

CONVEYANCERS PUTTING OWNERS & SALES AT RISK

Recently we had cause to threaten a conveyancer. She had failed to pay all the levies owing by their client and had failed to seek up to date information from the strata corporation as required by law. The owner had been with our debt collector for some time.

The conveyancer argued that the Strata Corporation had no right at law to recover the overdue and debt collection fees. Her client had instructed her not to pay all of the outstanding amounts and she had failed to put monies in trust pending a resolution of any dispute as is standard practice.

We only received the funds owing to the group when we sent her a letter of demand and threatened to take her to the Australian Institute of Conveyancers and the Office of Business & Affairs.

We spent many hours fixing this problem. A problem that resulted from the conveyancers failure to do her job properly and by the law. The following explanation of the role of the conveyancer appeared in Real Estate Agent Pauline Kelly's September 2007 Update. See www.cocksauld.com.au or phone 8272 6789)

If Buying: The real estate agent will forward the contract & Form 1 to your conveyancer.

Your conveyancer will:

- peruse the contract & Form 1 & advise you of any implications
- advise you on the stamp duty concessions for first home buyers if applicable
- obtain & examine the title & statutory searches to ensure that there are no outstanding charges on the property
- liaise with your financial institution in regards to your mortgage
- prepare the legal documentation required to transfer the property
- arrange the stamping of the transfer prior to settlement
- prepare a settlement statement & forward it to you prior to settlement so you are fully aware of all your costs
- coordinate & attend the settlement with your financial institution at the Lands Title Office in Adelaide on your behalf
- advise you once settlement has occurred, & notify SA Water & council of the change of ownership (& strata manager if applicable)
- advise you on other real estate matters such as

powers of attorney, leases, private mortgages, business sales, private contracts, change of name, caveats & land divisions

If Selling: The real estate agent will provide your conveyancer with the contract, Form 1 & statutory searches.

Your conveyancer will then:

- liaise with your financial institution to obtain the title to your property & request your bank to prepare the documentation to remove their mortgage from the title or collect your title from you if there is no mortgage
- prepare a statement for adjustment of rates & taxes to be provided to the purchaser together with details of cheques required at settlement
- prepare a settlement statement showing your costs & indicating the net proceeds due to you
- arrange for legal documentation to be delivered to you for signing once signed by the purchaser
- attend settlement and receive funds on your behalf in exchange for your title, after ensuring that your financial institution has prepared the documentation to remove the mortgage from your title
- deposit funds in your nominated account or post them to you by registered mail
- notify your real estate agent that settlement has occurred, and notify SA Water & the local council that you no longer own the property
- advise you on any other real estate matters such as powers of attorney, leases, private mortgages, business sales, private contracts, change of name, caveats & land divisions.

Cheers

Gordon Russell CPM

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



viewpoint



Gordon Russell CPM
Managing Director
mail@unitcare.com.au

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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WHY INSURE MY RENTAL PROPERTY?

This article is an extract of Scheer Tips and can be found on the Terri Scheer insurance website terriscsheer.com.au. We strongly recommend unit investors ensure they have landlords cover.

Below, we have listed these claims that may highlight to Landlords the risk of having inadequate insurance or heaven forbid, no insurance at all to cover their rental property.

With malicious damage claims tripling in the last 5 years and the cost of insurance claims on the rise, why would they be willing to take the risk of such a big exposure?

Case 1: Recently, Terri Scheer Insurance Brokers dealt with a malicious damage claim on the Sunshine Coast. This claim amounted to \$35,000 and comprised of the following:

- ◆ Malicious Damage by the tenant to the carpet due to saturated urine plus treatment to the floor underneath the carpet
- ◆ Malicious damage by the tenant to the building itself for a cost of \$22,000
- ◆ Loss of Rent for arrears totalling \$2,562
- ◆ Loss of rent for repairs to the property dragging out to 10 weeks and \$4,800
- ◆ Accidental Damage by the tenant to the Landlords contents items

Case 2—Legal Liability: A tenant was awarded \$1.2 Million when she injured her back after tripping on a hole in the carpet of the property she tenanted.

She fell in the hallway and landed on the bathroom floor sustaining serious injury.

The interesting thing about this case was that a mat had previously been placed over the hole, though on the day in question it was removed to be aired which then resulted in the tenant tripping.

The assessed damages in this case included loss of future earnings, past and future care, interest and special damage and came to a total claim of \$1,248,402.

Case 3—Fire Damage & Loss of Rent: There was a recent case on the Northside of Brisbane where a tenant burnt down a rental property in fear for her life. The tenant had been behind in her rent to the amount of \$1,800 and was scared that her spouse would find out about the arrears. Her partner had just been released from jail for assaulting the lady in question and in fear, the lady panicked and set fire to the property in the hope that her spouse wouldn't find out about the rental arrears.

The damage amounted to over \$30,000, and disappointingly, the damage wasn't covered by the Landlords insurer as the fire was proven to be started with intent.

Had this Landlord protected their rental property with the Terri Scheer Landlord Preferred and Residential Building Insurance policies, they would have been covered for Malicious Damage by the tenant to the full sum insured of the building as well as loss of rent

Please note that UnitCare has reprinted this article for the benefit of its investor clients and receives no commission or consideration from Terri Scheer Insurance.



UnitCare Services
 phone 08 8364 0022
 fax 08 8364 6822
 web site www.unitcare.com.au
 email mail@unitcare.com.au
 P.O. Box 4040 Norwood Sth 5067
 46 Kensington Road, Rose Park

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

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COMMITTEE CONDUCT - NEW CODE IN QUEENSLAND

Code of Conduct for Body Corporate Committees-QLD

Editors Note: Other states continue to innovate and legislate for their unit owners whilst South Australia stands still. See our website (www.unitcare.com.au) for the QLD legislation. Local body corporate committees and managers may want to take note of what we believe should be standard practice.

Body corporate committees will be subject to a Code of Conduct under legislation passed by Parliament in Queensland this year.

Fair Trading Minister, Margaret Keech advised the Body Corporate and Community Management and Other Legislation Amendment Bill would also strengthen the statutory Code of Conduct for body corporate managers.

Bodies corporate will have the power to enforce the Code of Conduct against the voting committee member by removing that member from office.

Most bodies corporate are required to elect a committee responsible for day-to-day administration. Clearly a committee had a significant and important role in the ongoing management of a body corporate. Stakeholders have expressed concern about the conduct of committees. In particular it is claimed that many committee members do not understand their roles and do not act in the best interests of the body corporate.

It is apparent that these issues contribute to the cause and escalation of body corporate disputes.

The Code requires committee members to:

- ✓ understand the Act
- ✓ act honestly
- ✓ disclose to the committee any conflicts of interest
- ✓ ensure their behaviour does not affect enjoyment of common property

The Body Corporate and Community Management legislation includes a number of consumer protection provisions regulating the relationship between the body corporate managers and bodies corporate, including the Code of Conduct for managers. The statutory Code forms part of the manager's contract and includes obligations to act honestly, fairly and in the best interests of the body corporate. The Bill includes a requirement that managers must not attempt to unfairly influence the outcome of body corporate committee elections □



The article was printed in CHU's recent newsletter. Visit www.chu.com.au for more details

TREES: CARBON COP-OUT OR SAVIOUR?

Much has been made of offsets for our burning of fossil fuels including plane flights. The following is an extract of an article that appears on the Australia Institute website.

"The promotion of tree planting to individuals and businesses is a prime example.

Tree planting is the most popular type of carbon offset promoted in Australia but it is in fact the least effective for dealing with climate change."

"The evidence indicates that offsets from renewable energy are the most effective, followed by those from energy efficiency projects, with forestry projects ranked last," Mr. Downie said.

"Tree planting, or forestry, can not secure real, measurable and permanent reductions in greenhouse gas emissions because sooner or later the forest will be felled, burned or destroyed.

"Concerned citizens should be congratulated for wanting to reduce their carbon footprint. But when they buy offsets from a forestry project with their airline ticket, for example, they are

actually buying a promise that the immediate emissions from their flight will be gradually offset over the next 100 years. There can be very little if any guarantee that this will actually happen."

Mr. Downie said there are strong grounds for excluding forestry-based offsets from an emissions trading system in Australia, or at least placing restrictions on their use.

"The European Union's scheme has excluded them entirely," he said.

The paper can be read on the Institute's website - www.tai.org.au



committee conduct

BEST PRACTICE - PLUMBING. WHO PAYS?

We are continuing our new column where we tackle body corporate issues and look at best practice in resolving them..

Duty of Unit Owner to Maintain - Plumbing

Case examples:

Blocked sewer: The tenant contacts their property manager (PM) and complains that the toilet in their rental unit is backing up. The PM rings the strata manager (SM) and asks them to get a plumber to look at it. The SM states that PM should get their plumber in. Who is responsible? In most cases a blocked toilet is the result of a blockage in the common sewer (tree roots, old earthenware drains collapsing etc.). A SM plumber will usually be familiar with the drains at the group, (often the SM has a sewer plan) and will report on the cause of the blockage.

Best Practice: Corporation plumber attends, reports and charges the Corporation. If the report identifies the pipe as the owner's, or the cause of the blockage is tenant behaviour, then the Corporation will recover all or part of the cost. The plumber's report must accompany any recovery. Section 5 (6b) applies - The common property comprises any pipe, cable, wire, duct or drain that is not for the exclusive use of a unit.

Leaking Shower: The tenant contacts the PM and complains that the hallway wall on the other side to the shower is peeling and wet. The PM rings the SM and asks them to fix the problem as it must be a leaking pipe and therefore strata insurance. The SM has the Corporation plumber attend. There is no leaking pipe. The plumber's report shows that the tile grout in the shower has failed allowing water through the wall. The SM sends the bill and report to the owner. Is the owner responsible? Yes. The shower tiles are a treatment on top of the floor or on the wall, similar to carpet. The boundary is the surface of the floor or external wall. Section 5 (5b) applies. Internal walls are the owner's not

the Corporations.

Best Practice: We suggest PMs check the grout on every inspection or two. Regrout to ensure sealing around base.

In the case of poorly maintained showers the Corporation has a lot of power under the Strata Titles Act to maintain the integrity of the group. This includes ensuring that owners maintain their plumbing and shower by forced entry if needed.

Article 1 under the Strata Titles Act states:

1(1) A unit holder must-

(a) maintain the unit in good repair; 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.

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. We would recommend that the owner then be served notice in writing, say 14 days in the case of the shower. 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 □



best practice

CHRISTMAS ARRANGEMENTS

Our best wishes for the New Year, to you and those close to you.

This Christmas we are closing our office from 5pm Thursday December 20th and opening on Monday January 7th from 8:45am.

If you have an emergency over the break and you need assistance just ring **8364-0022**

for up to date details on contractors and emergency services, or see the list on the back page of this newsletter.

