

# COMMON PROPERTY

Newsletter for professionals in the facilities management sector.



## *Taking Care!*



Edition: 5<sup>th</sup> July 2011

*What can a caretaker do when taking care of a property? This has become a key issue in a case that we are currently handling.*

*Section 40A of the Strata Schemes Management Act 1996 (SSMA), states:*

*A caretaker is a person who is entitled to exclusive possession (whether or not jointly with another person or other persons) of a lot or common property and assists in exercising any one or more of the following functions of the Owners Corporation for the strata scheme concerned:*

- (a) Managing common property,*
- (b) Controlling the use of common property by persons other than the owners and occupiers of lots,*
- (c) Maintaining and repairing common property.*

*Section 40B permits the Owners Corporation to appoint a caretaker for no longer than 10 years.*

*Section 40A of the SSMA clearly confines the caretaker to management, control and maintenance and repairs. Does this therefore preclude a Strata Manager from undertaking other functions on behalf of the Owners Corporation?*

*Section 13 states:*

*An Owners Corporation may employ such persons as it thinks fit to assist it in the exercise of any of its functions.*

*Obviously, Section 13 does not permit the delegation of functions to a caretaker outside those in Section 40A. Nevertheless, it does not preclude a caretaker from being engaged to assist in functions. In Owners Strata Plan 56443 vs. Regis Towers Pty Ltd (2003), the Court*

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of Appeal stated that a caretaker could be appointed to assist in undertaking functions providing they did this under the direction of the executive committee or the licensed strata manager.

It is important to note that these ancillary contracts are not limited to 10 years by the operation of the SSMA. If the Owners Corporation wants to engage a caretaker to do other functions, all other contracts must have a termination clause that coincides with the caretaking agreement.


Cheers,

**Bailey Compton and the team at ACP/Leverage**



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