

8 December 2009

Mrs Cassandra Stephenson  
Committee Clerk  
Standing Committee on Public Administration Committee  
Legislative Council  
Parliament House  
PERTH WA 6000

Email: [council@parliament.wa.gov.au](mailto:council@parliament.wa.gov.au)

Dear Madam

**Inquiry into Western Australian Strata Managers**

On 20 November 2009 you wrote to Mr Mark Atkinson, President of the Strata Title Institute of Western Australia, advising that the Standing Committee on Public Administration (Committee) had commenced an inquiry into Western Australian strata managers.

A Law Society member, Mr Atkinson brought the Committee's inquiry to the attention of the Law Society. The Law Society has no record of receiving a request for comment in relation to this inquiry.

The Law Society has long been of the view that the operations of strata managers should be regulated. A submission from the Law Society is attached. The same submission, dated 27 September 2002, was made to the 'Inquiry into the Western Australian Strata Management Industry' by the Economics and Industry Standing Committee.

Yours sincerely

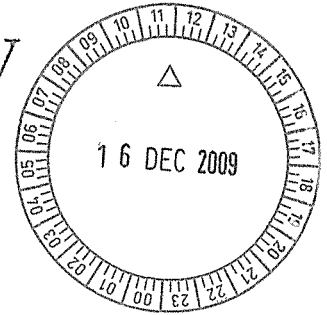
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## SUBMISSION

### INQUIRY INTO WESTERN AUSTRALIAN STRATA MANAGERS

#### Standing Committee on Public Administration

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#### Regulation of Strata Company Managers

The Society wishes to highlight the dangers of the activities of some Strata Company Managers who expose an unwitting public to the risk of defalcation and a level of unprofessional service. We urge you to give consideration to the establishment of a licensing regime for Strata Company Managers and others involved in Real Estate Transactions not adequately catered for by current legislation.

#### Strata Company Managers

The functions of a Strata Company Manager are similar to, but more complex than, those of a Real Estate Property Manager. The activities of a Strata Company Manager do not fall within the definition of "real estate transaction" in the *Real Estate and Business Agents Act 1978*. The activities of Strata Company Managers are not regulated in any way.

The scope and size of Strata Schemes is wide, ranging from two-lot schemes to schemes with hundreds of lots. The role of a Strata Company Manager requires it to collect and disburse significant sums of money on behalf of the proprietors of a Strata Scheme and conduct the affairs of the Strata Company in accordance with the *Strata Titles Act*.

Non-regulated Strata Company Managers are not required to audit their books nor are they required to maintain any form of professional indemnity insurance. By a quirk of the *Real Estate and Business Agents Act 1978*, Strata Schemes managed by licensed real estate agents can have access to the fidelity fund established under the Act, whereas schemes managed by non-regulated managers are totally exposed.

Section 4 (3a) of the *Real Estate and Business Agents Act 1978*, provides:

"For the purposes of this Act, monies collected by an agent for or on behalf of a Strata Company are deemed to be monies collected by the agent in respect of a real estate transaction."

It is unlikely that proprietors of strata lots are aware whether or not the activities of their Strata Company Manager are regulated. The public perception appears to be that all Strata Company Managers are required to be licensed. The public assume that their interests are protected by legislation and regulation.

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Those owners of strata lots who cannot rely upon the safety net of the Fidelity Fund established under the *Real Estate and Business Agents Act 1978* are at a distinct disadvantage, compounded by the fact that the proprietors may not be aware of the exposure that they face.

At a minimum, steps need to be taken to alert the public to the fact that they may not be dealing with a person or entity whose services are regulated. Preferably there should be a change in the law to require Strata Company Managers who seek and are rewarded for their services, to be licensed and regulated.

Strata Company Managers are licensed in other states of Australia. In New South Wales there is a regime of differential licensing under the *Property, Stock and Business Agents Act 1941*, including strata managing agents and community managing agents licenses.

The *Real Estate and Business Agents Act 1978* licenses Real Estate Agents and Real Estate Sales Representatives to undertake Real Estate Transactions. Only people licensed under the Act can undertake Real Estate Transactions for a fee. Only a licensed Real Estate Agent can operate a business that services Real Estate Transactions.

The typical activities of a Strata Company Manager require a more detailed level of skill and experience than a Real Estate Agent. Detailed knowledge of the *Strata Titles Act* and its Regulations is essential. A similar level of regulation is justified.

Scope exists for a new category of license to be granted either under the *Real Estate and Business Agents Act 1978* or under the *Strata Titles Act* to regulate the conduct of Strata Company Managers.

Some of the typical duties undertaken by Strata Managers include:

#### ***Accounting***

- Collection and disbursement of Strata Company levies.
- Maintenance of a Sinking Fund.
- Preparation of annual budgets and periodic financial reports for presentation to the Strata Company Council and to the Strata Company.
- Submission of books of account for audit.
- Liaison with Australia Taxation Office eg. GST/ABN registration if required, completion and submission of BAS returns if required.

#### ***Meetings***

- To convene and attend meetings of the Strata Company and the Strata Council.
- To advise the Strata Company and the Strata Council on the proper conduct of its affairs and the regulation of the conduct of the proprietors.
- To take and publish minutes of meetings.

### **Management**

- If required, to look after the day to day management of the Scheme and its improvements on behalf of the proprietors.
- Effect and maintain insurances required by the Strata Company.
- Apply for approvals required for the purposes of *Strata Titles Act* on behalf of the proprietors.

### **Knowledge**

- To have a detailed knowledge of the *Strata Titles Act* and its Regulations and to be able to advise the Council and Owners in relation thereto.

All regulatory regimes should ensure that Strata Company Managers have the requisite knowledge and skill to enable them to provide these services to the public.

Further, the Society's attention has recently been drawn to the disturbing rumours concerning kickbacks or secret commissions obtained by professional strata managers in the course of their management function. Such rumours would suggest that exorbitant quotes are sometimes obtained for building works to be carried out resulting in secret commissions being diverted back to the manager and the like.

### **Over-Regulation**

While proposing regulation of Strata Company Managers who either seek or are paid reward, the Society does not advocate an across-the-board regulation of all Strata Company Managers; obviously there are many small strata schemes which are honestly and adequately managed by diligent persons without any reward or recompense. There would need to be some recognition of this, such as there is in the *Strata Titles Act* which recognises, in section 36A, a less onerous regime for two lot schemes than would otherwise apply.

### **Other Real Estate Transactions**

The Society, also urges a general review of the licensing of real estate related businesses which have developed in the past 20 years. Some provision of the *Real Estate and Business Agents Act 1978* are not necessarily relevant or appropriate.

There are other areas of real estate activity which might also be considered as part of a differential licensing regime in Western Australian, namely:

- 1 Property Managers do not require the same skill or experience as Property Sales Agents and could be separately licensed as in other States.
- 2 The short-term holiday rental management industry is booming in Western Australia but because of the highly personalised nature of the service is of little interest to the real estate industry as now structured; such activities are, in some instances, being undertaken by non-regulated managers.

Managers of short-term holiday rental accommodation provide a necessary service to the tourist industry and holiday homeowners, but many managers operate without a license under the *Real Estate and Business Agents Act* although their activities fall within the definition of "Real Estate Transaction".

There is a need to recognise and license short term holiday rental managers. However, those managers do not require the same skill or experience as Property Sales Agents and so, could be separately licensed.

A handwritten signature in black ink, appearing to read "Dudley Stow". The signature is written in a cursive, flowing style.

Dudley Stow  
President

*7 December 2009*