property or not. Common property boundaries are usually shown on strata plans by thick black lines. Sometimes it may be necessary to refer to the registered strata plan if the boundaries between common property and lots in a strata scheme are unclear. If you wish to obtain a copy or seek interpretation of the registered strata plan of your scheme, please contact the Department of Lands on 9228 6798.

In effect, in most strata schemes, the lot owner owns the inside of the unit but not the main structure of the building. Usually the four main walls, the ceiling and roof and the floor are common property. The dividing walls within the lot (eg. the wall between the kitchen and lounge room), floor coverings such as carpet and fixtures such as baths, toilet bowls, benchtops are all the property of the lot owner. While it is sometimes a hard concept to envisage, a lot owner effectively owns the airspace (and anything included in the airspace) inside the boundary walls, floor and ceiling of the lot.

Airspace can also extend to balconies and courtyards. You should get proper advice about ownership of a tree in the courtyard or responsibility to maintain a pergola covering a balcony or courtyard. They could be in your airspace and therefore, would need to be maintained at your cost.

## What is the impact of sharing the common property in a strata scheme?

There are two main consequences arising from the fact that in a strata scheme, much of the structure of the building/s is common property. Firstly, the permission of the owners corporation has to be obtained before alterations can be done or services like cable television installed. For instance, a lot owner is not allowed to put an additional window in a common property wall without obtaining owners corporation approval. A common property wall is the property of the owners corporation from the surface inside the lot all the way through to the outside surface.

The second important impact is that the common property has to be maintained (eg. regularly painted) and the owners corporation has to meet this expense. To raise the funds for common property upkeep, the owners corporation needs to levy individual lot owners. So, lot owners must be aware of the fact that they will be required to make regular contributions to the owners corporation to cover the maintenance and administration of the strata scheme.

If you are looking at a unit, also have a look at the whole building. Some buildings have high quality and expensive finishes such as polished granite or marble foyers. These must be maintained along with swimming pools, lifts, tennis courts, saunas and gardens.

## What is the owners corporation?

The owners corporation is the body made up by all the owners in the scheme. Each lot owner is part of the owners corporation and has a right to participate in the corporation's decision making. The owners corporation comes into existence immediately a strata plan is registered. At first it

may only be made up of the developer but as each person buys into the scheme, the owners corporation gains more members.

The owners corporation has an executive committee which can make many of the necessary decisions on its behalf. The executive committee can have no more than nine members. It has a Chair, Secretary and a Treasurer. Some owners corporations employ a strata managing agent to carry out some or all of their responsibilities. A strata managing agent must be licensed under the Property, Stock and Business Agents Act.

## Are there any meetings I would have to go to?

While it is not compulsory for any lot owner to attend owners corporation meetings, a strata scheme operates better if those concerned take an interest in its affairs. It is helpful if people are willing to make themselves available for election to the executive committee. There would usually be several meetings of the owners corporation a year although the annual meeting, when levies are set for the coming year and the executive committee is elected, is the only meeting required by law. The executive committee would usually meet more often than the full owners corporation, as there would normally be a number of issues to deal with during the year.

## What sort of expenditure would my levies be used for?

An owners corporation has the same type of expenditure that a conventional householder has. There are council rates, water and electricity charges for common areas, building

and public liability insurance and repairs and maintenance of common areas. In a strata scheme, there is also additional expenditure on workers compensation insurance, building valuations and the resolution of any disputes which may arise within the scheme and other matters related to the running of the scheme.

The law requires that each owners corporation establish an administrative fund and a sinking fund. The **administrative fund** is for the day-to-day operation of the scheme such as paying the gardener, the insurance premiums, photocopying, stationery, stamps and light globes for common areas.

The **sinking fund** is for necessary long-term future expenditure such as painting and replacement of guttering or fencing.

The idea of the sinking fund is to have enough money available when the job needs doing. For many people, this is preferable to an owners corporation imposing a large sudden levy on lot owners when the time comes. Owners corporations are required to plan and estimate their long-term expenditure. Contributions made by a lot owner to the sinking fund are not refundable should the person later move out of the strata scheme (even if the money has not yet been spent on the item the levies were contributed for). It is important to recognise this, as some people do not fully appreciate the fact that every strata scheme will almost certainly at some time in the future be confronted with major capital expenditure and there needs to be money in reserve to pay for it.

Schemes registered after 7 February 2005 are required to make estimates for any likely capital work needed over the next ten years and budget for this in their sinking funds.

Since July 2006, strata plans numbered 50,000 and above have also been subject to this requirement. Older schemes will gradually be brought under the new requirements.

## Do I have to insure the contents of my strata lot?

While there is no obligation to do so, it is highly recommended that all lot owners take out adequate insurance on the contents of the lot that they own. While the insurance that the owners corporation is required to arrange will cover the structure of the building and any fixtures inside lots (eg. sinks, baths, shower trays), other contents belonging to the lot owner such as furniture, electrical appliances, curtains and carpets would not be covered. A lot owner could suffer major losses should their personal property not be insured in the event of a fire or through water damage. You should also know that contents insurance usually covers your paint finishes on walls and ceilings.

## Are there any lifestyle restrictions in a strata scheme?

Many activities that a person living in a freestanding dwelling maybe accustomed to, are more restricted in a strata scheme. Understanding and thinking about these differences before moving into a strata scheme should reduce the likelihood of disputes over these activities later on.

### Keeping animals

Each owners corporation has a by-law on this issue. Generally speaking the by-law will provide one of the following:

- no animals can be kept (other than fish in an aquarium) unless the permission of the owners corporation is first obtained
- no animals may be kept under any circumstances
- a cat, small dog, small caged bird or fish in an aquarium may be kept.

No matter what the by-law is, the keeping of a guide or hearing dog is allowed.

It is important to find out about the keeping animals by-law applying to the scheme before you buy a unit to avoid disappointment or distress later. Make sure the person who gives you information about the by-law in place knows exactly what the by-law provides and do not rely on the word of someone trying to sell you the property.

### **Parking**

No one can park on any part of the common property without the permission of the owners corporation. So, if a lot owner invites a group of friends over for a barbeque, they cannot park where they choose such as on the lawn at the front of the building. If there are not enough visitors' car spaces available, they may have to park in the street. It is important to remember that the lot owner cannot give permission for people to use common property for parking, as this is a matter for the owners corporation.

### **Noise**

A person wishing to have a party or entertain friends in a strata scheme must take into account the peace and enjoyment of other residents. Most strata schemes have by-laws about noise and the behaviour of invitees. Lot owners need to be aware that, when engaging in social activities, they must minimise any adverse effect on others in the scheme. You must also ensure that your visitors do not disturb other people in the strata scheme.

### **Activities of children**

The by-laws applying to the scheme are likely to contain some restrictions on children playing on common property within and outside the building if unsupervised. The purpose of the by-laws

may well be to minimise danger to children, particularly when using hazardous parts of the common property such as driveways and car parking areas. Any relevant by-laws on this issue should be checked if you have children living in the unit. Other than for retirement village strata schemes, by-laws are not allowed to restrict or prevent children living in lots in a strata scheme.

### **Drying of washing**

Most strata schemes have restrictions on washing being dried on balconies where it would be visible from the street or adjoining buildings. There may be communal drying areas and by-laws may place limits on the use of them.

The by-laws applying to the scheme in question should be examined to check what the position is on the drying of washing.

### **Changing the appearance of the lot**

It is usual for there to be a by-law about the appearance of the lot. Mostly, a lot owner is prevented from changing the appearance of the outside of the lot if the change would not be in keeping with the rest of the building. For instance, if all of the front doors or windows of a strata building were white and one person wanted to change the colour of their front door to purple, this could not be done without the permission of the owners corporation.

The colour of window furnishings can also be an issue. If you want brightly coloured curtains or blinds, that will be visible from the outside, the other owners can insist the colour match the rest of the building.

### **Floor coverings**

Most strata schemes have by-laws requiring floors to be either treated or covered to prevent noise being heard

in other lots. While this does not mean that all floors have to be carpeted, there may be an impact on a buyer and any restrictions or requirements in this area should be considered.

## Tenants

While the owners corporation cannot prevent a lot owner from renting their premises, all of the by-laws in place at the strata scheme apply to tenants in the same way as they apply to lot owners. The landlord or leasing agent must provide a copy of the by-laws to new tenants within 7 days of the tenant renting the premises so they are aware of their rights and responsibilities.

### Summary

These are some of the key lifestyle differences in strata living. Unlike living in your own house on a separate block of land, decisions on many matters can't be made without reference to the owners corporation.

## How are disputes within strata schemes resolved?

While it is to be hoped that every strata scheme will operate harmoniously, from time to time disputes arise and action must be taken to resolve them. Sometimes they are matters which the owners corporation is able to resolve, but occasionally matters need to be taken further. The *Strata Schemes Management Act 1996* enables disputes to be resolved through independent mediation and adjudication.

Orders may be made by Adjudicators or the Consumer, Trader and Tenancy Tribunal to resolve the dispute. They may include, for example, orders for the repair or restoration of common property. The Tribunal can also impose monetary penalties for breaches of notices to comply with by-laws.

## How can I obtain more information about strata scheme laws?

Copies of the *Strata Schemes Management Act 1996* and the *Strata Schemes Management Regulation 2005* may be obtained from the Government Information Bookshop (1300 656 986) or from [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)

A number of non-government publications on the strata laws have been published and enquiries should be made at appropriate bookshops/publishers if you are interested in this information.

For general information about the strata management laws, visit [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au) or contact Fair Trading on 13 32 20.

## What should I do before signing a contract?

You should get professional advice about the complexities involved in buying property. If you are interested in buying a strata unit, it is essential you look at the records of the owners corporation and know as much as you can about the maintenance of the building. In particular, you should consider how much it may cost and whether there are signs that money needs to be spent soon. Sometimes your solicitor or conveyancer will arrange this for you but not always. There are companies which specialise in inspecting strata scheme books and they know what to look for.

You can inspect the records yourself (upon payment of the necessary inspection fees) and the owners corporation must make the following records available:

- the strata roll (shows who owns each unit, mortgagees and others who have an interest in lots, general information about the strata scheme, name of the managing agent, insurance details, the by-laws, the unit entitlements for the scheme and each lot)
- general records, such as notices served about disputes or required by legislation, orders, minutes of meetings, accounting records, financial statements, correspondence received and sent, notices of meetings, details of proxies, voting papers
- plans, specifications, certificates, diagrams and other documents if supplied by the original builder at the first annual general meeting
- the certificate of title for the common property
- the last financial statements
- current insurance policies and the receipt for the last premium paid

- other records held by the owners corporation
- records or books of account kept by a strata managing agent.

## Buying 'off the plan'

Sometimes strata units are advertised for sale before the building has been constructed. The design of the building and sketches of its final appearance may be included in advertising material well before occupation is possible. Buying a strata unit under these circumstances is commonly known as buying off the plan.

There are a number of issues to be aware of when buying off the plan because you are entering into a contract to buy a property without having first been able to view and assess the finished product.

### The contract

When buying off the plan, the date for completing the contract is usually not until the building is finished and the strata plan is registered. The buyer usually pays a deposit and the balance is paid at the time of settlement once the building has been completed.

The conditions of the contract should be closely checked. Legal advice should be obtained on the benefits or restrictions provided by the terms of the contract. For example, consideration should be given to whether there are any penalties for withdrawing from the contract. Other questions you might need to ask could include:

- Can I make changes to the finishes in the kitchen and bathroom?
- Can I select appliances such as stoves and dishwashers and items such as floor and wall tiles?
- Can I visit the site during construction?

- If the building is finished earlier than expected, has finance been suitably arranged?

Always read your contract and obtain advice from a lawyer or licensed conveyancer.

## Home warranty insurance

Home warranty insurance is required to be taken out by the builder for residential building work (including the construction of strata units) valued over \$12,000. An exception to this requirement is for the construction of new multi-storey buildings built after 31 December 2003. A multi-storey building is a building of more than three storeys (not including the car park) and containing two or more dwellings.

All other residential building work that is not exempt from the insurance requirements must have home warranty insurance cover in place and a copy of the certificate of insurance must be attached to the contract of sale for the unit or apartment etc. The purpose of the certificate is to show that the necessary insurance has been taken out by the builder.

The insurance is required to insure the buyer against:

- the risk of non-completion of the work, and
- breach of statutory warranties relating to the work.

However, a developer who sells a non multi-storey strata unit off the plan is exempt from attaching a certificate of insurance to the sale contract, but only if the building work has not yet commenced and the contract informs the buyer that:

- the developer selling the property does not need to give a certificate of home warranty insurance if the building work has not yet started
- the law requires there to be home warranty insurance in place for the building work before commencement of the work

- the developer is required to give the buyer the certificate of home warranty insurance within 14 days of the insurance being taken out
- the buyer can cancel the contract of sale if the home warranty insurance certificate is not provided within 14 days of the insurance being taken out.

## Things you should think about

There may be substantial demand for apartment accommodation in popular areas of NSW and it is sometimes easy for developers to market such strata units months before building work is complete.

### *Selling price*

Market prices fluctuate, therefore the resale value of a unit may be different to that of your expectations or predictions. It may be difficult to know whether the selling price will reflect the actual market value of the unit at the time the unit is ready for occupation.

### *Changes to plans*

Changes to the building plans often need to be made during construction. This can sometimes mean that the finished unit is not exactly the same as shown in the original plan.

### *Quality of finish*

When signing the contract to buy the unit, you may not know exactly how it will look when construction is finished nor the precise quality or standard of fixtures and fittings. Sometimes, the quality and standard of fixtures and fittings is very different from how the buyer imagined the unit would look when completed.

### *Management contracts in place*

The developer may have signed the owners corporation into long-term management contracts with caretakers/building

managers. It may be difficult for the owners corporation to cancel these contracts.

### *Exclusive use or special privilege by-laws*

The developer may register by-laws which give exclusive use of desirable parts of the common property (eg. a roof garden) so that they are only accessible to owners of certain lots.

This information may not be available at the time the sale of the lots off the plan is advertised. Such by laws could have a big impact on the value of individual lots.

### *Unit entitlement*

The unit entitlement of the various lots (which determines voting power at meetings and the required levy contributions) may not be displayed or even known at the time the units are advertised for sale.

#### Summary

Remember that when you buy off the plan, you are paying for a unit where the finished product may be slightly different from your expectations.

The Office of Fair Trading recommends that potential off the plan buyers think carefully about these matters before entering into a contract to buy a strata unit that has not been built. Caution should be exercised and appropriate legal and other advice should be obtained before signing any documents or paying any money.