2-Lot Strata Schemes NSW: What Duplex Owners Must Know

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2-Lot Strata Schemes in NSW: Understanding the Rules, Common Issues and Your Legal Options

For many property owners, a two-lot strata scheme offers the convenience of shared ownership without the complexity of a large apartment building. These schemes are commonly found in duplexes, dual occupancies and semi-detached dwellings where each owner holds title to their individual lot while sharing ownership of common property.

Although two-lot strata schemes are generally simpler to manage than larger schemes, they remain subject to the *Strata Schemes Management Act 2015 (NSW)* and *Strata Schemes Development Act 2015 (NSW)*. Owners are often surprised to discover that legal obligations that apply to strata schemes continue to apply even where there are only two owners and no formal owners corporation meetings have ever been held.

Understanding how two-lot strata schemes operate can help avoid disputes, ensure compliance with the legislation, and make future property transactions much smoother.

What is a Two-Lot Strata Scheme?

A two-lot strata scheme consists of only two separately owned lots within a registered strata plan. Each owner receives their own title for their lot and automatically becomes a member of the owners corporation.

The owners corporation owns and is responsible for managing the common property. Depending on the strata plan, common property may include:

- shared driveways;
- visitor parking areas;
- gardens and landscaping;
- external walls;
- roofs;
- fencing;
- drainage infrastructure; and
- utility services.

The boundaries between a lot and common property are not always obvious from the physical appearance of the property, and the extent of the common property will always depend on the registered strata plan. The registered strata plan should therefore be reviewed carefully when purchasing, planning or undertaking building works, or determining responsibility for repairs.

Are Two-Lot Schemes Exempt from the Strata Laws?

A common misconception is that a duplex or two-lot development is effectively exempt from strata legislation because there are only two owners who share everything.

This is not the case.

While certain provisions of the legislation are modified or simplified for two-lot schemes, the owners corporation continues to exist and retains its statutory responsibilities. Owners must still comply with legislation relating to governance, insurance, maintenance and financial management.

Two-lot strata schemes are also generally required to hold an annual general meeting and complete annual reporting through the NSW Strata Hub.

The legislation recognises that formal administration may be unnecessary for very small schemes, but this does not remove the legal obligations imposed on owners.

Owners who have managed a property informally for many years should not assume that these obligations have ceased to apply simply because the two owners have been able to reach agreement between themselves.

Insurance Requirements for a 2-Lot Strata Scheme

One of the most significant differences between a two-lot strata scheme and larger schemes relates to insurance.

Where both lots are detached and no building forms part of another building, owners may be exempt from the requirement for the owners corporation to insure the buildings collectively. Instead, each owner may insure their own building individually, provided the statutory exemption applies.

However, where buildings share a common wall or structural elements (as is common with duplexes) the owners corporation will generally remain responsible for arranging building insurance covering the entire development.

Even where the exemption applies, owners should carefully consider the insurance arrangements for the property. The exemption relates to the statutory requirement for the owners corporation to obtain building insurance and does not necessarily remove other insurance obligations applying to the scheme.

Obtaining appropriate insurance is essential. Inadequate or incorrect insurance arrangements can create significant financial exposure if damage occurs or a claim is disputed.

Legal advice should be obtained if there is any uncertainty regarding the insurance obligations for a particular scheme.

Capital Works Funds and Two-Lot Schemes

Two-lot schemes can, in certain circumstances, also receive an exemption from the usual requirement to establish a capital works fund.

The exemption is available where:

- the owners corporation resolves unanimously that a capital works fund is not required;
- the buildings in the two lots are physically detached; and
- no building or part of a building is situated outside the lots.

The exemption is therefore not automatic.

Where a two-lot scheme contains shared structures or significant common property, appropriate budgeting for future repairs and maintenance remains important even if the owners have historically dealt with expenses as they arise.

Decision Making and Deadlocks Between Owners

Unlike larger strata schemes where majority voting often determines outcomes, decision-making in a two-lot scheme requires cooperation. Decision making can become one of the greatest practical difficulties in a two-lot strata scheme.

Many decisions require unanimous or joint agreement because there are only two owners.

This can create practical difficulties where owners disagree about:

- repairs and maintenance;
- improvements to common property;
- landscaping;
- insurance;
- expenditure;
- by-law changes; or
- redevelopment proposals.

With only two owners, disagreements can result in a deadlock. Where agreement cannot be reached, disputes may ultimately require mediation or determination through the NSW Civil and Administrative Tribunal (NCAT).

For this reason, clear records and properly documented decisions can be particularly important in a two-lot scheme.

Informal arrangements between neighbours may operate successfully for many years, but problems can arise when one property is sold and a new owner does not agree with the previous arrangements.

Early legal advice can often assist owners in resolving disagreements before formal proceedings become necessary.

Repairs and Maintenance in a 2-Lot Strata Scheme

Determining responsibility for repairs is often one of the most common sources of disagreement.

Generally speaking:

- each owner is responsible for maintaining their own lot; and
- the owners corporation is responsible for maintaining and repairing common property.

However, identifying whether a particular structure forms part of a lot or common property is not always straightforward.

Questions frequently arise regarding:

- boundary fences;
- retaining walls;
- waterproofing;
- roofs &gutters;

- driveways;
- shared services (including plumbing and electrical services); and
- stormwater drainage.

The registered strata plan, together with any applicable by-laws, usually determines ownership and maintenance responsibility.

The owners corporation has an important statutory duty to properly maintain and keep common property in a state of good and serviceable repair.

Incorrect assumptions about repair and maintenance obligations can result in lengthy disputes and unexpected costs.

By-Laws Continue to Apply and Remain Important

Many owners assume that because there are only two lots, by-laws are unnecessary.

In reality, by-laws remain an important part of every strata scheme.

They regulate matters including use of common property, renovations, pets, parking, noise, exclusive use areas and maintenance obligations.

Appropriately drafted by-laws can be particularly valuable in a two-lot strata scheme because they provide a documented framework for how the strata is to operate. This can significantly reduce future disputes by clearly allocating rights and responsibilities between owners.

Where existing by-laws no longer reflect how the property operates, owners may consider updating them to better suit the scheme.

For example, where owners have agreed that one owner will have exclusive use of an area of common property, or will assume responsibility for maintaining a particular structure, the arrangement should be properly documented rather than left as an informal understanding.

This becomes particularly important when one of the properties is later sold.

Selling a Lot in a Two-Lot Scheme

Purchasers will usually review the strata records before committing to purchase.

For vendors, in addition to ordinary sale considerations, ensuring that the owners corporation has complied with its legal obligations can assist in avoiding delays during the conveyancing process.

Issues commonly identified during due diligence include:

- inadequate insurance;
- missing records or failures to hold meetings;
- unresolved maintenance disputes;
- unpaid levies;
- undocumented agreements between owners;
- alterations to common property without approval; and
- outdated or inappropriate by-laws.

Addressing these matters before a property is listed for sale can provide greater certainty for both parties and reduce enquiries and delays in the sale process.

Buying Into a 2-Lot Strata Scheme

Purchasers considering a property in a two-lot strata scheme should not treat the purchase in the same way as buying a Torrens title property simply because the development looks like a duplex.

Before purchasing, it is important for a purchaser to complete their due diligence of the lot and the strata.

A lack of formal strata records can itself warrant further investigation, particularly where the owners have historically managed the property through informal agreements.

Resolving Disputes between Two Strata Owners

Disagreements between two owners can quickly become difficult because neither party holds a majority. The appropriate approach will depend on the nature of the dispute.

As a starting point, owners should consider the strata plan, by-laws, meeting records and relevant provisions of the legislation. Negotiation between the owners may then resolve the issue.

Where agreement cannot be reached, the legislation encourages parties to resolve disputes through negotiation and mediation before commencing proceedings in NCAT.

Seeking legal advice early often assists in identifying practical solutions while preserving neighbourly relationships where possible.

How E&A Lawyers Can Help

Although two-lot strata schemes are often viewed as relatively straightforward compared to larger strata schemes, the legal issues can be surprisingly complex.

If you would like advice regarding purchasing or selling a lot in a two-lot strata scheme, or in maintaining a two-lot strata scheme, E&A Lawyers can guide you through the process.

Understanding your legal rights and obligations is essential. Contact E&A Lawyers today to discuss your rights and obligations to ensure compliance with your strata obligations.
