**SUMMARY OF AMENDMENTS AFFECTING DEVELOPERS**

1. **New general obligations to OCs**

Developers now owe more obligations to the OCs they create. They will also owe certain obligations to OCs for longer.

The new obligations will prohibit a developer from:

* appointing themselves as OC manager (unless the OC in question relates to retirement village land)
* appointing an associate, such as a spouse or employee, as OC manager
* voting on any resolution of the OC that relates to a defect in or on a building on the plan of subdivision
* proposing an annual budget of the OC which is unreasonable or unsustainable;
* designating as a private lot what would normally be common property or services;
* receiving any payment from the OC manager in relation to the OC manager's contract of appointment.

Additionally, a developer will now owe the below existing obligations to an OC for 10 years (rather than 5 years) following the registration of the plan of subdivision if the developer is the owner of a lot or lots with the majority of lot entitlements:

* to act honestly and in good faith and with due care and diligence in the interests of the OC in exercising any rights under the OC Act.
* to take all reasonable steps to enforce any domestic building contract they have entered into to the extent that it relates to the common property and provided the developer is aware or should reasonably be aware of the breach of the domestic building contract.

1. **New obligations when preparing plan of subdivision**

When preparing a plan of subdivision, a developer is now required to engage a licensed surveyor to set out the initial allocation of lot liability and lot entitlement in the plan (unless the OC is a tier five OC).

The plan of subdivision must now specify details of lot entitlement and lot liability. It must also be accompanied by a statement detailing how lot entitlement and lot liability has been allocated.

There are new laws in relation to the allocation of lot liability. Lot liability in a plan must now be allocated equally between the lots except where:

* there is a substantial difference in the size of the lots, in which case lot liability must be determined by the size of the lot and the proportion that size bears to the total size area of the lots; or
* different lots have a bearing on the consumption or use of common utilities or the cost of maintaining the common property in which case lot liability must be determined by the size of the lot and level of consumption or use by that lot of the common utilities and the common property; or
* the number of occupiers in each lot has a greater bearing on the consumption or use of the common utilities or the cost of maintaining the common property than the size of the lot in which case lot liability must be determined by the number of bedrooms in the lot.

Meanwhile, lot entitlement in the plan must be allocated on the basis of the market value of the lot and the proportion that value bears to the total market value of the lots.

The OC can resolve to alter the lot entitlement or lot liability through a unanimous resolution of the members. If there is a unanimous resolution of the members, the OC must apply to the Registrar of Titles to alter the lot entitlement or lot liability. The application under subsection (1) to be in the approved form and made within 60 days of the passage of the unanimous resolution.

1. **New disclosure requirements at the first meeting of the OC**

A developer will now have to provide the following additional documents at the first meeting of the OC:

* the building maintenance manual
* an asset register
* copies of any warranties or, if copies are not able to be provided, details of any warranties
* copies of any specifications, reports, certificates, permits, notices or orders in relation to the plan of subdivision.

Note, a common seal will no longer have to be provided.

A developer will also have to disclose the following information at the first meeting of the OC:

* any relationship the developer has with the OC manager
* any immediate or future financial transactions that will, or will foreseeably, arise out of the relationship between the developer and the OC manager
* any specific benefits which the developer will receive as a result of their relationship with the OC Manager

There is also a requirement for the OC to keep minutes of the first meeting of the owners corporation for posterity. The minutes must contain the following information at a minimum:

* the date, time and place of the meeting; and
* the names of lot owners present; and
* the names of lot owners who have provided proxies; and
* the names of proxies present; and
* the voting on any resolutions; and
* the text of all resolutions of the owners corporation made at the general meeting; and
* any disclosure made by the developer in relation to their relationship with the OC Manager.

1. **Restrictions on contracts entered into by the Developer**

The Act introduces the following constraints on contracts entered into by a developer:

* If the developer appoints an OC manager who is neither the developer or a lot owner prior to the first meeting of the owners corporation, the contract of appointment of the OC manager expires at that first meeting.
* If the developer enters into any other contract (other than a contract of appointment for an OC manager) that relates to the OC and benefits the developer, that contract term must not exceed 3 years in duration. However, this restriction will not apply to hotel and resort management contracts.

These changes mean that developers cannot enter into long-term contracts to their own benefit at the expense of the OC, while empowering lot owners to appoint managers and other service providers on terms which represent their best interests.  Note of course that there is nothing preventing a developer from putting forward their preferred contractor(s) for consideration at the first meeting.