

ECONOMICS AND INDUSTRY STANDING COMMITTEE

INQUIRY INTO THE WESTERN AUSTRALIAN STRATA MANAGEMENT INDUSTRY

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
ON WEDNESDAY, 27 NOVEMBER 2002**

SESSION ONE

Members

Mr A.D. McRae (Chairman)
Mr J.H.D. Day (Deputy Chairman)
Mr J.J.M. Bowler
Mr B.K. Masters
Mr M.P. Murray

Committee met at 9.25 am

EDWARDS, MISS MICHELLE SUSANNE
Real Estate Agent, Blue Moon Realty,
examined:

The CHAIRMAN: This committee hearing is a proceeding of Parliament and warrants the same respect that proceedings in the House itself demand. Even though you are not required to give evidence on oath, any deliberate misleading of the committee may be regarded as contempt of Parliament. Have you completed a "Details of Witness" form?

Miss Edwards: Yes.

The CHAIRMAN: Did you understand the notes attached to it?

Miss Edwards: Yes.

The CHAIRMAN: Did you receive and read an "Information for Witnesses" briefing sheet regarding giving evidence before parliamentary committees?

Miss Edwards: Several copies; yes.

The CHAIRMAN: You have sent a submission to the committee. Would you like to speak to that submission? Maybe that will set the scene for what you want to talk about.

Miss Edwards: I just want more accountability on the strata management side of things. I do not do a lot of strata management, although I would like to. I have done all the courses and I know the Strata Titles Act. In my capacity as a real estate agent buying and selling real estate, I have come across so many nasties and they need to be fixed up.

The CHAIRMAN: Can we go to that point? You are a real estate agent trading in the buying and selling of property, and that may be of interest and use to the committee. Can you detail some of the issues that you have come across?

Miss Edwards: As a real estate agent, I must have a trust account and I must have that audited. I do not do property management, so all that goes into my trust account is deposits; and it is very strictly adhered to by the law. That is audited every year, but I cannot have the same accountant who does my tax do my audit. It is very difficult to get someone to come in and audit a small trust account like mine. Strata managers, who are unlicensed or do not come under a real estate agent, can have hundreds of thousands of dollars in their trust account and they are not audited, and they do not have to be.

The CHAIRMAN: Have you seen evidence of this in the course of your work?

Miss Edwards: No, I cannot speak about that, because I have not seen it. I cannot say that I have seen anything like other people's private trust accounts.

The CHAIRMAN: You mentioned that you had seen some nasties.

Miss Edwards: It is about people not being in bona fide control of their strata managers.

The CHAIRMAN: Can you provide some examples, without naming names?

Miss Edwards: It is very difficult. I do not know whether everybody here knows some of the ramifications of the Strata Titles Act, but there are situations where a person can own his own unit entitlement. There can be six units in a row, they are all facing the street and there is no common property on any of them. Each one owns his own lot and owns his own building. Under the Act they can insure together or separately. Under the Act each one is responsible for his own maintenance and repairs. The strata company is responsible for only the common property. A

government authority owns five of the six units - this is only one of the instances - and one is privately owned. Every time something breaks down in the other five, it comes out of the strata fees, which includes payments made by this elderly couple in the sixth unit. In effect, this elderly couple, who really do not have two beans between them, are paying for the maintenance and the repairs of the units owned by the government authority. The strata manager would not let them get their own painter, etc and insisted that they had to do it that way because she was the strata manager and she knew best. When we complained to the agent he came up with a whole lot of gobbledegook to show that he did not know the Act either. This is why I believe the strata manager should be licensed, even if she is working under a real estate agent. They should have a police clearance certificate. I believe this person was doing devious things, like building up the trust account until it was really high and then hiring the same painter for every strata she was managing and also getting two quotes from the same painter, one for seven years and one for one year - that was the choice of the quotes.

Mr J.H.D. DAY: What do you mean by that?

Miss Edwards Instead of getting three quotes from three painters, she got two quotes from the same painter, one to do the maintenance for one year and one to do it for seven years, and virtually forcing it on the people.

Mr B.K. MASTERS: And that creates opportunities for kickbacks, etc?

Miss Edwards Yes. I believe the painter was a relative of this person, because I have come across many stratas that she is managing and it is the same painter. She is now on her own, by the way; she is not with the agent any more.

Mr J.H.D. DAY: One would assume that a government authority that owns five of the units would want things done properly. Are you saying that they were really being taken for a ride by this manager, without knowing what was going on?

Miss Edwards I think the government authority believed the agent knew what he was talking about, and he did not. When he was put on the spot he said that the Act said that the strata manager has the authority to go in and repair when the places are falling down, and in certain cases that is right, but we must remember that for five years these people were trying to get it done, they were not allowed to do it themselves and the strata manager kept saying, "I'll get the quotes; I'm doing it; it's my responsibility; it's got nothing to do with you," and all this sort of stuff, while she is building up the trust account.

Mr J.J.M. BOWLER: Were the old couple paying one-sixth?

[10.35 am]

Miss Edwards They do not necessarily pay one-sixth, anyway; they pay their unit entitlement. It depends on how much land there is or the value of the property. However, unit entitlement varies. In this instance, at the beginning of this strata, they were paying one-sixth, which was wrong, because they were all different sizes and there was no change of by-laws to say that they could do that. Sometimes you can do it if you agree to do it. There were no reappointment authorities. If you see all the minutes, it was an absolute shambles.

The CHAIRMAN: What you are really saying is that, firstly, the management of the strata company had broken down, and that was not rectified, in part, because a majority owner exerted undue influence over -

Miss Edwards: No, because the authority always says that if it is a situation in which it has five and somebody has one, it tries never to exert its influence; it always tries to be fair. I believe it was misled by the agency that it had signed up with. I really think it leaned on the agency for advice, and it was given wrong advice.

The CHAIRMAN: The state housing agency, under strata title law, would be able to exercise a majority role.

Miss Edwards: Yes, because it had five and the person had one.

The CHAIRMAN: In the circumstance you are giving as an example, the agency probably would have had the power to make a decision on who was appointed the strata title manager. Are you aware if that is right?

Miss Edwards: It said that it put it out to tender. The fees that were being charged when it first went to tender were relevant fees today, and this was 10 years ago. Therefore, I do not know how it got the tender sorted out.

The CHAIRMAN: In other words, there has been no consumer price index adjustment.

Miss Edwards: I do not know. All I know is that I have copies of the minutes, and it was very wrong. You can elect to have them all painted and maintained together, but it must be notified on the strata plan. Therefore, if somebody is buying a strata, that person will look on the strata plan, and if he sees nothing on the back as a notification of a change of by-laws, he assumes that the standard by-laws are in place, which is great. It means you know what is going on. If anything has been changed, it must be on there. People do not make notifications on there. They change their by-laws all the time and they do not make a note of it.

The CHAIRMAN: Do you have a view on how the registration and regulation of strata management should be paid for?

Miss Edwards: I tried to join the strata management association at one stage, and its fees were huge.

The CHAIRMAN: Is that the Strata Title Institute of Western Australia?

Miss Edwards: Yes. I think if people can pay that kind of money to be in the institute, maybe they should contribute something towards licensing fees with the Real Estate and Business Agents Supervisory Board. However, I think it should be separate for the Real Estate and Business Agents Supervisory Board.

The CHAIRMAN: You are suggesting that the regulation and registration should be self-funding.

Miss Edwards: Yes, as with all the other boards - the Builders Registration Board of WA etc - but it should not come under the same umbrella as the Real Estate and Business Agents Supervisory Board, because I think that board has had too much to do with the finance brokers. It is crazy.

The CHAIRMAN: As a real estate agent, in your work do you come across issues relating to an absence of any sinking fund or long-term maintenance fund for strata title properties when a new unit holder is all of a sudden exposed to significant maintenance costs? Has that been your experience?

Miss Edwards: If you are a good real estate agent, the first thing you do is to try to get copies of the minutes of the last annual general meeting, and you look around. When you are selling something to somebody, you have a duty of care to your purchaser as well. Therefore, you look at the grounds, and if the bitumen looks pretty rotten and there are big holes everywhere, you know that the purchaser will be up for a fee eventually, so you want to know what is in the kitty. You get a copy of the minutes of the last year's annual general meeting so you can present to your purchaser all the facts, and those facts will show you whether or not money is in the kitty. However, over the years I have gone into stratas where there is no council, and all the paving on the driveway has had it. I say to them, "You realise that if anybody breaks their neck, you are jointly and severally liable." Then really quickly they start getting their act together. However, most people say, "Oh, we don't worry about that, love." We will sell something to elderly people. Every year we get more and more documentation to give purchasers to let them know that they are buying a strata property. In the old days we used to just put that it was under the Strata Titles Act, and then the

purchasers would say that they did not know that. Now you try to make them read it, and they say, "I have left my glasses at home" or "It's too small." I have big copies, and they say, "No, we don't have to do that."

The CHAIRMAN: Is it information overload, or are people just reluctant -

Miss Edwards: I think so. They want to complain only when something goes wrong. There is this business about strata managers not knowing the Act. You may get a situation in which two old houses are at the front of a property and two new ones at the back, and a common driveway. If they are all sharing the payment of the money, the ones at the front will need a lot more maintenance, so it is bad for the ones at the back. However, strata managers do not explain this sort of thing to them.

Mr M.P. MURRAY: You said that you had been through the strata title course.

Miss Edwards: Yes, at the Real Estate Institute of Western Australia - Peter Munday's course.

Mr M.P. MURRAY: Do you think that not enough is done in the training area as well?

Miss Edwards: Yes. Peter Munday's course is excellent. It is a very good course. However, people do not have to go to it. We have a saying - it is probably the same in most industries - that a lot of people in real estate got their licences in a Weeties box. You had to do two courses and you got it, and you became a real estate agent. Some of those people have never done any other courses, and we have had so much new legislation. Some of them still believe in caveat emptor. They do not know about the Trade Practices Act and they just say, "Well, if I don't tell them, tough" - this sort of stuff.

The CHAIRMAN: If they do not ask, it is their issue.

Miss Edwards: That is not the case any more, of course.

The CHAIRMAN: No, you have an obligation to inform them.

Miss Edwards: Of course you do. I think we must have education and police clearances. I must have a police clearance. Why should a strata manager not have a police clearance? There is a lot of money in a trust account. I think education and a regulatory body are very important.

The CHAIRMAN: As a real estate agent, do you have a view about duplexes being included under strata law?

Miss Edwards: Of course; a duplex is a strata.

The CHAIRMAN: Do you think that is an appropriate way of providing -

Miss Edwards: Of course. You have to be very careful. A lot of old duplexes are still all common property.

Mr J.H.D. DAY: What about when they do not have common property?

Miss Edwards: You must be careful. A duplex must come under the standard by-laws, because there are two houses very close to each other. The standard by-laws, which are in the Act - in fact, in the schedule - control the way people live when they live in close confinement.

The CHAIRMAN: I guess I was putting to you a thought that is running through my mind.

Miss Edwards: You are thinking about making them green titles.

The CHAIRMAN: The New South Wales experience, for example, is that they become separate titles, and there is no common property.

Miss Edwards: That is if there is no common property, because many of our duplexes have a common driveway.

The CHAIRMAN: That is right, but you can deal with driveways by the use of an easement.

Miss Edwards: Yes.

The CHAIRMAN: And still allocate the property and just arrive at the use.

Miss Edwards: Yes, and have two people maintain it as an easement, yes. I understand that. However, I think you still have the problem of people living in close confinement, and the strata by-laws say things like, "You can't use your front yard as a wrecking thing and have all your cars out the front" and stuff like that. However, a green title does not say that. If people are living on small blocks, there is a lot to be said for the standard by-laws. In fact, I think under the Strata Titles Act you have more control over your neighbours than you do with a green title. If I am in a strata and the neighbours have a terrible tenant in there, I can get that fixed up pretty smartly under the by-laws, because they are not allowed to make a lot of noise and things like that. However, under a green title, it would be very hard. I know; I have a very noisy neighbour at home.

[10.45 am]

The CHAIRMAN: A number of States on the eastern seaboard have much better regulation and registration of strata management.

Miss Edwards: That might be so; I do not know.

The CHAIRMAN: When examining these issues, we are really trying to examine all the experiences, and all the frameworks and policy approaches that are used. Australia has everything from absolutely zero regulation to fairly high intervention management and control. I was interested to hear your response.

Miss Edwards: They have gazumping in the eastern States. We do not have that here. We do not want to bring that over here. That is why they have their three days.

Mr M.P. MURRAY: You spoke earlier about showing prospective tenants the information that you have. Whereabouts do you get your information from?

Miss Edwards: The first thing you usually want to find out is who is the secretary of the strata council. If there is no strata council, you urge the purchaser not even to think about the place. Strata councils have a chairman and a secretary. They and all strata managers are supposed to have copies of the records. The strata manager will direct people to the treasurer, but you pay a fee to the strata manager. That is laid down in the Act. You can then go through the books. You pay a fee for anything you photocopy. Sometimes managers are amenable, sometimes they are not, but the law is that they must let you look at the books.

The CHAIRMAN: Is that a right of a unit holder or a prospective unit holder?

Miss Edwards: The owner gives you a signed form saying that you have the authority to go and get the information. You then pay the strata manager as a real estate agent.

The CHAIRMAN: That is done with the authority of the current unit holder, is it?

Miss Edwards: Yes.

The CHAIRMAN: What sort of dollar amounts are we talking about?

Miss Edwards: It is laid down in the Act. I cannot remember, but it is a lot of money for photocopying, for example. It is about 80 cents a page. There are fees like that. There is a set fee under section 43. I want to go further and go through the books, which I always think is the best thing to do. I put in my offer documents that the vendor will provide a copy of the minutes and agenda of the last annual general meeting. That solves a lot of problems.

The CHAIRMAN: That is very interesting.

Miss Edwards: That applies only to me; I do not know anybody else who does that.

Mr M.P. MURRAY: Do you sometimes have it in a larger format?

Miss Edwards: I enlarge it on the photocopier at the office. Section 68 of the Act provides for a notice. It really applies mostly to original proprietors. If somebody is the first owner of the strata property, a purchaser needs to know a lot of information. By law people are supposed to give the information. Under another section of the Act you are supposed to show people what happens when they buy and sell a strata property. They must be given a copy of this and a copy of that. We should also give them a copy of the strata plan and colour in the lot that they are buying so that they know what they are buying. That is not set in stone, but we all do it because it is the proper way of doing things.

The CHAIRMAN: In addition to identifying the particular private property that the person is purchasing, do you think that as a matter of regulation we should be requiring common property to be identified?

Miss Edwards: Yes. Some people do not understand the concept of common property. It is very hard for them to get their head around that. It is just like explaining strata companies to people; once you explain it to people, they are all right, but too few people have the time to sit down and explain these things.

The CHAIRMAN: In other jurisdictions in Australia and other countries, particularly in the United Kingdom, there is a move to change the name of this kind of property right. Typically, people are putting forward expressions like "common title" or "common hold". As I understand it, they are being used to try to communicate from the outset the sort of property rights that people are acquiring.

Miss Edwards: I would have to think about that. It has taken people a long time to understand what strata means. People say to me, "It is not a strata; it is a duplex." I tell them that a duplex means two buildings sharing a lot, which means that it is a strata title.

The CHAIRMAN: What if we came out with the expression "common title" or "community title"?

Miss Edwards: I do not know about that. I think people have learnt a lot about strata in the past five or six years. The previous Government organised a lot of open forums at which people could discuss it. A lot of people aired their grievances about strata. That is why the Act was amended. Many real estate agents were telling people that it is like a green title because they own the lots. In a sense it is, but people come under the Strata Titles Act. They always forgot that second bit.

The CHAIRMAN: It is like a green title but there is something more.

Miss Edwards: People come under the Strata Titles Act. It is very similar but -

The CHAIRMAN: That is right. It is like a green title inasmuch as there is private property, but there is more because there is common property.

Miss Edwards: No, sometimes there is no common property at all.

The CHAIRMAN: I cannot imagine that. Can you describe it?

Miss Edwards: If two lots both have street frontages and the owners own both lots, where is the common property?

The CHAIRMAN: It may be the fence.

Miss Edwards: The fence comes under the Dividing Fences Act.

Mr B.K. MASTERS: In that situation, what would be the benefit of maintaining the strata nature of those two units?

Miss Edwards: The fact that they are both close to each other. We are talking about very small living areas, although many lots that do not have strata title have very small living areas now. They

start to have the air of slums after a while because they are so tiny. Fremantle is a classic example of that.

The CHAIRMAN: Subiaco has houses with minimum distances between them of less than two metres.

Miss Edwards: They are very expensive in Subiaco. In the lower income areas you might find a family of six living on a cheapie block. Believe you me, the developers will develop such blocks. There are then all sorts of troubles in the street. People have a right to peace and the enjoyment of their own property.

Mr B.K. MASTERS: I can give one example of what Ms Edwards is saying. Some friends of mine lived in Shenton Park. They had the most minor disagreement with next door neighbours, but the husband was rather vindictive. For the next six months, every Saturday and Sunday he would move loudspeakers to the window facing their lounge room and turn the volume up and blast them out. The controls you are talking about through strata companies and by-laws could be very important.

Miss Edwards: We see some naughty stuff going on, especially with old ladies. I sold a lovely little villa to a lady once who sold it again a month later because the other three old ladies made her life a misery. You must be very wary of old ladies. They ganged up on her.

My main concern is education. I believe that all the fellows and women in real estate who have not done a course for years should be made to go back. Every time their triennial registration renewal comes up, they should list the courses they have done and give proof or a certificate showing that they have done the courses. Before people could own their own lot, it was very hard for people to understand that they did not own the property but they had exclusive right to put something on it. In those days you could sell a vacant piece of land when you did not own it. My boss used to ask how could people sell something when they did not own it. I would say to him that they had the right to put something on it and own the air inside it, but he could not understand it. He never did any courses. What we have now is much better than what we used to have.

The CHAIRMAN: You are suggesting for the registration of strata title managers that there be a registration process based on the development of skills through a recognised course.

Miss Edwards: Yes, they should know the Strata Titles Act. Half of them do not.

The CHAIRMAN: You are saying that they should undertake an appropriate course to develop those skills, which would satisfy registration requirements, are you?

Miss Edwards: Yes.

The CHAIRMAN: That is in addition to the requirement of being a fit and proper person.

Miss Edwards: Yes, separate to a real estate agent.

The CHAIRMAN: "Fit and proper person" has a particular meaning under Western Australian law. In addition to that, as I understand it, you are suggesting that continuing registration would be dependent upon demonstrating continuing professional development. Is that correct?

Miss Edwards: Yes. If people have a triennial registration renewal and if, in the three years before that, new legislation has come into being, they should have to prove - I believe we should too - that they have done a course on that new legislation if it pertains to our industry. What is wrong with that?

Mr J.J.M. BOWLER: To be the devil's advocate, there are the costs involved.

Miss Edwards: People do courses at the Real Estate Institute of Western Australia. They get special points for things that they do through REIWA. People who are not members of REIWA can still do the courses. In any profession, why would people not want to keep upgrading what they are doing? A doctor or lawyer goes to personal development sessions all the time.

Mr J.J.M. BOWLER: I suppose that some people might read the legislation and do their own course.

Miss Edwards: A gentleman came to me and said that it is a green title and that he did not know what I was talking about. My company is called Blue Moon Realty. He told me that it sounded like a brothel. This man had not done any courses. He lost his licence because he dipped his hand into the trust account 108 times. He always put the money back, and he thought it was all right as long as he put it back. That sort of attitude is a mindset. He did not do the courses, so he does not care and he does not know. He lost his licence because he was breaking the law. It is as simple as that. Real estate agents used to be in bona fide control. I say that laughingly, because every time somebody in their employ gets into trouble, the employee gets fined and the real estate agent continues to operate. I know four real estate agents who have had their trust accounts plundered, three by the same woman, and they continued operating. One trust account was plundered twice by two different women.

The CHAIRMAN: We had the impression that you were a strata manager, but you are not actually a strata manager.

Miss Edwards: I am about to become one, if I can. I am very nervous about doing it, although I want to do it, because at the moment it is a minefield. I have done all the courses in preparation for it and I go to meetings of other strata managers just to see what has been done correctly or not correctly. I can now pick out the ones who do not know what they are doing. Some people believe they should have chairmanship classes as well. Maybe that could be added to the agenda of the education committee because strata managers always end up being the chairperson of meetings.

The CHAIRMAN: One of the things that New South Wales does that is kind of interesting; when disputes arise, before an order can be enforced by a higher court, the Act imposes an obligation for parties to go through a mediation process. If mediation is not successful, the Act provides that they must go through an arbitration process, which is a sort of shotgun arbitration -

Miss Edwards: With whom? With the parties?

The CHAIRMAN: However many parties there are, they must appear before a strata management government agency, which is funded by the registration fees that people pay. Only after mediation and then arbitration are parties able to go to a court to have the conditions of the strata title company enforced.

Miss Edwards: I am a great believer in mediation. My husband, Philip Faigen, is **The CHAIRMAN** of the Institute of Arbitrators and Mediators of Western Australia, so I hear about arbitration all day and all night. I believe in mediation as the future. I think it is a win-win situation. People cannot achieve a solution through mediation without both parties feeling comfortable about the results. I do not believe there is anything better on the market than mediation.

The CHAIRMAN: I agree with you. I am a big fan of it. One of the things that has driven this in New South Wales is that it is a much more litigious community than Western Australia.

Miss Edwards: You would not know that because arbitration is private.

The CHAIRMAN: I am a trained mediator.

[11.00 am]

Miss Edwards: Then you should know that there has been a lot in WA.

The CHAIRMAN: It does not have the same level of community awareness or demand in WA that is seen on the eastern seaboard, particularly in New South Wales. Do you think that should be incorporated into strata management reform?

Miss Edwards: Most definitely; it is an excellent idea. I believe that the referee is overloaded anyway. He must have the big, final voice.

The CHAIRMAN: There have been some complaints about the Western Australian referee not being able to enforce his or her orders. Are you aware that there is no power under the Act for the referee to enforce orders?

Miss Edwards: I thought that had changed. I am ignorant about that. I know that for years people did what they liked because the referee had all the rules but no power. However, I thought that had changed.

The CHAIRMAN: No, it is still the case.

Miss Edwards: You would know. I thought it had changed under the recent amendments.

The CHAIRMAN: That is what the referee has told us. Thank you Miss Edwards. Is there anything else that you want to put to us?

Miss Edwards: That is about all. If you do mediation and arbitration, I do not see it as the same as the Real Estate Institute of WA. I understand from the experts that REIWA's arbitration clause is quite unworkable. The committee had a look at it and the new general conditions. I feel that it is a bit of a conflict of interest. If I am a purchaser or a vendor who has a problem with a real estate agent and I go to arbitration, chances are that the arbitrator on the arbitration panel will be one of the agent's mates.

The CHAIRMAN: You would argue that it should be independent mediation.

Miss Edwards: I think it should be an independent person who is an expert in the field.

The CHAIRMAN: That is a good comment.

Miss Edwards: The same should apply in our business.

The CHAIRMAN: On behalf of the committee, thank you very much for your contribution; it was very useful.

Miss Edwards: I just want it fixed.