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# GET READY FOR CHANGE: STRATA MANAGEMENT INDUSTRY REFORMS START ON 23 MARCH 2020.

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## GET READY FOR CHANGE: STRATA MANAGEMENT INDUSTRY REFORMS START ON 23 MARCH 2020

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On 23 March 2020 changes to the laws that regulate strata managers will start. In this article, we take a look at the key changes to the laws and how they will impact you. We also explain what you need to know about the new laws and what you need to do in order to be ready for them.

### **New Licence Levels**

The new laws will create 3 licence levels. These are:

- Certificate of Registration as an assistant agent;
- Class 2 licence as a licensed strata managing agent;
- Class 1 licence as a licensed strata managing agent or licensee in charge of a business.

The holders of Class 1 and Class 2 licences will be able to choose whether their licence will run for 1, 3 or 5 years.

### **Transitional Arrangements**

NSW Fair Trading will make arrangements to automatically transition most licence holders to an equivalent licence level.

This means that most strata managers who hold a current licence will be transitioned to a Class 2 licence and licensees in charge with a current licence will be transitioned to a Class 1 licence.

Assistant strata managers and others who hold a current Certificate of Registration, will be transitioned to the Certificate of Registration as an assistant strata managing agent.



## **Assistant Strata Managers**

Assistant strata managers and persons who perform the role of a strata manager, but are not licensed, will no longer be able to call themselves strata managers.

If an assistant strata manager has never held a Certificate of Registration, then that person will need to complete the new entry qualification and apply to obtain a Certificate of Registration as an assistant agent in strata management.

For those assistants whose Certificates of Registration have expired within the last 12 months, they will need to reapply to obtain a Certificate of Registration as an assistant agent in strata management but will be able to rely on the entry qualification that they completed for their previous certificate.

The Certificate of Registration of an assistant agent in strata management will lapse after 4 years. Fair Trading expects that assistant strata managers will transition to a Class 2 licence before the end of that 4 year period. If an assistant strata manager does not transition to a Class 2 licence within that 4 year period, their Certificate of Registration will lapse and they will not be able to perform the role of an assistant strata manager for 12 months, after which time they will be able to reapply for the Certificate of Registration.

In order for an assistant strata manager to transition to a Class 2 licence, the person will need to gain 12 months experience (or obtain recognition of prior learning) and complete a Certificate IV in Strata Community Management or Property Services (Operations).

The powers of an assistant strata manager will be restricted under the new laws. An assistant will no longer be able to sign a strata management agency agreement or affix the common seal of an owners corporation to documents such as a consolidated set of by-laws or development application. Those tasks will need to be completed by a strata manager who holds a Class 2 or Class 1 licence.

An assistant strata manager will no longer be authorised to withdraw money from a trust account. It is unclear if an assistant will still be able to authorise payment of moneys from a trust account held by an owners corporation, for example, to pay contractors and



other creditors. This is an issue which Fair Trading is likely to clarify.

Assistant strata managers who do not obtain a Certificate of Registration as an assistant agent will not be entitled to exercise any functions of an owners corporation such as organising repairs and maintenance, insurance and the like. Those assistants will need to take on a different role if they are to remain in a strata management business. Fair Trading intends to issue guidelines to assist strata management businesses decide what roles employees who do not hold a Certificate of Registration as an assistant strata manager will be able to play in their organisation.

### **Strata Managers**

Most licensed strata managers are expected to automatically transition to a Class 2 licence. This is because there are higher licence fees payable to obtain a Class 1 licence and increased CPD requirements for Class 1 licence holders.

It will be business as usual for strata managers who transition to a Class 2 licence because they will still be able to exercise the usual strata management functions on behalf of an owners corporation.

But a strata manager with a Class 2 licence will not be able to authorise the withdrawal of money held in the trust account of the business of that strata manager. It appears that the strata manager will still be entitled to authorise payment of moneys from trust accounts that are held for owners corporations to pay contractors and other creditors.

Strata managers who hold a Class 2 licence will be able to sign a strata management agency agreement and affix the common seal of an owners corporation to documents such as consolidated by-laws and contracts.

### **Licensee in Charge**

A strata management business will be able to operate with one, or more than one, licensee in charge. This means that a strata management business with multiple offices will be able to have one licensee in charge for the entire business instead of separate



licensees in charge at each office.

A licensee in charge will need to hold a Class 1 licence. It will not be possible to nominate more than one licensee in charge for the same part of a strata management business such as an office. If there are multiple licensees in charge, one will need to be the principal licensee.

A licensee in charge will still not be able to act as licensee in charge for two or more strata management business unless those businesses operate in partnership.

From 23 March 2020, only a licensee in charge will be entitled to withdraw moneys that are held in the trust account for a strata management business.

If a licensee in charge is away from the business, for example, due to ill health or travel, the business must appoint a temporary licensee in charge and advise Fair Trading within 5 business days of doing so. The temporary licensee in charge must hold a Class 1 licence.

Fair Trading will transition strata managers who are currently nominated as the licensee in charge for a corporate licence holder into a Class 1 licence. Sole traders and partners who run their own strata management business under their individual licence will also be automatically transitioned into a Class 1 licence but only if they have advised Fair Trading of their business name (this should be done immediately by email to [propertylicensing@customerservice.nsw.gov.au](mailto:propertylicensing@customerservice.nsw.gov.au)).

### **Becoming a Licence in Charge**

Strata managers who want to become, or be eligible to become, a licensee in charge will need to obtain a Class 1 licence. There are two ways to do this.

First, strata managers who hold a current licence and have done so for at least the last 2 years, will be eligible to obtain a Class 1 licence but only if they apply for that licence by 22 March 2021.

Second, a strata manager who does not take advantage of that transitional pathway, or



who has not held a licence for at least 2 years, will need to complete a Diploma in Property Services and 2 years' work experience as a Class 2 licence holder (or its equivalent under the existing laws) to qualify for a Class 1 licence.

It will be important for strata management businesses to have a pool of strata managers who hold a Class 1 licence in case the licensee in charge is unavailable or away to enable a temporary licensee in charge to be appointed.

### **CPD**

Starting on 23 March each year, assistant strata managers and licensed strata managers will need to complete continuing professional development (**CPD**) on an annual basis.

The holder of a Certificate of Registration as an assistant agent of strata management will need to obtain 3 CPD units from a Certificate IV provider each year.

The holder of a Class 2 licence will need to undertake 6 hours of CPD each year – 3 hours of compulsory topics determined by Fair Trading and 3 hours of elective topics.

The holder of Class 1 licence will be required to obtain 9 CPD hours each year – 3 hours of compulsory topics and 6 hours of elective topics, 3 hours of which will need to be related to business management.

A person who does not comply with these CPD requirements risks having their licence suspended.

Strata managers and assistants will need to keep their own CPD records.

### **What do you need to do?**

The first thing you need to do is ensure that your Certificate of Registration or licence is current as at 23 March 2020.

Next, if you are the owner of a small strata management business and operate as a sole



trader or partnership, you need to let Fair Trading know your business name if you have not already done so to ensure that you transition to a Class 1 licence in order to be able to act as the licensee in charge of your business.

If you have been a licensed strata manager for more than 2 years, you hold a current licence and you want to become, or be eligible to become, a licensee in charge, you will need to apply to Fair Trading for a Class 1 licence by 22 March 2021 in order to avoid having to complete a Diploma in Property Services in order to obtain the Class 1 licence.

If assistant strata managers in your business sign agency agreements and affix the common seal of the owners corporation on to documents, you will need to put in place new arrangements to ensure that Class 1 or Class 2 licence holders fulfil those tasks from now on.

If you are an assistant strata manager and you want to continue to act as an assistant or be promoted to the position of a strata manager, you will need to make enquiries with registered training organisations who provide a Certificate IV in Strata Community Management in order to complete that certificate within 4 years to ensure you are able to transition to a Class 2 licence before the end of that period. You will also need to check your business cards and email signatures to ensure that you are not referred to as a strata managing agent.

## **Conclusion**

The reforms to the laws regulating the strata management industry will have a considerable impact on the everyday practice of strata managers, their assistants and licensees in charge. You should make sure you are across those changes and the impacts they will have on you and your business so that you are ready for them when they commence on 23 March 2020.

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### About JS Mueller & Co Lawyers

JS Mueller & Co Lawyers has been servicing the strata industry across metropolitan and regional NSW for over 40 years. We are a specialist firm of strata lawyers with in depth and unmatched experience in, and comprehensive knowledge of strata law and levy collection.

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