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# TO VOTE OR NOT TO VOTE – THAT IS THE QUESTION?

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Does a strata committee have the power to make decisions on behalf of an owners corporation?

For as long as strata schemes and indeed strata legislation have existed, owners corporations have sought ways to transfer their decision making power to the strata committee.

This is quite understandable. The strata committee is a smaller group and therefore moves faster and is more efficient in making decisions at lower cost. Or at least that is the theory.

When the new Strata Schemes Management Act 2015 (Act) came into effect on 30 November 2016, owners corporations and strata managers alike rejoiced at the new found powers given to the strata committee to approve renovations which are deemed to be minor renovations under section 110 of the Act.

However many sections in the Act, and many by-laws, still require decisions to be made by the owners corporation.

The question then arises: how is it possible for the strata committee to have power to make a decision when the legislation or a by-law says the decision must be made by the owners corporation?

While many believe that, when in doubt, the answer is to vote to pass a resolution to give the strata committee this power, this is entirely unnecessary. The legislation has handed the strata committee this power on a silver platter.

The answer lies in section 36(2) of the Act which by its very nature gives the strata committee the power to make decisions on behalf of the owners corporation. Section 36(2) states, “a decision of a strata committee is taken to be a decision of the owners corporation.”

There are of course a number of restrictions on the power of the strata committee to make decisions on behalf of an owners corporation, including:

- If there is a disagreement between the owners corporation and the strata committee the decision of the owners corporation prevails,
- If the decision requires a special or unanimous resolution then the strata committee cannot make the decision, or
- If the owners corporation has decided in a general meeting that a particular type of matter can only be decided by the owners corporation in a general meeting then the strata committee cannot decide that matter.

So the next time a clause in a by-law or a condition in an agreement refers to the approval of the owners corporation, save yourselves a vote in a general meeting and let the strata committee make the decision on the owners corporation's behalf.

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**About JS Mueller & Co**

JS Mueller & Co has been servicing the strata industry across metropolitan and regional NSW for almost 40 years. We are a specialist firm of strata lawyers with in depth and unmatched experience in, and comprehensive knowledge of strata law and levy collection.

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