

Smart Strata: Committee Update

Executive Committee – Roles and Responsibilities

We have in the past provided a brief overview of the roles and responsibilities of the executive committee of your owners corporation. Some of our readers have asked for more specific details and we are only happy to provide them. Here is the first in a series of stories – this one is about the general role and fiduciary duty of the executive committee and the roles of the office bearers.



The general role and fiduciary duty

At each Annual General Meeting (AGM) of the owners corporation an executive committee of up to nine members is elected. This may change in NSW following new legislation to be introduced in 2014.

Broadly speaking, an executive committee has the responsibility for making many of the most immediate and day-to-day decisions on behalf of the owners corporation. These decisions normally relate to the repair of common property, enforcement of by-laws, convening meetings of the owners corporation, issuing receipts and dealing with other financial matters in line with the budget approved at the AGM etc. The executive committee cannot make by-laws, pass special resolutions, enter into licences and make decisions on any other matter reserved under the NSW Strata Schemes Management Act 1996 (the Act) for the owners corporation to determine at a general meeting. In addition, the owners corporation may limit what the executive committee may decide and indeed can overrule executive committee decisions.

Notwithstanding the strict requirements of the Act, members of an executive committee have a "fiduciary duty" to make their decisions in the best interests of all owners in the scheme. A fiduciary duty is one that is said to arise when a person has undertaken to act for and on behalf of another in a particular set of circumstances which give rise to a relationship of trust and confidence. The courts have upheld that executive committee members act on behalf of the owners corporation and in doing so have a fiduciary relationship to act in the best interest of the owners corporation not necessarily in their own best personal interests.

Specific roles of the office bearers

It is usually the case that the executive committee hold a meeting immediately following the AGM and decide who amongst them will be the office bearers for the scheme. The "office bearers" for a scheme are the positions of Chairperson, Secretary and Treasurer. The positions must be filled from only those elected to the executive committee, but the Act does allow for one member of the executive committee to be appointed to more than one of the office bearer positions.

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The specific roles of the office bearers are as follows:

Chairperson

- To preside at all general and executive committee meetings

It is to be noted that where the Chair is absent or otherwise indisposed, those present at the meeting and entitled to vote should elect a replacement Chair for that meeting. The Chair has a right to exercise their own vote, like other lot owner, but does not have an additional casting vote.

Secretary

- Prepare and distribute minutes of meetings and include a motion at each meeting to confirm any previous minutes;
- Give any notices required under *the NSW Act* on behalf of the executive committee or owners corporation;
- Maintain the strata roll;
- Enable the inspection of documents of the owners corporation under Section 108 of *the NSW Act*;
- Reply to correspondence addressed to the owners corporation;
- Apart from the first AGM, convene meetings of the executive committee and the owners corporation; and,
- Attend to administrative and secretarial matters for the executive committee and owners corporation.

Treasurer

- Notify owners of any levies;
- Receive, acknowledge, bank and account for any monies paid to the owners corporation;
- Prepare financial information in accordance with Section 109 of *the NSW Act*; and,
- Maintain all accounting records and prepare financial statements.

Note: The legislation allows the duties of office bearers to be delegated to the strata manager and the extent of that delegation is usually an agreed part of the functions set out in the Agency Agreement. Notwithstanding this contractual arrangement, the office bearers can elect to undertake any or all of these duties if they so determine unless some restriction has been placed upon their exercise of function by the owners corporation or the executive committee.