



Newsletter

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New approaches to assignments

At Mathews Hunt Legal we have assisted committees with dozens of assignments every year, but are increasingly detecting greater management challenges facing committees.

Committees understand how quickly their workloads increase when a poor caretaker takes over. Hallmarks are a caretaker who fails or refuses to communicate openly with committee members and contractors. That lack of responsiveness and accountability can also be seen in practice - when beautiful gardens decline through a caretaker's lack of gardening experience and effort; or where once pristine pools can become dirty and unhealthy, if a caretaker lacks proper maintenance knowledge and skills.

As a result, we are seeing an increasing number of committees frustrated by proposed new caretakers who lack relevant competence, qualifications and experience, and not surprisingly, it is no longer rare for a committee to refuse to provide its consent.

So how does the law respond?

A committee must not unreasonably withhold its consent to an assignment having regard to factors listed in the legislation and the caretaking agreement. Those factors include:

1. the character of the proposed caretaker;
2. the competence, qualifications and experience of the proposed caretaker; and
3. the extent to which the proposed caretaker has received or is likely to receive training.

There have only been a few decisions from the Commissioner's Office and QCAT about the refusal of consent to an assignment, and they emphasise the committee's obligation to be reasonable and to ask questions where a committee has concerns. In our opinion, it is unsatisfactory that the volunteer committee members must spend time addressing weaknesses in the proposed assignee's application in order to appear reasonable.

So what can you do?

If a proposed caretaker is not qualified for the role then the committee may reject the candidate or impose conditions on its consent. Recent conditions our committees have imposed include that:

1. an independent and experienced caretaker be retained to provide guidance for a few months after settlement; and
2. the representatives of the proposed caretaker undertaking the Commissioner's free online committee member training course prior to settlement.

We have also had committees retain a qualified independent person to conduct an evaluation of the proposed caretaker's competence before the committee makes any decision. This is particularly useful when a committee is divided about how to proceed.

We are sceptical as to promises of future training because once the caretaker is onsite they are very difficult to remove. Accordingly, committees are questioning the value of:

- future training from the existing caretaker, as sometimes the 'training' can be non-existent, or of a low standard or just passing on poor habits; and
- promises to complete a course. We all know that sitting in a room does not mean that anything is learnt. There is also no guarantee that they will ever complete the course.

The critical point is that a new caretaker may be with you for a few years. Therefore it is important that a body corporate does not swap its problem with its existing caretaker for a problem with its new caretaker.

What about the costs?

Costs are another example where drafting and knowledge of body corporate law is vital to protect your interests. QCAT has recently held that, in circumstances where agreements say nothing to the contrary, the legislation does not require a caretaker to pay a body corporate's costs if consent is refused. This is also an unsatisfactory situation. Why should owners have to pay the costs of evaluating an unsatisfactory application which should never have been proposed?

We seek to protect you as owners by requesting that the caretaker agrees to pay the body corporate's costs whether or not the assignment is approved. Failing that, the committee may not be able to consider the assignment in certain budgetary circumstances.

What do we recommend?

As all this suggests, given the relationship longevity, the difficulty of effecting caretaker agreement amendments and increasing caretaker issue complexity, we recommend that committees always seek expert legal advice when considering an assignment.

Why does Mathews Hunt Legal exclusively represent bodies corporate?

We believe in high quality, targeted and individualised client service to meet your needs. We understand body corporate issues, committee perspectives and emerging management challenges, so we can be proactive and responsive legally. In our opinion, it is very difficult to

represent owners without fear or favour, if you also act for caretakers – so we only act for bodies corporate.

You will not find us ceasing to act for your body corporate whenever it is more lucrative to represent a caretaker. But you will find that we know all about your caretaker issues and how to cost effectively resolve them.

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About us

Peter Hunt commenced practice with Mathews Hunt Legal in July 2010 after 20 years in the law, including being a partner in charge of litigation at another firm. He is a Fellow of the Australian College of Community Association Lawyers ('ACCAL'), and a regular presenter of seminars to Body Corporate Managers and the Strata community.

MHL practices exclusively in the Strata Industry and we have seen every imaginable issue (and some unimaginable issues), so don't hesitate to give us a call if you require legal assistance.

Disclaimer: This article is a summary of the subject matter only and is not legal advice, nor should it be relied upon as legal advice. Legal advice, specific to the individual circumstances of each case, should be sought at all times. All reasonable endeavours are made to ensure that this article is accurate at the time we send it to you, but no responsibility is accepted for any errors or for changes to the law.

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