

Strata reforms gunned down

July 2, 2014

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Proposed pro-pets changes to standard by-laws are one of the reforms that have been put on hold for 18 months. *Photo: Domino Postiglione*

The NSW Government has put on hold [strata law changes](#) that were due to come in this month - including allowing a majority of owners to [sell units from under reluctant owners](#), as well as making it easier for owners to keep pets.

Only last year, it was suggested that the changes to the Strata Schemes Management Act - some controversial, many common sense - would be in force by July 1.

Instead the final Bill will not be presented to parliament until early next year with enactment intended for the beginning of 2016, at the earliest, assuming the Government survives the next State election, due next March.

The official reason in a press release from the Fair Trading ministry is that the Government wants to bring changes to the Community Title laws up to speed so that all the reforms can go through at the same time.

But strata insiders claim the real reason for the delay is anticipated opposition in the Upper House from Labor, the Shooters and other cross-bench members.

"The Owners Corporation Network supports government taking time to draft effective laws to guide us through the next 50 years of strata living," says Karen Stiles, executive officer of the strata owners' peak body. "But it would be a travesty if the delay signals the demise of the excellent early inspection and defects bond initiative."

One of the proposals in the postponed reforms is a 2 per cent bond paid by developers to offset any claims for defects that might arise when the buildings are completed.

The strata law reform process has not been helped recently by a procession of Fair Trading ministers passing through the office., which began earlier this year when Anthony Roberts, the architect of the new strata Act, was elevated to Energy.

His successor, Stuart Ayres, was only in the seat briefly before being promoted to Police Minister in the Cabinet reshuffle that followed the Barry O'Farrell resignation. As a member of the Upper House, the current incumbent, Matthew Mason-Cox, may have a keen sense of the political obstacles the reforms face there.

The main focus of opposition to the Bill is the controversial "collective sales" proposal that will allow 75 per cent of owners in a building to agree to sell the block to developers, even if a minority of owners don't want to leave their family homes.

As it stands, there has to be a unanimous vote by all owners before a strata scheme can be "extinguished" and the building sold, leading to



Illustration: Shakespeare.

claims of opportunist hold-outs blocking sales in the hope of making a killing, as well as deep reluctance from people who simply don't want to leave.

The pro-sales lobby points to old buildings that are literally crumbling, costing their owners a lot of money to maintain, which could be replaced by more modern, safer and healthier buildings housing more people.

Other changes put on the backburner for another 18 months (at least) include;

- pro-pets changes to standard by-laws,
- a "defects bond" being lodged by developers to try to keep disputes out of court
- dealing with proxy farming - where one owner or group rules unchallenged using votes of uninterested and disengaged owners
- new rules on commissions paid to strata managers for organising mandatory insurance coverage
- protection for new owners from unfeasible claims of low levies to encourage sales.

These are just a small part of a raft of proposals intended to bring strata laws up to speed with how people live in units in the 21st Century, including online meetings and electronic voting.

The long-awaited strata law changes were first mooted back in 2011 and the official process started in December that year with an online consultation program on which the proposed legislation was based.

The delay is seen as another blow to apartment owners who saw the Home Building Amendment Act slip through parliament last month, bringing with it a redefinition of building defects which experts say could wipe out legitimate claims.

According to strata lawyer Christopher Kerin (among others), the major concern is the newly created definition of a "major defect" which must tick all of the following boxes:

- It has to be a defect in a "major element" (including fire safety, waterproofing and load bearing structural elements)
- be attributable to defective design, faulty work or defective materials
- it must stem from non-compliance with the structural performance requirements of the National Construction Code
- and it must be likely to cause the inability to inhabit or use the building for its intended purpose or threaten the collapse of any part of the building.

This definition of a "major defect" replaces "structural defect" when it comes to claiming statutory warranties and critics say the criteria are now too restrictive.

"The former category of structural defect ... was defined much more loosely and only required actual or a likelihood of physical damage to the building or any part of the building," says Kerin.

More urgently, claims for defects now defined as 'non-major' will have to be made within two years, rather than the six-year limit that previously applied.

"The reforms are largely retrospective," says Kerin. "So buildings more than two years old ... will lose the benefit of statutory warranties entirely unless the owners corporation has already commenced proceedings."

"Consumers are very substantial losers under these changes," says Karen Stiles. "The government has effectively protected builders from responsibility for shoddy work, and sentenced new apartment owners to pay dearly for the repair of defects caused by cost cutting and incompetence.

"It's time government stopped using economic growth arguments to support bad building practices, and started protecting disaffected owners in defects riddled apartment buildings."

The Home Building Amendment Act is expected to come into force at the end of this year.

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