

## Minutes

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### John - Legal

#### Slide:

- The common areas have not been vested – when should this occur?
- The developers are still Directors of the Management Company. We want to become Directors and have a say – how can we make this happen?
- Does a Residents Committee have any legal standing or do you have to become a Director to have a say?
- What legal papers do I need to copy? What information do they give me?

#### **The common areas have not been vested – when should this occur?**

Simply put, Common Areas are all those areas which are not your apartment ie: landings, lobbies, grounds etc. They should be handed over by the Developer when the last apartment has been sold. But unfortunately this often isn't a priority for them and they often don't do this. What will often be the case in apartment complexes is that the Management Company is looking after the common areas but doesn't own them.

#### **The developers are still Directors of the Management Company. We want to become Directors and have a say – how can we make this happen?**

You need to be a Director to have any real influence. There must be an AGM every year so ensure you go to that and prepare to propose yourself. It is becoming less of a problem recently that developers are remaining in control of complexes as they generally speaking do not want the hassle – they see being part of the Management Company as a headache, not a benefit.

#### **Does a Residents Committee have any legal standing or do you have to become a Director to have a say?**

Residents Committees do not have any legal standing. They can exert influence indirectly but not legally.

#### **What legal papers do I need to have a copy of? What information do they give me?**

You should obtain a copy of your lease. The lease states what agreements you entered into when you purchased your apartment. It states your service charge fee or apportionment and the interest rate applicable on overdue service charges. It covers topics such as car parking, advertising hoarding, keeping of pets, noise restrictions, balcony stipulations. It also states the conditions relating to the sinking fund. Although the lease can be a cumbersome and impenetrable document for most people without legal training it is a valuable reference document. You should also have copies of the land registry maps showing your apartment layout and your car parking space. You may

have to contact your lending institution to obtain copies of your lease and land registry maps if your solicitor did not provide you with a copy when purchasing.

You should have copy of your membership certificate. It can come in useful for any disputes. If you do not have this ask your solicitor for it.

### **Questions from the Floor**

Q: The common areas in our development are not vested but our developer went bust in 2003. Five people bought apartments since 2003 and it wasn't noticed by their solicitors. What do we do?

A: *This is a 'doomsday scenario' - you will need a declaration from the High Court transferring common areas to your Management Company.  
Corporate Governance expert added - It's important to note when engaging a solicitor - you do need a Company Law solicitor, not just an 'ordinary' solicitor - it's a specialist area.*

Q: Who do I ask for my membership certificate?

A: *Your solicitor should have it. When you bought the apartment it should have been given to them and they should have given it to you. It may have been sent with your title documents to the lending institution.*

Q: To what extent does a Management Company have a responsibility to give out membership certificates?

A: *Your solicitor is the first point of contact, it isn't the Management Agency's responsibility.*

Q: If a block is established for five years with no Directors or if the Directors are not resident at the apartments what is the status?

A: *Directors have to be elected onto the Board through an AGM. If you are not legally a member you cannot hold Directorship of the Company unless you were appointed director by the developer. You have to own a property within the development to be a Member or Owner.*

Q: If Directors act outside of their powers what can be done. In my development Directors are constructing an additional block in our common areas. A solicitor was employed and a member representative assured us the Directors were uninhibited. They are using maintenance fees to pay planning fees?

A: *The Directors obligation is to the company and they have to act in the company's best interest. If they are elected owner/occupiers it would require a special resolution to proceed with this course of action which means they need support from 75% of the members. It sounds like the company is not authorised to do this.*

Q: Our developer is still the Director of our Management Company and they still haven't relinquished control. The common areas are still in their name.

A: *If developer still owns common areas you are in a difficult position. You are entitled to a set of audited accounts. You should push for an AGM. Check your lease - you are a shareholder so you do have rights (but no power).*

Q: In our block the Developers are still Directors and we have a huge issue with noise. They're not enforcing rules. What's the comeback?

A: *So long as you are a member and they are a Director they have obligations to you. You can pursue them as a minority shareholder. The lease states the restrictions in relation to noise so you could write to the company secretary and request action to be taken. If you get no response you can report them to the ODCE for breach of their duty to the members (fiduciary duty).*

Q: How do you legally charge for anti-social behaviour?

A: *Directors are guardians and stewards of their Management Company. If they deem this charge valid it can legally be sanctioned.*

Q: Where the developer is currently a Director could he still develop land - what can be done if he is thinking of this?

A: *He will have to submit a planning application so you could object to that. But until common areas have vested you can't do much. You can complain to them and object to the planning application, provided the lease does not contain a clause about planning objections/appeals. In any event such a base may not be legally binding.*

Q: I live in a development that's 5 years old – our developers want to vest the common areas - what do you recommend we do before the AGM to prepare for this?

A: *Do a common areas snag. (See earlier response to vesting & snagging)*

Q: Is developer/director entitled to own/rent apartment?

A: *Yes the directors and developers may not rent out their units. There is a potential difficulty insofar as it may then be difficult to identify when "vesting of the common areas" should take place as it may be difficult to identify when the last unit is sold.*