

Termination of a Strata Scheme by the Registrar General

Amending legislation

On 30 November 2016, new legislation commenced in NSW, consolidating the separate pieces of legislation concerning strata development into one Act, being the *Strata Schemes Development Act 2015* (NSW).

The new Act is intended to simplify and streamline legislation relating to strata schemes in NSW. However, the Registrar General has retained the power to terminate a strata scheme (pursuant to s 142 of the Act). Where there are no competing interests that require resolution by the Court, it is appropriate for the termination to be carried out administratively by the Registrar General. This should result in both time and cost savings for the parties involved.

Applications to the Supreme Court for termination

The new Act does not remove the right to apply to the Supreme Court for termination of a strata scheme. An applicant may seek an order terminating a scheme from either the Supreme Court or the Registrar General.

Further, a refusal by the Registrar General to make an order terminating a scheme does not preclude an application being made to the Supreme Court (s 143).

Schemes that cannot be terminated by the Registrar General

The Registrar General cannot make an order terminating a strata scheme that is subject to a strata development contract (s. 142(1)). (For details on the various ways in which development schemes can be concluded, see s 89 of the Act).

How to make an application to the Registrar General

Before applying

Before lodging an application, steps should be taken to:

- (a) advertise the application
- (b) settle any outstanding debts of the Owners Corporation; and
- (c) obtain all necessary consents.

Advertising

Details of the proposed termination and a statement of intention to make an application to the Registrar General are required to be published at least 14 days before the application is made, unless the Registrar General otherwise agrees.

The advertisement is required to be placed in:

- (a) a daily newspaper circulating generally in the State; and
- (b) a local newspaper circulating generally in the area in which the strata scheme is located.

A suggested form of advertisement is:

Public Notice

Proposed termination of Strata Scheme

No.....being property situated at

.....

Notice is given of an intention to apply to the Registrar General for an order terminating the above Strata Scheme and the consequent winding up of the Owners Corporation, pursuant to section 142 of the *Strata Schemes Development Act 2015* (NSW).

Any person having any claim against the Owners Corporation of the above Strata Scheme or any estate or interest in or claim against any of the lots comprised in the Strata Scheme is required, on or before (a date not less than 14 days after publication of the advertisement), to send particulars of the estate, interest or claim to (address for service of notice).

Settlement of debts

While the Court may appoint a person to oversee the winding up of an Owners Corporation, the Registrar General has no such power, and therefore requires all but minor debts of the Owners Corporation to be settled before making an order for termination.

Obtaining consents

The local council (or, where applicable, other planning authority for the subdivision of land) is required to sign the application (s 142(4)).

Evidence is also required that land tax and water rates have been paid. This requirement may be satisfied by written consents to the application from the Office of State Revenue or the relevant water supply authority, or by production of:

- (a) a section 47 certificate issued by the Office of State Revenue (www.osr.nsw.gov.au) showing that there is no charge on the land for land tax; and
- (b) a section 66 certificate issued by Sydney Water, or other water supply authority, and if appropriate, receipts issued which together establish that the rates have been paid.

Additionally, written consent of any caveator under a caveat affecting any estate or interest in the common property or a lot in the strata scheme should be produced.

If it is intended to subdivide or develop the parcel after termination, it may be prudent to obtain council's consent to the subdivision before making the application.

The application

Fees

The fee payable on lodgment of an application for an order by the Registrar General for termination of a strata scheme is shown in the current schedule of fees on the Land and Property Information (LPI) website www.lpi.nsw.gov.au.

Form

An application for termination by the Registrar General should be made on a Termination of Strata Scheme form (15ST), available on the LPI website www.lpi.nsw.gov.au.

Who may make an application?

An application for termination may be made by:

- (a) any proprietor of a lot within the strata scheme;

- (b) any mortgagee or covenant chargee of a lot within the strata scheme; or
- (c) the Owners Corporation.

Execution of the application

An application for termination must be signed by:

- a) each owner of a lot within the scheme;
- (b) if the scheme is a leasehold strata scheme – the lessor of the scheme;
- (c) each registered lessee of a lot within the scheme; and
- (d) each registered mortgagee, chargee or covenant chargee of a lot, or of a registered lease of a lot, or of the common property within the scheme.

The Registrar General has the power to dispense with the requirement for the signatures referred to above. However, such signatures will not generally be dispensed with unless it can be shown that:

- (a) the party will not be disadvantaged by the termination and there is other evidence of the party's consent to the application; and
- (b) it is not possible to obtain the party's signature without considerable expense or hardship.

The circumstances supporting any request to dispense with a party's signature should be set out in a statutory declaration lodged with the application.

Supporting evidence

The application must be accompanied by:

- a) evidence, given by statutory declaration, that notice of the application was advertised (see 'Advertising'). The declaration must annex a copy of the advertisements from the newspapers;
- (b) the certificates of title for all of the lots within the scheme and for the common property;
- (c) the consents referred to in 'Obtaining Consents'; and
- (d) a completed Notice of Sale form or eNOS.

For the application to be successful, the statutory declaration should indicate that:

- (e) the declarant has the authority and knowledge to make the declaration;
- (f) outstanding debts of the Owners Corporation have been paid;
- (g) no outstanding claims have been made against the funds of the scheme;

- (h) there are no unregistered estates or interests in the common property or lots in the strata scheme, otherwise than as disclosed in the declaration;
- (i) the Owners Corporation has, by unanimous resolution, agreed upon the division of the moneys in the administrative and sinking funds; and
- (j) the strata scheme is not subject to a development contract.

The Order for Termination

Application for termination not accompanied by a plan of subdivision

Upon the registration of an order terminating a strata scheme:

- (a) the Owners Corporation is dissolved and the strata scheme is terminated;
- (b) the folios for the lots and common property in the strata scheme are cancelled;
- (c) the land within the former parcel immediately before the scheme is terminated will vest:
 - i. where there is a sole proprietor - in that proprietor; or
 - ii. where there are several former proprietors
 - * in those proprietors, as tenants in common in shares proportional to the unit entitlement of their former lots; or
 - * in such of those proprietors or in such proportions as may be set out in the application for termination;
- (d) subject to there being an appropriate plan, a new folio of the Register will be created for the parcel which existed prior to the strata scheme. The Registrar General may require a plan for the former parcel that is acceptable for registration; and
- (e) any caveat and any estate or interest registered in respect of any of the lots or common property will be carried forward onto the newly created folio.

A mortgage or charge registered against less than the total number of lots in the strata plan will be recorded on the new folio of the Register as affecting the part formerly in the strata scheme. For example, a mortgage affecting only one lot in a plan would be recorded as:

'X123456 Mortgage to XYZ Limited of the part formerly in 1/SP12345'.

Parties are encouraged to resolve mortgages affecting part of the land as part of the termination process.

Application for termination accompanied by a plan of subdivision

The termination of a strata scheme is frequently undertaken in conjunction with a subdivision

of the land. In such cases, after creating a folio of the Register for the former parcel (as set out under the preceding heading), the Registrar General will create folios for each of the new lots in the subdivision plan.

The folios created on registration of the plan will, however, reflect the vesting of the former parcel; that is:

- (a) where there is one proprietor of the former parcel, the folios for the new lots will show that person as proprietor;
- (b) where the strata scheme contained no common property and the boundaries of the new lots correspond with those of the prior strata lots, the folios will appear in the name of the proprietor of the respective former strata lot;
- (c) where in a case, other than (b), there are several former proprietors, the folios for the new lots will record:
 - i. those proprietors as tenants in common in shares proportional to the unit entitlement of their former lots; or
 - ii. such of those proprietors or in such proportions as may be specified in the application for termination.

In the case of (c), it may be appropriate for transfers to be registered to resolve the common ownership of the new lots.

Dual occupancy

A strata scheme may be terminated so that a dual occupancy development can then be subdivided by the registration of a conventional plan of subdivision. Any person considering such a proposal should have regard especially to the following matters:

- (a) While there is no need for easements in respect of common walls or service lines in a strata scheme, these easements may have to be created with the new plan of subdivision.
- (b) Councils and Sydney Water (or other water supply authority) may make additional requirements in regard to the proposed subdivision. These bodies should therefore be contacted before a final decision is made to terminate a strata scheme.

Stamp duty

In any case where the application requests the creation of a folio other than in the names of the proprietors of the former lots as tenants in common in shares proportional to the unit entitlements of their lots, the application must be marked by the Office of State Revenue www.osr.nsw.gov.au.

Disclaimer

This information is correct at the date of publication; changes after the time of publication may impact upon the accuracy of the material.
December 2016 LPI (S) P16/01/001

Copyright



© Crown in right of New South Wales through Land and Property Information, 2016. This copyright work is licensed under a Creative Commons Australia Attribution 4.0 licence, <http://creativecommons.org/licenses/by-nc/4.0/legalcode>

Customer Service Centre

☎ 1300 052 637
+61 2 9228 6666
@ GeneralEnquiry@lpi.nsw.gov.au
🖱 www.lpi.nsw.gov.au