

Managing agents and caretakers

In a strata scheme

A strata managing agent may carry out some or all of the functions, duties or powers of the owners corporation. Owners corporations must make sure that any managing agent they engage is licensed under the *Property, Stock and Business Agents Act 2002* (the Act).

Managing agents

The appointment and giving of powers to a managing agent can only be decided by a majority vote at a general meeting. Only a person who holds a strata managing agent licence under the Act can be appointed. The length of the appointment should be negotiated by the parties. Owners corporations should make themselves aware of the terms of any agency agreement they enter into. A managing agent cannot be given the power to:

- delegate their powers, authorities, duties or functions to others
- make a decision on a restricted matter (ie. a matter that needs a special or unanimous resolution or which the owners corporation has decided must go to a general meeting)
- set levies.

A managing agent must write to the owners corporation and tell them what duties they are doing and how they are doing them. A managing agent must give details of trust accounts and financial transactions when asked in writing by the owners corporation. The owners corporation and its executive committee can still carry out its duties even if it has delegated them to a managing agent.

A strata managing agent can not transfer the management of the scheme to another strata management business without the approval of the owners corporation.

Dismissing a managing agent

A managing agent can only be dismissed, or have a delegation changed at a general meeting by a majority

vote. Termination conditions, including payments, are detailed in the agent's contract. Written notice of the decision must be given to that agent.

Resolving disputes with managing agents

An Adjudicator can make decisions on disputes with a managing agent. An Adjudicator may appoint a nominated person as a managing agent to carry out:

- all the functions of an owners corporation
- all the functions of the executive committee and/or the Chairperson, Secretary or Treasurer
- only some of those functions.

If an Adjudicator is satisfied the owners corporation is not doing its work satisfactorily, or has failed to comply with an order, failed to perform one or more of its duties or owes a judgement debt, the Adjudicator may appoint a managing agent.

Caretakers and building managers

Caretakers may also be employed to assist the owners corporation in carrying out its functions. They do not have the same delegated functions as a licensed strata managing agent.

Caretakers may operate as letting agents within the building and are often referred to as the building manager. They may assist the owners corporation in:

- the management of common property
- controlling the use of common property by tradespersons and other non-residents
- the maintenance and repair of common property.

Caretakers may not enforce by-laws or carry out other similar functions of the owners corporation.

A person is not a caretaker if they exercise those functions on a voluntary or casual basis or as a member of the executive committee.

Protection of strata owners in relation to caretaker contracts under the Strata Schemes Management Act also apply to anyone carrying out the role of an on-site caretaker even if they use a different job title such as a 'building manager' or 'resident manager'.

Caretaker contracts or agreements

A caretaker must be appointed in writing under a caretaker agreement, which can be entered into before or after the strata scheme commenced.

An agreement between the original owner and the caretaker, entered into during the initial period, ends at the conclusion of the first Annual General Meeting (AGM). The agenda for the first AGM of an owners corporation must include an item to decide whether to appoint a caretaker and if so what functions the caretaker should exercise.

A caretaker agreement can be transferred to another person with the consent of the owners corporation.

From 10 February 2003, the period of a caretaker agreement has been limited to 10 years, but it may be renewed if the parties agree. An agreement entered into before this date that is for more than 10 years can run its full term.

Resolving caretaker disputes

The NSW Civil and Administrative Tribunal (Tribunal), is a specialist, independent, low cost Tribunal for the fair and timely resolution of disputes according to law. Disputes about caretaker agreements are resolved at a Tribunal hearing if they are not resolved at mediation or determined inappropriate for mediation.

Only an owners corporation can apply to the Tribunal for an order to resolve a dispute with a caretaker.

Applications may be made in relation to agreements entered into before 10 February 2003. The following grounds apply:

- the caretaker's unsatisfactory performance under the agreement

- unfairness of charges paid
- the agreement is harsh, oppressive, unconscionable or unreasonable.

The Tribunal, in dealing with a caretaker dispute, can make an order to:

- terminate an agreement
- require payment of compensation by a party to the agreement
- change, confirm or declare invalid the terms and conditions of the agreement
- dismiss the application.

Provision of contract

A copy of the managing agent and caretaker's agreement must be provided under any inspection of records request.

Use of proxy votes

Neither a strata managing agent nor a caretaker can use a proxy vote to obtain a financial or material benefit. For example:

- for the purpose of extending the term of their appointment, or
- increasing their remuneration or in a decision about legal proceedings involving the proxy.