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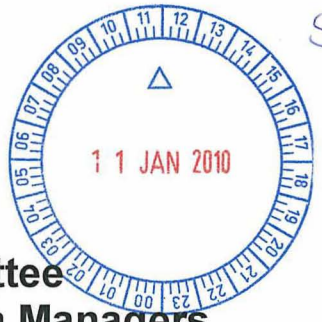

Legislative Council
Public Administration Committee
Inquiry into Western Australian Strata Managers
SUBMISSION
PURPLE TITLE MANAGERS VICE STRATA MANAGERS

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Introduction

Purple Titled developments and their managers are basically the same as those for Strata Titled developments; however, only Strata are covered by legislation. This submission purports that this is relevant to the inquiry's term of reference "(d) any other relevant matter".

The basic difference between the two types of development is in the division of the land and how the owners occupy the property. Under Purple Title the owners are tenants-in-common holding a share-portion with no specific portion of the property identifiable to a particular owner; whereas, Strata Titles identify surveyed portions of the property as being owned by specific entities. In both developments owners occupy portions of the property privately with the rest being held to be generally accessible common property.

Management structures for Strata developments are legislated; but, those for Purple Title developments are not and vary considerably and often detrimentally to owners generally accepted land holder's rights.

Recommendations

Either

1. That Purple Titled developments be regulated under the Strata Titles Act
2. That the Strata Titles Act be renamed the Strata and Purple Titles Act
3. That pre-existing Purple Titled developments be brought under the Act

Or

4. That a Purple Titles Act approximating the Strata Titles Act be enacted
5. That pre-existing Purple Titled developments be brought under the Act

And

6. That a Council of Owners be required to be the Purple Title scheme's responsible entity.

Discussion

It is presently the case that developers have created complexes under Purple Titled schemes. They have also assigned themselves or their management company subsidiary all rights to the property and its management via each complex's scheme's constitutional documents. This means that the buyers of shares enjoy none of the rights of ownership normally accompanying real property.

It is also the case that these contracts worth (generally) hundreds of thousands of dollars per share are not subject to Australian Securities and Investment Commission oversight like other financial products; nor are they oversighted by any other authority.

This form of ownership has completely fallen through the legislative cracks with the full awareness and complicit acquiescence of the Consumer Protection element of the Department of Commerce.

Unlike under the Strata Titles Amendment Act 1995 (as cited in the WASAT253 decision) there is no right to dismiss or renegotiate the contract for a manager of a Purple Titled complex after five years.

The schemes also give the developer/manager a right to receive a percentage (25%) of sales, whereas the sinking fund receives a much smaller percentage (5%).

At the same time all costs are born by purchasers of the on-sold shares including the costs (rates for instance) even when the developer/manager retains some shares.

The schemes typically give the developer/manager a Power of Attorney to act on behalf of all share holders. Contrary to normal accounting control, this gives the one entity full authority to execute any and all financial functions of the complex, including re-selling title shares. Clearly, this leaves these complexes wide open to fraud. While a legal remedy theoretically exists to recover losses through the courts, this is both costly and highly uncertain to be effective, because of the corporate veil's use to shield assets.

Managers typically have the right to deny access to common areas and assign portions to specific uses of their choosing. They even do this for the developer/managers further gain, as happens in my complex where part of our clubhouse is commandeered for their sales office, which generates commissions for them. Outsider sales agents do not get access to it.

Strata complexes have a body corporate or Strata Company comprising the owners; whereas, Purple Title complexes do not. This Company may or may not engage a manager, but has ultimate control over the complex. It sets budgets; gives owners a right to vote on structural changes/alterations and a right to object to planning authorities; a right to receive profits from the sale of structural changes; a right to wind up the scheme; and a right to change the complex's by-laws. All of these things are absent in Purple Titled complexes.

It is my experience that very few buyers are fully informed of or understand the Purple Title arrangement. Even if buyers consult a lawyer, they cannot afford to pay them what it would cost to produce a worthwhile opinion based on a comprehensive review of scheme documents and their interplay with general legislation. In my experience there are few lawyers competent in the area. Over years of diligent investigation I've found no one who really understands it and opinions vary and are vague where not confined to specific aspects. There is considerable ambiguity in interpretations of both the law and scheme contract's application.

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