Body corporates scrutinised as review pressure mounts

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The Unit Titles Act 1972 has provided a fruitful hunting ground for property managers who "capture" bodies corporate for their own benefit but their time may be coming to an end as momentum grows to tighten up the legislation.

The move is partly being driven by Auckland Regional Council which has published reports (available on its web site) and this week held a seminar for parties interested parties in changing the act.

The council believes inadequacies in the legislation may affect is urban intensification strategy for Auckland.

A High Court decision against Strata Title Administration reported in *The National Business Review* two weeks ago highlighted how one company, operated by Michael Chapman-Smith, became locked in disputes with tenants via their body corporate, set up to protect their interests and administer properties for their benefit.

Strata was ordered to repay more than $50,000 of money illegally held and it still faces further action from other bodies corporate later this month.

A proprietor of one of those bodies corporate has revealed a statement in Strata Title's body corporate manual that he believes is tantamount to a policy of kickbacks.

"Strata discloses that it may receive a fee from some maintenance companies or professional advisers to bodies corporate. For example, Strata has agreed with a cleaning company and several firms of valuers that, in return for ensuring prompt payment of their accounts and an undertaking that their accounts rank in priority to Strata's administration fees, Strata charges a 7.5%

plus GST. Likewise where a body corporate has employed a consulting engineer, Strata may not charge the body corporate for time briefing the engineer, and instead may charge the engineer a percentage of his fee," the corporate manual states.

Meanwhile, Rob Macdonald, principal of one of New Zealand's largest body corporate secretaries, Crocker Strata Management, said that his company recently took over as secretary of a body corporate in which the developer had effectively enshrined a power of veto to himself in the rules, meaning that the majority of the members had to go to court to get control of their own body corporate.

He said many body corporate rules prepared by developers may create conflicts of interest. "While the Unit Titles Act has generally worked well up until now, it is 30 years old and undoubtedly there are some areas where improvements can be made."

Mr Macdonald praised the ARC on taking the initiative to conduct free seminars about the issues.

"Crockers provided input into the ARC *Growth Forum Report*, and we're also working with other responsible industry stakeholders to ensure that a review of the Act takes place sooner rather than later," he said.

"In terms of the body corporate rules, we have always insisted on working with our developer clients when preparing those rules in order to minimise potential conflicts, and to ensure the rules are, as far as possible within the act, fair to all owners.

"The body corporate is there to protect owners' interests in the common areas and shared facilities, and in most cases they work well."

Mr Macdonald said the secretary of a body corporate is an agent of the owners of the units which make up the body corporate.

With more than 4000 new residential body corporate units created in the Auckland area last year, compared with over 300 a decade earlier, the Unit Titles Act affects more and more people.

At least 45,000 people are already living in apartments and townhouses governed by bodies corporate in Auckland alone.

The ARC is promoting two documents - *The Mysteries of Bodies Corporate: A Guide to the Rights and Responsibilities of Apartment Ownership*, and *The Unit Titles Act 1972: The Case for Review: A Discussion Report*.

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