

ASSIGNMENT OF MANAGEMENT RIGHTS – COMMITTEE'S BEWARE

A decision to consent to the transfer of management rights ("assignment") is a very serious matter for a body corporate, of which many committees unfortunately fail to appreciate.

A committee should be satisfied that a proposed resident caretaker/letting agent ("manager") is licensed, qualified and a suitable person before they consent to any assignment.

Unfortunately, however, many committees fail to discharge their duty correctly and merely "rubberstamp" the application for consent to an assignment, without conducting a proper investigation into the proposed assignee. A committee, by failing to properly discharge this duty, expose themselves personally to claims and actions in damages by the body corporate and lot owners if the assignee proves to be unsuitable for the role.

Many committees are mistakenly of the view that they must accept a proposed assignee and do not have the power to refuse consent to the assignment. This view is simply wrong.

The regulation modules provide a list of criteria that a committee may apply in considering a proposed assignee. If a proposed assignee does not meet that criteria, the committee should refuse the consent. Committees should view the assignment process as a review of a potential job applicant. If a job applicant does not have the requisite skill and qualification they do not get the job.

The recommended steps that a committee should take are as follows:

- 1 **Appoint independent solicitors for the body corporate:** A body corporate should not use the same solicitor as the incoming or outgoing manager. A body corporate's legal fees are paid by the outgoing manager, so there is no reasonable excuse for not appointing solicitors to act for a body corporate. If a committee appoints solicitors and they follow their advice they will substantially reduce the chance of a successful claim being made against them should the manager prove to be unsuitable.
- 2 **Request and consider the information detailed in the Regulation Module:** The regulation module applying to the scheme gives a number of criteria that a prudent committee should consider.
- 3 **Interview the proposed assignee:** The committee should interview the assignee or appoint a number of their members to conduct the interview and report back to the full committee.
- 4 **Make a decision based on the requested information and interview:** The committee should make a decision based on the legal advice, the information supplied by the proposed assignee as well as the results of the interview.
- 5 **Impose a Transfer Fee:** Where the preconditions exist for the imposition of a transfer fee, the committee should impose the transfer fee unless the transfer is required because of "genuine hardship" experienced by the outgoing manager. A committee will leave themselves exposed to a claim by an aggrieved lot owner if they fail to collect the transfer fee. A decision on not imposing the transfer fee, should only be made in a general meeting.
- 6 **No Consent unless Body Corporate Costs paid:** The Body Corporate should not hand over the deed of consent until the legal fees and the transfer fee (if applicable) are paid.

The minutes will reveal the process taken by a committee and if the minutes reveal that the committee have failed to take the above steps, an aggrieved lot owner or body corporate will have sufficient prima facie evidence that the committee have failed to properly discharge their duty, where a manager proves to be unsuitable.

Committees need to take the consent process more seriously, as it is not too far away that an aggrieved lot owner or body corporate will use the Courts to make committee members accountable for failing to properly discharge their duty.

Herdlaw Solicitors are the body corporate lawyers who as a major sponsor of the Unit Owners Association of Queensland (UOAQ) specialise in representing the rights and interests of bodies corporate and lot owners. We have extensive experience in all aspects of body corporate law, including levy collections, assignments of management rights, dispute resolution applications, establishment and amalgamation of schemes, and general advice to lot owners.

Recent amendments to the governing legislation of bodies corporate in Queensland, the Body Corporate and Community Management Act ("the BCCMA") have introduced a new 'Code of Conduct' for Committee Members. The Code sets out basic principles and standards expected of each person who is chosen as voting members of a body corporate committee without increasing their existing obligations. Additionally, the changes will protect committee members from liability for an act done or omission made in good faith and without negligence, in performing the person's role as a committee member.

Herdlaw have assessed the changes and prepared short presentations, which will concisely outline these changes. These UOAQ seminars will be conducted at convenient locations throughout Brisbane during late **April and May 2007**. If you are a committee member concerned as to your duties and liability, or if you are a lot owner seeking more information on the actions of your committee representatives, these informative seminars are not to be missed.

For more information on the dates and venues of the "**Code of Conduct of Committee Members**" please contact our office on **07 3393 0433**