

January 18, 2010

The Chairman
Standing Committee on Public Administration
Legislative Council
Parliament House
Perth WA 6000

Attention : Mr Trenorden, MLC

Inquiry into Western Australian Strata Managers

Dear Sir,

I ask that your committee please accept the following submission, made on my own behalf as a result of dealing with Strata Managers during the past three years.

I am retired after being employed as a Police Officer with the Western Australian Police Department for twenty nine years.

I am prepared to give evidence to the Committee if so required.

Most Strata Companies are initially appointed by the Developer. If appointed to manage a high rise residential strata complex the strata managers will administer budgets in most cases in excess of Two Hundred and Fifty Thousand Dollars (\$250,000.00) and in some cases exceeding Half a Million Dollars (\$500,000.00).

The appointment of a strata manager by a developer could be conceived as the strata manager having a 'conflict of interest' from the onset. The strata manager relies on being appointed to new developments so that it would seem not to be in the interests of the strata manager to then begin litigating with the developer and/or the builder of the complex to rectify common area defects. This cannot stand the strata company in good stead.

Further with such large amounts of monies to be administered the various strata companies could be the target of persons of poor character who seek election to the Council of Owners, work in conjunction with the strata manager and look after their own benefits rather than those of the owners in general. It is for this express occurrence that strata manager need to be "professionally accredited and registered entities" who can then be held accountable and must be independently appointed to manage a development so that they can best act for the interests of owners.

As common area defects are delayed or not carried out at all the investment each owner has made in the purchase or their apartment begins to devalue. A good example of this is the comparison of developments along Terrace Road in Perth between Victoria Avenue and Plain Street where the prices of similar apartments vary by as much as Two Hundred Thousand Dollars (\$200,000.00) and the sale time varied from as little as 2 weeks in a well maintained development to over 9 months in one that is not well maintained. Yes all owners paid similar off-the-plan purchase prices for their individual apartments.

I list some examples of my experiences with strata managers who held themselves to be professional and of many years standing in the industry, members of STIWA (Strata Titles Institute of WA) and even sitting on STIWA committees:

- At one AGM the strata manager provided incorrect advice with the procedure for a ballot to elect a council. The advice given to the owners was in direct conflict with the provisions of the scheme's

by-laws and the Strata Titles Act ("the Act"), and therefore, rendered the election process invalid. This necessitated a SAT application with a consequential SAT Order for the holding of an EGM resulting in a cost to owners of approximately \$7,626.25. Which cost was not recovered from the strata manager in question, in fact, the strata manager attended the EGM and proceeded to charge the owners for their time in attending. Likewise the strata manager charged the owners to attend SAT.

- Failed to operate a joint Trust Account with the strata company, this being an express term of its Management Agreement with the strata company.
- Advising owners in a General Meeting that it is not a requirement of the Act for an audit to be carried out. This constituting misleading advice as the Act is actually 'silent' on the subject of an audit. In any event STIWA recommends that audits be carried out and this strata manager having been a member of STIWA should have known better. Notwithstanding the foregoing it was an express term of the Management Agreement between the strata manager and the strata company that the strata manager cause an audit to be carried out annually, hence the manager was in breach of its agreement.
- In striking the Budget removing from it an allowance for an audit to be carried out.
- Following the resolution of the owners in General Meeting that an audit be carried out and provided to the owners within 3 months of the AGM, failing to provide such an audit until the expiration of 7 months from the date of the AGM.
- Failed to cause to be maintained separate budgets and levy schedules in respect of:
 1. Residential lots;
 2. Commercial lots;

as expressly required in the by-laws of the strata company.

- Failed to establish the replacement value of the building as required under section 54 and defined by section 53 of Strata Titles Act.
- After receiving an independent valuation of the building by an accredited valuer failed to insure the building at the recommended valuation of 100 Million dollars in choosing to insure the building for 85 Million dollars. The owners were never notified of this and therefore were left under insured at the time.

Receiving a commission from the strata company insurers, having failed to advise the strata company of this receipt. This could constitute the receipt of a "secret commission" and be in breach of the Trade Practices Act.

- Fail to maintain proper books of accounts.
- Making double payments for some invoices.
- Making payments for some services without having obtained an invoice.
- Transferring levy funds between 4 separate strata companies all of which were managed by the same strata manager. Returning some of those funds between 1 and 3 months after the date they were debited. The total amounts transferred from our strata company was approximately \$24,190.00 of which \$2,000 was never returned until this discrepancy was discovered. Yet the financials for the period ending June 2008 which were distributed to the owners balanced? The

amount of \$2,000 and interest on all of the transferred funds for the periods they were missing from the account was credited back to the account 17 months later.

- Fail to issue individual gas meter invoices whilst continuing to charge owners an administration fee for the provision of those invoices. Once requested to rectify the incorrect invoicing failing to do so in a timely fashion with the invoice in question being provided some 4 months after its original date of issue and with the new gas invoices still being charged incorrectly.
- Failing to reply to owners' queries in a timely fashion or at all.
- Allowing the tenant of a commercial lot being used as a restaurant to have exclusive use of a common area storeroom without obtaining the consent of owners as required under the Act. But in any event a tenant cannot be given exclusive use of any common property, hence another breach of the strata manager's duties.
- Failed to obtain and deliver to the owners a signed acknowledgement from every occupier of a lot of by-law 51.2 of our by-laws which by-law deals expressly with the use of the swimming pool.
- Failing to ensure that the Council of Owners implement a fire evacuation procedure as required under the by-laws and the Act.

It is my firm belief that all Strata Management Companies **must** be regulated and Strata Managers licensed and there be adequate penalties for any mismanagement, they should be educated as to policy and procedures required to operate as a Strata Manager.

Yours faithfully

R.M.HEALY

