

OCN User Guides:

1 Guide to the Strata Management Agreement

The Strata Community Association Agreement is currently widely used.

Rolling over to a new contract will mean that you will be locked-in again for the minimum term of the new contract rather than the legislated 3 month writing in notice period after the old contract minimum term expires.

1.1 Guide to the Standard Terms and Conditions

The Strata Management Agency Agreement 2016 version has the following terms and conditions:

- Warranties and acknowledgment
- Appointment of and delegation to agent
- Fees and charges
- Review of fees and charges
- Terminating the agreement
- Liability of the agent
- Transfer of the agreement
- Service of notices
- GST
- Work Health & Safety
- Definitions
- Interpretation

Some of our members are of the view that some of the terms and conditions tend to favour the strata agents and have made variations to the contract to suit their particular needs. The following represents a summary of some of those variations that other owners corporations may find useful.

This guide is based on our member input, including drafting by contract specialists in a number of instances, but does not constitute legal advice.

2 Clause Variations

Standard form contracts like the SCA Strata Management Agency Agreement are useful, save drafting costs for both sides and provide for consistency. While the standard agreement can be used as a guide, the actual signed contract is a contract between the selected strata manager and the owners corporation. As such it should, and can, be varied to meet the specific needs of that agreement.

Although based on a standard form of contract, there is no reason you can't vary the terms to make the contract specific to your circumstances.

Further, it is recommended that owners corporations include any variations they wish to include as part of the tender or request for quote, so that any agents responding to the tender or request for quote are aware of these specific requirements.

Some options, based on feedback from OCN members, follow. At one time or another some or all of these variations have been incorporated by Owners Corporations in their Strata Management Agreements.

2.1.1 Service fees, including Insurance Commissions:

Cover Page Item 6;

This is where you specify variable, fixed charging and/or insurance commissions.

Special attention should be paid to Clause 3.3 (d) which states if you select Item 6 Option 1 or 2 and then decide to save costs by arranging you own insurance, you will still have to pay the agent any commission they previously would have been entitled to.

2.1.2 Owners Corporation approval:

To ensure any additional work for which the managing agent wishes to charge is approved by the owners corporation, rather than the agent making choices on your behalf:

Add to 3.1 (b) the additional services fee for any additional services performed by the agent with the consent of the owners corporation;

Optional new clauses after 3.5:

2.1.3 Terms:

If you want further clarity of when functions actually start and end, insert a new clause after Section 3.5:

4. *Term*

4.1 *The Agent is appointed for the term in accordance with Schedule 2 [Fee Schedule], unless this agreement is terminated earlier.*

4.2 *The Agent must commence the functions on the commencement date.*

4.3 *At the end of the term, unless this agreement has been validly terminated earlier, it continues on the terms set out in this agreement.*

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2.1.4 Key Performance Indicators:

If you want to include specific Key Performance Indicators, insert:

5. **Key Performance Indicators**

The following are the Key Performance Indicators:

- 5.1 *Undertake all of the duties as selected from Schedule 1 [Delegated Functions] to the satisfaction of the Strata Committee Strata Plan No: XXXXX as evidenced by annual customer surveys.*
- 5.2 *Benchmark the Building operating costs against comparable buildings.*
- 5.3 *Number of genuine and non-frivolous complaints [as determined by the Strata Committee].*
- 5.4 *Whether remediation action in response to any complaints have been resolved to the satisfaction of the Strata Committee.*
- 5.5 *Further specific clauses as required for your scheme.*

2.1.5 Contract Variations:

If you want the option to change your selections from schedule 1 of the contract if your needs are likely to change from time to time, insert:

6. **Variations**

- 6.1 *At any time during this agreement the Owners Corporation may direct the Agent in writing to carry out a Variation by changing their selection(s) from Schedule 1 [delegated functions]. The Agent must comply with such a direction unless, on reasonable grounds, it is unable to do so within the time or over the period requested by the Owners Corporation. If the Agent is unable to comply with a Variation request it must promptly notify the Owners Corporation of that fact, specifying the reason.*
- 6.2 *The Agent must, within 5 business days after receiving a Variation request, provide a written valuation of the Variation to the Owners Corporation. If the valuation is not provided within that time, the valuation of the Variation is deemed to be nil additional fee.*
- 6.3 *The Agent must not make and will not be entitled to any additional payment for, any changes to the Services that are not directed as a Variation by the Owners Corporation in writing.*
- 6.4 *Payment for any Variation will be by way of adjustment to the Service Fee.*

2.1.6 Terminating the agreement due to sale of business:

If you are concerned about changes of ownership of the Strata Management company impacting your agreement, insert new clause after existing 5.4 (a) (iv):

- (v) *If there is a change in control of the ownership of the agent that the owners corporation determines, as agreed at a general meeting, is detrimental to this agreement.*

Transfer of agreement for any purpose can be a particularly difficult time with document transfer, continuity of services, just keeping you building running! Also note section 2.1.8 of this document.

If you want to cover yourself in the event of not reaching an agreement on transfer of services, add after 5.4:

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(X.5) The agreement may be terminated upon a failure to reach agreement on the transfer of services under clause [transfer of the agreement clause number].

2.1.7 Agent liability

In the standard agreement, the *agent* is excluded from all liability for any claim, liability or *loss* arising directly or indirectly out of the *services* or *additional services* or arising from any cause of action whatsoever except to the extent that the claim, liability or *loss* is caused or contributed to by the *agent's* breach of this *agreement*, breach of statutory duty, negligence, dishonesty or fraud and requires the owners corporation to indemnify the agent against and loss.

If you think this is unreasonable then revise existing 6.2 to read (noting strike outs)

6.2 The *agent* is excluded from all liability for any claim, liability or *loss* arising directly or indirectly out of the *services* or *additional services* or arising from any cause of action whatsoever except to the extent that the claim, liability or *loss* is caused or contributed to by the *agent's* ~~wilful~~ breach of this *agreement*, breach of statutory duty, ~~gross~~ negligence, dishonesty or fraud. ~~The owners corporation agrees that it will at all times indemnify the agent against all actions, suits, proceedings, costs, claims, expenses or demands which may arise in the course of or as a result of the agent's management of the scheme, including all legal expenses incurred by the agent in defence of or initiation of any legal proceedings as well as any excess payable under the agent's professional indemnity insurance;~~

~~(a) by third parties against the agent;~~

~~(b) by the owners corporation against the agent arising before, during or after this agreement.~~

2.1.8 Transfer of agreement

Transfer of agreement for any purpose can be a particularly difficult time with document transfer, continuity of services, just keeping you building running! Obstacles a scheme may face in the process of terminating an agreement may include difficulty in convening a meeting, obtaining strata roll and documents from the strata manager, liens and refusal to hand over the scheme's records.

The current agreement provides significant power to the Agent if they (the Agent) decide to transfer your agreement. If you are uncomfortable with the extent of that power, you might consider:

Revise existing 7.1 to read (noting strike outs):

~~7.1 The agent cannot transfer the agreement without the written consent of the owners corporation via a general meeting, which consent shall not be unreasonably withheld if the agent satisfies the owners corporation that the proposed transferee and related persons are fit and proper persons and have the qualifications, competence and experience to perform the agreed services and additional services at an agreed services fee and an additional services fee not greater than the current agreed services fee and additional services fee.~~

Revise existing 7.3 to read (noting strike outs):

~~7.3 If the owners corporation approves the transfer, the owners corporation, the agent and the transferee must enter into a transfer. or alternatively if the agent elects to enter into a new agency agreement then clause 7.4 will apply.~~

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Revise existing 7.4 to read (noting strike outs):

7.4 If there is no approval from the owners corporation for the proposed transfer, then the agreement may be terminated in accordance with clause (new x.5 Terminating agreement).

~~After the transfer agreement has been entered into or, if an election has been made by the agent under clause 7.3, the new agent must request that the owners corporation enter into a new agency agreement and the owners corporation must advise the new agent of its decision to enter into a new agency agreement within 28 days after such request, such approval not to be unreasonably withheld if the new agency agreement is on the same terms as this agreement, or on terms not less favourable to the owners corporation as this agreement. The new agent must pay the reasonable cost of preparing the new agency agreement, preparing and holding the meetings of the strata committee and the general meeting of the owners corporation, however if the meeting relates to more than approval of the minutes of the last meeting and the resolution relating to the new agency agreement, then the new agent must pay the proportionate share of the total cost relating to approval of the new agency agreement.~~

3 Schedule variations

In your tender or request for quote, you need to be clear about what is in the 'Agreed Services' and what constitutes 'Additional Services' as detailed in Schedules A1 and A2 and the fees and charges set out in Schedules B, C and D. Note, because the contracts that strata companies supply are templates used for all their proposals, Schedules B and D are usually just lists of standard charges and fees – it is up to you to determine whether they are relevant to your quote or not. For example many charges and fees may not be relevant if you have obtained a 'Fixed Price' or 'All Inclusive' proposal.

There is no magic to getting a good understanding. It just warrants careful reading. For example, Schedule A might include attending the annual general meeting and a stated number of committee meetings as part of an inclusive price, but require that they be held at the strata manager's offices during ordinary business hours. Whereas Schedule B might detail the fees for attending meetings outside office hours or out of office at an hourly rate. It is best to specify up front in the tender exactly what your requirements are.

The schedules, apart from the list of items in A1 (which reflects the duties under legislation), are unique to every company and can even change between contracts from the same strata manager.

The proposals you receive will likely have many pages with lists and inclusions/exclusions, activities and dollars. To simplify the process and make comparison easier, it is recommended that in the tender process these attachments be replicated to clearly identify which duties the owners corporation wish the Agent to perform so that there is no question of inclusions.

Cover pages: Details important information not provided in the schedules or the terms and conditions.

Schedule A1: Are the duties that can be carried out as required by Strata Schemes Management Act and Property Stock & Business Agents Regulations (Schedule 6 Clause 6).

Schedule A2: More clearly defines how owners corporations and agents agree to meet the obligations accepted in Schedule A1 and whether they are part of a standard charge or an additional charge.

Schedule B: Sets out the additional charges for either unit costs or hourly charges.

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Schedule C: Sets out any other financial benefits received by the agent in this contractual relationship.

Schedule D: Are the disbursements and associated fees.

3.1.1 Schedule A1

Lists the duties that can be carried out under the Strata Schemes Management Act 2015 and Property Stock & Business Agents Regulations 2003 (Schedule 6 Clause 6). Owners Corporations elect which services they wish to delegate and Agents elect whether they accept a delegation or otherwise and the 'Extent of Authority' of the agent in acting for the owners corporation. There are generally 3 options for each item.

1. Full authority with no limitations
2. No Authority
3. Full Authority Subject to Limitations as Disclosed in Schedule A2

The third column should more correctly represent Authority subject to limitations as disclosed, rather than Full Authority, subject to limitations:

simply delete 'Full'

3.1.2 Schedule A2

This schedule more clearly defines how agents agree to meet their obligations and whether they are part of a standard charge or are an additional charge. It provides agent specific commentary about how they will or will not meet the items listed in Schedule A1. It is important to understand this schedule as it is here that an agent may include / exclude activities you may want them to perform, and where they specify fees they will charge! For each of the items above Schedule A2 should specify:

- Details of how the agent will meet the functions
- Any limitation to the authority
- Fee method - Agreed or Additional (see Schedule B and D for rates)

In considering schedule A2, you should take into account options you have available, for example:

- *If there are limitations to authority, tick box 'authority subject to limitations' box in schedule A1. Limitations may include: investments only if advised, subject to acceptance by owners corporation', as instructed, renew with same person unless instructed otherwise*
- *Fee method may include: included in service fee, Additional schedule B fees apply, included with a limitation, recoverable from lot owner*
- *Charges may be included or referenced to another schedule*

3.2 Schedule B

Schedule B sets out the additional charges for either unit costs or hourly charges. If any items in schedule A2 specify additional fees then this is what you will be charged. There are usually a large number of items in this schedule ranging from \$/hour for staff members time to the cost of photocopying, stamps and telephone calls.

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Schedule B charges can significantly add up over the course of the agreement and should not be ignored.

3.3 Schedule C

Sets out any other financial benefits received by the agent in this contractual relationship. Discloses details of any providers who pay a rebate, discount or commission to the agent. Usually lists the strata management company's insurance commission agreements.

3.4 Schedule D

This schedule specifies the disbursements and associated fees that are identified in Schedule A2. These are generally administrative activities and stationery charges.

Be on the look-out for any charges that are classified as an 'Allowance', 'Per Lot' or a 'Per Month' charge. If there are any here check whether they apply to your proposal as they can add up to significant costs. For example, if your strata is 150 lots a seemingly small \$5 per month per lot 'Fixed Disbursement Allowance' will amount to \$9,000 per year on top of whatever other costs are charged!