

When can an administrator of a strata company be appointed under the Strata Titles Act?

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Appointment of administrator

Under the *Strata Titles Act 1985 (WA)* (as amended) (**the Act**), it is possible for an administrator to be appointed to a strata company by order of the State Administrative Tribunal (**SAT**).¹

The SAT may order the appointment of an administrator, if it considers it appropriate, to resolve a dispute. The order to appoint an administrator may specify the conditions of appointment for the administrator.

Strata disputes

Disputes between the strata company and other strata participants may arise over a range of issues.

For the purposes of this article, strata participants include:

- occupiers;
- lot owners; and
- lot owners who are members of the strata council.

Any of these parties can apply for an administrator to be appointed.

The most contentious types of strata dispute are those that result in a sense of unfairness or injustice. They can revolve around issues such as:

- interpretations as to what is exclusive to a lot owner and what is common property;
- a perceived abuse of power on the part of one or more members of a council of owners;
- the strata company's financial management of the strata scheme. E.g. the council continually approves a budget that invariably results in improvements to the northern end of the complex, which is where the dominant council members' lots are situated.

When is it appropriate to seek an order to appoint an administrator?

In the most extreme circumstances, a dispute may be so substantial and contentious that a party, typically one or more lot owners, might consider that the strata company has become dysfunctional.

One example of a dysfunctional situation might be where a series of financial decisions by the council of owners favours a particular member of the council. Further, those decisions might appear to have been made in accordance with the formal processes of an AGM yet still appear to be unfair. This could be because that particular council member controls a majority of the votes.

The situation might even be aggravated by a perception that a particular council member did not act for the benefit of the entire group of lot owners but only for himself or herself. The result could be that one or more lot owners feel disadvantaged and fall into dispute with the person who dominates the council but is unable to change the way that its decisions continually benefit a particular council member or group of lot owners or disadvantage another group of lot owners.

¹ *Strata Titles Act 1985*, s 102.

The SAT has the power to make a number of different orders to resolve disputes. The appointment of an administrator is one such order. However, it is seen as an extreme remedy that should only be used as a last resort. After all, it could be said that the concept of strata schemes is that the governing body of the strata scheme makes decisions for itself.

Appointing an administrator may be appropriate where the strata company has become dysfunctional. The symptoms of dysfunction would include its inability to provide the services required by the lot owners as a whole, an inability or unwillingness to make fair or reasonable decisions (that benefit lot owners as a whole) or otherwise make decisions that do not fairly comply with the Act.

The SAT can only appoint an individual as administrator if that person has consented to the appointment in writing. If an administrator is appointed, he or she would have the power to make decisions and take actions as a council of owners would have done. This can include commencing proceedings in the SAT or defending the strata company against proceedings.

As an administrator would charge fees for their services, appointing an administrator would incur additional expense for the strata company. This cost will ultimately be borne by the lot owners. However, the additional cost should be considered as a necessary evil if it rectifies or replaces the improper decisions processes occurring under the previous dominant majority on the council of owners.

Key Points

- Only the SAT can appoint an administrator to a strata company
- An administrator can be appointed to resolve a strata dispute
- It is a last resort
- It may be appropriate where the strata company has become dysfunctional.

Summary

The SAT may order the appointment of an administrator to a strata company where it is appropriate to resolve a strata dispute.

Such an order will only be appropriate in exceptional circumstances. Those exceptional circumstances typically involve a dysfunctional council of owners.

Appointment of an administrator is a last resort as it takes control of the strata company away from its owners. However, it may be that handing control to a professional administrator is preferable to leaving control in the hands of a dysfunctional council.

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