

Which service agreements have you arranged for the Committee?

In most caretaking agreements there will be tasks that need to be performed that will require skills, expertise or equipment that an average caretaker may not have. These tasks will generally need to be performed by another service provider arranged by the caretaker. Unfortunately, it is not always clear in caretaking agreements who is expected to pay the costs of engaging these service providers. This can lead to disputes between the caretaker and the committee.

Even though the caretaking agreement might be vague and confusing, most caretakers and committees will come to an understanding, or simply settle into an unspoken routine, where certain service providers are regularly paid by the Body Corporate. Years can go by with no issues being raised by the Body Corporate. And then the caretaker decides to sell their business.

What happens next is the buyer of the business will review the caretaking agreement and see that there are legitimate questions to be asked about who should be paying for the extra services. The most common issue of this kind I encounter is the question of who should be paying for the pool servicing. When the caretaking agreement doesn't clearly state whose responsibility it is to maintain the pool, even though the Body Corporate may have been paying these costs for years, a disruption to the management of the complex creates a risk that the Body Corporate could change their mind.

This suddenly becomes an issue for the caretaker trying to sell their business. The caretaker needs to convince the buyer that the Body Corporate won't or can't change their mind. The caretaker could do this by providing the buyer with evidence that the Body Corporate knowingly agreed to engage and pay the service provider costs. Strong evidence would be minutes for a committee meeting where the committee expressly agreed and voted to engage the service provider and pay the costs. This is often not the case though, when a service provider is engaged by the caretaker on behalf of the Body Corporate following verbal instructions from a committee member.

In these cases, it is difficult for the caretaker to prove to a buyer that the Body Corporate won't challenge the extra service provider costs in the future. It is also likely that the caretaker won't want to go to the committee and ask for a written statement from the committee acknowledging they agreed to engage the service provider after the fact. This will be like poking the bear and drawing the committee's attention to a "problem" that didn't exist before trying to sell the business.

The best solution to avoid this outcome is fixing the caretaking agreement to clearly state the extra services the Body Corporate pays for. The next best solution (when fixing the caretaking agreement isn't an option) is making sure that when the caretaker helps the Body Corporate to engage and pay for a service provider, they get those instructions in writing. Ideally recorded in minutes for a Body Corporate meeting, but any written record is better than none. This way, the caretaker has some tangible evidence they can show to a buyer without having to turn what used to be a non-issue into a red flag waving in front of the committee. If you have any concerns about the vagueness of your caretaking agreement, speak to your lawyer about making some positive changes.

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