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CAN A STRATA MEETING BE RECORDED?

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Introduction

It is becoming increasingly common for strata meetings to be recorded. But is it legal to do so? The answer might surprise you.

An Increasingly Common Scenario

At the outset of a strata meeting, a person present may occasionally announce that they intend to record the meeting. Sometimes that announcement will not cause any controversy. But often it does. Indeed, often the announcement is greeted with outright hostility. So what happens when a person announces that he or she intends to record a strata meeting and some of those present object to the meeting being recorded?

The Law

A strata meeting is a private meeting. This is because members of the public are not entitled to attend a strata meeting. And normally the discussions which take place at a strata meeting are private conversations. In NSW, the recording of private conversations is regulated by the *Surveillance Devices Act 2007*. Under that Act, a person must not knowingly use a listening device to record a private conversation to which the person is or is not a party. There are limited exceptions to this prohibition. For example, if all of the principal parties to the private conversation consent, expressly or impliedly, to the listening device being used to record the conversation, the conversation may be recorded. So if a person uses a listening device, such as a smartphone, to record the discussion during a strata meeting without the consent of the participants in that discussion, the person will normally be breaking the law.

The Chairperson

The chairperson of a strata meeting plays an important role in controlling the affairs of the meeting. Indeed the chairperson is the person who has control of the meeting and is responsible for preserving order and taking care that the meeting is conducted in a proper manner and according to law. For that reason, if a person at a strata meeting announces that he or she intends to record the meeting, the chairperson is entitled to direct the person to refrain from recording the meeting. If the person refuses, the chairperson may ask the person to leave or alternatively adjourn the meeting: see *Alliance Craton Explorer Pty Ltd -v- Quasar Resources Ltd* [2010] SASC 266.

The Meeting

It is generally accepted that a meeting itself should be governed and regulated by those present themselves with the assistance of the chairperson. This means that a strata meeting has the inherent



power to regulate its own affairs subject to the applicable legislation and rules. This includes power to regulate the manner in which meetings are conducted such as whether or not the proceedings of a meeting can be recorded. Therefore, if there is disagreement among those present at a strata meeting as to whether or not the meeting should be recorded, that disagreement can be resolved by a vote of those entitled to vote at the meeting. And in that case, it is possible for a meeting to make a majority ruling to preclude a person from taking a recording of the meeting even if it would be lawful to record the meeting under the surveillance devices legislation: see *Alliance Craton Explorer Pty Ltd –v- Quasar Resources Ltd* [2010] SASC 266.

By-Laws

The rules regarding the right of a person to record a strata meeting are not well understood and can cause controversy. Often a person who intends to record a strata meeting insists that he or she has a right to do so after being told by the chairperson or others present at the meeting that a recording cannot be taken. Perhaps the best way to overcome this problem is for an owners corporation to make a by-law clearly outlining the rules that it will apply concerning the recording of its meetings. In that way there can be no doubt about what rules apply.

Conclusion

The right of a person to record a strata meeting is not unfettered. A strata meeting generally cannot be recorded without the express or implied consent of the participants at the meeting by virtue of the surveillance devices legislation. Even if the surveillance devices legislation does not operate to prohibit a person from recording a strata meeting, the chairperson may make a ruling, or the majority of those present at the meeting itself have the right to vote, to prohibit a recording of the meeting being taken. If a person insists on recording a meeting after being told that he or she is not permitted to do so, the chairperson may ask that person to leave the meeting or alternatively adjourn the meeting.

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About JS Mueller & Co Lawyers

JS Mueller & Co Lawyers has been servicing the strata industry across metropolitan and regional NSW for almost 40 years. We are a specialist firm of strata lawyers with in depth and unmatched experience in, and comprehensive knowledge of strata law and levy collection.

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