

## ***NEWSLETTER ISSUE 7 MAY 2012***

Welcome to issue 7. We really hope you find these newsletters useful and informative. If there are any subjects you would like us to address in future editions, simply send us an email: [reception@prostrata.com.au](mailto:reception@prostrata.com.au) detailing the topic. Enjoy your read!

**Docmax progress – and even more:** Further to our January newsletter, we have started to set up Docmax. The process is more involved than first anticipated. This is due to the ability of the system to provide even more information to owners than we were previously aware. More on this in our next issue.

We are also pleased to advise it is possible for levy notices to be emailed, and so by the end of the year we expect to have everything in place to commence this service. We'll cover this in our next issue also.

**Executive Committee decisions process:** We would firstly remind Executive Committees of the requirement for meetings to be held when certain decisions are to be made, e.g. engaging lawyers due to the provisions of S80D of the *Strata Schemes Management Act 1996* (NSW), or undertaking works. There seems to be some confusion among those who are elected at the AGM to be the scheme's representative in dealing with our office per the agreement between the strata plan and PSS. The role of the representative is to cover basic day-to-day matters, e.g. the approval of an invoice for payment or to instruct us to send a letter to someone breaching the bylaws.

Members must note that an "email around" between committee members does not cover the requirements intended under the Act, which is to let owners know of an anticipated decision, particularly where an expense is being incurred. If undertaking works, for example, when this is in excess of \$1000 (which under the *Home Building Act* requires a contract), PSS needs authority under S238 of the Act to sign and affix the scheme's common seal.

The Executive Committee has few restrictions under the legislation so they can quickly and efficiently manage the affairs of the scheme. However, the government did anticipate the need for transparency when making the legislation, so a committee should not be a law unto itself by not letting owners know what it is doing. Hence, decisions can only be made after 72 hours notice from the time a notice is placed on the notice board and issued to each member of the committee. This allows owners who don't want a particular decision made, to rally owners of like mind to sign a notice to prevent the decision being made. This is provided for under Schedule 3 clause 11(2), which states: "A decision of an executive committee has no force or effect if, before that decision is made, notice in writing is given to the secretary of the executive committee by one or more owners, the sum of whose unit entitlements exceeds one-third of the aggregate unit entitlement, that the making of the decision is opposed by those owners."

Accordingly, owners cannot know what the Committee is deciding if no notice is placed on the notice board (thus sending emails around does not cover the requirement of the Act for disclosure). So, if a meeting is not validly convened – by making notices, placing them on the board and giving them to the Committee members - then the decision would be easily overturned by a challenge to the Office of Fair Trading (OFT).

Ignore this at your own peril. Imagine that you are now in the process of having invoices come in for the work done by a lawyer or builder and the authority under which the work was issued has been successfully challenged. The individual committee members would find themselves in a very awkward position with regard to payment of these bills as the authority to use the scheme's funds would not exist. It's better to follow the law and be protected from a challenge in the first place. So take the notice process into consideration when making a decision for your scheme, especially one that will incur an invoice at the end of it.

**Asbestos legislation:** Recent legislative changes, which came into effect from January this year, bring new requirements regarding safe work for buildings built PRIOR TO 31 December 2003. Of particular note are those which may have asbestos materials in them, either from the time of construction, or due to work carried out later – e.g. the installation of a hot water service with asbestos lagging, or installation of fire doors which may contain

asbestos. Executive Committees need to carefully consider obtaining an asbestos report/register so a program for containment or removal can be undertaken over an appropriate period. Fines are in the order of \$600,000 for executive members individually and \$3mil for Owners Corporations if they fail in their duty in relation to the new Workplace requirements. We have posted further information from Grace lawyers on our website so you can read more about this subject.

If you believe there is asbestos in your building, please email us at [reception@prostrata.com.au](mailto:reception@prostrata.com.au) so we can expedite a proposal for an expert's report to be obtained for your Executive Committee.

**Lot Renovations:** Notification of proposed work within your lot, whether changing floor coverings or updating your bathroom or kitchen, should be forwarded to our office ([reception@prostrata.com.au](mailto:reception@prostrata.com.au)) at least two weeks before you propose to commence work. The same applies for installation of a spa or air conditioning unit.

Depending on the bylaws or policy of your scheme and the work you are proposing, and/or if asbestos is known to be in your building, a letter outlining the conditions under which the work may be performed will be provided. In some cases a bond and/or a works bylaw may be required. This can take more than two weeks to put in place, so the sooner you write to us as to what you propose to do, the more likely you can start on the date you planned.

The scheme should always be informed of proposed work, first to help you reduce the impact on other residents, but also because action may be taken by the Owners Corporation via the Office of Fair Trading (OFT) if you interfere with common property. Far better to know what the rules are before you start, so as to avoid additional costs, or an order from the OFT to reinstate common property. If you are looking to remove a wall, then an engineer's drawing and letter from them confirming that no damage will result to common or personal property will be required. Further the scheme will require their structural certificate (SC) on completion. Not all engineers can issue an SC - they must be NPER to do so, i.e. they are on the National Professional Engineers Register.

Finally, to fully inform yourself, we highly recommend a visit to the NSW Office of Fair Trading's website - choose the tab "Tenants and Home Owners", then in the drop down find Home building and renovating: ([http://www.fairtrading.nsw.gov.au/Tenants\\_and\\_home\\_owners/Home\\_building\\_and\\_renovating.html](http://www.fairtrading.nsw.gov.au/Tenants_and_home_owners/Home_building_and_renovating.html)) This explains how to check whether the contractor has a current and relevant license to do the work you are undertaking. Make sure that the license is in the same name as that on your quote and that insurances are current, and in the same name as all invoices issued.

Ensure that you obtain copies of the contractor's public liability and workers compensation certificate of currencies. If there is damage to common or an owner's personal property, or the contractor is injured, you are less exposed if you have copies of these documents. Don't assume everything is in order - do the checking before work starts. If the contractor gives an excuse as to why they can't provide these documents, call the OFT and ask them. Finally, for any work over \$1000, a contract must be signed between the parties.

Both you and the contractor should sign the bottom of every page and initial any changes made throughout. The contract should state what sums are due and at what stages payments are expected to be made. Standard contracts from any Aust Post Office (prepared by the OFT) are basic and unbiased. Try to avoid an industry contract as these will generally be tilted in favour of the contractor. Attach the abovementioned copies of the license check from the OFT website and insurances to your original copy of the contract. By setting things up correctly, you will put the contractor in the mindset that you expect the work to be done properly and professionally. Nobody engages a contractor expecting things to go wrong, but the fact is that things do, somewhere, every day. In light of this, manage things so if something does happen to you, you have done all you can to protect your interests.

Finally, if work is over \$12k then a Home Owners Warranty (HOW) is also required by law in NSW. This will see an insurance company pay for work to be rectified if the builder is not around or goes bankrupt over the course of the next 6 years. Note that there are now very strict time limits to make a claim under these policies. So, if you become aware of an issue with the work, write to the HOW insurer as soon as possible. While they don't need to act in the first instance, and there is a possibility you can resolve things with the builder, you must still let them know immediately. If a problem arises and you can't sort things out with the builder, you will need to make a claim with the insurer.

We trust that the above information is helpful in protecting yourself personally and the scheme you are in.

**Did you know?** Our after hours team deal with emergency repairs whenever we are closed. For this number visit our website. Go to the "Contact Us" tab for their phone number. They will arrange a contractor urgently.