



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our Ref: MM:LJB:Property Law 2010  
Direct Line: 9926 0202

4 August 2010

Strata Schemes Management Regulation 2010  
Fair Trading Policy  
PO Box 972  
Parramatta NSW 2124

Email: [policy@services.nsw.gov.au](mailto:policy@services.nsw.gov.au)

Dear Sir/Madam,

***Proposed Strata Schemes Management Regulation 2010***

The Law Society thanks you for the opportunity to comment on the proposed Regulation.

The Society's Property Law Committee (Committee) has considered the provisions of the proposed Regulation and the Committee's comments are set out in the table attached to this letter.

If you have any questions regarding the Committee's comments, please contact Ms Liza Booth, Executive Member of the Committee by telephone on (02) 9926 0202 or by email to [liza.booth@lawsociety.com.au](mailto:liza.booth@lawsociety.com.au).

Yours faithfully,

**Mary Macken**  
President

Attach 1

CLAUSE NUMBER IN 2010 REGULATION	CONTENT	LAW SOCIETY RESPONSE	COMMENT
<b>Clause 10</b>	Additional documents to be given to owners corporation by original owner or lessor at first annual general meeting.	<ul style="list-style-type: none"> <li>• In the second line insert after “obtained or received” the words “or under the control of”.</li> <li>• In paragraph (e) insert after “valuation” the words “or replacement cost estimate”.</li> <li>• Add a new subclause to include any insurance certificates under the home building legislation.</li> </ul>	<ul style="list-style-type: none"> <li>• The 2005 Regulation only referred to the developer as the “owner”. The 2010 Regulation updates this to the “original owner” to correspond with definitions under the Development Act.</li> <li>• Paragraph (e) is new (which obliges the original owner to deliver any valuations it may hold).</li> </ul>
<b>PART 6 – FEES</b>			
<b>Clause 19</b>	Fees.	<p>The Committee opposes the introduction of a differential fee for the issue of a “refreshed” section 109 certificate where the certificate is issued within 3 months of a previous certificate (Schedule 1 item 10(b)).</p> <p>To date the Regulation has been silent about how a purchaser who has obtained a section 109 certificate might update the information contained in that certificate prior to settlement.</p> <p>The usual practice when acting for purchasers has been to either seek a verbal update from the managing agent prior to settlement (in particular, whether there had been any payments since the date of issue and recalculation of interest arrears) or to rely on the contents of the certificate, with the onus on the vendor to provide satisfactory evidence to contradict what the certificate stated( e.g. a receipt to show evidence of a recent levy payment). It was noted that such an inquiry should be welcomed when made because it minimises the possibility of minor discrepancies between cheques sent to pay outstanding levies and amounts in fact payable</p>	<p>If the proposed Regulation proceeds without amendment, then fees for making an application for a section 109 certificate will change. There are different fees depending on when the request for the 109 certificate is made, and by whom. These are the basic rules:</p> <ul style="list-style-type: none"> <li>• If the request is an initial request or a request made more than three months after a previous request by the same person in respect of the same lot - \$104.00 (compared with the previous \$90.00) and an additional \$52.00 (as compared with the previous \$45.00) for a further certificate for a lot comprising a garage, parking space or store room that services the lot the subject of the first certificate; and</li> <li>• if the request is made not more than three months after a previous request by the same person in respect of the same lot - \$90.00 (unchanged from the previous fee) and an additional \$45.00 (unchanged from the previous fee) for the further certificate (for a lot comprising a</li> </ul>

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		<p>(the discrepancies putting an additional corrective burden on those involved). The risk management implications of giving gratuitous information were noted, as was the risk of undue time being spent in answering frequent phone inquiries without reward. Committee members agreed it would be unfortunate if it became routinely necessary to pay a second fee to update levy information, not only because of the additional administrative effort involved but because of the cost added to the overall conveyancing process.</p> <p>By enshrining the section 109 certificate fee update fee into regulation will make it more likely that strata managing agents will refuse to provide information other than by means of a section 109 certificate.</p> <p>The Committee is also concerned that the introduction of a two-tier fee system will complicate the section 109 regime, with no significant benefit because it would be relatively rare for someone to choose to apply for two section 109 certificates for the same lot within a three-month period as part of the conveyancing process as it currently stands. (If in the future a section 109 certificate were to be obtained by a vendor as part of the contract preparation process that a section 109 “refresher” may have merit).</p>	<p>garage, car parking space or storeroom).</p>

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<b>SCHEDULE 2 – MODEL BY-LAWS FOR RESIDENTIAL SCHEMES</b>			
<b>Model by-law 10</b>	Hanging out of washing.	<ol style="list-style-type: none"> <li>1. Amend by-law 10(2) by inserting at the end of the by-law the words “or will not be visible from any other lot in the building or will not be visible from any other building”.</li> <li>2. Amend by-law 10(3) to read “an owner or occupier of a lot may hang washing on any part of the lot that will be visible from street level outside the building only if the owner or occupier has the prior written approval of the owners corporation in general meeting”.</li> </ol>	<p>The by-laws remain unchanged with the exception of changes to by-law 10 (hanging out of washing) and new by-law 21 (relating to electronic service of notices). The 2005 Regulation prohibited hanging of washing etc on any part of the parcel visible from outside the building without the prior written approval of the owners corporation. The new by-law 10 permits (subject to conditions):</p> <ol style="list-style-type: none"> <li>1. hanging washing on any lines provided by the owners corporation;</li> <li>2. hanging washing on any part of the lot provided it is not visible from street level outside the building; and</li> <li>3. hanging washing on any part of the lot visible from street level outside the building with the approval of the owners corporation.</li> </ol>

CLAUSE NUMBER IN 2010 REGULATION	CONTENT	LAW SOCIETY RESPONSE	COMMENT
<b>Model by-law 21</b>	Service of documents on owner of lot by owners corporation.	<p>The Committee welcomes the intent of the by-law and the members' initial reaction was that perhaps the by-law should be drawn more widely, to allow for electronic service of documents <b>on</b>, as well as by, owners corporations, and on others (e.g. occupiers, mortgagees etc). The difficulty with doing that seems to be that although the Management Act contemplates that service on an owner can be effected, among other means, "in any manner authorised by the by-laws for the service of notices on owners" (section 236(4)(e)), there is no equivalent provision for service on an owners corporation (s 235), or on occupiers (s 236(2)), other persons whose address is recorded on the strata roll (s 236(3)) or a section 105 notice (s 236(5)). Perhaps consideration should be given in due course to amending sections 235 and 236 of the legislation to mirror section 236(4)(e).</p>	<p>The by-law enables the document to be served on the owner of a lot by electronic means if the person has given the owners corporation an email address and the document is sent to that address.</p>

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<b>SCHEDULE 8 – FORMS</b>			
<b>FORM 1</b>	Section 109 certificate.	<ol style="list-style-type: none"> <li>1. Insert a new line after “Amount (if any) outstanding” to read “Particulars of any amount outstanding”.</li> <li>2. Insert a new row after “Amount (if any) in credit” with “Particulars of any amount in credit”.</li> <li>3. Insert a new line after “Amount (if any) outstanding” to read “Particulars of any amount outstanding”.</li> <li>4. Insert a new row after “Amount (if any) in credit” with “Particulars of any amount in credit”.</li> <li>5. Add a new clause (similar to clause 5) referring to costs under section 230.</li> <li>6. Insert a new clause disclosing details of any monies borrowed the owners corporation.</li> <li>7. In clause 7 replace the % sign with a \$ sign.</li> <li>8. In clause 10 insert “(if any)” after “caretaker” in the second paragraph.</li> <li>9. In clause 13, replace the first line with “Particulars of all insurance policies of which the owners corporation is a beneficiary”.</li> <li>10. Insert a new paragraph providing particulars as to whether the strata scheme is a part strata scheme (and if so, particulars of the relevant building management committee).</li> </ol>	The new 109 certificate follows closely the one recommended by the Law Society in 2009, with the exception of the comments made in this paper. The comments in paragraphs 1 to 4 make reference to amendments suggested in 2009. Comments in paragraphs 5, 6, 7 and 8 are new.

**NOTES:**

1. References to clause numbers are references to clause numbers in the 2010 Regulation (unless otherwise stipulated).
2. Reference to “Management Act” is a reference to the *Strata Schemes Management Act 1996 (NSW)*.
3. Reference to “development Act” is a reference to the *Strata Schemes (Freehold Development) Act 1973*