

STRATA & COMMUNITY LIVING

AUTUMN 2021

BROUGHT TO YOU BY:



DEALING WITH PROPERTY DAMAGE? HERE'S WHO'S RESPONSIBLE

We've updated our 'Who's responsible' guide for 2021!

SCA (NSW) understands that what's yours and what is considered part of the common property can be tricky and confusing but has developed a great solution specifically to sort through this issue.

A huge amount of work has gone into compiling the information and updating the guide to ensure that all readers receive the most up to date suggestions and recommendations for addressing property damage and liability in strata.

First launched in 2010, the "Who's responsible: a guide to common property" guide is available for download from the SCA (NSW) website. Find it [here - https://nsw.strata.community/responsible-guide/](https://nsw.strata.community/responsible-guide/)

It's had a few updates along the way and provides a comprehensive list of items found within a building that could generally be considered common property. It aims to give some guidance on who usually would be responsible for giving that item attention.

The guide is not meant to be a definitive answer to some of the more complex questions, although it can be used as a start.

SCA (NSW) recommends that in more complex cases, the guide should be used in conjunction with the strata plan and by-laws to determine who is responsible for repairs and maintenance.

STRATA LAW REVIEW

The NSW Government is undertaking a review of strata laws and wants community feedback on how the laws can be changed to better support people living or working in strata schemes.

The review focuses on the Strata Schemes Development Act 2015 and the Strata Schemes Management Act 2015

Minister for Better Regulation, Kevin Anderson, said feedback was also being sought on a new digital Strata Portal which would capture mandatory information for each strata building in NSW and make it available to the Regulator to ensure compliance with fire and other important safety requirements.

“Strata living holds the key to encouraging growing cities and urban development which is why this review is so important to ensure that we make strata living more appealing,” Minister Anderson said.

The wide-ranging review covers diverse areas of interest – including managing common property, resolving disputes, by-laws including animals, committee and owners corporation meetings, mixed-use schemes, strata renewal, animals in strata and much more.

The NSW Government is extending public consultation on the statutory review of the Strata Schemes Management Act 2015 and Strata Schemes Development Act 2015. The closing date for submissions has been extended by a month to 7 April 2021.

The review has been extended to provide more time for stakeholders to have their say about the strata laws.

In addition, a third survey has been added about the keeping of animals in strata. The additional survey is in response to a

requirement introduced by the Strata Schemes Management Amendment (Sustainability Infrastructure) Act 2021, assented to on 24 February 2021.

The new provision requires the Minister to review the strata management laws as they relate to the keeping of animals in strata and to table a report in both Houses of Parliament by August 2021.

The Act also changes the law in relation to animals in strata so that from later this year:

- a by-law, or an owners corporation’s decision under a by-law, has no force or effect if it unreasonably prohibits the keeping of an animal on a lot.
- keeping an animal on a lot is reasonable, unless it interferes with another occupant’s use or enjoyment of their lot, or the common property.
- regulations may be developed outlining the circumstances where the keeping of an animal interferes with another occupant’s use or enjoyment of their lot, or the common property.

Responses to the pets survey, in addition to responses related to pets provided as part of the broader review of the strata laws, will assist in the development of the regulations.

The additional survey is hosted on the NSW Governments’ Have Your Say website <https://www.haveyoursay.nsw.gov.au/strata-statutory-review-2020>.

Further information can be found on the Have Your Say website or be emailing stratareview@customerservice.nsw.gov.au

SCA NSW are participating in the public consultation process and would love for our members to participate as well.

NSW GOVERNMENT
WANTS YOUR FEEDBACK
ON HOW LAWS CAN BE
CHANGED



DESPITE LOOKING SIMPLE, BALCONIES ARE COMPLEX AND SHOULD BE TREATED AS SUCH.

COMMON ISSUES FOR BALCONIES IN STRATA

While a balcony is a wonderful asset to have, when it's located in a strata title development, there are certain issues you need to be aware of - what's common and what's not when it comes to balcony/deck degradation.

According to some building authorities, a well maintained (properly constructed) balcony should last 40-50 years without much issue.

Balcony structural elements have several components:

- Balustrade, columns and railings
- Surface tiles
- Waterproof membrane
- Airspace
- Concrete slab, which may include:
 - the balcony ceiling
 - balcony doors, windows and walls
 - awnings or pergolas

Despite looking simple, balconies are complex and should be treated as such.

The Most Common Issues with Strata Titled Balconies:

Other than "well maintained" there are other underlying assumptions including:

- The balcony was well designed in the first place with good drainage.
- The balcony and all its components were well constructed.
- Good quality and location appropriate materials were used in construction.

Water Leaks

The most common issue with body corporate balconies is, by far, water ingress.

Water leaks from a balcony can be into the lot or common property below or beside or into the subject lot.

Adequate drainage is the first issue that should be checked. An incorrect fall (resulting from poor design or construction) can funnel water directly into the lot or away from the appropriate drains.

Water pooling in also indicates poor draining.

Leaks to the lot below are, usually, indicators of a failure of the waterproof membrane.

There are lots of reasons membranes fail but poor workmanship accounts for up to 90% of failures. That can be everything from the slab being too wet to bond with the membrane, poor preparation of the surface, poor application of the membrane or subsequent tearing of the membrane when tiles are added or afterwards.

Leaks into the lot are more problematic since the failure may be the windows and doors rather than the balconies themselves. Or, as is often the case, the leaks have multiple causes.

If you have water ingress issues from your balcony have your own sliding doors checked first. If that proves not to be the cause of ingress, then report the matter to your strata manager.

If you have water ingress from the lot above or common property report straight to the strata manager.

Cracked or "Drummy" tiles

Tiles are laid over the waterproof membrane to which they bond providing protection for the membrane which itself



THE MOST COMMON ISSUE WITH BODY CORPORATE BALCONIES IS, BY FAR, WATER INGRESS.

stops water leaking into the lot below and protects the slab.

Sometimes expansion joints are inadequate, and the tiles push against each other as the slab moves. When that happens, the tiles can become de-bonded from the membrane and lift becoming “drummy”, named because of the hollow drumming sound they make with struck with something heavy.

Cracked tiles are, usually, the result of some sort of impact though it is possible that underlying issues can cause tiles to move and crack.

Cracked or lifted tiles need to be repaired as soon as possible. Movement of the tiles can tear the waterproof membrane. Even if the tiles come away cleanly it opens the way for water to penetrate to the membrane. It will have no way to drain away and can cause deterioration.

Repair of drummy or cracked tiles is lot owner responsibility.

If the cause of the problem comes from a structural issue such as concrete spalling the repair will be the OC responsibility.

Deterioration of the Balustrade or Fittings

Balustrades are made of all sorts of materials such as concrete, steel, wood, or glass. They are also fixed to the slab by either cementing in place or a complex arrangement of bolts.

All the materials are open to the elements and erosion or other deterioration will happen.

Regular maintenance is crucial. Concrete and steel balustrades should be painted regularly as painting seals the structure and prevents rust. Wooden balustrades, usually part of a wooden balcony, need to be treated regularly and inspected for evidence of wood rot and / or timber pests. Glass balustrades need to be cleaned and inspected regularly.

The most common balustrade issue is a breakdown of the connection to the slab. If bolts are used, they can rust weakening the structure.

When Balustrades No Longer Meet Australian Standards

Balustrades, like all building items, are subject to Australian Standards. Australian Standards are made more rigid, reasonably often, certainly more often than balcony balustrades are changed.

The changes to the Standards are not retroactive so if a non-compliant balustrade remains in good order then it’s a not an issue. The balustrade may be maintained, indefinitely.

There comes a point however when maintenance becomes a repair. Balustrades that are not compliant with Australian Standards may not be repaired.

It is common for a strata scheme with balustrade issues to find that replacement is their only option.

Concrete Cancer

Concrete cancer, or more correctly concrete spalling, is common in coastal areas.

For most buildings concrete cancer is a treatable problem.

Regular painting is crucial. The paint seals the concrete against moisture penetration. Painting goes hand in hand with inspection of the building and, if identified, repair of any spalling.

Balconies should be checked and painted regularly in concrete buildings as part of their regular maintenance.

Brick buildings by contrast do not need regular painting and balcony slabs are sometimes overlooked. The exposed concrete slab for the balcony should still be both inspected, painted and repaired if necessary.

If you’re unsure about any issues with your balcony, speak to your building or strata manager in the first instance.

EGMS EXPLAINED

The term “extraordinary” is not typically referred to in any legislation so, officially, these non-annual general meetings aren't really ‘extraordinary general meetings’, but just General Meetings. The term ‘extraordinary’ has been adopted into popular vernacular amongst the industry, thus the EGM acronym was coined.

Quick facts:

- An EGM can be held at any time throughout the year. There are no restrictions as to how many EGM's can be conducted.
- All other meeting requirements must be adhered to in that notices, an agenda as well as timeframes must comply with the Act.

Extraordinary General Meetings are held for any of the following reasons:

- when a special matter (that cannot wait until the next AGM) needs to be considered - such as to authorise major works, raise a special levy, change by-laws, appoint a Strata Manager, etc.
- within 14 days of when a request for an Extraordinary General Meeting is received by the Strata Committee (SC) from one or more persons eligible to vote and having a unit entitlement value of at least 1/4 of the total unit entitlement for the scheme.

- when there is a simple majority ‘Yes’ vote from the Strata Committee for the holding of an Extraordinary General Meeting.

Clear Days’ Notice:

For every Extraordinary General Meeting, a notice of meeting must be sent to each lot owner, company nominee, first mortgagee and covenant chargee, as shown on the strata roll and each registered tenant (if any) of a lot in the strata scheme who has been notified as a tenant of the lot to the Owners Corporation. There must be 7 clear days’ notice given plus time for postage (i.e., 7 business days) if the notice is being mailed.

NOTE: A copy of the minutes for the previous general meeting must accompany the notice unless a particular owner has already received a copy.

The items and motions that must be included in the notice for an Extraordinary General Meeting:

- copy of the minutes of the last general meeting.
- confirm the minutes of last general meeting.
- elect Strata Committee members (if the meeting is for that purpose)
- motion for each motion to be considered.
- whether a motion requires a special resolution or a unanimous resolution to be passed.



AN EGM CAN BE HELD AT ANY TIME THROUGHOUT THE YEAR.

- statement that a vote by an owner does not count if a priority vote is cast.
- statement that an unfinancial owner cannot vote at a meeting unless payment has been made before the meeting.
- statement that voting rights may be exercised in person or by proxy.
- provisions for determining a quorum at meetings.
- motions on any specific matters raised by the SC or the OC that require discussion or decisions.

The main Agenda for the Extraordinary General Meeting:

The agenda for the Extraordinary General Meeting will consist of some specific matters raised by the SC or the OC that require discussion or decisions and cannot wait till the next AGM.

Adding an item to the agenda of an Extraordinary General Meeting:

If you are entitled to vote at an Extraordinary General Meeting, you may give written notice of the 'matter' to be included to the secretary of the SC, keeping in mind the number of clear days' notice required for this type of meeting – i.e., 7 days plus postage (7 business days).

Your request must also contain:

- the name of the person submitting the motion.
- no more than a 300-word explanation of the motion.

Who is responsible?

As with most organisations the Secretary has the role of coordinating proposed agenda items and its distribution. However, in most strata schemes the strata managing agent generally undertakes this responsibility.

In some instances, owners are provided preliminary notice of the date of an EGM and requested to submit any items or issues they may feel appropriate for the agenda. It is important to have items of concern to you listed on the meeting agenda because there is no general business.

Fair Trading's website has a lot more information for those who would like to read further [here](#).

DAVID CHANDLER'S 6-MONTH REPORT CARD

The NSW Building Commissioner David Chandler OAM was recently interviewed to deliver a 6-month report card of what has been achieved, what's been completed and what's in the pipeline for consumers across NSW from him and the Office of the Building Commissioner (OBC).

In short – there has been a huge amount of work from the OBC in the last 6 months.

The piece can be found [here](#)

This is an excellent interview unpacking NSW Building Commissioner Chandler's role to date. Strata Community Association (NSW) and the Office of the Building Commissioner continue to work closely on government projects to help foster and re-establish consumer confidence for the building/construction industry in New South Wales.

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