

WHAT IS GALLERY VIE?

What is Gallery Vie, and why is the caretaker wanting to vary the caretaking agreement?

Gallery Vie is the name of a strata building which was involved in a 2015 Queensland Civil and Administrative Tribunal (**QCAT**) decision that significantly changed how Body Corporate legislation was interpreted going forward. In particular it changed how termination clauses in caretaking and letting agreements are applied when the caretaker has taken out a loan and used the caretaking and letting business as security for that loan.

In the Body Corporate legislation, when a bank has provided a loan to a caretaker, the bank is granted a special ability to step in and take control of the caretaking and letting business in the event the Body Corporate intends to terminate the caretaking and letting agreements. This special right is intended to prevent disruption to the services being provided to the Body Corporate and provide comfort to banks to encourage them to invest in the caretaking industry. Without bank investment, the vast majority of caretakers would not be able to operate.

Prior to the Gallery Vie QCAT decision it was widely understood that a Body Corporate could not terminate a caretaking or letting agreement that was secured by a bank for any reason without first allowing the bank the opportunity to rectify the breach or step in and take control of the business. The Gallery Vie decision however came to the conclusion that if the caretaking or letting agreement included additional termination rights over and above the rights granted in the Body Corporate legislation, it was possible for a Body Corporate to terminate an agreement without allowing the bank the option to step in first. This outcome severely undermined the protections the banks thought they held under the legislation and immediately led to banks cancelling or limiting lending to caretakers who were affected by the precedent set by the Gallery Vie decision.

To address the banks' concerns raised by the Gallery Vie decision and ensure that loans could continue to be offered to caretakers, most caretaking and letting agreements need to be amended to remove termination triggers that deny the banks the option to step in. These are triggers that allow the Body Corporate to terminate the agreements, such as:

- (a) the caretaker becoming bankrupt,
- (b) the caretaker having receivers appointed,
- (c) the caretaker being convicted of a crime, or
- (d) the caretaker becoming physically or mentally incapacitated.

By varying caretaking and letting agreements to remove the ability of these triggers to prevent banks stepping in, it returns the caretaking industry to the position it was in prior to the Gallery Vie decision (as originally intended in the legislation) and gives the banks the comfort they need to continue offering finance to caretakers. If the caretaking and letting agreements are not varied as required by the banks, the caretaker faces the prospect of losing their finance altogether or having to agree to finance on significantly less viable terms.