

Consumer Affairs Victoria

Bodies Corporate Factsheet

New laws for bodies corporate

October 2006

There are more than 65,000 bodies corporate in Victoria. They play a vital role in property ownership and management for a significant and growing number of people. To ensure that legislation is relevant to the changing nature and size of bodies corporate – particularly the increase in multistorey high rise apartment buildings – Parliament recently passed the Owners Corporations Act 2006. The new Act will come into operation in late 2007.

Need more information?

Call Consumer Affairs Victoria Helpline on 1300 55 81 81.

From body corporate to owners corporation

The name body corporate will be changed to owners corporation. This is the term used in other States and emphasises the fact that the body represents lot owners and gives them a vehicle to manage their common property.

Scope of the new legislation

The new Act incorporates relevant sections of the current Subdivision (Body Corporate) Regulations 2001 and *Subdivision Act 1988*. It builds on and enhances these provisions to give owners corporations the powers that are necessary to carry out their functions, and requires them to exercise these powers responsibly.

The Act does not yet apply to owners corporations in Victoria, as it will not come into operation until it is proclaimed (or on 31 December 2007 if not proclaimed earlier). Bodies corporate should continue to operate according to the current body corporate regulations until then.

Transition to the new Act

The new Act will involve changes to many aspects of the operation of owners corporations. The Act contains transitional provisions to allow for a smooth changeover to the new regulatory scheme:

- Body corporate rules will continue in force so long as they are not inconsistent with the new Act or regulations.
- Any existing body corporate committee or body corporate certificate made under the old regulatory scheme will continue to be valid under the new Act.
- A resolution made by a body corporate that is in force under the old regulatory scheme will also continue to be valid under the new Act, as long as it is not inconsistent with the new Act and the regulations.
- Delegations will also continue to be valid under the new Act unless they are inconsistent with the new Act, in which case they will remain in force until the next Annual General Meeting of the Owners Corporation.
- Paid managers will have to apply to the Business Licensing Authority for registration but those who apply within three months after the new Act comes into operation may continue to act as a manager without being registered until a decision is made on their application.

During 2007, Consumer Affairs Victoria will conduct an education campaign to ensure that body corporate managers, lot owners and the general public are aware of their rights and obligations under the new Act. In addition, there will be public consultations around regulations that specify how various sections of the Act will be implemented, such as model owners corporation rules.

Clarifying the powers of the committee

The new Act establishes that the owners corporation committee can do all the things the owners corporation can do by ordinary resolution (by a simple majority vote of lot owners) except for those matters that the owners corporation has resolved can only be decided at a general meeting. A committee meeting may be called by the owners corporation, the committee, the chairperson of the committee, the secretary of the committee, the manager of the owners corporation or a delegate of the owners corporation. Committee members must receive advance notice of the meeting, with the notification including the time and place of the meeting, and the agenda. Minutes have to be taken at each meeting and the committee is required to report on its activities to the Annual General Meeting. Members of the owners corporation will be entitled to inspect the minutes of committee meetings.

Information and record keeping

A significant problem experienced by many people buying property has been the difficulty of accessing information about an owners corporation, such as financial statements, maintenance plans, committee minutes and body corporate rules.

The new Act requires the owners corporation to keep records of its activities, undertakings and membership and make them available for inspection, free of charge, to current and incoming lot owners. Lot owners can also request copies of these records for a reasonable fee.

The new Act will also require a copy of the owners corporation certificate, which includes information about proposed fees, repairs and liabilities, to be attached to the vendor's statement (section 32) in sales of properties affected by an owners corporation. This will ensure potential purchasers can make an informed decision about the property.

Dispute resolution

The current regulatory framework provides no alternatives for dispute resolution outside applying for a formal Order from the Magistrates' Court or using the services generally available for resolving neighbourhood disputes. The cost of taking matters to the Magistrates' Court acts as a deterrent, while the neighbourhood dispute settlement model may not seem adequate for resolving disputes to do with, for example, accountability for the use of owners corporation funds.

The new Act sets out a three tier approach to dispute resolution:

- **First tier** – Owners corporations must have an internal dispute resolution process, with a default process set out in the model rules. The Act also establishes a formal complaint- handling process where the informal process fails.
- **Second tier** – At any time, a person who is not satisfied with the internal process may contact Consumer Affairs Victoria. Consumer Affairs can conciliate or mediate between the parties in a dispute.
- **Third tier** – The new Act provides the Victorian Civil & Administrative Tribunal (VCAT) with broad powers to resolve disputes and make binding determinations. However, the owners corporation cannot take a matter to VCAT unless the dispute resolution process outlined in the rules and the complaints procedure in the Act have been exhausted.

Financial accountability

Currently, owners corporations are required to keep accounts and prepare financial statements. The new Act includes additional requirements that the books of account must “provide for the making of true and fair view reports of the financial situation of the owners corporation.” An annual financial statement must be presented at the Annual General Meeting and a ‘prescribed owners corporation’ (see below) must have its financial statement audited after the end of the financial year.

Prescribed owners corporations and the new regulations

In the current legislation, there are no differences in the requirements for small and large owners corporations. The new Act recognises a common sense distinction in the financial and management responsibilities between, for example, a two-lot building and a modern 100-lot high rise.

Under the new Act, there will be a category of prescribed owners corporations which will be required to:

- prepare financial statements in accordance with prescribed standards
- have financial statements audited
- have a maintenance plan
- get five year valuations of common property for insurance purposes

Regulations that are currently being drafted will set out which owners corporations are prescribed (intended to be the ones larger in size). The regulations will be subject to public consultation before they are finalised.

Meetings

The new Act retains and builds on the current legislative requirements for meetings. The first meeting of the owners corporation must occur within six months of the registration of the plan of subdivision. At this first meeting, the developer must provide various items, such as the owners corporation register, the plan of subdivision and any insurance policies. The new Act also requires the tabling of any:

- contracts and leases that have been entered into
- accounts and records already made
- maintenance plans
- names of companies or tradespeople or suppliers who have provided a warranty or guarantee and copies of those warranties or guarantees

At subsequent Annual General Meetings, as well as current requirements, the agenda must include an insurance update, consideration of the proposed budget and any delegation, and valuation and complaints-handling reports.

Meeting procedures

The new Act sets out the procedures for General Meetings, covering requirements for quorums, proxies, powers of attorney, ballots, decisions, interim decisions, voting rights and minutes.

The new Act includes consumer protections which have implications for the procedures governing General Meetings:

- Owners corporations, developers, managers, committee members and proxy holders will be required to act honestly and in good faith and to exercise due care and diligence in performing their functions.
- Committee members and managers are prohibited from improperly using their position for gain.
- It will be an offence for developers, managers or any other person to demand or require that a lot owner give a power of attorney in their favour (see below).

Developers

At the moment, there are no limitations on the developer's role in the owners corporation. Under the new Act, developers with a majority holding will be required to enforce contracts and to act in the interests of the owners corporation for the first five years after the owners corporation is created. This will include requiring the developer to pursue contract remedies against the builder for any defects in the common property. Developers (and anyone else) are also prohibited from requiring owners to provide proxies or powers of attorney as a condition of purchase.

Managers

Paid managers must be registered with the Business Licensing Authority (BLA) and will be prevented from registering if they are insolvent or do not have professional indemnity insurance. As with other licensing schemes administered by the BLA, the register will be made available to the public and include details of any orders made against the manager.

The new Act also clarifies the manager's powers where there is and is not a committee and enables the committee to remove a manager, rather than limiting this capacity to a general meeting or ballot of lot owners.

Legislative process

Regulations are currently being drafted. These will prescribe model rules and define a prescribed owners corporation, amongst other things. Stakeholders will be consulted during the drafting process. Once these regulations are finalised the new legislation will take effect. The default date for the Act coming into force is 31 December 2007. However, it may be proclaimed earlier.

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Further reading

- Body Corporate: A quick guide to the law in Victoria (published by the Victoria Law Foundation)
- Body Corporate: What to consider when buying a flat, unit or apartment
- The Body Corporate annual general meeting
- Useful body corporate contacts

Ring Consumer Affairs Victoria on 1300 55 81 81 or download the publications from www.consumer.vic.gov.au (go to the Buying and Selling Property section).

More information

Further information, such as the new *Owners Corporation Act 2006*, reports and media releases can be viewed and downloaded at www.consumer.vic.gov.au.

Information on Bodies Corporate is available from:

Consumer Affairs Victoria

Victorian Consumer & Business Centre

113 Exhibition Street
Melbourne 3000

Telephone: 1300 55 81 81

Website www.consumer.vic.gov.au

Regional Offices

Consumer Affairs also has regional offices located in Ballarat, Bendigo, Geelong, Morwell, Mildura, Wangaratta and Warrnambool together with a mobile outreach service that regularly visits rural communities. To find details on the office or mobile service nearest you, ring 1300 55 81 81 or go to the Consumer Affairs website on www.consumer.vic.gov.au and click on the Contact Us link.



Because this publication avoids the use of legal language, information about the law may have been summarised or expressed in general statements. This information should not be relied upon as a substitute for professional legal advice or reference to the actual legislation.

Authorised by the Victorian Government, 113 Exhibition Street, Melbourne, Victoria, 3000.
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