

Body corporate consent by Matthew Manz

Some years ago I wrote an article which explored some of the issues that we were beginning to see in terms of sellers obtaining body corporate consent to an assignment. Essentially, in that article I expressed my view that the process of obtaining body corporate consent to an assignment was becoming increasingly drawn out and, at times, difficult. The reasons for my view at the time were as follows:

1. Lot owners and committees were more aware of their rights under the Body Corporate and Community Management Act and the caretaking and letting agreements and were exercising those rights;
2. Body corporate solicitors were requesting significantly more information from buyers than ever before (often without justification); and
3. Buyers and sellers were not organized and adequately prepared.

A few years on from that article and I can safely say that the consent process has become significantly more difficult and more drawn out than at any other time over the 20 odd years I've been involved in the management rights industry.

Why is this?

Certainly the 3 reasons I have mentioned above are as valid today as they were previously. In addition to those reasons I would add the following:

1. Bodies corporate have been emboldened by the lack of any serious blowback or consequence from previous committee decisions to refuse consent to assignments;
2. Some committees perceive there to be a manager skills gap, particularly in relation to communication and a lack of any experience applicable to running a management rights business. Unfortunately in a number of instances this view has been justified; and
3. Bodies corporate have previously experienced poor managers and/or have been advised of poor managers by their body corporate manager or body corporate solicitor. Again, and unfortunately, this view has been justified.

With respect to points 2 and 3 it has meant that committees are more cautious when considering assignments, are asking for significantly more information and oftentimes when the applicant has little to no experience a requirement that the applicant undertake appropriate training.

As readers would know, under the Body Corporate and Community Management Modules, in considering an assignment, a committee can have regard to the following:

1. The character of the proposed transferee;
2. The financial standing of the proposed transferee;

3. The proposed terms of the transfer;
4. The competence, qualifications and experience of the proposed transferee and the extent to which those persons have received or are likely to receive training; and
5. Any other matters that are specified in the caretaking and letting agreements.

The caretaking and letting agreements usually place the onus squarely on the shoulders of the seller to ensure that the committee has received all of the information required to consider an assignment. It is therefore a matter for the seller, and the seller's lawyer, to make sure that they have this information from the buyer.

To ensure a smoother body corporate consent process my suggestion is that sellers, their lawyers and their agents make it clear to the buyer from the outset what items are required to be given to the body corporate. In addition to that, given the problems that we are experiencing as a result of the issues I have mentioned above, I would also suggest that when a seller is considering a prospective offer to purchase, that they take into account the skills and experience of the potential buyer in addition to their monetary offer. It just may be that a smoother body corporate consent process due to the buyer having sufficient skills will save on time, money and angst when compared to a failed or significantly drawn out body corporate consent process.

Building defects and the caretaker's role by Amy O'Donnell

Building defects continue to be an issue, and source of dispute, for bodies corporate. In an attempt to address this increasing issue, new body corporate regulations (which came into effect on 1st March 2021) now place greater obligations on builders, developers and bodies corporate to make sure building defects are identified and rectified on a timely basis.

What is a building defect?

There are a number of commonly used definitions, but a building defect is generally accepted to be "work that is faulty or below a reasonable standard of quality".

What is the body corporate's legal position?

Irrespective of who caused the building defect, or if the body corporate has any rights to hold another party responsible, the body corporate has statutory obligations in the Body Corporate and Community Management Act 1997 (Qld) (BCCMA) to maintain common property in good condition.

Accordingly, the body corporate is obliged to take action to ensure any

common property that has a building defect is repaired. This could extend to:

- repairing the building defect at the body corporate's own cost; or
- commencing proceedings against the entity who caused the building defect.

The appropriate approach will be determined by a consideration of the cost of repairs, urgency of the repairs and progress being made with the entity who caused the building defect.

What is the resident manager/ caretaker's role?

Whilst you (as caretaker/resident manager) will not be responsible for building defects in the scheme, you do play an important role in assisting the body corporate in identifying defects and managing the defect process.

A prudent resident manager / caretaking service contractor should:

- report building defects as they become aware of them;
- be aware of any building defects on site and the action the body corporate is taking;

- liaise with building inspectors, the QBCC and other contractors to conduct site inspections; and
- keep the committee informed of any change to the condition of the defects and any works being carried out.

Importantly, this role does not extend to project managing the repairs. Such a task is not something that a committee should expect a caretaking service contractor to perform as it is not within a caretaking service contractor's expertise or duties in the caretaking agreement and requires a project manager's licence under the QBCC Act.

Depending on the level of involvement the committee expects from the caretaking service contractor and the terms of the caretaking agreement the caretaker can be engaged to carry out a more involved process for an additional fee. However, this will not always be the case.

If your scheme is facing issues with the building defects or you have been asked to help manage the process, please do not hesitate to contact Mahoneys to discuss the factual circumstances of your body corporate.



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For latest CPI figures go to

[Click here for Brisbane All Groups CPI figures](#)

You will need to click on "All groups CPI, index numbers(a)" to see the detail. For example, if your remuneration started at \$100,000 on 1 September 2016, the correct calculation for the 1 September 2022 increase based on Brisbane All Groups CPI would be $\$100,000 \times 127.9$ (i.e. the last index figure before the review date – the June 2022 quarter) / 109 (i.e. the last index figure before the commencement date – the June 2016 quarter) = \$117,339.45. Mahoneys has assisted many managers in having their remuneration increased to market level.



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