Democracy Rules, OK? Well, Not Quite: Strata Managers and Section 237 Appointments

Introduction

In a democracy, majority rules even if those decisions are bad. If you are in the minority, there is not much you can do until the next election (or annual general meeting) at which time you may try to become the majority.

A similar concept applies in "Strata Land" but with one very important exception: under section 237 of the Strata Schemes Management Act 2015 ("SSMA"), if an owners corporation becomes dysfunctional or fails to carry out its obligations, a lot owner can apply for Tribunal orders appointing a new strata manager effectively to act like a dictator by exercising all the functions of the owners corporation, the strata committee, the chairperson, the treasurer and the secretary.

When will a strata manager be appointed under section 237?

A strata manager is normally appointed by an owners corporation's general meeting based on majority rules.

It is not enough to get a strata manager appointed under section 237 for a lot owner to complain they are ignored by the majority. What needs to be shown is that bad decisions are being made or many of the things the law requires to be done is not happening at all.

More specifically, a strata manager can be appointed under section 237 in any of the following four cases:

- The management structure is not functioning at all or is not functioning satisfactorily.
- The owners corporation has failed to comply with a requirement imposed on the owners corporation by an order made under the SSMA.
- The owners corporation fails to perform its duties.
- The owners corporation fails to pay a judgment debt.

In practical terms, such cases may arise where:

- The owners corporation persistently fails to maintain and repair the common property.
- The owners corporation's decision making is deadlocked because of the existence of rival factions.
- The owners corporation persistently fails to impose sufficient levies to pay for maintenance and repair of the common property or for large bills such as insurance.
- The owners corporation does not keep records it is required by law to keep.
- The owners corporation fails to hold annual general meetings.

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- The owners corporation persistently fails to comply with the law, Tribunal/Court orders or pay its bills.
- The majority unfairly or unlawfully discriminate against the minority.

The near dictatorial powers of a section 237 strata manager

The Tribunal may decide that a section 237 strata manager has a limited function. For example, if the owners corporation's building is uninsured because there is no money to pay for it, a strata manager may be appointed for a short period say three months to impose new levies to pay for insurance, get insurance quotes and make a decision on which one to accept.

Usually however a section 237 strata manager is empowered to act like a dictator. In these cases, the strata manager is empowered for a period usually of 1 or 2 years with all the functions of the owners corporation, the strata committee, the chairperson, the treasurer and the secretary. The strata manager can make any decision which the general meeting could have made such as raising new levies, commencing litigation and passing new by-laws. The strata manager does not have to give notice of its intention to make these decisions and there is no general meeting to approve the decisions. During the period of the strata manager's section 237 appointment, the lot owners lose all their voting rights, there are no general meetings and there is no strata committee.

While a section 237 strata manager can act like a dictator ignoring the wishes of lot owners and not consulting with them at all, the strata manager still owes a duty of care to act in the best interests of the owners corporation. While the strata manager does not have to, as a matter of practice, strata managers appointed under section 237 usually do engage in some level of consultation with lot owners to make sure they make the right decisions.

A section 237 appointed strata manager will replace any existing strata manager as the standard form strata managing agent agreement contains a contractual term that the strata manager's appointment is automatically terminated if another strata manager is appointed under section 237.

Key takeaways

- Under section 237, a strata manager can be appointed if the owners corporation is dysfunctional or fails to meet its obligations.
- A strata manager appointed under section 237 can exercise all functions of the owners corporation without needing to consult lot owners.
- Lot owners lose their voting rights during the period of the strata manager's appointment.

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