

# “Risk Proofing” Your Business

By Gary Bugden\*

**Identifying and managing risk is an essential aspect of modern business practice. For strata managers the process is particularly complex and this article examines why that is the case.**

The complexity arises from the fact that strata management companies face risks on two fronts – the risks associated with their own business (“**Private Risks**”) and the risks to which the bodies corporate they manage are exposed (“**Client Risks**”). Because the strata manager is effectively the executive officer of the managed bodies corporate they are in the front line of attack when it comes to responsibility for Client Risks.

## **Private Risks**

The Private Risks are much the same as the risks associated with any business. These include risks involving such things as:

- Cash-flow and financial management (including financial covenants)
- Regulatory compliance (such as professional licensing)
- Human relations (including anti-discrimination, harassment, workers compensation and Fair Work claims)
- Taxation compliance
- Adequacy of insurances
- Third party intellectual property use
- Data security and IT
- Proprietary intellectual property (such as brand and precedents)
- Public relations
- Workplace Health and Safety
- Natural events (such as floods, earthquakes, fires, cyclones, etc.).

## **Client Risks**

Whatever the technical arguments are about the terms of appointment and scope of responsibility of strata managers, the hard cold fact is that the strata manager is the most likely to be sued, either solely or with other parties, if any foreseeable Client Risk eventuates and results in loss or damage.

The most significant Client Risks concern the following aspects of a body corporate’s operation:

- Regulatory compliance
- Financial management
- Negligent advice

## **Regulatory compliance**

There is a maze of legislative provisions that impose compliance obligations on bodies corporate ranging from the obvious to the not so obvious. The obvious risks include such things as Workplace, Health and Safety, swimming pool fencing requirements and income tax compliance. The not so obvious risks include such things as building security, fire safety, electrical safety and the monitoring of building maintenance requirements.

Another aspect of regulatory compliance is ensuring that a body corporate observes the requirements of its own legislation (involving such things as effecting insurances, keeping statutory records, complying with Court or Tribunal orders and ensuring the validity of procedures).

## **Financial management**

As the executive officer of a body corporate (and treasurer's delegate), the strata manager is the party responsible for guiding its financial management. If the body corporate encounters financial difficulties because of any act or omission of the manager (such as being unable to undertake a major capital replacement because of a failure to ensure build-up of adequate reserves in the sinking fund), the manager may incur a liability to the body corporate and its members.

Similarly, if a body corporate is unable to pay its debts as they fall due because of a failure on the part of the manager to recover levy arrears, or body corporate funds are misappropriated because of flawed procedures on the part of the manager, then the manager could be held liable.

Liability could also arise through failure to source appropriately priced goods or services or if a manager or one of their employees receives any undisclosed fee, gain or reward from a third party dealing with the body corporate.

## **Negligent advice**

However, negligent advice is probably the most significant risk area for strata managers. It involves advice given negligently by the manager to or on behalf of the body corporate. The classic example is the issue to a prospective purchaser of a certificate as to outstanding levies where the arrears amount is understated. But there are numerous other examples –

- Advice on interpretation of laws or legal advice generally
- Advice on maintenance or building defect solutions
- Information provided during the course of a strata records inspection, particularly where records are incomplete or misleading
- Recommendations as to suitability of an insurance cover or insurer.

It does not matter that the advice is given gratuitously. There is no requirement for payment or consideration before the wrong advice can attract legal liability. This whole area of negligent advice is so complex as to be a topic in its own right.

## Managing risks

Having identified the risks, the manager needs to categorize them (to determine their respective importance) and then develop a plan to manage them. This risk management plan needs to focus on the higher risk areas, set out a clear process for dealing with any risk that eventuates and be accompanied by a means of monitoring and reporting on its effectiveness. But that is not to say that lower risk areas are to be ignored or neglected – the issue is merely one of prioritization based on the level of risk and potential consequences if the risk eventuates.

This process needs to be undertaken for both Private Risks and Client Risks. This whole area of risk assessment and management is critical for any body corporate management company that is committed to protecting itself against loss or liability and providing a quality service to its clients.

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