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NEW STRATA LAWS GIVE THE BUILDING COMMISSIONER MORE POWER

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Introduction

On 10 June 2020, the New South Wales Government made new laws regulating the construction of apartment buildings. Those new laws commenced on 1 September 2020. They will have a significant impact on all owners corporations.

Overview of new laws

The *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 (Act)* gives the Secretary of the Department of Customer Service and the NSW Building Commissioner, David Chandler, (**Commissioner**) significant new powers. Those powers entitle the Commissioner to prevent the issue of occupation certificates and the registration of strata plans, investigate serious defects and issue defect rectification orders in respect of residential apartment buildings.

Notification of intention to apply for occupation certificate

A developer will now need to notify the Commissioner at least six months (but not more than 12 months) before applying for an occupation certificate for a building or part of the building. The notice must set out the date the developer expects to apply for the occupation certificate for the building or part of the building. The developer must provide an updated notice if circumstances change as a result of which the developer will apply for an occupation certificate on a different date. There is, however, a six-month transitional period that commenced on 1 September 2020 during which developers will need to notify the Commissioner, within 14 days of 1 September 2020, of their intention to apply for an occupation certificate for a building. It is an offence for a developer not to give or update a notice of the intention to apply for an occupation certificate.

Restrictions on the issue of occupation certificates

The Commissioner is entitled to make an order prohibiting the issue of an occupation certificate or the registration of a strata plan for a residential building if:

- the developer does not give the Commissioner notice of the intention to apply for the occupation certificate within the timeframes set out above;
- the Commissioner is satisfied that there is a serious defect in the building;
- any building bond required under the *Strata Schemes Management Act 2015* in relation to the building has not been paid to the Commissioner.

An occupation certificate that is issued in contravention of a prohibition order is invalid and it is now an offence for a private certifier to issue an occupation certificate in contravention of a prohibition order.

Investigative powers

The Commissioner now has powers to carry out investigations to ensure that building work is carried out in compliance with the Building Code of Australia, relevant Australian Standards and relevant approved plans and to investigate whether buildings have serious defects. The Commissioner is now entitled to gather information, require developers and others to produce documents and enter buildings to carry out inspections. The Commissioner is now entitled to enter the common property of a residential strata building without the consent of the owners corporation or a search warrant.

Stop Work Orders

The Commissioner is now entitled to issue a stop work order to require a developer to ensure that building work stops if the Commissioner considers that the building works contains or is likely to contain serious defects. It is an offence for a person to fail to comply with a stop work order.

Rectification Orders

The Commissioner is also able to issue defect rectification orders if there are serious defects in building work carried out in a residential apartment building. Any rectification order will require the developer to carry out or refrain from carrying out building work in order to eliminate or remediate serious defects. The Commissioner will need to give prior notice to the developer of his intention to issue a rectification order before doing so and developers will be able to make written representations concerning the proposed order and why it should not be issued and to appeal against the issue of any such orders.

Delegation of powers

The Secretary of the Department of Customer Service is able to delegate his powers under the Act to the Building Commissioner, Fire & Rescue NSW and local councils.

Retrospectivity

The Act applies to the building work in respect of residential apartment buildings that was authorised to commence in accordance with a construction certificate or complying development certificate and was completed within the period of ten years before the Commissioner exercises his powers under the Act and in respect of building work that has not yet been completed.

Conclusion

These new laws will have a substantial impact on the strata industry and will result in changes to the practice that is followed by all developers and owners corporations. Owners corporations will now be able to make complaints to the Commissioner about defects and the Commissioner will be able to force developers to rectify defects. The new laws will also make it more likely that serious defects will be fixed before occupation certificates are issued and strata plans are registered.

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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 all strata law inclusive of by-laws, building defects and levy collection.

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