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# STRATA ADJUDICATIONS AND NCAT – GETTING IT RIGHT!

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## THE STRATA DISPUTE RESOLUTION PROCESS EXPLAINED

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How are most strata disputes resolved? What is the difference between strata mediation and strata adjudication? How long does the process take? How much does it cost?

### Introduction

The NSW Government wants most strata disputes to be resolved quickly, cheaply, and out of court. For this reason an entire Chapter of the Strata Schemes Management Act 1996 (“Strata Act”) outlines, in considerable detail, a process for resolving most types of strata disputes. This process typically involves, first, strata mediation, followed by strata adjudication, and then an appeal to the NSW Civil and Administrative Tribunal.

### Strata Mediation

The persons involved in a strata dispute normally must first attempt to resolve the dispute through mediation: see section 125(1) of the Strata Act. Usually one of those persons (e.g. an owner or owners corporation) will apply to the Mediation Services Unit of the NSW Office of Fair Trading for mediation. This is because the Mediation Services Unit offers (essentially) a free mediation service for strata disputes: s128.

Mediation is not like a court of tribunal case. Mediation is a method of dispute resolution which involves an impartial, third party (the mediator) attempting to facilitate a settlement of the dispute by encouraging the disputing parties to generate solutions that focus on their mutual interests and preserve ongoing relationships. The matters that are discussed in mediation remain confidential to encourage a full and frank discussion to help facilitate a resolution of the dispute.

In practice, the Mediation Services Unit of NSW Fair Trading will invite the persons in dispute to participate in a mediation session in the Sydney CBD. Attendance at mediation is voluntary. That is, the persons who are invited to attend mediation do not have to agree to attend the mediation session. Normally the disputing parties should attend mediation if there is a possibility of some common ground being found and/or the dispute settling at mediation.

The mediation session normally lasts for about 3 hours. Typically the mediator will spend the first 10 minutes explaining the mediation process to the parties whilst they are all present in the same room. The person who applied for mediation is then invited to and normally does make an opening address in which he or she states the issues to be discussed at mediation and what he or she wants to achieve. The other party to mediation is then invited to and normally does respond. At that point the mediator often separates the parties and confers with them privately to establish if there is any common ground or possibility of settling the dispute. Typically if there is no common ground or possibility of settling the dispute the mediation will end. Otherwise the mediation will continue with all parties being present in the room and/or the mediator separating the parties at various times and conferring between them.



If the dispute is resolved at mediation, the mediator will prepare an agreement to record the terms of settlement between the parties. The agreement is then normally signed at the end of the mediation session. Lawyers typically charge about \$1,000.00 to attend a mediation session and provide a report on the outcome of mediation. The mediator does not have power to order one person to pay the other person's legal costs.

### **Strata Adjudication**

If mediation is unsuccessful then the next step is for one of the persons involved in the dispute to apply for orders from a Strata Schemes Adjudicator. Adjudicators can make a wide range of orders. This includes orders to require compliance with a by-law or the Strata Act.

The adjudication process is paper driven. There is no hearing. After the person lodges his or her application, interested parties, including the owners corporation, are normally given approximately one month to lodge written submissions either supporting or opposing the application. Once the submission period closes, the application is referred to an Adjudicator.

The Adjudicator will consider the written submissions made by all parties and then hand down a written decision.

Normally the adjudication process takes approximately 3-4 months to complete. Legal costs for each party are typically about \$2,500 - \$5,000.00. The Adjudicator does not have the power to order the loser to pay the winner's legal costs. Nor does the Adjudicator have power to order payment of compensation or damages.

### **Tribunal Appeal**

If either party is dissatisfied with the outcome of adjudication, they have the right to appeal against the Adjudicator's decision to the NSW Civil and Administrative Tribunal. The appeal is a more formal process than the adjudication and it runs more like a typical court case. The appeal normally takes 6-12 months to get to a final hearing. At the final hearing, the parties appear before a tribunal member either in person or through a lawyer. Witnesses can be cross-examined. Oral submissions are made to the tribunal member. The tribunal member normally reserves his or her decision and then issues a written decision several weeks after the hearing. Legal costs for each party typically vary from about \$5,500 for a simple matter up to \$15,000.00 for a complicated matter. Normally the tribunal will not order the loser to pay the winner's legal costs unless there are special circumstances.

### **A Further Appeal**

If either party is dissatisfied with the outcome of the appeal, then they have a very limited right to lodge a further appeal to the Supreme Court. The further appeal normally takes about 6-9 months to conclude. Normally witnesses do not give any evidence and the further appeal is conducted on the basis of the material that was presented to the Tribunal member and the Adjudicator.

The Court normally upholds the Tribunal's decision, overturns that decision, or sends the dispute back to the Tribunal to determine properly. The Court will normally order the loser to pay the winner's legal costs of the further appeal.



## Conclusion

The strata legislation provides a simple and often effective way of resolving most types of strata disputes. Mediation has a proven track record of resolving many disputes. And strata adjudication can offer a simple, quick and cheap way to finalise a dispute. However no system is perfect. Regrettably, a minor number of disputes prove to be costly and protracted taking many months to work their way through the dispute resolution process as the disputing parties exhaust their appeal rights.

Further, not all strata disputes are resolved through mediation or adjudication. Some parties to strata disputes, particularly parties that seek payment of compensation, bypass these processes and head straight to the Supreme Court to resolve their disputes. But the fact remains that the overwhelming majority of strata disputes are resolved through either mediation or adjudication. It therefore helps to have a good working knowledge of the way this dispute resolution process works.

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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 almost 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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