



# Gallery Vie Decision: How to keep your management rights financier happy...

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## Gallery Vie has caused some management rights financiers to question their security position when lending to management rights operators.

You may be aware of the Queensland Civil and Administrative Tribunal (QCAT) decision known as "Gallery Vie".

Gallery Vie has caused some management rights financiers to question their security position when lending to management rights operators including to:

1. tighten their lending policies (and for some to even refuse to lend); and
2. require amendments to the management rights agreements to 'draft around' the potential issues raised by Gallery Vie as a condition to lending.

For some background to Gallery Vie, the *Body Corporate and Community Management Act 1997* (section 126) provides:

1. a "financier" for a contract (eg. a caretaking contract), is a person who provides written notice signed by both the financier and the management rights contractor to the body corporate notifying the body corporate that the person is a financier for that contract;
2. the body corporate under a contract where there is a "financier" (a "financed contract"), may only

terminate the financed contract if:

1. the body corporate gave written notice to the financier notifying the financier that the body corporate has the right to terminate the contract;
2. 21 days has passed since that notice was given; and
3. during that notice period the financier does not 'step in' or appoint a receiver/manager.

Before Gallery Vie, the generally accepted view in the management rights industry has been that after a financier stepped in or appointed a receiver / manager to perform the obligations of the caretaker under the agreements those agreements could not be terminated for the actions of a third party.

In other words, unless the financier or its representatives did something to trigger termination, the agreements could not be terminated by the body corporate.

The Gallery Vie decision overturned this generally accepted view. That has made financiers wary when lending against management rights. Financiers once viewed section 126 as a complete protection against

termination of management rights agreements by bodies corporate but are now concerned that events outside their control that arise after they've stepped in or appointed a receiver, could entitle a body corporate to terminate.

Many financiers will now require amendments to be made to management rights agreements to fix the Gallery Vie issue as a condition of providing finance.

*We offer free advice regarding the Gallery Vie issue, its application to your management rights and our recommendations as to amendments required to your management rights agreements to fix the issue.*

*Contact us at Stratum Legal if you would like to discuss.*

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