

The downsizing dream that turned into a nightmare

[Michael Bleby](#) Aug 17, 2019 — 12.00am

When Christine Robinson bought a high-rise apartment in June 2017 she didn't know she was also buying a building manager's services - for 25 years.

Robinson, a nurse, and her IT worker husband Chris also didn't know that they, and the other owners in the North Melbourne building, would be paying that building manager, CP Property Pty Ltd, an increase of 4 per cent after the first year and 5 per cent every year after that.



Christine Robinson says: "This could have been a magnificent building." *Eamon Gallagher*

This means the building management contract, worth an initial \$172,000 before GST, would rise to \$549,434 and a cumulative total \$8.1 million by the end of 25-year contract. That's an average yearly rate of \$325,301. For the 61-year-old Robinson, who could easily still be in the unit in 25

years' time, it was a shock.

"My nursing salary sometimes went up 1 per cent in three years but we are paying this company 5 per cent guaranteed increase," she says.

Reflections, a 12-storey residential tower with 140 apartments, is in a beautiful location. Robinson's third-floor apartment looks down onto a triangular tree-filled park that in winter gives glimpses through the CBD and in summer is filled with a burst of tree canopy greenery. But it is a deeply problematic building and Robinson already plans to move out of what was to be her "forever" home.

The story of her \$765,000-apartment reveals the deep-seated interests between a developer and other players in a building's ongoing maintenance and management - and how related costs affect owners long after the developer has moved on.

The building manager's contract, for example, was awarded by Daniel Caspar, one of the three directors of the developer Haines Street Holdings, at a meeting with two representatives from the strata management company he had appointed, before a single resident moved in. Caspar is also a director of Eton Property Group which marketed the property.

As the hangover from Australia's high-rise construction party kicks in, tales of weak regulation and poorly built buildings are all too common. Robinson's building is a case in point. Scheduled for completion in January 2018, her apartment was three months late.

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While she was supposed to have just one pre-settlement inspection of the apartment, after identifying 22 defects that included a crack in the

bathroom wall tile, a front door that lacked plates covering the screws holding in the doorhandle, and an unfinished balcony, Robinson had to arrange two more inspections before she was satisfied builder ABD Group had fixed them.

But contractually, she realises she had no way to hold the builder or developer to the completion standard expected.

"You've got no leeway to say 'Hold on, we're not happy,'" she says.

"If you're not happy at settlement [and delay settling] you get charged interest. You don't have the recourse to say 'This is not up to scratch!'"

After moving in, the owners' corporation commissioned a building defects report in August last year that identified a further 16 defects, including cracked tiles in common areas with jagged, rough edges, a stormwater pipe discharging water onto a neighbouring driveway where there was no appropriate drainage, and a waterproof membrane on the building's roof that had been punctured after the builder stored materials on top of it.

Fifteen months down the track, ABD Group hasn't resolved all the faults. Water still seeps into the underground car park from exposed concrete piles.

A planter box on the fourth-level rooftop garden - directly above a passageway in Robinson's apartment - doesn't have the required puncture-proof board to prevent roots from growing through the waterproof membrane and is already leaking water.

In this case, according to the defect consultant's report, the surveyor knowingly approved the faulty planter box so liability lies with the surveyor.

Over promised, under delivered

But Robinson's greatest anger is reserved for Haines Street Holdings, that she says, promised much, delivered less, and set up contractual arrangements that bind the owners for decades.

In some cases it's a matter of not getting what was promised. The tasteful hard-backed sales booklet for Reflections promised a 24/7 concierge service, a key selling point for Robinson, a shiftworker, who sometimes works late hours.

But no such service exists, nor was ever demanded of the building manager by the developer. On the desk in the lobby where the promised concierge would be is a lonely sign saying "building manager", with a mobile number.

As a consumer buying off the plan for the first time, the process has opened Robinson's eyes to a murky world with little redress.

"The whole strategy, from developers to builders to owners corporation management to the way embedded networks and building managers are set up – it's just a quagmire," she says.

"The government allows the developer to lock all the lot owners into contracts that they have no say in. We're locked into the building manager for a 25-year contract. We're locked into Turnbull Cook for five years and we're locked into the embedded network."

Haines Street Holdings declined to respond to *AFR Weekend* about the building management contract and other aspects of the project.

"I'm not really interested in answering these questions," the spokesman said.

Searching for answers

The sales contract for the apartments, however, gives part of an answer.

The vendor (developer) can appoint the strata manager and sell the building's management rights, adding "in which event the benefits of any such sale will vest in the vendor", the contract says.

What galls Robinson, who downsized from a four-bedroom family house in Eltham, in the outer north-eastern suburbs, is these contracts, which the developer Haines Street Holdings committed her and the other owners to well before any of them moved in.

At that meeting in February 2018, a month before settlement, one of the three directors of the development company, Daniel Caspar and the two representatives from strata management company - the only other people present - formally create the owners corporation for the new building.

Caspar, whose company still owned all lots in the development at that stage, then took on the role as chairman of the owners corporation. In that role, he appointed Turnbull Cook as strata manager for five years, set up an embedded network with supplier OC Energy to provide gas and electricity to all of the apartments, and converted bicycle racks that some residents had purchased for \$2500 each into 99-year leases. And he signed up CP Property to manage the building.

Shifting responsibility

The processes are common in off-the-plan developments across the country.

Last week advocacy group Owners Corporation told the NSW Upper House inquiry into building standards that developers, builders and government had all shifted the risk of costly defects onto apartment buyers and created a system with inherent conflicts of interest.

"These buyers have no bargaining power in the market and little more

than a glossy brochure on which they rely for their award-winning luxury apartment," OCN director Jane Hearn said.

"New strata owners - that is, in a new owners corporation - are at a significant disadvantage. They don't know each other, they have very little information, they have little knowledge, they have no funds and some of them have limited English.

"The handover of a building is very easily exploited to cause delay and avoid warranty obligations. The strata manager is appointed by the developer and many of them are very good, but they tread a very fine line. They also get a substantial volume of business from new buildings."

In Robinson's case, the appointment of a building manager on a 25-year contract shows how easily developers can make decisions that affect the long-term interests - and finances - of residents.

"It's outrageous. Who gets that sort of tenure? It makes it very difficult for owners to remove the people if they're not happy," says construction lawyer Bronwyn Weir, the co-author of a key federal government report that recommended a series of reforms to Australia's building industry.

"If they are then acting with one eye towards the builder or the developer who's appointed them, it'll be a long time before the owners corporation suspects they may not be fully acting in the interest of lot owners."

Strata manager Turnbull Cook said in a statement it currently managed two properties developed by Eton Property and that it had tendered for contracts on other Eton projects but had not been successful.

The experiences of Reflections' owners also reveal another weaknesses in the development chain - conveyancers who failed to identify a historic easement in the contract of sale that means that in the future at least 77 more cars will be passing through the building's basement car park.

The easement through the ground floor of the property that gives access to a future neighbouring residential development site on the adjacent Shiel Street, was not spotted by Robinson's conveyancer, nor by any of the lawyers acting for buyers in the project.

Tim Szalek, the chairman of the owners corporation in Robinson's building says it was the duty of conveyancers to identify issues such as easements over property,

"It's their role to advise their clients as to what they sign up for," Szalek says.

"Would this be a key deciding issue that your client should be advised upon? There's a lot of people out there that would say yes."

Szalek, a lawyer who did his own conveyancing for his own purchase, also failed to spot the easement in the contract.

"I did my own conveyancing, so I've only got myself to blame," he says.

Private developer Fridcorp purchased the Shiel Street site in 2016 for \$7.35 million and [won approval last year for a 90-apartment, nine-level tower](#) on the site. It [tried to sell the site](#) last year, but failed to do so in a weakened development market and is landbanking it.

Robinson and her husband don't want to stay in the building. Given the defects already apparent, she looks at high-profile building failures such as Sydney's Opal and Mascot Towers and wonders what problems lie undiscovered in her own building.

"I'm so sad," she says.

"This could have been a magnificent building, but no. We're going to get leaks in time with that garden above us and roots we know are growing into the building.

"There's part of me that absolutely loves our apartment but another part of me that absolutely loathes it. I feel like Jekyll and Hyde."