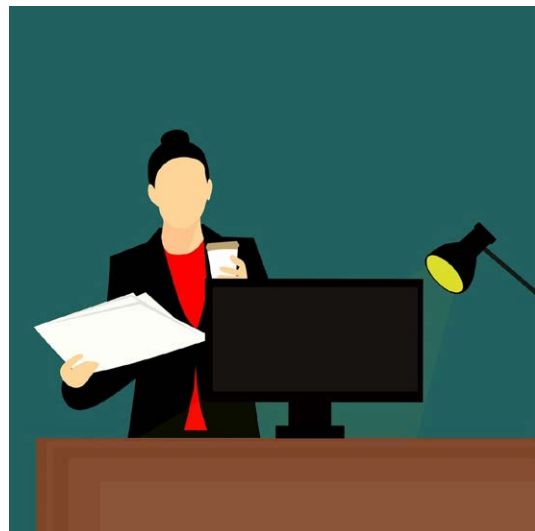
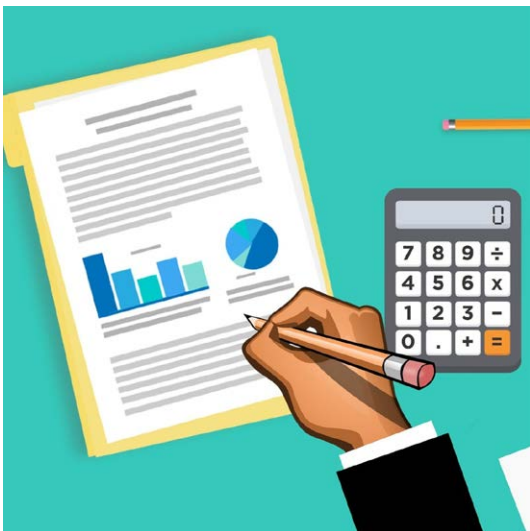


WELCOME 2019!



I want to start by thanking everyone for their support and instructions throughout 2018 and look forward to another year. 2018 has seen some significant changes within the strata industry with changes to various legislation and compliance requirements.

As 2019 commences, it is a good time to remind ourselves of the strict deadlines that could apply to our various clients. In most of these circumstances, there is no option to extend these statutory deadlines. I set out below, a summary of these deadlines, for your convenience:



- **Debt recovery:** 6 years from the date when the debt first accrued. This usually means the date when the levy was raised, resolved and due. [*Limitation Act 1969*]

- **Building defects:**

- For building contracts entered into prior to 1 February 2012: 7 years from the date of completion of the works, irrespective of the nature of the defects [*Home Building Act 1989, sect 18 as per savings provisions*];
- For building contracts entered into after 1 February 2012: 6 years in respect of any “major defects” as defined in the *Home Building Act 1989*, 2 years in any other case. Please note that these time periods reflect the time periods which apply to the provision of written notice to an insurer under a home warranty insurance policy [*Home Building Act 1989, sect 18 as amended*] and/or the Builder and Developer.
- For any building claim: a 10 year “stop gap” after completion of the works to commence any other action [*Environmental Planning and Assessment Act 1979 sect 6.20*]

In cases where a claim is to be lodged with the NSW Civil and Administrative Tribunal, we will need to be mindful that the Tribunal will not accept a Home Building application unless the applicant has first had recourse to the Complaints process with NSW Fair Trading. An exception may be made if the limitation period expires within 3 months from the date of lodgement of the application. It is important to note that the lodgement of a Complaint will not stop the running of the time period.

- **Defective (Combustible) Cladding:** The owner of a building (usually, the owners corporation) is to provide a report to the Department of Planning and Environment by 22 February 2019 if the building was occupied before 22 October 2018, or within 4 months after occupation if the building was occupied on or after 22 October 2018. [*Environmental Planning and Assessment Amendment (Identification of Buildings with External Combustible Cladding) Regulation 2018*]
- **Registration of by-laws:** 6 months from the date of the general meeting at which the motion for the making of the by-law was approved.
- **Inspections for building defects for works commenced after 1 January 2018:**
 - If the initial period ends within 12 months after completion of the strata scheme, the developer must appoint an inspector and provide the owners corporation with notice of the appointment no later than 14 days after the appointment is made. If the initial period does not end within 12 months after construction, notice is to be provided by the developer to the owners corporation within 21 days after the end of the period.

Within 14 days after the making of a decision, the owners corporation is to provide the developer and NSW Fair Trading with written notice of its decision to accept or to refuse to accept the nominated building inspector

- Building inspector is to provide an interim report not earlier than 15 months and no later than 18 months after completion of the building works.
- No later than 18 months after completion of the works, the developer must arrange a final inspection followed by a final report to determine that the remedial work is completed. An exemption applies where the interim report does not identify any defective work.

- **Building Bonds:**

- An application to claim a building bond must be made no later than 14 days before the last day on which the building bond must be claimed or realised.
- A building bond must be claimed or realised by the later of the following time periods: within 2 years after the date of completion of the building work for which it is given, or within 60 days after receipt of the final report by NSW Fair Trading from the building inspector. Please note that the Regulations prescribe a period of 2 years and not more than 3 years after the date of the occupation certificate.

FIRE AND RESCUE NSW



After three years of research into fire safety in residential buildings up to 25 metres high, fire & rescue nsw (frnsw) recently released two reports. The core of the findings demonstrate that sprinklers combined with smoke alarms are more effective at saving lives

than using smoke alarms in isolation.

Paul Baxter is the FRNSW Commissioner. “Smoke alarms have had a significant impact on reducing the number of fatalities over the past 10 years; however, a combination of fire sprinklers and smoke alarms can significantly further reduce the risk of fatalities in the event of a fire,” said Commissioner Baxter.

“Modern-day furnishings and building materials often produce faster fires with higher levels of heat and toxic smoke. We are committed to keeping the people of NSW fire safe and will continue to carry out research that better informs building code legislation and product standards to improve fire safety.”

Following the recommendations outlined in the reports, the FRNSW will work closely with relevant stakeholders over the coming months. Together with the Fire Protection Association Australia and the Australasian Fire Authorities Council, the FRNSW has submitted a *Proposal for Change* to the 2019 National Construction Code to mandate sprinklers in all new apartments up to 25 metres high. While sprinklers will be a welcome addition to fire safety, interconnected smoke alarms positioned throughout apartments are also essential. According to the law that came into effect on May 1 2006, smoke alarms must meet the requirements of the Australian Standard AS 3786. The alarms must be placed in hallways near bedrooms and there must be an alarm on all levels of the home even if they aren’t any bedrooms. The Commissioner recommends taking the minimum requirements even further with one alarm in each bedroom and in the living area. “On average, there are approximately 21 deaths reported each year as a direct result of residential fires across NSW,” he said. “Up to a half of those fatalities could have been prevented if these homes had working smoke alarms as well as a home fire escape plan. Additionally, the interconnection of multiple alarms ensures that if one alarm detects smoke, all other alarms will activate to sound a warning,” he said.

WHAT IS A CAPITAL WORKS FUND?



It is important to have a capital works fund. The capital works fund (previously known as the sinking fund) covers the renewal or replacement of existing common property and the addition or acquisition of new common property. This may include items such as repainting the common areas of the building. If a strata plan does not have funds in the capital works fund, the owners at the time will have to cover the full cost of the expense, often by raising a special levy. The capital works fund acts as a cushion during such times and is usually built up as time goes by. The balance of the capital works fund shows the financial health of a strata scheme.

The Strata Schemes Management Act 2015 contains the following provision:

“79(2) an owners corporation must, at each annual general meeting, estimate how much money it will need to credit to its capital works fund for actual and expected expenditure:

- for painting or repainting any part of the common property which is a building or other structure, and
- to acquire personal property, and
- to renew or replace personal property, and
- renew or replace fixtures and fittings that are part of the common property, and
- to replace or repair the common property, and,
- to meet other expenses of a capital nature.”

The owners corporation must prepare, or have prepared, a plan for a 10-year period commencing from the first annual general meeting, and following that 10-year period, a plan for each 10-year period thereafter as the previous plan expires. It is intended that each owners corporation must review the plan at least once every 5 years.

HOW MUCH SHOULD BE IN MY CAPITAL WORKS FUND?

Each complex is different and calculating this number is a specialised task. It's determined by looking at capital works fund forecasts.

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INDUSTRY WINS IN SHORT-TERM HOLIDAY LETTING REFORMS



7 January 2019

Did you know, back on 6 June 2018, the NSW Parliament tabled the *Fair Trading Amendment (Short-term Rental Accommodation) Bill 2018* (the Bill)?

The Bill, assented to on 21 August 2018, will introduce a new regulatory framework to govern the short-term holiday letting industry, and includes many hard-fought-for wins for REINSW.

The framework was developed in response to the growth of the short-term holiday letting

industry. It is designed to protect residents from anti-social behaviour while also ensuring communities continue to benefit economically from local tourism.

Review of the short-term holiday letting industry

The recent growth and increasing popularity of online booking services, such as Airbnb and Stayz, has seen the rapid expansion of the short-term holiday letting industry.

While NSW has benefitted from this type of tourism for many years, the industry has remained largely unregulated.

In July 2017, the NSW Department of Planning and Environment in conjunction with NSW Fair Trading decided to review this industry, releasing the [Short-term Holiday Letting in NSW Options Paper](#) (the Options paper).

REINSW seized this opportunity to provide feedback on behalf of its members, lodging a submission in response to the Options Paper on 31 October 2017.

“We were happy to have the opportunity to provide feedback on the short-term holiday letting industry and its impact on real estate professionals, owners and tenants,” says Tim McKibbin, REINSW CEO.

“The growth of the short-term holiday letting industry has been rapid and shows no signs of slowing. However, like many industries impacted and driven by technological disruption, regulation has not kept pace with the evolution and growth of the short-term holiday letting industry.

“With no standardised regulation, local councils across the State regulated this industry independently and confusion reigned. Unfortunately, strata managers and property managers often bore the brunt of complaints regarding unsavoury guests, so reform in this industry was necessary.”

REINSW lobbying for better regulation

REINSW applauded the NSW Government’s initiative in seeking industry and stakeholder input into the development of a robust framework for the short-term holiday letting industry.

“A robust framework will provide greater clarity and guidance for all stakeholders,” says McKibbin. “It will also ensure the economic benefits of the industry continue while

managing the social and environmental impacts.”

The release of the Bill saw many wins for REINSW members, landlords and tenants. These include:

Owner’s rights | In balancing the interests of stakeholders, REINSW emphasised that owners should have the right to deal with their property in the manner they see fit. As a result, the changes to the Strata Schemes Management Act 2015 (NSW) (which are yet to commence) afford protection to the rights of both industry participants and non-industry participants.

Protecting short-term letting owners and tenants | It is the Government’s intention for the rights of both owners and tenants to be protected under a code of conduct, which is yet to be established. Section 54B of the Bill will allow for a code of conduct to be included in the Fair Trading Regulation 2012 (NSW), which is a huge win for REINSW. Such a code will set out the rights and obligations of all industry participants as well as providing for the resolution of disputes and complaints. An important win for REINSW is the registers contemplated by the Bill. The code may authorise the establishment of an exclusion register of participants who have breached the code, prohibiting or restricting them from participating in short-term rental accommodation arrangements. The code may also provide for the registration of premises used for these types of arrangements.

“We fought hard for the registration of residential properties used for short-term holiday letting to be included in the Bill,” says McKibbin. “With this, at least there is a foundation for a regulatory environment in which participants understand the consequences of adverse behaviour.

REINSW is also lobbying for an owner register and guest register with a process of identification established so that the parties to the transaction are clearly known. REINSW will continue its lobbying efforts into the new year with the intention of bringing the Government’s attention to the need and importance of such registers in the short-term rental scene.

Contravention of the code comes with both criminal and civil penalties – the maximum penalty for an offence for a corporation is 1000 penalty units (equivalent to \$110,000) and 200 penalty units in any other case (equivalent to \$22,000).

Payment of bonds (a loss) | REINSW suggested that a bond be payable by the

short-term letting tenant at the time of booking and making payment for their stay. This would provide owners with security in the event of damage to their property caused by the short-term letting tenant. Despite these suggestions, no provisions have been included in the Bill to address the requirement of a bond.

More change expected

Short-term holiday letting impacts a variety of stakeholders, including owners, tenants, agents, online booking providers, insurers, local councils, neighbours and the wider community. It also affects a range of property types, such as lots in strata schemes and other community-style schemes, and detached dwellings

McKibbin says these reforms protect the needs, interests and concerns of the majority of stakeholders and represent .thediffering property types.

“REINSW has been invited to participate in an advisory committee to develop the code of conduct for this industry,” he says.

“When a lot owner chooses to engage in long-term letting, a series of strict obligations are imposed upon both them and the tenant under the Residential Tenancies Act 2010 (NSW) – and when those obligations are breached, there are consequences.

“Why should it be any different in the case of short-term holiday letting? Surely lot owners, occupiers and tenants engaging in short-term holiday letting should be similarly bound?”

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Our Team

Leo Paternoster

Director

leo@integritystrata.com

WOLLONGONG

Managers

David Paternoster

General manager

davidp@integritystrata.com

Kellie Rickwood

Strata Manager

kellie@integritystrata.com

Debbie Kominkovski

Portfolio Manager

debbie@integritystrata.com

Luanne Martins

Strata Manager

luanne@integritystrata.com

Personal Assistants

Donna Morice

donna@integritystrata.com

Amelia Knott

amelia@integritystrata.com

NOWRA:

Managers

Narell Whitehead

Strata Manager

narell@integritystrata.com

Claire Clarke

Trainee SM

claire@integritystrata.com

Tamara Warfield

Trainee SM

tamara@integritystrata.com

WOLLONGONG 0242294699 AND NOWRA 0244 235 028 | WEBSITE:WWW.INTEGRITYSTRATA.COM

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