

Can a Company be Appointed as a Proxy?

An owner is entitled to appoint a “person” to act as his or her proxy at a general meeting of an owners corporation.

But does that allow an owner to appoint a company as his or her proxy rather than an individual? The answer might surprise you.

Is it Possible for an Owner to Appoint a Company as their Proxy?

Owners in strata buildings regularly appoint other people to act as their proxies at general meetings of owners corporations. Invariably, those proxies are individuals, often other lot owners. But is it possible for an owner to appoint a company as his or her proxy to vote at a general meeting of an owners corporation? If so, who is entitled to exercise voting rights on behalf of the company as proxy? The answer lies in the *Strata Schemes Management Act 2015 (Act)* and other legislation.

An Analysis

An owner is entitled to appoint a “person” to act as his or her proxy at a general meeting: cl 23(3) and 26(1), Sch 1 of the Act. However, the Act does not provide a definition of a “person”. But it is clear that a person can be an individual or a company for several reasons.

First, the *Interpretation Act 1987* says that in any Act “person” includes an individual or a company: section 3(3) and Sch 4.

Second, the expression “person” is used throughout the Act in

a way that makes clear that it can include both an individual or a company. For example:

- section 7 expressly provides that a person can be a company for the purpose of determining whether a person is connected with another person;
- section 10(2) prohibits an owners corporation delegating any of its functions to a person unless the delegation is specifically authorised by the Act and it is clear that a “person” in that context would include a strata managing agent which would typically be a company;
- section 12 allows the owners corporation to employ any person that it thinks fit to assist it exercise its functions which includes a building manager which typically carries on business through a company;
- section 22 requires a “person” who has an interest in a lot that gives the person a right to cast a vote either personally or by nominee at meetings of the owners corporation to give the owners corporation written notice of that interest – in that context, a “person” clearly includes a company which owns a lot which is able to cast a vote via a company nominee.

There are other indications from the language used in the Act that a person is not limited to an individual but can include a company. For example:

- The Act gives a co owner of a lot (which could be company) the right to vote at a general meeting in certain circumstances: cl 23(4) and (5) Sch 1;
- An original owner (i.e. the developer) can cast a vote by means of a proxy in certain circumstances (and a developer is almost invariably a company): cl 25(5) and (6), Sch 1; and
- A building manager or strata manager can vote as a proxy provided that their vote does not result in them obtaining a material benefit (and a building manager and strata manager are typically a company): cl 25(7), Sch

1.

Moreover, the expression “person” where used in legislation has repeatedly been interpreted by the Courts to mean both an individual and a company: see *In the matter of Metal Storm Limited (in liquidation) (Receivers and Managers Appointed) (No. 2)* [2019] NSWSC 1682.

There are other reasons why an owner can appoint a company as his or her proxy. For example, a company can be appointed as an attorney under a power of attorney and the appointment of an attorney is similar to the appointment of a proxy given that in both cases a person is appointing another person or company to act as his or her agent.

And in sphere of company law, a shareholder can appoint a “person” as his or her proxy to vote at meetings of a company and it is clear that the person who is appointed as the proxy can be either an individual or a company: see section 249X of the *Corporations Act 2001*.

Finally, there is nothing in the Act which explicitly prohibits an owner appointing a company as his or her proxy.

Who Exercises Proxy Voting Rights?

Where an owner appoints a company as his or her proxy, the company itself cannot exercise voting rights as the proxy. So who does?

Obviously, a company that is appointed as a proxy needs to appoint an individual to exercise the powers of the company as a proxy. That would typically be done by a written notice given by the company to the owners corporation specifically empowering the individual to act on behalf of the company as proxy at meetings of the owners corporation. Normally, that individual would be the company secretary or a director of the company. But as long as the person is properly authorised by the company to exercise proxy voting rights on its behalf, and

the owners corporation has notice of that authority, he or she may do so.

Conclusion

Whilst it is uncommon for an owner to appoint a company as his or her proxy, that situation can arise. When it does, an individual with the authority of the company that the owners corporation has notice of is able to exercise the company's proxy voting rights on behalf of the owner.



Adrian Mueller I BCOM LLB FACCAL I Partner

Since 2002 Adrian has specialised almost exclusively in the area of strata law. His knowledge of, and experience in strata law is second to none. He is the youngest person to have been admitted as a Fellow of the ACSL, the peak body for strata lawyers in Australia. [Profile](#) I [Linked](#)

Contact Us

For all strata law advice including by-laws, building defects and levy collections contact our specialist NSW and Sydney strata lawyers [here](#) or call 02 9562 1266, we're happy to

assist.