

GENERAL INFORMATION GUIDE

NSW STRATA SCHEME –PROXY

1. <i>What is meant by the term Proxy?</i>	A proxy is a person who an owner of a lot(s) appoints to attend a general meeting (FAGM, AGM, EGM) of an O.C. to represent them in an owner's absence.
2. <i>Who can be appointed as my proxy?</i>	You can appoint anyone over the age of 18 years to be your proxy. A spouse, a family member, a friend, solicitor, another lot owner or the chairperson of the meeting.
3. <i>What is the procedure to appoint a proxy?</i>	<p>A lot owner must complete and sign the prescribed proxy form (usually sent out with the notice). The completed form must be submitted prior to the meeting starting. It must be dated and signed by the owner to be valid.</p> <p>The form must indicate the duration of the appointment; i.e. 1 meeting, one week 1 month, 1year.</p> <p>For a large scheme (over 100 lots) the proxy form must submitted no later than 24 hours prior to the commencement of the meeting to the Secretary/ Strata Manager.</p> <p>For schemes under 100 lots the form may be presented to the chairperson or Secretary just prior to the meeting starting.</p>
4. <i>How many proxies can one person hold?</i>	<p>The SSMA 2015 restricts the number of proxies any one person may hold at a meeting.</p> <p>For schemes under 20 lots a person may hold only one proxy.</p> <p>For schemes over 20 lots the maximum number is not more than 5% of the total number of lots. This is rounded down to a whole number if fractions are involved.</p> <p>It should be noted that this is determined by total number of lots and not Unit Entitlement.</p> <p>E.g. In a 99 lot scheme one person may hold a maximum of 4 proxies. $5\% \text{ of } 99 = 4.95$ which is rounded down to a whole number - 4</p>
5. <i>What happens if one person hold more than the maximum number of proxies allowed?</i>	<p>If a person holds more than the total number of proxies permissible, the person cannot vote using any additional proxies.</p> <p>The person will need to determine which proxy or proxies they will not represent.</p> <p>If they fail to identify the proxy or proxies they will not represent it becomes an obligation of the Chairperson to so determine. The chairperson has a duty of care to protect the Owners Corporation from possible legal action.</p>

	By voting on ineligible proxies the legitimacy of the resolutions may be changed in by another owner in NCAT.
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6. <i>Is the Chairperson restricted to the same limit on proxies held or can they hold in excess of the 5%?</i>	The SSMA 2015 does not make any reference to a Chairperson being able hold any more proxies than prescribed for all other people. In other words, the Chairperson is also governed by the prescribed limits.
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7. <i>What happens if I appoint a proxy and then I attend the meeting?</i>	<p>You assume your full rights and your proxy cannot participate in the meeting.</p> <p>However, if you wish, you can be an observer and still have your proxy speak and vote on your behalf. It is one or the other situation. The role should not be exchanged back and forth within a meeting.</p>
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8. <i>What voting rights does a proxy have at a general meeting?</i>	<p>A duly appointed proxy has the same voting rights as the owner(s) they represent.</p> <p>Another owner in that scheme may be appointed as a proxy. In that situation that person has multiple votes – their own lot vote and one for each proxy they hold.</p> <p>A proxy has the right to request a poll vote if they consider it appropriate.</p> <p>Limitations may be imposed by the owner appointing the proxy. This should be noted on the proxy form.</p> <p>A proxy cannot vote on any motion if:</p> <ol style="list-style-type: none">a) The owner who appointed them is present at the meeting and votes on the motion.b) That will confer a pecuniary or other material benefit on the proxy.<ol style="list-style-type: none">i. If the proxy is a strata managing agent, building manager or on-site residential property manager they are prohibited by the SSMA 2015 from voting on that matter.ii. Likewise, if a service provider to the O.C. is appointed as an owners proxy they cannot vote on any motion that would provide them with a material gain (e.g. a submitted quote; preferred provide status or such like)c) The right to vote on any such matter is limited by the proxy form.
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9. <i>What is the situation of multiple proxies existing for one owner?</i>	It is the role of the Chairperson to role on the validity of proxies. However the SSMA 2015 directs that the most current dated proxy is the rightful instrument.
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10. *How long does a proxy appointment last?*
- The proxy takes effect from the date the form is signed and may be for:
- a) One meeting (should be noted by the date of the meeting)
 - b) A specified period – from one particular date to a concluding date.
 - c) A maximum of 12 months or at the end of the 2nd AGM held after the signing date (whichever occurs first)
 - d)
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11. *Can it be a condition of sale of a lot that a purchaser appoints a proxy or votes in a particular manner?*
- A provision of a contract for the sale of a lot in a strata scheme, or of any ancillary or related contract or arrangement, is void and unenforceable to the extent that it:
- (a) Requires the purchaser of a lot, or any other person, to cast a vote at a meeting of the owners corporation at the direction of another person, or
 - (b) Requires the purchaser to give a proxy at the direction of another person for the purpose of voting at a meeting of the Owners Corporation (that is a person cannot rely on any such proxy to cast a vote as a proxy).
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12. *Can I appoint the strata manager as my proxy?*
- This is not recommended and the legislation specifically precludes a strata manager from voting on an issue in which there is a pecuniary interest.
- This is not to say you cannot appoint your strata manager, but you need to be mindful of the legislative requirements.
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13. *I own two lots in the strata scheme so can I appoint the same person as my proxy for both lots?*
- If the scheme is 40 lots or more you are able to appoint that same person as long as they are not holding any other proxies.
- If your scheme is 39 lots or less you will need to appoint 2 different proxies.
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14. *If a Strata Committee member is going to be absent from a Strata Committee meeting, can they appoint a proxy?*
- S.C. members cannot appoint a proxy in their absence. The absenting S.C. member can nominate a substitute to represent them and the S.C. vote on the proposed substitution as part of the proceedings at the beginning of the meeting.
- A substitute can only be an owners or company nominee in that scheme. The committee is required to accept the substitute nomination if they met this criteria.
- The substitute may already be a S.C. member. In this case the strata committee member will carry more than one vote – their own and one for each substitution they represent.
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AGM - Annual General Meeting; EGM – Extraordinary General Meeting; FAGM – First Annual General Meeting;
O.C. – Owners Corporation; SC – Strata Committee; SSMA – Strata Schemes Management Act;
NCAT – NSW Consumer & Administrative Tribunal; U.E. - unit entitlement