

What is a “Gallery Vie issue”? In plain English

If you have bought or refinanced a Management Rights business in Queensland since 2015, there is a reasonable chance that you have heard that there are things called “Gallery Vie issues” that can be found in caretaking and letting agreements. Gallery Vie issues do not directly affect the manager, but they can have a significant impact on whether a manager is able to get finance for their Management Rights business. Since the infamous Gallery Vie Queensland Civil Administration Tribunal decision made in 2015, the ripples caused by that decision affected the financing of Management Rights businesses all over Australia. Although many years have passed, Gallery Vie issues still affect businesses to this day.

So, what is a Gallery Vie issue?

When a manager uses finance to purchase or operate their Management Rights business, the bank providing that finance understandably wants security to protect the money it has provided to the manager. One of the most common forms of security the bank will want is an opportunity to sell the business in the future if the manager fails to pay their debts. The bank will also want the opportunity to step in and take control of the business, if the actions of the manager are reducing the value of the business.

If a manager is failing to perform their duties under the caretaking and letting agreements entered with the Body Corporate, there is a risk that the agreements will be terminated. If the agreements are terminated it will drastically reduce the value of the business and potentially there will be no business left for the bank to sell. This is a significant risk for someone providing money to a business that they have no control over. This results in banks not being willing to provide finance unless they have some peace of mind that this outcome can be avoided.

In Queensland, to help prevent this outcome and provide confidence for investment in Management Rights’s businesses, laws were specifically created to allow banks special rights. These rights ensured that banks would have an opportunity to step in to fix the manager’s mistakes when the manager is failing to perform their duties, and an opportunity to sell the business. These special rights effectively press pause on the Body Corporate’s ability to terminate agreements, while the bank attempts to fix the problems caused by the manager, or failing that, sells the business to a new manager who can perform the duties.

What the Gallery Vie decision identified was a gap in the laws granting these special rights to banks. Some agreements give the Body Corporate a right to terminate the agreement, or prevent the sale of the agreement, due to circumstances that do not relate directly to the performance of the duties under the agreements. For example, if the manager has fallen into debt and is unable to pay their bills for a while, in some agreements this gives the Body Corporate a right to terminate the agreement even if the manager is still performing all their duties in the agreements. In these circumstances the special rights the law granted to banks don’t apply. This means the agreements can be terminated without the bank having an opportunity fix the issue or sell the business.

When a caretaking or letting agreement includes clauses in it that allow the Body Corporate to terminate the agreement or prevent the assignment of the agreement, without the manager’s financier having an opportunity step in to rectify the manager’s failures or sell the business, this is what we call a Gallery Vie issue.

Since 2015, it is now common practice for agreements that contain Gallery Vie issues to be varied to remove these problems. Although it has been over 10 years, I still regularly find agreements that have Gallery Vie issues in them that need to be fixed in order for banks to provide finance. Until they

are addressed, these Gallery Vie issues can make it difficult for managers to refinance or sell their business.

The impact of the Gallery Vie decision in Queensland has also affected other States in Australia. When offering finance outside of Queensland, banks will typically require that the manager and the Owners Corporation enter a deed with the bank. These deeds grant the bank special rights mirroring the rights found in the Queensland law, plus closing the door on Gallery Vie issues that could enable an Owners Corporation to terminate an agreement before the bank has had an opportunity exercise its special rights. If you suspect the agreement you have entered with the Body Corporate or Owners Corporation still has a Gallery Vie issue in it, you should seek legal advice to ensure it will not impact your ability to obtain finance or sell your business in the future.

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