EAS-02 Easements & restrictive covenants (strata companies)

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1 General

Easement and Restrictive Covenant documents executed in respect of strata/survey-strata schemes are subject to the normal requirements. Some issues that have caused problems are discussed in the following paragraphs.

2 Strata Companies Do Not Own the Parcel in Strata Schemes

Although a strata company may execute a document, in accordance with s.20(1) of the STA, creating easements or restrictive covenants, it does so as the representative of the registered proprietors of the lots (and common property). The strata company does not own any lots or common property. Ownership of the parcel is held by the registered proprietors of the lots (s.17 and 4(4) of the STA).

If the ownership of all lots in a strata/survey-strata scheme is identical to that of another parcel of land, then the two parcels are held in the same ownership.

In accordance with common law principles, easements and restrictive covenants can only be created when the dominant and servient tenements are in separate ownership. Easements or restrictive covenants created on subdivisions under Part IVA of the TLA or s.5D of the STA are statutory exceptions to that principle.

Registration of a transfer of at least one strata/survey-strata lot to another person is one way of breaking the unity of ownership.

3 Execution of Easements and Restrictive Covenants by Strata
Companies

Any easements or restrictive covenants under s.20 of the STA can only be executed by the strata company pursuant to a unanimous resolution. A unanimous resolution can only be achieved at a duly convened general meeting of the strata company of which the requisite notice specifying the proposed resolution has been given. See the definition of unanimous resolution in s.3(1) of the STA.

The strata company can only pass such a resolution or any resolution necessary to authorize the execution of the documents, at the earliest on the 16th day after registration of the strata plan (registration date is counted as day one).

4 Execution of Easements and Restrictive Covenants by Proprietors of Proposed Strata/Survey-Strata Lots – with Proprietors of Land Outside the Scheme

The formalities of execution by strata companies of documents creating easements or restrictive covenants means that such documents cannot be lodged with applications for registration of strata/survey-strata plans.

Grants or acceptance of grants of easements and restrictive covenants between the owner of a proposed strata/survey-strata and the owner of another property can be made by reference to an annexed copy of the proposed strata/survey-strata plan and registered before the strata/survey-strata plan.

5 Easements in Respect of Encroachments

Easements in respect of Encroachments referred to in s.22 of the STA are required to be granted before registration of the strata plan. Accordingly, they can never be executed by the strata company.

6 Also see

- EAS-01 Easements