

Breach notices require urgent action

by Peter Hunt, Partner

We have seen a very sharp rise in the number of breach notices being issued to caretakers across the State.

A committee should only issue a breach notice when it has genuine concerns over the performance of duties under a caretaking or letting agreement, and verbal and informal efforts to resolve an issue have failed. However, they are being issued all too often as committees are breaching first and talking later.

A breach notice is also known as a notice to remedy breach, remedial action notice, notice of default etc. Irrespective of the name given to it, issuing a breach notice is a very serious matter and one of the first shots fired by a committee intent on terminating a caretaker's engagement.

Act immediately

If the breach remains unremedied after 14 days, the body corporate may take steps to try to terminate your rights.

What you must do

Caretakers must therefore ensure that every item in a breach notice is addressed, and a comprehensive response is delivered to the body corporate, during the 14 day period. A breach notice usually contains numerous items that need to be addressed. If these items are valid concerns but a caretaker fails to address just one of them within the 14 day period, then the body corporate may take steps to try to terminate your rights.

To best protect your position, the breach notice requires close examination. In just the last few months we have seen breach notices that are invalid or of no effect as:

1. They demand the performance of tasks that are not in a caretaker's agreement.
2. The allegations are baseless, such as the caretaker being accused of profiting from the sale of gas used in a BBQ – which was run on electricity!
3. It doesn't comply with the Act or the Module.

Given that a very significant asset is at risk when a breach notice is issued, and a caretaker only has 14 days to respond, it is important to immediately seek specialist legal advice when one is received.

The right response to a breach notice can prevent the termination of your rights, protracted litigation or both.

Communicate

As the termination of a contract will require the vote of owners, it is also important to make sure that you continue to keep all owners (not just those in the letting pool) informed of positive developments through a regular newsletter, so that they are more likely to appreciate the work you are doing and support you in any vote.