

Combined Pensioners & Superannuants Association

OF NEW SOUTH WALES INC



Uncle Steve knew

Response to the NSW Government's
Strata and Community Title Law Reform Discussion Paper



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Combined Pensioners & Superannuants Association of NSW Inc (CPSA)

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About CPSA

Combined Pensioners and Superannuants Association of NSW Inc (CPSA) was founded in 1931 in response to pension cuts. CPSA is a non-profit, non-party-political membership association serving the interests of pensioners of all ages, superannuants and low-income retirees. CPSA has 139 Branches and affiliated organisations with a combined membership of over 29,000 throughout NSW. CPSA serves the interests of its membership and broader constituency at the local, state and federal levels.

About this submission

The title of this submission, *Uncle Steve knew*, is a reference to a report in the Sydney Morning Herald of 15 September 2012, where Mr Stephen Goddard, Chair of the Owners Corporation Network and strata title lawyer, is quoted as saying “*Aunt Doris knew when she was buying an apartment that she was buying airspace...*” The title implies that Uncle Steve knew when he was buying an apartment that he was buying into a bricks and mortar structure that could only be sold in its entirety if all the owners agreed.

Key points

- The current arrangements for the sale of property covered by a strata scheme are adequate. They offer security of tenure and maximise the premium owners in a strata scheme can achieve.
- The termination of strata schemes by majority vote rather than by a unanimous decision renders tenure in strata schemes insecure, and this particularly affects ‘little old ladies’, as the Owners Corporation Network so patronisingly dubs older people.
- The termination of strata schemes by majority vote rather than by a unanimous decision would reduce premiums developers are prepared to pay owners in strata schemes to sell.
- Selling people’s strata titled home from under them forces them out of their area, because they can only afford to buy back into the area if they buy a strata titled home that is likely to be in a scheme which is also a candidate for termination by majority vote.
- Older people will become very wary of downsizing into a strata titled home, forcing them to stay in a house that may no longer meet their needs.
- The Metropolitan Strategy has been successful in achieving targets for additional dwellings in existing suburban areas, suggesting there is no supply need for making it easier to terminate strata schemes.
- The NSW Government should not interfere in the market for strata titled homes and strata schemes.

Introduction

CPSA's response to the discussion paper *Strata & Community Title Law Reform Discussion Paper* focuses on the *Urban Renewal* section in Chapter 3 *Managing the Built Environment*.

CPSA notes that the issue of effectively ending residential strata schemes by a majority rather than a unanimous decision is one that is raised periodically by NSW Governments. The idea has so far been shelved each time, and it is CPSA's belief that the same will happen this time round.

The Government's discussion paper states: "The number of households in NSW is projected to increase to 3.72 million by 2036, a rise of 41%. In the Sydney region the projection is for a 46% increase in households over that period. To meet this need the Metropolitan Strategy requires that over the next 25 years between 60-70% of new housing for Sydney will be built in existing urban areas. Unless some of the existing low density strata schemes can be renewed this target will not be met."

It is concerning that a NSW Government discussion paper proposing changes to the way strata schemes are ended relies on such an embarrassing non-sequitur. The total area of land taken up by residential strata schemes as compared with the total area of land taken up by traditional homes is small. It would make much more sense to put in place a mechanism for the traditional home-owner to be deprived of their home on, for example, a street-by-street basis than to redevelop strata scheme land on a per-scheme basis.

Also, according to the Metropolitan Strategy the increase in the number of dwellings between 2000 and 2005 as a result of the implementation of "Residential Development Strategies (RDSs) to allow additional dwellings of a suitable type to be developed within the existing urban area to minimise sprawl" was successful.¹ Targets were met in the absence of laws to make it easier for strata schemes to be redeveloped. Neither the Metropolitan Strategy nor the Government's discussion paper explains why targets could not again be met without the changes to how strata schemes are ended.

Logically and morally, if depriving home owners of their home (apartment, town house or traditional home) is the way to increase housing supply, the NSW Government's discussion paper would cover both these options, or, rather, lump these two options together. It has been done before: the centre of modern-day Paris is the result of such an approach.

The real reason why the termination of residential strata schemes is again on the agenda is the profit motive. The Owners Corporation Network's submission of May 2012 on the topic of Review of Strata Legislation in NSW at least has the virtue of being honest, unlike the arguments used by the majority of the developer lobby. The Owners Corporation Network's submission rubbishes the self-serving arguments of the developer industry (housing shortage, urban consolidation, buildings falling down, energy efficiency) and replaces them with an argument that serves developers and owners in strata schemes just as well, albeit that its deficiency from a public policy perspective is immediately obvious.

¹ <http://www.metrostrategy.nsw.gov.au/dev/uploads/paper/housing/index.html> .

The Owners Corporation Network (OCN) submission² states: "The real problem for developers is the lack of any provisions in the NSW Strata Titles legislation facilitating the collective sale of all the lots and common property in a strata scheme to a third party."

While this is a true, it ignores the fact that, when this legislation was enacted, the view was that agreement to sell an entire block needed to be unanimous among the owners in a scheme. In other words, the legislation assumes that the planning process is able to deal with redevelopment proposals following the sale of an entire block.

While the OCN's submission is pointedly silent about owners in strata schemes who don't want to sell and in that way prevent the redevelopment of the land occupied by schemes, public statements by the OCN's current President, Mr Stephen Goddard, clarify what it is exactly that is bugging OCN.

The Sydney Morning Herald, 16 January 2010: A strata lawyer, Stephen Goddard, said he had acted for the owners of a unit block in Cronulla who had been prevented from developing their dilapidated building because an elderly owner refused to sell. "The building is 50 years old, well past its best and definitely not the best use of the property," Mr Goddard said. "But because just one of the 16 owners - an 80-year-old woman who is refusing to leave because she has convinced herself that she'll die if she does - is refusing to sell, everyone is stuck there while the whole block gradually falls to the ground."

This is quite a curious claim, because obviously no one was stuck in the block in question. Each and every owner was free to put their property on the market. They would not have achieved the premium associated with selling to a developer for redevelopment, but stuck? No.

The Sydney Morning Herald, 15 September 2012: "This idea that you have ownership of the bricks and mortar in a strata plan is a cultural fraud," [Mr Goddard] said. "Aunt Doris knew when she was buying an apartment that she was buying airspace, not clear title to a block of land. "Buying into strata means buying into a system of collective decision making. (...) Mr Roberts' [Minister for Fair Trading overseeing the review] biggest problem will be the political fear his colleagues will have of seeing little old ladies being dragged kicking and screaming from their homes. (...) "That is the fear which stops the growth of good public policy."

If we knew what a cultural fraud was, we might accuse Mr Goddard of committing one by pretending that airspace is something that can be lived in without a floor, roof and walls. 'Aunt Doris' bought her airspace on the assumption it would be surrounded by a floor, roof and walls at all times. The only time floor, roof and walls could be taken away would be with her permission, and, because it would affect all the other owners' airspaces, it would be with the permission of all the other owners. That, in fact, is what the law says, without there being fraud, cultural or otherwise, involved.

² Review of Strata Legislation in NSW, Submission by the Owners Corporation Network of Aust Ltd, Part 3 OCN Strata Renewal Model, May 2012.

Mr Goddard certainly cannot be accused of displaying an excess of diplomatic skills. In these two quotes from the Sydney Morning Herald, he:

1. Accuses an 80-year old woman of delusional beliefs and conduct;
2. Labels an entire female age group as “Aunt Doris” and “little old ladies”;
3. Predicts this entire female age group would need to be forcibly evicted and would resist eviction either violently and unlawfully or hysterically;
4. Describes insistence that a section of the strata laws be upheld as a “cultural fraud”, implying bad faith or criminality on the part of Aunt Doris, little old ladies and other ‘hold-outs’, another pejorative term used by the NSW development lobby, of which the OCN is an integral part.

Let us return to the OCN’s submission. It proposes strata scheme reform with the exact same end result as the proposals by a “number of major industry bodies, including PCA, UDIA and SCA (NSW)”. Whether the proposals by a “number of major industry bodies” are used or whether the proposals by the OCN are used, the upshot for owners in strata schemes would be exactly the same: they would vote and there would no longer need to be a unanimous decision to terminate the strata scheme.

Aunt Doris and the hold-outs

CPSA will use the term ‘hold-outs’ in this submission in the spirit of housing advocacy pride. Unlike what readers of the Sydney Morning Herald articles in which Mr Goddard was quoted might think, it’s not just “Aunt Doris” and “little old ladies” who frustrate the redevelopment of strata scheme land.

The Sydney Morning Herald of 15 September 2012 quotes Mr Peter Reedman, chairman of the 28-unit strata apartment block at 229 Miller Street, North Sydney (who has been trying to get owners to accept an offer from developers, with four still holding out) lists the reasons for holding out: some because they just don’t want to move; others because they want their share of the profits that developers can’t make unless they agree to sell their homes. “Most of it is just greed,” Mr Reedman is reported as saying.

It is strange that Mr Reedman accuses hold-outs of “greed”. Mr Reedman’s principal motivation in wanting to sell the entire apartment block rather than sell just his own apartment would have to be his own financial betterment. Mr Reedman appears to be just as interested in the premium that can be achieved by selling the entire block as the “four still holding out”.

The hold-outs, according to Mr Reedman, fall into two groups: (1) those that want to stay in their home and (2) those that aren’t happy with the price that has been offered.

CPSA believes that both categories of hold-outs have valid and legitimate arguments for not wanting to sell.

Hold-outs who want to stay

You can't blame people for wanting to stay in their own home. To take the example of the 80-year old woman in Cronulla who incurred Mr Stephen Goddard's wrath, her life expectancy would have been around five years. At that stage of her life, why would she want to go through the trauma of either buying a new place or, alternatively, finding somewhere to live temporarily while the strata scheme common property was being demolished and new common property erected? Why would she be interested in financial gain from the sale of her home so close to the end of her life? In spite of Mr Goddard's dismissal of her fear that moving house might kill her, housing advocates see what trauma is incurred as a result of forced removals.

There is another aspect to people in strata schemes not wanting to sell to a developer. Many of those that sold would not be able to stay in their area or would lose significant amenity if they sold.

If you live in an apartment block past its economic life and you sell your apartment as part of an apartment block sale, it is unlikely that you would be able to buy back an apartment in the same area in a comparable location. The Sydney Morning Herald (Hold-outs' time may be up with new rules, September 22, 2012) reports on the circumstances of Mr Phil Davenport, who lives in a 1920s apartment with views of Bondi beach. Mr Davenport is under pressure to sell his apartment to a developer, who, according to the Herald, "planned to turn the eight flats into four single-floor luxury apartments, with possibly an underground car park". (So much for the Metropolitan Strategy's aim of increasing the number of strata dwellings invoked in the Government's discussion paper.)

Mr Davenport puts the argument for wanting to stay succinctly: "If I had to move, well, maybe \$10 million might get me something equivalent. But there really is nothing equivalent. Nothing else will give me the same view, the same sunshine, the same high ceiling, the same convenience to everything."

The same argument applies in the case of elderly people living in lesser suburbs. They may be living close to the shops, to their GP, the bus stop. Sell where they live, even at a premium, and they would be likely to lose their ready access to amenities. Even if they could find something in their area with comparable access to amenities, it would most likely be a block that is also being eyed off by a developer for redevelopment. They would risk going through the same nightmare again, squandering their equity on stamp duty, real estate and other costs.

Hold-outs not happy with the price

While it is almost amusing to hear developers accuse hold-outs of "greed" or "just greed", those owners who reject a developer's offer are engaging in normal, commercial behaviour. They know that if they hold out for too long, the offer may not be improved or withdrawn altogether. Similarly, a developer committing to a project by gradually buying up apartments in a block knows that each purchase strengthens the bargaining power of owners who have not yet sold.

These are simply market forces at work. While the standard response from free marketeers in any industry whose purposes are being thwarted is to call for 'regulation', 'reform' or other forms of coercion, Governments should disregard such calls.

Owners who support the idea of a majority vote to end a strata scheme should also realise that, if it becomes easier to close a strata scheme, the premiums that a developer is prepared to pay to owners will be reduced. In a very real sense it is in the interest of those owners to maintain the current arrangements for the sale of an entire block, i.e. a unanimous decision among owners in the block.

Downsizing

Another consequence of introducing the termination of strata schemes by majority vote is that older people looking to downsize would be wary of buying into an older strata scheme. Old by developer standards can be less than 50 years.

This, incidentally, gives rise to the question why such buildings are deemed old, when in many parts of the world apartment buildings last much longer. Were they badly built developments in the first place? Should developers raise their game and erect buildings that don't fall down so soon?

Whatever the answers to those questions might be, older people would be foolish to buy into anything that might become the subject of a termination move. This could not only affect older buildings, but also newer buildings in areas where councils vary planning policies, allowing, for example, increased building heights.

The effect would be to significantly limit the downsizing options of older people and would be incompatible with the NSW Government's ageing strategy commitment to supporting "greater housing choices for the next generation of older people".

Two more disadvantages

It is also possible that an owner would be significantly disadvantaged by the forced sale of their strata property:

- if the sale price is less than the purchase price plus stamp duty and other costs, especially for recent purchases;
- for an investment property, if the sale is not timed right for Capital Gains Tax purposes.

Conclusion

It is a typical free marketeer ploy to lobby government for regulation when the free market produces a result that is not in their interest. This can lead to bullying, almost thuggish statements as the one from the previously quoted Mr Peter Reedman: "These hold-outs should maybe rethink their position. Once the legislation comes in, all these offers to make it easier to move might not be on the table any longer."

When “Aunt Doris” bought her apartment, she bought into security of tenure, she bought into an area, she bought into friends and acquaintances, she bought into her way of life. She also bought in the knowledge that those things could not be taken away from her.

“Buying into strata means buying into a system of collective decision making”, Mr Goddard is reported as stating. Very true, and what could be more collective than unanimity?

Proposals calling for anything less than unanimous agreement to sell an apartment block are not attempts at “good public policy” but expressions of greed parading as the greater public good.

Good public policy is evidence-based policy. The public policy interest in this case is for NSW to have an adequate supply of housing as identified in the Metropolitan Strategy. Public policy regarding the adequacy of housing should be formulated solidly within the context of the Metropolitan Strategy, not developed piecemeal.