

Common Property

Newsletter for professionals in the facilities management sector.



Unit Entitlements



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Registered with every strata scheme is a set of unit entitlements. These unit entitlements will define the proportion of levies paid by each lot owner and will determine their voting powers at General Meetings. It is one of the many systems in the world where a person pays for power. What is ironic however is that power is not always important in an owners corporation, it is the amount that a person pays in relation to levies.

There is no definition under the Act how unit entitlements are allocated when first registered. There are 2 primary mechanisms for determining unit entitlement:

- Value; or
- Floor space.

It is our experience that developers and builders rarely have any scientific approach to the allocation of unit entitlements at registration. Hence, this leaves many strata organisations in a position of disputation.

Section 183 of the Strata Schemes Management Act 1996 (SSMA) permits any lot owner to seek action to have unit entitlements reallocated. The simple test under Section 183 is that the allocation of the unit entitlements were "unreasonable".

Although Section 183 of the SSMA does not provide an absolute means of determining unit entitlements, it does require that a valuation be provided to the Consumer Traders & Tenancy Tribunal (CTTT). Based on *Makita (Australia) Pty Ltd v Spowles [2001] NSWCA 305*, the valuation must be vigorous and pass certain tests. The reasonability or lack of reasonability will be determined based on the valuation.

There are usually 3 parties to a unit entitlement dispute:

- The lot owners;
- The owners corporation; and
- The developer.

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If it has been found that a lot owner has paid an unreasonable amount of levies, the developer will be responsible for refunding all of those fees. This is why developers should pay greater attention to the distribution of unit entitlements when first registering the strata scheme.

If unit entitlement is disputed, it now appears that the matter can only be heard and ruled upon once. There was consideration for many years that, owners corporations could return to the CTTT under Section 183 to have these unit entitlements reviewed. Based on *Schrader v Owners Strata Plan No 12449 [2008] NSWSC 117*, dispenses with this proposition. In the Schrader case, it was clearly determined that lot owners could not ask the CTTT or the Supreme Court to reconsider a unit entitlement dispute which is essentially the same as the previous dispute. The fact that it may be a different lot owner or different valuation did not mean anything to the Supreme Court. In the Schrader case, unless action is being taken on a fresh issue, unit entitlement disputes cannot be heard again.

If your owners corporation is seeking a redistribution through the CTTT or any lot owner is seeking a redistribution through the CTTT, steps must be taken to do it properly the first time around. Firstly, valuations need to be obtained which are clear and unambiguous; secondly, the valuation needs to comply with the principles in *Makita (Australia) Pty Ltd v Sprowles (2001) 52 NSWLR 705*; and thirdly the case needs to be run properly.

Although the CTTT is meant to be an inexpensive mechanism for justice, it has become a highly technical jurisdiction when dealing with the SSMA. We have seen at least 2 cases where lot owners have attempted to run their own cases and have lost out on justice because their first attempt was not undertaken properly. Even though we believe that this is unfair, considering the purpose of the CTTT, it is a reality. If you are an owners corporation seeking unit entitlement redistribution, please advise lot owners and members of the owners corporation to seek proper advice.

***Cheers,  
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