

Uncertain future for Body corporate levies

By Gary Bugden*

Home unit owners in Queensland are bracing for further changes to the way lot entitlements are allocated to the various units in their buildings.

Lot entitlements determine things such as shares of ownership of common areas, voting entitlements and liability for maintenance levies. It is this liability for levies that is of special interest to unit owners, particularly older owners and those on fixed incomes. A change in lot entitlements can affect the amount that an owner has to pay their body corporate each quarter. In some cases this can also have an impact on the value of their unit.

History of change

Before 1997 lot entitlements in Queensland home unit buildings were allocated, often unfairly, by developers with little or no guidance from the law. In 1997 a coalition Government changed the law to create two sets of lot entitlements – interest schedule lot entitlements (dealing with common property ownership) and contribution schedule lot entitlements (dealing with voting rights and levy liability). In post 1997 developments the interest schedule entitlements were to be allocated equally unless, in the case of the particular building, it was “just and equitable” that they should be allocated in another way. This just and equitable test involved a complex assessment of the extent to which the respective units drew upon the financial resources of the body corporate. That is, it applied a “user pays” principal.

Pre 1997 buildings were given the right to make application to a specialist adjudicator to have their interest schedule entitlements reallocated in accordance with the new rules. Some 150 of those applications were made, most being successful because of injustices that existed with the original allocations. These reallocations were unpopular with many of those owners who had to pay higher levies as a result. Some owners argued that people purchased their units with knowledge of the lot entitlements and that it was unfair to allow those people to retrospectively seek to change them.

Last year the former Labour Government amended the law to broaden the criteria for reallocation of lot entitlements and to allow a single owner aggrieved by a decision of a specialist adjudicator made before the amendment to bring about a reversal of the adjudicator’s decision – the original allocations then being reinstated. This action was unpopular with those owners who had previously obtained or benefited from reallocations. Apart from the costs incurred in obtaining the reallocation, reinstatement of a system adjudged to be unfair was considered objectionable. The amendments also increased the uncertainty about future reversal applications.

Current Bill

The Newman Government currently has a Bill before the Parliament to enable reversal of the reversal of the adjudicator’s decision (i.e. to reinstate the original decision of the adjudicator). The Minister responsible, Attorney General and Minister for Justice Mr Jarrod Bleijie, has also indicated that next year he will commission an expert panel to come up with the best way to allocate lot entitlements. Further changes to the law are then likely. Meanwhile, for unit owners the uncertainty continues as to how one’s share of maintenance levies may in the future be calculated.

Fifty years ago, when strata titles were first introduced in NSW, lot entitlements were allocated in proportion to the respective areas of the units. This resulted in many instances of unfair allocations, caused mainly by units with exceptionally large balconies or with courtyards that were part of the unit title. Parking and storage spaces also had the potential to distort the fairness of allocations made using this approach.

Subsequently in 1973, NSW moved to lot entitlements being allocated according to the respective values of the units in the building. Even this approach has had its problems where the respective values change because of such things as views being blocked by new buildings, improvements being made to some units but not others or market fluctuations where some types of units become more marketable than others.

The move by Queensland in 1997 to adopt two schedules of lot entitlements instead of the normal single schedule was an attempt to overcome the unfairness of a single entitlement allocation regulating the sharing of ownership, voting and levy liability. This was an excellent approach which mirrored the practices in some North American jurisdictions. Where it went wrong was, arguably, the allowing of virtually unrestricted changes for existing schemes. This retrospective approach galvanized the opinions of a large body of unit owners against the “equality” form of allocation. It was this body of opinion that prompted the previous Government to act as it did in changing the law.

The current position in Queensland is that allocations may take account of a range of things, such as equality, equity, management arrangements, unit usage (e.g. residential or commercial), market values, extent to which the unit draws on the body corporate’s financial resources and the nature, features and characteristics of the units. Comparatively, the Queensland position is one of the more complex in the world. And therein lays the reason for the uncertainty.

The choice for Queensland

Ultimately, the choice for Queensland will involve the selection of one of the established criteria for allocating entitlements (i.e. value, area, equal or just and equitable) or the combining of these and other criteria to come up with a more reliable outcome. The use of single established criteria will result in instances of unfairness, as has been the experience around the world. Use of a combination of criteria, if properly applied, may result in a fairer outcome, but it will likely result in the same level of uncertainty as currently exists in Queensland.

The fact is that there is no perfect solution. Developers and Governments around the world have been trying for almost a century to come up with the perfect solution, but it has evaded them. Queensland is up with the best when it comes to the approach to allocation of lot entitlements and the challenge for the Government will be to ensure that we remain there.

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