

Meetings and voting

Changes to community and strata titles legislation To take effect from 28 October 2013

Introduction

The *Statutes Amendment (Community and Strata Titles) Act 2012* will change the laws (the *Community Titles Act 1996* and the *Strata Titles Act 1988*) governing community and strata titles in South Australia, to take effect from **28 October 2013**.

The changes to the community and strata titles laws are designed to improve protections for consumers who buy into or own units in strata and community titled developments. In doing so, they introduce further rights for owners and further obligations for body corporate managers as well as, in some cases, further obligations for community and strata corporations.

The following fact sheet is one in a series of fact sheets that have been prepared to explain the effects of these impending law changes and what they mean for owners and community and strata corporations and for body corporate managers.

Meetings, proxies and conflict disclosure

Participation in meetings remotely

Owners will be permitted to participate in meetings remotely, for example by telephone, video-link or internet, if the articles or by-laws provide for this or the secretary of the corporation agrees with an owner's written request for this.

Length and revocation of proxies

The law changes make it clear that the appointment of a proxy (for example, the manager) can be revoked at any time and that any agreement to the contrary is ineffectual. Also, even if an owner has appointed a manager as their proxy, this does not prevent an owner from attending a meeting and voting in person.

The owner must still receive notices of meetings, although copies can go to their proxy in addition if the corporation agrees. Proxies will be limited to no more than 12 months. Further, a proxy appointing the body corporate manager will lapse automatically if the appointment of the body corporate manager ends.

Disclosure of conflicts of interest

The amendments confirm that all members of the corporation and any proxies or attorneys who attend the meeting on their behalf have to disclose any interest that they or their principals have in matters being considered by the corporation (other than interests held in common with the other members of the corporation).

Managers are required to disclose to the corporation any monetary interest, or monetary benefit they stand to gain, from acting for the corporation. For example, if the manager would receive a commission from a person for placing business of the corporation with that person, it would be an offence to fail to disclose that fact before placing business with the person. Similarly, if the manager were to profit by placing business of the community corporation with a related company, it would be an offence to fail to disclose that.



Chairing of meeting by body corporate manager

Under the changes, a body corporate manager may only chair a corporation meeting if a majority of those present votes for this. The manager may only vote on this question if the manager holds specific proxies to this effect and only after telling the meeting at the outset:

- that he or she may only chair the meeting if a majority of those present vote for this and that he or she has no right to vote, except when exercising a specific proxy for a member;
- whether he or she holds any proxies for the meeting, and for whom, and that they are available for inspection; and
- that he or she has no right to prevent any member from moving or voting on any motion.

Timing of meetings of secondary and tertiary corporations

The requirement that secondary and tertiary corporations must meet within one month after the annual general meeting of the primary corporation will be removed. Instead they will be required to hold an annual general meeting for a financial year within 6 months after the commencement of each financial year. Corporations will be free to hold the meeting either before or after the meeting of the primary or secondary corporation.

Voting and special resolutions

The definition of 'special resolution' for strata titles will be changed so that it matches that for community titles.

Currently under the *Strata Titles Act*, a special resolution is passed if two-thirds of all lot holders vote for it at a validly convened meeting. For example, in a group of 15 units, at least 10 owners must vote in favour for the resolution to pass. If fewer than 10 owners attend the meeting, the resolution cannot pass, even though the members not attending might have no strong views on the resolution.

The *Community Titles Act* takes a different approach. Under that Act, a special resolution is passed if no more than 25% of all lot holders vote against it at a validly convened meeting. For example, in a group of 16 units, if nine owners attend the meeting and 4 of them vote against the resolution, it will pass even though it has the active support of only 5 of the 16 members. The result is that a special resolution is much more easily achieved under the Community Titles Act, because it is not defeated by those who are indifferent but can only be defeated by those who are actively opposed. Under the changes, this will be the same for strata titled groups.

A meeting is only validly convened if 14 days' notice has been given to all owners, including notice of the text of the proposed special resolution. That means that anyone concerned about the resolution has a chance to vote.