

Strata Management Agency Agreements – How Much Liability Do Strata Managers Have?

Strata managing agents provide a broad range of services to their owners corporation clients, ranging from accounting and other administration to property repairs and maintenance. This frequently necessitates involvement in highly specialist areas, such as work health and safety and occupiers liability compliance, maintenance to parts of the building containing asbestos contaminated materials and building defects litigation and remedial works. It also frequently necessitates the agent dealing with third party consultants who have expertise in these areas, which the agent may not share. There is a growing tension between the standards expected of agents by their owners corporation clients and the level of expertise one can reasonably expect of agents in these highly specialised areas.

One means for agents to address this issue is to have in place appropriate resources and procedures to minimise the risk of incidents occurring and claims being made. This will generally involve engagement of appropriate consultants where required.

The terms of the agency agreement between the agent and its owners corporation client are also very important. Typically, these will include a limitation of liability provision and an indemnity provision in favour of the agent. The provisions delegating functions to the agent are also important, as they deal with the scope of the agent's responsibilities and consequently the scope of the agent's liability. In our experience, these issues are frequently not well handled, leading to agents having unnecessary exposure. This is supported by recent cases, where agents have been found liable to persons injured on common property and where there was no enforceable indemnity provision.

Agents should take care when negotiating agreements with owners corporation clients so that liability issues are properly addressed. In particular, agents should consider the following:

- Whether the scope of authority delegated to the agent is appropriate, i.e. the scope should be limited to matters for which the agent expects to be responsible.
- Whether the agent's liability is appropriately limited. It is common, across a range of industries for agents liability to be limited, e.g. by restricting certain types of claim or claims above capped amounts and there is mutual benefit, as appropriate limitation of liability assists agents to quantify exposure and reduce fees.
- Whether the agreement contains an appropriate indemnity provision. Many we see are deficient, for various technical and practical reasons.

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