

This article will discuss the types of strata dispute resolution mechanisms available to help solve conflicts between strata residents, including mediation and conciliation.



Strata-titled buildings and dwellings are on the rise, especially in the Sydney area. According to the City of Sydney, the residences within the Sydney local area are now 80% apartments, which is over 5 times the national average.¹

With an increase in people living in residences with shared common property, there is a higher risk of conflict arising between residents and/or associated owners corporations.

While you may not need legal representation when taking your dispute to the Owners corporation or NCAT (NSW Civil and Administrative Tribunal), seeking legal advice is recommended to aid the resolution process.

A. TYPES OF CONFLICT

Some common types of conflict that may arise between those within the same strata scheme are maintenance issues, noise complaints, residents not adhering to by-laws, issues surrounding pets, parking issues and water penetration problems.

B. OWNERS CORPORATION

Disputes can be handled internally if they are communicated well and solutions are sought efficiently. The owners corporation are able to decide on certain strata disputes, such as breaches of by-laws and issues with maintenance.² The owners corporation has the ability to act on issues and distribute notices to alert residents of any breach. Where a resident may not comply with a notice, further external resolution methods may be put in place.

If you have a dispute, you can approach the secretary of the owners corporation (or the Strata Manager if one is appointed by the owners corporation) and request the matter be put on the agenda for the next meeting.

B.1. WHAT IS A BY-LAW?

All strata schemes have rules and regulations that owners and tenants must abide by, being the strata by-laws. By-laws are determined by the owners corporation, but must not be “harsh, unconscionable or oppressive”.³ An example of a by-law that is too harsh is a law prohibiting children or ‘assistance animals’ (e.g. a guide dog) from living in a lot. The *Strata Schemes Management Act 2015* and the *Strata Schemes Management Regulation 2016* have model by-laws that many strata schemes follow.⁴

¹ City of Sydney, *Apartment Living*, accessed 17/01/2020 <<https://www.cityofsydney.nsw.gov.au/live/residents/apartment-living>>.

² Department of Fair Trading, *Strata Schemes*, accessed 22/12/2019 <<https://www.fairtrading.nsw.gov.au/housing-and-property/strata-and-community-living/strata-schemes/resolving-disputes-and-mediation>>.

³ Ibid.

⁴ Jamesons Strata Management, accessed 22/01/2020 <<https://jamesons.com.au/blog/laws-strata-scheme/>>.

⁵ Ibid.



C. MEDIATION

Mediation is a dispute resolution mechanism that involves an independent third party (a mediator) facilitating a meeting between two parties to a dispute. It is a more informal process than going to a tribunal and all parties must agree on whether lawyers can be present or not. NSW Fair Trading offers free mediation on strata issues and will provide an impartial mediator to encourage collaboration and help reach a solution that is agreeable to most parties.⁵

For most strata issues, mediation is a mandatory process before a party can take a matter to the NSW Civil and Administrative Tribunal (NCAT).⁶ For a list of what issues are exempt from mandatory mediation, see the fact sheet on the NCAT website.⁷ Issues such as the appointment of a strata management agent, penalty disputes, providing the owners corporation with access to a private lot or access to strata records are usually considered to be inappropriate for mediation and may be heard at NCAT without mediation.

D. NSW CIVIL AND ADMINISTRATIVE TRIBUNAL (NCAT)

NCAT is an independent body that can hear matters and resolve strata disputes by creating binding orders under the *Strata Schemes Management Act 2015*.⁸ To apply for an NCAT hearing a person would complete the Strata schemes application form, found on the NCAT website,⁹ and lodge it at an NCAT registry.

Before a hearing takes place, the tribunal may ask the parties to attempt to solve their dispute through conciliation. This is a voluntary process which allows

the parties an opportunity to discuss the matter privately and attempt to come to an agreement. If available, a conciliator will attend the conciliation to help the parties reach an agreement.

If conciliation is unsuccessful or 'is made known but not attempted', the parties will proceed to a hearing. You must gain permission from the tribunal first if you would like your lawyer to appear with you (or instead of yourself). On occasion, a decision made by the tribunal can be appealed to the NCAT Internal Appeal Panel.

D.1. WHAT IF THE PROBLEM IS URGENT?

Taking matters to NCAT can be time consuming. For urgent matters such as anything affecting the health and safety of residents or to stop unauthorised construction work, an application for 'interim orders' can be made before a full trial is heard. The tribunal will try and assess the interim order proposed within 24 hours.

Interim orders must be accompanied by an application for an NCAT hearing. A granted interim order can be enforced for up to 3 months, with an option to renew it for another 6 months.¹⁰

Comasters is able to provide legal advice on strata disputes and can represent clients at NCAT and at strata (general or committee) meetings.

For more information on related matters, you may wish to read the following articles:

1. [*Strata Owners Corporation and the Law*](#)
2. [*Strata Inspection Reports*](#)
3. [*NSW Civil and Administrative Tribunal*](#)

Comasters is able to assist clients with strata disputes.

⁶ Section 227(4) of the *Strata Schemes Management Act 2015*.

⁷ NCAT, *Strata Fact Sheet*, accessed 22/01/2020 <https://www.ncat.nsw.gov.au/Documents/ccd_factsheet_strata_schemes.pdf>.

⁸ Ibid.

⁹ NCAT, *Strata Schemes*, accessed 22/01/2020 <<https://www.ncat.nsw.gov.au/Pages/cc/Divisions/strata.aspx>>.

¹⁰ NCAT, *Strata Fact Sheet*, accessed 22/01/2020 <https://www.ncat.nsw.gov.au/Documents/ccd_factsheet_strata_schemes.pdf>.

© Comasters February 2020. **Important:** This is not advice. Clients should not act solely on the basis of the material contained in this paper. Our formal advice should be sought before acting on any aspect of the above information.

CONTACT US

Jeffrey T Lee Principal Lawyer
Gina Bae Associate Lawyer
Alice Huang Senior Paralegal
Alizeh Ahmad Paralegal
Eleni Carydis Paralegal

Comasters Law Firm and Notary Public
Suite 101, Level 1, Capitol Terrace
743-755 George Street
Sydney NSW 2000, Australia

T +612 9288 0300
F +612 9288 0399
E comasters@comasters.com.au
www.comasters.com.au