

Successful Strata Management

Termination of Schemes – Facing the challenge, a global perspective

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1. In Australia, as in most countries, there were a large number of residential flat buildings that were built in the 1940's 50's and 60's. Until the late 1960's most of these buildings were held under separate freehold titles. While some had been well maintained by investment landlords, many were in a poor state of repair and needed substantial upgrading, particularly as regards fire safety aspects.
2. In some states the maintenance of these buildings was adversely impacted by post second world war legislation designed to protect tenants by fixing rents and controlling termination of tenancies. The low rents and the inability of landlords to obtain possession meant that little or no money was spent on maintenance of the building.
3. These laws were gradually relaxed by State Governments and this relaxation generally corresponded with the introduction of State based strata title laws. These laws allowed the subdivision of freehold buildings, old or new, into lots and common property and automatically created an owners corporation to control and manage the common property at the expense of the lot owners.
4. During the 1960's and 1970's a substantial proportion of these buildings in Australia were converted to strata title. Prior to conversion they had to be upgraded, although much of the work was of a poor quality.
5. About the same time there was a heavy demand for housing in the capital cities and large numbers of residential flats were built and sold by way of strata title. Many of these were in poorer areas of the cities and attracted what are commonly called "first home buyers". Those buyers stretched their financial resources to the limit to secure ownership of their own apartment.
6. Over the years the maintenance and appearance of these lower quality housing estates and converted buildings deteriorated. The main reason was inadequate budgeting by owners corporations for future maintenance of the buildings. Over time this ensured that the buildings deteriorated and it became beyond the means of the apartment owners to bring them up to an acceptable standard.
7. Many of the buildings built in the post war era were built in fashionable areas of the cities (or areas that subsequently became fashionable). These buildings have been better maintained than those in the less fashionable areas and they still have a substantial economic life ahead (e.g. many of the pre and immediate post second world war apartment buildings in the eastern suburbs of Sydney).
8. However, there are large numbers of the older buildings that are fast approaching the end of their economic life. Many of these have been the victim of what I call "life cycle change". The cycle occurs as follows:
 - Low cost buildings were built in a down market area in poorly planned estates.
 - Lower income families purchased the units, which served them well as they brought up their children and built up their equity and incomes.
 - Because of the lower incomes, the buildings were poorly maintained and progressively deteriorated, as did the general neighborhood.
 - When they could afford it, these owners sold their unit and purchased a better quality property in a more up market area.
 - The incoming purchasers of the units were often making the move from rental accommodation and stretched themselves to make the purchase, thus having little or no capacity to start maintaining the building, let alone bring it back to standard.
 - The buildings deteriorated further, as did the neighborhood.

- The cycle continued over the years until there was no prospect of addressing the degradation of the building and its neighborhood, other than to completely redevelop the area.
 - Sociological issues were often a by-product of this process.
9. Under strata title laws Schemes can only be terminated (to allow for redevelopment of the buildings) if all owners and their mortgagees agree. This requirement makes it virtually impossible to redevelop many older buildings.
 10. This redevelopment problem is not confined to old, poorly maintained buildings. The same problem arises where older well-maintained buildings occupy prime locations, such as Sydney harbour-front sites that are capable of supporting a much higher density development. While it may make economic sense for everyone concerned to redevelop these sites all owners may not be prepared to commit to redevelop.
 11. There can be unfortunate consequences as prospective developers try to acquire all of the units in a building. On the one hand the developers can resort to questionable tactics to try to force remaining owners to sell their apartments. On the other hand, stubborn owners may hold the developer to ransom if they are they last one or two to sell.
 12. That raises the question of compulsory acquisition for redevelopment purposes – a sensitive issue for any government. There is mounting pressure in Australia, as there is in other countries, for a mechanism to allow the redevelopment of older or under developed properties where a substantial majority of owners favour such development. So far, no Australian State Government has been prepared to address this demand. One problem is the long held principle that “a man’s home is his castle”. While Governments (reluctantly) resume property for public utility and infrastructure purposes they have so far been unwilling to facilitate redevelopment of privately owned land by compelling unwilling owners to sell to either Government or developers.
 13. Will Australia eventually follow the lead of the United States Supreme Court in this regard? In June 2005 that Court upheld by a 5-4 majority decision the right of a City authority in Connecticut to resume a group of private homes so they could be demolished and the land made available to a private developer undertaking a major urban redevelopment. The decision was broadly based on the principle of “public good”.
 14. A proper process is required in Australia for sensible decision making on redevelopment proposals. The following has been suggested by this author as an appropriate process:
 - (a) a redevelopment proposal is prepared in a prescribed form (“proposal”);
 - (b) the proposal is put to a general meeting of apartment (lot) owners and mortgagees for approval;
 - (c) if the proposal is approved unanimously, then it proceeds and all lot owners and mortgagees are bound;
 - (d) if the proposal is approved by a specified majority (which might vary depending on the number of lots in the Scheme), but not unanimously, then it is referred to the appropriate State Supreme Court for review and decision on whether dissenting lot owners or mortgagees should be over-ruled;
 - (e) if the proposal is not approved by the specified majority, then it fails and is terminated;
 - (f) a proposal referred to the Court is examined with respect to specified criteria (designed to balance and protect the interests of all persons involved) and all parties are entitled to put their case to the Court;
 - (g) if the Court approves of the proposal it proceeds and all lot owners and mortgagees are bound;
 - (h) if the Court does not approve the proposal, then it fails and is terminated.
 15. To date no Australian State Government has shown serious interest in this or any other process to facilitate the redevelopment of older or uneconomic properties. The desire to preserve the domain of the citizen is stronger than the benefits that flow from sensible urban renewal.

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