

Lecture 8

Multi-Owned Properties

Developer Roles and Responsibilities

- Three stages where developer has control in governance decision-making
 - **Pre-registration**
 - Before the owner's corporation comes into existence, the developer will make decisions which impact upon how the scheme will be governed
 - For example: who will manage the scheme, the initial budget, lot liabilities and entitlements, lot boundaries, service providers.
 - **Post-registration**
 - Shortly after the owner's corporation comes into existence, before the lots are settled, the developer will usually call a meeting to ratify the decisions pre-registration
 - **Within initial developer period (as a lot owner)**
 - Developer has diminishing control as each lot is sold
 - May last 5 years post registration

Stage 1: Pre-registration

- Management
- Financial Management- budget, contribution
- Lot entitlements and lot liabilities
- Scheme rules
- Service providers- need to look at facilities
- Insurance

Legal duties owed by developers

- In Victoria, **section 68 (OC ACT)**
 - ...the initial owner of land affected by an owner's corporation must act honestly and in good faith and with due care and diligence in the interests of the owners corporation in exercising any rights under this Act...only while the initial owner is the owner of the majority of the lots affected by the owners corporation and only until the end of the period of 5 years following the registration of the plan of subdivision.

Stage 2: Post-registration

- Call and hold first meeting
 - Ratify decisions made pre-registration
- Call and hold first AGM
 - The owner's corporation act 2006, sets out the issues that need to be discussed and voted on at the first AGM
- Turn over scheme documents

- OC need specifications, documents etc

Duties of committees

- **Section 117 (OC ACT)** Duties of committees and sub-committees
 - A member of a committee or sub-committee of an owner's corporation—
 - must act honestly and in good faith in the performance of his or her functions;
 - must exercise due care and diligence in the performance of his or her functions;
 - must not make improper use of his or her position as a member to gain, directly or indirectly, an advantage for himself or herself or for any other person

Stage 3: Initial Developer Period

- Refer to **section 68**
- Period starts at the date the scheme is registered
- Developers control diminishes as the lots sell
- Developer can be a committee member and may exert control if they have voting power

Governance responsibilities

- Insurance cover
- Engagement of service providers
- Document handover
- Common property and assets
- Calling and holding first AGM
- Budget setting and levy contributions

Negative impacts

- Property value often underestimated- increased premium
- Conflicts of interest- long-term contracts
- Maintenance issues arising
- Forced sale/maintenance; withholding disclosed assets, incomplete transfer
- Out of time- multiple impacts
- Underestimated- financial distress

Example of developer governance responsibilities and impacts

- Governance responsibility: engagement of Body corporate management
- Conflict of interest situation arising: no fee agreements, associated industries
- Negative impacts
 - Culture of distrust
 - Unpaid developer levies- financial distress
 - Defect rectification issues- action thwarted