

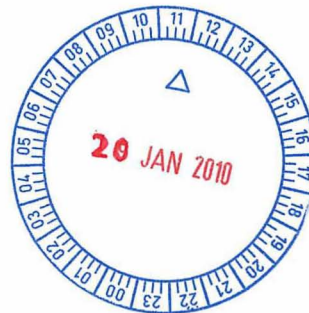
PUBLIC

IAN LAIRD**STRATA TITLES CONSULTANT***Life Member: Strata Titles Institute of Western Australia Inc.**Independent consultancy to managers and owners of strata titled property.*

ABN: 31 168 100 992

20 January 2010

The Committee Clerk
Public Administration Committee
Legislative Council
Parliament House
PERTH WA 6000



Dear Sir,

RE: Inquiry into Western Australian Strata Managers

I have been involved in the Strata Titles industry for more than twenty three years acting in the capacity of a strata company manager and since 1997 in a consultative capacity in regard to issues of management of strata companies and how that impacts on ownership and use of lots and common property in strata and survey strata schemes.

I respectfully make this submission based on my personal experience in the industry and trust that it may be of interest to the Sub-Committee.

Throughout my submission I have assumed that the default Schedule 1 & 2 By-laws are applicable.

Disputes between strata (company) managers and their clients.*Avoidance of disputation.*

It is my submission that there is widespread misconception as to the identity and relationship of strata (company) managers and their clients. This includes varying degrees of confusion among strata company managers, strata company Councils and individual lot proprietors.

It is the strata company, through its Council, which is the client of the strata company manager. Individual lot proprietors are not the client of a properly appointed strata company manager. There is no provision for a strata company in general meeting to appoint a strata manager. That power is vested in the Council pursuant to section 44 and Schedule 1 by-law 8(2)(b).

It is possible that a strata company in general meeting could, as provided for in section 44, direct its Council to appoint a specified strata company manager but this is not well understood by either of the parties and is therefore rarely the means of appointment. Even if it were the case the client of the strata company manager remains the strata company.

It should follow that where any dispute arises between the strata company manager and their “client” strata company the matter should be confined to dealings between the strata company manager and the Council of the strata company.

It is often the case where individual proprietors, including individual Councillors, have an issue in respect of their ownership or use of their lot or the common property. There are also occasions where proprietors become concerned about the financial affairs of their strata company. In the vast majority of these matters, which can develop into full scale disputes, the issue or concern stems from ignorance and/or apathy.

Ignorance of the provisions of the Strata Titles Act and by-laws. Ignorance of decisions previously and legitimately made by the strata company either in general meeting or by its Council. Ignorance of the management structure and relationship between the strata company and the strata company manager. Ignorance of the rights and responsibilities attaching to ownership of strata titled property. Ignorance of the duties, powers and functions of a strata company and its Council. Ignorance of the imperative duty to maintain the property in good condition. And, ignorance of the range of agreed services being provided by the strata company manager.

Apathy manifests itself most relevantly in the lack of interest and preparation for general meetings. Many general meetings fail to attract a quorum of members on the specified date. Few proprietors actually read, let alone seriously consider the proposed business of general meetings. Those who do attend are often ill prepared to make an informed decision on matters which can have significant financial and other impact on the value and condition of their investment and the interests of those who do and do not attend such meetings.

It is an unfortunate reality that generally it is only a minority of proprietors who take an active interest in the affairs of their strata company. This leaves the management to a minority of proprietors who may not have a clear indication of what the majority require. It is very often the case that candidates for the Council are not readily forthcoming and it is left to reluctant volunteers to assume the responsibility for the performance of the duties functions and powers of the strata company, including the appointment and supervision of the strata company manager.

In my submission there is a significant need for direct and continuing education of all proprietors of strata titled property as to the rights and responsibilities of themselves, their strata company and the appointed strata company manager. Some of that education could easily be provided at no cost to Government or the consumer.

I respectfully submit the following three possible means of making that educational information available.

1. (a) Every strata/survey-strata plan to have an additional page or pages setting out the definition of the composition of lots and common property in respect to that scheme. This to include the buildings and any part lots external to the building, including improvements such as fences, pergolas and sheds, and, where appropriate be accompanied by a three dimensional diagram of the extent of the lots. As the common property should be included as dimensioned same scale plan which is not the case in strata schemes at present; and, (b) Whenever a re-subdivision of a scheme is registered it should be in form of a “new master” plan which shows all former and new lots, to the same scale, as they exist at the registration of the re-subdivision and this may necessitate a new definition as proposed in (a) above.

Such information would be automatically provided to each prospective and/or new owner of a lot in each scheme. At the time of implementation each exiting owner would be similarly informed. This would overcome the most common cause of concern and dispute as to who has responsibility for what.

2. Every contract for the sale of strata titled property should be accompanied by either a copy of the minutes of the most recent Annual, and any subsequent Extraordinary General meetings, together with the last adopted statement of accounts, budget and levy of contributions for the lots in the scheme as a whole. Alternatively a statement that there have been no such meetings, accounts or budgets considered or approved.

It should be incumbent on the vendor and the strata company to provide this information in a similar format to the existing section 43(1)(c) and (d) certificate but prior to the entering into any contract by the prospective purchaser as part of the section 69A requirements.

This would ensure that every prospective owner was fully aware of the recent management and financial decisions of the strata company and the precise nature of any proposed changes to policy, major works, current and perhaps likely future contributions.

3. Every professional strata company manager should be required to provide every lot proprietor with a “Plain English” statement of the services they have agreed to provide to that strata company and, as importantly, any services which they are not willing or able to provide or for which they make additional charges over the “contracted” annual fee.

Additionally there should be a clearly stated process of how an individual proprietor can raise concerns, seek information, approval or have matters included on a general meeting agenda.

This would ensure that each owner was made fully aware of what services and at what cost the Council, on behalf of the strata company, had contracted the strata company manager to provide.

Financial risk management.

There have been previous enquiries and reports dealing with the treatment of and the risks associated with the strata company manager having control over the funds of strata companies for whom they act. The handling and reporting of financial transactions is regulated by the Act at section 35. I refer you to the enclosed booklet entitled “***Strata Company Financial Reports and Information***”.

There are occasions where owners become concerned as to the propriety of the manner of spending the money contributed by proprietors and this also can be a source of concern leading to dispute.

The strata company has the opportunity to consider and approve or not as it sees fit the financial statements of the strata company at each Annual General Meeting. The Council of the strata company has the actual responsibility to ensure that these accounts are presented in sufficient detail as to be capable of interpretation by a reasonable person using reasonable diligence.

Each owner receives a copy of the statement as part of the papers accompanying the notice of the AGM and have an opportunity to compare actual costs with prior approved budgets and to ascertain the overall financial strength of their strata company.

That the vast majority do not take the time or trouble to do so is not a matter with which the Council or the strata company manager can be concerned in advance.

It would be very unusual if any owner's financial questions or concerns were not dealt with in full and promptly.

In the unlikely event that there were to be discovered any irregularities the strata company could initiate an independent audit and this should provide conclusive answers to such issues.

In the even more unlikely event that there had been some improper use or loss of the strata company's funds the strata company would usually have a fidelity guarantee insurance policy covering it for up to \$100,000 against loss of funds by unlawful means.

I respectfully submit the following suggested risk management solution:

1. Every strata company be required to have Fidelity Guarantee insurance in the minimum sum of \$5,000 per lot in the scheme or \$100,000 whichever is the lesser sum.
2. In the event that the strata company should accumulate funds in excess of the minimum sum insured it should be a requirement that the excess funds be lodged with an authorised deposit taking institution (ADI under the Banking Act) in the name of the strata company and requiring not less than two signatories one of whom must be a Councillor/proprietor.

THE SPECIFIED TERMS OF REFERENCE

(a) the functions and responsibilities of strata (company) managers;

I accept that the general term for strata company managers has been abbreviated to be strata managers but it is important that all parties have a clear understanding of the role of the manager, the nature of the appointment, to whom the manager is accountable and what services and information is to be provided to the strata company and its members.

That said, I refer the committee to the STIWA publications in its Best Practice Series entitled;

“The Role of the Strata Company Manager.”
“Appointment of a Strata Company Manager”
“Strata Company Financial Reports and Information”

Copies of which are enclosed herewith.

The term strata manager needs to be defined as to whether it only is applicable to those firms or individuals acting in a managerial position for reward, or, whether anyone who takes direct responsibility for financial, secretarial or administrative duties for one or more strata companies is regarded as being a strata company manager.

In my view it will always be impossible to regulate or identify strata managers until and unless there is a clear definition of what that term means.

At present the function and presumably the responsibilities of the management of the affairs of strata companies is undertaken by real estate agents, conveyancers, lawyers, accountants, individual owners and those who have set up businesses which have the main or sole purpose of performing that role.

There is no test or requirement of competency to perform this role which should be the major concern of those charged with the task of consumer protection.

(b) the education of strata (company) managers;

There is no current requirement for any person so engaged to undertake any education in respect to whatever role they or their client may agree on. Nor is there any requirement for such a person to actually submit to any form of competency test or ability to provide any services to strata companies.

Management education is provided by STIWA and REIWA but there is no immediate or ongoing quantitative testing of knowledge, resources and business management skills. The general public has no means of determining whether or not a prospective or current strata company manager can actually deliver the services required for the strata company to fulfil its obligations under the Act.

As a minimum requirement any person acting in such a capacity should be able to demonstrate a fundamental understanding of the provisions of sections 3(2), 35, 35A, 36, 43, 47 and 53 to 59 (the Insurance sections) as those sections apply to every scheme.

(c) whether strata (company) managers should be licensed;

There is widespread support among professional strata company managers for some form of regulation which might extend to actual licensing.

It is my own view that some form of registration of who is acting in the capacity of strata company manager, perhaps as defined in (a) above, would be a first step in identifying those who are actually engaged in that capacity.

The criteria for registration might be as simple as an initial written test of theoretical knowledge of the Act (see previous section), evidence of professional indemnity insurance, current police clearance and written business and personal references as to integrity, knowledge and skills. It would be advisable to require each registered entity/person to submit regular returns of any strata companies under their management, and as added to their portfolio or transferred to another manager.

A regulatory authority could well consist of representatives of DOCEP, Landgate and industry bodies such as STIWA, REIWA and any others directly involved in the development and conveyancing industries. For example conveyancers, valuers and surveyors.

An annual registration fee could be based on the number of strata companies (or lots) under management and this could at least cover the cost of maintaining the register. Any registration requirements, such as education and competency testing, could be delegated to the industry bodies concerned.

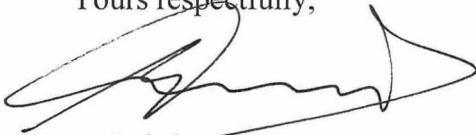
The matter of employee education and regulation could also be included in the above structure.

The register should be publicly available on-line and any lot proprietor should be able to ascertain who is the current manager of the strata company of which they are a member.

Any dispute which is not capable of resolution by the SAT could be referred to one of the industry bodies for investigation with the ultimate decision in the hands of the regulatory authority.

I thank the committee for giving this brief submission its consideration and advise that I am available to meet with the committee should that be deemed necessary to expand on or better explain the matters contained herein.

Yours respectfully,

A handwritten signature in black ink, appearing to read 'Ian Laird', with a large, sweeping flourish extending to the right.

Ian Laird