

March 2006

Subject: Issues affecting strata unit owners and tenants.

Applications to the Consumer Trader & Tenancy Tribunal

Orders in strata and community disputes are made by the Consumer Trader and Tenancy Tribunal. The procedure for determination of disputes is briefly outlined as follows.

1. Mediation

Prior to a dispute being dealt with by the Tribunal it is a requirement under the Act that parties attempt mediation. Amendments have recently been made to the strata legislation to allow a broader discretion for the Registrar to refer matters for adjudication without mediation, however the majority of matters will still require mediation (except penalty applications and appeals). If parties do not think mediation is appropriate, reasons should be provided to the Registrar to consider whether a matter can be referred directly to adjudication.

Mediation can take place at the Strata Schemes and Mediation or parties can contract their local Community Justice Centre for mediation.

2. Adjudication or Tribunal hearing

Most decisions are made by an Adjudicator on the written material provided to the Tribunal the exceptions are: -

- appeals
- unit entitlement applications
- initial period applications
- penalty applications

In community scheme applications only by-law issues and alterations to common property go to adjudication, with most other matters going to a Tribunal member. The application forms have full details as to whether a matter is dealt with by an Adjudicator or by a Member at a hearing and should be read carefully prior to making an application.

When a decision is by adjudication, the parties must ensure that all relevant material is provided. The onus is on the applicant to prove their case. Applications commonly fail because parties have provided insufficient material to prove their case.

3. Appeal process

Orders by an Adjudicator may be appeal to the Tribunal and listed for hearing before the Tribunal.

4. Matters heard by the Tribunal

Matters for hearing before the Tribunal will be listed for either directions or hearing if it is a straightforward penalty applications it will usually be heard on the first occasion. However for a complex unit entitlement application, directions may be given at the first hearing and then the matter will be set down for full hearing at a later date where witnesses can give evidence. Again all supporting evidence should be brought to the initial hearing of the Tribunal.

5. Appeals from the decision of the Tribunal

Matters that are heard for the first time before the Tribunal such as unit entitlements applications can be reheard by the Tribunal. Appeals from any other decisions of the Tribunal can however only be appealed on a matter of law to the Supreme Court.

6. Urgent applications

An Adjudicator can make orders or stays on interim applications. It must be noted however these orders will only be granted if parties show there is a real and present need for urgency as these orders are made without the respondent having an opportunity to present evidence and are therefore not made lightly.

Article extracted from the NSW Office of Fair Trading Strata and Community Living pamphlet.

THE BROADER ASPECTS OF OH&S

Whilst we have all attended various seminars on Occupational Health and Safety (OH&S) regulations, they have tended to concentrate on the responsibilities concerning contractors.

Although blocks, which are 100% residential, are exempt from some legal obligations, the Owners Corporation must still provide safe working environments.

Residents who undertake jobs on behalf of the Owners Corporation for payment or a reduction of levies must follow OH&S Guidelines.

Focus must also be placed on people doing work on behalf of the Owners Corporations without remuneration – Voluntary Workers.

If residents, owners or any other persons are undertaking approved work such as lawn mowing, changing light bulbs, cleaning or gardening they must be treated in the same way as contractors in relation to OH&S.

Safe Work Method Statements (SWMS) must be filled out and followed, safety gear such as goggles, proper boots and appropriate safety clothing must be worn. Safety measures such as harnesses or restraints are required if a person is more than 1 meter off the ground, on a roof or a wall. When the height of the work to be completed is more than two meters from the ground, scaffolding must be erected. If water is being used for example to wash stairs yellow “sandwich board” signs saying “slippery when wet” must be placed at the area in question.

If a ladder is used and the height to be climbed is greater than three steps up, two persons must work as a team, one to ensure that the ladder is held safely and to assist the person up the ladder.

The same rules apply to residents who do specified voluntary work for and with authorisation of the Owners Corporation.

No work is to be carried out on a voluntary or paid basis if this work would ordinarily require a licensed repairperson and the required license(s) are not held by the people involved. This includes but is not limited to electrical, building or plumbing work.

If an Owners Corporation wants to undertake works such as painting or repairs themselves in order to save money, and it does not require any trade licenses and

the cost is \$1,000 or more for workmanship and materials, various other licensing criteria is required by the Office of Fair Trading and must be adhered to. This also applies to owners who are carrying work out in their own units.

If a person is hospitalised or prevented from working for seven days because of an injury, occurring whilst undertaking work for the Owners Corporation. Work Cover must be notified.

The fines for breaches of these rules and regulations, which are imposed mainly by Work Cover, may be substantial.

On the spot fines of up to \$27,500 may be imposed whilst the maximum fine is \$850,000 and/or two years in jail for breaches of the Act.

Article extracted from the Institute of Strata Management The Institute Newsletter (Oct. 2005).

Smoke detectors

Readers will probably be aware of recent government announcements to require the fitting of smoke detectors in all residential premises. Legislation was passed by Parliament in June 2005 to bring this about. One of the effects will be that the landlords of all rented residential premises will be obliged to install smoke alarms as part of the renting arrangements. Amendments to the Residential Tenancies Act will place this obligation on landlords and also give them the right of access to fit the alarms. Much of the precise details, including the standard and type of alarms to be fitted, who is to be responsible for the maintenance of the alarms, including the possible replacement of batteries, is to be worked out in the coming months.

The new provisions will have an effect on strata schemes, as there will be some common property issues to be resolved. As smoke alarms are normally fixed to ceilings, and ceilings are generally common property, it has to be decided whether the consent of the owners corporation should be required for what is essentially a public safety issue. These details also have yet to be finalised. The new laws are to come into effect on 1 May 2006.

Article extracted from the NSW Office of Fair Trading Strata and Community Living pamphlet.