

Bannermans Lawyers

How a Developer Retains Control of a New Strata Building

Despite legislative restrictions on developers retaining control of new apartment buildings, developers can continue to control buildings after completion.

Some strategies for retaining control are:

- 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) holds proxies for lot owners who reside overseas or do not personally attend general meetings. The developer can influence what resolutions get passed and who gets elected to the executive committee.
- Companies related to the developer are appointed as the strata manager and building manager during the initial period. After the initial period expires, these related companies can be re-appointed because the developer's related company financier can cast priority votes to renew the contracts and/or the developer can rely on proxy votes it holds to vote for renewal.
- Creating by-laws at the registration of the strata plan that require special resolutions for matters such as:
 - Changing the strata manager or building manager.
 - Commencing any legal action.
 - Investigating building defects such as by getting a building defects report.

It remains to be seen whether the government will change the law as part of the recent strata law reform review to curtail the ability of developers and others to control owners corporations such as by prohibiting proxy farming.

Once the above strategies are put in place, there is not much individual lot owners can do through the owners corporation to obtain control away from the developer. However, the developer needs to be aware that its ongoing control in part rests on contracts existing between the owners corporation and the strata manager, and between the owners corporation and the building manager.

Under these contracts, the strata manager and the building manager owe contractual duties to perform the services set out in the contracts. In addition, the strata manager owes fiduciary duties to the owners corporation and has statutory obligations under the Property Stock & Business Agents Act 2002.

The strata manager's fiduciary, contractual and statutory duties will over-ride the developer's control over the agent. For example, a strata manager may have a contractual, fiduciary or statutory duty to advise an owners corporation about building defects. If the strata manager tries to protect a developer's interest by providing mis-information, then the strata manager may be liable for misleading and deceptive conduct and conflict of interest.

Executive committee members also owe fiduciary duties to their owners corporation. Committee members nominated by a developer have no duty to the developer however they have fiduciary duties to the owners corporation.

The failure of the strata manager, the building manager and the executive committee to perform their legal duties may be grounds for making an application for a compulsory strata manager under section 162 of the Strata Schemes Management Act 1996 because the owners corporation's management is dysfunctional or the owners corporation is failing to perform its duty to repair and maintain common property.

Upon appointment of the section 162 strata manager, the appointment of the developer-related strata manager is terminated and the section 162 strata manager can make decisions without the need to obtain general meeting special resolutions.

For more information on section 162 strata managers, please see "[Democracy Rules, OK? Well, Not Quite: Strata Managers and Section 162 Appointments](#)".

For more information about dealing with an executive committee not acting appropriately, please see the article "[What to do if the Executive Committee is not Acting Appropriately](#)".

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