



Owners Corporations

(Some tips on living with the new Owners Corporation Act 2006)

Background

On December 31 2007 new legislation, the *Owners Corporation Act 2006*, came into operation.

What is an Owners Corporation?

An Owners Corporation is a separate legal entity which is created when a plan of subdivision creates an area referred to as common property. They were formerly called body corporates.

The Owners Corporation owns the common property and manages it on behalf of all the lot owners. The lot owners make decisions by a majority vote on management issues. Lot owners should take care to check the lot liability and lot entitlement applicable to their property.

The lot entitlement governs the number of voting rights the lot owner has in relation to decisions made by the owners corporation.

What are the different types of Owners Corporations?

Owners Corporations can be:

Unlimited, Limited or Prescribed.

The most common type of Owners Corporation is the unlimited Owners Corporation.

In some situations an Owners Corporation may be a limited Owners Corporation which is created to serve a purpose ancillary to the main unlimited Owners Corporation. An example of a limited Owners Corporation might be an Owners Corporation established to manage a swimming pool in a larger complex.

An unlimited Owners Corporation can also be a Prescribed Owners Corporation. Prescribed Owners Corporations have annual levies of greater than \$200,000.00 or their subdivisions have more than 100 lots. Prescribed Owners Corporations must comply with additional financial requirements such as obtaining an annual audit and establish a maintenance fund.

What are the main functions of an unlimited Owners Corporation?

The main functions of the Owners Corporation are as follows:

(i) **To manage and administer the common property**

If the subdivision is greater than 13 lots the Owners Corporation must elect a committee which consists of a minimum of three lot owners and no more than 12 lot owners. The committee is responsible for making decisions on behalf of the Owners Corporation.

The Owners Corporation can also appoint a manager. If the manager receives a fee the manager must be registered with the Consumer Affairs Office. The Owners Corporation sets the annual fees to cover general administration, maintenance and insurance and it may also set a special levy to cover any extraordinary items required to undertake the repair and maintenance of the common property.

(ii) **To take out and pay insurance premiums**

An Owners Corporation must take out public liability cover for \$10 million over the common property and is also obliged to take out reinstatement and replacement insurance for buildings on the common property.

(iii) **To keep an Owners Corporation register**

An Owners Corporation must keep a register which details the following:

- the Owners Corporation plan number and address
- the name and address of each lot owner
- the name of the manager and contact details
- total lot liability
- total lot entitlement
- the date of amendments to any rules of the Owners Corporation
- details of any notices served
- details of contracts, leases and licences
- details of insurance policies

(iv) **To provide an Owners Corporation certificate upon request**

Any person may apply to an Owners Corporation for a certificate. This certificate must be provided within 10 business days for a fee not exceeding \$150.00. The certificate must contain prescribed information and be accompanied by a copy of the rules (standard model and any additional rules), a statement of advice to prospective purchasers and a copy of the last annual general meeting minutes and resolutions. The certificate and the accompanying documentation must be attached to the Vendors (Section 32) Statement when any lot on the plan of subdivision is sold.

Can an Owners Corporation bring legal proceedings?

An Owners Corporation can go to VCAT to recover money due to the Owners Corporation. For any other legal action the Owners Corporation will need to obtain a special resolution of the Owners Corporation to proceed with the action. A special resolution means at least 75% of the total lot entitlement vote for the cause of action.

What are the financial requirements imposed on an Owners Corporation?

The Owners Corporation must keep accounts that reflect a fair and true view of the income and expenditure. The financial accounts must be presented to an annual general meeting. Prescribed Owners Corporations must be audited and have a maintenance plan. The maintenance plan is a plan which recites the major capital items for repair and replacement which shall occur over the next 10 years for the Owners Corporation. Non-prescribed Owners Corporations are not obliged to have an audit and have a maintenance plan but may do so if they elect to.

What other obligations should members of the Owners Corporation be aware of?

Members of the Owners Corporation have fiduciary duties imposed upon them which means when acting on behalf of the Owners Corporation they should act honestly and in good faith, exercise due care and diligence and not make improper use of their position. Also, members of an Owners Corporation need to be aware of the rules of the corporation and comply with them.

The rules might be tailor made "Special Rules". If not, the model rules will apply, The model rules deal with issues such as health, safety and security, management and administration of the common property, use of the common property, use of lots, behaviour of owners, occupiers and guests and also some dispute resolution mechanisms

What are the requirements placed on two lot subdivisions?

An owners corporation in a two lot subdivision is exempt from the insurance requirements, the need to hold an annual general meeting and to keep an Owners Corporation register. It can also avoid internal dispute resolution procedures, does not require a special resolution to issue legal proceedings and does not have to create a maintenance plan or maintenance fund.

Conclusion

Recent legislation has made major changes to the area of Owners Corporations and for further information refer to "Owning, Managing, and Living in a Unit or Apartment". This publication is available from Consumer Affairs Victoria - www.consumer.vic.gov.au.

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