



The Legal Affairs and Community Safety Committee
Parliament House
BRISBANE.
Queensland 4000

Dear Sirs,

Submission
Body Corporate and Community Management and Other Legislation
Amendment Bill 2012

I enclose my submission relative to the above proposed legislation.

I note with dismay that the influence of the promoters has resulted in this matter being drafted without any community involvement and with a small time frame of opportunity for submissions.

Yours faithfully,

James E. Catterall.

October 1, 2012.

Body Corporate and Community Management and Other Legislation Amendment Bill 2012

A few years ago a change in the law and the interpretation thereof allowed the owners of larger apartments in strata titled complexes to apply for an adjudicator to review the "Lot Entitlement" basis by which the common costs to operate the complex was allocated to individual owners. Applications for several complexes were processed and each resulted in changes that provided enormous advantage to the minority of owners and a profound financial disadvantage to the majority of owners. The fact that all owners were fully aware of the basis of cost allocations was known by all parties prior to them contracting to proceed to ownership of their respective properties was ignored by the adjudicator.

I am the owner of a two bedroom apartment at Trafalgar Towers in Maroochydore. Trafalgar was built with five three bedroomed apartments and fifty-three two bedroomed apartments. The three bedroomed apartments were originally allocated two Lot Entitlement units and the two bedroomed units were allocated one Lot Entitlement unit. In two instances adjoining apartments were amalgamated to create four bedroomed apartments the combined Lot Entitlement of two units continued to apply.

The owners of the five three bedroomed apartments sought a review by an adjudicator who reduced their Lot Entitlements to one unit and although the owners of the amalgamated four bedroomed apartments did not participate in the application for the review their lot entitlements were also reduced to one unit notwithstanding that in at least one case the combined apartments were rented as two separate apartments.

The financial implication to each of the seven owners that received benefit was about \$7000 per year. The financial disadvantage to all other owners was about \$700 per year.

The experience at Trafalgar is probably typical of the experience at all other complexes that suffered a review of Lot Entitlements by an adjudicator.

Thus the decision of the adjudicator resulted in a profound financial penalty to the majority of owners who would have purchased the apartments in good faith in the confidence that their contractual obligations were predetermined and fixed in perpetuity.

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In the case of all complexes where an adjudicator had adjusted the Lot Entitlements the unexpected financial impost to the disadvantaged owners occurred concurrently with the developing Global Financial Crisis and as a result some owners, particularly those on fixed incomes were forced to sell apartments devalued by both the reviewed Lot Entitlements and the GFC. Conversely some of the advantaged owners took the opportunity to realise the value of their properties that had been inflated by the review.

The only avenue apparent to disadvantaged owners was to make representations to the government through their elected representatives. In the case of Trafalgar there was a general recognition and acceptance by some members of the Parliament representing both major political persuasions that the adjudicator's orders were not appropriate?

Thus the 2011 amendments to Body Corporate legislation permitted a fair and proper reinstatement of the original basis of contribution.

It must be acknowledged that during the period of the application of the adjudicators review the small number of buyers of the apartments where the owners chose to realise the inflated values of their properties have been significantly disadvantaged by the 2011 amendments. Whatever consideration might be given to their significant plight the reinstatement of the adjudicator's orders to once again penalise those who were unfairly penalised by the adjudication orders is not justified.

It is evident that those who had gained the most from the adjudicator's determinations also have adequate intellectual and financial capacity to advance their cause, whilst those who suffer the most have the least intellectual and financial capacity to promote consideration of their plight.


James E. Catterall.


October 1, 2012.

