

# OCTOBER 2016 LEGAL EASE COLUMN RESORT NEWS

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## ANOTHER IMPORTANT QCAT DECISION

A recent decision by a member of the Queensland Civil & Administrative Tribunal has solved a conundrum that has plagued lawyers for Building Managers and Bodies Corporate for some time.

It found that a Building Manager was not responsible for a Body Corporate's legal or administration fees in a case where the Body Corporate has declined to consent to an assignment/transfer of the Caretaking and Letting Agreements.

He stressed that the relevant section in the Body Corporate and Community Management Act only allowed the legal and administration fees to be placed on the Building Manager if they were incurred by the Body Corporate in approving an assignment/transfer.

Since the restraint on what the Body Corporate can receive in respect of assignments/transfers is set out in the Body Corporate and Community Management Legislation, and under that legislation, a party cannot contract out of its rights and obligations under the legislation, it is likely this decision cannot be overridden by provisions in the Caretaking or Letting Agreements.

Hopefully this will reinforce the position that Body Corporate committees must take the assignment process seriously and not arbitrarily or capriciously refuse consent. Financially for the Body Corporate it will be better for the committee to favour consent, unless they are convinced that potentially the new Building Manager would be a bad choice.

One of the matters that caused the Body Corporate in this case to vote against the assignment/transfer was the belief by the Buyer that, due to their financial circumstances, they could not effectively operate the Management and Letting business, without obtaining a top up of the term of the Caretaking and Letting Agreements. The committee indicated to the Buyer that it had a policy of not agreeing to top ups. Subsequently the committee resolved to put this policy to a general meeting of the Body Corporate for adoption. At the request of the Building Manager, the QCAT member hearing the case granted an injunction preventing the committee from doing this. He said "In acting reasonably the Body Corporate must keep an open mind on any motions put to it. Adopting a non top up policy inevitably gives the impression, whether intended or not, that requests to the Body Corporate for a top up will not succeed, regardless of their merits. Such a policy also carries a danger of misleading Body Corporate members into thinking that they do not have to consider top up requests on their merits."

All in all, important findings for the management rights industry.

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