

SUPERVISION – WHAT DOES IT REALLY MEAN?

Every caretaking agreement I can think of requires the building manager to supervise something. For example, the building manager must supervise the plumber when they are fixing a tap on common property. The amount of time and effort required to supervise a task, and the nature of the actual supervision required, can vary significantly, especially when the task being performed affects the common property on a grand scale. Supervising a single light switch being fixed is one thing, but supervising the replacement of all the wiring in the building is another. Unfortunately, most caretaking agreements do not distinguish any difference between these situations and building managers are simply required to “supervise” everything.

This lack of clarity often leads to disputes between the building manager and the body corporate. When there isn't clear guidance in the caretaking agreement, people cannot agree on how to interpret the building manager's duties. It raises questions about what happens after a storm or when the body corporate decides to do major capital works. If the agreement doesn't clearly state what kind of supervision is required in each circumstance, it leaves you having to look at what is implied in the agreement.

If you are trying to work out what is implied in an agreement you will need to consider things like context, capabilities, reasonableness and overall expectations.

Context – If all the caretaking duties that refer to supervision only describe small one off tasks, it might be implied that they are the only times supervision is required.

Capabilities – If the level of supervision required is within the capabilities of the building manager and no special skill or qualification is needed, it might be implied that it is a task the building manager must perform.

Reasonableness – If the time and resources needed to provide the supervision is not reasonable when compared to the remuneration being paid for the building manager's services, it might be implied that supervision in those circumstances is extra work and not included in the caretaking agreement.

Expectations – If the caretaking agreement never refers to any tasks being performed by other service providers at the body corporate's expense or services that the building manager may charge extra for, owners may expect that the caretaking agreement is a one stop shop and it is implied that the building manager is engaged to do everything including supervising all works in the complex.

Deciding what is or isn't implied in an agreement can be a minefield of arguments. Unfortunately, these are often unavoidable arguments when unusual or unforeseen circumstances arise. If you are a building manager and you find yourself in a situation where you are unsure of the kind of supervision you need to provide or whether you can charge extra for your supervision services, it is better to have a conversation with the body corporate before it becomes a dispute. Being proactive and having the difficult conversations before the bridges get burnt is the healthy choice for you and your business. And remember there are a variety of people that can help you with this.

Liability limited by a scheme approved under Professional Standards Legislation
Disclaimer – This article is provided for information purposes only and should not be regarded as legal advice.