

Best Practice Guide

The Role and Duties of Building Managers



The “caretaker” category of property management introduced with the changes to the Strata Schemes Management Act (the Act) and Regulations in 2003 has been updated in the Strata Schemes Management Act (2015) and Strata Schemes Management Regulations (2016) – caretakers are now referred to as “building managers”.

The building manager’s role is limited to:

- managing the common property
- controlling the use of common property (except by owners and occupiers)
- maintaining and repairing the common property.

A person is not a building manager if they perform these functions only on a voluntary or casual basis or as a member of the strata committee.

A building manager cannot be taken to be a strata manager or an on-site residential property manager - however, an on-site residential property manager may be a building manager.

BUILDING MANAGERS AND THE TRIBUNAL

Building managers are not licensed, but they are within the jurisdiction of the NSW Civil and Administrative Tribunal (NCAT). NCAT may hear and determine any disputes regarding the Caretaker Agreement between the owners corporation and the building manager.

NCAT may:

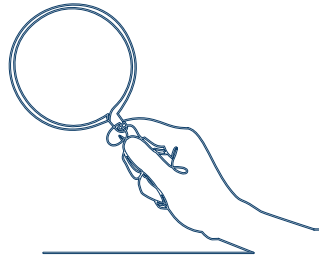
- terminate the agreement
- decide upon payment of compensation by a party to the agreement
- vary or declare void the terms or conditions or confirm same, or
- dismiss the application.

An owners corporation may seek orders on the grounds that:

- The building manager has refused or failed to perform in
- accordance with the agreement
- The building manager’s performance has been unsatisfactory
- Charges payable by the owners corporation for the services of the

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- building manager are unfair, or
- That the agreement is harsh, oppressive, unconscionable or unreasonable.

BUILDING MANAGER AGREEMENTS

To prevent Building Manager Agreements being entered into between the original owner and building manager prior to the strata scheme being commenced, it is a requirement that a resolution be passed at the First Annual General Meeting of the owners corporation to choose whether or not to enter into a further agreement. Similar provisions apply to the appointment of a strata manager.

If the Building Manager Agreement was entered into before or after a strata scheme commenced, by the building manager and under the authority of a resolution passed at a general meeting of the owners corporation, it must be executed after the strata scheme commenced. A Building Manager Agreement cannot be entered into for more than 10 years, although they may be renewed by agreement.

A building manager may be entitled to exclusive possession of a lot or common property. This can be jointly with another person(s).

An on-site residential property manager must have as their principal place of residence the premises which they manage. They must also own, or have a prescribed interest, in that residence. The Property and Stock Agents Act (PASA Act) 2002, notes that an on-site residential property manager cannot manage more

than one residential complex, unless they hold a real estate agent's licence.

CONCLUSION

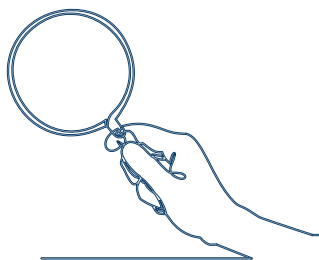
A building manager has limited functions compared to those of an on-site residential property manager and strata manager. Whatever functions the people in these categories undertake, they must ensure they act within the terms of their agreements and legislative requirements.

OTHER IMPORTANT CHANGES

- Section 184 certificates have to include the name of the building manager, and during a section 182 search, a copy of the building manager contract must be made available to a prospective purchaser.
- Proxy voting restrictions apply to building managers, strata manager and on-site residential property managers, e.g. they cannot vote to obtain a financial or material benefit (Strata Schemes Management Act Schedule 1 –Meetings and procedure of owners corporation – S25 clause (7)).
- Proxy voting forms must clearly state the length of the proxy, but not more than 12 months or 2 Annual General Meetings.
- Priority voting rights of mortgagees may only be exercised on motions relating to insurance, budgeting, fixing a levy, special or unanimous resolutions, and motions relating to expenditure for certain amounts as set out in the Act.

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For further information on the above, and building managers' agreements, see NSW Fair Trading website www.fairtrading.nsw.gov.au or call 13 32 20

RESOURCES

Strata Schemes Management Act 2015
Property and Stock Agents Act 2002

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Strata Community Association (NSW) is the peak industry body for Strata and Community Title Management in New South Wales. Membership includes strata managers, support staff, committee members and suppliers of products and services to the industry. SCA (NSW) has in excess of 3,000 members who represent over 75% of strata lots in NSW by way of helping to oversee, advise or manage a combined property portfolio with an estimated replacement value of over \$400 Billion. SCA (NSW) proudly fulfils the dual roles of a professional institute and consumer advocate.

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