

Conveyancing Amendment (Building Management Statements) Act 2001

What is the reason for the Act?

Since 1992 it has been possible to have a strata scheme that only applies to part of a building.

For example, a five-storey building comprising shops on the first two floors, and residential units on the top three floors, might have a strata scheme consisting of only the residential units on the top three floors. The bottom two floors would not be part of the strata scheme. The *Strata Schemes (Freehold Development) Act 1973* provides that where such part-building strata schemes exist, a document known as a strata management statement must be registered on the titles of the strata and non-strata parts of the building. The strata management statement sets out a method for the building to be managed and maintained as a whole, between the strata scheme and the non-strata part. The strata management statement will also bind any subsequent owner of a part of the building. Furthermore reciprocal easements for support and shelter automatically arise between the strata and non-strata parts of the building.

The aim of this Act is to take this existing method and apply it to buildings where, though there is no strata scheme, different parts of the building are owned by different persons. These types of buildings are already in existence and usually there is an agreement between the owners of the different parts of the building regarding the management of the building and the sharing of expenses. However that agreement does not bind subsequent owners of a part of the building. This Act remedies that situation as well as ensuring that future buildings of this nature will not have this problem.

How does the Act remedy the above problem?

Consider a situation when in a five-storey building the bottom two storeys might be owned by one person

and the top three storeys might be owned by another person. This is achieved by the registration of a plan of subdivision that contains non-strata lots that are defined so as to coincide with different parts of the building. The Act allows a document known as a Building Management Statement to be registered on the titles for the different parts of the building. The Building Management Statement will set out a method for managing the building as a whole entity, and the statement will bind any subsequent owner of a part of the building. In fact the statement will operate as a deed binding each person who owns part of the building, whether at the time the statement is registered, or in the future. The statement will also bind other parties with a registered interest on the titles for the building, namely parties such as mortgagees, chargees and lessees, whether now or in the future.

A Building Management Statement may be registered in respect of an existing building owned in separate non-strata parts, or at the same time that a plan of subdivision is lodged with the Registrar General that subdivides a building into separate non-strata parts.

What things must a Building Management Statement provide for? (s.196E and Schedule 8A)

Firstly, the establishment and composition of a building management committee and its office bearers. The building management committee will manage the building as a single entity and will be comprised of representatives of the owners of the various parts of the building. The statement will normally provide that there will be a secretary for the committee and may also provide for other office bearers such as a treasurer.

Secondly, the statement will set out the functions of the committee and its office bearers. The functions of

the committee will relate to activities necessary to manage and maintain the building.

Thirdly, the statement must set out a method for resolving disputes between the parties. This may involve mediation or arbitration, or both.

Fourthly, the manner in which notices and other documents may be served on the committee is to be made clear. This will normally be by post or facsimile.

And lastly, the statement must contain provisions dealing with insurance for the building.

The five matters mentioned above are the compulsory matters that must be contained in a building management statement. However the statement is not limited to only those matters but may also deal with any other matter that is considered to be of relevance in the management of the building. These types of matters might include the following:

- The location, control, management, use and maintenance of any part of the building, or its site, that is a means of access;
- The storage and collection of garbage on and from the various parts of the building;
- Meetings of the building management committee;
- The keeping of records of proceedings of the committee;
- Safety and security measures;
- The appointment of a managing agent;
- The control of noise levels;
- The prohibition or regulation of trading activities;
- Service contracts; and
- An architectural code to preserve the appearance of the building.

What matters are implied in a Building Management Statement? (Clause 6, Schedule 8A)

Every statement will be deemed to include the following provisions, unless the statement provides otherwise;

- The building management committee must meet at least once each year.
- At least 7 days notice of a meeting must be given to each member of the committee.
- The quorum for a meeting of the committee is a majority of the members.
- The decision of a majority of the members present and voting is the decision of the committee.

Who must sign a Building Management Statement? (s.196H)

A statement lodged for registration must be signed by the registered owner of each part of the building as well as by each registered mortgagee, chargee or lessee. Amendments to a statement must also be signed by those persons

What is the effect of a Building Management Statement? (s.196I)

The statement, when registered, operates as a deed between the owners, mortgagees and lessees of any part of the building. The agreement is deemed to include covenants by which all those persons jointly and individually agree to carry out their obligations under the statement, and to permit the other parties to carry out their own obligations.

Once a person ceases to have a registered interest in a building that is subject to a statement, then the statement ceases to bind that person. However, this does not affect any obligation or right that was incurred when the statement bound that person.

Do easements operate in conjunction with a Building Management Statement? (ss.196K, 196L, Schedule 8B)

When a statement is registered for a building, mutual easements for support and shelter arise between each part of the building for which those easements are relevant. Furthermore, when easements for vehicular access, personal access or for a specified service exist between different parts of the building, then certain standard terms for those easements will be implied, unless the easement provides otherwise. This is the same situation as applies for buildings that are partly subject to a strata scheme. In essence this part of the Act just sets out a way that standard terms and conditions of an easement can be created merely by describing the easement in a certain way – for example ‘right of vehicular access’, or ‘right of personal access’.

What happens when a strata scheme is registered for part of the building? (s.196J)

At some point after a Building Management Statement has been registered for a building it is possible that an owner of part of that building may wish to strata that part. Section 28R of the Strata Schemes (Freehold Development) Act requires that a strata management statement must be registered whenever a part-building strata scheme is created. As mentioned earlier a strata management statement sets out a method for managing a building between the strata and non-strata parts. However in the example given there is already a building management statement in place that governs the relationship between the various parts of the building. In order that the building not be governed by two documents dealing with the same subject matter, the Act provides that upon registration of a strata management statement, the existing building management statement ceases to have effect. That is, the strata management statement replaces the building management statement. Of course any right or obligation that was accrued or incurred by a person prior to the replacement of the building management statement still continues in force.

What form must a Building Management Statement take?

It must be in Approved Form 12.

When did the Act commence?

1 June 2001

Where can I get a copy of the Act?

Government Information Service
Level 12, Goodsell Building
18-12 Chifley Square
SYDNEY NSW 2000
T 02 9228 7139
URL www.pco.nsw.gov.au

Copyright

Copyright of this work is held by the Department of Lands. Division 3 of the *Commonwealth Copyright Act 1968* recognises that limited further use of this material can occur for the purposes of fair dealing – for example study, research or criticism. However, to make use of this material, other than as permitted by the Copyright Act, please write to the Department of Lands at the address on the back of this fact sheet.

Disclaimer

Information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Advice from a professional adviser (eg a solicitor or licensed conveyancer, as appropriate) should be sought if there is doubt as to the applicability of this information to individual circumstances.

Department of Lands
Head Office
1 Prince Albert Road
Queens Square
SYDNEY NSW 2000

T 61 2 9228 6666
F 61 2 9233 4357

www.lands.nsw.gov.au

© 2004 NSW Department of Lands

Approved Form 12

S 196E; Schedule 8A

Conveyancing Act 1919 Building Management Statement

Note: This statement has effect as an agreement under seal binding:

- Each owner for the time being of any part of the building or its site and
- A mortgagee in possession or lessee of any such part of the building or its site.

1. Definitions and Interpretation ¹

2. Compulsory Matters ²

- 2.1 Establishment and composition of Building Management Committee (the Committee) and appointment of Office Bearers.
- 2.2 Functions of the Committee and its Office Bearers
- 2.3 Dispute Resolution
- 2.4 Damage Policy
- 2.5 Other Insurance
- 2.6 Service of Notices on the Committee

3. Other Matters ³

- 3.1 Means of Access
- 3.2 Storage and Collection of Garbage
- 3.3 Meetings of the Committee
- 3.4 Records and Books of the Committee
- 3.5 Safety and Security Measures
- 3.6 Appointment of Managing Agent
- 3.7 Unacceptable Noise Levels
- 3.8 Control of Trading Activities
- 3.9 Service Contracts
- 3.10 Architectural Code

4. Implied Provisions ⁴

- 4.1 Annual General Meeting
- 4.2 Convening Meetings
- 4.3 Quorum
- 4.4 Voting

1. The inclusion of definitions and provisions governing interpretation is not mandatory.

2. See Item 2 of Schedule 8A to the Conveyancing Act 1919.

3. The headings in this section of the form are for guidance only and are not an exhaustive list of the matters which may be included -See Item 5 of Schedule 8A to the Conveyancing Act 1919.

4. These provisions do not apply to the extent that the Statement provides otherwise. (See Item 6 of Schedule 8A to the Conveyancing Act 1919.)