

Evictions versus holdouts. How to painlessly dissolve a strata title

Written by Duygu Yengin, Associate Professor of Economics, University of Adelaide

Should private citizens be allowed to force the sale of a neighbour's property against his or her will?

Let's ask the question another way: is it fair that just one neighbour, or maybe a small group of neighbours, should be able to block the sale or redevelopment of someone else's property?

When it comes to collective strata sales, the answer isn't obvious.

À lire aussi : [***When developers come knocking: why strata law shake-up won't deliver cheaper housing***](#)

Strata title is the most common form of apartment ownership in Australia. It gives each owner 'title' over their own unit and shared ownership of the shared space. [Three million people](#) live in them. In most states (except for NT and NSW), 100% of the owners have to agree in order to terminate a strata scheme and sell the block of units.

The need for achieving a unanimous decision makes it difficult for ageing buildings to be sold and redeveloped in order to increase urban density. Until 2016, only 1.1% of all the strata schemes in NSW [had been terminated since 1961](#).

Economists, [at least since 1838](#), have understood that attempts to assemble complementary resources can be plagued by [the holdout problem](#).

À lire aussi : [***Economic theories that have changed us: game theory***](#)

A new law, which commenced in NSW in 2016, intends to remedy it. Only 75% of the owners in a strata will have to agree in order to sell or redevelop a site. Early in 2018 the Land & Environment Court issued preliminary decisions in [two cases in Sydney](#) . It's easy to see more will follow due to inherent problems with the solution.

What's wrong with 75%?

First, the urban redevelopment benefits might not materialise. There's no requirement for the properties developed to be replaced by properties with increased density.

Second, the legislation gives private citizens a power previously only available to the government: the power to compulsorily acquire someone else's property. Given the cultural and legal importance of property rights in Western societies, violating those rights is a big step.

Third, the law says the terms of the settlement must be “[just and equitable in all the circumstances](#)” . This can be taken to mean the market value of the lot and other costs, such those of moving.

But market value is problematic. The market value of the entire block sold as one will often be much more than the sum of the market value of each unit sold individually. And the market value of an individual unit might be insufficient to purchase a replacement in the neighbourhood after the redevelopment takes place.

À lire aussi : [***It's not just the buildings, high-density neighbourhoods make life worse for the poor***](#)

The property might be an investment which, if sold, would be [subject to capital gains tax](#) . After payment of the tax, the owner might have insufficient funds to purchase a suitable replacement.

And existing owners are likely to value their property higher than the market, otherwise, the property would already have been sold.

A premium is justified, but how much?

The legislation doesn't define the highly subjective concept, "just and equitable compensation".

It provides no guidance as to how to separate [the true subjective value to the owners](#) from what they might be asking for just because they're holding out to inflate their financial gains.

Our solution: reducing holdouts while protecting property rights

We believe it is. Most people didn't want to see a single owner holding out on a development purely for personal financial gain. On the other hand, most don't want to see a vulnerable resident removed from their home against their wishes.

The method we propose in [a working paper](#) coauthored with economists from Florida State University and University of California Santa Barbara assigns to each owner a right to a defined fractional share of any collective sales proceeds, equal to his or her proportion of the overall market value of the whole building, as assessed by the independent valuer (the shares add up to 100%). Then, each strata owner specifies the lowest price at which he or she is willing to sell.

How it would work

Consider an owner called Jo whose share is 10% and who nominates \$1.2 million as the compensation she wants (this may well be more than the valuer's estimate of the market price of Jo's apartment). For Jo to receive \$1.2 million, the whole building would have to sell for \$12 million.

Thus Jo, by nominating her required compensation as \$1.2 million has, in effect, set a reserve price of \$12 million for the whole building. Every owner does the same, each setting the building's reserve price. The highest of these building reserve prices becomes the actual reserve price and it is what matters: when it is met, every owner will get at least what they asked

for.

Wouldn't the owners all nominate unreasonable and untruthfully high prices? It turns out our scheme gives the owners a financial incentive to set a truthful price, that is to nominate the lowest prices at which they would voluntarily sell their individual properties. If they set a price too high they run the risk of the sale falling through and getting nothing.

How it could be used

It's an idea that could be applied in other contexts. The sale of group water rights in the Murray Darling Basin is one.

For decisions to sell strata-titled units, the scheme would require the appointment of a neutral agent to receive the individual demands for compensation and to set the (secret) reserve necessary to ensure no collective sale is made unless all demands for compensation are met.

It would eliminate the incentive for holding out. Any collective sale that took place would be unanimous, satisfying the NSW law and also the laws of the states that require 100% agreement.

There's nothing to stop it being adopted voluntarily, on a case by case basis, now, as an option that will get the best result for development and owners within the laws that we have got.

Les auteurs ne travaillent pas, ne conseillent pas, ne possèdent pas de parts, ne reçoivent pas de fonds d'une organisation qui pourrait tirer profit de cet article, et n'ont déclaré aucune autre affiliation que leur poste universitaire.

Authors: Duygu Yengin, Associate Professor of Economics, University of Adelaide

Read more <http://theconversation.com/evictions-versus-holdouts-how-to-painlessly-dissolve-a->

Evictions versus holdouts. How to painlessly dissolve a strata title

Written by Duygu Yengin, Associate Professor of Economics, University of Adelaide

[strata-title-103091](#)