

Relationship between Strata Manager and Strata Council



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In response to Civic Legal's article published earlier this year regarding strata manager's duties, a number of questions arose concerning the relationship between strata managers and the strata council in specific situations.

This article will address some of the new responsibilities that strata council members and strata managers will have once the amendments to the *Strata Titles Act 1985 (WA)* (the Act) come into effect, expected to be by the end of this calendar year.

What is the difference between a strata council and a strata manager?

The strata council is the group of lot owners elected to represent all the lot owners (**the strata company**) in a strata scheme. The strata council decide on matters that arise for the strata company, such as the maintenance of common property, enforcing by-laws and convening General Meetings.

"Council members are the main decision makers and bear the responsibility that goes with the role. Strata managers merely carry out those decisions under instructions from the council."

A strata manager is a person or company hired to assist the strata council in the management of the strata scheme. They can be responsible for tasks ranging from financial management and administrative support to maintaining common areas, as directed by the strata council.

What responsibilities do members of the strata council have?

Before the amendments, there were no formal requirements for a strata council to act in the best interests of the strata company. However, the amendments create new standards as to how council members conduct themselves as office bearers.

Once in force, section 137 of the Act will require council members to act honestly, with loyalty and in good faith at all times.

In performing their functions, council members will also have to exercise the degree of care and diligence that a reasonable person in their position would be reasonably expected to exercise.

An example of the strata council fulfilling these standards could be responding in good time to the strata manager. For instance, the strata manager might need special financial authorisation from council members when major plumbing damage has begun to cause flooding in some common areas.

Council members would show care and diligence by responding quickly to the strata manager's request for directions.

Key Points

- The duty of strata council members' to act honestly, with loyalty and in good faith will extend to their relationship with the strata manager
- Strata managers will have a duty to exercise a reasonable degree of skill, care and diligence in the performance of their functions

What can the strata manager do if the strata council contravenes its duties?

If the strata council appears to be contravening the Act, such as instructing the strata manager to spend money on items that have not been budgeted for, then strata managers would be in a difficult position.

Council members are the decision makers for the strata scheme and bear the responsibility that goes with the role. On the other hand, strata managers implement the decisions of the council.

However, once in force, section 146 of the Act will impose duties on strata managers such as having to exercise a reasonable degree of skill, care and diligence in the performance of their functions. If a strata manager discovers that the council's instructions are in breach of the Act, they should warn the council against their conduct. By checking if a contravention has occurred (e.g. by taking legal advice) and then giving the warning, the strata manager would show that they exercised appropriate care and diligence.

If the council does not heed the strata manager's warning, the strata manager could consider terminating their contract with the strata company.

This is because section 146 also introduces the obligation on a strata manager to "act honestly and in good faith". It would not be achieving that standard of conduct if it helps a council act in ways that breach the Act.

Consequently, a strata manager will have to decide whether the risk of itself breaching the Act outweighs any commercial benefit in helping the council to breach it.

Can a strata manager take the strata company to the State Administrative Tribunal (SAT)?

Under the Act, strata managers provide services to the strata company. It is not their role to enforce the law on erring strata companies in the SAT.

Strata managers can take the strata company to the SAT for various matters, such as a dispute over the terms or performance of its contract with the strata company.

However, the Act does not contemplate strata managers engaging in enforcement of the Act with regard to any contravention by the strata company in the way described above.

Conclusion

It is very positive that the Act has brought in new duties around acting honestly, with loyalty, and in good faith as well as the duty on strata managers to exercise a reasonable degree of skill, care and diligence in the performance of their functions.

These new legal duties should promote better management of strata schemes around Western Australia.

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