

**STRATA TITLES (LEASEHOLD) (REGISTRATION OF PLANS)
AMENDMENT ACT 1989 No. 174**

NEW SOUTH WALES



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AMENDMENT ACT 1989 No. 174**

NEW SOUTH WALES



Act No. 174, 1989

An Act to amend the Strata Titles (Leasehold) Act 1986 with respect to the registration of plans, including plans of buildings that encroach on other land; and for other purposes. [Assented to 14 December 1989]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Strata Titles (Leasehold) (Registration of Plans) Amendment Act 1989.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).

(2) Section 5 commences on the date of assent.

Meaning of "Principal Act"

3. The Strata Titles (Leasehold) Act 1986 is referred to in this Act as the Principal Act.

Amendment of Strata Titles (Leasehold) Act 1986 No. 219

4. The Principal Act is amended as set out in Schedules 1 and 2.

Transitional provision

5. An amendment of the Principal Act does not apply in relation to a plan lodged for registration under the Principal Act before the commencement of the amendment.

SCHEDULE 1 - AMENDMENTS RELATING TO COUNCIL REQUIREMENTS

(Sec. 4)

Section 66 (Approval of proposed strata plans, certain subdivisions and conversions of lots into common property (1973 Act, s. 37)):

(a) Section 66 (1) (b) (i):

After "that Act;", insert "and".

SCHEDULE 1 - AMENDMENTS RELATING TO COUNCIL
REQUIREMENTS - *continued*

- (b) Section 66 (1) (b) (iii):
Omit "or" where secondly occurring, insert instead "and".
- (c) After section 66 (1) (b) (iii), insert:
 - (iv) the land proposed to be subdivided is not the subject of any outstanding order, requirement or notice made or given under a provision referred to in subsection (1A); and
 - (v) if the local council has made an order under section 317D of the Local Government Act 1919 in relation to the land proposed to be subdivided - the order has been complied with or an objection to the order has been made under section 317F of that Act and the Land and Environment Court has refused to confirm the order; or
- (d) Section 66 (1) (c) (i):
After "that Act;", insert "and".
- (e) At the end of section 66 (1) (c) (iii), insert:
 - ; and
 - (iv) the land proposed to be subdivided is not the subject of any outstanding order, requirement or notice made or given under a provision referred to in subsection (1A); and
 - (v) if the local council has made an order under section 317D of the Local Government Act 1919 in relation to the land proposed to be subdivided - the order has been complied with or an objection to the order has been made under section 317F of that Act and the Land and Environment Court has refused to confirm the order.
- (f) After section 66 (1), insert:
 - (1A) For the purposes of subsection (1) (b) (iv) and (c) (iv), the provisions referred to in this subsection are:

SCHEDULE 1 - AMENDMENTS RELATING TO COUNCIL REQUIREMENTS - *continued*

- (a) section 61 (3) and (4), and section 65, of the Public Health Act 1902; and
 - (b) section 281 (1) (a) and (b) of the Local Government Act 1919; and
 - (c) section 281 (2) (a), (d), (j), (k) and (n) of the Local Government Act 1919; and
 - (d) section 281 (3) (a), (b) and (c) of the Local Government Act 1919; and
 - (e) section 317B of the Local Government Act 1919; and
 - (f) provisions of the ordinances made under the Local Government Act 1919 that are prescribed by regulations made for the purposes of this subsection.
- (g) Section 66 (4) (c):
Omit "or (c)" where firstly occurring, insert instead "(i), (ii) and (iii) or subsection (1) (c) (i), (ii) and (iii)".
- (h) Section 66 (5) (b):
Omit "or (c)" where firstly occurring, insert instead "(i), (ii) or (iii) and subsection (1) (c) (i), (ii) and (iii)".

SCHEDULE 2 - AMENDMENTS RELATING TO ENCROACHMENTS

(Sec. 4)

- (1) Section 7 (**Registration of strata plans (1973 Act, s. 8)**):
- (a) Section 7 (2) (d), (e) (ii), (iii):
Omit "referred to in section 67 (1) (b) or, where eaves encroach, or guttering encroaches, on land other than a public place, that an appropriate easement exists" wherever occurring, insert instead "that is an encroachment referred to in section 67 or an encroachment by the building on to land other than a public place".

SCHEDULE 2 - AMENDMENTS RELATING TO
ENCROACHMENTS - *continued*

(b) After section 7 (2), insert:

(2A) If the certificate referred to in subsection (2) states that there is an encroachment on land other than a public place, the strata plan must not be registered unless the certificate also states:

(a) that an appropriate easement exists; or

(b) that it is intended to create an appropriate easement in accordance with section 88B of the Conveyancing Act 1919 on registration of the plan.

(c) After section 7 (9), insert:

(10) If an encroachment referred to in subsection (2) (d), or subsection (2) (e) (ii) or (iii), on land other than a public place is shown on a proposed strata plan, the provisions of this Act, other than those relating to ownership and certification of title, apply:

(a) in the case of so much of an encroachment as is designated for use with a lot - as if it were part of the lot; or

(b) in any other case - as if it were common property.

(2) Section 10 (**Subdivision of development lots (1973 Act, s. 8A)**):

(a) Section 10 (2) (e) (iv):

Omit "referred to in section 67 (1) (b) or, where eaves encroach, or guttering encroaches, on land other than a public place, that an appropriate easement exists", insert instead "that is an encroachment referred to in section 67 or an encroachment by the building on to land other than a public place".

(b) After section 10 (2), insert:

(2A) If the certificate referred to in subsection (2) (e) states that there is an encroachment on land other than a public place, the strata plan of subdivision must not be registered unless the certificate also states:

SCHEDULE 2 - AMENDMENTS RELATING TO
ENCROACHMENTS - *continued*

- (a) that an appropriate easement exists; or
- (b) that it is intended to create an appropriate easement in accordance with section 88B of the Conveyancing Act 1919 on registration of the plan.
- (c) After section 10 (5), insert:
 - (6) If an encroachment referred to in subsection (2) (e) (iv) on land other than a public place is shown on a proposed strata plan of subdivision, the provisions of this Act, other than those relating to ownership and certification of title, apply:
 - (a) in the case of so much of an encroachment as is designated for use with a lot - as if it were part of the lot; or
 - (b) in any other case - as if it were common property.
- (3) Section 11 (**Subdivision of lots and common property (1973 Act, s. 9)**):
 - (a) Section 11 (2) (a):

After "plan", insert "and, if required by the Registrar-General, a location plan".
 - (b) Section 11 (2) (c) (iv):

Omit "referred to in section 67 (1) (b) or, where eaves encroach, or guttering encroaches, on land other than a public place, that an appropriate easement exists", insert instead "that is an encroachment referred to in section 67 or an encroachment by the building on to land other than a public place".
 - (c) After section 11 (2), insert:
 - (2A) If the certificate referred to in subsection (2) (c) states that there is an encroachment on land other than a public place, the strata plan of subdivision must not be registered unless the certificate also states:

SCHEDULE 2 - AMENDMENTS RELATING TO
ENCROACHMENTS - *continued*

- (a) that an appropriate easement exists; or
- (b) that it is intended to create an appropriate easement in accordance with section 88B of the Conveyancing Act 1919 on registration of the plan.
- (d) After section 11 (5), insert:
 - (6) If an encroachment referred to in subsection (2) (e) (iv) on land other than a public place is shown on a strata plan of subdivision, the provisions of this Act, other than those relating to ownership and certification of title, apply:
 - (a) in the case of so much of an encroachment as is designated for use with a lot - as if it were part of the lot; or
 - (b) in any other case - as if it were common property.
- (4) Section 17 (**Alteration of building affecting lot boundary (1973 Act, s. 14)**):
 - (a) Section 17 (1) (d) (ii):

Omit "67 (1) (b) or, where eaves encroach, or guttering encroaches," insert instead "67 or, if any part of the building encroaches".
 - (b) Omit section 17 (4), insert instead:
 - (4) If an encroachment referred to in subsection (1) (d) (ii) is shown in a building alteration plan, the provisions of this Act, other than those relating to ownership and certification of title, apply:
 - (a) in the case of so much of an encroachment as is designated for use with a lot - as if it were part of the lot; or
 - (b) in any other case - as if it were common property.
- (5) Section 67 (**Encroachments (1973 Act, s. 38)**):
 - (a) Section 67 (1) (a):

SCHEDULE 2 - AMENDMENTS RELATING TO
ENCROACHMENTS - *continued*

After "extent;", insert "and".

(b) Omit section 67 (1) (b).

(c) Section 67 (2) (b):

Omit "apply to the encroachment as if it were common property.", insert instead:

apply:

- (i) in the case of so much of the encroachment as is designated on the plan for use with a lot - as if it were part of the lot; or
- (ii) in any other case - as if were common property.

[*Minister's second reading speech made in -
Legislative Assembly on 20 September 1989
Legislative Council on 15 November 1989*]













FIRST PRINT

**STRATA TITLES (LEASEHOLD) (REGISTRATION OF PLANS)
AMENDMENT BILL 1989**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the Strata Titles (Registration of Plans) Amendment Bill 1989.

The object of this Bill is to amend the Strata Titles (Leasehold) Act 1986:

- (a) to enable local councils to ensure that, before the conversion of an existing building to leasehold strata title units, any outstanding notices affecting the building and relating to matters such as fitness for occupation, structural soundness and fire safety have been complied with; and
- (b) to permit the registration under the Act of certain plans for the subdivision of a building into leasehold strata units even if the building encroaches on other land (including a public place).

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines the expression "Principal Act".

Clause 4 is a formal provision that gives effect to the Schedules of amendments.

Clause 5 is a transitional provision.

**SCHEDULE 1 - AMENDMENTS RELATING TO COUNCIL
REQUIREMENTS**

Schedule 1 proposes to include among the matters as to which a local council must be satisfied before approving a subdivision under the Principal Act, compliance with

Strata Titles (Leasehold) (Registration of Plans) Amendment 1989

outstanding requirements under certain provisions of the Public Health Act 1902 and the Local Government Act 1919 and its ordinances.

SCHEDULE 2 - AMENDMENTS RELATING TO ENCROACHMENTS

Schedule 2 (1):

- (a) proposes that, before a strata plan may be registered, a surveyor must, in addition to other matters, certify that an appropriate easement exists, or will be created, in respect of any encroachment on other land that is not a public place; and
- (b) provides for the encroachment to be treated as part of a lot, or as common property, within the leasehold strata scheme.

Schedule 2 (2) makes similar provision in relation to the surveyor's certificate required to accompany a proposed plan of subdivision of a development lot.

Schedule 2 (3) makes similar provision in relation to the surveyor's certificate required to accompany a proposed strata plan of subdivision.

Schedule 2 (4) makes similar provision in relation to the surveyor's certificate required to accompany a proposed building alteration plan.

Schedule 2 (5):

- (a) removes limitations on the type of encroachment on a public place that would otherwise prevent a council from approving a strata plan or strata plan of subdivision; and
 - (b) provides for the encroachment to be treated as part of a lot, or as common property, within the leasehold strata scheme.
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FIRST PRINT

**STRATA TITLES (LEASEHOLD) (REGISTRATION OF PLANS)
AMENDMENT BILL 1989**

NEW SOUTH WALES



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REQUIREMENTS

SCHEDULE 2 - AMENDMENTS RELATING TO ENCROACHMENTS

**STRATA TITLES (LEASEHOLD) (REGISTRATION OF PLANS)
AMENDMENT BILL 1989**

NEW SOUTH WALES



No. , 1989

A BILL FOR

An Act to amend the Strata Titles (Leasehold) Act 1986 with respect to the registration of plans, including plans of buildings that encroach on other land; and for other purposes.

Strata Titles (Leasehold) (Registration of Plans) Amendment 1989

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Strata Titles (Leasehold) (Registration of Plans) Amendment Act 1989.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).

(2) Section 5 commences on the date of assent.

Meaning of "Principal Act"

3. The Strata Titles (Leasehold) Act 1986 is referred to in this Act as the Principal Act.

Amendment of Strata Titles (Leasehold) Act 1986 No. 219

4. The Principal Act is amended as set out in Schedules 1 and 2.

Transitional provision

5. An amendment of the Principal Act does not apply in relation to a plan lodged for registration under the Principal Act before the commencement of the amendment.

**SCHEDULE 1 - AMENDMENTS RELATING TO COUNCIL
REQUIREMENTS**

(Sec. 4)

Section 66 (Approval of proposed strata plans, certain subdivisions and conversions of lots into common property (1973 Act, s. 37)):

- (a) Section 66 (1) (b) (i):
After "that Act;", insert "and".

SCHEDULE 1 - AMENDMENTS RELATING TO COUNCIL
REQUIREMENTS - *continued*

- (b) Section 66 (1) (b) (iii):
Omit "or" where secondly occurring, insert instead "and".
- (c) After section 66 (1) (b) (iii), insert:
 - (iv) the land proposed to be subdivided is not the subject of any outstanding order, requirement or notice made or given under a provision referred to in subsection (1A); and
 - (v) if the local council has made an order under section 317D of the Local Government Act 1919 in relation to the land proposed to be subdivided - the order has been complied with or an objection to the order has been made under section 317F of that Act and the Land and Environment Court has refused to confirm the order; or
- (d) Section 66 (1) (c) (i):
After "that Act;", insert "and".
- (e) At the end of section 66 (1) (c) (iii), insert:
; and
 - (iv) the land proposed to be subdivided is not the subject of any outstanding order, requirement or notice made or given under a provision referred to in subsection (1A); and
 - (v) if the local council has made an order under section 317D of the Local Government Act 1919 in relation to the land proposed to be subdivided - the order has been complied with or an objection to the order has been made under section 317F of that Act and the Land and Environment Court has refused to confirm the order.
- (f) After section 66 (1), insert:
(1A) For the purposes of subsection (1) (b) (iv) and (c) (iv), the provisions referred to in this subsection are:

SCHEDULE 1 - AMENDMENTS RELATING TO COUNCIL REQUIREMENTS - *continued*

- (a) section 61 (3) and (4), and section 65, of the Public Health Act 1902; and
 - (b) section 281 (1) (a) and (b) of the Local Government Act 1919; and
 - (c) section 281 (2) (a), (d), (j), (k) and (n) of the Local Government Act 1919; and
 - (d) section 281 (3) (a), (b) and (c) of the Local Government Act 1919; and
 - (e) section 317B of the Local Government Act 1919; and
 - (f) provisions of the ordinances made under the Local Government Act 1919 that are prescribed by regulations made for the purposes of this subsection.
- (g) Section 66 (4) (c):
Omit "or (c)" where firstly occurring, insert instead "(i), (ii) and (iii) or subsection (1) (c) (i), (ii) and (iii)".
- (h) Section 66 (5) (b):
Omit "or (c)" where firstly occurring, insert instead "(i), (ii) or (iii) and subsection (1) (c) (i), (ii) and (iii)".

SCHEDULE 2 - AMENDMENTS RELATING TO ENCROACHMENTS

(Sec. 4)

- (1) Section 7 (**Registration of strata plans (1973 Act, s. 8)**):
- (a) Section 7 (2) (d), (e) (ii), (iii):
Omit "referred to in section 67 (1) (b) or, where eaves encroach, or guttering encroaches, on land other than a public place, that an appropriate easement exists" wherever occurring, insert instead "that is an encroachment referred to in section 67 or an encroachment by the building on to land other than a public place".

SCHEDULE 2 - AMENDMENTS RELATING TO
ENCROACHMENTS - *continued*

- (b) After section 7 (2), insert:
- (2A) If the certificate referred to in subsection (2) states that there is an encroachment on land other than a public place, the strata plan must not be registered unless the certificate also states:
- (a) that an appropriate easement exists; or
- (b) that it is intended to create an appropriate easement in accordance with section 88B of the Conveyancing Act 1919 on registration of the plan.
- (c) After section 7 (9), insert:
- (10) If an encroachment referred to in subsection (2) (d), or subsection (2) (e) (ii) or (iii), on land other than a public place is shown on a proposed strata plan, the provisions of this Act, other than those relating to ownership and certification of title, apply:
- (a) in the case of so much of an encroachment as is designated for use with a lot - as if it were part of the lot; or
- (b) in any other case - as if it were common property.
- (2) Section 10 (**Subdivision of development lots (1973 Act, s. 8A)**):
- (a) Section 10 (2) (e) (iv):
- Omit "referred to in section 67 (1) (b) or, where eaves encroach, or guttering encroaches, on land other than a public place, that an appropriate easement exists", insert instead "that is an encroachment referred to in section 67 or an encroachment by the building on to land other than a public place".
- (b) After section 10 (2), insert:
- (2A) If the certificate referred to in subsection (2) (e) states that there is an encroachment on land other than a public place, the strata plan of subdivision must not be registered unless the certificate also states:

SCHEDULE 2 - AMENDMENTS RELATING TO
ENCROACHMENTS - *continued*

- (a) that an appropriate easement exists; or
 - (b) that it is intended to create an appropriate easement in accordance with section 88B of the Conveyancing Act 1919 on registration of the plan.
- (c) After section 10 (5), insert:
- (6) If an encroachment referred to in subsection (2) (e) (iv) on land other than a public place is shown on a proposed strata plan of subdivision, the provisions of this Act, other than those relating to ownership and certification of title, apply:
 - (a) in the case of so much of an encroachment as is designated for use with a lot - as if it were part of the lot; or
 - (b) in any other case - as if it were common property.
- (3) Section 11 (**Subdivision of lots and common property (1973 Act, s. 9)**):
- (a) Section 11 (2) (a):

After "plan", insert "and, if required by the Registrar-General, a location plan".
 - (b) Section 11 (2) (c) (iv):

Omit "referred to in section 67 (1) (b) or, where eaves encroach, or guttering encroaches, on land other than a public place, that an appropriate easement exists", insert instead "that is an encroachment referred to in section 67 or an encroachment by the building on to land other than a public place".
 - (c) After section 11 (2), insert:

(2A) If the certificate referred to in subsection (2) (c) states that there is an encroachment on land other than a public place, the strata plan of subdivision must not be registered unless the certificate also states:

SCHEDULE 2 - AMENDMENTS RELATING TO
ENCROACHMENTS - *continued*

- (a) that an appropriate easement exists; or
- (b) that it is intended to create an appropriate easement in accordance with section 88B of the Conveyancing Act 1919 on registration of the plan.
- (d) After section 11 (5), insert:
 - (6) If an encroachment referred to in subsection (2) (e) (iv) on land other than a public place is shown on a strata plan of subdivision, the provisions of this Act, other than those relating to ownership and certification of title, apply:
 - (a) in the case of so much of an encroachment as is designated for use with a lot - as if it were part of the lot; or
 - (b) in any other case - as if it were common property.
- (4) Section 17 (**Alteration of building affecting lot boundary (1973 Act, s. 14)**):
 - (a) Section 17 (1) (d) (ii):

Omit "67 (1) (b) or, where eaves encroach, or guttering encroaches,", insert instead "67 or, if any part of the building encroaches".
 - (b) Omit section 17 (4), insert instead:
 - (4) If an encroachment referred to in subsection (1) (d) (ii) is shown in a building alteration plan, the provisions of this Act, other than those relating to ownership and certification of title, apply:
 - (a) in the case of so much of an encroachment as is designated for use with a lot - as if it were part of the lot; or
 - (b) in any other case - as if it were common property.
- (5) Section 67 (**Encroachments (1973 Act, s. 38)**):
 - (a) Section 67 (1) (a):

SCHEDULE 2 - AMENDMENTS RELATING TO
ENCROACHMENTS - *continued*

After "extent;", insert "and".

(b) Omit section 67 (1) (b).

(c) Section 67 (2) (b):

Omit "apply to the encroachment as if it were common property.", insert instead:

apply:

- (i) in the case of so much of the encroachment as is designated on the plan for use with a lot - as if it were part of the lot; or
 - (ii) in any other case - as if were common property.
-