



COURT CASE

A recent case in the Magistrates Court commenced as a dispute over building works and moved on to highlight issues of governance and inequities.

The Magistrate asked the writer to report to Court on the matter.

The group of 7 is self managed and down by the beach. A site visit and review of the corporations records found some serious anomalies.

1: The unit entitlement : A review of the schedule of unit entitlement revealed that the unit entitlement value for one unit is the same as another even though the 1st unit is a two storey townhouse at least twice the size of the other unit. The 1st unit has sea views.

The inequity comes with the payment of levies. They are apportioned according to the unit entitlement. This results in the owner of the large unit paying the same levies as the smaller unit despite the much higher costs to maintain and insure.

We recommended.. That the strata corporation engage a independent licensed valuer to prepare a fresh set of unit entitlements.

That should the existing unit entitlements not comply with the + or - 10% required by Section 6 of the Strata Titles Act then the corporation cause the new set of entitlements to be lodged with the Lands Titles Office, and the corporation adjust all levies paid since the plaintiff became an owner. This will result in the plaintiff being reimbursed funds and the defendant having to put in additional levies to cover the payout.

2: Short term rentals: One owner at the group owns 6 units. They rent out 5 of the units as holiday units by the beach. The unit owner is running a business.

Short term leasing can lead to many behaviour related problems as the tenants have no relationship or sense of obligation to the other members of the group.

We recommended.. That the Strata Corporation amend its Articles to prevent leasing of units for a period of less than 6 months. The following is some wording that may be helpful.

Any lease or right of occupation granted by a unit holder to an occupier must be in writing and signed by both parties and must be for a minimum period of six (6) months.

Any lease or right of occupation granted by a unit holder to an occupier must include a term which expressly prevents the lessee or occupier under such instrument from subletting or assigning their interest in the unit, or from otherwise granting a further right of occupation to a third person.

3: Governance: The majority owner had for many years used his majority to appoint himself and his partner as the management committee, appoint he and his partner to paid positions and pay he and his partner from corporation funds.

Recommendations.. Appoint an Administrator for an initial 6 months to sort out the unit entitlement and amendment of the Articles.

That following administration minority owners be represented on the Management Committee.

That following administration, the Administrator go on to act as independent chair for a period of 1 year. The independent chair is to record and distribute minutes of all meetings for that period.

The matter is still before the Court at the time of writing ☐

DEATH FOCUSES US ON LIFE

Death twitches my ear

Live, he says...

I'm coming.

Virgil (Italian Poet 70 BC)

The death of a parent, tragic as it may be, can help us refocus our life.

Death forces us to look deeper into the nature and purpose of life. Reexamine our values and goals.

Contact with death awakens us to the fact that someday we too will die.

This might motivate us to change our life, live a more meaningful existence, improve our character, drop judgement, be kinder to others, love more, learn from the great philosophers, make time for friends.

We may also discover that life is more meaningful when we value our needs along with those of others.

The German philosopher Friedrich Nietzsche wrote..

" The Thought of Death. It gives me a melancholy happiness to live in the midst of this confusion of streets, of necessities, of voices: how much enjoyment, impatience and desire, how much thirsty life and drunkenness of life comes to light here every moment! And yet it will soon be so still for all these shouting, lively, life-loving people! How everyone's shadow, his gloomy travelling companion stands behind him! It is always as in the last moment before the departure of an emigrant- ship: people have more than ever to say to one another, the hour presses, the ocean with its lonely silence waits impatiently behind all the noise-so greedy, so certain of its prey! And all, all, suppose that the past has been nothing, or a small matter, that the near future is everything: hence this haste, this crying, this self-deafening and self-overreaching!"

Embrace life, take risks.

Cheers

Gordon Russell

ps: Do you have any friends who need to read our newsletter? Ring and we will post one out or they can download it from our website ☐

emergency numbers

Plumbing , Gas, Roof Leaks	8356 2750
Electrical	1300 130 229
Breakins & Glazing	0411 848 398
Police to attend - noise/robbery etc.	131 444
State Emergency Service storm/flood	132 500



SHORT TERM RENTALS - RAPID GROWTH

" *Entrepreneurs cashing in on Airbnb as rooms are sublet by the day.*" This was the headline in The Age newspaper on February 14, 2015. The article in part says...

Entrepreneurs are running networks of sublet apartments on accommodation-sharing website Airbnb, allowing tenants to offset their rental costs - and yielding a return potentially double what the properties' owners can earn.

A Fairfax Media survey of local listings on Airbnb reveals about a dozen operators running multiple listings of apartments. In some cases, these operators manage their network as a business, renting each room in the apartment separately, employing cleaning firms to look after the mess and taking a cut of the profit.

One user, with 20 listings on the website for rooms in four apartments, who would speak to Fairfax only on condition of anonymity, has put together a portfolio of acquaintances' apartments, which he manages on their behalf via Airbnb. To maximise profits, he lists each bedroom for rent separately and employs friends to work as cleaners.

All those whose apartments he lists are tenants. Subletting on Airbnb allows them to keep up with their rent.

The activity highlights the regulatory grey area in which the booming sharing economy operates.

Subletting a house on Airbnb is legal, if you have the "written consent" of your landlord, Landlords are required to give consent to reasonable subletting requests, meaning the subletting operates in a legal grey area.

On average, Airbnb listings in Melbourne go for \$135 a night - cheaper than a hotel, but much more expensive



than a comparable rental property. A professionally leased and managed apartment on Airbnb can return up to 14 per cent rental yield, twice what an investor might expect on the traditional rental market, the user said - " but there's obviously risk of eviction or prosecution".

Lobby groups are clamouring for the government to regulate the area and give body corporates in apartment blocks the power to stop short-stay rentals.

" Airbnb has gone from sort of a smaller cottage industry into some people making their main living," Accommodation Association of Australia chief executive Richard Munro said.

Meanwhile, owner's corporations are fighting for the right to lock Airbnb out of their buildings for good.

Rob Beck, general manager of Strata Community Victoria, called for owner's corporations to be given the power, via legislation, to impose minimum rental terms for apartments in their buildings.

" The current situation is untenable. You've got a huge amount of angst out there," Mr Beck said.

There are almost 200 apartments in the Adelaide square mile listed on Airbnb's Australian website at the time of going to press.

We at UnitCare are witnessing a rising level of complaints due to the disruptive behaviour of those using short term rental services such as Airbnb.

The answer for some of our clients is to amend their Articles / By-Laws to prohibit any lease of less than 3 months.

If your group is suffering from this problem we can help with advice and wording to change your group's Articles / By-laws ☐

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ASBESTOS REGISTERS - SAFEWORk SA

Following our Spring 2014 article we sought a definitive answer to the question, do residential unit groups need to have an Asbestos Register by law.

We wrote to SafeWork SA late last year and received the reply below.

The Executive Director states "As you are aware, Regulations 425-428 of the Work Health and Safety Regulations 2012 (SA) deal with asbestos registers. However, Regulation 421 stipulates that these requirements do not apply to any part of residential premises that is used only for residential purposes.

As such, **asbestos registers are not required for residential unit groups that are only used for residential purposes.**



Dear Mr Russell

Thank you for your letter dated 9 January 2015 regarding asbestos registers for residential unit groups.

As you are aware, Regulations 425-428 of the Work Health and Safety Regulations 2012 (SA) deal with asbestos registers. However, Regulation 421 stipulates that these requirements do not apply to any part of residential premises that is used only for residential purposes.

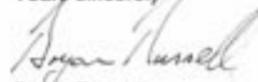
As such, asbestos registers are not required for residential unit groups that are only used for residential purposes.

If, however, the premises are used for a mix of purposes, for example retail and residential, an asbestos register would need to be prepared for the non-residential premises and common areas within the building.

Where an asbestos register is required, a person with management or control of a workplace must ensure that the register is readily accessible as per Regulation 427. Please note that this does not require a locked document box to be installed.

Information on identifying asbestos, creating an asbestos register and managing the risks of asbestos in the workplace can be found in the Code of Practice titled: *How To Manage And Control Asbestos In The Workplace* which can be accessed from the Safe Work Australia website at www.safeworkaustralia.gov.au.

Yours sincerely


Bryan Russell
EXECUTIVE DIRECTOR
SAFEWORK SA

An asbestos register is required by the Work Health and Safety Regulations 2012 (SA) (Regulations) but only for commercial premises. There is no legislative requirement for residential premises to have an asbestos register. The Work Health and Safety Regulations 2012 don't mention residential premises, only legislating asbestos in regards to work premises (s425). Safe Work Australia identified in the *How to Manage and Control Asbestos in the Workplace Code of Practice* that asbestos registers are not necessary for domestic premises."

We are circulating this letter to all body corporate managers, the Real Estate Institute of SA and the Strata Community Australia SA industry body in the hope that managers will cease telling their residential clients they are required to have the register.

One manager advised me that he advised its clients that in time the state government would move to have all asbestos removed from residential unit buildings. There is no evidence of this.

The reports we have sighted to date are vague. The authors have undertaken no tests and state that this or that 'may' contain asbestos.

If the matter of asbestos registers arises and you are an owner in a residential only unit group then use this letter to challenge those purporting to 'know' the law.

Of course if your group agree to undertake an asbestos audit knowing that it is not required then please look for a qualified firm.

On a related note a fencing contractor scared a new unit owner at one of our client groups into believing there was asbestos dust in the roof space above her unit. The roof is a 1960's asbestos roof. We engaged a specialist, no asbestos was found.

There is a lot of fear around the asbestos issue. There are legitimate concerns over this product. The risk is that the fear can be exploited to make a lot of money with little useful result ☐

RESOLUTIONS FOR UNIT RESIDENTS

The following article appeared in the online column Flat Chat in January this year. It looks at how unit owners can as individuals make a difference at their group. The content has been adjusted to suit South Australian laws.

Another year has rolled around and you still haven't got to grips with living in your unit group. You've got issues, but who hasn't? And you have something to contribute, but who's got the time?

Without getting all Pollyanna about things, if half the people in your block did some small thing to make it a better place to live, everyone's lives would be better and that isn't going to hurt property prices.

Ah, now I've got your attention. So here are 12 resolutions for you that will make your little corner of the world a better place.

1. Do something nice for a neighbour whenever you get the chance. Help them with their groceries or garbage or just ask them how their day's going. It will make you both feel better.

2. Put up a sign on your notice board (if your group has one) offering your services as ... whatever you can do. If you can fix computers or program DVD recorders or walk dogs, you will become the most popular person in the building.

3. Complain. Seriously, if something has been bugging you - like a noisy neighbour, barking dog or a parking thief - don't assume that everybody else knows about it and has already complained. Maybe they are like you and they're waiting for someone else to pick up the phone and have a whinge.

4. Stop complaining. If everything and everyone in your building upsets you, you are probably living in the wrong place. But if those issues aren't bad enough to make you want to move home or pursue a complaint through official channels, it's probably time to shut up and get on with your life. Either learn to live with the things you can't change or change the way you live. It's as simple as that.

5. Show up. Promise to attend your annual meeting, just to see what's going on. It's annual - only one evening a year - so do it.

6. Vote wisely. If you don't go yourself, don't give your proxy vote blindly to the chair, secretary or whoever is going around begging for votes. Find someone in the building who is going and who shares your views and give your vote to them. Blind proxy voting is lazy and anti-democratic and leads to autocratic strata fascists, whose main concern becomes holding on to power rather than doing the

right thing.

7. Attend at least one management committee meeting - just to find out how it works and for them to know you are there.

8. Get involved. Everybody should be on their management committee for at least one term, if only to discover what it's like to be on the receiving end of angry complaints from people who don't get involved. You probably have more to offer than you realise.

9. Get out of the way. If you are on your management committee and turn up for only half the meetings or even fewer, move over and let someone who gives a damn have a go. If you are only there to protect your own interests, and don't really give a flying fax about other people's problems, that's even worse. Go. Leave. Resign. You will not be missed.

10. Read your bylaws/articles. If you are an owner, they'll be at the back of the sales contract. If you are a tenant, the law says your landlord should have given you a set. You'll be amazed at the things you are allowed to do, as well as possibly surprised by the things you aren't. If they are not bylaws/articles or part of strata or community title law, they are unenforceable.

11. Think. There is an element of give and take in unit living. But while you might expect to hear noise from an occasional party, just because you live in a unit doesn't mean you have the right to re-enact Woodstock every weekend. Those tiles you put down without permission will only drive your downstairs neighbours mad until your body corporate forces you to recarpet at your expense. Those concealed speakers and giant sub-woofers in your surround sound might make you feel like you are at the cinema, but it will make the people above, below and around you feel like calling the police - which they can do. So if you don't want your "castle" to be under siege permanently, spare a thought for the effect your actions have on others.

12. Enjoy the fact that you are living close to where you want to be, with all the convenience and community that entails. And the next time a house-hobbit says "I wouldn't live in a unit for quids", smile and reply "That's OK, mate. We don't want you."

For more articles visit Flat Chat at <http://news.domain.com.au/domain/by/Jimmy-Thomson>

EMAIL ROLL OUT

Following testing we are rolling out emails to owners who have supplied their email address.

The current rollout will include ..

Correspondence to owners

Levy notices where they are paid by owners, not agents

Treasurer reports, these include an activity and arrears report along with the regular ledger. Most are sent monthly and enable scrutiny by the treasurers at all our client groups

work okay letters to committee and officers

Emails will be sent with a letter as text in the body of the email along with attachments where needed. Attachments are either pdfs or tifs (image file).

We will continue to post meeting notices and other legal notices.

Emailing important documents comes with some risks. To date we have encountered many emails returned to us as the owner's email address is no longer current and working. We have found that the causes are usually a change of job or internet service provider. A lot of owners have shifted to gmail accounts. Some workplaces have restrictions on the type or size of emails.

Saving mailing costs requires those with email addresses to ensure we have the current address and are promptly advised of any changes.

Please let us know if your email has changed or if you would rather we did not use your email address ☐

