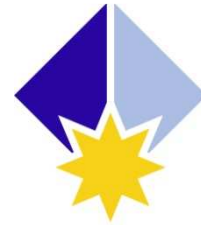


Common Property

Newsletter for professionals in the facilities management sector.



Unlicensed Caretakers



Edition: 18th November 2011

During our journeys throughout the country, Leverage and ACP staff stay in serviced apartments. It is our preferred form of accommodation because it provides a balance between rest and work. We take time to talk to all of our hosts, in particular, we take the opportunity to promote the licensing regime that applies to such on-site managers.

Those who are running serviced apartments are referred to as 'persons who hold management rights'. These management rights have two bundles of legal documents:

- The manager signs an agreement with the Owners Corporation to maintain and manage the common property. This agreement will also permit them to run a hotel-type serviced apartment. They will be also given the exclusive right to be the only letting agent on the premises.
- They will enter into managing agency agreements with each of the landlords to provide services to those apartments and to let them to the public.

All of the small resort managers or serviced apartment managers hold either a real estate agent licence or an on-site residential property manager licence. These people have complied with the various legislations throughout Australia. Some of their competitors do not.

We did a survey sometime ago to look at the numbers of serviced apartments throughout Australia. In New South Wales alone, we found in excess of 1200 serviced apartment complexes. The Office of Fair Trading showed that only approximately 450 of these are licensed. This means that approximately two thirds of the industry does not have the requisite licenses. We will say that the peak industry body does not wish to have these statistics brought to the attention of the regulators. I don't understand why, because it can only help those body members to be in a competitive environment.

Strata CPD

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What is more concerning is that the international groups and the largest serviced apartment chains are the ones who have no licensing system. Very few of their people have the requisite certificates, their people are not supervised by licence holders and their corporation is not licensed. They do not have to maintain certain standards and do not have to hold monies in trust for protection purposes. Again, that little guy loses out.

Strata managers essentially turn a blind eye to this non-licensed regime. Firstly, people who are in property management or caretaker agreements are required to hold a requisite licence. These large organisations are not in compliance with their contract because they do not have the requisite licenses. In Hallwood v Gillette, the Court held that a contract was void where the requisite licenses were not held. If a strata manager is acting in their clients best interests, they should be bringing this to the attention of the Owners Corporation. Secondly, there is a requirement under Section 39 of the Property, Stock & Business Agent's Act 2002 to report unlicensed trading to the Office of Fair Trading. Strata managers are failing to meet this objective.

We have a system whereby the big guys have an advantage over the little guys and no one is looking at it. The Department is failing to consider it, and those who can monitor it and bring it to the Department's attention are also doing very little about it.

In New South Wales we have the best strata regulation in Australia. We don't have the disasters that Queensland has in relation to serviced apartments because of this different regime. Its integrity relies on those who oversee it and it's hoped that we will utilise the world's best compliance management practices to provide a competitive and fair environment for everyone.

***Cheers,  
Bailey Compton  
and The team at ACP/Leverage!***



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