

*This information is general in nature and should not be construed as legal advice.  
Independent professional advice should be sought for your personal circumstance.*

## GENERAL INFORMATION GUIDE - NSW STRATA SCHEME

### STRATA COMMITTEE NOMINATION GUIDE

The Strata Schemes Management Act 2015 (SSMA) imposes conditions on owners corporations as to who and how people are nominated and elected to a strata committee.

An owners corporation has an obligation to ensure the legislation is applied. Failure to follow the legislative requirements may result in significant financial and legislative consequences for the owners corporation generally, the strata committee as a whole and for individual members personally.

Additionally, do not overlook the insurance implications of failure to comply. Changes or corrections cannot be made after the event. If an insurance claim is denied because owners didn't think that applying the legislation fully in the first instance was necessary, it is not the insurance provider who is at fault.

The following 25 items are matters that a strata managing agent advice on nearly on a daily basis, not necessarily because we believe it should be that way, but because the legislation prescribes it.

The following should answer any question regarding nominations for strata committee elections.

1	<i>How are people nominated to stand for election to a strata committee?</i>	<p>There are two ways for a person to nominate or be nominated for strata committee elections. They may either submit a writing nomination before the meeting or verbally at the meeting conducting the election.</p> <p><i>See SC Nomination Form on General Tab at <a href="http://platinumstratamanagement.com.au">platinumstratamanagement.com.au</a></i></p>
2	<i>Who can nominate to be a member of a strata committee?</i>	<ul style="list-style-type: none"> <li>▪ Any person who is an owner (name must appear on the strata roll).</li> <li>▪ A company nominee of a corporation that is an owner (must have been appointed by the company in writing and their name attached to the strata roll prior to the meeting).</li> <li>▪ A co-owner of a lot if nominated by: <ul style="list-style-type: none"> <li>○ another owner other than the co-owner, or,</li> <li>○ the co-owner if they are not a candidate.</li> </ul> </li> <li>▪ A person who is not an owner but who is nominated for election by an owner who is not a candidate.</li> </ul>
3	<i>Is there any person(s) identified as not being eligible to stand for election to the strata committee?</i>	<ul style="list-style-type: none"> <li>▪ Building manager</li> <li>▪ Property manager / leasing agent with property in that strata scheme.</li> <li>▪ Person connected to the original owner who does not disclose the connection. Un-financial owner at the time of the notice who has not paid amounts owing prior to the meeting.</li> <li>▪ Strata Manager. Not exclude specifically by the SSMA 2015 but by the Stock and Stations Agent Act. (and associated persons).</li> </ul>
4	<i>When should nominations to the strata committee be lodged?</i>	<p>Nomination should be lodged in response to a motion on an owners corporation's general meeting when distributed to all owners.</p> <p>The SSMA 2015 requires a mandatory motion for election of a new strata committee to be conducted at every AGM.</p>

5	<i>Do strata committee nominees have a seconder?</i>	No. The legislation does not require owners to seek the approval of another person to submit a nomination for election to the strata committee.
6	<i>What is meant by the term "Sole Owner" in relation to strata committee nominations?</i>	A single person who owns a Lot in the scheme. A sole owners may nominate themselves for election to the strata committee.
7	<i>What is a "Co-Owner" in relation to strata committee nominations?</i>	A co-owner is a person you shares ownership in the same Lot with one or more persons. Their name, in conjunction with their fellow owners, must appear on the strata roll against a specific lot in which they have shared ownership.
8	<i>What is meant by the term "Company Nominee" in relation to strata committee nominations?</i>	A person nominated or appointed by a company that owns a Lot the scheme. Company Nominee must be appointed in writing a recorded on the strata roll against the lot owned by the company.
9	<i>What conditions apply to a sole owner of a Lot to nominate for the strata committee election?</i>	A sole owner may nominate in writing or verbally at the meeting. If nominating themselves, they cannot nominate anyone else.  If they are nominated by other owners and accept the nomination, they cannot nominate anybody else as they are deemed as standing for election.
10	<i>What is the situation of sole owners who own additional lots in the scheme?</i>	They may nominate themselves one Lot. They may then nominate another person for each remaining Lot that they own. If they do not nominate themselves for any Lot, they are able to nominate another person. Instead.
11	<i>What conditions apply to a co-owner of a Lot to nominate to the strata committee?</i>	A co-owner cannot nominate themselves. They must meet one of two conditions: either be: <ul style="list-style-type: none"> <li>▪ Nominated by their co-owner(s): <ul style="list-style-type: none"> <li>○ Verbally if they are present at the meeting, or,</li> <li>○ in writing if they are not in attendance</li> <li>○</li> </ul> </li> <li>▪ Nominated by the owner(s) of another Lot, either, <ul style="list-style-type: none"> <li>○ Verbally if that owner is present at the meeting, or,</li> <li>○ in writing if they are not in attendance</li> </ul> </li> </ul>
12	<i>What conditions apply to a company nominee of a Lot to nominate to the strata committee?</i>	To be eligible for nomination the person's name must be attached to the strata roll as a nominated nominee of the company that owns the Lot.
13	<i>Is an unfinancial owner eligible to nominate for election to the strata committee?</i>	YES. An unfinancial owner can nominate, or be nominated, for election to the strata committee. However, they cannot vote in the election as unfinancial owners are legislatively prohibited from doing so.

		<p>Additionally, if elected, they cannot vote at strata committee meetings until paid up.</p> <p><i>Note: An owner is unfinancial if they own the owners corporation \$0.01 or more.</i></p>
14	<p>Are there any restrictions on the number of people who can nominate or be nominated for election to the strata committee??</p>	<p>No. The owners corporation cannot restrict the number nominations for election to the strata committee it will take so long as those nominations met the requirements of the Act.</p> <p>However, the SSMA 2015 restricts the maximum membership of any strata committee in NSW to nine (9) members.</p>
15	<p>Can an appointed Building Managing Agent for the owners corporation be nominated to the strata committee?</p>	<p><b>NO.</b> Not prohibited especially under the Strata Schemes Management Act 2015 but prohibited by the Property and Stock Agent Act.</p> <p>Not only is the building manager prohibited, but so is any employee of that agency or related person or associated/connected persons.</p>
16	<p>Can the Strata Managing Agent be nominated to the strata committee?</p>	<p>No. A strata manager is not prohibited especially under the Strata Schemes Management Act 2015 but prohibited by the Property and Stock Agent Act.</p> <p>Not only is the strata manager prohibited but so is any employee of that agency or related person.</p>
17	<p>Can an original owner be nominated for election to the Strata Committee?</p>	<p>YES. If an original owner still owns Lot(s) in the scheme they are eligible to nominate for the strata committee. If they are a company, then they must appoint a company nominee.</p>
18	<p>Can a co-owner verbally nominate for election to the strata committee at the meeting if their co-owner is not in attendance?</p>	<p>NO. Co-owners cannot nominate themselves. They must have the nomination of their co-owner(s).</p> <p>If a co-owner is to attend the meeting and wishes to stand for election to the strata committee, they must present the written nomination for their co-owner(s) at the motion dealing with the election.</p>
19	<p>Is there any obligation for any disclosure of a connection to the original owner to be made?</p>	<p><b>YES.</b> <i>It is a legislative obligation for any person nominating for election to declare any connection they may have to an original owner. The disclosure must be made at the meeting before the election and must be minuted.</i></p> <p><i>A connected person to the original owner is:</i></p> <ul style="list-style-type: none"> <li>▪ <i>a relative of the principal or holder of an executive position (director, manager, or secretary of the corporation)</i></li> <li>▪ <i>An employee or the original owner</i></li> <li>▪ <i>A business partner of the original owner</i></li> <li>▪ <i>The employer of the original owner</i></li> <li>▪ <i>Any connection or association- e.g. relative; family member.</i></li> </ul>

20	<i>Is there any obligation for any disclosure of or connection to builder of the strata scheme to be made?</i>	<p><b>YES.</b></p> <p>The builder may also be the original owner. Notwithstanding, even if they are separate entities, the same connection as listed above for the original owner must be considered.</p>
21	<i>Can an owner at the meeting nominate another owner, who is not at the meeting, on the basis that the absent owner told them "they wish to stand for election"?</i>	<p><b>NO.</b></p> <p>The absent owner would need to lodge a written application or attend the meeting to verbally nominate.</p> <p>Hearsay nominations cannot be accepted as they are not legislative compliant.</p>
22	<i>Can the meeting declare additional vacant positions in anticipation of absent owners taking up a position in the future?</i>	<p><b>NO.</b></p> <p>The SSMA 2015 requires the meeting to declare the number of positions at the meeting that will be filled at the conclusion of that motion.</p> <p><i>Example.</i> If a meeting declares nine strata committee positions and only six nominations are received, then the strata committee size is six members and the remain three positions are dissolved. They <b>do not</b> carry forward</p>
23	<i>We have a new owner in our scheme who wishes to be on the strata committee. Can that owner be nominated to be a member of the strata committee?</i>	<p>There is no process to nominate to the strata committee unless there is a notice issued for the AGM.</p> <p>The new owner must wait for the next AGM to be conducted and nominate through the standard process.</p> <p>Also see answer to item 25 re casual vacancy.</p>
24	<i>When does an original owner stop being eligible to nominate for the strata committee?</i>	<p>Once an original owner has no ownership in any Lots, they cease being able to nominate for a position on the strata committee.</p> <p>Remember, that there is a difference between nominating and being elected. Nominating or being nominated only enables consideration for election by the owners corporation.</p>
25	<i>The Lot purchased in item 23 above was purchased from an owner who was a member of the committee until they sold the property. Can the new owner fill that position automatically?</i>	<p>No.</p> <p>Election to strata committee apply to a specific person and not a Lot.</p> <p>The SSMA 2015 makes provision for casual vacancies to be filled. However, the Act is vague on the process and is left to strata committees to determine how a casual vacancy is filled. If it close in time for the AGM, they are likely to leave it vacant, particularly if there are no meetings scheduled.</p> <p>Best practice for a casual vacancy is to include a motion on the next strata committee meeting, distribute a call for nominations with the meeting notice and conduct a strata committee ballot of those nominations.</p>