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APPROVING AGREEMENTS AT GENERAL MEETINGS: HOW MUCH INFORMATION NEEDS TO BE GIVEN TO THE OWNERS?

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HOW MUCH INFORMATION NEEDS TO BE GIVEN TO THE OWNERS?**

An owners corporation will often approve an agreement at a general meeting. Sometimes the agreement is complex or lengthy and the cost to include a complete copy of the agreement in the meeting notice is prohibitive. In those circumstances, does the agreement still need to be included in the meeting notice or can it be tabled at the meeting?

This issue has never been conclusively decided in the strata title context in NSW. However, it appears that when the complexity or length of an agreement would make it prohibitively expensive to include the agreement in a meeting notice that is distributed to all owners, it is not necessary for the agreement to be included in the notice.

However, in these cases, the meeting notice should indicate that a complete copy of the agreement is available for inspection at the strata manager's office or is able to be sent to any owners who desire a copy of it by mail or email. The meeting notice should also include an accurate, concise and clear summary of the agreement. And a complete copy of the agreement should be available and tabled at the meeting and this should be recorded in the meeting minutes.

This conclusion is supported by at least two cases.

In *Re Mirvac Ltd* (1999) 32 ACSR 107, the NSW Supreme Court held that in the case of a special resolution to adopt a new company constitution at a shareholders' meeting, it was not necessary to distribute the full text of the proposed constitution particularly where the document was lengthy and complex. The Court considered that it was sufficient for a summary of the effect of the proposed changes to the constitution to be provided to shareholders provided that summary was accurate and complete in all material respects.

This issue was considered in the strata title context in *Meriton Apartments Pty Ltd -v- Owners Strata Plan No. 72381* [2015] NSWSC 202. There, the NSW Supreme Court concluded that a meeting notice which included a motion for an owners corporation to approve a caretaker agreement was adequate even though the agreement did not accompany the meeting notice.

In that case, the meeting notice indicated that due to the costs associated with the copying and circulation of the caretaker agreement to all owners, the agreement had not been included with the meeting notice but that a copy of the agreement was available upon request at the office of the strata manager.

The Court considered that the note in the meeting notice, and the tabling of the caretaker agreement at the meeting, sufficiently disclosed the agreement and, after a resolution was passed at the meeting to approve the agreement the owners corporation was bound by the agreement.

That conclusion was reached by the Court in a different context, namely, in deciding whether or not the agreement had been properly disclosed to owners for the purpose of the developer (Meriton) complying with its fiduciary duties to the owners corporation. However, there is no reason why the same principles cannot be applied to the question of whether or not an agreement has been adequately disclosed to owners by an owners corporation that wishes to approve an agreement at a general meeting but does not include a complete copy of the agreement in the meeting notice.

The strata legislation also indicates that there is no absolute obligation to include a document that will be considered at a general meeting in the meeting notice. For example, the legislation requires the notice of an annual general meeting to include a motion for adoption of the financial statements.

However, the legislation contemplates that the financial statements will not be included in the meeting notice. This is because the legislation provides that the owners corporation must, at the request of an owner, give the owner a copy of the last financial statements at least two days before the meeting at which the statements are to be presented.

The omission of an agreement from a meeting notice should be avoided. But where the cost to copy and circulate a lengthy agreement together with a meeting notice is prohibitive, it is possible to omit the agreement from the meeting notice provided the recommendations above are followed.

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JS Mueller & Co Lawyers 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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