Removing a Shareholder from a Company Title Scheme

A company title scheme is a different form of property ownership than strata. Unlike a strata scheme, where you purchase a particular apartment or lot, under a company title scheme the building is owned by a company and you purchase shares in that company.

What are the rights of shareholders in a company title scheme?

Those shares generally grant the shareholder the right to occupy a particular part of the building, most commonly a specific apartment. In other words, you do not own the apartment itself; you own shares in the company that owns the building, and those shares give you the right to occupy your particular apartment.

This distinction becomes particularly important when a shareholder wants to sell, transfer or otherwise exit the scheme. In a company title scheme, the company's constitution is the starting point. The constitution will usually set out the rules governing the ownership and transfer of shares and may require a proposed transfer to be approved by the company's directors. It may also contain provisions dealing with circumstances in which a shareholder can be required to exit the scheme.

As such, removing a shareholder is not a one-size-fits-all process. The appropriate approach will depend on the circumstances of the case and requires careful consideration of the company's constitution, together with the requirements of the *Corporations Act 2001* (Cth).

A shareholder's exit may occur through the forfeiture of their shares. Put simply, this involves a shareholder losing their shares in accordance with a power or procedure contained in the company's governing documents. Whether forfeiture is available, and the steps required to lawfully exercise that power, will depend on the terms of the constitution and the circumstances of the case.

The process is not necessarily as straightforward as selling a strata lot because the legal interest being dealt with is the shareholder's interest in the company. A company's ability to remove a shareholder from the scheme will generally depend on the mechanisms provided for in its constitution. Some constitutions contain provisions allowing for the compulsory buy-back or transfer of shares in specified circumstances. However, in the absence of clearly articulated provisions establishing these processes, the avenues available to a company seeking to remove a shareholder may be limited.

One circumstance in which a company title scheme can potentially compel forfeiture of shares is where a shareholder falls into arrears with their levy payments. As with strata, shareholders in a company title scheme are generally required to pay levies to the company. These levies contribute towards the company's operating costs and the maintenance of the building and common areas.

Where a shareholder fails to meet those obligations, the company may have mechanisms available to recover the unpaid amounts.

Section 34A of the *Local Court Act 2007* (NSW) confers jurisdiction on the Local Court to make various orders in relation to certain company title disputes. Where provided for in the company's constitution, a company may recover unpaid levies through debt recovery proceedings in the Local Court.

A company can also seek to safeguard its interests by incorporating additional levy recovery provisions into its constitution. This may include provisions dealing with the consequences of ongoing non-payment, including, where appropriately drafted, the eventual forfeiture of a shareholder's shares following a continued failure to pay levies.

The importance of a comprehensive constitution containing clear and unambiguous provisions was illustrated in *McLaughlin v Dungowan Manly Pty Ltd* [2007] NSWSC 197 ("**McLaughlin**"), where the company was able to rely on provisions in its constitution to deal with a shareholder's failure to pay amounts owing to the company. The relevant provisions did more than simply impose an obligation on shareholders to pay levies. They established a framework for enforcement, including rights in respect of the shareholder's shares and a process by which those rights could ultimately be exercised.

The case demonstrates an important practical point for company title schemes. It is not enough for a constitution to identify a shareholder's obligations. It should also clearly prescribe what the company can do when those obligations are not met, and the steps it must follow to protect the company and its shareholders.

A robust constitution should therefore provide clear and workable mechanisms for dealing with problematic conduct, whether that involves a misbehaving or belligerent shareholder disrupting the peaceful enjoyment of other shareholders, or persistent non-payment of levies impeding the company's ability to repair and maintain the property. Where the constitution does not clearly address these circumstances, a company may find itself with limited options when a shareholder becomes persistently non-compliant.

The constitution should not be treated as a document that only becomes relevant when a dispute arises. Its provisions should be carefully considered at the outset and periodically reviewed to ensure that the company has the practical tools it needs to protect its interests, its property and the shareholders who comply with their obligations when difficulties arise.

Key takeaways

- A company title scheme differs from strata ownership, as shares in a company are purchased rather than the property itself.

- The company's constitution governs the removal of shareholders and may require director approval for share transfers.

T: (02) 9929 0226 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

- Forfeiture of shares may occur if a shareholder fails to pay levies, as outlined in the company's governing documents.

- Local Court jurisdiction allows companies to recover unpaid levies through legal proceedings.

- A well-drafted constitution is crucial for clearly defining the processes for shareholder removal.

****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.*

Prepared by Bannermans Lawyers
11 September 2026

T: (02) 9929 0226 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA