



viewpoint

MANAGER NEGLIGENCE

A case has come across my desk that illustrates the damage lazy and negligent management can cause. In this case the fallout has been both long running and expensive.

A commercial community titled group needed \$30,000 for common carpark repairs. The manager raised the levy based on a quote from the majority owner in breach of Section 114 of the Community Titles Act.

There is no evidence of minutes of meeting authorising the expenditure of \$30,000+ on the works as required by Section 119 and Regulation 21 of the Community Titles Act.

There is no evidence of minutes of meeting authorising the large expenditure to lawyers pursuing the unpaid levies

There is no evidence of minutes of meeting authorising the raising of the levies to fund the legal costs.

There is no evidence of minutes of meeting authorising the engagement of the lawyers and the proceedings in magistrates court.

The fallout is a lawyers picnic, years of litigation and the breakdown of any trust between owners.

I believe that the responsibility for this mess is clearly the body corporate managers. Their contract states ..

"advise our client of its obligations pursuant to the Community Titles Act 1996 (Act) and Regulations"

They clearly failed their duty to their client.

The challenge for body corporate managers is to lift their game and become professional.

1: Abide by the law - read your Strata and Community titles acts regularly. Read related acts such as the Fences Act.

2: Act ethically, honestly, be straightforward and sincere.

3. Be objective, fair and not allow prejudice or bias to override that objectivity

4: Act in a lawful manner and comply with the law.

5: Perform your duties diligently and with competence. Only undertake work which you can reasonably expect to be able to complete in a timely manner.

6: Disclose and deal with conflict of interest issues in an open and fair manner. Do not pay or accept secret commissions.

some material sourced from
Strata Community Australia
code of conduct.

Cheers

Gordon Russell

ps: Do you have any friends who need to read our newsletter? Ring and we will post one out or they can download it from our website



RIGHT OF ENTRY TO PRIVATE PROPERTY

A recent court case highlighted the issue of entry to an owners unit or their yard in a strata titled group. At the time of writing the group is under Court administration.

In this case the common electricity meter box and fuses are in the unit yard subsidiary of one unit.

The case involves an owner who refuses access for residents and meter readers to his yard to read the meters.

The Magistrate pointed out that Section 9 of the Strata Titles Act provides an easement. An easement is a right to cross or otherwise use someone else's land for a specified purpose.

In this case the right of residents and owners who need access the meters and or fuses have a right to enter and cross the unit owner's yard to read the meters or access the fuses serving their respective units.

9—Easements

The following easements exist, to the extent required by the nature of the strata scheme, between the units and between the units and common property:

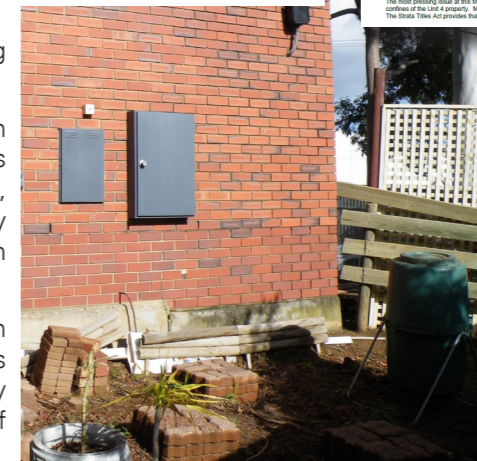
- (a) easements of support and shelter;
- (b) easements allowing for the establishment and maintenance of pipes, ducts, cables and other equipment so that—
 - (i) a unit may be supplied with water, gas, electricity, heating oil, or air-conditioned air;
 - (ii) a unit may be connected to the telephone or to a radio or television antenna;
 - (iii) a unit may be connected to sewerage, garbage, drainage or other similar services.

The Magistrate made the following Order:

1. With no less than 48 hours notice in writing, the owner or tenant of Unit # is to provide access for residents, owners, tradespersons, meter readers and any others needing access to the common meter box and fuse box.

2. With no less than 48 hours notice in writing, the owner or tenant of Unit 4 is to provide unfettered access to electricity service providers for the installation of remote reading meters.

3. The administrator will approach the police for a stand by breach of police presence if the owner of Unit # will not agree to allow access, or arrange a private security officer.



Any costs incurred in enforcing the easement by access into the Unit # property for access to the services as referred to in paragraphs 1 and 2 above are to be recovered from the owner of Unit #.

42—Unit holder's power of entry

- (1) If—
 - (a) —
 - (i) the proper supply of hot or cold water, gas, electricity, heating oil or air-conditioned air to a unit (unit A) fails; or
 - (ii) the sewerage, garbage or drainage system as it affects a unit (unit A) fails to operate properly; and
 - (b) some other unit (unit B) must be entered in order to investigate the cause of the failure, or to carry out necessary repairs,
- the unit holder of unit A, or a person authorised by that unit holder, may, after giving such notice to the unit holder of unit B as may be practicable in the circumstances, enter unit B for that purpose.
- (2) Reasonable force may be exerted in the exercise of powers conferred by this section but any damage to unit B must be immediately made good at the expense of the unit holder of unit A.



The right of access is also covered by Section 42 of the Strata Titles Act.

This section provides access to units where there is a failure of a service. The author used this section to break into a unit where the owner's hot water service was leaking into the unit below. The owner could not be reached. The HWS tank had split.

STOP PRESS
Contractors are flat out and getting 3 quotes or work done quickly is not happening. Unfortunately the east coast flooding disaster will only exacerbate the problem.

emergency numbers

Plumbing , Gas, Roof Leaks	8364 5855
Electrical	8274 0100
Building repairs, breakins & glazing	1300 362 515
Police to attend - noise/robbery etc	131 444
State Emergency Service storm/flood	132 500

Always be kind.
If you see someone falling behind, walk beside them.
If someone is being ignored, find a way to include them.
If someone has been knocked down, lift them up.
Always remind people of their worth.
Be who you needed when you were going through hard times.
Just one small act of kindness could mean the world to someone.

STOP PRESS

A reminder that should your corporation fail to give 14 clear days notice of its general meetings then all decisions will be invalid. We recommend 21 days to allow for postal delivery.

USEFUL LINKS

For podcasts and fact sheets on many unit living matters go to.. www.unitcare.com.au/fact_sheets.html

Our colleagues at www.lookupstrata.com.au have sent us some useful links.

The following are from some of their most viewed pages...

- www.lookupstrata.com.au/sa-neighbour-smoking-on-balcony/
- www.lookupstrata.com.au/category/parking/parkingsafaq/
- www.lookupstrata.com.au/factsheet-maintenance-common-property/
- www.lookupstrata.com.au/category/noise/noisesafaq/



SECRET - FIND SOMEONE TO STAY A CHILD WITH

The following was penned by Madeleine Gaastra on her Facebook page in October 21st 2020

The problem is, we look for someone to grow old together, while the secret is to find someone to stay a child with! (Charles Bukowski)

What does Love mean to 4-8 year old kids? Slow down for a few minutes to read this...

A group of professional people posed this question to a group of 4 to 8 year-olds, "What does love mean?" The answers they got were broader, deeper, and more profound than anyone could have ever imagined!

'When my grandmother got arthritis, she couldn't bend over and paint her toenails anymore... So my grandfather does it for her all the time, even when his hands got arthritis too. That's love.' Rebecca - age 8

'When someone loves you, the way they say your name is different. You just know that your name is safe in their mouth.' Billy - age 4

'Love is when a girl puts on perfume and a boy puts on shaving cologne and they go out and smell each other.' Karl - age 5

'Love is when you go out to eat and give somebody most of your French fries without making them give you any of theirs.' Chrissy - age 6

'Love is what makes you smile when you're tired.' Terri - age 4

'Love is when my mommy makes coffee for my daddy and she takes a sip before giving it to him, to make sure the taste is OK.' Danny - age 8

'Love is what's in the room with you at Christmas if you stop opening presents and just listen.' Bobby - age 7 (Wow!)

'If you want to learn to love better, you should start with a friend who you hate.' Nikka - age 6

(we need a few million more Nikka's on this planet)

'Love is when you tell a guy you like his shirt, then he wears it every day.' Noelle - age 7

ISSUES MOST MEN WON'T TALK ABOUT

Like older women, many men as they grey into old age seem to become invisible and silent — the difference is that men are only just beginning to talk about it. Some of them.

Older age for most men involves adjusting to major change, something many do not do well. Prominent among these are retirement, widowhood and relocation, all rating highly on the stress scale.

But it appears men have bigger issues at heart - father, adult, son relationships, the lack of a role once out of work and the spiritual aspects of living.

The prevalence of loneliness, depression and suicide among older men is similar to that among young men. But men over 65 are four times more likely to take their own lives than elderly women.

In reaction, Sydneysider Jack Zinn has written a book, Older Men's Business, his primary objective being to show men over 55 that they are not alone. Whatever their hidden feelings or fears, there are many others who feel the same.

'Love is like a little old woman and a little old man who are still friends even after they know each other so well.' Tommy - age 6

'During my piano recital, I was on a stage and I was scared. I looked at all the people watching me and saw my daddy waving and smiling.

He was the only one doing that. I wasn't scared anymore.' Cindy - age 8

'My mommy loves me more than anybody. You don't see anyone else kissing me to sleep at night.' Clare - age 6

'Love is when Mommy gives Daddy the best piece of chicken.' Elaine - age 5

'Love is when Mommy sees Daddy smelly and sweaty and still says he is handsomer than Robert Redford.' Chris - age 7

'Love is when your puppy licks your face even after you left him alone all day.' Mary Ann - age 4

'I know my older sister loves me because she gives me all her old clothes and has to go out and buy new ones.' Lauren - age 4

'When you love somebody, your eyelashes go up and down and little stars come out of you.' (what an image!) Karen - age 7

'Love is when Mommy sees Daddy on the toilet and she doesn't think it's gross...' Mark - age 6

'You really shouldn't say 'I love you' unless you mean it. But if you mean it, you should say it a lot. People forget.' Jessica - age 8

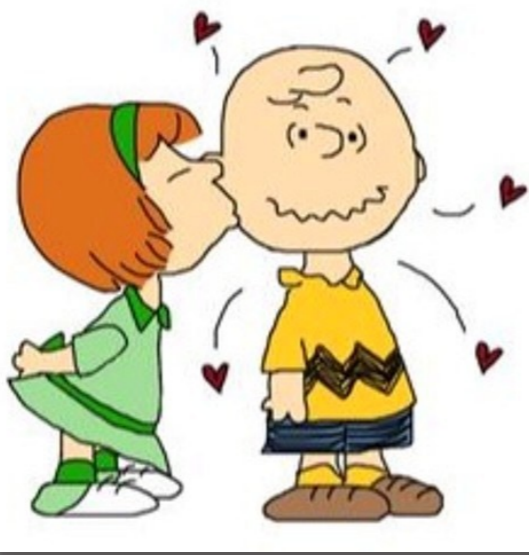
And the final one: The winner was a four year old child whose next door neighbour was an elderly gentleman who had recently

lost his wife. Upon seeing the man cry, the little boy went into the old gentleman's yard, climbed onto his lap, and just sat there. When his mother asked what he had said to the neighbour, the little boy said, 'Nothing, I just helped him cry.'

(this made me cry!)

Now, take a few seconds and post this for others to inspire and spread Love like butter!

And then be a child again today!



TERMITES - WHO IS RESPONSIBLE?

Termites cause more damage to homes than floods, fire and storms put together. Some 40% of S.A. homes suffer termite attack.

Termites are social insects living in colonies of up to a million individuals. The Queen rules the colony and is the mother of all the termites. Without her the colony has no future. Several pest species of termites nest in tree stumps, under homes, in gardens, from which the workers make subterranean tunnels to timber located in our homes within about a fifty metre radius of the colony. Most attacks on homes and timber originate from outside. They return to the nest and share gathered food with the queen and all members of the colony.

How do termites gain access? Houses and other buildings provide termites with the ideal combination of warmth, moisture and food sources. Termites can find ways to enter your house that you've never thought of. They are small enough to gain entry into hidden areas of cellars, crawl spaces, and concrete slabs, through openings as small as 0.1mm. A loose mortar joint, a small space around a drain pipe, garden soil covering air vents, or a settlement crack in the concrete slab is all they need to gain entry to the home.

Some history. Chemical barriers to prevent the access of termites into the wall and roof timbers have been applied around homes and under timber floors and concrete slabs in Australian homes since 1954. Organochlorine insecticides such as dieldrin, aldrin, chlordane and heptachlor were used as chemical barriers until 1995 with the chemical being active in the soil for ten years to 25 years. Since 1995 chemicals which have a shorter period of protection have been approved to prevent termite access into buildings with retreatment being recommended every five years

Baits - an alternative to chemical barriers. For many years we have suggested bait boxes for client groups with active termites. These

COMMUNITY TITLES - ILLEGALLY RAISED LEVIES

Recently we came across a case where the body corporate manager raised a substantial levy for carpark bitumen works and then had the corporation spend those funds on the works.

If their client was a strata corporation then a simple majority at a duly convened general meeting would have sufficed to authorise both the raising of the levy along with expenditure on the works.

But this was a community corporation. Expenditure is controlled by legislation and regulations as follows...

119—Limitation on expenditure: Expenditure of an amount exceeding the amount prescribed for that purpose by regulation must not be made by a corporation unless the expenditure has been specifically authorised by an ordinary, special or unanimous resolution of the corporation depending upon the amount involved.

21—Resolutions authorising expenditure (section 119 of Act)

Expenditure by a community corporation

(a) of less than an amount that is equivalent to \$2,000 multiplied by the number of community lots in the scheme must be authorised by an ordinary resolution of the corporation;

take the form of short sections of PVC sewer pipe containing poisoned tasty timber. The pipe is dug into the soil and capped with a PVC screw cap.

The traps are checked every few months. The great value of this method is that the termites take the poison back to nest and kill it off. There is now a more sophisticated and reliable method of baiting with the trade name of Sentricon. Its features are:

- ✦ In ground bait tube
- ✦ Active ingredient in Sentricon AG Termite Bait is called hexaflumuron.
- ✦ Insect Growth Regulator, specifically a Chitin Synthesis Inhibitor.

✦ Prevents the termites from completing their moulting process.

✦ Termites die if they can't complete the moulting process.

✦ Bait is taken back to the nest and spread throughout the entire colony via trophallaxis.

✦ Rate of 5g/kg impregnated in compressed cellulose matrix (briquettes).

✦ Hexaflumuron at 5g/kg is undetectable by the termites.

✦ 6 months post commencement of baiting, 80% of colonies had been eliminated with a further 6% having consumed sufficient bait to gain elimination. (Range 4 to 12 months)

Note: Termite damage is not normally covered by home insurance policies.

Fact Sheet: www.unitcare.com.au/fact_sheets.html see termites

(b) of the amount referred to in paragraph (a) or more but less than an amount that is equivalent to \$5,000 multiplied by the number of community lots in the scheme must be authorised by a special resolution;

(c) of the larger of the two amounts referred to in paragraph (b) or more must be authorised by a unanimous resolution.

The cost of the works in this case was \$30,000. This expenditure required a Special Resolution. No meeting or special resolution occurred.

The manager commenced debt collection proceedings against a lot owner who at law appears to not owe the funds.

The manager in this case is in breach of section 78C(2) of the Act by failing to exercise its professional services with due diligence or care and not acting in the best interests of our client as its manager.

Hint: Managers need to quote the relevant act(s) when providing advice to clients.



In this fact sheet we look at termites. Who is responsible for treating and protecting the buildings at a body corporate group. It is important to understand what comprises common property. We cover this under Boundaries on our website. www.unitcare.com.au/faq_strata_boundaries.html

Both strata and strata division (1 unit on top of another) community corporations are responsible for the dealing with termites and any resultant damage. Termites cause more damage to homes than floods, fire and storms put together. Some 40% of S.A. homes suffer termite attack. Termites are social insects living in colonies of up to a million individuals. The Queen rules the colony and is the mother of all the termites. Without her the colony has no future. Several pest species of termites nest in tree stumps, under homes, in gardens, from which the workers make subterranean tunnels to timber located in our homes within about a fifty metre radius of the colony. Most attacks on homes and timber originate from outside. They return to the nest and share gathered food with the queen and all members of the colony.

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