

The Costly “Industry” of Management Rights Assignments

Something has got to be done about the “industry” that is developing, or has already developed, around the process of a body corporate giving its consent to an assignment of Management Rights Agreements (Caretaking and Letting Agreements for Schemes).

This harmful industry has sprung up from the activities of some Body Corporate Managers, Solicitors and so-called “experts” in assessing the merits of the assignee, when a party is buying the management rights and the selling manager seeks the consent of the Body Corporate.

The job of the committee of the body corporate is simply to check the material submitted by the assignee, have an interview with the assignee and determine if that party is approved as suitable, based on the reasonable knowledge and assessment. The tests of suitability are:

Are they capable of performing the agreements? (Physically and knowledgably)

Are they of good standing in character and the community, sufficient to perform the role?; and

Are they sufficiently financially sound for the conduct of the caretaking duties and letting activity?

Which suitability must be decided within 30 days of receiving the proffered material received from the outgoing manager.

From this relatively simple process, our firm has found, that in recent times, lawyers costs in acting for a body corporate have grown from in the vicinity of \$1,200.00 to amounts of up to \$4,000.00 – \$6,000.00, Body Corporate Managers charges from \$300.00 to between \$2,000.00 to \$4,000.00 and other so-called “experts” bringing in charges of \$1,500.00 - \$4,000.00. These are amounts that we, as lawyers for managers selling, have actually experienced in recent times. One manager, selling a management rights operation for a permanent letting complex run effectively by one person, had to pay approximately \$11,500.00 and to experience a process that took well in excess of 60 days.

Part of the problem has arisen from Body Corporate Managers automatically advising the committee to engage preferred lawyers to “take over” the process, as a necessity. Often the Body Corporate Manager employs the solicitor for the body corporate before the committee is consulted on the matter. The solicitor appointed often demands that an agreement be made by the seller to pay all costs charged, whether or not consent is given. This leads to the lawyer assuming that they may review the terms of the agreements, particularly as to assignment consents, provide reports to the committee, compiling lists of questions to ask, provide extensive written advice on how thorough the committee might be, how other “experts” may be engaged at the sellers cost and as to what material may be required before even holding an interview or reviewing what has been lodged.

In the above instance, the committee’s representatives had more than sufficient material from the assignees (describing themselves in detailed resumes of business and personal standing) but insisted that a quantity surveyor, knowledgeable in body corporate matters, be engaged to firstly, interview the assignees and secondly, attend the complex with them for a

day to assess and train them. The cost payable in advance was \$3,850.00 and that was for a simple housing complex with common property comprising only roads, gardens a pool and minimal storage areas!

To object, meant being blocked off from the committee, further delays in argument and payment of additional costs accruing for the body corporate lawyers and managers to confer.

A review of the law shows that this "industry" has gotten way out of hand. It involves questionable practices and extraordinary interpretations of the Act, Modules of Regulation and the Terms of Agreements.

Interestingly, the costs and expenses and details of obtaining the body corporate committee approval for an assignment now appear to far exceed that for a transfer of a lease of commercial premises, where the assignee will be obligated for payments to the consulting party, rather than the opposite.

To assist the management rights operators, Body Corporate Managers and committees, we have now produced a simple guide to the basics of approving the assignees, based on a reasonable interpretation of the laws that apply. This is readily available from us, by anyone enquiring.

We strongly suggest that other lawyers, Body Corporate Managers, SCA and ARAMA take a stand against the people who work to this "industry" and thrive on making assignment consents a costly nightmare.

This article was prepared by JOHN PUNCH, Partner and published in Resort News Magazine.