

Into the Future: Strata and Community Titles Owners' Forum

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Working Together for Better Environments

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Today's topic requires an understanding of what we mean by "better environments", as well as the identity of those who need to work together.

Our environment encompasses our surroundings and in a broader sense, our conditions of life. Therefore, our environment in a strata and community title context means the physical surroundings and conditions associated with our lot, whether that lot is a residential lot or a commercial or retail lot. My focus today will be on the urban residential environment, although many of the principles discussed will apply to broad acre communities and non-residential situations.

As to who needs to work together; they are the key people who have the capacity to influence our environment - the property developers, lot owners, body corporate managers and Government. We need to consider each of those groups in the context of the environmental problems that confront strata communities.

DEVELOPERS

First of all, let's consider the developers. The developer has control over such things as:

- The choice of the site
- The type of product to be developed
- The facilities to be provided
- The design of the product
- The quality of the built form
- The body corporate and building management arrangements
- The accuracy and completeness of the information they provide buyers.

All of these things influence the final environment. And to a large degree these things are in turn influenced by the demands of the marketplace and the need for the developer to make a profit from the development. The developer will not intentionally develop anything that is not marketable. Nor will the developer intentionally develop anything that is not profitable. These basic propositions must be accepted by all.

Some developers are very "brand conscious" and, within the constraints of marketability and profitability, pay particular attention to all of the things I have referred to. They do this because they want to be known for producing a quality product and they foster repeat

business. Unfortunately, other developers are more opportunistic. They take whatever shortcuts they can, particularly if they are not discoverable until after completion of the project.

The types of developer related problems currently being experienced are:

Inappropriate long term building management appointments

Originally, long term building management appointments were only used for holiday letting buildings where the owners were predominately non-resident investors. The Queensland Accommodation Module was intended only for this purpose. Increasingly, developers are tending to set up long term management agreements for any building of reasonable size. The reason is often to allow the sale of management rights and increase the gross revenue from the development. This does not necessarily increase the profit from the project. Often it simply increases the revenue to a point where the project becomes viable. The reality is that, in many cases, the absence of a management rights sale will simply increase the sales prices of the individual units.

However, developers need to address this trend. While long term agreements are appropriate for some developments, they are totally inappropriate for most developments; even larger ones. Where they are legitimately used, developers need to ensure that key provisions are fair, such as:

- Term of the agreement
- Duties of the manager
- Levels of remuneration
- Performance reviews
- Default provisions

If this does not occur, then there will be a negative impact on the strata or community environment caused by tension between the manager and the body corporate or between investment and resident owners. This impact can have a devastating affect on harmony within the building. This often takes the form of opposing factions within the community (e.g. resident –v- non-resident owners), each working to gain the control they need to achieve the outcomes best suited to their own interests.

Lack of facilities within the building or the community

Facilities in residential complexes, such as outdoor landscaping, swimming pool, barbecue areas, gymnasium, comfortable foyers, entertaining lounges and such like all contribute to a better lifestyle for residents. They do this by encouraging social interaction among residents and providing the body corporate with the opportunity to build community within the complex. Community building is becoming more important to home unit residents and needs to be encouraged more by both developers and Government.

Gone are the days when it was sufficient to build an architecturally attractive building with comfortable units. A growing sector of the home unit market is looking for more – they want a nice place (or community) in which to live. Some developers are reacting to these sentiments.

Poor design

Design features can solve problems or create problems. They can also make life easier or more difficult. Common design problems include:

- Location of the garbage collection area too close to bedrooms.
- Balconies and windows overlooking each other.
- Accessibility of facilities.
- Lighting circuits not segregated, resulting in increased energy costs.
- Basement extractor fans not being sensor operated, resulting in increased energy costs.
- Secured buildings not being easily accessible for visitors.
- Exhaust stacks located near unit balconies.
- Common foyers in mixed use buildings.
- Inadequate insulation in dividing walls.
- Large expanse of suspended floors leading to noise and vibration transmission.
- Bedrooms fronting a busy road or industrial site.

Developers are often content to build strictly according to National building standards, which are often inadequate for apartment buildings. Developers need to pay more attention to the standards that are conducive to peaceful living conditions rather than simply meeting the legal requirements. More attention needs to be paid to the impact of building design on end users of the apartments. In turn, Governments need to ensure that development and building regulations are at an appropriate standard.

Poor quality construction

Poor quality construction means building defects and increased maintenance costs. Building defects means problems and frustration for the early residents of a building. Unfortunately, building defects are a serious problem confronting unit owners and bodies corporate.

Some developers ensure that building defects are rectified within a reasonable time frame. Others tend to ignore them in the hope that they will go away. Where building defect issues drag on, there is often a dispute about whether they are maintenance or defect issues.

More attention needs to be paid by developers to:

- Avoid building defects.
- Address them quickly and with a minimum of argument.

New owners moving into a unit that they have paid substantial money for do not want to spend the next 2 years trying to sort out building defects. They want to get on and enjoy their new asset and lifestyle.

Governments need to provide more protection against building defects and make it easier for bodies corporate to obtain redress in respect of poor quality construction (e.g. facilitating restricted class actions against builders and/or developers). The protection could take the form of stronger statutory warranties in favour of purchasers and more rigorous enforcement by regulatory authorities.

Understated levy estimates

There is a serious problem involving the understatement of levy estimates by developers and marketing agents. Most give an estimate for the first year of operation of the body corporate. Many are grossly underestimated. Even where they are fairly estimated, they are only of limited use because during the first year the real cost of operation is distorted by the fact that many expenses are covered by warranties. Developers should provide reasonable estimates for the first 2 or 3 years and should be required to warrant their accuracy.

Governments need to get much tougher with this type of disclosure and buyer disclosure and misrepresentation generally. If developers are to be given the development flexibility they ask for (and need), then they must be more accountable when it comes to the level and accuracy of disclosure.

BODY CORPORATE MANAGERS

I have been saying for years that the standard of body corporate management is far too low. Virtually everywhere you go unit owners are complaining about the “non-performance” and unprofessional standards of body corporate managers. The managers have responded to some degree by trying to lift their game and I readily admit that their professionalism today is light years ahead of what it was 10 or 15 years ago. However, for whatever reason, they are not meeting market expectations.

My personal experience with them as Chairman of 2 bodies corporate (and as an owner in many others) is that they have to be “managed” themselves rather than being pro-active administrators of the body corporate. Some do not function effectively even with a top quality and very active governing committee. One committee I chaired was made up of elite professional and business people who personally devoted a lot of time to governing the body corporate. The manager often failed to deliver what was asked of him and when he did deliver there were mistakes and omissions. On one occasion the Treasurer (a former senior executive of a major Bank) made a range of amendments to a budget that was being sent out under his name and the manager even failed to make the amendments before the document was dispatched. This particular management company was one of the better ones I have worked with over the years.

Speaking generally, in my opinion, managers (from principals to portfolio managers) need to:

- Be better educated.
- Increase their practical skill levels.
- Increase their professionalism (particularly in relation to their duty to the body corporate –v- their loyalty to others, such as trades people and developers).
- Upgrade their technology and office infrastructure so as to automate their routine work and free themselves up to spend more time with their owners.
- Be more service orientated.
- Create career paths within their industry to attract more highly qualified and motivated people.

The problem I see is how this can occur while they are being paid the fees that they are currently being paid. Despite what is commonly thought, the body corporate management industry, with a few exceptions, is not generally profitable. Most body corporate business principals are virtually working for wages. If you take into account the time spent on most buildings and the fees charged the hourly rate is extremely low – well below professional services levels.

The market is very competitive and cost sensitive. Unit owners do not appreciate how much routine work is actually undertaken by the managers and there is reluctance on the part of managers to increase their fees. The managers have survived by curtailing their fees and charging for a range of “extras”, some under the guise of being disbursements. Insurance commissions (properly disclosed) virtually represent the profit component of some businesses. This approach is designed to distract owners’ attention from the real amount that is actually being charged because of the cost sensitivity that exists on the part of unit owners.

There is a need on the part of managers for more transparent charging and moving to a higher all inclusive fee. Alternatively, fees could be more related to the “fee for service” model, also known as hourly rates. Whichever approach is adopted, owners must be prepared to pay more if they want better service and more professionalism. This is what will bring about change – not more regulation, such as licensing and increased reporting obligations.

A good body corporate manager should be able to achieve savings for the body corporate equal to or in excess of the fees being charged.

UNIT OWNERS

I have heard it said that unit owners are the only stakeholder when it comes to strata or community titles – the rest are simply part of the gravy train that lives off the unit owners.

What a simplistic and unintelligent view is that? With that type of view how can we possibly work together to produce better outcomes – a better environment for unit owners? I urge thinking unit owners to resist that type of attitude and to embrace a more collegiate approach to resolving the various problems that confront home unit living.

The starting point is for unit owners to keep a number of key things in mind:

- They have a responsibility to choose their units and buildings wisely.
- Having chosen their unit, they should respect the circumstances to which they have committed.
- While expecting to get what they pay for, they should not expect to get more than what they pay for.
- Changing legislation is not always the solution to problems.

Choose units and buildings wisely

There is no substitute for this. No one should buy a home unit without undertaking a thorough due diligence. This involves:

- An assessment of the area (shops, transport, schools, neighboring activities, potential noise problems, likelihood of future development, etc.).
- An assessment of the unit (number of bedrooms, physical location, cupboards, appliances, CATV – internet availability, etc.).
- An assessment of the building (swimming pool, gym, sauna, number of lifts, standard of maintenance, type of residents, etc.) leading to a decision whether it is personally suitable.
- An inspection of body corporate records (to determine disputes or current issues, building problems, financial state, adequacy of insurances, special management structure such as management rights or mixed use arrangements, attitude to animals, maintenance history and future plans, etc.).

This should be followed by a careful examination of the contract documents, preferably with the help of a lawyer, before the documents are signed.

Accepting ones choice

Some unit buyers end up being dissatisfied with their choice of unit and then set out, either alone or by marshalling a group of owners, to change things. Common examples are:

- Buying into a “no animals” building and then expecting to get approval to keep an animal.
- Buying into a holiday letting building and then complaining about the wear and tear on common property being caused by holiday makers.
- Buying into a building with management rights and then seeking to bring about a termination of those rights.

Sometimes there are good arguments for change. The problem is that change often affects the rights of others. For example; the right of an animal hater to live in a building without animals; the right of an on site manager to not lose his or her management rights that may be worth a substantial sum of money; the right of an investment owner to have an on-site manager.

Getting what you pay for

Sometimes problems arise because people expect too much for what they are paying. This can apply to the purchase of the unit, the standards of management, the work of an on-site building manager or the standard of maintenance of the building. Sometimes this arises because there is a failure to appreciate the market remuneration for work being undertaken or services being provided.

Sometimes people are paying too much for what they get. This can often relate to the services being provided under a caretaking agreement, particularly where it is put in place by an unscrupulous developer.

In these circumstances both sides need to work together constructively to reach a compromise as an alternative to a combative approach. Relationships need to be preserved to ensure a harmonious future environment.

Changing legislation

There is a tendency among unit owners to expect Government to solve problems by changing the legislation. This usually means more regulation. There are problems with this approach:

- Some problems (e.g. people problems) cannot be solved by legislation.
- Amendments to legislation to solve one problem often results in the creation of other problems.
- The regulatory environment becomes more complex when it should be simpler because it affects the day to day lives of so many people in such a direct way. (What better example than the secret ballot provisions in the Queensland legislation.)
- The compliance costs are higher. For example, if amendments to legislation require more financial reporting from body corporate managers, this will involve more work and therefore more cost to the body corporate.

It is therefore important for Government to be careful about amending the governing legislation. Far too often amendments have been made to try to solve problems that are far from widespread. Considering the number of schemes and units in a particular jurisdiction, in most cases a problem needs to be very widespread before it warrants legislative change. This requires careful assessment on the part of Government. That assessment should include appropriate research to understand the nature and extent of the

problem and assess the best way to address it. In the past this research has not been undertaken and the standard and effectiveness of many amendments is questionable.

Unit owners need to understand these issues and take them into account in their demands on Government and when providing input to their homeowner associations. In turn, homeowner associations have a duty to be balanced in their demands on Government and ensure that those demands reflect a widely held view of their constituent members and not just the views of their executive or pressure group. This is best achieved by unit owners making the effort to join their home unit owners association and actively participate in its efforts to improve outcomes for unit owners.

In recent times the host of this Forum, Griffith University's Service Industry Research Centre, has focused some of its research on the strata and community titles area with a view to providing unit owners and other stakeholders (particularly Government) with more information on issues confronting the sector. Unit owners and their associations should get right behind Griffith University and its efforts because they have the potential to deliver much better outcomes for everyone, but particularly for unit owners.

EDUCATION

Finally, unit owners need help when it comes to choosing and living in a home unit and participating in the governance and management of bodies corporate. For many this is a new experience and an understanding of what is involved can be invaluable. The law, procedures and techniques of governance and management of bodies corporate are not straight forward. They are detailed and complex and unit owners need help to deal with them.

Government has the principle responsibility to provide adequate education for those buying a unit or already living in one. This is part of the social infrastructure that is needed to support the Government sponsored push towards higher density living. ***Funding needs to be made available to provide an adequate level of education and practical assistance for unit purchasers and owners.***

One worthwhile outcome of this forum and the Griffith Conference generally would be to get the message across to Government that education and practical assistance for unit owners is an imperative and a Government responsibility, particularly as the drive for higher density living gains momentum. Funding needs to be made available to meet this need.

* **Gary Bugden** is a lawyer who has specialized in strata and community titles for over 30 years. He has authored many publications and presented numerous papers on strata and community titles. He has also been actively involved with the development and management industries, as well as a wide range of Government consultancies in Australia and overseas on legislative reform. He has owned units for nearly 40 years; lived in units (including for the past 6 years) both as an owner and tenant; served on numerous body corporate committees (including as Chairman of one that battled with serious building defects for over 3 years). He understands the issues confronting all sectors of the strata and community titles industry.