



Précis Paper

ACT Strata Law

A discussion of issues within Strata Law in the ACT, including some recent cases.

Discussion Includes

- How is Strata Law in ACT different?
- Issues with mixed-use developments
- Reduced quorum decisions
- Special privilege rights
- Development in Canberra
- The next stage in Canberra's development
- How does new technology affect ACT strata law?
- The future direction of ACT strata law

ACT Strata Law

1. In this edition of BenchTV, Christopher Kerin (Kerin Benson Lawyers) and Nicholas James (Kerin Benson Lawyers) discuss issues within Strata Law in the ACT, including some recent cases.

How is Strata Law in ACT different?

2. ACT Strata Law has been in existence since 1971, however it is only in the last twenty years that it has really begun to affect people on a larger scale.
3. In the 2000's there was a significant amount of growth in construction which has continued to this day. Near 60% of the dwellings built in the ACT are medium density apartment style dwellings.
4. Since 2003, apartment construction has accelerated substantially.

Issues with mixed-use developments

5. ACT strata legislation has not had the same number of rewrites as in NSW.
6. In NSW you will find in urban areas a lot of mixed use developments. In such a building, each section will have their own owners corporation. There may be several different owners corporations within a building, and the utility services are managed by an agreed services agreement.
7. In the ACT there is no such provision in the legislation. There are a number of examples of commercial spaces and residential apartments in the same building, where the commercial space is consuming much higher levels of utilities. Because it is all in the one owners corporation, all parties are sharing those costs in accordance with unit entitlements, and not in accordance with consumption.
8. The driver of reform to unit entitlements in the ACT is mixed user development, with developers strongly advocating in the media.

Reduced Quorum Decisions

9. If a reduced quorum decision is made, the owners must within seven calendar days give written notice of the reduced quorum decision.
10. In the ACT many owners corporations never have a quorum and all of their decisions are made on a reduced quorum basis, which means that many owners corporations in the ACT will have many decisions that are not validly made.

Special privilege rights

11. Special privilege rights do not need to be registered in the Land Titles Office. Purchasers coming in several years after a special privilege right has been put into place will search the Land Titles Office and find no special privileges right, because the minutes are only required to be held for five years.
12. It is important to know that such rights exist and that the ACT Government takes steps to ensure that there rights have to be registered.

Development in Canberra

13. Building standards across Australia are fairly uniform. Uniform doesn't necessarily mean good.
14. There have been many building defects in the media recently.
15. The ACT Government failed to ensure that buildings above three stories had statutory warranty insurance.
16. There have been other failures to protect ACT consumers, the most obvious being the Master Builders Fidelity Fund Scheme.

The next stage in Canberra's development

17. In ACT there is not pathway to enable the redevelopment of Strata Schemes as there is in NSW.
18. In the ACT, in order to cancel a units plan you either get a cancellation order from the Supreme Court or from APLA.
19. The ACT legislation has a strong emphasis on sustainable infrastructure.
20. Green buildings, water and electricity saving devices, is not particularly encouraged.

How does new technology affect ACT strata law?

21. People can now vote electronically at meetings, via teleconference or webinar for instance.

The future direction of ACT strata law

22. The future direction of ACT strata law will see more intersection with other pieces of legislation, such as short term letting planning legislation and disability legislation.
23. Owner apathy will continue to be an issue, giving owners incentive to understand what they have bought when they have bought an apartment.
24. Housing affordability is an issue in Canberra as it is across Australia.
25. Rights and responsibilities to tenants have to be addressed.

BIOGRAPHY

Chris Kerin

Legal Practitioner Director, Kerin Benson Lawyers, Canberra

Christopher worked for many years in leading commercial construction law practices acting for government, developers and contractors in the building, transport infrastructure and resources sectors.

He has been involved in all forms of dispute resolution including litigation, arbitration and alternative dispute resolution in a range of jurisdictions in Australia. Christopher also has a number of years' experience in contract drafting, risk analysis and providing general construction advice having been involved in a whole range of construction projects, from minor works to projects worth billions of dollars.

Christopher holds a Masters of Laws, is a Law Society of NSW accredited specialist in commercial litigation and is a member of the National Editorial Panel of the Australian Construction Law Newsletter. He has published in a range of law journals and associated publications.

In the last few years, he has brought his specialist construction industry knowledge to the strata sector and now only acts for owners corporations in a range of jurisdictions.

Christopher has also developed a specialization in ACT strata law, acting for ACT owners corporations in a range of matters. He has provided training to most ACT strata managers and is the author of the Kerin Benson Lawyers Guide to ACT Strata Law which is intended to become the standard reference for strata law in the ACT.

Nicholas James

Solicitor, Kerin Benson Lawyers, Canberra

Nicholas James is a solicitor at Kerin Benson Lawyers practicing in the areas of ACT Strata Law and Building & Construction Law. He graduated from Macquarie University in 2017 and was admitted in 2019.

He is particularly interested in the constantly evolving legal landscape of the ACT as its population and development continues to increase dramatically and more people begin to dwell in apartment/high-density style living.

BIBLIOGRAPHY

Cases

The Owners – Units Plan No 928 v Cochaud (Unit Titles)[2017] ACAT 66

Brookfield Multiplex Ltd v The Owners – Strata Plan No 61288 [2014] HCA 36

The Owners – Units Plan No 3115 v The Trustees of the Master Builders Fidelity Fund Scheme
[2019] FCA 115

Body Corporate for Nobbys Outlook v Lawes [2013] QDC 30

Legislation

Evidence Act 2011 (ACT)

Privacy Act 1988 (ACT)