

NEWSLETTER ISSUE 12 October 2013

In this edition of our newsletter we explain what may result – ie an agent is compulsory appointed by the CTTT – after significant breaches of the Act by an Owners Corporation. It is very interesting reading. Also as a complete change from our normal content, I have included a joke that is very relevant to our industry. I hope you find it as funny as I did. We end with an easy money saving tip.

SECTION 162 APPOINTMENTS – WHY, AND WHAT HAPPENS

Whilst most of our managements run smoothly, with overall agreement between owners, strata managers are being sort more and more frequently to be appointed under s162 of the Strata Schemes Management Act (Act), ie a compulsory appointed agent. Owners may seek these where they can show that their scheme is not meeting its legal obligations. Circumstances may include:

- The management structure of a strata scheme is not functioning or not functioning satisfactorily;
- An owners corporation has failed to perform one or more of its duties, including the s62 obligation to maintain and repair; or
- An owners corporation fails to comply with an order under the Act.

Examples of where an owner's corporation is not functioning or is not functioning satisfactorily are: 2-lot stratas where votes are deadlocked; an owners corporation is failing to insure their scheme adequately/at all; an owners corporation is not holding general meetings; or an owners corporation is otherwise acting in breach of the Act.

Upon the Tribunal making a S162 appointment, it is important to note that the agency agreement with the existing strata manager is automatically terminated and the agent is not entitled to any remuneration after that termination.

Assuming it is a full appointment, the new agent makes all of the decisions of the owners corporation and the executive committee. During the period (normally 12 months but can be longer), there are no general meetings or executive committee meetings where owners are able to vote as neither have any legal power to make decisions. The appointed agent makes all of the decisions including passing ordinary resolutions, special resolutions and even unanimous resolutions. Therefore, as well as standard things such as insuring the building and carrying out common property repairs, the appointed agent can commence legal action, enter into caretaker agreements, pass by-laws and approve the alteration of common property.

The appointed agent is not even required send notice of meetings as there is no obligation to consult with owners, as Andrew's case showed, they can just send out minutes of their decisions.

The agent can be held accountable for negligent decisions, so it is recommended that if there is any potential for dispute, the agent should obtain independent reports and engage experts where necessary, and follow the recommendations of those experts. All of which must be paid for by the scheme.

At the end of the term, the agent's appointment automatically ceases. A general meeting needs to be held immediately to appoint an agent to carry out the usual duties.

NOAH'S ARK TODAY!

The Lord appears before Noah and says, "In one year I am going to make it rain and cover the whole earth with water until it is all destroyed. But I want you to save the righteous people and two of every kind of living thing on the earth. Therefore I am commanding you to build an ark."

In a flash of lightning God delivers the specifications for the ark. Fearful and trembling Noah takes the plans and agrees to build the ark.

"Remember", said the Lord, "You must complete the ark and bring everything aboard in one year".

Exactly one year later fierce storm clouds form, lightning fills the sky and all the seas of the earth rise up in tumult. The Lord reappears and sees Noah sitting in his front yard weeping.

"Noah!" he shouts. "Where is the ark?"

“Lord, please forgive me!” cries Noah. “I did my best but there were big problems.”

“First, I had to get development consent from the local council. They said that building the ark was a non-complying development so I had to go to the Land and Environment Court to overturn their decision.”

“Then they said that because of the flood I had to supply an Environmental Impact Statement. So I commissioned an environmental consultant to write the impact statement.”

“Then they said they wanted a plan of the flood plain to update their records. I sent them a globe of the world.”

“I finally got my development consent and then I had to apply for a construction certificate. The council immediately told me that the ark didn’t comply with the Building Code of Australia and didn’t fulfil the BASIX requirements. I had to get the plans redrawn.”

“Because the ark was over 25 m tall council sent the plans to the Fire Department. They said I had to install a sprinkler system. I had to get the plans redrawn again.”

“I finally got my construction certificate and started work with a team of carpenters 24/7 to catch up for lost time. Then council issued a stop work order on the job because I was breaching the terms of the development consent. I could only work 9-5 Monday to Friday and only use power tools between 10 and 4.”

“To try and speed things up I decided to outsource some of the construction work offshore. Then my carpenters went on strike. They claimed that the offshore production standards would make the ark unsafe for the people who got on board.”

“After I finally sorted all that out the RSPCA took action to stop me claiming I would be engaging in live export of animals without a permit.”

“If that wasn’t enough the Humanist Society took an anti-discrimination action against me because I was refusing to take godless, unbelieving people aboard.”

Just when I thought it couldn’t get any worse the Federal Police seized all of my assets claiming that the ark was part of a people smuggling operation.”

“I really don’t think I can get the ark completed for at least 5 years”.

The sky began to clear, the sun began to shine and the seas began to calm. A rainbow arched across the sky.

Noah looked up hopefully. “You mean you are not going to destroy the earth Lord?”

“No”, said the Lord sadly. “The Government’s already done it!”

USEFUL TIP ON SAVING MONEY

Whilst it may seem obvious we often find scheme’s do not have a plan for regular maintenance of items such as hot water services, garage doors, pipes that block regularly, pumps, gutter cleans etc.

Like a car, maintenance servicing ensures things work at their optimum level and minimise break downs. If you do not carry out regular maintenance, it can create huge inconvenience and often the costs will be higher. For instance clearing a sewer line that is chocking periodically because of tree roots, simply by using tablets you can get from a hardware store will go a long way to reducing back-ups of the system. Back-ups usually occur out of work hours, ie weekends or evenings, because all the residents are home and using the plumbing, which will cost sustainably more to rectify if you need to call a plumber, than during normal work hours.

We have also seen such services be effective with respect to garage door break downs in two large schemes – both in very exposed locations ie on main roads. Maintenance has been able to completely prevent issues, which would otherwise see the door propped open, leaving the car park open for anyone to access and cause damage – particularly on weekends.

Please talk to us about your services and what type of periodic attention may be required, as it is much better to prevent breakdowns and other crisis, than paying to fix them.

AS ANOTHER YEAR ENDS

This is our last edition for 2013. We thank you all for your ongoing support and wish you a safe and relaxing festive season. We look forward to bringing you further industry updates and information in 2014, particularly with new strata legislation to be released next year.