

Strata and Community Title in Australia for the 21st Century 2011 Conference

Building a better partnership between the executive committee and the strata manager

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Getting started by setting the scene

This paper is one in a series of evolving and related articles about strategic planning for bodies corporate, and the relationship between owners – committees – strata managers – building managers.

The topic of this paper is:

Building a better partnership between the executive committee and the strata manager

The perspective I will take in this paper is obviously tainted by my experience: most of my time presently is spent as a strata manager. Hopefully the perspective is as balanced as one could be after 19 years, but I believe I have seen things from various perspectives, being an owner of strata property, a strata manager going to meetings, an owner of a strata business, a commercial tenant of strata property, a resident in an apartment, an owner of management rights, a lawyer acting for committees, a lawyer acting for owners against bodies corporate, and a lawyer acting for resident managers.

Ambitiously, this paper seeks to outline a process which, if undertaken, will result in a better partnership between the executive committee and the strata manager.

As an aside, it is my view that it is not strictly correct to say that the executive committee and the strata manager are in partnership. In a later section of this paper there is a basic analysis of the type of relationship which exists between a strata manager and an executive committee. Suffice for now to say that the element of partnership relevant to this paper is the concept of mutual benefit which may flow from the relationship.

This paper intends to look at the benefits flowing to various stakeholders where a better partnership (relationship) may exist.

So why bother with a better partnership?

Where a solid partnership exists between the executive committee and the strata manager then the following factors may be present:

1. Both the executive committee and the strata manager understand the difference between their purposes, their roles and their powers.
2. Both the executive committee and the strata manager understand their responsibilities, obligations and opportunities.
3. The creation of a body corporate strategic plan. It is my contention that the existence of a body corporate strategic plan is indicative of a deeper understanding of the opportunities offered by strata living, and that the parties are doing more than merely going through the motions.

Rather than rely on factors which might be present which could indicate a better partnership exists, let's try to measure the benefits which could flow from a better partnership between the executive committee and the strata manager. If you cannot count it then it might not be real. So let's start counting. I propose that a better partnership between executive committee and strata manager could be measured "scientifically" by the following factors:

1. Shorter committee meetings:

That's right. Get out the stop watch. Race to the finish. Remember, nobody buys an apartment so they can be involved in the body corporate. A body corporate is a necessary component of community living, but it is merely a mechanism to allow the owners to enjoy the synergistic benefits of living in close proximity, and to manage necessary issues of communal "stuff". Get the business done as quickly as possible so you can get on with enjoying your lives.

2. Higher levels of owner participation in committee business:

Count the people involved. Here is where I roll out the clichés. Many hands make like work. 2 (or even more) heads are always better than one.

3. Body corporate strategic goals being achieved faster

How many months did it take to progress your foyer refurbishment from concept to approval? 3, 6, 18 months? Maybe more? That is your benchmark. Take a look at your sinking fund

forecast and pick your next major project. Let's try to halve the time it takes for the project to go from concept to ribbon cutting.

4. Increased value for lots in the scheme

Everybody loves increases in property values. You do, your bank does, and of course the government does because it means more tax revenue. So have you ever stopped to see how your building compares? Let's make this a fair measure. It is easy to get a 4% increase in property values if every strata scheme is getting 4% increases. Similarly, it is not too devastating to have a 3% decrease in property value if every scheme in your area is similarly affected. My point being: The relevant performance measure is your scheme's ability to outperform the market. If the buildings in your area are experiencing 2% capital growth then you can get 4%. That is the achievement!

Performance measures of this nature are now relatively easy to obtain from the various on-line tools which record recent property sales. Simply select 4 schemes in your vicinity which are similar to your scheme. Calculate the average of the sales prices in those buildings over the last 3 years, and do the same for your building. Let's repeat this exercise every 12 months for the next 3 years and see how you do.

5. Stronger balance sheet

Is your body corporate balance sheet growing each year? What is your body corporate balance sheet? Take a more expansive view than traditional accounting. Include the following measures –

- Surplus cash in your administrative fund
- Balance of your sinking fund, over and above your predicted requirements for capital expenditure. It is good enough to have what you need, but it is better to have an excess in the bank for a rainy day.
- Insurance valuation for your building.
- Body corporate fixtures and fittings
- Impending expenditure for capital maintenance

6. Longer agreements

Longer agreements are a benefit for the strata manager, but they are also a quantifiable measure of a strong relationship between the executive committee and the strata manager. Longer agreements are a measure of trust between the parties and a better partnership.

7. Higher renewal rates

Where a strata manager is participating with the committee in a sound working relationship and delivers tangible and measurably benefits it is logical that the committee acknowledge the value of the relationship by offering the strata manager a fee higher than the previous year and increasing at a rate better than inflation.

The building blocks of partnership

This is my one and only sporting analogy for this paper. Back when the Brisbane Lions AFL team were a powerhouse, winning 3 premierships and coming oh-so-close to a fourth, I once heard Michael Voss (the captain) speak about elements of a successful team over such an extended period. He professed the philosophy of the individuals in a successful team to be:

- Know your role
- Accept your role
- Perform your role

I submit a similar approach holds true for the strata environment.

What is the purpose of the executive committee?

I believe that there are 3 relevant, related but different concepts to be considered:

- Purpose
- Role
- Powers

I wish to distinguish what I mean by each term.

Powers are easy to define as they are provided for by the legislation which establishes bodies corporate. A “power” is the ability of the committee to make a decision and then execute that

decision. The powers of the executive committee vary from jurisdiction to jurisdiction. An executive committee does not have the same powers as a typical board of directors for a proprietary limited, limited or public company constituted under Federal law. Many powers which would rest in the board of directors from a traditional company rest with the owners acting in general meeting only.

The “role” of the executive committee is something which is different from its powers. The role of the executive committee is simply to deal with the impracticality of requiring all owners to be involved in all decisions required of the body corporate. The executive committee’s role is to make decisions which it has the power to make, so that the owners do not have to convene.

Aside from dealing with the practical nature of decision making for a body which is made up of many individuals, does the committee have a purpose? The most interesting of the 3 concepts, and perhaps the one least examined is “purpose”. Is there a higher cause, and a higher level of responsibilities which rest with the committee, aside from making decisions which the rest of the owners cannot be bothered making?

The legislation for strata does not impose upon the executive committee the responsibilities for strategic direction of the body corporate, but the responsibility must be implied. Where else would it rest?

What is the role / purpose / powers of the strata manager

On the Living In Strata website (www.livinginstrata.com.au) I have reproduced a detailed breakdown of the role, purposes and powers of a typical strata manager, and included a framework to analyse the duties of the strata manager as provided for in most typical strata management agreements. Please go to the website to review this material.

What the executive committee wants

Nobody buys strata property so that can have a new social interest – “being involved in an executive committee”. The involvement comes from a sense of responsibility to help the group of owners create a community which satisfies the needs of all participants. To do this most effectively the executive committee requires a strata manager – somebody who is a

professional in the area of “all things strata”. I tender the following checklist as a sample of the things an executive committee may want from its strata manager.

The Strata Manager Checklist for Satisfying the Needs of the Executive Committee

- **Take away the boring stuff.** There are many procedural responsibilities for administering a body corporate. Executive committees have day jobs, and the last thing members want is to be involved in routine processes. These individuals get involved for the bigger goals that can be achieved. The list of responsibilities associated with taking away the boring stuff is endless, and in this respect refer to the duties of the strata manager set out in the material on the Living In Strata website (www.livinginstrata.com.au)
- **Following up.** The strata manager will often have many tasks and action items coming from a committee meeting. Making sure these items are attended to in a timely manner is fundamental. In addition, other executive committee members may have action items flowing from a meeting, and the strata manager may play a role in assisting these other committee members completing their responsibilities in a timely manner.
- **Statutory compliance.** The list of legislation imposing obligations upon strata property is extensive. Strata managers are not lawyers, but as people dealing with the same issues day to day, they offer the committee a method to ensure they minimise the risks associated with understanding and then complying with the legislative requirements imposed on strata property.
- **Organisation.** Every year in the life of the body corporate certain procedures and actions must be undertaken. The owners must be offered the chance to nominate for the committee, the annual general meeting must be held, the minutes for all meetings must be prepared and distributed, committee meetings must be held in order for the body corporate to transact its day to day business, the accounts must be prepared, the tax and BAS returns filed, the levies sent out and the money collected, the audit completed, and then the process starts again. A detailed timetable and extensive systems are associated with ensuring all these things happen as and when required.

- **Ideas.** It is of great benefit to a committee to have a strata manager who can attend a meeting and be an active participant in the discussion of the issues. Strategies for dealing with the issues confronting the executive committee are an invaluable benefit to a busy committee.
- **Mediation.** Executive committees can be a mix of personalities, and everyone one of those personalities has a personal interest in the business of the body corporate. A strata manager in the executive committee meeting without a personal interest, who can look dispassionately at the matter being discussed, can play an integral role in helping the committee reach a final decision.

What the strata manager wants

True partnerships are characterised by reciprocity, and “better partnerships” should be characterised by higher levels of reciprocity. For any committee interested in offering reciprocity to their strata manager I offer this indicative checklist:

The Committee Checklist for Recognising the Strata Manager

- Strata Managers want long term agreements to allow them to plan their business. It is recognition they are doing a good job.
- Strata Managers really do want a partnership. Somebody in the trenches, who has got your back.
- Strata managers want fair remuneration increases.
- Strata managers want contracts where the level of work required to satisfy the terms of the agreement and the needs of the executive committee reflects fairly to both sides the compensation paid.
- Strata manager wants to do business at reasonable hours – going out from 7-11pm might be satisfactory for the committee because it happens 3 times a year, but put yourself in the

shoes of the strata manager: Do it 3 nights a week, 46 weeks a year. Consequently, the strata manager wants a committee to recognise the committee has serious business to conduct and as such it should be done during reasonable business hours.

- Strata manager wants reasonable deadlines. A strata manager will generally try to please a committee and will try to make the committee feel like they are the strata manager's only client. Most committees recognise this and are very reasonable with the time lines for their requests of the strata manager. Some owners (not on the committee) can demonstrate less understanding – probably because they are outside the partnership.
- Strata manager wants praise for a job done well. Once again some committees are excellent at this. As I am writing this paper I witnessed one committee member dropping in a bundle of work for a strata manager but bringing a bunch of flowers as a “thank you”. I saw the smile from the strata manager and I know the strata manager will go the extra mile for this committee.
- Recognise the strata manager is human. Mistakes do occur. Systems do produce anomalies.
- The strata manager wants feedback from the executive committee. Personal feedback and also feedback in meetings. Meetings where the majority of executive committee members sit in silence is generally indicative of an unhealthy committee.
- The strata manager wants committee solidarity. While true Westminster style cabinet solidarity may only be a dream – even in federal parliament (just ask Kevin Rudd and Julia Gillard), where it exists it promotes better group decision making and better leadership.
- The strata manager – executive committee relationship is defined by a contract that has a start date and an end date. Every strata manager wants a new contract when the old contract expires. The people servicing committees take the expiry of a contract very personally, and loss of a contract is often followed by a mini grieving process on the part of the strata manager. Every agreement that does not get renewed is a failed relationship.

The importance of personalities – do executive committees and strata managers need to like each other?

The second sentence of the Wikipedia definition of a partnership is as follows:

Since humans are [social beings](#), partnerships between individuals, [businesses](#), [interest-based organizations](#), [schools](#), [governments](#), and varied combinations thereof, have always been and remain commonplace.

The concept of “social beings” resonates for me, as it acknowledges that the personalities of the parties to the relationship are a key element to the success of the relationship. Matching those personalities is a key to improving the partnership.

Depending on the chair, and the other members of the committee, the personality of the strata manager may need to vary between:

- Order taker
- Trusted advisor
- Silent servant
- Vocal leader
- Mediator / Conciliator

So my proposition is that while the strata manager and the executive committee do not need to like each other, there most definitely needs to be a social working relationship, where their personality styles fit each other.

“Better partnership” – is the executive committee and the strata manager in partnership? Defining the relationship

The following is an excerpt from the Wikipedia definition of partnership, in so far as it is relevant to the executive committee – strata manager relationship:

*A **partnership** is an arrangement where parties agree to cooperate to advance their mutual interests.*^[1]

Since humans are [social beings](#), partnerships between individuals, [businesses](#), [interest-based organizations](#), [schools](#), [governments](#), and varied combinations thereof, have always been and remain commonplace. In the most frequent instance, a partnership is formed between one or more businesses in which partners (owners) co-labor to achieve and share profits and losses (see [business partners](#)). Partnerships are also common regardless of and among sectors. [Non-profit](#), [religious](#), and [political organizations](#), may partner together to increase the likelihood of each achieving their mission and to amplify their reach.....

Partnerships present the involved parties with special challenges that must be navigated unto agreement. Overarching goals, levels of give-and-take, areas of responsibility, lines of authority and [succession](#), how success is evaluated and distributed, and often a variety of other factors must all be negotiated. Once agreement is reached, the partnership is typically enforceable by [civil law](#), especially if well documented. Partners who wish to make their agreement particularly explicit and enforceable typically draw up [Articles of Partnership](#).

In the New South Wales jurisdiction for a strata manager there exists the term “strata managing agent”, which reflects the high level of parallels between the obligations of a traditional agent (trust account, licensing). Again relying on Wikipedia as my source of wisdom, the extent of the definition of agent is as follows:

*The **law of agency** is an area of [commercial law](#) dealing with a [contractual](#) or [quasi-contractual](#), or non-contractual set of relationships when a person, called the **agent**, is authorized to act on behalf of another (called the [principal](#)) to create a legal relationship with a third party.^[1] Succinctly, it may be referred to as the relationship between a principal and an agent whereby the principal, expressly or impliedly, authorizes the agent to work under his control and on his behalf. The agent is, thus, required to negotiate on behalf of the principal or bring him and third parties into contractual relationship. This branch of law separates and regulates the relationships between:*

- Agents and principals;
- Agents and the third parties with whom they deal on their principals' behalf; and
- Principals and the third parties when the agents purport to deal on their behalf.

The [common law](#) principle in operation is usually represented in the [Latin](#) phrase, *qui facit per alium, facit per se*, i.e. the one who acts through another, acts in his or her own interests and it is a parallel concept to [vicarious liability](#) and [strict liability](#) in which one person is held liable in [criminal law](#) or [tort](#) for the acts or omissions of another.

You will note from the definition that there is a high degree of reliance on the concept of “binding” third parties as the defining characteristic of an agency relationship. It is not the present scope of this paper to look in detail at the ability of the strata manager to bind the body corporate, but I feel this is essentially the major element which has been stripped away from the strata manager, with most decision requiring either the executive committee or the body corporate to pass resolutions in order to bind the body corporate. Consequently, my view is that it is inappropriate to classify the strata manager – executive committee relationship as an agency.

Conclusion

The topic upon which I was asked to write this paper is: **Building a better partnership between the executive committee and the strata manager**. However, in essence the relationship is not a partnership. The strata manager is a contracted service provider.

I don't think categorising the relationship as client – service provider devalues the relationship nor grades the parties to the relation. There is real value for both parties in strengthening the service relationship that exists between them. To this end, below I offer a process which could lead to a strengthening of the relation.

Five Steps to Follow to Build a Better Partnership

1. The Executive Committee Must Have a Strategic Plan for the Body Corporate which it shares with the Strata Manager

I have written other articles on the wasted opportunity that exists in the strata industry where the executive committee does not have a strategic plan for the body corporate. Please see the SSKB website (www.sskb.com.au) and the Living In Strata website (www.livinginstrata.com.au) for our strategic planning articles and tools.

2. The Executive Committee Must Decide What It Wants From the Strata Manager – and then Communicate Those “Wants”.

If one accepts that the strata manager – executive committee relationship is not a partnership, but is in fact a service contract, then it follows that the executive committee holds the dominant position in the relationship. It is the executive committee who can decide who they wish to contract with. Consequently, the executive committee must define what it wants from the relationship.

There are 2 categories of things that the executive committee might want: the obvious and the not so obvious.

- “The Obvious” are all those things that can be easily defined, like the number of meetings to be held each year and the statutory compliance issues. Have a look at the analysis of the strata manager’s contract tool referred to earlier in this paper, which can be found on the SSKB website (www.sskb.com.au) for many of the obvious factors.
- “The Not So Obvious” are exactly those things that cannot be defined easily. They are wrapped up with the intangibles which might be included in the strategic plan of the body corporate. For example “increase the level of knowledge of owners about strata” or “increase the community spirit among residents and owners” might be a not so obvious requirements. Again see our strata manager analysis tool on the website.

3. Align the Personalities

In this regard I refer you to the body of this paper where I touch upon the “social” aspect of the relationship between the executive committee and the strata manager. As vital as the contractual terms for ensuring the body corporate receives the benefits it wishes to receive is the matching of the personality needs of the committee with the characteristics of the strata manager.

4. Review the Strata Management Agreement

Remember that usually the strata management agreement has been drafted as an industry standard document so that it can be applied to any body corporate at any time. It is a proforma contract and the rationale behind proforma contracts is that they provide the public with

confidence that the terms of the agreement are approved by the industry at large, and avoid the need for lawyers to be involved in drafting. While this might be true, the standard contracts might apply lowest common denominator standards to the needs of both parties. See www.sskb.com.au and www.livinginstrata.com.au for tools to analyse the strata management agreement.

5. Apply the Measures

See earlier in this article for a sample of applicable measures which indicate the executive committee – strata manager relationship is moving in a positive direction.

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