

GENERAL INFORMATION GUIDE

NSW STRATA SCHEMES – RESTRICTED MATTERS

The Strata Schemes Management Act 2015 (SSMA) and the Strata Schemes Management Regulations (SSMR) 2016 are the predominant legislative tools that govern the operations of all strata schemes in NSW. Within those operations there is a range of legislative restrictions. These legislative restrictions apply predominately to the strata committee.

Restricted Matters are issues mandated by the SSMA and SSMR that must be decided by the owners corporation (OC) in general meeting, i.e. either at an Annual General Meeting (AGM) or General Meeting (GM) of the OC.

If a matter is a Restricted Matter, the strata committee (SC) is specifically excluded from deciding on that issue.

Additional to the legislative restrictions, the OC also has the authority to impose further restrictions on the SC. Bear in mind that the OC has authority over the SC. That means that the SC cannot over-rule a decision by a general meeting of the OC, however, the OC can overrule a decision of the SC.

The SSMA requires a mandatory motion to be included on every AGM agenda to consider what restrictions, if any, are to be resolved. Although widespread practice in strata schemes has been to use this motion to impose a maximum financial limit that the SC can consider, it is not the only reason for the mandatory motion.

An owners corporation may determine that, for specific project(s), that matter must be decided by a general meeting, not the strata committee. Examples may include repairing of electronic entry gates or repairs to hot-water tanks. These restrictions may change from year to year.

Additionally, the legislation requires certain topics to be determined by either a Special Resolution or Unanimous Resolution. These may also be considered legislative restrictions or restricted matters.

The following table identifies some (not all) of the common aspects that are restricted matters and must be decided by a general meeting of the OC. Also indicated is the type of resolution required.

RESOLUTION TYPE	TOPIC
ORDINARY RESOLUTION	<ul style="list-style-type: none"> ▪ Employ persons ▪ Strata committee members honoraria ▪ Give notice to comply with a bylaw ▪ Recover loss from the original owner for a breach of initial period restrictions ▪ Recover money payable under an exclusive-use special privilege bylaw ▪ Control, manage & administer the common property ▪ Maintain, repair, renew & replace common property fixtures ▪ Carry out work & recover costs where an owner fails to comply with a duty or notice ▪ Carry out work within lots at its own cost ▪ Enter lots to carry out work or determine if work is required ▪ Transfer money between Administrative & Capital Works funds ▪ Recover unpaid contributions ▪ Insure any property that is not otherwise required to be insured ▪ Determine accounts & financials be audited ▪ Borrow money ▪ Enter into an agreement with an owner or occupier to provide amenities or services ▪ Represent owners in certain proceedings relating to common property

	<ul style="list-style-type: none"> Take proceedings as agent for an owner to remedy structural defects Confirm minutes of last general meeting of the owners corp. Decide what matters shall not be decided by the strata committee. Seek legal advice, services or initiate legal action where expenditure exceeds legislative maximum. Appoint a strata managing agent & determine the extent of delegation of powers & the revocation of such appointment & delegations Determine moneys payable to the Administrative & Capital Works Funds Adopt Owners Corp. financial statements at AGM Determine moneys payable by owners for special levies Appointment / termination of a caretaker agreement In a large scheme, when spending 10% more than allocated on an item by a general meeting Change the Owners Corp. address for service of notices
SPECIAL RESOLUTION	<ul style="list-style-type: none"> Amend, add or repeal bylaws Pass, amend or repeal an exclusive-use or special rights bylaw Decide if it is inappropriate to maintain, renew, replace, or repair an item of property of the Owners Corp. To improve/enhance common property by adding, altering, or erecting a structure Granting a licence to a lot owner to use common property Decide that a discount be applied to contributions payable by an owner if paid before the due date Terminating a strata committee member Amend or revoke a previous special resolution The acquisition by transfer or lease of additional common property The disposal by transfer or lease of common property The creation of easements or restrictions on use over common property Subdivision of common property in a development scheme The amendment of a strata development contract for a development scheme which requires a change in the terms of the development consent The amendment of a strata management statement
UNANIMOUS RESOLUTION	<ul style="list-style-type: none"> The amend or revocation of a previous unanimous resolution The alteration of an order of an Adjudicator or the Tribunal where the order has the same effect as a bylaw Payment to an owner in respect of dealings involving common property or an exclusive-use or special privilege bylaw The distribution of surplus moneys from Administrative or Sinking fund the amendment of a strata development contract for a development scheme which requires a change in the architectural & landscape design of the development or its essence or theme A certificate by an Owners Corp. stating that the development scheme has concluded The dedication of common property as a public road, reserve or drainage reserve <p><u>In a 2-lot scheme.</u></p> <ul style="list-style-type: none"> The decision not to establish a Capital Works Fund The decision not to effect building insurance