

## IS IT MAINTENANCE OR IS IT MORE?

Caretaking and building manager agreements generally require the caretaker to conduct regular maintenance and upkeep of the common property. This usually encompasses a requirement to perform small jobs that don't require a special skill or trade like touching up damaged paint or replacing the occasional plant. What can be difficult to define in many agreements is the line between a small maintenance job and a task that is over and above the scope of the caretaker's duties.

Ideally the duties in an agreement clearly define the difference between maintenance that must be performed by the caretaker and work that is "extra". Unfortunately in many agreements, especially older agreements, this is not the case. Where the wording of an agreement is vague or uncertain, it can result in disputes with the committee, like when it comes time to paint an entire fence, replant a garden bed, install a new door, the list goes on. How to tackle these issues can be tricky when they are unique to each building and there is very little to go on in the agreement to give you guidance.

If you find yourself in this situation, the specific facts of your circumstances will be crucial to coming to an understanding with the committee. However, in most situations the following principles can help you and your committee to come to a reasonable and fair outcome when deciding what is or isn't included in your standard caretaking duties.

### **Regularity**

How often is the task needed? If the task is not needed every year it is a strong sign that the task is something out of the ordinary and not something within the scope of a typical caretaking agreement. If the task is needed at least once a year, is it needed because it is something that is needed as a matter of routine, or is it needed simply in reaction to events that tend to occur more than once a year (like storms or vandalism)? Tasks that are sporadic and reactionary in nature are less likely to be considered within the scope of typical caretaking duties.

### **Forecast capital works**

If the task to be performed is included the 10 year forecast plan for the building, like painting or replacement of facilities, it is very likely not within the scope of typical caretaking duties.

### **Expenses**

If the task requires materials or equipment provided by the committee/owners that is paid for from the sinking fund it is very likely to be a capital works task and not within the scope of typical caretaking duties.

### **Time to perform**

If the task takes more than a few hours to perform but isn't specifically identified in the agreement it is usually a sign that the task isn't within the scope of the caretaker's regular duties. When the caretaking agreement already lists several tasks that take several hours to perform it is notable when a task that will clearly take several hours to complete isn't specifically identified as a duty in the agreement.

Whenever you are unsure about whether a task you have been asked to perform by the committee is within the scope of the duties you are required to perform, you should endeavour to have an open discussion about it with the committee. Maintaining regular and productive communication with the committee is essential to a strong Management Rights business. If speaking with the committee is unsuccessful you may want to consider seeking legal advice from a specialist who deals with caretaking agreements every day.