SMH

Licences for Common Property Storage and Reception Areas

In many strata schemes the reception desk or office is located on common property. Often, the equipment needed to conduct caretaking and letting services in the strata scheme also needs to be stored in sheds, rooms or cupboards on the common property. For many caretaking and letting businesses, having a right to exclusively use a part of the common property is not just convenient but essential.

Only the Body Corporate for the strata scheme has the authority to grant rights to use common property storage or reception areas for a caretaking or letting business. These rights can be in the form of a licence, a lease, or an exclusive use by-law. The laws that control how these rights may be granted by the Body Corporate are generally similar across Australia. Queensland is the outlier though as it does not allow exclusive use by-laws for areas that relate to the caretaking and letting services, and a license is specifically known as an “occupation authority” and only exists while the caretaking and letting agreements are in force.

When I am conducting a review of a caretaking and letting business, there are two issues that I often encounter with common property licences. The most obvious issue is discovering that the licence doesn’t exist because there is no evidence that the Body Corporate has granted it. A less common issue (but still one I see too often) is that no one actually knows exactly where the licence area is because the plan showing the licence area is missing. Both of these issues are usually avoided when the caretaking and letting agreements clearly state that the manager is granted rights to use the common property and also includes a plan that identifies where the licence areas are.

If a manager is unable to prove that the Body Corporate has previously granted a licence to use the common property, or is unable to prove where a licence has been granted, the manager is at risk of having those areas taken away. This might mean that the manager loses a location that is essential for their business, or that the manager may need to grant concessions to the Body Corporate and owners to have access to the locations returned. In a worst case scenario a concession might come with a significant price tag for the manager such as: having to pay rent when no rent was previously paid; reducing the caretaking remuneration; or covering the costs for a renovation of the common property. These kinds of issues are made worse when they are discovered during the sale of the Management Rights business and the selling manager finds themselves in a very difficult situation dealing with the Body Corporate and the expectations of the incoming manager.

If you are a manager and use common property to operate your business, it is a good idea to make sure that you have a clear paper trail that shows your rights to use the common property. If your caretaking and letting agreements make no mention of the storage or reception areas you use, or don’t include a plan that identifies the areas, you likely have a problem that needs attention. These are issues that typically can’t be fully resolved without passing a resolution at a general meeting of the Body Corporate. These are not issues that can be fixed quickly with a band aid solution. If you suspect there is an issue with the common property rights that are granted to your business don’t push it to the back burner as this should be a front burner priority. If you are unsure about your circumstances you should seek legal advice.