

The Goose, The Golden Egg and The Assignment

By John Mahoney

In an article I wrote some 5 years ago I expressed concern at a trend in management rights of inexperienced managers being sold management rights on promises of minimal work, high return on investment and low (or no) risk and the damage that was causing and would continue to cause the industry if it continued. I warned that the goose which had laid many golden eggs for the industry and its many participants was in grave danger. Unfortunately my prediction has proven to be close to the mark.

Regrettably the trend identified back then has not abated, or at least not to any great extent. A number of bodies corporate have found themselves with managers with little if any understanding of their duties or the reasonable expectation of owners. Disputes have become commonplace and body corporate managers are understandably encouraging their bodies corporate to be extremely cautious when considering requests for consent to assignment.

An unfortunate knock on effect of this has been the approach taken by some body corporate managers and lawyers to "outsource" the assessment of proposed new managers when asked to consent to an assignment. The reason they do this is so that the committee cannot be accused of consenting to an assignment of a poorly qualified new manager but can point to the assessment by an independent and (supposedly) qualified and competent third party.

It has also become common for bodies corporate to require potential new managers to have undergone, or to undergo, training of

some description. Like other lawyers I have seen examples of where a body corporate has gone overboard in the extent and level of training required and the excessive cost of that.

Imposing such requirements has also made the whole assignment process more complicated meaning not only long delays but that the fees being demanded by some body corporate lawyers and body corporate managers are way above what might be reasonably expected.

The reality is though that bodies corporate have considerable rights when it comes to consenting to an assignment and are, due to many problems body corporate managers have experienced with poorly performing resident managers, exercising those rights in order to protect unit owners and themselves.

It is therefore too simplistic in my view to blame all of this on body corporate managers, body corporate lawyers, those engaged to do the assessment or those offering training. That is not to say that some of them are not taking advantage of the situation and gouging managers (as some clearly are) but you have to look at what has led to this and what can be done to reverse the trend. The industry has got itself into this situation and needs to find a way out.

In my view the answer lies in better and broader education of proposed new managers and existing managers. They all need to understand some basic principles including:

- Management rights is not a risk free, passive investment. It can involve hard work to meet the owners' reasonable expectations

for the remuneration they are paying. For every \$50,000 of annual remuneration the owners might reasonably expect 25 hours of work per week.

- Proposed managers need to be totally familiar with the duties set out in the agreement, must understand the statutory requirements around infrastructure and services and must have a good understanding of the relevant legislation.
- Bodies corporate are entitled to be satisfied that the proposed new manager has the qualifications and experience (and if necessary the training) to perform the duties. If training is needed, get it done before you seek the consent of the body corporate.
- Rather than ask how can I do less work for more money ask how I can give my owners better service and improve my complex.

Proposed new managers with no or minimal experience should seek out education and training organisations. The first place to start is the ARAMA management rights induction course which is run over a full day and covers all of the essential basics. Depending on the person's level of expertise further training of a practical nature through Danny Little of MRAS can be invaluable. If additional training in the theoretical aspects is required seek out one of ABMA approved trainers.

If we better educate and improve the quality of existing and proposed new managers, many of the assignment problems the industry is now experiencing will dissipate. However if we stick our head in the sand and blame others for the problems they will only get worse.

Another Victory for The Mahoneys Litigation Team

By Ben Sandford

Mahoneys secured another victory for resident managers recently in a QCAT decision where we acted for the manager of a large complex at Southport.

The body corporate issued three separate remedial action notices (**RANS**) alleging some 115 breaches in total. Ultimately the body corporate only pursued 19 breaches.

QCAT found that most of the RANS were invalid, that our client had complied with the other RANS and that the body corporate motion to terminate the agreements was invalid and of no effect.

The tribunal criticised the way the remedial action notices were set out, saying that it was a "dangerous formula" for the body corporate to tell the manager that it would terminate the agreement if specified remedial works were not carried out and that "how the caretaker remedies the breach is a matter for the manager".

QCAT criticised the way the body corporate demanded the manager comply with the

obligation to monitor compliance with by-laws, unsurprisingly finding that this duty was not a duty to issue by-law contravention notices. The body corporate's demand that the caretaker provide contravention notices was "inappropriate given the body corporate, not the caretaker, is responsible for enforcement, as opposed to identification, of breaches of by-laws."

The tribunal also expressed some scepticism about the body corporate's intention in requiring that contravention notices be provided, in circumstances where it was observed that "there appears to have been no reasonable intention of acting on them".

In relation to the duty to "keep a log of all relevant matters ... and produce the log to the body corporate", QCAT found that matters such as recording when fire extinguishers were last serviced or when a lift service contractor last attended or is next due might be considered relevant matters that should be noted. But "not recording the

minutiae and plethora of a caretaker's daily or weekly activities of no great significance or consequence other than it might be utilised as a tool to monitor the behaviour of the caretaker".

The tribunal also found that it was unreasonable for the body corporate to demand that the caretaker produce logs within 21 days in circumstances where it had apparently not made a similar demand of any previous caretaker, it had accepted in the deed of assignment that the previous caretaker had performed all its duties under the caretaking agreement and it would take between 40 and 60 hours to produce just a maintenance log alone.

We often see bodies corporate try to use duties, that they otherwise have never enforced, as a means to punish caretakers with whom they have personal enmity. QCAT has effectively given us another way to fight against unreasonable body corporate requirements.



info@mahoneys.com.au
www.mahoneys.com.au

Brisbane office
L 18, 167 Eagle Street
Brisbane Qld 4000

GPO Box 3311
Brisbane Qld 4001

p 07 3007 3777
f 07 3077 3778

Gold Coast office
L 2, 235 Varsity Parade
Varsity Lakes Qld 4230

PO Box 482
Varsity Lakes Qld 4227

p 07 5562 2959
f 07 5575 7803

Liability limited by a scheme approved under Professional Standards Legislation.

CPI increases

Most caretaking agreements provide for CPI increases. We often see that managers have not claimed these increases for several years! The following is a table of the Brisbane All Groups CPI figures.

For example, if your remuneration started at \$100,000 in October 2010, the correct calculation for the October 2014 increase based on Brisbane All Groups CPI would be \$100,000 x 106.5 (i.e. the last index figure before the review date) / 96.9 (i.e. the last index figure before the commencement date) = \$109,907.

That would be increased by 10% GST if there is a GST escalation clause in your caretaking agreement. Managers should check that there is.

Mahoneys have assisted many managers in having their remuneration increased to market level. Up to date figures can be found at <http://www.oestr.qld.gov.au>.

	Mar	Jun	Sep	Dec
2005	80.7	81.1	81.6	82.3
2006	83	84.5	85.2	85.1
2007	85.5	86.7	87.5	88.4
2008	89.6	91.1	92.4	92.2
2009	92.4	92.9	94.2	94.5
2010	95.2	95.9	96.9	97.4
2011	98.6	99.6	99.9	99.7
2012	99.9	100.5	101.6	101.9
2013	102.0	102.5	103.8	104.6
2014	105.2	105.8	106.5	106.7
2015	106.7	107.4	108.1	108.5
2016	108.5	109.0	109.7	110.2
2017	110.5	111.0	111.4	112.3
2018	112.4			



Buying/selling
assistance



Off the plan
implementation



Renewal
strategy



Dispute
resolution

www.mahoneys.com.au