# WHAT IS THE FUTURE AT LAW OF OUR STRATA TITLED BUILDINGS?

I would like to share with your readers some of my thoughts and the details of an interesting matter I recently handled which covers the legalities of what happens when a building could be approaching its “used by date”. Apart from the practicalities of determining what the fate of a building should be, the question of how it all is determined brings into play not only the law but also personal greed, failure of community of interest and the reasoning behind some people’s advice.

In the past, I have been involved in several buildings which were strata titled where my client desired to buy out all the owners and to redevelop the resulting property. In each case it was an interesting exercise which required patience and dogged determination to deal with each and every owner individually for the buyout as well as the operator of the Management Rights.

In my recent experience I acted for a group of owners who became suspicious of the persons in charge of the Body Corporate.

It had been put to all the owners by the Committee and its legal advisors that there was a path at law where the Body Corporate structure could be terminated and this would result in an easier arrangement, requiring everyone to sell their interest when a buyer for the entire land and building could be found.

The group of owners that I acted for and the onsite manager were aghast at the prospect of having no control of their own investment in the building by way of a process to simply “cancel out” the existence of the Body Corporate.

What was proposed to the owners in General Meeting by the Committee was to resolve that the Body Corporate would apply to the District Court for an Order to wind up the Body Corporate based on the wording of sections of the Body Corporate and Community Management Act? It was indicated that there were 2 possibilities, firstly to have a Resolution Without Dissent where the building voluntarily destroyed i.e. terminated its Body Corporate arrangements, and secondly, to seek a Special Resolution to commence the litigation in the name of the Body Corporate to have the Court so order a termination. Obviously the first option was an impossibility but the group of owners who are my clients were very concerned that a Special Resolution might be passed and the Body Corporate could become embroiled in expensive litigation possibly chewing up hundreds of thousands of dollars and causing havoc to all the owners.

Fortunately, sanity prevailed and once material from my firm was circulated indicating the harm and uncertainty of what was proposed, the Resolution was not passed.

The section of the Act presented by the Committee indicates, in all innocence, that a Judge of the District Court can Order the winding up of a Scheme, thus destroying the government of the Body Corporate in existence, if it was decided that it was “just and equitable to terminate the Scheme”. It is quite extraordinary that such few words are applied to a situation involving millions of dollars and many owners’ individual elements of ownership and investment.

What needed to be explained to owners was what it really meant if a Scheme was terminated. To understand that another piece of law, the Land Title Act, had to be considered and applied.

What I knew from my previous experience was that you cannot put the cart before the horse by cancelling or terminating the Scheme before you have amalgamated the ownership of all of the lots into the name of one entity. To attempt to do so would only produce chaos.

When a CTS is terminated then, under the Land Title Act, a plan must amalgamate all the lots and be registered to create a single title in a single lot description of the land and the owner or owners who previously owned all of the lots must then be recorded on the title as owning the land and building as tenants in common, for their respective shares.

Can you imagine the chaos of taking say 50 lot owners, destroying the title to 50 lots that they all own and placing all of the names as owners on one title for one lot? What happens with all the mortgages and leases (particularly where part of the building is a commercial area as in this instance) covering the individual lots?

If the owners had blindly followed the legal advice and voted to terminate the Scheme by seeking an Order of the Court, I suspect that the only party that would have benefitted would have been the lawyer being paid the legal fees for litigation, whether or not it was successful in attempting to obtain the Court Order. Of course, in similar instances, the Court has never found that such a bizarre path was “just and equitable”.

I particularly mention this strange exercise because no doubt your readers will ask – what about the Management Rights? To answer that, in the termination of Schemes where I have been involved, the party wishing to buy up the building has first addressed the Management Rights by amicably buying out the manager and the managers unit and then having a strong foot hold to practically arrange the acquisition of all the lots whilst running the management business for the owners. However, if that were not the case then the manager would have to argue in Court that it was not “just and equitable” to create a Court Order where the business reliant on a contract with the Body Corporate would be harmed by the result of the Court Order. Management Rights relies entirely on maintaining Body Corporate contracts and the goodwill of the manager with all owners.

Obviously there should be a reasonable path put in place by our Queensland Government to apply an orderly arrangement for the buyout of a building in a Community Title Scheme where the overwhelming majority of owners are willing to accept a reasonable price for their lots. This is currently being looked at by our Government just as it is and has been looked at in New South Wales. Comparable situations occur under the laws applying to public companies and a great deal can be copied from that scenario. Once you have a community of owners all investing and controlling real estate through a Body Corporate, it is very similar to a group of shareholder investors in a public company, where sense and reasonableness have to prevail to protect the rights of the majority. When 90% of the shareholders in a public company have agreed on the pricing for the sale of their interests on a properly organised buyout arrangement, then the remaining shareholders cannot “hold out” and are required to sell at the prevailing price applied to the 90%.

Because these laws have not been thought out and applied in Queensland to a Body Corporate situation, there have been classic cases of the last person selling, demanding and receiving an astronomical sum. Obviously such opportunism is bad for commerce, produces a blight or redevelopment and should not be tolerated by any failure in the law.

Through ARAMA I have already had some input to the Queensland Government to ensure that in any legislation being considered, there will be an inclusion of protection to the owner of the Management Rights for that important sector of commerce and investment.

**By John Punch – Published in Resort News**