



QUEENSLAND SHOWS THE WAY

The Queensland Government has recently enacted a code of conduct for body corporate managers.

South Australia should follow this lead, given the experience of many owners and groups that we have recently assisted over disputes with managers.

Here is an extract of Schedule 2 of the Queensland Body Corporate and Community Management Act. See our web site for the Act.

1 Knowledge of Act, including code: A body corporate manager must have a good working knowledge and understanding of this Act, including this code of conduct, relevant to the person's functions.

2 Honesty, fairness and professionalism: (1) A body corporate manager must act honestly, fairly and professionally in performing the person's functions under the person's engagement.

(2) A body corporate manager must not attempt to unfairly influence the outcome of an election for the body corporate committee.

3 Skill, care and diligence: A body corporate manager must exercise reasonable skill, care and diligence in performing the person's functions under the person's engagement.

4 Acting in body corporate's best interests: A body corporate manager must act in the best interests of the body corporate unless it is unlawful to do so.

5 Keeping body corporate informed of developments: A body corporate manager must keep the body corporate informed of any significant development or issue about an activity performed for the body corporate.

6 Ensuring employees comply with Act and code: A body corporate manager must take reasonable steps to ensure an employee of the person complies with this Act, including this code, in performing the person's functions under the person's engagement.

7 Fraudulent or misleading conduct: A body corporate manager must not engage in fraudulent or misleading conduct in performing the person's functions under the person's engagement.

8 Unconscionable conduct: A body corporate manager must not engage in unconscionable conduct in performing the person's functions under the person's engagement.

Examples of unconscionable conduct—

1 taking unfair advantage of the person's superior knowledge relative to the body corporate

2 requiring the body corporate to comply with conditions that are unlawful or not reasonably necessary

3 exerting undue influence on, or using unfair tactics against, the body corporate or the owner of a lot in the scheme

9 Conflict of duty or interest: A body corporate manager for a community titles scheme (the **first scheme**) must not accept an engagement for another community titles scheme if doing so will place the person's duty or interests for the first scheme in conflict with the person's duty or interests for the other scheme.

10 Goods and services to be supplied at competitive prices: A body corporate manager must take reasonable steps to ensure goods and services the person obtains for or supplies to the body corporate are obtained or supplied at competitive prices.

11 Body corporate manager to demonstrate keeping of particular records: If a body corporate or its committee requests, in writing, the body corporate manager to show that the manager has kept the body corporate records as required under this Act, the manager must comply with the request within the reasonable period stated in the request.

We will bring this important development to the attention of our politicians.

Cheers

Gordon Russell CPM

ps: Do you have any friends who need to read our newsletter? Ring and we will post one out ☐

viewpoint



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EMERGENCY NUMBERS	Service	Number
	Plumbing , Gas, Roof Leaks	8356 2750
	Electrical	8244 0733
	Breakins, & Glazing	0437 818 449
	Police to attend - noise/robbery etc	131 444
	State Emergency Services	132 500

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MANAGER'S BAD ADVICE COSTS OWNERS

At an AGM in 2006 owners in a multi storey group of units considered allowing unit owners on each floor to construct lockers on the common property about the lifts. Their manager advised the chair and owners 'that only a simple majority was required'.

The meeting moved that 'the common area on each floor be under the control and responsibility of the owners of the units of that floor. Any work performed on each floor must have unanimous approval of all units on that floor. Any construction made on the common area will be subject to subsequent unanimous agreement by units of the floor. If one person objects on the respective floor the construction must be removed'. This motion is recorded as carried with 15 votes for and 7 against.

This motion clearly breaches Section 26 of the Strata Titles Act in permitting common property to be alienated for the benefit of individual unit owners without the required unanimous resolution (2/3rds of owners agree with no dissent) or regard to local fire and planning regulations.

Section 26(4) The strata corporation may, if authorized to do so by unanimous resolution of the corporation, grant to a unit holder an exclusive right to occupy part of the common property for a specified period.

Some owners have already undertaken works. This is a breach of Article 5 of the Corporation's Articles as follows...

5) The registered proprietor of a unit and every occupier thereof shall not: a) Use the common

property or permit the same to be used in such a manner as unreasonable to interfere with the use and enjoyment thereof of other members of the corporation or occupiers of units or their families or visitors.

We understand that the Corporation has failed to put in place any leases over the common property, collects no rent for its use and has not addressed the issues of insurance, maintenance, transferability to new owners and reinstatement.

The Fallout: We are acting for an elderly owner who has grave concerns for issues of fire safety and the use of common property without addressing leases, public liability, maintenance and changes of ownership. The manager has refused to reply to our request to rectify the situation. Our client is now being blamed for tensions at the group. Some owners are telling our client to sell up and move out.

We believe the manager has failed in their duty to the Corporation and our client. This matter has been before the Courts. The magistrate told the Presiding Officer and strata manager that 'they didn't have a feather to fly on' and that the works were illegal. The matter is currently in mediation between our client and the more moderate members of the management committee. We understand that some members of the group are seeking the removal of their current manager.

You have to wonder what unit owners get when they pay and pay every year for a strata manager ☐



ANNUAL AUDIT REPORT

The annual independent audit has been undertaken. As is our policy a copy of the report, warts and all, is forwarded to the Treasurers of our client groups. Our clients trust us with their money and pay for the audit, it's the least we can do.

We are concerned at recent evidence that some strata managers are not undertaking the statutory audit. Ask your manager for a copy just to make sure they are doing the right thing by your group and the law.

View a copy of the latest audit on our web site www.unitcare.com.au ☐



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BIG IMPROVEMENTS IN STRATA INSURANCE

Corporate Home Unit Underwriters (a subsidiary of QBE insurance) has recently announced some additional benefits to its residential strata policy. We will be supplying all of our clients who use the CHU/QBE strata insurance with a policy summary with their annual meeting minutes. Below is our summary of the major changes.

Emergency cost of minimising losses. Limit increased to \$2,000. An example would be temporary roof cover following storm damage.

New temporary protection - includes protection for both property and resident persons.

Temporary accommodation 'Uninhabitable' replaced by 'made unfit for its intended purpose'. This cover applies until the lot or unit is reoccupied.

Rent. 'Uninhabitable' replaced by 'made unfit for its intended purpose' and cover applies until the lot or unit is relet. Owners are now covered for the gap between when the building works are completed and the tenant commences leasing.

Cost of reletting. This is a new cover and covers the cost to relet the unit. eg; advertising and agents fees.

Emergency accommodation. Cover increased to \$1,000 without a daily limit. For example if accommodation is short then owners can use a luxury hotel as needed.

Alterations/ additions: Covers alterations/additions if the value of such work does not exceed \$100,000. For example an owner installs expensive kitchen - now covered.

Arson reward. Benefit increased to \$10,000 from \$5,000 and includes theft, vandalism and malicious damage.

Electric motors. Size of motor increased to 5 kilowatts from 4 kilowatts and age limitation of 20 years removed. This deals with larger airconditioning systems in residential strata.

Exploratory costs. Repair of parts and pollution damage caused by leaking water apparatus increased to \$1,000 from \$500.

\$20 excess has been removed. This improved cover allows for repairs to pipes etc. even when no building damage has occurred.

Fallen trees. Benefit increased to \$5,000 from \$2,000. This cover no longer discriminates based on who owns the tree - neighbour, unit owner or body corporate.

Key, lock replacement. Benefit increased to \$5,000 from \$1,000 Now covers large costs associated with secured buildings and issue of new keys.

Landscaping. Benefit increased to \$10,000 from \$1,000 and includes lot owners' landscaping.

Mortgage discharge. This new cover pays the cost of owners discharging their mortgages if building is demolished/uninhabitable.

Pets, security dogs accommodation. Benefit increased to \$1,000 from \$500

Records. Benefit increased to \$50,000 any one claim from \$5,000 any one period of insurance. Clause requiring records to be in the custody of an office bearer or strata manager has been removed. This cover pays for the reinstatement of corporation records lost or destroyed, such as in a fire.

Removal, storage costs. Benefit increased to \$10,000 from \$5,000

Water removal from basement. This new cover pays for the removal of water that has flooded a basement or undercroft parking area.

Audit costs incurred if Australian Tax Office or other Government authority requires an audit of the Corporation's records.

Legal defence expenses. CHU has increased the cover on this policy to \$50,000 up from \$20,000 to cover the cost of legal assistance if the Corporation is sued in the course of conducting its business.

These changes apply to both residential Strata Titles and residential Strata Schemes under the Community Titles Act. UnitCare act as an agent for CHU/QBE body corporate products. Visit www.chu.com.au for more details ☐



Insurance Improvements

BEWARE PRIVATE WATER METERS

Early this year we took on the management of a large group of units. One of the reasons the group changed management was that the manager had not addressed anomalies with the meter readings and billing of owners for their use. Our research revealed that some of the private water meters were under reading by up to 70%. This rendered all readings suspect. The meters had at the time been in place since the construction of the group ten years previously. The fallout was that owners needed to bear the cost of replacing all the meters or pay by lot entitlement regardless of consumption. The group decided to pay the \$14,000 + bill to have all the meters replaced. Readings for the July to September quarter will take effect in October. The readings will be undertaken by Strata Water Solutions who will also bill the owners. The investors will then be

able to bill their tenants for the cost. We strongly recommend private water meters be tested at regular intervals ☐

SOME FEES RISE

Tax compliance and the rising staff costs have seen us review the fees we charge our clients. Many remain the same however the cost of tax compliance will see the first rise in our tax related fee in over a decade. Daily we receive calls or letters from the ATO. Much of it is an unnecessary nuisance however it all takes time to ensure our clients comply with tax law. An up to date schedule of our fees appears on our website under the 'Compare us to Others' button ☐

BEST PRACTICE - OWNER'S DUTY TO MAINTAIN

This is a new column where we will tackle body corporate issues and look at best practice in resolving the issues.

Duty of Unit Owner to Maintain

Residents in a group start complaining about the state of unit 1's rear yard. They complain of the bags of rubbish, overgrown lawn and their bushes pressing against the dividing fence. What can be done to fix this? Surely an owner can do what they want in their yard?

The Corporation has a lot of power under the Act to maintain the integrity of the group. This includes ensuring that owners maintain their unit.

Article 1 of the Strata Titles Act states:

1(1) A unit holder must-

- (a) maintain the unit in good repair;
- (b) carry out any work ordered by a council or other public authority in respect of the unit.
- (2) The occupier of a unit must keep it in a clean and tidy condition.

Section 25(c) of the Strata Titles Act states:

The functions of the strata corporation are as follows:

(c) to enforce the articles of the corporation.

Section 28 of the Strata Titles Act states:

28. (1) A strata corporation may, by notice in writing to a unit holder, require the unit holder-

- (a) to carry out specified work in pursuance of a duty of maintenance or repair imposed on the unit holder by the articles;
- (b) to carry out specified work to remedy a breach of this Act or the articles on the part of the unit holder, a former unit holder, or an occupier or former occupier of the unit;
- (c) to carry out specified work required to be carried out on the unit by a public authority or council.
- (2) If the unit holder does not comply with a requirement imposed under this section within the time allowed in the notice, a person or persons authorised by the strata corporation may (using such force as may be reasonably necessary in the circumstances) enter the unit and carry out the specified work.

(3) A power of entry must not be exercised under subsection (2) unless the unit holder has been given reasonable notice of the proposed entry.

(4) Any cost reasonably incurred by the strata corporation in having work carried out under this section may be recovered as a debt from the unit holder.

In the case of the yard in a mess, we would recommend that the owner be served notice in writing only after the committee or manager have seen evidence of the need to serve such notice. Once satisfied we suggest a notice giving 7 days for the owner to make good the yard and remove the rubbish. The notice needs to be clear about what is required by the Corporation. We recommend that a highlighted copy of the Articles and sections of the Act be attached.

Here are some further examples of breaches of Article 1

- Blinds/Awnings in a poor state
- Rubbish in their rear yard
- Oil stains in their carport
- Goods or rubbish stored and on show in their carport
- Lawn/yard badly overgrown
- Flyscreen on their door or window falling apart
- Littering with cigarette butts
- Clothesline in a poor state
- Trees overhanging another unit yard, causing risk or damage
- Leaking water apparatus eg: bath or trough into unit below

You will notice that the Act gives the Corporation the right to recover any related costs and if needed enter private property to rectify breaches of Article 1.

Where the Corporation has a manager we strongly suggest that the manager take no action unless the group's management committee has authorised them to do so in writing ☐



best practice



NETWORK 10 WEATHERCAM

Over the past six months we have helped one of our clients negotiate a lease with local television station Channel Ten to install their well known weathercam. They have recently moved their studio from North Adelaide to the City. This move has seen the need to find a new spot to locate their popular weather camera.

At the time of going to print the camera is being commissioned. Its new location is going to provide easier access and greater manoeuvrability. We understand that viewers will get sweeping views of the city on the nightly news.

This income from this lease along with two others on this prominent tower block will enable the owners and their management committee to undertake some improvements along with some overdue repairs ☐