

**AUSTRALIAN PROPERTY CUSTODIAN HOLDINGS LTD. ("APCHL") IN ITS CAPACITY AS  
RESPONSIBLE ENTITY ("RE") FOR THE PRIME TRUST RETIREMENT & AGED CARE PROPERTY TRUST  
("PRIME TRUST")  
(ADMINISTRATORS APPOINTED) (RECEIVERS AND MANAGERS APPOINTED)  
(CONTROLLERS APPOINTED) ACN: 095 474 436**

**SUMMARY OF QUESTIONS AT BRIEFING OF UNITHOLDERS**

Briefings of Unitholders were held in Brisbane, Sydney and Melbourne on 10th, 11th and 12th January 2011 respectively.

At each of the briefings a representative of the Prime Trust Action Group ("PTAG") was in attendance. The following is a summary of the key points raised by the PTAG:

- *Support for PTAG is growing rapidly. There are presently approximately 16% of unitholders registered representing 37% of total funds invested. There is widespread angst and frustration over the present situation. The PTAG has identified a number of examples where it believes the RE acted against the interest of the unitholders and engaged in misleading and deceptive conduct.*
- *A listing fee of \$33 million was charged, being 2.5% of assets being equivalent to 7% of unitholder funds. In order to do this the RE changed its Constitution. It is believed that such action was in breach of the Corporations Act, as the RE required Unitholder approval to make such changes.*
- *The management rights belonged to the trust and it is believed they then became an asset of Mr. Lewski or an associated entity. Not only have the management rights been sold but they have been sold to a competitor. Mr. Lewski had no title to the management rights and therefore had no right to sell them.*
- *Prior to July 2007 Prime Trust received 100% of the deferred management fees ("DMF"). The DMF was payable upon settlement of the vacating residents unit/ apartment. In 2007 the arrangement was changed and Prime Trust was to receive only 40% of the DMF. The 60% balance went to a company of Mr. Lewski. This fee restructure was not in the interests of unitholders.*

*This change was made on a retrospective basis and accordingly all DMFs which had been built up and outstanding over a period of time were written off.*

*In addition it appears in the Product Disclosure Statement ("PDS") the projections were based on the assumption that 100% of the DMF would be received, not the amount of 40% which was then being received. This significantly altered the return amounts.*

- *The financial statements for 2007 for Prime Trust indicate that a profit of \$36million profit was made. Such a profit was obtained as a result of writing up of assets. If there was no write up there would be no profit. Distributions were made out of non-cash income.*

- *Prime Trust was required to act as a passive investment this restricted the investments in which it could enter into. The trust lent money towards developments of retirement villages on a second mortgage basis (known as Property Investment Loan Agreement's ("PILA"s)) with an option to purchase at completion of the project. This is a highly risky practice and it is believed that the trust is unable to enter into such investments.*
- *It is also alleged the PDS contained a number of examples of defective disclosure. It is believed that if such disclosure were accurately represented in the PDS the unitholders would have reconsidered whether to invest.*

I am aware of each of the above matters raised by the PTAG and am investigating the matters further. Each of the above matters will be addressed in the report to creditors which at this stage is due to be issued in late April 2011.

The following is a précis of questions raised by attendees at the various briefings. The question raised is shown in bold text followed by the response by the Administrator. This document is issued to provide unitholders with a précis of the discussions at the briefing and is not to be taken out of context, nor referred to as in any way binding.

#### **Was Prime Trust Insolvent?**

A company is deemed to be insolvent when it is unable to pay its debts as and when they fall due. I understand Prime Trust was able to meet its day to day expenditure and present debts. The unsecured creditors of \$49 million were not debts currently due and payable. This is an area which I will need to investigate further and report in my second report to creditors.

#### **Recently in the "Courier Mail" newspaper an advertisement appeared from Ernst & Young Chartered Accountants advertising a retirement village open for expressions of interest. What action is Ernst & Young taking?**

I believe the advertisement does not relate to any of the villages held by Prime Trust.

#### **The Prime Trust is one entity which has a number of Receivers and Managers appointed over it. Is it possible to have only one Receiver appointed across all of the villages to save costs?**

Such a situation would be ideal however as secured creditors the banks have the ability to appoint a Receiver at any time when it believes it to be necessary. In Prime's case there are four banks involved.

#### **There are three Receivers and Managers appointed across the villages. They could sell the villages at any time without our approval. What is your relationship like with the Receivers and Managers?**

I have spoken with each of the Receivers and Managers and am in regular contact with their offices. At this stage, I have encouraged the Receivers and Managers not to proceed hastily with a selling program. This could change at any time. It should be noted at law the Receivers and Managers can sell the villages at any time, subject to their responsibilities under the Corporations Act.

#### **Is there any evidence that prior to the voluntary administration the four directors sold a substantial amount of units on the stock market?**

No, I have not found evidence to that effect.

**There were a number of mortgage projects in the last couple of years. These mortgages were written off. Why were these not retained? What investigations have you conducted?**

These situations are known as Property Investment Loan Agreements ("PILA").

Prime Trust was not allowed under its constitution to be an active trust it had to act as a passive investor. For this reason it could not build its own villages. The trust loaned monies to developers to complete these projects and in return took a second ranking mortgage.

These projects did not perform as well as anticipated and in some cases the PILA's are worthless.

To give an example, in the case of Sunbury a recovery of approximately \$2.5 million is anticipated The project owes Prime Trust \$9 million.

**Ownership of the management rights is very important to the value of the villages. Prime Trust purchased these villages. The management rights were not distinguished in the purchase of the villages which indicated that the management rights were an asset of Prime Trust. What investigations have you undertaken to find out what happened to the management rights?**

The management rights were sold. My investigations are still in the early stages.

I am obliged to carry out investigations for the benefit of the trust and all its stakeholders. I am required to report to the creditors of the company during April of this year. However, it is not likely that a black and white answer will be available to this issue in the short term.

**The management rights were given away for nothing which led to a personal gain for the directors. Can they be forced to pay back?**

In certain circumstances, yes.

**Will the financial statements for the financial year ended 30th June 2010 be made available?**

I am in receipt of these draft accounts and I will be reporting on them in my report to creditors. The accounts will not otherwise be made available publically.

**Lend Lease Primelife ("LLP") is in an advantageous position and it is assumed that the arrangement was entered into above board. LLP is the competition. What benefit would LLP get out of co-operating with Prime Trust?**

This is a fact of life, however, I will endeavour to do the best I can notwithstanding.

**My financial advisor advised me to invest in this scheme, what rights do I have against my financial advisor?**

You may have certain rights; however this is something that you would need to pursue yourself.

**Have you considered the Sons of Gwalia case law and its implications in this situation?**

I have read material on this matter, and it appears to cover liquidations. In the case of Voluntary Administration and a Deed of Company Arrangement the legislation is not clear, nor in the case of a trust.

**In relation to the RE, Who is it and who is its leader?**

The company has two roles. It holds an Australian Financial Services licence from ASIC in its own right and is trustee of the trust. The RE is required under the Corporations Act. The directors of the RE are:

- Michael Wooldridge
- Neil Rodaway
- Anthony Hancy
- Kim Jaques

**Are all decisions of the directors properly documented?**

I understand that all relevant documents have been filed. At this stage I cannot advise whether they are sufficient. I have taken a copy of all computer records including emails. This is a standard process.

**What are the chances of Prime Trust continuing to operate?**

To some extent this is dependent on the receiverships. There would need to be an improvement in the Lend Lease Primelife situation. The best scenario is that the Prime Trust is taken out of voluntary administration.

In the event that Prime Trust does not continue it would be a wind up and would be a "cents in the dollar" situation. This would be a less favourable option.

**What role did Kidder Williams play? Have you investigated the transfer of RE to Lewski?**

I have not at this stage undertaken investigations into this aspect.

**In relation to the Professional Insurance Indemnity policy I understand that there is a clause which restricts the information which can be released without the consent of the insurer. Have you requested this consent?**

I have written to the insurer seeking consent.

**Are there exceptions in the policy which enable it to be provided pursuant to a court order?**

There is a process which must be followed to enable the release of information.

**In relation to the \$500,000 advanced to you by the NAB are there any restrictions on the way you can use these funds?**

No.

**What work have you done so far and what do you intend to do in relation to all of the issues?**

I have a duty to make all recoveries relevant to the trust and its stakeholders. I need to take these issues as far as I feel is appropriate. This may mean that an issue may need to be tested in court.

I will be required to report on all of these issues to the PTAG and creditors.

Most of the matters raised have already been put to me by Clarendons Lawyers. At this stage I only have unitholder information and I need to get all of the information. There may be a valid defence to the issues and they may need to be aired in court. There are many complex issues in this matter. I will need to look at all the facts and determine what action to take.

**Who do you act for? Do you act for the Owners? Do you report to Mr. Lewski?**

It is my role to act in the interest of all stakeholders and obtain the best outcome for all. I act for all stakeholders without fear or favour.

My obligation is to protect the interest of all stakeholders of PrimeTrust including Unsecured Creditors and Unitholders.

**Has there been any action taken to freeze the assets of Mr. Lewski to enable a recovery for Prime Trust?**

There is currently no action against Mr. Lewski. It would be some time before commencing (if at all) any recovery action.

**Daytree Pty. Ltd. is on the Committee of Creditors. Given the issues with Mr. Lewski isn't there a potential conflict of interest?**

Daytree Pty. Ltd. is part of the Committee of Creditors. The Committee of Creditors can pass certain resolutions and has an advisory role. At this stage no resolutions have been passed. There are 8 members of the committee. The Committee members are:

- Mr. S. O'Reilly
- Mr. N. Rodaway
- Macquarie Bank Ltd.
- Kidder Communities Pty Ltd (Receivers and Managers Appointed)
- Daytree Pty. Ltd
- Industry Funds Management (Nominees No. 2) Pty. Ltd.
- D. B. Zwirn Asia Investment BV
- Brentwood Village Limited

If there are any major problems I would need to go to court to rectify the problems.

**Mr. Vrsecky and yourself were appointed by Daytree Pty. Ltd. and that appointment was queried by another party. Can you explain this further?**

Mr. Vrsecky and I were appointed by Daytree Pty. Ltd. After our appointment we instructed our solicitors to review our appointment and confirm that we were validly appointed. This is a standard process when an appointment has been made by a chargeholder to ensure that the appointment is in order.

At the same time, Clayton Utz, the solicitors acting for the NAB had an issue with my appointment. The NAB was refusing to hand over approximately a \$7 million deposit of which we believed we were entitled to as administrators.

Our solicitors advised us that they believed that there was an issue with our appointment as the Daytree Pty Ltd charge was not over all of the company assets.

The matter was brought to Court and the Court found that on the basis that the directors appointed me across all the subsidiary companies it was most likely that they would have appointed me over the main entity at the same time. Accordingly, by court order our appointment was validated effective 18th October 2010.

**What is the magnitude of the Lewski debt?**

Mr. Lewski has a claim across both the Company and Trust assets. The RE has creditors of approx. \$29million of which approximately \$28 million relates to Mr. Lewski.

**You mentioned that you only proceed with actions that you deem to be relevant / appropriate. This indicates that you have a subjective ability to take some matters forward and not others? If you have a potential conflict with Mr. Lewski, how can you make such a decision?**

I cannot avoid the responsibility of my appointment. If I need to pursue an action then I am obligated to do so without fear or favour.

**Is ASIC involved?**

I understand that ASIC has been in attendance at each of these briefing sessions. It is vitally interested and has been involved since the beginning. It has raised a number of issues of which I have responded to.

**When do the police become involved in this if it is found to be fraud / theft?**

To date I am more interested in the civil side of this matter. I am required to report to ASIC if I believe any improper conduct has occurred. Such action could not be taken until proper investigations have been conducted.

**What action can you take to freeze the assets of the directors?**

At this stage I have no grounds on which to take any such action.

**If a unitholder is considered a contingent creditor how will they rank?**

Unitholders who are able to establish that they have a proper basis to be considered a contingent creditor, at this stage have been submitting their claim as an unspecified amount along with documentation setting out the basis for their claim. At present I have allowed these claims to rank for \$1.

The unitholders will need to quantify this claim to rank, and this may involve a court process.

If unitholders are able to prove that they had a valid claim as a creditor they would rank equally with unsecured creditors. This would be the best position that unitholders could get to.

**Is the PTAG attempting to establish itself as a contingent creditor?**

No, only individual unitholders can claim.

**Under a Deed of Company Arrangement ("DOCA") will the unitholders be able to prove for the value of their units?**

At present I have allowed certain unitholder who have provided a proper basis for their claim to be held as contingent creditors and admitted for \$1. To get their claim to be an actual amount the unitholder would need to further prove their claim.

Under the Sons of Gwalia case, shareholders were able to claim in certain circumstances.

Legislative change is currently in progress and it is unclear as to whether such a claim will be allowed in the future.

**What are our chances of recovery? Is it possible unitholders will be paid in full?**

The claims discussed at this briefing by the PTAG in relation to management fees, deferred management fees, if recovered would be for the benefit of the trust. Such a recovery would first be available to unsecured creditors.

I anticipate being able to provide more clarity in two to three months.

**Will there be further briefings to unitholders?**

It is unlikely further briefings will be held. As discussed I am required to send a report to creditors. I intend to keep unitholders similarly informed.

**Is a DOCA proposal likely to be forthcoming?**

A DOCA can be appropriate outcome for a number of interested parties. The process is that a proposal is put forward on behalf of the company. Once all conditions of the DOCA are completed the entity reverts back to the previous existence.

Such a proposal is generally attractive to many parties associated with the entity. The outcome would need to be satisfactory for all stakeholders. At this stage I have not received any such proposal.

**When can you expect your work to be completed?**

I anticipate there will be some developments in the coming months. Accordingly, I ask unitholders to be patient until the situation becomes clearer. There are timelines that I am required to abide by. I am required to complete a substantial report.

As you will be aware receivers and managers are in charge of 11 of the 12 villages. I will need to await the outcome of their progress.