Are daily caretaking duties to be done…daily?

There is an unwritten assumption built into many caretaking agreements (especially older ones), that when a caretaking duty needs to be performed daily, it doesn't actually mean all seven days of the week. Instead, it might be understood to mean just business days, or every day except Sundays and public holidays. I believe the reason it isn't expressly stated in the agreement can generally be attributed to two main causes. One, it seemed so obvious at the time the agreement was prepared that stating the obvious was simply overlooked. Or two, it was intentionally left vague to allow flexibility.

Neither of these are ideal when entering an agreement that is expected to continue for ten or more years and pass through many hands. What inevitably happens is that the people trying to interpret and enforce the terms of the agreement are not the people that were present when the agreement was created. This increasingly leads to disputes between the caretaker and the Body Corporate.

Picture the following scenario. The strata scheme is an apartment complex that is 18 years old and so is the wording used in the caretaking agreement. The current caretaker is the fourth person to hold that role over the years. There are no original owners left in the complex and the committee is made up of people that have bought their lots in the last seven years (mostly after Covid). In an effort to save money a new strata manager was appointed at last year's AGM and the committee are looking for other ways to get more value out of the levies.

The caretaking agreement says that the caretaker must perform several duties "daily", but for as long as anyone can remember, the caretaker has only done those duties on the days when the caretaker is staffing the office, i.e. Monday the Saturday. Then one day, a new owner asks the question, why aren't the daily duties being performed on Sundays? And soon after the caretaker is being issued with a breach notice.

Now the caretaker finds themselves in a difficult and stressful situation. Although they (and previous caretakers for many years) have been performing the caretaking duties exactly as they believed they needed to be performed, the black and white words in their agreement don't agree. This unfortunately leads to arguments and a need to decipher the history of the agreement and what was intended when the agreement was originally entered many years ago. And all this occurs while there is the looming threat that the caretaker's business is becoming increasingly unsellable.

Unfortunately, this isn't an uncommon scenario and there isn't a magic switch that solves this problem. The solution here, as with many of my articles, is being proactive. If you find yourself in a similar situation with vague wording in your agreements, rather than wait for a new owner to come along and flip the table on your years of service, get ahead of the problem by fixing the words in your agreement. Take advantage of your good relationship with your owners (while you still have one) and take the initiative to remove the grey areas in your duties.

Although it may be confrontational and uncomfortable, tackling these kinds of issues because you have started the conversation, is far less stressful than dealing with them when they are sprung on you by the committee.

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