What can you do when the Developer Retains Control of your Strata Building?

What steps can you take if your strata building owner developer retains control, including options to regain authority, including refinancing and revoking proxies.

Despite legislative restrictions on developers retaining control of new apartment buildings, developers are coming up with new ways to continue their control after completion.

Some of the more elaborate strategies for retaining developer control include:

- A company related to the developer provides finance to lot owners to purchase their lots. The financier then becomes entitled to a priority vote at general meetings on insurance, budgeting and fixing levies involving spending above certain levels (depending on the size of the strata scheme) and on any matters requiring unanimous or special resolutions. The lot owners themselves cannot vote on these matters if the financier exercises a priority vote.

- The developer or a related company may hold proxies for lot owners. Although the current strata management legislation imposes limits on the number of proxies which may be used, a high level of overseas owners or scheme apathy, can result in the developer still being able to influence votes. For example, this can result in the developer's nominees being elected as strata committee members. A person connected with the developer can be elected if they own a lot or disclose the connection.

- During the initial period, appointing a company related to the developer as the building manager. It used to be common to do the same with the strata manager, but this is no longer possible, as the current strata management legislation prohibits persons connected with the developer from being appointed as strata manager for 10 years after registration of the strata plan. Although an appointment made during the initial period expires at the first AGM, it is often renewed at the first AGM as a result of priority votes or proxy votes controlled by the developer.

- Creating by-laws at the registration of the strata plan that require special resolutions to change the strata manager and/or building manager or commence legal action. Previously, the same method was often used to hinder schemes in pursuing building defect issues, but this is now addressed in Part 11 of the Strata Schemes Management Act 2015, Section 192 providing that only an ordinary resolution is required.

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What can owners corporations do?

Where the issue is with priority votes, owners could refinance with a lender not connected with the developer.

Where the issue is with proxy votes, owners could revoke the proxies.

Where the issue is with a building manager connected with the developer, the owners corporation could rely on the building manager's statutory and contractual obligations.

Where the issue is with strata committee members connected with the developer, they could be replaced, but in any event owe fiduciary duties to their owners corporation, which could be enforced. Further, the failure of the strata committee to perform their legal duties may be grounds for making an application to NCAT, which can make a wide range of orders, including appointment of a compulsory strata manager, who can make decisions without the need to obtain general meeting resolutions.

For more information on appointing a compulsory strata manager, please see "Democracy Rules, OK? Well, Not Quite: Strata Managers and Section 237 Appointments".

Key takeaways

- Developers may retain control through financial arrangements that grant priority voting rights.
- Proxy votes can be manipulated by developers, affecting strata committee elections.
- Owners corporations can take steps to revoke proxies and refinance with independent lenders.
- Strata committee members connected to developers owe fiduciary duties to the owners corporation.
- NCAT can appoint a compulsory strata manager if the committee fails to perform its legal duties.

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