

NEWSLETTER ISSUE 15 OCTOBER 2014

The roles of the Office Bearers of the Executive Committee

At the AGM, we are often asked “What are the responsibilities for each role of the office bearers?” Outlined below is an overview of each role and their responsibilities. You can access this information anytime simply by visiting the newsletters on our website.

Chairman – this position is very important so it is in the schemes best interest to appoint a person who has experience and knowledge regarding meeting process, where possible. The chairman’s role includes maintaining order during a meeting and to keep the meeting progressing so it gets through the business on the agenda. It is up to them to:

- i) determine what is a quorum
- ii) determine which proxies are valid and which are not.
- iii) when there is a quorum, to declare the meeting open.
- iv) determine who can speak during the meeting and ensure only one person talks at a time. It is up to them to direct a query to the right person who can answer it.
- v) determine if the motion on the agenda is legal – ie raised in the right format . Also who is allowed to vote on that motion and how many it will take to pass it.
- vi) call the vote after ensuring all queries have been heard and the meeting is ready to make an informed decision.
- vii) ensure that if there is an amendment to the motion the Chairman follows the due process to ensure the amendment is legally put, agreed upon and then once it becomes the motion, calls a vote on the new motion.
- viii) call for the vote, count them, and determine if the motion is passed or defeated. Finally they declare the outcome to the meeting.

The fundamental difference in strata from other forms of committees is that the Chairman does not have a casting, or deciding vote if there is a tie. (Note in strata, there is no such thing as tie ie if there are as many in favor as are against the motion, then the motion is considered defeated – so there is always an outcome).

The importance of getting this role correct is sometimes an issue in the courts. If you are unsure it would be best for the committee to get together and generally discuss the issues, and then have your strata manager prepare an agenda in accordance with the intent of the outcome. The Act makes provision for paper vote meetings so you don’t have to meet up again face to face, but return a voting paper indicating your wishes on each motion.

Secretary - the meeting paper work for the Executive Committees is handled by the person elected to this role. It is up to them to liaise with their fellow Executive members as to motions for the agenda and prepare the minutes at the conclusion – both within the legal timeframe required under the legislation.

The agenda is required to detail what matters are to be determined – eg consider quotations for the painting of the building. The motion format for a committee meeting does not have to appear in the strict format that is required for a meeting of all owners but anyone reading an Executive Committee agenda should be able to determine what the meeting is planning to discuss and make decisions regarding.

It is usual that the secretary places the notice of the meeting on the notice board (as is required in older schemes) and to distribute the agenda and minutes to those entitled to receive them.

Should a letter need to be tabled at the meeting the secretary will bring this to the meeting (it is preferable to circulate it in advance so the members have time to consider the contents before they attend so a well considered outcome can be determined at the meeting). They will respond to the correspondence after the meeting in accordance with the decision taken by the members.

When a S109 is requested by a solicitor for the information required to settle a property on the market, the secretary fills in those parts that do not relate to accounting, including who is on the committee, bylaws passed but not yet registered at the Land Titles Office, the insurance details of the scheme etc. They then provide this to the treasurer to complete the form regarding the levy status of that lot – and then it is returned to the requesting lawyers.

Treasurer – these are the bookkeepers for the scheme – and are accountable for the preparation of the annual accounts for the Annual General Meeting. They are also responsible for the completion of the financial aspects relating to the lot in question as required on a S109 certificate.

In cases where an owner doesn't pay their levies, it would be the treasurer who - after a meeting of the committee has decided to debt recover their arrears - will brief the lawyers per the decision of the members.

The treasurer will also complete any insurance claim paperwork and submit it, bank the payment when received in settlement, and undertake any other banking the scheme may have to do.

They also prepare the levy notices and distribute these to owners for contribution payments and issue a receipt accordingly.

It is important that all owners understand the various roles, especially those that take on these responsibilities. The Act requires you to appoint not just a committee but also fill the office bearer positions as detailed above. For those schemes with managing agents it is good for you to know that in most cases these roles are undertaken by the manager in accordance with their contract. These positions are therefore often only held by the Committee members - in name only.

Where you have a manager – it is good to check that:

- i) the delegated authority level and duties they are to perform under their contract, otherwise these will fall to the person elected to the roles above.
- ii) If the office bearer chooses to exercise their role then the strata manager must relinquish that aspect of their services and allow the member to perform it - either as a one off or for the period they hold office.

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In the decision just handed down by the High Court of Australia, in future, commercial schemes cannot sue a builder/ developer for negligence in respect to construction defects.

As commercial schemes do not fall under the Home Building Act – which is for residential properties, and thus purchasers are provided with a Home Owners Warranty, this was previously the only avenue a commercial scheme had regarding defects rectification.

One of the reasons given by the court is that the owners have the option of negotiating a contract for purchase to suit, or to walk away if terms offered are not to their liking.

It is suspected that a similar argument will be soon heard in the courts relating to residential schemes. If the decision is the same as for commercial schemes, it would remove one of the few means owners have of pursuing a builder/ developer for the rectification of residential defects. The detail of the case can be read by visiting our website (www.prostrata.com.au) and opening the Grace Lawyers attachment, under Newsletter 15.

More than ever the saying “cavet emptor” – “let the buyers beware” should be heeded.