

If I Sell My Lot, Can I Still Commence Proceedings? The Appeal Panel Says “No.”

Recently, the Appeal Panel (“**Appeal Panel**”) of the New South Wales Civil & Administrative Tribunal (the “**Tribunal**”) dismissed an appeal submitted by a former lot owners against their owners corporation seeking compensation claim under section 232 of the *Strata Schemes Management Act 2015 (NSW)* (“**SSMA**”). The Tribunal held that it did not have the jurisdiction to hear this former lot owner’s claim because they had sold their lot prior to filing their application. The Appeal Panel agreed and upheld this decision. Importantly, the timeline consisted of the following:

1. In 2023, the lot owner in *Griffinchuk No 1 Pty Ltd ATF Griffinchuk Family Trust v The Owners – Strata Plan No 92745 [2025] NSWCATAP 273* (“**Griffinchuk**”) attempted to file proceedings against their owners corporation on the basis that it had failed to carry out an agreed scope of works to remedy water damage to their lot.
2. In late 2023, The Tribunal rejected this application because the lot owner had not attempted mediation with the owners corporation, which is required prior to commencing proceedings under section 227 of the SSMA.
3. In late 2023, the lot owner sold their lot.
4. In mid-2024, the lot owner commenced proceedings in the Tribunal.

The Tribunal dismissed the lot owner’s application because the lot owner was not an “*interested person*” within the meaning of section 232 of the SSMA as the lot owner had sold their lot approximately five (5) months before they had filed. The lot owner appealed this decision on two (2) primary grounds, both of which were refused by the Appeal Panel:

1. **Ground 1** - The lot owner contended that they were an “*interested person*” under section 226(1)(d) of the SSMA, as they were “*an owner of a lot in the scheme*” as “*Owner*” is defined in section 4 of the SSMA as the person “*for the time being*” recorded in the Register of the lot. The Appeal Panel rejected this ground, determining that the phrase “*for the time being*” required an applicant to be a current lot owner at the time the application is filed, regardless of when the losses claimed in the application occurred.
2. **Ground 2** - The lot owner submitted that the Tribunal Registry’s decision to reject their application was a jurisdictional error, as section 227(1)(b) of the SSMA allows an application to proceed where one party has refused to participate in mediation, which the lot owner submitted the owners corporation had done. The Appeal Panel dismissed this ground, finding that the decisions of the Tribunal’s Registry are only internally appealable where they are expressly set out in rule 41 of the *Civil and Administrative Tribunal Rules 2014 (NSW)*.

The Registry's ability to dismiss an application under section 227 of the SSMA does not appear on this list, meaning the Registry's decision was not internally reviewable.

Key takeaways

Primarily, *Griffinchuk* confirms that lot owners must own their lot at the time they commence proceedings in order to have any legal standing in the Tribunal, even if the issue complained of occurred during the time they were an owner. The timeline of key events can be critical to establishing legal standing in Tribunal proceedings.

If you are a lot owner and you are unsure whether you have standing in legal proceedings, feel free to reach out to enquiries@bannermans.com.au or on **02 9929 0226**.

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