



CAMPAIGNING BEATS COMPLAINING

If you can see needs being ignored such as vital maintenance, or liberties being taken with common property, your best approach is action. Gather all the information available about the problem, formulate a solution, then start by contacting all owners with your ideas. If it is a maintenance matter, arrange for quotations from reliable tradespeople. If it is a common property issue, check the Corporation's records for any policies or longstanding approvals for individual use. Once you have done the legwork, you are in a position to approach the group with both the details of your concern along with an option or options for change. Campaigning is better than just complaining. If your corporation keeps doing what it's always done, you will keep getting what you've always got.

BEST SORT OF FRIEND IS HONEST

The following article is by Ruth Ostrow writing in the Australian last year. We believe it is worthy of consideration given the close proximity of unit living.....

It happens often. Something gets you down. You ring your friends for support. If you're female you probably tell the story over the phone or meet for a coffee. Men tend to meet their mates for a drink.

Greeted by a warm, supportive face. A buddy who sees the world as you see it, you begin the diatribe that generally falls into two main categories:

He/she has done me wrong! — an extended gripe about a partner who isn't being or doing the things they are supposed to. Or maybe — "No one understands me", a generalised whinge about bosses, kids, colleagues or staff who aren't supportive, don't get what you're trying to achieve, are putting up obstacles or being unhelpful.

The response friends give is called "a buy-in", where your version of events is accepted unequivocally. Friends will listen to your side and click their tongues. They will completely buy your story and collude with you. "Absolutely, your husband should have picked up the kids given that you are so tired! You do everything!" Or: "That's terrible, your boss didn't give you more money, you're the brightest spark in the company!"

Another term for this is a Pity Party: a party of pitying people who are only too quick to agree with your story and provide pity in spades. "Poor you. If I were you I'd kick him out!" Or: "Poor you, you should never have been treated like that. It's so unfair."

While Pity Parties seem like the most wonderful gift, they are in fact our worst enemies. Often our version of events is wrong. We are being oversensitive, we have misunderstood something or put the wrong slant on things.

By enrolling supporters we become self-righteous, which can make matters worse as we go in with guns blazing and create the very thing we have suspected or feared. It's a self-fulfilling prophesy.

Deborah Tannen, the brilliant US linguist, talks in her masterwork, You Just Don't Understand, about women needing trouble-talk to bond them. Women seek intimacy. They feel it ruins the intimacy to give solutions instead of pity. Men, too, can feel very sorry for each other over a few beers.

But the best sort of friend is an honest one. We should seek not to collude or be colluded with on versions of events, rather guided towards objectivity. It's not as satisfying as having someone play violin as we weep, but the results are empowering and worth the sacrifice.

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FAIR SHAKE OF THE SAUCE BOTTLE

Call us innocent and naïve but we continue to be astounded at the behaviour of developers towards purchasers, the very people who help make them wealthy.

Case 1: The developer markets this large group as having common recreation facilities including a pool, spa and tennis courts. The truth is that his company owns the spa and pool as they are on his unit. The developer then charges the Strata Corporation a monthly fee to access these "common" facilities and in addition the Corporation pays for maintenance.

Case 2: The developer sells the units and hands over some documents to an owner and leaves them to sort themselves out. Nine months later the owners are faced with the insurance policy ceasing and not knowing what to do. No inaugural meeting has been held.

Case 3: The developer and body corporate manager hold a meeting of the Corporation before the owners have settled on their units. The owners paid deposits some years earlier however they were not informed of the meeting. The developer and manager committed the Corporation and its owners to a 15 year contract with the manager, 25 years with a hotel manager and an open ended agreement with the Council to pay for the developer's encroachment onto Council land.

All the above cases have left unit purchasers confused and paying a price.

We are encouraged that some purchasers are seeking legal redress for the actions of developers. The cases that are developing focus on breaches of the Trade Practices Act, Land Sales & Conveyancing Act and the Strata or Community Titles Acts.

The time is long overdue for shonky developers to be called to account before the Courts.


Cheers

Gordon Russell CPM

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	8244 0733
Breakins & Glazing	0437 818 449
Police to attend - noise/robbery etc.	131 444
State Emergency Service storm/flood	132 500

MANAGER'S CARELESSNESS SEES OWNERS AT RISK OF BANKRUPTCY

The owners of a six unit group suffered a public liability claim from a visitor using the external stairs. The claim alerted their insurance company to the state of the stairs and that their design and construction failed to meet the Australian Standards. The Corporation in early 2008 had accepted a quote and was raising some \$40,000 when the strata manager wrote the following to owners on May 6th....

"In September 2003 the corporation's insurer sent a notice advising that unless the common area steps were upgraded to meet the Building Code of Australia 1996 then they would not be in a position to offer renewal of Policy 2 - Legal Liability or Policy 6 - Office Bearers Liability. The corporation held an Extra Ordinary General Meeting on 30 October 2003 to discuss this. At the 2004 Annual General Meeting a quote was accepted of \$3,850 to install handrails to the steps as agreed with the insurer. They were installed.

At the 2005 Annual General Meeting approval was given to install additional lighting to the steps from the car park to the units. This was done.

On 27 February 2004 the insurer advised that they would diarise their files for two to three years time (2006 - 2007) re: the replacement of the steps. To date the corporation's insurer has not implemented the warning given in September 2003 not to offer Liability insurance cover or Office Bearers Liability cover and the 2008 insurance renewal has been received and paid.

The improved lighting and the handrail has clearly made a significant improvement to the safety level of the steps since 2003.

The current corporation owners if you so wish, may determine that there is no current obligation upon the corporation to replace the steps and you may resolve not to do so. If in the future ~~the~~ or some other insurer does impose a requirement upon the Corporation to replace the steps then the Corporation will need to address this issue at that time.

As to monies collected to date our view is that if the Corporation decides upon this proposal then those monies can be returned to the individual unit holders. If and when the situation arises that the steps need to be replaced then the Corporation would need to meet and resolve to fund the works. That would then be subject of an appropriate levy from the unit holders at that time."

The outcome was that owners in good faith accepted the manager's advice and were refunded their levies.



The insurance company cancelled the public liability cover on renewal in early 2008 - a month before we became managers.

The insurance company have advised us that the manager at no stage in 2008 asked them if they were satisfied with the state of the stairs

This has left the owners personally exposed to any claims related to the stairs.

We have had bunting erected about the stairs to warn all not to use the stairs.

Given the owners had agreed to the work and were raising the money, we are at a loss to understand the manager's advice to owners. We believe the advice may be the basis of a claim of negligence against the manager and their firm should a stairs related injury claim arise.

This is by no means an isolated case and reinforces the need for managers to be regulated and trained ☐

For more stories www.unitcare.com.au/case_studies.html ☐

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BOUNDARIES - STRATA TITLES: WHO

OWNS WHAT

The question of what is and what is not common property can be a difficult issue, and can cause many disputes.

The following is an extract from our upcoming Best Practice Manual due for release in July.

Generally speaking, the boundary of a unit is the internal surface of its walls, floors and ceilings (but another boundary may be specified on the strata plan). A unit may also include an area defined on the unit plan as a 'unit subsidiary', which is an area for the exclusive use of a particular unit, for example a carport or garden. Common property is any land or space that is not within a unit.

Common property such as pipes or electrical wiring which service a number of units can run into these boundaries, which then complicates any strict definition of 'common' property. Such things as pipes or electrical wiring which service only one unit are considered part of that unit and not part of the common property. It should be noted that in most strata corporations the roof, roof space, guttering, external walls and foundations are common property.

Section 5 part 5 of the Strata Titles Act spells out the physical boundaries of a unit by defining what the unit holder owns and therefore is not the Strata Corporation's responsibility to maintain.

(5) Subject to any explicit statement to the contrary in a strata plan, the following principles apply to the definition of a unit by strata plan—

- (a) where a boundary is defined by reference to a wall or fence—the boundary is the inner surface of the wall or fence;
- (b) where a boundary is defined by reference to a floor—the boundary is the upper surface of the floor;
- (c) where a boundary is defined by reference to a ceiling or roof—the boundary is the under surface of the ceiling or roof.

The internal walls and yard subsidiaries are not common property but the owner's to maintain

The Corporation is responsible for maintaining the common property. In the case of a unit this includes: the external walls and floors, the foundations, the roof, the space in the roof, gutters and eaves immediately below the gutters

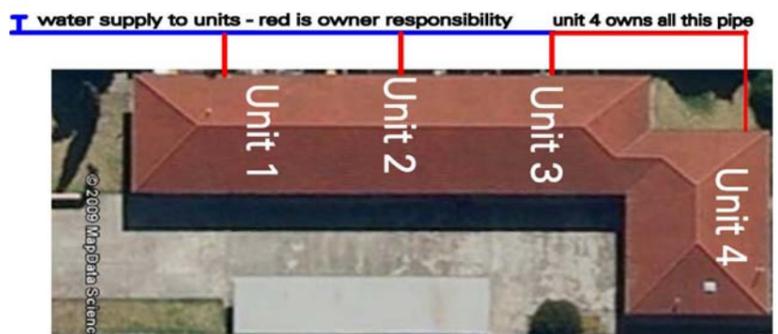
This does not include, fixtures and fittings such as kitchens and bathrooms.

Section 5 part 6 of the Strata Titles Act goes on to spell out other structures and services that are the Strata Corporation's responsibility to maintain.

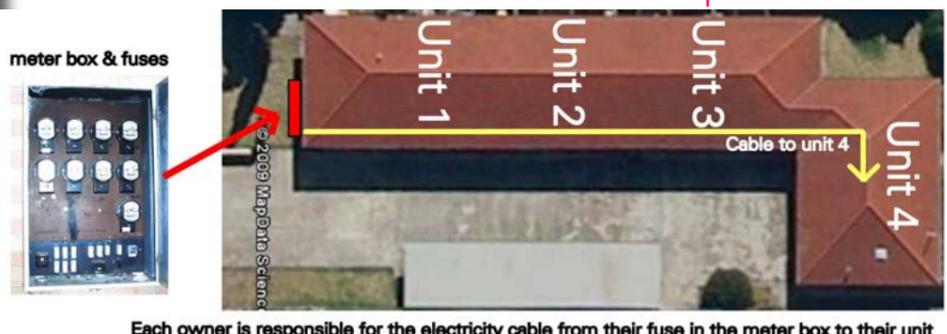
- (6) The common property comprises—
 - (a) any land or space that is not within a unit;
 - (b) any pipe, cable, wire, duct or drain that is not for the exclusive use of a unit;
 - (c) any structure that is not for the exclusive use of a unit installed before the deposit of the strata plan;
 - (d) any structure installed by a strata corporation as part of the common property;
 - (e) any other structure on the site committed to the care of a strata corporation as part of the common property.
- (7) Subject to any explicit statement to the contrary in the strata plan, a wall or fence between a building that forms part of a unit and a unit subsidiary to that unit is part of the common property.

What does this mean? Land that is not within a unit, and services that do not serve a single unit, are the Corporation's common property. This includes common driveways and the land beneath the property, the common sewer etc.

The Corporation is responsible for: water pipes until they only serve a unit. In the illustration below, the pipes shown in red are the owner's to maintain.



The electrical supply is common property until it meets the fuse serving only one unit i.e.: the meter box



In the example above, the cable to unit 4 is the owner's to maintain despite it travelling through the common roof space.

The sewer is common property until it meets the junction serving only one unit (Note: if a common vent is attached to the unit then the sewer is common as cutting off the sewer would affect the venting of all the related units).

NEW ARTICLES REDRESS BULLYING

Over the past three years we have been assisting unit owners at a marina to resolve governance and bullying issues.

We are pleased to report that the group have adopted a new set of Articles that address many of the behaviour issues. The group have had their first AGM since the new Articles were put in place. The meeting went well. A new balanced committee has been appointed and owners are cautiously optimistic about the future.

We provide a consultancy service for any owners or groups needing help resolving difficulties at their body corporate.

The first half hour is free. Give us a call to make an appointment if you need to resolve a dispute at your group ☐



ROOF INSULATION - APPROVAL?

Our office is receiving an increasing number of calls from owners looking to install roof insulation. This follows the Federal Government's grants in its new Energy Efficient Homes Package.

For Strata Titled units and Primary Strata groups that are Community titled, permission is required to use the common property roof space. Our position is that the Management Committee has the power under Section 35(3) to give approval to an owner. A resolution might be...

It was resolved that the Corporation grant consent for all owners to install insulation in the roof space above their unit, subject to the unit holder and their successors in title agreeing without any further notice that the costs of and incidental to installation, maintenance, repairs and replacement shall be at all times at the expense of that unit holder from time to time. That the work be undertaken to a trade standard and that no insulation be installed on or above down lights, transformers and other equipment subject to heating.

For information on the government grant go to

www.environment.gov.au/energyefficiency/insulation/index.html

MANAGER FIDDLES WHILST BALCONIES ROT

The owners of a three storey group became aware two years ago that the balustrades on their balconies had rotted and were no longer safe. One of the owners contacted our office frustrated and concerned as their manager had collected the money but only half the balconies had been repaired.

We discovered that the manager had failed to ensure that the balconies could not be used and to date residents and their visitors still have access to the dangerous balconies.



Given that the owner had tried many times to expedite matters we advised her to take her concerns to the group's insurance company as their Public Liability cover may be voided given the failure to prevent access to the balconies or undertake the repairs. We anticipate that the insurance company will give the manager a kick up the proverbial. If this fails then the matter needs to be referred to the Court for a breach of Section 25 - duty to maintain ☐

MAGISTRATE & DEBT RECOVERY HITCH

In May this year we helped a group take an owner to Court to recover some \$3,000 in overdue levies and costs. The owner had been put in the hands of Debt Collectors however he had refused to pay the monies. The corporation incurred costs in pursuing the matter with Court the only option.

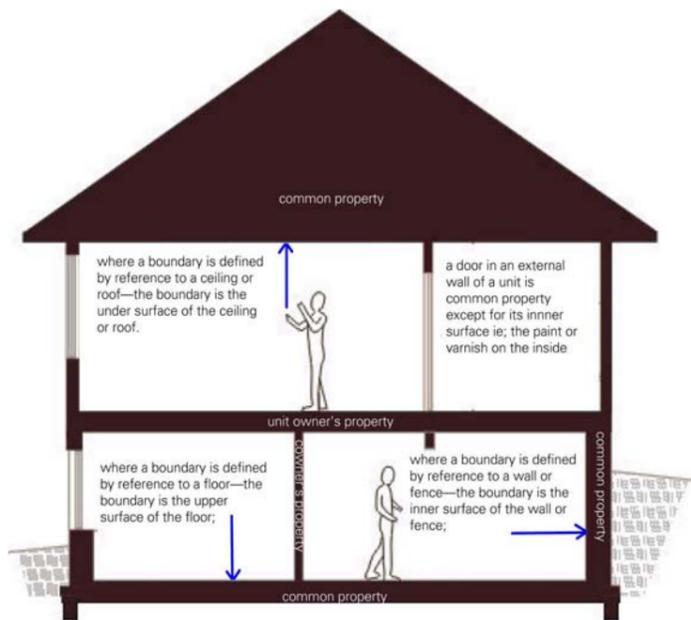
At the trial the Magistrate made it clear to the owner that there was no excuse for not paying the monies and made orders to that effect. The hitch was that the Magistrate disputed the validity of the Corporation's policy ..

Overdue Contributions Interest & Fees: That the payment of the Corporation Account Notice is the responsibility of each unit holder and accounts must be paid within twenty-eight (28) days of the due date for payment. If any account is not paid within 28 days of the due date unit owners are required to pay interest on the overdue amount at the rate of twelve (12%) per annum calculated from the due date until payment, and to pay all expenses incurred in pursuing recovery of overdue amounts including (but not limited to) legal fees, administrative costs, location and service fees and any commission payable to debt recovery consultants or solicitors. If the account is not paid by the due date a reminder notice will be sent with a late payment charge of \$11 including GST.

The Magistrate claimed that the policy was not enforceable as it was not in the Corporation's Articles. We disputed that it needed to be as the policy amplifies Section 27(5) of the Strata Titles Act...

(5) The strata corporation may recover an unpaid contribution (and interest on any such contribution), as a debt, from the unit holder of the unit in respect of which the contribution is payable (whether or not that person was the unit holder when the liability arose).

This is the first time we have had this difficulty with a Magistrate over debt collection costs. We are seeking legal advice. If the Magistrate's ruling stands then all Strata & many Community Titled groups in SA will need to lodge amended Articles and By laws. ☐



Boundaries (continued)

All boundary fences and gates, including those that separate units from one another are common property. Note that 'fence' includes a gate under the Interpretation section of the Strata Titles Act.

A pergola is common property if erected by the Corporation.

Best Practice

Make sure your group has an up to date set of Strata Plans.

Circulate a copy of the plans to all exiting owners and new owners as they join your Corporation.

Check the strata plan for any notation on boundaries - some pre 1988 groups have a unit boundary that is 1/2 way through the external, ceiling and floor.

The Lands Services Office can supply a copy of your group's plans if needed or contact our office and for \$25 we can supply a full set of