

Strata disputes: Who pays for the State Administrative Tribunal process?

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In the 2018 amendments to the *Strata Titles Act 1985 (WA)* (the Act), the State Administrative Tribunal (SAT) was named as the sole forum for the resolution of strata disputes. The changes will come into force this year and are an improvement to the regime. Previously, disputing parties faced potential confusion in trying to choose between the right court and the SAT.

This article looks at:

- why you might apply to the SAT to resolve a dispute;
- who pays for the costs of SAT proceedings; and
- whether the SAT awards costs orders.



Why should parties apply to the SAT to resolve a dispute?

Strata disputes can occur between lot owners, a lot owner and the strata company, or the strata company and strata manager, to name a few combinations. These disputes are often around a breach of scheme by-laws. For example, unauthorised use of common areas, excessive noise, refusal to pay levies or damage to property. Disputes such as these are best handled by the strata company through an informal, internal dispute resolution process, with reference to the strata by-laws.

However, sometimes this informal process may not be effective and one or more of the parties may want a more structured mechanism for resolving the dispute. Perhaps one party refuses to compromise. In such cases, a deadlock arises which should be broken by the intervention of the SAT.

Who pays the costs of a proceeding?

The person bringing the matter before the SAT (known as “the applicant”) must pay filing fees and fees that are incidental to subsequent proceedings.ⁱ From 1 May 2020, it will cost \$1,832.00 to lodge an application with the SAT. Additionally, the hearing fee is \$1,832.00 for each day after the first day of hearing.ⁱⁱ

The much more significant costs of a SAT matter will be for legal fees and other costs (such as that of expert witnesses e.g. engineers, arborists, landscapers etc.).

Who pays for legal representation?

Anyone who wants representation in the SAT need not engage a lawyer. Unlike the courts, the SAT may allow non-lawyers to be a representative at hearings and conferences.ⁱⁱⁱ If the strata company is involved in the dispute, the director, secretary, or another officer of the body corporate may act as its representative.^{iv}

But parties often engage lawyers to appear in the SAT because of their legal and advocacy skills and experience in the adversarial environment. Those can often make the difference to a matter.

Each party appearing before the SAT will generally bear their own costs for legal representation, unless the SAT makes a costs order in one party’s favour.

Does the SAT award costs orders?

One often-touted feature of the SAT is that it is a “no costs” jurisdiction, meaning that the SAT does not normally award costs against a losing party. This is in stark contrast to the courts, which make such awards as a matter of course.

However, the SAT does have the power to order that all or any costs incurred by one party be paid by one of the other parties.^v This is known as a costs order and can be for legal costs, costs related to the proceedings, or compensation for expenses, loss, inconvenience or embarrassment.^{vi} When this happens, the SAT will order that an amount it considers appropriate be paid.

If the SAT does decide to make a costs order, it can be for a variety of reasons, including where:

- a party has incurred unnecessary costs due to unreasonable or inappropriate conduct;
- a party has been dishonest in their dealings with the other party or the SAT;
- the case is weak or without merit; or
- a party has been required to commence the proceeding in order to establish an objectively clear entitlement.

The SAT also has additional discretionary powers to make a costs order if it considers that:

- the proceeding was vexatious, frivolous, or an abuse of process;
- a party did not genuinely participate in the original decision;
- the proceedings disadvantaged a party; or
- one of the parties fails to attend any hearing in the proceedings.^{vii}

Individuals involved in a strata dispute should therefore be aware that there are some situations which may result in a costs order against them.

Some examples of what might incur disapproval of the SAT include:

- applying to the SAT without appropriate grounds and solely to cause a nuisance; or
- lying or bullying behaviour during the process.

The amount that the SAT orders to be paid can be 'fixed', meaning that it assigns a figure to them, e.g. \$x for a hearing on a particular date. Fixing the costs provides clarity and certainty.

Alternatively, if the costs are to be 'assessed', then a structured procedure follows involving a separate assessment application and an associated fee. From 1 May 2020, this will be \$342 plus 2.5% of the costs claimed.

The nature, importance, complexity, and time and effort spent on the matter are all factors in determining costs, whether fixed or assessed.

Additionally, when considering the hourly rate of a legal practitioner as a part of assessing costs, the SAT will look to the Legal Costs Committee's 'SAT Costs Determination' schedule and use the amounts specified there.

Disclaimer: This article contains references to and general summaries of the relevant law and does not constitute legal advice. The law may change from time to time and circumstances may differ from person to person. Therefore, you should seek legal advice for your specific circumstances. The law referred to in this publication is understood by Civic Legal as of publication date.

Conclusion

The SAT is a most valuable jurisdiction for obtaining intervention in intractable strata disputes. It is a welcome alternative to the court system, which is more formal and costly.

However, despite the "no costs" mantra in and around the SAT, engaging in disputes always comes at some cost, especially if one wants to use professional advice and representation.

Before embarking on such an exercise, decide if professional help should be used. Then find out what the true costs exposure might be.

Your decision to engage in proceedings in the SAT will then be better informed.

Contact

For more information please contact:



Anthony Quahe
Managing Principal
T 9200 4900
E aquahe@civiclegal.com.au

ⁱ *State Administrative Tribunal Act 2004*, s 3; *State Administrative Tribunal Regulations 2004*, r 9, Schedule 4.

ⁱⁱ *Ibid.*

ⁱⁱⁱ If the representative is not a legal practitioner, they must fall into a category as outlined in the *State Administrative Tribunal Act 2004*, s 39.

^{iv} *State Administrative Tribunal Act 2004* s 39(1)(a).

^v *Ibid* ss 87(1)-(2); s 88.

^{vi} *Ibid* s 87(3).

^{vii} *Ibid* s 87(4); ss 47-49.