

Guide to Company Title Buildings

Part 2

Protecting your company title building from the risks of COVID-19

In these uncertain times, the need for a strong and pro-active board of directors is more important than ever. Directors, managers and shareholders should start looking at implementing measures to mitigate the **level of risk in the building**, with the overall aim of reducing the spread of COVID-19 amongst shareholders and occupants whilst also maintaining the conduct of the building.

Company title buildings contain large areas that form part of common property such as the rooftop, laundry room, gymnasium, garden etc. The proximity of people in high rise buildings and the use of common areas gives rise to an additional risk in the face of COVID-19.

Further, company title buildings are a popular hub for short term leasing and sub-leasing platforms. The use of Airbnb and other online short-term leasing platforms is commonly used by shareholders and occupants as a way to earn income on their investment property. Have you thought of the additional issues that arise with short term leasing and COVID-19?

Now is the time for the board of directors to **show strong leadership, assess the risk** facing the building and **act accordingly**.

The need for a pro-active Board

Assessing the level of risk in your building

It is essential that directors **assess the level of risk** in a building and subsequently pass Regulations to mitigate the level of assessed risk.

These are uncertain times that are changing day by day. Buildings are also likely to become busier and will become subject to higher rates of occupancy arising from the increased practice of working from home and the general shut down of society.

Inadvertently, your **building is likely to become a busier place**.

In light of the increased activity and occupancy in the building, it is important that the board of directors, along with their managing agent are in a position to assess the level of risk in the building, heed government recommendations and move fast to incorporate those recommendations into the building. Strong leadership is required from directors and managers.

Short term leasing and common areas

At the best of times, JFM LAW recommends that company title buildings introduce a strict **leasing policy** into their House Rules. However, this recommendation is now strengthened for the following reasons:

- Short term leasing **jeopardises the security of the building**. The movement of people in and out of the building increases and the company has little means to track the movement of people.
- Short term leasing has the tendency to **create disruptive behaviour** such as damage to common property, noise transference and anti-social behaviour from occupants. In those circumstances, the **company has no legal avenue to enforce the House Rules or the Articles of Association against the tenant**. The company has a binding contract with the Shareholder (through the Memorandum and Articles of Association). However, a tenant or sub-tenant is not a party to that contract. The absence of any legal recourse against a contravening tenant is especially risky in our current environment.

- Now with the rise of Covid-19 an additional risk transpires. That is, the **movement of people into the building increases** and the opportunity to properly observe **social distancing** is reduced. This is already difficult in communal living arrangements, where the use of common property (such as rooftops, laundry areas, gymnasiums, lifts etc) often means that occupants and shareholders are interacting with each other frequently in 'hot spots'

What can the Board of Directors do?

It is crucial that Directors are proactive in their approach to contain the impact of COVID-19.

Directors can practically implement a proactive approach by doing the following things:

1. First, **review the Articles of Association/Constitution** of the company to ascertain whether the board of directors have the right to make Regulations for the benefit of shareholders from time to time. If this clause exists, the Board have the power to amend or introduce House Rules which becoming binding on all Shareholders once the Board have **validly passed a resolution**. This is a fast process and can be practically implemented rapidly.
2. Second, **assess the nature of the building to ascertain the level of risk**. Does the building have a problem with short term leasing or is the building mainly owner occupied? If the building is mainly owner occupied, introducing new Regulations on short term leasing is not required.

Does the building contain large areas of common property and are those common areas frequented by occupants? If there are large areas of common property, it may be worthwhile passing a new Regulation relating to the use of common areas.

In short, undertaking a **risk assessment** of your building, will enable you to determine which Rules should be introduced

3. Third, **review the existing House Rules/Regulations** of the company and assess whether the Rules contemplate any of the following subject areas:
 - Short term leasing, or
 - Behaviour of shareholders and occupants in common property. This would include any hygienic practices that must be observed by shareholders and

occupants in common property areas and circumstances where the use of common areas could be restricted.

4. If the **House Rules are silent on leasing**, you should consider obtaining advice to insert the following clauses to the House Rules:

- All leases must be approved in writing by the Board of Directors (or their managing agent).
- Leases must contain a minimum term of 3-6 months.
- Sub-leasing is prohibited.
- The use of online leasing platforms, such as Airbnb is prohibited.
- All prospective tenants must enter a Licence to Occupy with the Company.

5. If the **House Rules are silent on shareholder/occupant behaviour or use of common property**, the Board should consider introducing the following clauses to the House Rules:

- All shareholders and occupants are required to observe hygienic measures such as frequent hand washing or other measures recommended by [Australian Government Agencies](#).
- All shareholder and occupants are required to maintain proper ventilation in their apartment.
- All shareholders and occupants are required to observe social distancing measures when interacting with others on common property and if practical, through their use of lifts.
- If a shareholder or occupant receives a positive diagnosis of COVID-19, then there is a requirement to inform the company manager or the board of directors. **It is important that directors and/or company manager strictly maintains the confidentiality of the person with a positive diagnosis**, otherwise the Company may risk breaching privacy legislation.
- That all shareholders and occupants comply with Regulations made by the Board of Directors, including but not limited to **restricting the use of common areas**.

6. Once the Company has sought advice and agreed on the form of changes to the House Rules, the directors should **convene an urgent directors' meeting**. The purpose of the directors' meeting would be to pass a board resolution making changes to the House Rules.

7. Finally, all shareholders and directors should be **informed of changes to the House Rules**. It is essential that the updated House Rules and/or Regulations are effectively communicated to shareholders, occupants and property agents. The effective flow of information from the directors/managing agent to shareholders (and other stakeholders) will ensure that everyone is aware of their obligations and ultimately create a **pathway to compliance**.

Keep communicating with shareholders and stakeholders

All managers and directors should ensure that they keep in touch and remain engaged with shareholders and other stakeholders.

Directors, managing agents and shareholders should keep up to date with all NSW and Federal Government announcements. For example, on 20 March 2020, the NSW Minister for Health and Medical Research made an [Order](#) under section 7 of the *Public Health Act 2010* (NSW). An individual and **a company can be liable to penalties** if there are breaches of the Order.

Shareholders, occupants and stakeholders must ensure compliance with the Order and can report those in the building that do not comply. It may be a good idea to create a simple **newsletter** to be distributed to shareholders on a weekly basis. The purpose of the newsletter would be to inform shareholders of new Regulations made by the board of directors and/or Government Recommendations that must be implemented into the building.

We recommend the use of [Mailchimp](#) as a tool to responsibly disseminate information, especially for the larger buildings.

How do you put this into action now?

Again, get us involved.

We can help you conduct a risk assessment of your building and put in place strict Regulations to ensure your building continues to operate with little risk to shareholders and occupants.

To discuss further, call either:

John Morrisey on **0407 069 507** or

Mariam Chalak on **0410 914 128**

Both John and Mariam have transitioned to work arrangements that will ensure they remain available to help you through these times.

If you would rather get in contact through email, send your questions through to Mariam at mariam.chalak@jfmlaw.com.au.

