Strata Renewal: Tips for OC's – Finding a way through the Renewal Maze

The level of interest in the strata renewal of existing strata schemes continues to increase despite a fall in property values in the Sydney market. This interest is either from lot owners working collaboratively together to find a buyer, where owners are achieving inflated prices for their units selling collectively rather than individually, or, when a developer may approach an owners corporation with an offer to purchase the whole site. This is particularly evident in areas which have been re-zoned or where blocks are underdeveloped within existing planning regulations.

When 100% support for a sale is not achieved, a sale is still possible as a result of the strata renewal legislation commenced on 30 November 2016 pursuant to Part 10 of the Strata Schemes Development Act 2015 (**Part 10**) if owners holding more than 75% of lots and unit entitlements are in support of the sale.

Some important tips for owners corporations in manoeuvring the Part 10 maze are:

- Be aware that the developer's solicitor cannot also act for the owners corporation. The owners corporation requires its own lawyer.
- The owners corporation is the applicant in the Part 10 proceedings, not the developer.
- It is the owners corporation's application which will fail if all of the technical legislative steps required under Part 10 have not been followed.
- There are strict time limits for various meetings to be held and documents to be provided after receipt of a Strata Renewal Proposal by an owners corporation. If one of these time limits is missed, this could potentially affect the Court's power to make the orders.
- All meeting notices and procedures must be adhered to.
- The Part 10 process is expensive and external valuation and possibly planning consultants and lawyers are required.
- Early steps should be taken to enter into an agreement with the developer to indemnify all costs incurred by the owners corporation associated with the Part 10 process.

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- Part 10 provides for the owners corporation paying a dissenting owners' reasonable costs of the proceedings. These costs should also be indemnified by the developer otherwise the owners corporation may find itself having to provide security for costs in the Court proceedings for the dissenting owners.

- The Strata Renewal Plan is prepared by the Strata Renewal Committee elected by the owners corporation, not the developer. The Plan must be 'just and equitable in all the circumstances'.

- Owners should obtain independent tax advice in regards to any sale transaction.

Bannermans can assist in providing in depth strata and collective sales advice to owners corporations having been involved in numerous matters since the inception of the strata renewal legislation acting for owners corporations, developers, supporting lot owners and dissenting lot owners.

Key takeaways

- Owners corporations must have their own legal representation during strata renewal proceedings.
- The application for strata renewal must be initiated by the owners corporation, not the developer.
- Strict time limits and procedural requirements must be followed to avoid jeopardising the application.
- Developers should indemnify owners corporations for costs incurred during the strata renewal process.
- Independent tax advice is essential for owners considering a sale transaction.

****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

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