

CAN A BODY CORPORATE DEDUCT MONEY FROM A CARETAKER'S REMUNERATION?

It depends on the terms of the caretaking agreement.

Caretaking Agreement

Some caretaking agreements allow the body corporate to recover the costs of rectifying a default of the caretaker by deducting the costs incurred from the caretaker's remuneration.

If this type of clause is in a caretaking agreement, the body corporate must usually do 3 things before it can deduct money from a caretaker's remuneration:

1. Prove that there is a default (eg that the caretaker did not clean the pool or common foyer area);
2. Do something to fix that default (eg hire a cleaner to clean the pool or common foyer area); and
3. Incur costs to rectify the default (eg the cleaner charges \$330.00 to perform the cleaning duties usually performed by the caretaker).

In this scenario, the amount that may be deducted would be limited to the costs incurred and not an amount to represent general compensation or damages to the body corporate.

Repudiation

If there is no such clause in the caretaking agreement, the body corporate may breach the caretaking agreement if it decides to deduct the caretaker's remuneration.

That is because the body corporate has a contractual obligation to pay the caretaker remuneration, and a failure to pay the full remuneration can show an intention to not be bound by the terms of the caretaking agreement.

At law, this is called repudiatory conduct.

This repudiatory conduct, if accepted by the caretaker, entitles the caretaker to sue the body corporate for damages for breach of contract.

Depending on the nature of the caretaking agreement and the repudiatory conduct, the amount of damages that can be recovered from the body corporate can amount to hundreds of thousands of dollars.

What to do?

If your bodies corporate are having issues with their caretaker, there may be other ways to address the problem. Those other avenues should be explored. If deducting the caretaker's remuneration is desired, the body corporate must only do so within the bounds of the caretaking agreement to avoid the risk of a potentially expensive damages claim.