

# Information Bulletin No 44

January 2001

## Termination of a Strata Scheme by the Registrar General

### Background

#### Amending Legislation

1. From 2 August 1993 the Registrar General has the power, set out in s. 51A of the Strata Schemes (Freehold Development) Act 1973, to make an order terminating a strata scheme.
2. Prior to this amendment, a strata scheme could only be terminated by an order of the Supreme Court pursuant to s. 51 of the Strata Schemes (Freehold Development) Act 1973. Such an application was often a time consuming and costly exercise. However, 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 appreciable savings in both time and costs for the parties involved.

#### Applications to the Supreme Court for Termination

3. The amendments do 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.
4. A refusal by the Registrar General to make an order terminating a scheme does not preclude an application being made to the Supreme Court.

#### Schemes that cannot be terminated by the Registrar General

5. The Registrar General cannot make an order terminating a scheme that is subject to a strata development contract [s. 51A(2)]. [For details on the various ways in which development schemes can be concluded see s.28Q Strata Schemes (Freehold Development) Act 1973].

## Making an Application to the Registrar General

### Before Applying

6. 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

7. Details of the proposed termination and the 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.

8. The advertisement is required to be placed in:
  - (a) a daily newspaper circulating generally in the Sydney area; and
  - (b) in a local newspaper circulating generally in the area in which the strata scheme is located.
9. A suggested form of advertisement is:

### **PUBLIC NOTICE**

Proposed termination of Strata Scheme No..... being property situate at  
.....

### **NOTICE TO SEND IN CLAIMS**

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 Body Corporate pursuant to section 51A of the Strata Schemes (Freehold Development) Act 1973.

Any person having any claim against the Body Corporate 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*).

**Note:** While s. 51A also provides for advertisement in the Government Gazette, this will not be required by the Registrar General.

#### **Settlement of Debts**

10. While the Court may appoint a liquidator to oversee the winding up of a owners corporation after the termination of the strata scheme, the Registrar General has no such power and therefore requires that all but minor debts of the owners corporation be disposed of prior to making an order for termination.

#### **Obtaining Consents**

11. The consent of the local council (or, where applicable, other consent authority for the subdivision of land) is required to be endorsed on the application [s. 51A(4)].
12. Evidence is also required that land tax and water rates have been paid. This requirement may be satisfied by written consents of the Office of State Revenue or the relevant water supply authority to the application, or by production of:
  - (a) a certificate issued by the Office of State Revenue showing that no moneys are owing for land tax; and
  - (b) a certificate issued by the Sydney Water, or other water supply authority, and if appropriate, receipts issued by Sydney Water or other water supply authority, which together establish that the rates have been paid.

13. The written consent of any caveator under a caveat affecting any estate or interest in the common property or a lot in the scheme should be produced.
14. If it is intended to subdivide or develop the parcel after termination, it may be prudent to obtain council's consent to the subdivision prior to making the application.

## **The Application**

### **Fees**

15. The fee (current at the date of this bulletin) payable on lodgment of an application for an order by the Registrar General for termination of a strata scheme is \$58. In addition, a fee of \$100 for each hour, or part thereof, occupied in investigating the application will be assessed and is payable prior to the Registrar General making the order for termination.

### **Form**

16. An application for termination by the Registrar General should be made on a Termination of Strata Scheme form 15ST.

### **Who may make an Application?**

17. 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**

18. An application for termination must be signed by:
  - (a) each proprietor of a lot within the scheme;
  - (b) each registered lessee of a lot within the scheme; and
  - (c) each registered mortgagee, chargee or covenant chargee of a lot or of a registered lease of a lot within the scheme.
19. The Registrar General has the power to dispense with the requirement for the signatures referred to in paragraph 18. 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

20. The Application should be accompanied by:

- (a) Evidence, given by statutory declaration, that notice of the application was advertised as required (see paragraphs 7-9 above). The declaration should 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) For the application to be successful the statutory declaration should indicate that:
  - (i) the declarant has the authority and knowledge to make the declaration;
  - (ii) outstanding debts of the owners corporation have been paid;
  - (iii) there no outstanding claims have been made against the funds of the scheme;
  - (iv) there are no unregistered estates or interests in the common property or lots in the strata scheme otherwise than as disclosed in the declaration;
  - (v) the owners corporation has, by unanimous resolution, agreed upon the division of the moneys in the administrative and sinking funds; and
  - (vi) the strata scheme is not subject to a development contract.
- (d) The consents referred to in paragraphs 11, 12 and 13 above.
- (e) A properly completed Notice of Sale form.

## The Order for Termination

Application for termination not accompanied by a plan of subdivision

21. 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) a new folio of the Register will be created for the parcel which existed prior to the strata scheme;
- (b) 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.

**Note:** 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 only the share of the proprietor of the former lot(s). For example, a mortgage affecting only one lot in a plan would be recorded as;

"X123456 Mortgage to XYZ Limited as regards the interest of (the mortgagor).

#### Application for termination accompanied by a plan of subdivision

22. The termination of a strata scheme is frequently undertaken in conjunction with a re-subdivision of the land. In such cases, the consequences of registering an order for termination differ from those set out above in one major respect. Instead of creating a folio of the Register for the former parcel, the Registrar General will create folios for each of the new lots in the subdivision plan.
23. 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.

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

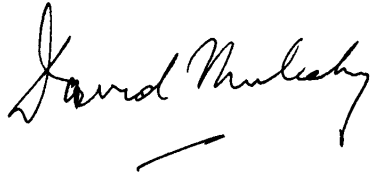
#### Dual Occupancy

24. 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; and
  - (b) councils and the Water Board (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

25. 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, Stamp Duties Division.

Inquiries relating to dealings may be made in person at the Client Service Counter, ground floor, by telephone on 9228 6713 or fax 9223 9464. Inquiries relating to plans should be made at the Plan Support Counter, level 2, North wing, Land and Property Information, 1 Prince Albert Road, Queens Square, Sydney by telephone on 9228 6798 or by fax on 9221 4405.

A handwritten signature in black ink, appearing to read "David Mulcahy". The signature is fluid and cursive, with a horizontal line underneath the name.

David Mulcahy  
**Registrar General**

Legal Division

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