

Stormy Waters – The Lives and Times of Strata Property Managers in the ACT

Owners Corporation Managers face a number of issues in fulfilling their functions as managers of owners corporations in the Australian Capital Territory. The area has undergone substantial reform and re-reform in recent years. The area can be rife with conflict and unrest, and this is particularly the case in Canberra in recent times. A good owners corporation needs to have a good understanding of the legislative framework along with the people skills to traverse the inevitable stormy waters. It is potentially daunting for the novice, and an appropriate dose of professional advice is often required.

In the ACT property managers responsible for the management of a strata title building will be appointed by ordinary resolution of the owners corporation members, pursuant to s50 of the Unit Titles (Management) Act 2011. The owners corporation enters into a management contract with the manager pursuant to this enactment.

Many owners corporation managers will be licensed real estate agents, who are appointed in a professional capacity pursuant to s50(1)(a). Others may be part timers, who are a member of the owners corporation, or who manage just one owners corporation, as a non-primary source of income.

A management contract must set out which functions of the owners corporation the manager is retained to perform, and may include other conditions agreed between the manager and the owners corporation. Importantly, s51 of the Act dictates that there is a time limit of 3 years as the maximum duration for any management contract.

Functions of an Owners Corporation Manager in the ACT:

As noted above, an owners corporation manager's functions will often be set out in the management contract. Pursuant to section 58 of the Act, further functions may be bestowed on the manager by a written delegation of functions coming from the owners corporation itself or from the executive committee.

Typically these functions will include being the point of contact for complaints by owners corporation members, and being the public face of the owners corporation.

An owners corporation manager may not transfer their rights and obligations under a management contract without first obtaining approval to do so by ordinary resolution of the owners corporation. The owners corporation may not, however, unreasonably refuse its consent.

Pursuant to section 57 of the Act an owners corporation manager is required to obtain and maintain a public liability insurance policy in accordance with the requirements set out in the ***Unit Titles (Management) Regulation 2011***.

Legal Responsibilities Pursuant to the Act:

Owners corporation managers can be subject to disciplinary action in certain cases. Pursuant to section 55 of the Act, a manager commits a 'remedial breach' if he/she fails to exercise his/her functions, is grossly negligent or engages in misconduct while carrying out

his/her functions, or contravenes the code of conduct set out in schedule 1, part 1.2 of the Act.

In the event that the owners corporation forms the view that a remedial breach has been committed, it may serve a written notice on the manager detailing the nature of the breach and giving the manager 14 days within which to remedy the breach or respond in writing giving reasons for denying the breach. The notice must also warn the manager that the owners corporation may end the contract if the manager does not comply, or the reasons for denying a breach are not accepted.

The Code of Conduct:

The code of conduct places a number of specific duties on an owners corporation manager. In brief, the code requires the following:

- the manager must have a good working knowledge and understanding of the Act;
- the manager must act honestly, fairly and professionally in exercising the manager's functions;
- the manager must not try to unfairly influence the outcome of an election for the owners corporation executive committee;
- the manager must exercise reasonable skill, care and diligence in exercising the manager's functions;
- the manager must act in the best interests of the owners corporation unless it is unlawful to do so;
- the manager must keep the owners corporation informed of any significant development or issue about an activity carried out for the owners corporation;
- the manager must take reasonable steps to ensure that the manager's employees comply with the Act, including this code, when exercising the manager's functions;
- the manager must not engage in fraudulent or misleading conduct in exercising the manager's functions;
- the manager must not engage in unconscionable conduct in carrying out the manager's functions;
- the manager must not accept an engagement for another owners corporation if this may lead to a conflict of interest;
- the manager must take reasonable steps to ensure the goods and services the manager gets for, or supplies to, the owners corporation are obtained or supplied at competitive prices
- the manager must upon request demonstrate that he/she has kept the owners corporation's records as required under the Act.

Section 56 of the Act states that owners corporation managers must comply with the code. As above, failure to comply with the code may be grounds for the owners corporation to end the management agreement.

Dispute Resolution:

Often owners corporation managers are faced with disputes and legal issues. After all, some strata titles can include hundreds of individual titles. The owners may have wildly varying interests in the property. A mix of owner/occupier units, units retained by the developer, units used as investment properties and leased to tenants, and even units

owned by the government and used by government housing recipients is possible. Many of these stakeholders will have wildly different motivations and wildly different expectations of their owners corporation manager.

Some strata titles can be the size of a small town, and unsurprisingly this mix creates perfect storm conditions for a cyclone of dispute. It is an oft-repeated truism that good fences make good neighbours. Take away the fences and increase the number of neighbours exponentially, and you arrive at an adequate description of strata title.

Many of the disputes can become legal in nature, and it is often the role of the owners corporation manager to deal with these situations.

Perhaps the most common problem facing owners corporation managers is disputes about maintenance or rectification of damage or building defects. These are tricky issues, as it typically involves one or more owners demanding that the owners corporation pay to attend to a maintenance or damage issue which affects their property. Of course, unit owners who are not affected by that particular issue are not always well disposed to contributing their own money to allow the works to proceed.

An Owners Corporation can be compared to a naval ship at sea in the vast expanse of the ocean. Hundreds of crew are packed together in close quarters. Occasionally they must unite to confront an external enemy, but for the vast majority of the time the day to day monotony pervades, and shipmates pass the time by engaging in confrontations and disputes amongst themselves.

The manager must act on behalf of the owners corporation as a whole. Often this may bring it into conflict with one or more individual unit owners. So whilst the owners corporation manager is ostensibly acting on behalf of the owners corporation, and by extension all of the individual owners, it is more realistic to say that at any given time the owners corporation manager may be acting on behalf of some owners, against other owners.

When a dispute does arise, the ACAT is the body with jurisdiction in regard to matters between different stakeholders within an owners corporation. Section 125 of the Act gives standing to a unit owner, the owners corporation or the manager themselves to be a party in a dispute pertaining to an owners corporation.

Pitfalls for Professional Owners Corporation Managers:

Where owners corporation managers can face more troubled waters is in the event of a clash between two groups, where the manager may have to choose between making the decision which is in the interests of the majority of unit owners, where this decision may be oppressive on the minority.

A common problem facing an owners corporation manager is the changing dynamics within an owners corporation subsequent to their appointment. Often the manager will be appointed early on after construction of a new dwelling, at a time when the owners corporation is controlled by the original developer, who retains the majority of units.

Where there are defects on common property, the new unit owners may want the owners corporation to sue the developer and require rectification. This will obviously not be in the

developer's interests.

Furthermore, suing the developer may not be in the manager's interests, as it is akin to biting the hand that feeds you. The same developer is unlikely to appoint one as manager on their next project if you have taken legal action against them in a prior project. This is especially true in a comparatively small community, like the ACT.

However if the manager backs away from litigation against the developer, the other unit owners may quite rightly see this as unreasonable, as it leaves them without adequate recourse. In this situation they may accuse the manager of breaching the code of conduct, or even apply to have the manager removed, and an administrator appointed.

It pays to be well informed about one's obligations as a property manager, and to take expert advice where necessary.

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