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# CAN “SQUATTER’S RIGHTS” EXIST IN A STRATA SCHEME?

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## CAN “SQUATTER’S RIGHTS” EXIST IN A STRATA SCHEME?

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### **Introduction**

There have been two recent court cases involving “squatter’s rights” over parcels of land in Sydney. In both of those cases, people have acquired ownership of parcels of land they did not own through adverse possession by exercising “squatter’s rights”. One case involved a 3.35m<sup>2</sup> remnant of a “dunny lane” in Redfern. The other involved a derelict house in Ashbury which a developer discovered was vacant, renovated and then began renting it out after the woman who had been there died. These cases raise the interesting question: Can “Squatters Rights” Exist in a Strata Scheme?

### **What are “Squatter’s Rights”?**

A person can apply to become recorded as the owner of land they do not own under the law of adverse possession which is also known as “squatter’s rights”. This is a highly technical area of law that allows a person to apply to take ownership of land if they have occupied the land for at least 12 years.

### **What are the Rules Relating to “Squatter’s Rights”?**

There are some rules that apply before a person is entitled to acquire ownership of land through adverse possession. Generally, in order to be entitled to acquire ownership of land through adverse possession a person must occupy the land that he or she does not own without force, secrecy or the landowner’s permission. Further, for land held under strata title, a person cannot claim adverse possession of a strip of land – the land must be the whole parcel of land.

### **Can “Squatter’s Rights” Exist in a Strata Scheme?**

These rules make it virtually impossible for a person to claim ownership of part of the common property in a strata scheme through adverse possession or by exercising “squatter’s rights”. It also makes it very difficult for an owners corporation to claim ownership of part of a lot through adverse possession.

### **Some Examples**

So, for example, where part of a lot is a storeroom has been abandoned by its owner, it would be virtually impossible for an owners corporation to acquire ownership of the storeroom by changing the locks on the room, taking possession of the room and occupying or using the room for over 12 years.

Even if the storeroom was a separate lot, it would still be virtually impossible for the owners corporation to acquire ownership of the storeroom because the Registrar-General does not consider that an owners corporation is able to own a lot in its own strata scheme.



In general, the only way an owners corporation is able to “own” a lot is by converting the lot to common property which requires the consent of the lot owner.

In some cases, particularly where a separate lot such as a storeroom or car space has been abandoned by its owner long ago, it will be virtually impossible for the owners corporation to take ownership of the lot even if the owner’s corporation takes possession of the lot for more than 12 years. This scenario commonly arises in older strata buildings where apartments, car spaces and storerooms are on separate titles and an apartment is sold without its car space or storeroom.

Typically, once the apartment is sold, the owner forgets that he or she still owns the car space or storeroom and therefore no longer pays levies on those separate lots. Over time the levy arrears accumulates and the owner disappears. In those circumstances, it can be very difficult for the owners corporation to do anything about the problem because it cannot acquire ownership of the car space or storerooms and it cannot successfully sue the owner for levy arrears because he or she cannot be found.

### **Conclusion**

Ultimately, it is unlikely that “squatter’s rights” can exist in a strata scheme and claims for adverse possession of strata property should be treated with caution.

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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 with in depth and unmatched experience in, and comprehensive knowledge of all strata law including by-laws, building defects and levy collection.

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