

Buying into a strata scheme

What is a strata scheme?

A strata scheme is a building or collection of buildings that has been divided into 'lots'. Lots can be individual units/apartments, townhouses or houses. When a person buys a lot, they own the individual lot and also share the ownership of common property with other lot owners. Common property generally includes things like gardens, external walls, roofs, driveways and stairwells.

Strata living can provide a friendly community-style environment but differs from living in a freestanding house.

It is important for you to be aware of the additional and different responsibilities and responsibilities that apply to living in a strata schemes if you are considering purchasing a lot in a strata scheme. Some activities may be more restricted than if you were living in a freestanding house - for example, where you can park your car or how you can renovate your lot.

Community schemes

The property you are looking at may actually be within a community scheme. Generally, community schemes support a variety of different land uses (houses, apartments, gym, shops, golf course) within the one complex. Community schemes operate in much the same way as strata schemes, having lot owners, common property, owners corporations and by-laws.

What would I actually own in a strata scheme?

One major difference between owning a house and a unit in a strata scheme (or 'lot') is that the external walls, the floor and roof do not usually belong to the lot owner. These areas are usually common property, which means that the maintenance and repair of these parts of the building are the responsibility of the owners corporation. As it is common property, the lot owner cannot alter or renovate these areas without permission from the owners corporation. Lot owners may need permission to do things such as install services (eg. cable television, phone or internet), knock down walls or replace locks on doors or windows.

Before buying into a strata scheme, you should be clear on the common property boundaries. For a definitive answer on the common property, refer to the strata plan for your individual strata scheme from Land and Property Information NSW. The strata plan shows the layout of the strata scheme and the common property details. Pay close attention to items such as sliding doors leading to balconies, garage doors and balcony railings, as strata plans may differ on whether these are common property. You can also obtain expert advice if you are uncertain about the common property boundaries.

In most strata schemes, the lot owner owns the inside of the unit but not the main structure of the building. Usually the four main walls, the ceiling, roof and the floor are common property. The internal walls within the lot (e.g. the wall between the kitchen and lounge room), floor coverings such as carpet and fixtures such as baths, toilet bowls and bench tops are all the property of the lot owner. Effectively, a lot owner generally owns the 'airspace' (and anything included in the airspace) inside the boundary walls, floor and ceiling of the lot.

Airspace can also extend to balconies and courtyards. You should get proper advice about ownership of such things as a tree in the courtyard or the responsibility to maintain a pergola covering a balcony or courtyard. They could be in your airspace and, therefore, would be maintained at your cost. You should also check whether things like car spaces or gardens are part of your lot. If they are, you will be responsible for their maintenance.

Owners corporation and executive committee

The owners corporation is an incorporated body, and all lot owners in a strata scheme are automatically part of the owners corporation (sometimes referred to as the 'body corporate'), and have a right to take part in the decision making.

The owners corporation is usually responsible for maintenance and repair of common property. The owners corporation should hold regular meetings to decide the issues of the scheme, and has responsibility for the overall management of the scheme.

The owners corporation also has an elected strata committee able to make certain decisions on its behalf. The strata committee is in place to enable quicker decision making on many of the day-to-day decisions about running the scheme. The strata committee members are obligated under the law to act with due care and diligence and must adhere to strict disclosure requirements.

Unit entitlement

The strata scheme plan determines the unit entitlement for each lot. It is important for lot owners to know their unit entitlement, as this is what is used to work out the overall interest (part-ownership) in the common property, and to calculate the levies payable, and voting entitlements. Not all lot owners have the same unit entitlement, as this can vary for each unit in a scheme.

Levies

Lot owners need to make regular contributions to the owners corporation to cover the maintenance and administration of the strata scheme and help maintain the life of the building.

The owners corporation looks after the management of the strata scheme. It must set up and keep an administrative fund (for day-to-day operational expenses) and a capital works fund (for short and long-term future expenditure of a capital nature).

The owners corporation must estimate how much money is needed each year for the funds to cover all the expenses and needs of the strata scheme. An owners corporation must take into account anticipated major expenditure identified in the 10-year plan for the capital works fund. The levy amount to be paid by owners is decided at each annual general meeting (AGM) by a majority vote. All levies must be worked out based on the unit entitlements of each lot. Levies are usually paid every 3 months.

What do levies pay for?

An owners corporation has the same type of expenditure as a conventional householder. There are council rates, water and electricity charges for common areas, building

and public liability insurance and repairs and maintenance of common areas, such as painting or re-painting parts of the common property, or renewing or replacing fixtures or fittings. In a strata scheme, there can also be additional costs such as workers compensation insurance, building valuations, and the resolution of any disputes arising within the scheme.

Owners should pay close attention to the quality and finishes of a building as everything the scheme has to offer must be maintained eg. swimming pools, lifts, tennis courts, saunas etc.

Special levies

Owners corporations can vote to introduce a 'special levy' where there are insufficient funds to cover expenses such as large capital works or unforeseen work.

Difficulty in paying levies

If you are experiencing difficulties in paying your levies the first step is to contact your strata committee or the strata managing agent to discuss the issue. You may be able to negotiate an agreement with your owners corporation to ensure these obligations are met.

If levies continue to be unpaid the owners corporation can take civil action through the Local Court to recover unpaid levies. This can include garnishee of your wages, or rental money from your real estate agent.

Are there any meetings I would have to attend?

It is not compulsory for a lot owner to attend owners corporation meetings. However, a strata scheme operates better if you take an interest in its affairs. It helps if people are willing to make themselves available for election to the strata committee. The owners corporation usually meets several times each year, although the AGM (when levies are set for the coming year and the strata committee is elected) is the only meeting required by law. The strata committee would usually meet more often than the owners corporation, as the owners corporation delegates some decision-making to the committee.

The owners corporation can use electronic voting or other means to maximise participation in the scheme and involve owners in making decisions on how it operates. You should ask your solicitor to check what type of voting and attendance is permitted at meetings of the scheme.

Strata managing agents

The owners corporation can manage the strata scheme itself, or it can engage a strata managing agent to work on behalf of all owners to help manage the scheme. If it engages a strata managing agent, the owners corporation enters into a contract with the agent, which outlines their duties and responsibilities. The owners corporation has the power to instruct the agent to do certain works and if necessary, they can overrule the agent.

The appointment of a managing agent can only be decided by a majority vote at a general meeting. Only a person who holds a strata managing agent's licence under the *Property Stock and Business Agents Act 2002* can be appointed. Owners corporations should periodically check the licence is current by doing a licence check of the property licence register at www.fairtrading.nsw.gov.au

Agents can carry out some or all of the functions, duties or powers of the owners corporation including administrative matters such as calling meetings and collecting levies. The owners corporation decides what duties and functions it wishes to give to the strata managing agent. Agents should also give advice and guidance about legislative requirements.

By-laws

By-laws are a set of rules that all people living in a strata scheme must follow. By-laws are made on issues such as safety and security measures, floor coverings, pets etc. Strata schemes can adopt model by-laws that are set out in the *Strata Schemes Management Act 2015*, they can amend and adopt these model by-laws, or they can make their own.

Before buying, it is advisable to check the schemes by-laws as they will affect the way you will live in a scheme. Of particular importance is whether you would like to

bring your pet into your lot, and whether the by-laws will permit this. Just because you see other lot owners with pets in your scheme does not necessarily mean they are allowed under the by-laws. You need to check before you make your decision.

In some instances, a breach of a by-law can attract a penalty.

Before signing a contract

Seek professional advice about the complexities involved in buying a strata unit. Look at the records of the owners corporation. Know as much as you can about the maintenance of the building and the related costs, and look for any signs that money may need to be spent soon.

There are companies that specialise in inspecting the records. Sometimes your solicitor will arrange this for you. You can also inspect the records yourself. The owners corporation must make their records available following payment of the necessary fees (usually done through the strata manager). You can access the following records:

- the strata roll (this shows who owns each unit, mortgagees and others who have an interest in lots, general information about the strata scheme, the name of the managing agent, insurance details, the by-laws and the unit entitlements for the scheme and each lot)
- general records, such as notices served about disputes or required by legislation, orders, minutes of meetings, accounting records, financial statements, correspondence received and sent, notices of meetings, details of proxies, voting papers
- plans, specifications, certificates, diagrams and other documents if supplied by the original builder at the first annual general meeting
- the certificate of title for the common property
- the last financial statements
- current insurance policies and the receipt for the last premium paid
- other records held by the owners corporation, and
- records or books of account kept by a strata managing agent.

Getting a Section 184 certificate

If you are an owner, or you have an owner's, mortgagee's or covenant chargee's written permission, you may write to the owners corporation and ask for a section 184 certificate. A member of the strata committee or the strata managing agent must give the certificate under the owners corporation seal. The certificate must be on the set form used in the Strata Schemes Management Regulation 2016 - Schedule 1. There is a fee payable. A Section 184 certificate will give information about the strata scheme including:

- the names and addresses of the strata committee members, the managing agent and building manager (if applicable)
- the levies to be paid by the owners
- any outstanding levies
- any outstanding levies for the owner of the lot you are interested in
- the proposals for funding the matters set out in the 10-year capital works plan
- the address where the records and financial statements can be viewed
- details of any by-laws made by the owners corporation within 6 months before the date of the certificate that have not been lodged at NSW Land Registry Services as at that date
- whether or not a strata renewal committee has been established in relation to the strata scheme under the *Strata Schemes Development Act 2015*.

If a levy is outstanding before the certificate is given and it is not shown on the certificate, the purchaser is not responsible for the payment.

Buying off the plan

Sometimes strata units are advertised for sale even before the building has been constructed. The design of the building and sketches of its final appearance may be included in advertising well before occupation is possible. Buying such a strata unit is known as 'buying off the plan'.

Usually a contract of sale is signed, but the date for completion of the contract will not be until the building is completed and the strata plan is registered. The buyer usually pays a deposit (typically ten percent of the agreed price of the unit) and the balance is paid when the contract is 'settled' upon the building's completion.

There are several issues to be aware of when buying off the plan, as you may be entering into a contract without having first seen and assessed the finished product. Find out more at our Buying off the plan page on the Fair Trading website.