

2013 Strata Community Australia (NSW) Convention

Speech by the Commissioner for Fair Trading Rod Stowe

'Preparing NSW for Change'

Friday, 1 November 2013

Thank you for the opportunity to speak today.

The theme of this convention is 'Preparing NSW for Change'.

The strata sector is one that has undergone significant change since the original strata laws were introduced in 1961.

I am convinced that this dynamism will continue for decades to come.

In many ways, the current reform of strata and community title laws is playing catch up with an ever changing market and the evolving expectations of the community.

I also acknowledge that the strata management sector has come a long way in recent years.

Today, there are more than fifteen hundred licensed strata managers, providing expert services to more than 60 percent of the 72,000 strata schemes in NSW.

Managing a strata scheme and the people involved can be challenging.

I know that most of you do a fantastic job, in difficult circumstances.

The reforms that the Government is proposing will have an impact on the way schemes are run and on the way you operate your businesses.

However, I am convinced that these reforms are a natural progression for strata.

They will only serve to build confidence in and benefit the management of the sector in the years to come.

As you are all aware, the NSW Government is nearing completion of its landmark consultation on the strata and community title legislation.

It is anticipated that new laws will be in place by the middle of next year, albeit possibly with some transitional arrangements.

The task we have just undertaken has been a massive one.

This is actually the largest such reform consultation process ever undertaken by NSW Fair Trading, in terms of the number of comments and submissions we have received.

This is not surprising given the number of people that will be intimately affected by changes to these laws.

Owners, residents and industry participants have argued that the laws are outdated and do not meet the current or future needs of the sector in an efficient and effective way.

The laws are seen as overly formal and complex, creating unnecessary disputes and potentially hindering the future growth of the sector.

It is the Government's aim to create a lasting framework that will meet the needs and expectations of the sector for the next fifty years.

The reforms that the Government has developed are focused on improving the everyday things that people living and working in strata care about.

We have listened to business and the community and sought to introduce laws that will streamline processes, improve transparency and accountability, and introduce flexibility to give schemes the power to chart their own future.

These reforms will be far-reaching and will impact everyone involved in the strata sector.

In particular, a number of the reforms will impact the operations of managing agents, and I will focus on those today.

The Minister will address the forum tomorrow to discuss the broader reform package and how the sector as a whole must prepare for change.

The strata sector in NSW is growing and becoming more complex.

We are clearly seeing a long-term trend towards cities becoming denser as people move to urban centres for lifestyle and employment reasons.

With land prices at a premium, strata is the housing choice of the future.

In fact, it has been estimated that by 2040, half of Sydney's housing will be multi-unit dwellings.

Around five new strata schemes are registered every day and we are seeing a trend towards larger and more complex strata buildings.

About 60 per cent of strata schemes are managed by a licensed strata managing agent and this increases to close to 100 per cent for large schemes.

The services that managing agents provide have a huge impact on the quality of life of those living and working in strata.

Strata managing agents are in a unique position of trust.

They are trusted with helping to run people's homes and investments.

Their advice can have far reaching consequences.

The feedback we received during the review has confirmed that the community expects strata managers to conduct their duties to the highest ethical and professional standards.

Before I outline some of the reforms that the Government is proposing to make, I will give you a bit of insight into the motivation behind them.

Fair Trading regularly receives complaints from individuals and owners corporations about the performance of strata managing agents.

I estimate that a quarter of all strata-related complaints that come to Fair Trading are about managing agents.

The nature of these complaints and comments is varied, but at their heart we often find a lack of transparency and accountability.

Whether these complaints are justified or not, there is clearly a perception that not all agents act in the best interests of their clients at all times.

In particular, we have received a clear message from the community that more needs to be done from a regulatory point of view.

We need to improve accountability and address potential conflicts of interest within the strata sector and in the decision making process.

In fact, addressing conflicts is an underlying motivation behind many of the reforms that the Government will make to the strata laws.

I am sure that the Minister will talk more about this tomorrow.

Let me now run through some of the reforms that will directly impact strata managing agents.

You will note that these reforms are all about improving transparency and accountability.

When entering into a management agreement, agents will be required to disclose any links to the developer and any other potential conflict of interest.

Although this is usually only an issue during the early years of a scheme, it is clearly something that many strata owners are concerned about.

Owners often feel pressured by developers at the first annual general meeting to accept the agent that is presented to them.

This leaves many owners feeling disempowered and cheated as consumers, particularly if there are ongoing disputes with the developer over defects.

This is not a good way for any agent to start a relationship with an owners corporation.

Disclosures must be made if owners are to trust and rely on their agent right from the start.

In fact, trust in those who make decisions in strata is something we must all work towards.

That is why disclosing relationships and potential conflicts of interest will be a key feature of the reforms and will apply to committee members and other decision makers.

We will also prohibit non-owners with a financial interest in the scheme, such as managing agents, letting agents or building managers, from being appointed to the strata committee.

These people may still have an important role in the committee process, such as running the meetings and distributing papers, but they will not have a vote in the committee.

We are also proposing to limit the term of a strata management contract to three years.

Owners have consistently raised concerns that it is difficult to dismiss managing agents, even in cases of extremely poor performance.

In particular, Fair Trading receives regular complaints about long term contracts being entered into at the first annual general meeting with agents who have essentially been chosen by the developer.

Some agency agreements also include terms such as automatic rollovers that make it hard for owners to replace the agent.

Automatic rollovers will no longer be allowed.

We will require strata managers and committee members to make agency agreements available for inspection by any owner or resident on request.

The role of managing agents is often misunderstood.

Owners often do not know what services the agent has been contracted to provide under the agency agreement.

Disclosing the terms of any agreement will help improve understanding.

We will expand the powers of the Consumer, Trader and Tenancy Tribunal to enable orders to be made with respect to agency agreements.

This will allow the Tribunal to make orders where, for example:

- the managing agent has refused or failed to perform in accordance with the agency agreement, or has performed unsatisfactorily;
- the charges payable by the owners corporation under the agreement for services of the agent are unfair; or
- the agreement is harsh, oppressive, unconscionable or unreasonable.

This reform will hold to account those strata managers who do not perform their functions in a satisfactory manner.

And last but not least, we will be seeking to further regulate in the area of third party commissions.

As most of you will be aware, the Government has been considering ways to address conflicted payments under an agency agreement, including commissions paid by insurance companies and service providers.

Fair Trading receives regular complaints from owners corporations that they are being forced by the terms of their agreement to enter into insurance contracts that they feel are not in their best interests.

I understand that this practice has evolved in the strata industry over time and is now wide spread across the industry.

Consequently, I acknowledge that commissions are an important source of income for many businesses.

However, from a consumer perspective, it can be difficult to understand or explain these types of arrangements.

Commissions have the potential to influence the behaviour of managing agents and induce them to make decisions that are not in the best interests of their clients.

Certainly, the current process lacks transparency.

It was made clear through the review that the legislation needs to do more to limit the negative implications associated with such payments.

Strata Community Australia and others have raised concerns about the impact of a complete prohibition on commissions.

The Government has listened to the concerns you've raised and is continuing to work with your association and other stakeholders on a possible alternative approach.

While we will not be backing away from the need to reform the rules around conflicted payments, we are currently exploring options other than a complete ban.

We are considering new ways to enhance disclosure and give owners the information they need to make informed decisions about the service arrangements they are entering into.

This option would result in new legal obligations on strata managers to disclose the circumstances and amount of their commissions at key times.

The Minister will be releasing a position paper in a week or so that will outline the reform proposal in this regard.

From the outset, we have worked with business and the community to achieve a balanced legislative package that represents the interests of all stakeholders.

These reforms, as a whole, will help to ensure confidence in strata decision-making and will further professionalise the strata management sector.

The strata sector is changing and the expectations of owners continue to evolve.

I am confident that many of the reforms that we are putting in place will help to ensure that the strata management sector is well placed to meet the challenges of the future.

Together, we can create a strata sector that is world class, highly regarded and beyond reproach.

In conclusion, I would like to thank Strata Community Australia for inviting me here today.

I appreciate the opportunity to discuss our reform package with so many of you who will be intimately affected by the changes up ahead.

I would also like to take this opportunity to thank Strata Community Australia for its valuable contribution to the reform process and its commitment to the strata services sector.

I encourage you all to embrace change and I wish you all the best for this convention and in your business endeavours.

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