

# Starting the owners corporation

## In a strata scheme

The owners corporation starts when a strata plan is registered with the Land and Property Management Authority NSW. In most cases the owners corporation will initially be the original owner.

### Definitions

#### Owners corporation

The owners of the lots (formerly referred to as the body corporate) are known as 'The Owners - Strata Plan No. X'.

#### Original owner

The original owner is the owner of the scheme when the strata plan is registered and is usually the builder or developer.

#### Initial period

The initial period begins when the strata plan is registered and ends when one-third of the unit entitlements have been sold.

## The initial period

### Restrictions during the initial period

During the initial period, the owners corporation must not:

- change or cancel the by-laws or make extra by-laws that do not give a right or obligation to all owners or all lots
- alter common property (except under a development contract)
- incur a debt for more than is set aside in its funds to repay
- borrow money or give securities
- appoint a strata managing agent or caretaker to continue after the first Annual General Meeting (AGM)
- sell any common property.

## Application to the Tribunal to alter any common property

The NSW Civil and Administrative Tribunal (NCAT) is a specialist, independent, low cost Tribunal for the fair and timely resolution of disputes according to law. Disputes are resolved at a hearing or by alternative dispute resolution.

During the initial period, the owners corporation can apply to the Tribunal for an order to waive, vary or extinguish a restriction about the initial period.

If the restrictions are not obeyed, the original owner is liable for any debt or loss of the owners corporation or an owner.

## Duties of the original owner

During the initial period the original owner is responsible for all the duties of the owners corporation, even if the first AGM has not been held.

## First Annual General Meeting

The original owner must hold the first AGM within two months of the end of the initial period. There can be a fine of up to \$1,100 if this is not done.

Notice of the AGM must be given to each owner and each first mortgagee and covenant chargee shown on the strata roll. This must be done at least 14 days before the meeting. At the first AGM, the original owner must give the owners corporation:

- all plans, occupation certificates, specifications, diagrams, maintenance and service manuals, depreciation schedules and other documents and policies relating to the strata scheme

- all development consents, complying development certificates and related endorsed plans, 'as built' drawings, compliance certificates (within the meaning of the *Environmental Planning and Assessment Act 1979*), fire safety certificates and warranties obtained or received by the owner or lessor and relating to the scheme or any building, plant or equipment in it
- any other document or item relating to the scheme or any building, plant or equipment as prescribed (eg sewer diagrams)
- the certificate of title for the common property, the strata roll and any notices or other records about the strata scheme, but only if the original owner has control of them
- the accounting records and the latest financial statement.

A penalty of up to \$11,000 can apply to a breach.

### Voting rights of the original owner

At the AGM, if you are the original owner and still own half or more of the total unit entitlement, and a vote by poll or special resolution is called, the value of your vote is reduced to one-third of your unit entitlement, ignoring any fraction.

If the motion is for electing the executive committee and you are the original owner and own half or more of the lots, your vote is reduced to one vote for each three lots you own, ignoring any fraction.

If a poll is called on the election of the executive committee, the value of the original owner's vote is reduced to one-third of the total unit entitlement, ignoring any fraction.

### First AGM agenda

As long as the set agenda is used, the first AGM is valid even if it is called or held after the fixed time. The set agenda includes the following:

- insurance cover
- the election of executive committee members
- by-laws

- appointment of a strata managing agent
- accounting records
- restricted matters and levies
- preparation of 10 year sinking fund plan
- whether a caretaker is to be appointed.

If the first AGM is held but an executive committee is not appointed, an owner, mortgagee or covenant chargee can make an application to the Adjudicator for an order to appoint a person to hold a general meeting to appoint the executive committee.

An Adjudicator can make decisions on disputes or complaints which have not been resolved by mediation.

If an executive committee has been elected at the first AGM but no office bearers have been appointed, an owner, mortgagee or covenant chargee can make an application to the Adjudicator for an order to appoint a person to call an executive committee meeting to elect those officers.

### Failure to hold the first AGM

If the original owner does not hold the first AGM, an Adjudicator may appoint a person to hold the meeting. The owners corporation, an owner, or a mortgagee of a lot, may make an application to the Adjudicator for this order.