

13 November 2006

Gordon Russell  
Unit Care Services

**Via Email: [gordon@unitcare.com.au](mailto:gordon@unitcare.com.au)**

Dear Gordon,

### **Advice concerning aspects of privacy legislation**

You have sought our advice regarding the provision by a strata manager of names, addresses and telephone numbers to a body corporate. In particular you have inquired whether such provision would contravene any privacy legislation.

I understand that the question has arisen in the context of a rival strata management business refusing to provide a body corporate with such information on the grounds that to do so would be in breach of privacy legislation.

Put simply, our advice is that a strata manager *can* (and *must* if requested to do so) provide such information to the body corporate (or an officer of the corporation) so as to allow the business of the body corporate to be conducted.

Our advice is based on the following facts. If any of the facts are incorrect, you should let us know because it might change our advice.

### **The facts**

You have been told that a strata management business is refusing to provide the officers of a body corporate (managed by it) with the contact details for the unit holders/owners in the group on the grounds that to do so would breach privacy laws. We understand that the body corporate and in particular its officers require this information for the efficient management of the affairs of the body corporate.

### **Relevant Law**

The relevant law that we have considered in providing this advice is as follows:

- Privacy Act 1988 (Commonwealth)
- Strata Titles Act 1988 (South Australia)
- Community Titles Act 1996 (South Australia)
- The common law of agency

**Please note the original of this email will not be posted unless otherwise requested.**

### **WARNING - this email is confidential**

This email (including accompanying pages) contains confidential information intended only for the named addressee. Any use, copying or disclosure by any other person is prohibited.

If you have received this email in error, please notify us by telephone immediately so that we may retrieve the documents at no cost to you.

**If you do not receive the complete email, please contact us immediately.**

\\odma\grpwise\lm.adl.short term:172745.1

## Analysis

### *Relationship between the Body Corporate (Strata or Community) and Strata Manager*

Strata Managers are given their functions and powers through the Strata Titles Act 1988 (SA) section 23(6) or section 76(9) of the Community Titles Act 1996 (S.A.). These provisions allow for the appointment of a person to assist an officer of the corporation. A manager is appointed by the body corporate, but that does not remove those same powers from the appointing body.

What exists in law between corporation and manager is an agency relationship. The manager is the "agent" of the body corporate, which is "the principal" in the relationship.

Agents generally:

- Have a duty to the principal to carry out the principal's lawful instructions.
- Do not have discretion to disregard instructions.
- Are not allowed to deny the principal rights that have accrued for the principal through their agency.
- Must acknowledge the principal's ownership of property where that property is held by the agent as agent.

The manager cannot withhold the property of the body corporate from the body corporate, nor can it deny the body corporate its rights.

The information concerning unit holders is the property of the body corporate. In this regard we note that you have provided us with an extract from a work published by the Victorian Law Foundation entitled "The Complete Guide to the Law and Managing Bodies Corporate". The extract quite properly points out the following:

*"The major function of the body corporate is to administer and manage property which is jointly owned by the members. Therefore **the body corporate must collect sufficient personal information to enable the members to communicate with each other and keep records of those communications.**" [our **emphasis**]*

The rights that the manager has evolve through the agency, as the rights of the body corporate. Hence withholding information concerning unit holders from the body corporate would amount to a breach of the manager's duty as agent.

### *The Privacy Act 1988*

The Privacy Act provides that generally, if the actions of an organisation (the managers would be regarded as such) breach a privacy code or a National Privacy Principle in relation to personal information, then this will be an interference with the privacy of the individual.

Hence, managers must have regard to National Privacy Principles.

The applicable Privacy Principles (see section 14) require that:

- A record keeper will maintain a record setting out the details of the records, which persons are able to gain access to the information and how they should go about doing so.
- Records with personal information must only be used for a purpose that the information was obtained for unless:
  - the individual concerned has consented to the use of the information for the other purpose, or

- the other purpose is related to the original purpose.
- The information cannot be disclosed to persons other than the individual unless:
  - The individual is likely to be aware that the information will be passed to the other organisation;  
or
  - They have consented to the disclosure (either implicitly or explicitly); and
  - The information is not used for an unrelated purpose for which it was originally obtained.

The National Privacy Principles, which are also applicable, cover similar ground but in addition require that:

- Information should be collected, where possible, from the individual.
- If personal information is obtained from someone else, the individual should be made aware of:
  - The identity of the organisation and contact details
  - The purpose for which it was obtained
  - Whom the information may be disclosed to
- If information is collected for another purpose, it must be related to the first purpose and if it is used for marketing, the individual must have either consented, or at least been provided with the ability to request that any communications using it do not continue.

The disclosure of non-sensitive information (like names, contact details etc) from one corporation to a related corporation is **not** an interference with the privacy of the individual. This is covered under 13B(1) of the Act.

As managers are agents for the body corporate, and as the information was provided to the manager by the body corporate (and did not attract the Privacy Act provisions), then the handing back of this information to the rightful owner of the information (that is the body corporate) will not offend the Act.

Even without this provision, it could be reasonably expected by unit holders that their contact details would be provided to the officers of the corporation to allow the proper functioning of the business of the body corporate. This is the purpose for which the information was originally collected and providing the information back to the body corporate cannot be regarded as "any other purpose" and even if it were, it would most certainly be regarded as "a related purpose".

I trust that the above advice is sufficient your current needs.

If you should have any questions concerning the above, please do not hesitate to contact me.

Yours faithfully



**Michael Hutton**  
Partner  
Lynch Meyer