

Body corporates torn many ways

Legal matters

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THE proliferation of high-rise, multi-unit and mixed use developments mean sound body corporate management and due diligence is more critical than ever.

One of the most vexing issues in this area concerns construction quality and occupational health and safety matters.

Building ailments can be varied and unusual.

For example, one body corporate dispute was over extensive "concrete cancer" caused by insufficient water proofing. There were even stalactites in the basement up to a metre long.

Typical ailments concern air-conditioning problems.

The worst-case scenario from this particular issue is legionnaire's disease, unwelcome obnoxious odours, poor insulation and noise transmission issues and defective workmanship.

One of the greatest issues is clearly identifying individual owner's properties from the common property.

It's not always clear. Careful legal consideration has to be used in working out the boundaries.

We have acted in matters where individual occupants have wanted the body corporate to fund litigation, but it has not been possible because the defects do not embrace common property.

Running body corporate litiga-

tion is also very tricky, a bit like herding cats.

Defects may only affect some occupants, in which case the "un-affected" don't like to contribute to the cost of litigation.

Before a body corporate committee embarks upon a case it has to ensure that there is a "war chest" — that is, sufficient money to run a case.

Regular top-ups to a fund are required. Levies have to be raised and the resolve of the plaintiffs cannot wax and wane, because contractors know how to manipulate equivocal plaintiffs.

Where developers own some of the units committee stacking can occur.

This can paralyse a case and any redress sought by the plaintiffs.

The task of the facilities manager is particularly difficult — the liabilities the manager can attract if he can't get money to spend on complying with OH&S requirements can be huge.

The responsibility is onerous. Managers need to be meticulous with their minute taking, proactive at all times, on top of their OH&S requirements and have to be firm and unambiguous in their recommendations.

Once cannot stress that enough.

When in doubt, see a lawyer who knows the way around body corporate laws, OH&S and construction law.

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