Managing Agents: Where Their Responsibility Begins and Ends…

Understanding Your Scheme: Roles, Responsibilities and Limitations

An article by Jennifer Paddock

Managing Agent…

It's a job that requires a person to wear numerous hats: accountant, facilities manager, lawyer, psychologist and policeman to name a few.

And the key thing about being a managing agent – it's all about people:

Chairpersons. Trustees. Owners. Rental agents. Body corporate staff. Municipal representatives. Contractors. Tradesmen. Lawyers. Estate agents. Neighbours.

It's the Managing Agent's job to deal with all of them.

Abuse is no joke

The MA is effectively the public face of the body corporate, and the role often involves delivering difficult news to owners about what they may or may not do and about how much money they owe (**another special levy?! Definitely the Managing Agent's fault!).**

Not many people appreciate that managing agents regularly experience verbal abuse from owners – a classic case of shooting the messengers. The MAs are intermediaries and, in most cases, do not have the power to rectify issues – they can only manage the communication and the processes around them.

Pressure to keep levies low but get everything done

One of the key tasks performed by a MA is to prepare the annual budget on behalf of the trustees, which, once approved, becomes the basis upon which each owner's levies are calculated.

In my experience, many owners seem to believe that the MA is directly responsible for how much the levies end up being. In actual fact, the only amounts that the MA has a direct impact on are the body corporate's management fees and any other charges the management company bills the body corporate. For the most part the new budget is based on the body corporate's actual expenditure for the previous financial year plus foreseen increases and other anticipated expenditure for the following year. But ultimately the ***owners*** at the AGM (and ***NOT the MA***) approve the budget upon which their levies are based.

When I used to receive calls from irate owners shouting at me for the increase in levies I loved explaining to them how the approval of the budget was actually the owners decision (i.e. ***their*** decision) and then asking if they had in fact attended the AGM. Nine times out of ten they hadn't. That usually did the trick.
In addition, the ironic thing with this pressure to keep levies low is the corresponding pressure on the managing agent to get all manner of things done. My problem is that the owners have generally not seen the terms of the signed management contract and therefore they do not understand the scope of services provided by the MA. They therefore generally expect everything and anything relating to their section or the common property to be the MA's responsibility when in actual fact there are many things that fall outside the MA's agreed scope of services. Not to mention that even if what they are asking for is within the scope of services – it may not have been budgeted for…

So, Who Is Actually Responsible for What?

Many frustrations in sectional-title schemes arise because the roles of the Body Corporate, trustees, managing agent, Estate Manager, owners and letting agents are misunderstood.

While these parties work together, they do not have the same responsibilities or authority.

The Body Corporate

The Body Corporate consists of all the registered owners in the scheme. It is responsible for the control, management and administration of the common property for the benefit of all owners.

Its responsibilities include:

- maintaining and repairing the common property;
- establishing administrative and reserve funds;
- arranging the required insurance;
- raising levies and special contributions;
- enforcing the scheme's rules; complying with legislation applicable to the common property; and
- approving matters that require an ordinary, special or unanimous resolution.

At general meetings, the owners collectively approve matters such as the annual budget, maintenance plan, insurance arrangements, election of trustees and other decisions reserved for members.

Its limitations: The Body Corporate is not the landlord of privately owned units. It does not manage leases, collect private rentals, select tenants or maintain the inside of an owner's section unless the problem involves common property or an installation for which the Body Corporate is legally responsible.Individual owners cannot speak or make decisions on behalf of the Body Corporate merely because they are members of it. Collective decisions must be taken through the correct meeting and resolution processes.

The Trustees

The trustees are elected to exercise the Body Corporate's powers and perform its functions between general meetings, subject to the legislation, scheme rules, approved budgets and directions given by owners at general meetings.

Their responsibilities include:

- making governance and operational decisions;
- approving quotations, expenditure and contractor appointments;
- applying Body Corporate funds in accordance with approved budgets;
- overseeing maintenance and rule enforcement;
- supervising the managing agent, Estate Manager and service providers;
- approving legal and arrears-recovery action where authorised; and
- reporting to owners.

Trustees hold a fiduciary position and must act honestly, in good faith and in the best interests of the Body Corporate.

Their limitations: A trustee does not generally have authority to act alone. Trustee decisions must be taken by the required majority at a properly constituted meeting or by a valid written resolution.

The chairperson is not the "owner" or chief executive of the building and cannot make unilateral decisions simply by virtue of being chairperson. Trustees must also disclose conflicts of interest and may not participate in decisions in which they have a direct or indirect personal interest.

Trustees cannot override legislation, the scheme's rules or decisions that are legally reserved for the owners in general meeting.

The Managing Agent

The managing agent is appointed by the Body Corporate to provide specified financial, administrative, secretarial and management services under the supervision of the trustees.

Depending on the management agreement, these services may include:

- preparing draft budgets and levy schedules; issuing levy statements and monitoring arrears;
- maintaining accounting and administrative records;
- preparing trustee and general meeting notices and packs;
- obtaining quotations and coordinating contractors;
- administering insurance claims;
- communicating trustee decisions;
- maintaining statutory and scheme records; and
- implementing lawful instructions and resolutions.

The managing agent provides information, guidance and recommendations, but does not replace the trustees or the Body Corporate.

Its limitations: A managing agent cannot independently approve Body Corporate expenditure, appoint contractors, change levies, amend budgets, waive arrears, change rules or make policy decisions on behalf of the Body Corporate.

Payments from Body Corporate funds must be supported by the approved budget and the necessary trustee resolution or approval. The managing agent may prepare, capture or process a payment, but this is not the same as deciding that the expenditure should be incurred.

Trustees may give a managing agent or another person limited authority in writing, but the delegation should identify the specific power, the maximum amount that may be spent and any applicable conditions.

The exception is where an **executive managing agent** has been formally appointed by special resolution or through the Community Schemes Ombud Service. An executive managing agent may perform functions and exercise powers that would ordinarily belong to the trustees.

The Estate Manager

The Estate Manager is generally the operational presence at the scheme and acts as the on-site link between residents, contractors, staff, trustees and the managing agent.

Depending on the employment agreement or service contract, the Estate Manager may:

- inspect the common property;
- identify and report maintenance problems;
- oversee cleaning, gardening, security and maintenance staff;
- monitor contractor attendance and performance;
- administer access and contractor-control procedures;
- respond to incidents and emergencies;
- obtain operational information and quotations; and
- provide reports and updates to the trustees; owners and managing agent.

Their limitations: The position of Estate Manager does not automatically carry statutory decision-making authority. The Estate Manager's powers are limited to the employment contract, job description, approved procedures and any written delegation.

Unless specifically authorised, the Estate Manager cannot approve payments, appoint contractors, incur unbudgeted expenditure, waive scheme rules, decide legal liability, approve alterations or commit the Body Corporate to a contract.

The Estate Manager may take reasonable emergency steps within an approved emergency protocol, but significant decisions and expenditure must still be referred to the trustees.

Individual Owners

Each owner owns a section together with an undivided share in the common property and automatically becomes a member of the Body Corporate.

Owners are responsible for:

- paying levies and other lawfully raised amounts;
- maintaining the inside of their sections;
- keeping exclusive-use areas clean and neat, subject to the scheme's rules;
- complying with the management and conduct rules;
- obtaining approval before undertaking regulated alterations or work;
- allowing authorised access where legally required;
- notifying the Body Corporate of changes in ownership or occupancy;
- ensuring that tenants, occupants, visitors, employees and contractors comply with the rules; and
- attending meetings and participating in Body Corporate decisions.

Their limitations: An individual owner cannot instruct the managing agent, Estate Manager, security personnel, Body Corporate staff or common-property contractors as though they were personally employed by that owner.

An owner cannot independently approve common-property work, alter common property, waive a rule, authorise contractor access contrary to scheme procedures or commit the Body Corporate to expenditure.

Appointing a letting agent does not transfer the owner's statutory responsibilities to the agent. The owner remains accountable to the Body Corporate for the unit, the amounts due and the conduct of tenants and occupants.

Letting or Estate Agents Appointed by Owners

A letting agent is appointed privately by an owner to manage the letting of that owner's unit. The letting agent acts for the owner, not for the Body Corporate.

Depending on the mandate, the letting agent may:

- prepare and administer the lease;
- collect rental and manage deposits on behalf of the owner;
- conduct inspections; coordinate repairs for which the owner is responsible;
- communicate with the tenant; and assist the owner with landlord-and-tenant matters.

The letting agent should ensure that prospective tenants receive the applicable scheme rules and understand the building's access, moving, contractor and conduct requirements.

Its limitations: A letting agent has no automatic authority over the common property or the administration of the Body Corporate. The letting agent cannot:

- instruct the Body Corporate's managing agent or Estate Manager;
- approve alterations or contractor access;
- waive or reinterpret scheme rules;
- make decisions for the trustees;
- approve Body Corporate expenditure;
- vote at meetings without a valid proxy; or
- treat the Body Corporate's staff as part of the letting agent's rental-management service.

All requests involving common property, building access or Body Corporate approval must follow the scheme's prescribed processes.

A Simple Way to Remember the Difference: -

- **Owners collectively decide matters reserved for the Body Corporate.**
- **Trustees govern and make authorised decisions between general meetings.**
- **The managing agent administers, advises and implements approved decisions.**
- **The Estate Manager coordinates day-to-day operations on site.**
- **Individual owners remain responsible for their sections and occupants.**
- **Letting agents manage private rental relationships on behalf of individual owners.**

The managing agent and Estate Manager are often the people answering the telephone or responding to emails, but being the first point of contact does not mean they have the authority to approve every request.

They can obtain information, coordinate processes, make recommendations and escalate matters. The actual decision must still be made by the persons, or body legally authorised to make it.

Understanding these boundaries leads to better accountability, faster decision-making and far less frustration for everyone involved.