

Changing Strata Managing Agents

Introduction

Strata managing agents are regularly requested to provide “quotes” to undertake the strata management of a particular strata scheme. Owners Corporations wish to change their strata managing agent for a variety of reasons. Those reasons will not be canvassed here. The purpose of this article is to outline the process and the content is based on several years of discussion with numerous enquirers.

What does stand out when these enquiries are made is that the enquirer or the Owners Corporation does not understand the legislative requirements of appointing a strata managing agent. There are several essential points that need to be addressed prior to initiating enquiries.

The first, and most important, is to identify what the completion date of the current agency agreement is. Those making enquiries of prospective new agent will ask this question very early in the enquiry approach.

Many lot owners, including strata committee members, do not know the completion date of the current agreement when asked. More often than not there is expressions of dismay when an enquirer learns that the agency agreement has two years to run even though the appointment was only undertaken at last year’s AGM.

Who makes the decision to change strata managing agents?

Simply put, the Owners Corporation does. This must be as a consequence of an appropriately worded motion at a legislative compliant general meeting of the Owners Corporation.

A strata managing agent can only be appointed by the Owners Corporation at a general meeting. The strata committee does not have the legislative authority to appoint a strata managing agent. The appointment of a strata managing agent is a restricted matter, i.e. the strata committee cannot undertake the role. This does not mean that the strata committee is prohibited from playing a role.

Nevertheless the initial process can be instigated by the strata committee itself as it maybe by an individual owner or a group of owners who may, or may not be, part of the strata committee.

It is important to note that tenants, property managers, building managers or any person whose name does not appear on the strata roll cannot initiate a change of a strata managing agent. The exception to this is a lot owned by a company. In this circumstance the appointed company nominee can initiate the process. That company nominee must be registered with the Owners Corporation.

Strata Committee Initiating Change

This is probably the most common approach. Committee members may have reasons to raise the matter with other committee members and it becomes a motion on a strata committee meeting agenda. Or concerns are raised with a committee member(s) by a non-member(s) and the matter is then made an agenda item. Generally the initial motion is for the strata committee to review the appointment of the strata managing agent and it is often resolved to seek submissions from alternative providers.

One aspect that prompts a strata committee to initiate a review is the fact that the current agency agreement is approaching completion and the committee undertakes a due diligence review rather than just accept the status quo.

If implemented by the strata committee it is recommended that any submissions are reviewed by the committee and that only one recommendation is put to the general meeting. This is to minimise confusion and argument at the general meeting.

Individual Lot Owner Initiating Change

Any lot owner is entitled to have an item (motion) placed on the agenda of the next general meeting. The lot owner does not need the permission of the strata committee. There are four basic criteria for an individual owner submitting a motion for consideration. Firstly it should be in writing and addressed the Secretary. It must be an appropriate worded motion, identify the lot (s) that is submitting the motion and, importantly it must have be accompanied by an explanation of no more than three hundred words.

If a lot owners request for an item on the agenda of next general meet addresses those four criteria, it cannot be denied by the secretary, strata committee or strata managing agent. In other words there is no veto process.

Contrary to popular misconception, a motion requested by a lot owner does not have to be seconded by any other owner (or committee).

The Appointment Process

It is essential that the legislated appointment process is adhered to and short cuts not taken. An invalid appointment could be costly to the Owners Corporation.

It is a mistaken believed that a motion on the AGM agenda to reappoint the current strata managing agent is the instrument to change agents. This is not the case. The spirit of that motion is to re-appoint. Therefore owners can only vote "for" or "against".

If the Owners Corporation intends to change strata managing agents, the meeting notice should have a two part motion that: A; terminates the current managing agent and withdraws the duplicate powers of the office bearers; with part B appointing the new managing agent.

More often than not, the appointment process is conducted as part of an AGM. If the termination / appointment motion is not included on the AGM agenda, and owners wish for a change of managing agent, they will need to vote against the motion to reappoint. This will necessitate another general meeting to be conducted to either appoint the new managing agent or to re-appoint the current one.

An essential inclusion at the actual general meeting is a copy of the agency agreement. The Strata Schemes Management Act 2015 (SSMA) requires a copy of the agency agreement to be available at the meeting at which a strata managing agent is appointed. This is to enable owners review, and if necessary, ask questions of the agreement.

Prior to a vote being taken at the meeting, owners need to be cognisant of what the actual annual base fee is and what term of appointment is proposed by the strata managing agent. Too often these very critical points are not included in the motion and the Owners Corporation sign the agreement without knowing what the term of appoint is.

Alternative Appointment Process

Owner Corporations wishing to change strata managing agents do not necessarily need to wait for an AGM to initiate the change of appointment.

Most agency agreements require 90 days' notice of termination of the appointment. Waiting til the AGM is not necessary. A little over three months prior to the completion date of the current agreement the Owners Corporation can conduct a general meeting. The agenda will include the termination / appointment motion.

We often hear that Owners Corporations do not wish for their current managing agent to be involved in a general meeting that is proposing to replace them because the relationship is not harmonious.

Many owners are of the mistaken belief that an Owners Corporation need the authorisation of their strata managing agent to conduct any meeting. This is not so. The responsible person in this situation is the Secretary as they have the legislative right to call meetings. The strata managing agent is appointed to assist the Owners Corporation with the administration of the scheme.

Qualified Requests

If a lot owner is confronted by resistance from the secretary or strata committee with regard to conducting a meeting a qualified request can be submitted. A qualified request is a request by a group of lot owners whose Unit Entitlement (UE) total 25% or more of the aggregate UE. The qualified request will contain the termination / appointment motion and explanation of less than 300 words. The name of those requesting the motion is provided by the qualified request.