Transitioning governance responsibilities

How developers of strata schemes can implement better governance principles in the control period

STRATA KNOWLEDGE

Background

Transition is a term rarely discussed in strata commentary. Transition in the strata context refers to the process of transferring control and governance from the scheme developer to the owners corporation.*

However, transition does not occur at a particular point in time, it is a multi-staged process.

When we discuss transition, we need to consider all the governance decisions that have been made by the developer from the beginning (in the planning phase). These decisions affect the future operational structure of the strata development and the owners corporation will need to assume responsibility for those decisions.

The governance decisions made by the developer can have fundamental and long-lasting impacts on the functionality of a scheme. Decisions made by a developer, on behalf of an owners corporation, can lead to financial hardships down the road.

In 2003, the Community Associations Institute (CAI) in the USA, published a best practice guide on transition. The purpose of the publication was to provide guidance to stakeholders to enable the transition process to be better managed with less confrontation. The guide includes a model of best practice for developers.

We are yet to see a similar guide in the Australian market.

* The term 'owners corporation' is used generically to refer to any private governing entity created under a strata or community title arrangement (e.g., body corporate, strata company, association)

Research Findings

My PhD dissertation explored in detail the transition period in the Australian strata context.

One of the contributions advanced in the dissertation was the development of a good governance model for the transition phase.

Although some legal reforms have incorporated the principles outlined in the model, it is useful to highlight these principles if only to continue an industry discussion on their usefulness and applicability. The headings below indicate some developer governance responsibilities and under each heading are examples of good governance principles that could be considered.

Establish sustainable financial structures

- Formulate budgets for year 1 and year 2 (excluding warranties). Budgets should include notations regarding methods used and assumptions made during budget formulation.

Establish sustainable financial maintenance structures

- Sinking fund / capital works plans should be amended / updated upon completion of the scheme (if initial plans are prepared prior to the confirmation of all assets, equipment and infrastructure).

Establish fairness and equity in by-laws

- Model rules should be used where possible. If tailored rules are required, due consideration needs to be given to the interests of all lots and residents. Exclusive use by-laws should clearly state the rationale behind the exclusivity.

Establish supportive stakeholder relationships

- Any engagement of a strata manager should be carefully considered to ensure that the manager is suitability qualified for the type of scheme.
- More than one management proposal should be sought, and a process instituted before any engagement. This process should be documented and included in the scheme records

Establish sustainable building management structures

- For non-tourism schemes, the management rights model should be avoided.
- A detailed schedule of duties and costs should be determined by an independent qualified person and in accordance with industry standards.

Establish infrastructure maintenance procedures

- Avoid arrangements where contractors agree to provide infrastructure or equipment to the developer for free, in exchange for non-negotiated contracts.

Establish a competitive supply structure

- Avoid leasing and licensing arrangements, where the developer causes the owners corporation to enter into an arrangement with associated or related developer entities.

Establish transparent procedures

- Invite contracted buyers to attend the first meeting.
- Ensure decisions made are beneficial and in the bests interests of the owners corporation.
- Governance decisions should be carefully documented and reasons for the decisions outlined.
- Avoid use of proxies and powers of attorney.

Establish record keeping protocols

- Ensure all documents relating to the development and governance decisions are turned over to the owners corporation in a timely manner.

Lessons and Implications

With more complex strata schemes being constructed, it is time to reassess the types of good governance principles that should be advocated to strata developers. Although many governance decisions made by developers are aimed at lowering costs and maximising profits, there are opportunities for developers to stand out from the crowd by implementing good governance principles that are valued by strata buyers.

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