

# Strata managing agents

The owners corporation may engage a strata managing agent to help with managing the scheme.

The strata managing agent must be licensed. Owners corporations should check the licence through the Service NSW website, and from time to time check it is still current.

The owners corporation can choose which responsibilities the strata managing agent manages on its behalf. For example, it may delegate arranging meetings but keep control of financial management.

The agency agreement (contract) with the strata managing agent will set out the responsibilities the owners corporation delegates to them, and when these powers may be exercised.

The owners corporation and the strata committee can still carry out their duties even if they have delegated them to a strata managing agent.

A strata managing agent **cannot**:

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

## Appointing a managing agent

A strata managing agent can only be appointed by the owners corporation by a general resolution.

If a strata managing agent has been appointed by the developer before the first annual general meeting (AGM), then their appointment ends at that meeting. If a strata managing agent is appointed at the first AGM, then they can only be appointed for up to 12 months.

## Future appointments

Any subsequent appointment can only be for a maximum of 3 years. Contracts cannot simply be 'rolled over' after 3

years. The parties must negotiate and enter into a new agreement.

The developer of a strata scheme, or a person linked to the developer, is not entitled to be appointed until after 10 years starting from the date the strata plan was registered.

## Extending a strata managing agent contract

The strata committee may extend a strata managing agent's appointment for up to 3 months after it would have otherwise expired, but not past the next AGM. This applies whether the strata managing agent was appointed at the first AGM, or after.

This extension period allows the owners corporation to seek a new strata managing agent if they wish.

A strata managing agent's 3-year term automatically includes an option for the agent their appointment for up to 3 months afterwards. This option applies:

- if the owners corporation decided not to reappoint the agent and does not extend their appointment
- the agent gives the owners corporation written notice of taking up this option.

If the strata committee extends the appointment, and then decides not to re-appoint the agent, then they must give the strata managing agent at least 1 month's notice of not reappointing them. Just like any other contract, the owners corporation should check the terms of the agency agreement.

## The agent's reporting duties

A strata managing agent must:

- write to the owners corporation about their duties and how they are doing them

- give a copy of the records kept for the past 12 months to the owners corporation at least once each year
- give written details of trust accounts and financial transactions when the owners corporation asks them to. A strata managing agent cannot transfer management of the scheme to another strata management business without approval from the owners corporation. If it is transferred, it can only be for the rest of the term of the original agent.

## Disclosure requirements

Before being appointed, strata managing agents must disclose to the owners corporation:

- if they are connected with the original owner (developer)
- any direct or indirect pecuniary interest in the strata scheme (other than an interest arising from the prospective appointment). If these potential conflicts of interest arise after they are appointed, the strata managing agent must declare them to the owners corporation. A strata managing agent must not request or accept a gift or other benefit valued at more than \$60 connected with them doing their duties, unless approved by the owners corporation (for example, in the agency agreement). An agent may obtain reasonable meals, refreshments and small gifts in appreciation of their services. Strata managing agents risk a penalty of up to \$2,200 if they breach these requirements.

At the AGM of the owners corporation, strata managing agents must also report whether any **commissions or training services** have been provided to them, or paid for them. This applies to those connected with their role providing services for the scheme. The report should include commissions or training services:

- provided, or paid for, in the past 12 months, or
- likely to be provided or paid for in the coming 12 month period.

These reporting requirements **do not** apply to training that is provided by:

- the strata managing agent's employer, or
- third parties, such as legal practitioners, direct to strata managing agents.

For more information, visit the Disclosure requirements page on the Fair Trading website.

## Ending a strata managing agent agreement

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 the agent.

Owners corporations need to examine the agreement carefully to determine how and when an agent's term can be ended. Not ending an agent's agreement correctly can be costly.

## Dispute with a strata managing agent

The NSW Civil and Administrative Tribunal (the Tribunal) can make decisions about disputes with a strata managing agent.

Disputes 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 managing agent about their agreement. The Tribunal, in dealing with such a dispute, can make the following orders:

- 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.

The Tribunal may make an order to terminate an agreement due to:

- the managing agent's unsatisfactory performance under the agreement
- unfairness of charges paid
- a strata managing agent not disclosing commissions or training services, or disclosing these in good faith
- the agreement being harsh, oppressive, unconscionable or unreasonable
- the managing agent not disclosing an interest, which led to them being appointed.

For more information, visit the Strata and Community disputes page on the Fair Trading website.

### Complaint about conduct

The conduct of strata managing agents is governed by the *Property, Stock and Business Agents Act 2002*, which Fair Trading regulates.

You can lodge a complaint about matters concerning the conduct of an agent on the Fair Trading website.

### Compulsory appointment of a strata managing agent

The Tribunal may compulsorily appoint a strata managing agent if the owners corporation:

- is not doing its work satisfactorily
- has not complied with an order
- has failed to perform one or more of its duties, or
- owes a judgement debt.

The Tribunal may appoint a nominated person as a strata managing agent to carry out:

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

### Provision of contract

A copy of the strata managing agent agreement must be provided under any inspection of records request to the owners corporation.

### Proxy vote restrictions

A strata managing agent can only use one proxy at a general meeting. They cannot use a proxy vote to obtain a financial or material benefit. For example:

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