

What are the functions of the Executive Committee?





01

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05

Procedures for conducting a Committee Meeting

06

So what can the committee determine?

08

Requirement for Committee to Act

09

Restricted Matters

What are the functions of the Executive Committee?



Introduction

The Executive Committee of every Owners Corporation play an important role in the administration of their scheme, with members usually fulfilling the committee's duties on a voluntary basis and during their own time.

As such, understanding the strict legal impositions that are placed on the Executive Committee by the Strata Schemes Management Act 1996 (the Act), the Owners Corporation, the strata by-laws and other legislation can be onerous, particularly for anyone that has not served on a committee previously.

The following guide has been written for owners and Executive Committee members to assist in their understanding of what the roles & duties of the Executive

Committee are and how they relate to the operation of the Owners Corporation as a whole.

Definition

The Executive Committee is a group of between 1 to 9 owners or owners nominees elected at each Annual General Meeting, who are responsible for assisting in the day to day administration of the strata scheme subject to the restrictions imposed by the Owners Corporation, by-laws or Strata Schemes Management Act 1996 (the Act).

Legal Classification

An agent for the Owners Corporation, as such the Executive Committee is not part of the Owners Corporation, but a representative arm of the Owners Corporation, not unlike the board of

directors of a company. Given this legal position, the Executive Committee may be pursued legally if they do not perform their functions in accordance with the Act.

Decision Making Powers of the Executive Committee

The paramount duty of all Owners Corporations is to control, administer and manage the common property for the benefit of all owners. The committee's role is to ensure that the duties and obligations of the Owners Corporation are fulfilled.

Strata legislation imposes many different obligations on an Owners Corporation, however Chapter 3 of the Act lists 5 items that are considered to be the 'Key Management Areas' for every strata scheme, which are;

1. *Maintenance and Repairs (Sections 61 to 65 of the Act)*

Stipulates that an Owners Corporation has a mandatory duty to repair and maintain the common property within the scheme and provides powers to enter property to effect any required works, as well as recoup expenses for certain necessary work.

2. *Financing the Strata Scheme (Sections 66 to 80 of the Act)*

Outlines that an Owners Corporation must establish an Administrative and Sinking fund to provide sufficient monies for the expenses of the scheme and that levies may only be raised via a general meeting of the Owners Corporation.

3. *Insurances (Sections 81 to 95 of the Act)*

Obligates every Owners Corporation to effect 4 mandatory insurances being, Building Insurance, Public

advent of electronic communication, this can even be extended to decisions being made via email correspondence, as long as the proper procedural requirements have been followed.

There are three circumstances where a decision may be made by an Office Bearer (ie the Secretary, Treasurer or Chairperson) when Executive Committee meeting is not required, they are;

- (a) A Mandatory duty imposed by legislation, eg renewing the Owners Corporations insurances;
- (b) Implied authority, eg fulfilling the roles of Secretary, Treasurer & Chairperson;
- (c) An incidental step, eg obtaining council approval before removing a tree.

A Strata Managing agent that has been delegated the full powers of the Executive Committee may exercise the functions of the committee at anytime via this delegated authority.

The Roles of Secretary, Treasurer and Chairperson

The positions of Secretary, Treasurer and Chairperson, or Office Bearers are determined by the Executive Committee members at their first meeting after they have been elected by the Owners Corporation at the Annual General Meeting. A common misapprehension is that the Owners Corporation elects the Office Bearers, however section 18 of the Act specifically gives this privilege to the Executive Committee exclusively.

Section 18 also allows one committee member to perform more than one or all of the Office Bearer roles.

The Chairperson

The duties of the Chairperson are not specifically listed in the Act like

the Secretary and Treasurer, however their role is essentially to preside at all meetings of the Owners Corporation and Executive Committee to ensure the successful and lawful functioning of the meeting.

For Executive Committee meetings;

- The Chairperson must preside (conduct) the meeting
- In the absence of the Chairperson another member of the Executive Committee must be appointed to preside that meeting
- The Chairperson does not have a casting vote, however may vote in their own right as a member of the committee

For General Meetings of the Owners Corporation;

- The Chairperson must preside (conduct) the meeting
- In the absence of the Chairperson another person that is eligible to vote at the meeting must be appointed to preside that meeting

- The Chairperson does not have a casting vote, however may vote in their own right
- The Chairperson to announce the names of persons entitled to vote on a motion or those that may nominate for the Executive Committee
- The Chairperson may declare that a motion is out of order if it conflicts with the Act or other legislation, conflicts with the By-Laws, would be unlawful or unenforceable or any motions that are not on the written agenda for the meeting
- The Chairpersons' declaration of a vote on a motion is final, unless a poll vote is requested (ie a vote conducted by Units of Entitlement). A poll may be demanded even after a declaration has been made
- A valid meeting of the Owners Corporation may be held even if the Chairperson is the only person present at the meeting, provided a quorum (ie sufficient owners





Most of the powers & functions of the Secretary are detailed under Section 22 of the Act, however there are numerous references throughout the act as follows;

The Secretary must;

- Prepare and distribute all notices of general meetings and Executive Committee meetings, including affixing copies of the notices on the common Notice Board where required;
- Prepare and distribute Minutes of Executive Committee and general meetings including affixing copies of the notices on the common Notice Board where required;
- Answer all communications addressed to the Owners Corporation
- Maintain copies of the Owners Corporations records, including all correspondence for at least 6 years
- Maintain the Strata Roll
- Make available the strata records of the Owners Corporation as prescribed by section 108
- Convene general meetings & Executive Committee meetings when requested or required
- Affix a Notice Board on the common property (if required)
- Attend to all administrative and secretarial tasks of the Owners Corporation and committee, eg; Lodging Tax Returns, ensuring all Insurances are affected, quotes for works are obtained, residents are alerted to By-Law breaches and ensuring tradespeople perform their tasks adequately.
- Have custody of all the strata schemes records (except for accounting records maintained by the Treasurer)
- All other duties of the Owners Corporation

voting at the meeting) has been formed

The Treasurer

Most of the powers and duties of the Treasurer are detailed in section 23(1) of the Act as follows;

- The Treasurer must notify owners of any contributions levied pursuant to the Act and when they are payable;
- Receipt, acknowledge, bank and account for any monies paid to the Owners Corporation
- Prepare certificates as prescribed by section 109 of the Act
- Keep the prescribed accounting records and prepare the prescribed financial statements as required by Sections 103 & 106 of the Act

Other Obligations;

- Have the Secretary place a motion on the agenda of an Executive Committee meeting or general meeting to decide whether to initiate debt recovery proceedings against an owner who is in arrears with their strata levies
- Notify the Chairperson of the levy positions of all owners prior to a general meeting

The Secretary

The Secretary of an Owners Corporation is the chief Administration officer for the corporation. Unlike the Secretary of a company, the Secretary has no power to bind the Owners Corporation contractually. This right can only be conferred by the Owners Corporation or Executive Committee via a resolution at a properly convened meeting.

So what can the committee determine?



As stated above, the Act allows the Executive Committee to exercise all the powers, authorities, duties and functions of the Owners Corporation, which provides the committee with wide ranging powers. Where a Managing Agent had been appointed the agent is usually delegated the authority of the Secretary, Treasurer and Chairperson and will fulfill the procedural elements of these roles as required by the Act. In this circumstance the committee may meet and make decisions as the need arises relating to the following items;

1. Repairs & Maintenance

The committee can decide all items relating to the repair and maintenance of common property and apart from large strata schemes (those with more than 100 lots) there are no spending limits imposed by the

Act on the committee. Obviously caution should be taken by a committee so as to not approve a particular item of maintenance that the Owners Corporation has not budgeted for or if the cost of the item will exceed the existing funds that are available.

For large schemes, the committee must not exceed expenditure on any one budgeted item by more than 10%. For amounts that will exceed 10% approval from the Owners Corporation will need to be gained.

2. Appointing Contractors

Whilst not required by the Act, when determining what maintenance works shall be carried out to the common areas, a committee will often obtain a number of quotations

from various contractors to ensure the Owners Corporation is receiving value for money.

By virtue of this, the committee is able to appoint whichever contractor they deem appropriate to complete the associated works. This principle extends to other expenses of the Owners Corporation such as choosing the strata insurers, cleaners, gardeners, trades, auditor, utility providers etc.

3. Approval under By-Laws

Many of the standard By-Laws registered with a strata scheme prohibit residents from conducting a particular activity, unless they receive written permission from the Owners Corporation. The Executive Committee is able to grant approval for items specified in the following standard By-Laws;

By-Law 2 - Vehicles

Approval for parking vehicles on common property.

By-Law 10 - Drying of Laundry Items

Permission to place a clothes drying rack on an owners balcony.

By-Law 4 - Damage to Lawns & Gardens

Approval for an owner to tend to the common gardens.

By-Law 12 - Storage of inflammable Liquids

Permission to store certain types of chemicals with a garage.

By-Law 5 - Damage to Common Property

Approval for an owner to damage common property, EG to install an air-conditioning unit to their lot.

By-Law 16 - Keeping of Animals

For schemes that allow animals, approval for certain types of animals to be kept.

By-Law 9 - Depositing Rubbish on Common Property

Approval for an owner to place a 'skip' bin on common property whilst renovating an apartment.

By-Law 17 - Appearance of the Lot

Approval to maintain something that is not in keeping with the building, EG changing the blinds within the lot.

4. Convening Executive Committee Meetings

In the event there are ongoing or complex management issues affecting the strata scheme, the Executive Committee may elect to convene future meetings of the committee to continue investigations and discussions relating to a particular matter.

Alternatively, due to the size of some strata complexes and the continual issues that are raised, some committees elect to convene future meetings on a regular basis, such as every month or quarterly, so issues raised by owners within the scheme may be addressed continually throughout the year.

5. General meetings of the Owners Corporation

If the need arises, the Executive Committee is authorised to convene a general meeting of the Owners Corporation at any time, EG if special levies are required to complete necessary maintenance works.

6. Filling a vacancy in the Executive Committee

In the event a position on the Executive Committee is vacated, eg a committee member sells their lot within the scheme, the Act obligates the Owners Corporation to fill the vacant position.

The replacement committee member may be determined by the committee at an Executive Committee meeting.

7. Miscellaneous Items

Any other miscellaneous items that may affect the owners corporation or committee.



Requirement for Committee to Act

Section 138(2)(b) of the Act, stipulates that an Owners Corporation is deemed to have failed to exercise a function if after 2 months of being requested to perform a function, the request remains either outstanding or undetermined.

This section of the Act provides all owners with some assurance that matters should be addressed by the owners corporation/committee in a prompt & efficient manner. It also provides the owners with a recourse via the Consumer, Trader & Tenancy Tribunal if the issues remain unresolved.

The Need for a Committee

As far as the legal requirement for a committee is concerned, Sec 16 (1) of the Act requires that a committee of between 1 & 9 members be

appointed. However in the event that no owners or representatives nominate for the committee 1 of 3 possible scenarios will occur;

1. A Managing Agent is delegated the authority of the Executive Committee under sec 28
2. The Owners Corporation will administer itself, Sec 16(4) (ie every decision regarding the Owners Corporation must be made at a general meeting)
3. The Strata Schemes Board makes an order that a Managing agent be appointed, Sec 162

How does a Managing agent fit in?

Due to the detailed and exacting legislative requirements imposed by strata legislation, managing agents are often engaged to administer the day to day functions of the strata scheme on behalf of the Owners Corporation.

In order to perform these functions, an agent may be delegated the authority of the secretary, treasurer and chairperson. This delegation allows the agent to perform all of the functions of the executive committee, such as convening meetings, supervising maintenance, overseeing By-law compliance, compiling financial reports and affecting the appropriate insurances for the Owners Corporation.

It should be noted that any delegation provided to an agent does not extinguish the rights of the executive committee or owners corporation, as such the owners will always retain the ultimate authority to administer the owners corporation.



RESTRICTED MATTERS

Motions requiring a Unanimous Resolution

- Distribution of Surplus Funds from the Admin or Sinking Fund (Section 72(1))
- The alteration of an order from an Adjudicator or CTTT where the order has effect as if its terms where a By-Law (S. 49(2))
- The amendment or revocation of an order from an Adjudicator or CTTT made under section 207 of the Management Act.
- Application to an adjudicator to be exempt from building insurance (Sections 86(1)-(4))
- The amendment of a Strata Development Contract for a development scheme which requires changes in landscaping or Architectural design (Section 28j(2)(b) SSFDact)
- A certificate from an Owners Corporation stating a development scheme has concluded (Section 28Q(3)(3) SSFDact)
- For 2 lot strata schemes, a decision not to effect building insurance (S83(4)(c)) or not to establish a sinking fund (S69(2)(a)).
- A revocation or amendment of a resolution previously passed by Unanimous Resolution

What is a Unanimous Resolution;

The dictionary of the management Act defines a Unanimous resolution as;

"...means a resolution which is passed at a duly convened general meeting of the Owners Corporation and against which no vote is cast."

Motions requiring a Special Resolution;

- The amendment, addition or repeal of By-laws (section 47 management Act)
- To pass Exclusive Use or Special Privilege By-Law (section 52 management Act)
- Absolution of maintenance (section 62(3) management Act)
- To decide that levy arrears should bear no interest (whether for quarterly levies or special levies) (section 79(3) management Act)
- To decide to allow a 10% reduction on levies if paid prior to the due date (whether for quarterly levies or special levies) (section 79(4) management Act)
- When wishing to terminate an Executive Committee members office (schedule 3, clause 4(1)(e) - management Act)
- When seeking to effect 'Personal Liability Insurance' (section 87(1)(c) management Act)
- The creation of easements over the common property (section 26 freehold development Act)
- The dedication of common property as a public road, reserve or drainage reserve (section 27 freehold development Act) (formally unanimous resolution)
- The acquisition by transfer or lease of additional common property (section 19(2) freehold development Act) (formally unanimous resolution)
- Authority to grant a licence over common via a special resolution (section 65B - Management Act)
- Payment to an owner in respect of dealings involving common property (section 112 management Act)
- In respect of a Strata Plan of subdivision involving common property that has been lodged with local council, it must be accompanied by a certificate of the Owners Corporation

consenting by special resolution to the proposed subdivision (s37(4)(a) freehold & Form 12)

- In respect of a Strata Plan of subdivision that involves common property (ie where common property is affected or created), it must be accompanied by a certificate of the Owners Corporation (passed by special resolution) to the proposed Unit of Entitlement (UOE) for each lot and the aggregate UOE (section 11(b) Freehold Development Act)
- In respect of a notice of conversion (ie where the Owners Corporation acquires lot property) a certificate from the Owners Corporation consenting to the conversion (s 37(5) freehold Act)
- Subdivision of common property in a development scheme (section 28c(4) Freehold Act)
- The amendment of a strata development contract for a development scheme which requires a change in the terms of the development consent (section 28j(4) freehold development Act)
- The amendment of a Strata Management Statement (section 28u(1)(a) freehold development)
- The registration of a Strata Management Statement or amendment (s28v(1)(a) Freehold Act)
- A revocation or amendment of a resolution previously passed by Special Resolution

Motions requiring an Ordinary Resolution

Note: The definition of 'ordinary resolution' cannot be found in the management act, as such we are left with the interpretation given by common law, which is a resolution passed by a majority vote ie 51%.

- Confirmation of Minutes of the previous general meeting Minutes (Schedule 2, Clause 35 of the Management Act)
- To adopt the Owners Corporations financial statements

at each Annual General Meeting (Schedule 2, Clause 34 of the Management Act)

- Setting contributions to the administrative fund or sinking fund at each Annual General Meeting (section 76(2) - Management Act)
- Raising special levies for the Administrative Fund or Sinking Fund (section 76(4) - Management Act)
- To appoint or dismiss and or determine the delegation of powers to a Strata Managing Agent (Sections 27 & 28 - management Act)
- To decide what further restrictions to impose on the Executive Committee (section 21(2)(b) - management Act)
- An Owners Corporation must not seek legal advice without passing a resolution at a general meeting (Section 80D - Management Act)
- To change the Owners Corporations address for service of notices (section 239 - Management Act)
- To approve a plan of sub-division not involving common property (section 37(2) - Freehold development Act)
- To alter an order of an adjudicator or CTTT under section 208(2)(b) of the management Act (we'll do this later)
- To apply to the commissioner for assistance in the Land & Environment Court for orders in respect of a Strata Development contract, its amendment, a development consent or its modification or the agreement implied by section 28I (section 28QG - Freehold development Act)
- To amend a Strata Development contract, which does not require a change in the architectural or landscaping design, its theme or essence, a change in the law or the requirements of the consent authority or terms of the development consent



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