



STRATA LAW – THE RULES ARE CHANGING

With proposed reforms to NSW strata laws, the property-owning landscape within the state could be significantly altered. But will those changes be for better or worse? ANGELA YOUNG

There's been a lot happening in the world of strata rules in New South Wales of late. Draft legislation was released in July proposing a raft of changes, and comments and submissions had to be submitted by August 12.

PROPOSED REFORMS

The NSW Government describes its moves to make changes as bringing strata laws “into the 21st century”. According to the data, the state's strata schemes are worth a whopping \$350 billion and more than two million industry professionals, residents and strata owners could be affected by the reforms.

So, what's being proposed? There are several things, but the issue that really

hit the headlines recently was that of “collective sale and renewal”. Among the ideas put forward for this particular reform was a change enabling just 75 per cent of owners within a strata title to effect change, i.e. end the strata scheme and sell up or rebuild.

As soon as the proposals became public, headlines predicting old ladies abandoned on streets began to emerge. Greens NSW MP John Kaye voiced his disapproval early on, describing it as “a massive gift for the greedy”.

“Politically powerful real estate developers have won the argument and are set to be gifted a much lower barrier to getting their hands on older unit blocks,” he said.

“This is the law that the Property

Council would have written to set their members up for windfall profits.”

According to the government, the idea is to empower lot owners “to realise the full potential of their strata building and make their own decisions in a democratic and transparent way”, and to enable urban renewal and consolidation. It's also keen to stress that checks and balances will be in place to prevent unfair circumstances, including compensation for lot owners and a free advisory service and advocacy program for vulnerable owners.

Kaye, however, remains unconvinced. “The promise of advice and advocacy services is window dressing. A determined and well-cashed-up developer will have no difficulty in

winning over 75 per cent of owners, leaving the others powerless and evicted, regardless of the advice and so-called support they receive.”

IS ANYONE SAFE?

The Combined Pensioners and Superannuants Association (CPSA) of NSW has also called out the proposals, predicting that they'll dramatically reduce the security of tenure of owner-occupiers, young, old and middle-aged.

“Particularly hard hit will be the ‘little old ladies’, who won't be able to live out their last years in their apartment,” a spokesman for the CPSA says.

“Unable to afford to buy in the same area, they'll most likely be forced into a nursing home, develop depression and die within a very short period.”

Allison Benson, of Kerin Benson Lawyers, says that many of the reports and comments have simply been scaremongering.

“A lot of older people are already in housing as opposed to units,” she says. “People do downsize but they downsize as they get older. They're generally downsizing to the newer schemes, so I think there's a lot of beat-up about kicking out the ‘little old ladies’.

“All of my family and friends, when their parents have resettled, it's been into smaller units, newer units, better accessible units.”

Benson also points out that even under the current legislation, it's possible for the same people to be affected.

“There's an avenue at the moment to go to the Supreme Court to force collective sale, provided there's sufficient compensation,” she says. “They keep saying ‘it has to be unanimous at the moment’ – well, yes and no. It does, if you don't want to go to the Supreme Court – and going to the Supreme Court is a costly exercise, so it's not something to be done lightly – but the existing law doesn't actually say that a building has to be of a certain age or state of disrepair, you can do it to any building.

“Worst case scenario, if you've got a scheme involving a building that's 100 years old, was converted to strata title (which a lot of them were, not so well, after the post-war years), and it just hasn't been maintained properly over the years... and if you've got, say, an eight-lot scheme with seven owners saying ‘this is getting to be a safety issue, we've got parts of the roof falling off, we want

to redevelop this’, they can actually go to the Supreme Court. And that would be a very good case at the moment... as long as you provided sufficient compensation for ‘the little old lady’.”

Overall, Benson says she sees the collective sale/renewal process reforms as a “huge opportunity to develop smaller blocks”.

METHODOLOGY

The route the new system would take is pretty straightforward.

“People have to opt into the scheme first of all, so it doesn't automatically apply,” Benson explains.

“Fifty per cent of lot owners then have to say ‘yep, we think urban renewal or urban sale could be a good idea’. Next, a plan gets developed, so you've got a proposal for a sale or renewal, and the executive committee have a look at that and take it to a general meeting. If half of the owners agree, then a new committee is elected and they're just looking at the renewal or sale program.

“There's a list of set information they have to look at, and they're allowed to get in professional advisers, so they can get their accountants, they can get their solicitors, they can get developers, they can get building experts in to help them... they can do what they need to do to get this plan together. Then it goes back to the general meeting.

“Owners have got 60 days to consider it and then after the 60 days – in between 60 days and 12 months – they have to get 75 per cent support.”

Unit entitlement can get a little confusing, as it's not simply one unit equals one vote.

“Unit entitlements are set when the scheme's registered according to the value of that property relative to the other properties in the building,” Benson says. “If you've got a penthouse and you're in this five-lot building, and level three takes up all of the penthouse, and all of the other lots are put into levels one and two, then the lot on the penthouse is going to be worth a heck of a lot more than the others, and gets more say.”

A really typical scenario, according to Benson, involves strata from the early days.

“When they first came in, you had small-scale developers,” she says. “You get a block of four and each has 25 per cent unit entitlement. So, if one person

PETS ALLOWED

With the outright banning of pets no longer on the agenda for owners corporations, there could well be more and more fur babies moving in, with all the extra craziness that can entail.

Lawyer Allison Benson tells of the case of a wolfhound who had to fight for her right to stay.

“It was a massive building and she was scaring kiddies in the lift!” she recalls.

In this case, however, she was a very nice dog and, with the vet's character reference to back her up, she was allowed to stay. And yes, you did read that right.

“This is becoming more and more common,” Benson says. “Schemes now require character references for your pets, from at least two different sources. It's not unusual whatsoever.”

So, if the executive committee says they'd like to see character references and someone's unable to provide them (maybe the dog has biting issues or starts biting people in the scheme), it would then be perfectly reasonable for the committee to turn it down.

With references, however, Fido should be entitled to move in just about anywhere (within reason)!



holds out, under the new scheme, tough luck. They've only got 25 per cent.

"That sounds horrible, but it's tough cookies, basically!"

Of course, if two people hold out in this scenario, then the whole process is stalled. Which is why, Benson says, she's never been a fan of the smaller developments.

"Two-pack schemes – there's no way I'd ever buy into one, unless I had a clear majority vote," she says. "You'd only need to have the slightest disagreement with your neighbour and that's it, everything gets stuck."

The smaller complexes actually make up most of the stock in Greater Sydney, as indeed do pre-1980 titles.

"Apparently one third of the schemes in the Greater Sydney area were registered before 1980," Benson explains, citing the City Futures interim report *Renewing the Compact City*, "so we've got a pretty old housing stock there... That really does push the case for urban redevelopment"

■ OTHER AMENDMENTS

Another proposed change concerns the setting up of a new strata scheme (i.e. for a newly developed block).

"When the new bills come through, the management of the strata scheme changes slightly, so that it's more owners corporation skewed, not developer skewed," Benson says.

Developers are known for placing their own strata manager on nice long contracts at the earliest opportunity, which should no longer be the case.

They also must disclose that they're related to the developer, if they are, as well as their commission.

The giving of gifts is an area the government would like to crack down on, though Benson feels any effects here could be minimal.

"They can't accept gifts [but] that's not going to stop them!... Most strata schemes expect Christmas gifts," she

“It's easier to renovate, there's increased transparency with finances... there are better ways to vote.”

ALLISON BENSON

says. "Their tradies won't necessarily give them a gift, but if they have anything wrong with their own homes, the tradies will just turn up free of charge. That's just what happens."

However, the new regulations should be able to stop the large Christmas gifts. Benson cites the example of a law firm that gave out iPads to strata managers: "[They] just walked in and started handing out iPads. They were quite new, so they were about \$1,000 a pop!"

"It's not all of them, and most people genuinely do a good job," she stresses, "but there's a culture of entitlement there, so any capping of that and any disclosure is good."

A particularly good prospect for investors that would like to get in and do a quick flip is the change to the owner renovation by-laws. While the new regulations aren't entirely clear, it seems some things that were once considered a minor renovation have now been downgraded.

Benson uses an example of ugly architraves. Under the old regime, approval would need to have been sought to remove such a thing, if it was

on a common property wall. Under the new scheme, however, approval will no longer need to be sought.

Another example, and a better one for flippers, is the introduction of hard floors, which can be a pretty significant change.

"Under the current regime, you'd need a special resolution, a works by-law, so you need 75 per cent of people voting in your favour (or not more than 25 per cent against).

"Now, they're going to call that a minor renovation to install a timber floor, for instance, and you only need 50 per cent of people voting in your favour. For developers and investors, that's quite good because it makes the place look so good, but for the people actually living there, the hard surface flooring just has all sorts of issues.

"You've got to have a proper acoustic base to build on," she says, describing a family who moved into a unit in Coogee and spent more than \$36,000 trying to solve the "drumminess" of the flooring they inherited, with no fix in sight.

"If you're going to do it, flip it quickly and get the hell out of there!"

■ ANIMAL MAGIC

Proposed amendments to pet by-laws should make it much easier for residents to own pets within a strata, which of course opens up the potential for landlords to offer "pet-friendly" rentals.

"This one's an interesting one," Benson says. "They're moving any reference to bans, or the banning of pets. The scheme can still say 'we don't want to have pets', but currently there are options when you register a plan (option one is pets are banned, option two is pets are allowed on reasonable request) so this one takes out any talk about a ban."

Essentially, then, if residents want to keep an animal in their property, the owners corporation can't unreasonably

refuse that request. Given that many landlords are now wising up to the fact that a pet-friendly rental tends to be a sought-after one, it's another win for the investor.

Parking is another area being tackled in the reforms, though Benson feels they too are unlikely to have much impact.

"What's proposed is that owners corporations can go to their local council and have an arrangement whereby council can police, like it's their street, their strata scheme, and fine people, do everything that council is normally entitled to do.

"Personally, I don't see that as working. I know parking is a big issue, particularly where you're near a hospital or a shopping centre, or even the beach, but council don't have the resources half the time to do their own work.

"It's a bit of a toothless tiger, I think, that one. Essentially, they're getting council rangers, and they're going to have to pay for that.

"If a scheme is currently not going to be putting in place barriers, swipe card access, that sort of thing, because it costs money, I don't necessarily see them spending money with council to enforce their parking by-laws."

A particularly contentious issue being addressed in the reforms is that of smoking on premises.

While Queensland has taken a rather blasé "each to their own" approach, according to Benson, NSW is taking the bull by the horns, saying that smoke drift can be considered a nuisance or hazard to others.

In due course, then, residents could

be banned from smoking on their own balconies – music, no doubt, to many people's ears. Breach penalties (including for smoking) are also set to be hiked up – doubled, in fact – in a bid to make them more effective.

If residents have loud parties, while the notice to comply will still stand (i.e. the first warning), the fine for one offence will now be \$1,100, slightly harder hitting than the current \$550.

■ THE DEFECT BOND

Perhaps the hardest hitting change on the horizon, especially for developers, is the introduction of a "defect bond".

An amount equal to two per cent of the value of a new construction will need to be put aside to pay for any defects discovered in the building within the first two years.

Benson explains: "A developer has to have a qualified person go out and do a building inspection within 12 months, and within 18 to 24 months of the works being completed there has to be a final report.

"That bond is actually used to pay to fix whatever was the problem in those final reports. So, for two years that bond just sits there, basically.

"It's the high-rise units, so it'll be for those that aren't covered by the NSW Homeowners Warranty Insurance, which only applies to blocks under three storeys.

"If you've got a building that's worth \$10 million, that's a fair chunk to be sitting out there."

All in all, Benson sees the proposed changes as a plus for property investors.

GOLDEN OLDIES

Suburbs where more than 50 per cent of the strata schemes were registered before 1980 (and therefore could be prime for some urban renewal!).

- ▶ Ashfield
- ▶ Botany Bay
- ▶ Lane Cove
- ▶ Rockdale

NAME CHANGES

Some of the jargon around strata titles is set to be changed under the reforms.

OLD	NEW
Strata committee	Executive committee
Capital works fund	Sinking fund
Building manager	Caretaker

"Investors are going to come out quite well from this," she says. "It's easier to renovate, there's increased transparency with finances... there are better ways to vote (you can now vote by email). They're the good things that are coming in for owner-investors."

She also predicts no more waiting around for the reforms to take place.

"I think there's a lot of opportunity out there, or will be as soon as this bill comes in, and I think it's likely to pass.

"Next step is I expect to see a bill getting introduced to Parliament. I don't think there's going to be any further consultation, because they've already had three consultation periods."

Best guesses, she says, are that the bill's going to be introduced before the end of term this year, and therefore come into effect late next year, maybe July 1. **API**

THE FIGURES

Some of the key numbers on strata titles in Greater Sydney:

42.5%

OF UNITS AND APARTMENTS ARE RENTED (THEREFORE OWNED BY INVESTORS)

31.4%

OF UNITS AND APARTMENTS ARE OWNER-OCCUPIED

6.9%

OF UNITS AND APARTMENTS ARE SOCIAL HOUSING

674,785

RESIDENTIAL STRATA LOTS AND **68,398** RESIDENTIAL STRATA SCHEMES IN NSW*

45.1%

OF THE RESIDENTIAL STRATA LOTS IN THE WHOLE OF NSW ARE RESIDENT-OWNED*

58.2%

ARE SCHEMES WITH BETWEEN TWO AND 10 LOTS

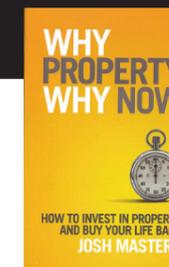
* Figures correct as of December 2013; City Futures Strata Data 2013

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