

Passed by both Houses



New South Wales

Strata Schemes Legislation Amendment Bill 2001

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2001*



New South Wales

Strata Schemes Legislation Amendment Bill 2001

Act No , 2001

An Act to amend the *Strata Schemes (Freehold Development) Act 1973* and *Strata Schemes (Leasehold Development) Act 1986* to make further provision with respect to staged development of strata schemes; to make a consequential amendment to the *Strata Schemes Management Act 1996*; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Strata Schemes Legislation Amendment Act 2001*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Acts

Each Act set out in Schedules 1–3 is amended as set out in those Schedules.

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

(Section 3)

[1] Section 5 Definitions

Omit “(not being a lot in a stratum parcel)” from the definition of *development lot* in section 5 (1).

[2] Section 5 (1), definition of “non-strata land”

Insert in alphabetical order:

non-strata land means land that is not subject to a strata scheme.

[3] Section 5 (1), definition of “public place”

Insert “, or land that is a public road (within the meaning of the *Roads Act 1993*)” after “*Local Government Act 1993*”.

[4] Section 5 (1), definition of “schedule of unit entitlement”

Omit “paragraph (b)” from paragraph (a) of the definition.
Insert instead “paragraph (b) and (c)”.

[5] Section 5(1), definition of “schedule of unit entitlement”

Insert at the end of the definition:

, or

- (c) if a revised schedule of unit entitlement has been recorded under section 28Q (5) as the schedule of unit entitlement in substitution for a schedule of unit entitlement referred to in paragraph (a) or (b), the schedule so recorded.

[6] Section 7 Subdivision

Insert at the end of section 7 (2B):

Note. See section 8A for subdivision of land that is a development lot.

[7] Section 8 Registration of strata plans

Insert after section 8 (4A):

- (4AA) The schedule of unit entitlement for a strata scheme that includes a development lot must indicate that the schedule may, on conclusion of the development scheme, be revised under section 28QAA.

[8] Section 8A Subdivision of development lot

Omit “(which cannot be land within a stratum parcel)” from section 8A (1).

[9] Section 9 Subdivision of lots and common property

Omit “except where the land comprised in the plan is held otherwise than by the original proprietor or a certificate under this paragraph or section 13 (2) (b) or 28 (4) (b) has been previously lodged in the office of the Registrar-General,” from section 9 (3) (d).

Insert instead “in the circumstances set out in subsection (3A)—”.

[10] Section 9 (3A)

Insert after section 9 (3):

- (3A) A floor plan is required to be accompanied by a certificate or certified or office copy if:
- (a) the land comprised in the plan is held by the original proprietor (not being an original proprietor who holds all lots forming part of the parcel to which the strata scheme concerned relates), and
 - (b) a certificate under subsection (3) (d) or section 13 (2) (b) or 28 (4) (b) has not previously been lodged in the office of the Registrar-General.

[11] Section 13 Conversion of lots into common property

Omit “except where the land to which the notice of conversion relates is held otherwise than by the original proprietor or a certificate under this paragraph or section 9 (3) (d) or 28 (4) (b) has been previously lodged in the office of the Registrar-General,” from section 13 (2) (b).

Insert instead “in the circumstances set out in subsection (3A)—”.

[12] Section 13 (3A)

Insert after section 13 (3):

- (3A) A notice is required to be accompanied by a certificate or certified or office copy if:
- (a) the land to which the notice relates is held by the original proprietor (not being an original proprietor who holds all lots in the strata scheme concerned), and
 - (b) a certificate under subsection (2) (b) or section 9 (3) (d) or 28 (4) (b) has not previously been lodged in the office of the Registrar-General.

[13] Section 19 Acquisition of additional common property

Omit “unanimous” wherever occurring from section 19 (2), (3) (b) and (6).
Insert instead “special”.

[14] Section 25 Transfer or lease of common property

Omit “unanimous” wherever occurring. Insert instead “special”.

[15] Section 26 Creation or variation of easements, restrictions and positive covenants

Omit “unanimous” wherever occurring. Insert instead “special”.

[16] Section 27 Dedication of common property

Omit “unanimous” wherever occurring from section 27 (2) and (3) (b).
Insert instead “special”.

[17] Section 28 Effect of dealings under this Division

Omit “unanimous” from section 28 (4) (a). Insert instead “special”.

[18] Section 28 (4) (b)

Insert “where all lots concerned are held by the original proprietor or” after “except”.

[19] Section 28A Explanation of staged development

Insert “(whether or not the parcel is developed together with development of non-strata land adjoining or adjacent to the parcel)” after “scheme” in section 28A (1).

[20] Section 28A (2)

Insert “of the parcel” after “development” where firstly occurring.

[21] Section 28A (2), second dot point

Omit “such lot”. Insert instead “development lot”.

[22] Section 28C Form and content of strata development contract

Insert “and any non-strata land adjoining or adjacent to the parcel that is proposed to be developed together with the parcel” after “development lot or lots” in section 28C (2) (a).

[23] Section 28C (2A)

Insert after section 28C (2):

- (2A) If a strata development contract relates to development of a parcel together with any non-strata land adjoining or adjacent to the parcel, it must:
- (a) include a description of the non-strata land, and
 - (b) indicate that a strata management statement will (unless the requirement for a statement is dispensed with under section 28R) govern both the non-strata land and the parcel, and
 - (c) indicate that, if the strata management statement is registered in accordance with Division 2B, a copy of it may be obtained from the Registrar-General.

[24] Section 28I Effect of strata development contract

Insert at the end of the section:

Note. A strata development contract has no effect to the extent that it is inconsistent with a strata management statement for the strata scheme concerned—see section 28W (6A).

[25] Section 28J Amendment of strata development contract

Insert at the end of section 28J (1):

, and

- (c) the amendment is not inconsistent with a strata management statement for the strata scheme concerned.

[26] Section 28Q Conclusion of development scheme

Insert after section 28Q (4):

- (5) If, after the conclusion of a development scheme, a revised schedule of unit entitlement for a strata scheme is lodged with the Registrar-General in accordance with section 28QAA, the Registrar-General must record it as the schedule of unit entitlement in substitution for the existing schedule of unit entitlement for the scheme.

[27] Section 28QAA

Insert after section 28Q:

28QAA Revised schedule of unit entitlements

- (1) If, at the conclusion of a development scheme, a body corporate considers that the schedule of unit entitlement in force for the strata scheme concerned does not apportion the unit entitlements so as to reflect the market value of the lots in the strata scheme, the body corporate may lodge a revised schedule of unit entitlement for the strata scheme with the Registrar-General.
- (2) The revised schedule of unit entitlement must be lodged within the period of 2 years after the conclusion of the development scheme.
- (3) A revised schedule of unit entitlement that is lodged with the Registrar-General must:
 - (a) be in a form approved by the Registrar-General, and
 - (b) be clearly identified as a revised schedule, and
 - (c) show, as a whole number apportioned on a market value basis and so as to total the unit entitlements, the unit entitlement of each lot, and

- (d) be accompanied by a certificate signed by a registered valuer certifying that the unit entitlements of the lots are apportioned on a market value basis, and
- (e) be accompanied by a certificate under the seal of the body corporate concerned certifying that it has, by special resolution, agreed to the substitution of the existing schedule of unit entitlements with the revised schedule.

(4) In this section:

registered valuer means a practising real estate valuer registered under the *Valuers Registration Act 1975*.

[28] Section 28R Requirement for strata management statement

Insert after section 28R (2) (a):

- (ab) if:
 - (i) the plan relates to part of a building that includes one or more stratum parcels, and
 - (ii) a strata management statement has already been registered for the building and the site concerned, or

[29] Section 28W Effect of strata management statement

Insert after section 28W (6):

- (6A) Without limiting subsection (6), a provision of a strata development contract relating to a strata scheme is void to the extent (if any) that it is inconsistent with any provision of a strata management statement relating to that scheme.

[30] Section 43 Registrar-General's power to adjust unit entitlements

Insert "or on a revised schedule of unit entitlements lodged under section 28QAA" after "for registration" in section 43 (1).

[31] Section 43 (2)

Insert "or revised schedule of unit entitlements recorded under section 28QAA" after "common property".

[32] Section 158 Regulations—general

Insert “and the supply by that office of copies of registered or other plans and documents” after “documents” in section 158 (1) (d).

[33] Schedule 1A Requirements for strata plans

Omit clause 5.

[34] Schedule 1BA Covenants implied in strata development contracts

Insert at the end of clause 3:

- , and
- for any amounts due under the strata management statement that are connected with the carrying out of the permitted development.

[35] Schedule 1BA, clause 6

Insert “or any part of the building and its site that is not subject to the strata scheme” after “common property”.

[36] Schedule 1BA, clause 7

Insert “or any part of the building and its site that is not subject to the strata scheme” after “development lot”.

[37] Schedule 1BA, clause 8

Insert “, or the building or site,” after “parcel” where firstly occurring.

[38] Schedule 1BA, clause 8, first dot point

Insert “or other occupiers of a building of which the development lot forms part” after “parcel”.

[39] Schedule 1BA, clause 8, second dot point

Insert “, or such other parts of the building and its site,” after “parcel”.

[40] Schedule 4 Transitional and savings provisions

Insert after Part 4:

Part 5 Transitional provisions relating to the Strata Schemes Legislation Amendment Act 2001

1 Definition

In this Part:

amending Act means the *Strata Schemes Legislation Amendment Act 2001*.

2 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the amending Act, but only in relation to amendments made to this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the amending Act or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

3 Surveyors certificates

A certificate duly given by a registered surveyor under section 8 (2) (c), 8A (3) (b) or 9 (3) (c) before the amendment of Schedule 1A by the amending Act is taken to have been duly given under that provision despite that amendment.

4 Transitional arrangements for certain staged development

The amendments made to this Act by the amending Act do not apply to a strata development contract or strata management statement registered before the commencement of this clause.

5 Transfer or lease of common property and creation of variation of easements, restrictions and positive covenants

A transfer or other dealing pursuant to a unanimous resolution passed before the commencement of an amendment made by the amending Act to section 19, 25, 26, 27 or 28 is authorised to be carried out after the commencement as if that section had not been amended.

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

(Section 3)

[1] Section 4 Definitions

Omit “(not being a lot in a stratum parcel)” from the definition of *development lot* in section 4 (1).

[2] Section 4 (1), definition of “non-strata land”

Insert in alphabetical order:

non-strata land means land that is not subject to a strata scheme.

[3] Section 4 (1), definition of “public place”

Insert “, or land that is a public road (within the meaning of the *Roads Act 1993*)” after “*Local Government Act 1993*”.

[4] Section 4 (1), definition of “schedule of unit entitlement”

Omit “paragraph (b)” from paragraph (a) of the definition.
Insert instead “paragraph (b) and (c)”.

[5] Section 4(1), definition of “schedule of unit entitlement”

Insert at the end of the definition:

, or

- (c) if a revised schedule of unit entitlement has been recorded under section 57 (5) as the schedule of unit entitlement in substitution for a schedule of unit entitlement referred to in paragraph (a) or (b), the schedule so recorded.

[6] Section 6 Subdivision

Insert at the end of section 6 (3A):

Note. See section 10 for subdivision of land that is a development lot.

[7] Section 7 Registration of strata plans

Insert after section 7 (2CA):

(2CAA) The schedule of unit entitlement for a strata scheme that includes a development lot must indicate that the schedule may, on conclusion of the development scheme, be revised under section 57AAA.

[8] Section 10 Subdivision of development lot

Omit “(which cannot be land within a stratum parcel)” from section 10 (1).

[9] Section 11 Subdivision of lots and common property

Omit “except where the land comprised in the plan is held otherwise than by the original lessee (if any) or a certificate under this paragraph or section 16 (2) (b) or 32 (4) (b) has been previously lodged in the office of the Registrar-General,” from section 11 (2) (d).

Insert instead “in the circumstances set out in subsection (2A)—”.

[10] Section 11 (2A)

Insert after section 11 (2):

(2A) A floor plan is required to be accompanied by a certificate or certified or office copy if:

- (a) the land comprised in the plan is held by the original lessee (not being an original lessee who holds all lots forming part of the parcel to which the strata scheme concerned relates), and
- (b) a certificate under subsection (2) (d) or section 16 (2) (b) or 32 (4) (b) has not previously been lodged in the office of the Registrar-General.

[11] Section 16 Conversion of lots into common property

Omit “except where the land to which the notice of conversion relates is held otherwise than by the original lessee (if any) or a certificate under this paragraph or section 11 (2) (d) or 32 (4) (b) has been previously lodged in the office of the Registrar-General,” from section 16 (2) (b).

Insert instead “in the circumstances set out in subsection (2A)—”.

[12] Section 16 (2A)

Insert after section 16 (2):

- (2A) A notice is required to be accompanied by a certificate or certified or office copy if:
- (a) the land to which the notice relates is held by the original lessee (not being an original lessee who holds all lots in the strata scheme concerned), and
 - (b) a certificate under subsection (2) (b) or section 11 (2) (d) or 32 (4) (b) has not previously been lodged in the office of the Registrar-General.

[13] Section 22 Acquisition of additional common property

Omit “unanimous” wherever occurring from section 22 (2), (5) (b) and (7).
Insert instead “special”.

[14] Section 29 Transfer or sublease of common property

Omit “unanimous” wherever occurring. Insert instead “special”.

[15] Section 30 Creation or variation of easements, restrictions and positive covenants

Omit “unanimous” wherever occurring. Insert instead “special”.

[16] Section 31 Dedication of common property

Omit “unanimous” wherever occurring from section 31 (2) and (3) (b).
Insert instead “special”.

[17] Section 32 Effect of dealings under this Division

Omit “unanimous” from section 32 (4) (a). Insert instead “special”.

[18] Section 32 (4) (b)

Insert “where all the lots concerned are held by the original lessee or” after “except”.

[19] Section 41 Explanation of staged development

Insert “(whether or not the parcel is developed together with development of non-strata land adjoining or adjacent to the parcel)” after “scheme” in section 41 (1).

[20] Section 41 (2)

Insert “of the parcel” after “development” where firstly occurring.

[21] Section 41 (2), second dot point

Omit “such lot”. Insert instead “development lot”.

[22] Section 43 Form and content of strata development contract

Insert “and any non-strata land adjoining or adjacent to the parcel that is proposed to be developed together with the parcel” after “development lot or lots” in section 43 (2) (a).

[23] Section 43 (2A)

Insert after section 43 (2):

- (2A) If a strata development contract relates to development of a parcel together with any non-strata land adjoining or adjacent to the parcel, it must:
- (a) include a description of the non-strata land, and
 - (b) indicate that a strata management statement will (unless the requirement for a statement is dispensed with under section 57A) govern both the non-strata land and the parcel, and
 - (c) indicate that, if the strata management statement is registered in accordance with Division 5A, a copy of it may be obtained from the Registrar-General.

[24] Section 49 Effect of strata development contract

Insert at the end of the section:

Note. A strata development contract has no effect to the extent that it is inconsistent with a strata management statement for the strata scheme concerned—see section 57F (6A).

[25] Section 50 Amendment of strata development contract

Insert at the end of section 50 (1):

- , and
- (c) the amendment is not inconsistent with a strata management statement for the strata scheme concerned.

[26] Section 57 Conclusion of development scheme

Insert after section 57 (4):

- (5) If, after the conclusion of a development scheme, a revised schedule of unit entitlement for a strata scheme is lodged with the Registrar-General in accordance with section 57AAA, the Registrar-General must record it as the schedule of unit entitlement in substitution for the existing schedule of unit entitlement for the scheme.

[27] Section 57AAA

Insert after section 57:

57AAA Revised schedule of unit entitlements

- (1) If, at the conclusion of a development scheme, a body corporate considers that the schedule of unit entitlement in force for the scheme concerned does not apportion the unit entitlements so as to reflect the market value of the lots in the strata scheme, the body corporate may lodge a revised schedule of unit entitlement for the strata scheme with the Registrar-General.
- (2) The revised schedule of unit entitlement must be lodged within the period of 2 years after the conclusion of the development scheme.
- (3) A revised schedule of unit entitlement that is lodged with the Registrar-General must:
 - (a) be in a form approved by the Registrar-General, and
 - (b) be clearly identified as a revised schedule, and
 - (c) show, as a whole number apportioned on a market value basis and so as to total the unit entitlements, the unit entitlement of each lot, and

- (d) be accompanied by a certificate signed by a registered valuer certifying that the unit entitlements of the lots are apportioned on a market value basis, and
- (e) be accompanied by a certificate under the seal of the body corporate concerned certifying that it has, by special resolution, agreed to the substitution of the existing schedule of unit entitlements with the revised schedule.

(4) In this section:

registered valuer means a practising real estate valuer registered under the *Valuers Registration Act 1975*.

[28] Section 57A Requirement for strata management statement

Omit section 57A (2). Insert instead:

- (2) The Registrar-General may waive the requirement for a strata management statement:
 - (a) if:
 - (i) the plan relates to part of a building that includes one or more stratum parcels, and
 - (ii) a strata management statement has already been registered for the building and the site concerned, or
 - (b) on the direction of the Minister given on such grounds as the Minister considers sufficient.

[29] Section 57F Effect of strata management statement

Insert after section 57F (6):

- (6A) Without limiting subsection (6), a provision of a strata development contract relating to a strata scheme is void to the extent (if any) that it is inconsistent with any provision of a strata management statement relating to that scheme.

[30] Section 72 Registrar-General's power to adjust unit entitlements

Insert "or on a revised schedule of unit entitlements lodged under section 57AAA" after "for registration" in section 72 (1).

[31] Section 72 (2)

Insert “or revised schedule of unit entitlements recorded under section 57AAA” after “common property”.

[32] Section 196 Regulations—general

Insert “and the supply by that office of copies of registered or other plans and documents” after “documents” in section 196 (1) (d).

[33] Schedule 1A Requirements for strata plans

Omit clause 5.

[34] Schedule 2AA Covenants implied in strata development contracts

Insert at the end of clause 3:

- , and
- for any amounts due under the strata management statement that are connected with the carrying out of the permitted development.

[35] Schedule 2AA, clause 6

Insert “or part of the building and its site that is not subject to the strata scheme” after “common property”.

[36] Schedule 2AA, clause 8

Insert “, or the building or site,” after “parcel” where firstly occurring.

[37] Schedule 2AA, clause 8, first dot point

Insert “or other occupiers of a building of which the development forms part” after “parcel”.

[38] Schedule 2AA, clause 8, second dot point

Insert “, or such other parts of the building and its site,” after “parcel”.

[39] Schedule 5 Transitional and savings provisions

Insert after Part 3:

Part 4 Transitional provisions relating to the Strata Schemes Legislation Amendment Act 2001

1 Definition

In this Part:

amending Act means the *Strata Schemes Legislation Amendment Act 2001*.

2 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the amending Act, but only in relation to amendments made to this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the amending Act or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

3 Surveyors certificates

A certificate duly given by a registered surveyor under section 7 (2A) (c), 10 (3) (b) or 11 (2) (c) before the commencement of Schedule 1A is taken to have been duly given under that provision despite that amendment.

4 Transitional arrangements for certain staged development

The amendments made to this Act by the amending Act do not apply to a strata development contract or strata management statement registered before the commencement of this clause.

5 Transfer or lease of common property and creation of variation of easements, restrictions and positive covenants

A transfer or other dealing pursuant to a unanimous resolution passed before the commencement of an amendment made by the amending Act to section 22, 29, 30, 31 or 32 is authorised to be carried out after the commencement as if that section had not been amended.

**Schedule 3 Amendment of Strata Schemes
Management Act 1996**

(Section 3)

Section 183 Order for reallocation of unit entitlements

Insert after section 183 (2) (a):

- (a1) was unreasonable when a revised schedule of unit entitlements was lodged at the conclusion of a development scheme, or