

A close-up photograph of a person's hands signing a document. The person is wearing a purple long-sleeved shirt. They are holding a black pen with silver accents and are in the process of writing on a white piece of paper that has some text on it. The paper is resting on a light-colored wooden surface. The background is blurred, showing a warm, indoor setting.

Contracts

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Contracts

What constitutes a contract?

A contract is a promise or a legally binding agreement between two or more parties. This promise or agreement can be made orally or in writing, however, must have four (4) elements within it to constitute a contract. There four (4) elements are:

- Offer
- Acceptance
- Consideration and
- Intention to be legally bound

Let's look at each element in further detail.

An **offer** is a clear proposal or promise made by one party (the offeror) to another (the offeree) to enter a contract. This could be as simple as one party offering their services, for example a strata management agency setting down their fees for service and outlining what is included in those fees.

Acceptance occurs when the offeree agrees to the terms of the offer, creating a mutual agreement. An example of this could be an Owners Corporation agrees to the terms of a proposed managing agency agreement from a strata agency, which includes their fees and limitations of service.

Consideration is the exchange of something of value between the parties, such as money, goods, or services being offered and accepted. In a strata

management setting, this is the monthly fee being paid to the agency for their fulfilment of the offer and acceptance that has been previously agreed upon.

Intention to be legally bound.

This element is fulfilled by both parties doing what is required of the agreement for it to take place. In the strata management example this is the strata management agency taking carriage of files, setting up their system to accommodate the strata plan and doing all of the management functions that have been agreed upon by both parties. For the Owners corporation this could include ensuring files and accounts are transferred to the new strata management company and allowing the strata managers to be able to provide their strata management services as agreed upon.

When all four of the elements of a contract are in place, it is clear to see that there is a legally binding agreement in place.

Written vs Oral Agreements

It was mentioned above that a contract does not have to be in writing, it can be an oral agreement.



In many of our daily interactions, we enter into oral agreements. When you jump into a taxi to get from an event to your home, you are entering into an agreement with the taxi driver.

- The driver has their light on to indicate they are open for services. You enter the taxi and advise where you would like to go.
- The driver agrees to drive you to your location.
- The driver enters your desired location into their system and begins the journey.
- At the end of the journey they advise you of the total cost and you pay it.

This finalises the agreement with their intention to be legally bound and with you paying the consideration. Therefore, a contract has been entered into and transacted.

Whilst an oral agreement is still legally binding in many instances, within strata, property management and real estate sales, it is a statutory requirement to have an agreement that is in writing. This is set out in section 55 of the NSW Property and Stock Agents Act. This indicates that in order to guarantee payment according to your agreement with an

Owners Corporation, Landlord or Vendor, it is essential that your agreement is documented in writing as a compliant agency agreement.

Contract Essentials

In New South Wales, building and renovation contracts for strata properties are categorised as either “small” or “large” depending on the contract value. Contracts for projects valued between \$5,000 and \$20,000 are deemed small and necessitate a basic written contract, whereas those that exceed \$20,000 require more comprehensive contracts. Additional information and contract templates can be found on the NSW Fair Trading website.

Strata schemes must ensure that their contracts adhere to the guidelines set forth by NSW Fair Trading and should also take sustainability into account during each Annual General Meeting (AGM).

As agents, it is essential to ensure that contracts are established for the schemes you are overseeing to ensure both compliance and to mitigate risk or exposure.

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