Ethical behaviour in strata management is crucial for ensuring fair and responsible governance within owners corporations. This document outlines the key ethical standards and obligations that strata committee members and managers must adhere to.

Ethics in Strata

Owners corporations, strata committees, lot owners, tenants and many other people rely heavily on the information and services provided by strata managers to make informed decisions in the management of their schemes.

There are many relationships to manage in strata schemes, together with different interests each of these people may have. Often these relationships and interests are in conflict and being able to identify and properly deal with these can be challenging.

What is Ethics or Ethical Behaviour?

Ethics or ethical behaviour is defined in many ways. The SCA Code of Ethics defines ethical behaviour as 'in accordance with the moral standards customarily applied in a business or professional relationship'.

Materials setting out Ethics in the Strata Industry

A lot of the written materials, rules and the like focus on the behaviour of business persons, such as:

- The SCA Code of Ethics and NCTI Code of Conduct.
- The Property, Stock and Business Agents Act 2002 ("Act") and Property, Stock and Business Agents Regulation 2014 ("Regulation"), containing rules regarding:
    - Fiduciary obligations.
    - Honesty, fairness and professionalism.
    - Skill, care and diligence.
    - High pressure tactics, harassment and unconscionable conduct.
    - Acting in clients' best interests.
    - Confidentiality.
    - Conflicts of interest.

There are a number of materials and cases affecting owners and business persons, such as:

- Common law principles of fiduciary duties for directors potentially applying to strata committee members.

BANNERMANS LAWYERS

T: (02) 9929 0226 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

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- The SCA Code of Ethics which is similar to the common law fiduciary duties owed by directors of companies.

- Developers owing fiduciary duties to their strata schemes – see *Community Association DP No 270180 v Arrow Asset Management Pty Ltd & Ors* [2007] NSWSC 527 (30 May 2007).

Office of Fair Trading

The Office of Fair Trading handles complaints made by people against licensees or certificate of registration holders for a variety of reasons, such as, for breaches of the Act and Regulation or breaching a licence or certificate condition.

If the Director-General is satisfied that there are grounds for taking disciplinary action, the Office of Fair Trading has a number of options available. These include cautions or reprimands, issuing a directive, undertakings, issuing penalty notices, imposing licence conditions, licence suspension or cancellation and disqualification.

Strata committee members

The members of the strata committee of an owners corporation owe obligations to the owners corporation which may exceed their expectations, suggesting that considerable care should be exercised in accepting their appointment as a strata committee member and performing their functions once appointed.

The Corporations Act 2001, which imposes fiduciary and other duties on company directors, does not apply to owners corporations.

Under Section 37 of the Strata Schemes Management Act 2015, each member of a strata committee of an owners corporation has a duty "to carry out his or her functions for the benefit, so far as practicable, of the owners corporation and with due care and diligence", but subject to Section 260, which provides protection from personal liability for members of strata committees who act in good faith.

Recent ethical issues

The main ethical dilemmas faced are those of:

- Managing agents where their contracts are sought to be terminated.

- Strata committee members using their position to advance their own cause to the detriment of others.

- Managing agents and/or building managers who have an ongoing commercial relationship with the developer which places them in a position of conflict with their fiduciary duty to the scheme for certain dealings, such as, defects claims.

Many ethical complaints are made about performance issues, but most of these are not about ethical issues.

Trends going forwards

The following ethical issues are likely in the coming months and years:

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- With the increase in developments in New South Wales there may be an increase in ethical and conflict of interest challenges for managing agents dealing with developers.

- With the ongoing increase in property values, there may be an increase in strata committee members seeking to feather their own nest.

- With increased competition in the strata sector, there may be an increase in the number of complaints made against managing agents in regards to their conduct in termination of their contracts.

What to do?

Ethical issues are often difficult to determine and traverse many grey areas. If faced with a conflict of interest or if you have an ethical concern, you should seek advice from the professional body of which you are a member, SCA or the Office of Fair Trading.

Key takeaways

- Ethical behaviour in strata management is defined by the SCA Code of Ethics and various legislative frameworks.
- Strata committee members have fiduciary duties that require them to act in the best interests of the owners corporation.
- Common ethical dilemmas include conflicts of interest and managing agents' relationships with developers.
- The Office of Fair Trading oversees complaints against strata managers for breaches of ethical standards.
- Future ethical challenges in strata management are anticipated as the industry evolves.

****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

Prepared by Bannermans Lawyers
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BANNERMANS LAWYERS
T: (02) 9929 0226 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

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