

## RECORDS AT RISK

We continue to come across atrocious record keeping practices by some body corporate managers. Records arrive at our office in the following states:

- ✗ no financial statements for each year
  - ✗ financial statements where the balance from the end of one year do not agree with the beginning of the next
  - ✗ invoices in no order - a mix of years
  - ✗ no evidence of an annual reconciliation of the accounts
  - ✗ correspondence in no order
  - ✗ no tax records or tax returns not lodged for many years
  - ✗ records stuffed into brown paper bags
  - ✗ poor records of owner payments
  - ✗ owner debts not pursued
- Good record keeping is essential to the proper running of any body corporate.

What we see on a regular basis underlines the need for owners and their management committees to pay attention and not assume their managers have their best interest at heart.

Here are some suggestions:

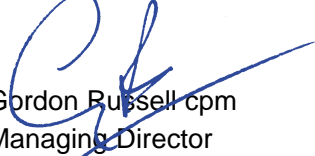
- ✓ At the annual meeting ask to see the records.
- ✓ Check that the financial statement balances agree with last years and that the accounts are attached.
- ✓ Ask to see all the correspondence for the last year and make sure it is in order and not a mix of years.
- ✓ Demand a monthly ledger of the accounts be sent to the Treasurer
- ✓ Ask for a copy of the Audit report - most managers charge for this and it is required by law

Having a manager does not absolve owners of the responsibility of care for their group.

These precautions keep managers on their toes and have the owners sharing the responsibility.

Trust should not be taken for granted, although intangible, it is precious and underpins our job as managers.

Cheers



Gordon Russell cpm  
Managing Director

*ps: our current newsletter can be downloaded from our web site*

## LIFE GIVING HUG

Recently a set of twins were born and each was kept in their respective incubators, and one was not expected to live. A hospital nurse fought against the hospital rules and placed the babies in one incubator. When they were placed together, the healthier of the two threw an arm over her sister in an endearing embrace. The smaller baby's heart rate stabilised and her temperature rose to normal.

Let us not forget to embrace those whom we love.



## viewpoint



Gordon Russell CPM  
Managing Director  
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## RAU REPORT INTO STRATA MANAGERS



The Hon. John Rau MP released his report on the strata title industry in February this year.

Amongst his many recommendations are:

- Professional Strata Managers should be registered and licensed so as to enable their activities to be scrutinised and regulated.
- A code of conduct and range of specific legislative requirements, including appropriate criminal sanctions, should be imposed upon professional Strata Managers modelled on those soon to apply to Real Estate Agents.
- Strata Managers should not be permitted to chair Corporation meetings.
- A quick, easy, inexpensive and user-friendly dispute resolution mechanism needs to be developed. .... the Residential Tenancies Tribunal could perhaps be modified to serve this function.
- A property vendor's Section 7 statement should be required to include a copy of the Corporation's most recent accounts. A concise explanation of the difference between Strata Title and Torrens Title should also be provided. Unpaid Strata fees should also be clearly and explicitly disclosed.

The report identifies:

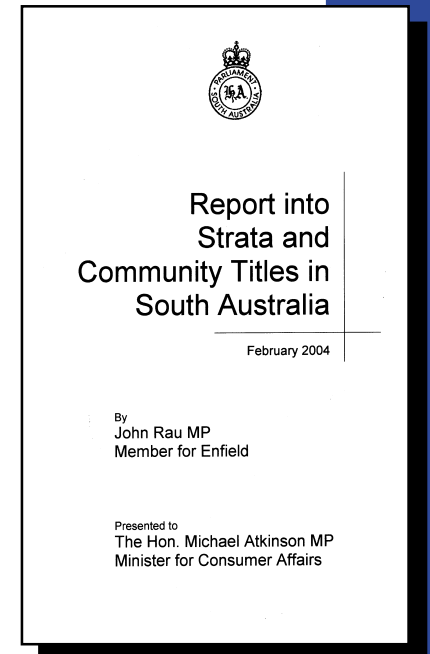
- funding for additional dispute and advisory services through the use of interest on strata manager Trust accounts.
- the need to adopt a wholistic process to the licencing and regulation of all real estate practitioners
- problem managers who refuse to hand over records and funds at termination
- the many problems faced by unit owners in 'vertical villages'.
- The lack of good information to prospective unit purchasers.

We applaud John Rau's efforts on this report and reform in the Real Estate Industry generally.

The report has gone to the Minister for Consumer Affairs. It is expected that a discussion paper and draft legislation will be forthcoming later this year.

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*see our web site for the full report*



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**after hours emergencies - must phone 8364 0022 for up to date numbers**

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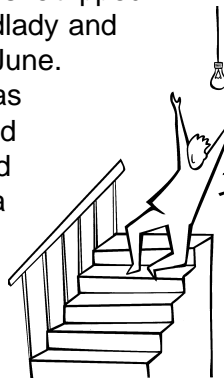
## LANDLORDS - TRIPPING OVER COURT

A Queensland tenant has been awarded a \$1.2m payout for back injury

A woman who injured her back when she tripped on a hole in a carpet sued her landlady and won \$1.2 million in damages last June.

The Supreme Court in Brisbane was told Donna Maree Muir, now 45, had fallen in the hallway of the house and landed in the bathroom, sustaining a serious injury.

Muir sued the owner of the house, claiming her injuries were caused by the owner or the agents' failure to take reasonable care for Muir's



safety. She claimed that the carpet had been allowed to remain in a dangerous state, that it had not been repaired after requests to do so, and that no interim measures had been taken to ensure that the carpet could not be tripped over.

Justice John Helman found that, by failing to replace or repair the hall carpet, the owner had failed to maintain the house in good tenable repair. He said the owner had therefore exposed Muir to a risk of injury □

Source: Courier Mail June 27, 2003

## ADELAIDE SOILS

Clay foundations are the cause of major problems to our houses, as they swell or shrink to some degree when they become wet or dry out. The concrete structure that transfers the load to this foundation is the footing system. The chance of footing failure is higher if extreme site conditions, such as the following are permitted to occur:

- ✗ Planting of trees too close to footing
- ✗ Excessive watering of gardens adjacent to the house
- ✗ Lack of watering to maintain moisture levels
- ✗ Lack of maintenance to site drainage
- ✗ Failure to repair plumbing leaks.

Reactive clay soils swell or shrink to such an extent, that foundation movements can damage houses. These soils are generally rare in major cities except Adelaide.

In order to prevent cracking to buildings and piping, corporations should find out the classification that is applicable to their site's soils and take the necessary advice to maintain the best soil equilibrium, to prevent soil heave or shrinkage □

Source: CSIRO Australia & [chu.com.au](http://chu.com.au)

free checkup

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negligence costs

reform on its way

## RAU REPORT RECOMMENDATIONS

8.1 Professional Strata Managers should be registered and licensed so as to enable their activities to be scrutinised and regulated.

8.2 A code of conduct and range of specific legislative requirements, including appropriate criminal sanctions, should be imposed upon professional Strata Managers modelled on those soon to apply to Real Estate Agents.

8.3 Conflicts of interest can and do arise between Strata Managers, Strata Unit holders, third party suppliers and developers. These conflicts need to be the subject of legislation requiring full disclosure of any such conflicts and providing penalties for breaches.

8.4 Strata Managers should not be permitted to chair Corporation meetings. The actual or potential conflict of interest associated with this behaviour makes it highly undesirable. This may mean that an independent chair person is required from time to time in some Corporations.

8.5 Certain core obligations imposed on Strata Managers are so important, as to require strict observance with appropriate formalities. This is the case irrespective of whether the Corporation is professionally managed or not. These functions include trust account auditing, obtaining and maintenance of appropriate insurance and the maintenance of an appropriate sinking fund.

8.6 In order to insure that adequate insurance is held and maintained, Strata Managers should be obliged to:

- a) Obtain a professional valuation as to the replacement cost of buildings at least every five (5) years.
- b) Arrange common insurance on behalf of Unit holders for each Unit (not including personal effects, furniture or chattels).

8.7 Irrevocable proxies should be outlawed.

8.8 A maximum term for Management agreements, or at very least a clear power to dispense with the services of a Strata Manager at any time, should be mandated by law.

8.9 Aside from certain specific obligations imposed on all Strata Managers at all levels of sophistication, a practical and legal distinction should be drawn between the simple Strata Corporation and a professionally managed Strata Corporation.

8.10 Professional Managers should be required to hold professional indemnity insurance as against a major default on their part, for example failure to provide adequate insurance cover for the Corporation.

8.11 Mandatory "sinking fund" arrangements should be introduced, with preference being for an insurance based product rather than by direct contribution to a fund (if possible).

8.12 Funding for the Regulatory Scheme may be in part secured from interest on funds held by Managers (currently estimated at \$13 million).

8.13 Strata Managers should only be able to exercise powers specifically delegated to them by the Corporation. Such delegation should be in writing to eliminate ambiguity.

8.14 A quick, easy, inexpensive and user-friendly dispute resolution mechanism needs to be developed. (The Victorian V. C.A.T. model seems to work well in other fields but it may not suit local South Australian conditions). In South Australia, the Residential Tenancies Tribunal could perhaps be modified to serve this function.

8.15 Replace the requirement for a unanimous resolution to approve the termination of a freehold Strata Scheme to a requirement that no more than 25% of owners vote against the termination (as currently applies for 'special resolutions').

8.16 Include provisions for dealing on fair terms with the interests of any owners not supporting termination.

8.17 The current segmented approach to legislative schemes governing Real Estate Agents, Strata Managers and other associated professional callings should be abandoned in favour of an holistic approach focusing on the common themes of accountability, transparency, avoidance of conflicts of interest and regulation through a licensing regime capable of imposing standards and regulating conduct in the industry.

8.18 A property vendor's Section 7 statement should be required to include a copy of the Corporation's most recent accounts. A concise explanation of the difference between Strata Title and Torrens Title should also be provided. Unpaid Strata fees should also be clearly and explicitly disclosed □

## RAU REPORT CONTINUED FROM PAGE 1.

We will continue to press for greater accountability through Managers being obliged to:

- ✓ supply quarterly financial reports to all owners
- ✓ monthly reports to Treasurers

- ✓ invoices to committees/officers for approval
  - ✓ supplying all owners a copy of the BC's insurance certificate following renewal
- and the establishment of an indemnity fund to protect unit owners money □