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CORONAVIRUS AND STRATA MANAGERS: WHAT CAN YOU DO TO HELP?

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The Coronavirus has presented new and fundamentally different challenges to strata managers and owners corporations. The most dramatic and short-term impact of Coronavirus on the strata industry is the affect it has had on the ability of strata managers to engage in face to face meetings with strata committees and lot owners and work from their office. But there are other impacts the Coronavirus has had and will be likely to have on the strata industry. In this newsletter we take a look at some of those impacts and what you can do about them.

General Meetings

There are many strata managers and owners who would prefer not to attend face to face meetings to help avoid the spread of Coronavirus. The *Strata Schemes Management Act 2015 (Strata Act)* allows general meetings to be held remotely in two ways. First, a general meeting is able to be conducted entirely by pre-meeting electronic votes cast by owners. Second, owners are able to attend and vote at general meetings remotely by means of teleconference, videolink or other electronic means.

However, an owners corporation must “opt in” to enable either or both of those two procedures to be followed to allow general meetings to be held remotely. Opting in requires an owners corporation to hold a face to face general meeting and pass a resolution to permit votes to be cast by pre-meeting electronic votes or remotely by way of teleconference, videolink or other electronic means. Once that resolution is passed, face to face meetings can be avoided. But to get to that point, there is a need to hold a face to face meeting to “opt in”.

Is there another way to hold a meeting remotely which does not involve the “opt in” procedure? The answer is “yes”. It is possible for owners to appoint a strata manager as their proxy for the purpose of voting at general meetings. If this is done, the strata manager would be able to hold a general meeting at which he or she is the only person present, declare a quorum and utilise his or her proxy voting rights to vote in favour of or against motions at the meeting. If this procedure is followed correctly then it will be possible for the strata manager to be the only person present at the meeting and for the meeting to proceed.

This alternative procedure is not a perfect solution. Under that procedure, owners or other persons that they appoint as their proxies would still be entitled to attend the general meeting and the anti-proxy farming rules in the Strata Act limit the number of proxies a strata manager can hold. And a



strata manager cannot cast a vote as a proxy on certain matters such as a vote to reappoint the strata manager. But this procedure does provide a way for owners corporations to avoid face to face meetings during the Coronavirus crisis.

Strata Committee Meetings

The Strata Act allows a strata committee to make decisions without a meeting. There is a strict procedure that must be followed to enable a committee to pass resolutions without a meeting. Under that procedure, proper notice of the committee meeting must be given including to each committee member and the motions included in the meeting agenda must be approved in writing by a majority of the committee members. If this procedure is followed, then any motions that are included in the agenda of the committee meeting are taken to have been validly passed even if the meeting is not held. This “circulating resolution” procedure is often used by directors of companies to make decisions without holding meetings and is a useful way for a strata committee to continue to make decisions without holding face to face meetings.

By-Laws

There is scope for new by-laws to be made to help an owners corporation deal with the Coronavirus crisis. A by-law can be made to set out rules that must be followed by owners who wish to cast pre-meeting electronic votes or attend and vote at general meetings remotely. A by-law can be made to prohibit large social gatherings in communal areas such as on a rooftop or meeting room. It is also possible to introduce a by-law to impose rules concerning the use of communal facilities such as a gym, sauna or pool to impose minimum hygiene standards and social distancing etiquette. It would also be possible to make a by-law that restricted the right of owners and residents to use communal facilities when they are not well or have contracted the COVID-19 virus and remain infectious.

Health and Safety

There is an understandable concern to ensure the health and wellbeing of our community by taking steps to help prevent the spread of Coronavirus. Those steps include social isolation including the avoidance of face to face meetings or large gatherings and improved personal hygiene. But do those concerns mean that an owners corporation or strata manager owes a legal duty to help ensure that the owners and residents in a strata building do not contract the Coronavirus? There is no clear answer to this question, but it does appear unlikely that an owners corporation or strata manager would have a legal duty to owners and residents in a strata building to take steps to avoid them being exposed to or contracting Coronavirus.



The duties of an owners corporation and a strata manager who has been delegated the functions of an owners corporation under the Strata Act focus on, relevantly, the maintenance and repair of the common property, not the health and wellbeing of the occupants of the lots in the building. Under the general law, the duty of an owners corporation or strata manager is likely to be limited to taking reasonable steps to ensure that the common property is physically safe and does not present a risk of a personal injury being suffered by anyone who enters the common property such as a trip and fall injury.

However, there are additional duties that are imposed on owners corporations of commercial and mixed-use strata buildings under the Work Health and Safety legislation. This includes a duty to ensure, so far as is reasonably practicable, that common property that is used as a workplace is without risks to the health and safety of any person. This has the potential to impose a positive obligation on an owners corporation of a commercial or mixed-use building to take reasonable steps to prevent persons who enter the common property being exposed to or contracting Coronavirus. If that duty does exist, then what exactly would it require an owners corporation to do? Would the owners corporation be required to institute a strict cleaning regime to wipe down areas of common property that may be exposed to Coronavirus such as touch points or to issue warnings about the possible presence of Coronavirus? This will be an emerging area of law that will no doubt play out in the coming weeks and months.

Service Contracts

The Coronavirus may have an impact on the ability of contractors to provide services to owners corporations. In particular, the Coronavirus may prevent contractors attending strata buildings to provide a variety of services including building and construction work, cleaning services and strata, building and facilities management services. For the moment, any owners corporation contemplating entering into a service agreement should consider adjusting the agreement to deal with Coronavirus and the impact it will have on the provision of services by contractors. For example, it may be beneficial for service agreements to be amended to contemplate the provision of services remotely and to allow either party to terminate their arrangement in the event that the contractor is unable to fulfil its obligations under the agreement due to Coronavirus. It may also be prudent for strata managers, building managers, caretakers and facilities managers to adjust their agreements to deal with the consequences of the Coronavirus, for example, by expressly permitting services to be provided remotely due to an inability to attend face to face meetings or crowded areas.



Public Relations

The present climate has made it advisable for strata managers to advise owners corporations they manage and their committees about any changes to normal working arrangements that result from Coronavirus. In other words, strata managers who have made changes to their working arrangements that will have an impact on the services they are able to provide their owners corporations and strata committees should be communicating those changes to their clients. This helps manage the expectations of clients in these testing times.

Conclusion

The Coronavirus pandemic still has a way to play out. This will undoubtedly result in changes to the way we all do business and communicate with each other for the time being. The current climate presents an opportunity for savvy strata managers to demonstrate their knowledge to their clients and offer real value-added solutions to the new and novel problems presented by Coronavirus. Some of the tips in this article should enable strata managers to do just that.

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About JS Mueller & Co Lawyers

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

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