

Resolving body corporate disputes

If the owner of the next apartment is failing to live up to their obligations, what are your avenues of recourse? **Caroline Gonzalez**

POTENTIAL conflict is one reason many investors avoid strata-title developments. After all, who wants to have to take a dispute to court because one lot owner refuses to join the party to paint the external features of a block of units?

Common body corporate disputes include damage to or improper use of common property, non-payment of contributions and unauthorised building extensions.

So what do you do if you're faced with a conflict in a body corporate?

New South Wales

If the conflict is about issues such as damage to common property, the owners corporation needs to get involved.

Wally Patterson, managing director of Dynamic Property Services in Sydney, says investors should first meet with their strata managing agent or a member of the property's executive committee.

Investors can then seek to address the executive committee at a meeting, Patterson says.

"If the investor believes the executive

committee meeting may not provide an outcome reflective of the wishes of the majority of owners, it may be appropriate to take it to a general meeting of all owners," he says.

"Any owner has the right to submit a motion for discussion at a general meeting."

If all else fails, mediation is available at the Consumer, Tenancy and Trader Tribunal.

Queensland

Methods of resolving a conflict within a

NO HARBOUR FROM STORAGE RULES

An eight-month dispute involving a kayak on common property was resolved through a diligent step-by-step process by a body corporate in a complex on Sydney Harbour.

Wally Patterson from Dynamic Property Services was involved in resolving a dispute between an owners corporation and a lot owner at a prominent waterfront development in 2005.

The owners were part of a strata-titled marina where occupiers could park their boats within their lots, next to a floating pontoon which was common property.

Patterson, the managing director of

The lot owner was adamant the kayak was a vessel and was therefore entitled to be attached to the pontoon.

the body corporate management company, says the dispute surfaced when a lot owner noticed another owner had stored a kayak on the pontoon.

"The lot owner had a genuine desire to have on the pontoon a kayak so that he could go paddling in the morning and enjoy the Sydney Harbour," Patterson says. "But because it was on common property he had no right to store it on the pontoon."

In response, the lot owner was adamant the kayak was a

vessel and was therefore entitled to be attached to the pontoon. The body corporate began a step-by-step process starting with a notice from the strata manager that the kayak wasn't permitted on the pontoon.

Patterson says the process culminated in a decision by the executive committee to move the kayak into a storage facility with transport and storage fees to be charged back to the lot owner as part of his strata levies. In total, the dispute resolution process took eight months.

"The owner was given notice that gave him a deadline to reply and at the 11th hour he went out, bought a small boat, put it into his lot and put the kayak on top of the boat, which was all totally compliant," Patterson says. "And so we never heard from him since."



JOHN CORNISH

Queensland body corporate vary depending on who's responsible for a resolution.

Tim Carrigg is the general manager of Cambridge Management Services and president of the Community Titles Institute in Queensland.

He says if the issue is related to body corporate levies, investors need to write to their body corporate manager and, if there's a committee of management, copy in on that letter the secretary of the committee.

For problems such as maintenance of the common area, investors need to write to the body corporate which may investigate the complaint through the executive committee, he says.

The Community Titles Institute can investigate but only when the body corporate manager is a member.

"If the problem still exists after requests to have it rectified, the investor may lodge a notice of dispute with the Commissioner for Body Corporate and Community Management," Carrigg says.

For the unlucky ones with unsettled issues, he suggests seeking legal advice from a practitioner in Queensland body corporate law.

Western Australia

The first port of call is to try to settle the dispute within the strata company.

Otherwise investors can seek an order or mediation at the State Administrative Tribunal, says Jacqueline Courtney, president of the Strata Titles Institute of Western Australia.

The tribunal can resolve the matter through mediation or a compulsory conference, the latter of which is compulsory for all parties to attend.

Northern Territory

Lorelei Fong Lim from the Department of Justice says the local court is the main arena for settling body corporate disputes in the Northern Territory.

"The parties could attend the Community Justice Centre that could arrange for mediation of the dispute," Fong Lim says.

"However, disputes at the centre are only resolved by the agreement of the parties."

If problems stem from the actions of

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the body corporate manager, the matter could become the subject of disciplinary action before the Agents Licensing Board.

"However, that is quite rare," Fong Lim says. "This is general advice and shouldn't be considered as legal opinion."

Australian Capital Territory

Conflict between unit owners can end up in the court system in the ACT.

Warwick Fulton from Canberra Units Plan Services says body corporate managers investigate complaints but persistent troubles are referred to the property's executive committee.

Furthermore, the committee or individual unit owners can take legal action through the Magistrates Court for compliance with body corporate articles such as noise and anti-social behaviour, Fulton says.

The ACT Government is considering a proposal to appoint a Strata Commissioner to oversee minor body corporate disputes.

Victoria

Strata-title investors in Victoria will have a new, structured system to handle disputes under laws to come into effect on December 31.

Under the *Owners Corporations Act 2006*, owners corporations or bodies corporate must establish and first use an internal dispute resolution process to handle conflicts, and have a formal complaint handling procedure in place.

In the second tier of the process, as described by Consumer Affairs Victoria, an investor who is unhappy with their internal body corporate process can contact Consumer Affairs, which can mediate between parties.

In the third and final tier, issues can be

addressed to the Victorian Civil and Administrative Tribunal but only after the dispute resolution process has been exhausted. Currently, problems first need to be raised with the body corporate.

For persistent disputes, investors can apply to the Magistrates Court for an order or a declaration.

Andrew Dawson, president of the Institute of Body Corporate Managers Victoria, says: "Resolving conflicts in a body corporate is a really difficult area at the moment and most directions of remedies are expensive."

Tasmania

Investors can call on the body corporate but bigger issues can be heard at a special general meeting of the corporation.

Gary Peterson, senior strata adjudicator at the Office of the Recorder of Titles, says under section 75 (3) of the *Strata Titles Act 1998*, the committee of management or the secretary to a body corporate can call a special general meeting at any time. But a meeting must be arranged if required by no less than a third of the number of members in the body corporate.

The Recorder of Titles can referee strata disputes but if the conflict is unresolved, investors can apply to the Recorder for relief and to issue an order.

South Australia

Anna Edwards, president of the Community Titles Institute of South Australia, says investors raise issues with a body corporate manager.

A mediation service is offered by state legal aid, or investors can apply to the Magistrates Court.

The last port of call would generally be to seek legal advice from a solicitor, Edwards adds. ■