

Consumer Affairs Victoria *Body Corporate*

*What to consider when
buying a flat, unit or
apartment*

**The questions you need
to ask before buying into
a body corporate.**





I have been commissioned to chair the Body Corporate Review by the Minister for Consumer Affairs, John Lenders, MP.

The Terms of Reference for the Body Corporate Review required me to examine ways to minimise disputes and look at non-legislative options to improve the effectiveness and efficiency of the Subdivision Act 1988.

One of the first issues to come to my attention was the lack of understanding of bodies corporate and the requirements of the legislative framework.

Submissions on the Issues Paper identified that some potential purchasers may not understand that living in a body corporate means closer living, sharing common areas and a necessity to consider the rights of others.

In addition, the submissions also highlighted that by improving information available to both potential purchasers of lots and existing body corporate members, many issues may be avoided or resolved before becoming a 'dispute'.

Consumer Affairs Victoria has produced this brochure to increase awareness of the body corporate concepts and inform potential purchasers about matters that can affect a person's lifestyle when living in a body corporate. It will also assist potential purchasers by highlighting what to ask at the time of purchase.

I hope that you will find this a useful resource.

A handwritten signature in cursive script that reads "Helen Buckingham".

Helen Buckingham MP
Member for Koonung Province

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Definition of a Body Corporate

A body corporate is created to manage common ownership of property when a plan of subdivision is registered at Land Registry.

Why choose to buy or live in a flat, unit or an apartment rather than a detached house?

Unit living can offer a great lifestyle at an affordable price. For many, the attraction is a convenient location close to services such as cafes, shops and schools. Living in a communal environment also provides increased security and a shared maintenance responsibility.

What issues may affect your decision to buy a flat, unit or an apartment?

Owning a flat, unit or apartment means you will have particular rights and responsibilities. A body corporate oversees the collective responsibility and decision making in relation to use and maintenance of the common property in your building. As an owner you will be required to make financial contributions to the body corporate. You will also need to consider possible parking restrictions, restrictions to pets, noise, traffic and how to deal with your close neighbours whether they are owners or tenants.

Choosing a flat, unit or apartment

Location

- One of the great advantages with a flat, unit or an apartment may be in close proximity to conveniences such as shops, public transport, parks, hospitals, schools and work. Check that the property you are interested in is close to the facilities you require.
- If the unit, flat or apartment is near a main road, check there are safe places for children to play and cross roads to schools. Remember, open space areas are often small and the outdoor living areas may not provide sufficient space for your children and pets. If you have pets and small children you may need to consider a flat, unit or an apartment adjacent to a park or other facilities.

Social dynamics

- Consider how many units are in the body corporate. It is important to consider how many of the units are owned by individuals or organisations and how many units are owner-occupied or rented. Are the units free standing or do they share walls? How long have the owners or tenants lived there? Generally, if residents live in a property for a long time, it indicates that they enjoy their surrounds.

- Consider the age mix of the lot owners and occupiers and the tenants. Will there be a clash of interests between you and other residents? For example, people who may object to loud music or the riding of skateboards on the common areas, or neighbours with young children or animals that may make noises during the night.
- Make enquiries about the general harmony amongst the members of the body corporate. Speak to the neighbours or ask to see the minutes of the last general meeting of the body corporate. Check to see whether the body corporate has a complaints mechanism or policy for disputes between owners or tenants?

Can you afford to buy this flat, unit or apartment?

- In addition to the purchase of your home, you will have to pay annual body corporate fees to cover the costs of management, security, cleaning, repairs and gardens. If there are other shared facilities (such as lifts, air conditioning, barbeques, tennis courts, swimming pools or gym equipment) these will add to the ongoing cost of living in a body corporate.

- As an owner of a flat, unit or apartment in a body corporate, you will be liable to pay fees and levies for administrative expenses including maintenance, upkeep and repair of buildings that form any part of the common property. You may also be liable to contribute to a reserve or sinking fund to cover anticipated costs of repairs to the building or replacement of essential items or services such as lifts and air conditioners.
- Check that all costs have been added in. Management fees are often not set and may increase over time. Refer to the minutes of the annual general meeting which may discuss upcoming fee increases. If you are buying a unit off the plan, the management fees will be based on the last project and may increase. Sometimes the cost of maintaining air conditioning units and lifts are not included in the first year because of warranties, so make sure you ask questions and get a commitment on the maintenance fees for the next two years from the vendor.
- As an owner you are required to pay Local Council rates, water, gas, electricity and telephone charges. These charges are not necessarily less expensive than a stand alone house. Always consider additional costs, such as car parking, that may increase what you have to pay.

- You should consider the age of the building. Are any facilities likely to require repairs or replacement? Air conditioning and lifts are especially expensive. You may find useful information in the minutes of the last annual general meeting. It is strongly recommended that you obtain an architect or engineers report on the building before deciding to buy.
- Make sure you have added up the total cost of body corporate fees and levies, parking, water and council rates to your loan repayments on the property before you agree to any purchase. Ask yourself if you can you afford to buy the property.

Noise

- When you choose to live in a flat, unit or an apartment consider whether the building is close to clubs or other live music venues. What is the amount of passing traffic – will it be noisy at peak hour? Is the unit beside businesses or schools? Will the noise affect your lifestyle? It is a good idea to arrange an inspection of the building during the evening or during peak hour traffic before you agree to the purchase.
- Are there rules of the body corporate in relation to floor coverings? Are there any polished floorboards? What sound insulation is provided to minimise higher noise thresholds?

- The Building Code of Australia sets minimum standards for building structure, fire safety, health and amenity in the design, construction and use of buildings. However, the minimum building standards may not provide adequate levels of protection against noise. Higher levels of sound insulation may be desirable to alleviate noise from neighbours' stereos or polished floorboards.
- It is common practice for developers to increase building density by locating bathrooms inside the building away from windows. Bathroom ventilation is then provided by mechanical ventilation systems. Such systems usually involve one or more extremely large fans being mounted on the building roof. These fans extract air by suction from within the fully enclosed bathrooms inside the core of the building. You should consider the impact of noise from these fans on your lifestyle.

Security

Areas are usually safer where there is a reasonable amount of passing traffic. Do fences and garages dominate the street? If local residents can see directly onto the street this may help to make you feel safer. Are there signs of break-ins or vandalism? Is the building well lit? Are there security doors or intercoms? Remember to visit the property during the night, what seemed safe and welcoming during daylight hours may have a different feel after dark.

Parking

Does the residence have parking? Do you have to pay extra to use the parking? Does the body corporate have rules about residents or visitors parking on common areas? If you have regular visitors it may be an inconvenience if there is not adequate parking nearby.

Construction

- The construction and design of the building will affect your lifestyle. Poor construction may incur expensive maintenance costs and inconvenience.
- Are there signs of wear or damage? Check for cracking plaster or bricks? Is there water or mineral deposits? Is it a new building with planter boxes? There is no standard for the waterproofing of roofs, balconies, planter boxes and basement walls at present, any water damage from these items may cause problems in the future.
- Kitchen odours from other apartments or from nearby restaurants may become a problem. Consider making enquiries about the building's insulation and ventilation, as it can be both smelly and noisy. Arrange to visit the building during the evening and meal times to help you make your decision.
- You should always refer to the minutes of the last annual general meeting of the body corporate and any maintenance reports. Your Local Council can also provide a report on building approvals, usually at a very low cost.

- An engineer's or architect's report will help identify essential services to be maintained, major and minor faults and make suggestions to improve privacy, ventilation, sound-proofing, energy-efficiency and cost-effective materials. For example, a pre-purchase report inspection will check inside, outside, sub-floor, roof-space, kitchen, bathrooms, floors, walls and ceilings. The report will comment on lighting, electrical, dampness, doors, guttering, framing, heating, bath, stove, sink, balcony, balustrade, and more. These reports are often a great investment, given the cost of purchasing a flat, unit or an apartment. An engineer or architect's report can save people thousands of dollars by assisting to identify faults and what should be fixed in the building.

Rights and obligations

- Living in a flat, unit or an apartment has very different rights and obligations from what you may be used to. You should consider how all aspects will impact on your lifestyle, or the lifestyle of potential tenants.
- If you intend to enter into a contract to purchase a flat, unit or apartment in strata or body corporate subdivision, you should note that you are buying both the lot AND a share in the common property in the strata or body corporate subdivision.
- A body corporate automatically comes into existence when the plan of a subdivision containing common property is registered at Land Victoria.
- What you own is set out in the plan of subdivision. The plan of subdivision defines the individual lots (what you own) and the common property. All the land or parts of the building on the plan of subdivision that are not lots are common property. In high-rise apartments, it is possible to only own the air space and a share of the whole building, which may be common property. This means that you may have no rights to alter the exterior features of the property or make renovations.

- The plan of subdivision sets out lot entitlement and lot liability. Lot entitlement is the owner's proportionate share of ownership in the assets (such as common property) held by the body corporate. It can also determine voting rights. Lot liability is the proportion of the body corporate expenses which a lot owner is obliged to pay.
- As the owner of a flat, unit or an apartment, you are automatically a member of the body corporate. What are the rules of the body corporate? Are there any restrictions to keeping pets, car parking restrictions or use of public spaces?
- The rights and obligations of an owner of a flat, unit or an apartment in a body corporate are set out in the *Subdivision Act 1988*, the *Subdivision (Body Corporate) Regulations 2001* and the body corporate rules. Copies of these can be obtained from Information Victoria or from www.dms.dpc.vic.gov.au. A body corporate may choose to impose additional rules, however these must be listed on the plan of subdivision. Rules that are not listed on the plan are unenforceable.
- Ensure the rules are consistent with the Act, Regulations and other Victorian laws, otherwise they may not be enforceable. Any additional rules of the body corporate may be changed by a resolution of the body corporate.

- Are there facilities on the common property? Are the facilities available only to the owners or open for use to the public? Is there a cost to use the facilities? Check the financial viability of maintaining the facilities.
- Check the plan of subdivision carefully for any restrictions or agreements registered with the plan that may limit the use of the land or unit, especially restrictions that may impose burdens on future owners.
- The Subdivision Act 1988 provides for implied easements and rights, which may affect the lot or the common property. Refer to the Act or seek legal advice.
- Are there any local council restrictions in regard to the land, building, zoning or any other matters that may affect the property or plans you may have for future development?

Basic information you should obtain

- The vendor's statement (s32 statement) and the body corporate certificate (Form 3) provide essential information to potential purchasers about the lot and the body corporate. The body corporate certificate also provides a warning about any proposed works, debts associated with the lot or the body corporate, and potential or existing legal claims. The minutes of the annual general meetings can be obtained from the vendor or the body corporate, these also provide information in relation to proposed works, possible body corporate fee increases

and disputes or other liabilities. It is strongly recommended that body corporate certificates be obtained before signing the contract.

- Obtain copies of the minutes of the last two or three annual general meetings, minutes of committee meetings and any maintenance plan.
- Is the body corporate operating? If not, then the common property is unlikely to be insured and there may be expensive maintenance issues emerging.

Special contractual issues in 'off the plan' sales

If you decide to buy a property before it has been built, or 'off the plan' there are a number of things you should take into consideration.

- Are you being asked to sign your voting rights away to anyone? Be careful when signing over your rights in the body corporate. Remember, your voting rights are your ability to have a say in the future of your property. It is in your interests to make sure you are actively involved in your body corporate.
- Ask whether a body corporate manager has been appointed. How long is the appointment, what are the powers delegated to the manager and how much are the management fees?

- Is the developer going to be managing your body corporate? If this is so, it may limit your opportunities to ensure good workmanship to your property. A body corporate manager that is not associated with the developer ensures that there will be somebody that is able to act on your behalf if problems do arise.
- Always seek legal advice prior to entering into a contract with a developer. This will help ensure that the domestic building contract specifies the required standards and codes. Remedying building faults with a developer once the building is complete can be a very difficult process. Make sure the contract specifies energy ratings, dimensions and materials you have chosen.
- The contract may provide rights to the developer to vary the lots and common property. The rights of the developer then may continue after settlement. It is important to ensure that there is full disclosure of voting rights, leases and licences and expected outgoings contained in the contract.
- If your property is part of a staged plan, then there are important issues you should consider. Depending on which stage of the development your property is at, there may be future development planned. A good example of this is housing estates. Look for section 2 or section 3 notations on the plan of subdivision to confirm which stage of development your property falls into.

The developer's rights to vary under s37 are extensive and may include the right to amend earlier stages of the plan or withdraw from the plan.

- Most contracts for 'off the plan' sales, do not require the developer to complete works on common property. You should insist that the terms of the contract provide for completion of the common property. Facilities on the common property are often not completed until after settlement and are hard to enforce. This will be an inconvenience and may affect the ability to obtain a tenant.
- It is strongly recommended that legal advice be obtained on all 'off the plan' purchases.

Checklist

Remember, it is important to understand what you are buying before you sign any contract.

These conditions will impact greatly on your lifestyle or may affect your ability to find suitable tenants for your investment property.

Committees

- Are there written documents that specify the duties and the delegation of the secretary and the manager of the body corporate?

Costs and finances

- What are the current annual fees paid and owing?
- Is the bank account in the name of the body corporate, a trust fund or the body corporate manager? This determines who can access money paid from your fees.
- Does the body corporate have a credit balance or is it in debt? This may affect fees you are required to pay in the future.
- Are there any debts or other financial liabilities? If so, how much? Any outstanding payments will be made up from fees you are liable to pay in the future.
- Are there proper financial statements and other records kept by the body corporate?
- Is there a sinking fund or reserve fund for long-term maintenance?

Insurance

- What is the insurance cover and renewal date?
- Are there any insurance claims or identifiable damage to the buildings? If so, you may have to contribute to the cost of making these repairs.
- Are there any legal or insurance claims pending against the property? If so, you may be liable as a member of the body corporate.
- Have any building works been undertaken on the unit and completed within the last six years and six months? If so, is there a warranty insurance policy or guarantee in place?

Legal proceedings

- Are any legal proceedings affecting the body corporate? Ask the vendor and refer to the minutes of the last annual general meeting.
- If there are any legal proceedings affecting the body corporate, you should obtain your own independent legal advice before signing the contract.

Maintenance

- Is there a maintenance report on the building from an architect or engineer? If so, ask to see a copy of the report. If not, consider obtaining one.
- Are there any proposed maintenance, renovations or other building works expected in the next 12-24 months? Body corporate certificates and the minutes of the last annual general meeting may be able to tell you this. If so, you may have to contribute to the cost of these.

- Is there a maintenance person employed by the body corporate? How often is maintenance carried out? Frequent disruptions may disrupt your lifestyle.
- Does the body corporate have enough funds in its working accounts to maintain the building?
- Is there a clear procedure to follow regarding maintenance problems?

Management issues

- Is a manager appointed?
- If the body corporate has appointed a manager, what are the management fees and what do they cover?
- What powers are delegated to the manager?
- Is there a manager or caretaker who lives in one of the lots? This means that repairs and maintenance are likely to be carried out more quickly.
- Is it proposed to appoint an administrator? If so, get legal advice? This indicates that the body corporate may be facing financial difficulties.

Meetings

- Ask to see a copy of the minutes of the last three annual general meetings.
- What were the issues raised at the last annual general meeting that may impact on you?
- When is the next annual general meeting being held?

Records

- Who keeps body corporate documents? Are there any policies in regard to keeping and accessing body corporate documents? Are there any costs to view the documents?
- Is there a list or register of the members' names and addresses? This will allow you to contact other members in your body corporate, which is necessary if you wish to call a meeting of body corporate members or to discuss common issues. Providing names and addresses of members in a separate list or a register complies with privacy legislation.

Rules

- Does the body corporate have any additional rules to those required by law?
- Are the rules registered on the plan of subdivision? If they are not registered on the plan, they may be unenforceable.
- How will these rules affect your lifestyle?

Services and agreements

- Are there any agreements to provide services or special privileges affecting the common property?
- If there are any agreements, leases or licences affecting the common property, then request to see a copy of the document.

Further information

Consumer Affairs Victoria

For advice and information on body corporate and information relating to the legislation

Tel: 1300 55 81 81

www.consumer.vic.gov.au

Useful publications

- *Common Ground: your guide to body corporate law and living*
- *The complete guide to the law and managing bodies corporate*
- www.victorialaw.org.au

Consumer Affairs Victoria

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