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1 April 2016

Consumer Property Law Review
Policy and Legislation Branch
Consumer Affairs Victoria
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Dear Sir/Madam

Thank you for the opportunity to provide a submission to your current issue paper (no. 2).

I must note that I whilst I am a Volunteer Manager for an owners corporation, I am providing this submission as an individual lot owner and not on behalf of my owners corporation.

**Consumer Property Acts Review Issues Paper No. 2**

**Owners corporations**

I would like to provide comments to six of the questions raised in the issues paper:

**25: Should lot owners be able to 'opt out' of the insurance policy taken out by the owners corporation when they take out their own insurance (and not, therefore, pay their portion of the owners corporation's policy)?**

No. The 'opt out' provision is at odds with most insurers who insist that all lots and common property must come under the one policy. When individual lot owners take out their own insurance and a major incident occurs affecting multiple lots and common property, the situation is complicated by multiple insurers more focussed on how the liability will be carved up, rather than the best interest of the insured lot owners.

Unfortunately 'opting out' will become more common place when lot owners believe they can obtain a better price direct from an insurer, rather than coming under an owners corporation policy where commissions are built into the premium. The burden of such commissions will be borne by the remaining lot owners who chose to come under the owners corporation policy.

**40: Are there any other issues about the external appearance of lots? What has been your experience?**

There could be issues for properties affected by strata. From experience, where the owners corporation comprises of individual lots plus common property (not strata), these issues tend to be similar to 'neighbour disputes'. Example, the position of an air-conditioner compressor on a townhouse rooftop and the neighbouring townhouse complains about its visibility. I believe this distinction (strata vs individual lots) needs to be very clear.

**44: Should there be Model Rules regarding pets and smoking? If so, should there be a choice of rules such as is allowed in New South Wales (with or without a default option)?**

There could be a choice of rules for properties affected by strata, however, I believe such rules would be completely unnecessary and a burden for owners corporations that are not strata affected (i.e. individual lots). I believe this distinction (strata vs individual lots) needs to be very clear.

**46: What are your views about owners corporation rules that prevent lot owners installing 'sustainability' items in or on their units?**

If local council planning rules do not require permits for installation, then no, rules should not prevent lot owners installing such devices (on their lots). Example, if the local council does not require a lot owner to obtain a planning permit to install solar panels, why should the owners corporation rules disallow such an installation? I completely agree with the Queensland legislation, it is far more important that lot owners are able to install energy-saving and other sustainability items, rather than just 'keeping up appearances'.

**61: What are your views about:**

* **who should set the initial lot liability and entitlement, and any criteria that should be followed**

It cannot be at the developer's discretion, especially if the developer has an interest in the lots after subdivision. In this situation, it is a clear conflict against other lot owners. It must be set by an independent body, i.e. licensed surveyor, which has no connection with the developer.

* **how lot liability and entitlement should be changed**

If lot owners request that lot liability and entitlement be reviewed, it will most probably be as a result of these owners believing the existing arrangements are not just and equitable. Therefore, in this situation, the review will not progress as it requires a unanimous resolution. As a result, the review will never be undertaken.

**62: In the absence of a unanimous resolution, what requirements should be met before VCAT can be empowered to change the lot liability and lot entitlement on a plan of subdivision?**

I believe that any lot owner, at any time, should be able to apply to VCAT for a review of their lot entitlement/liability arrangements. Alternatively, it should be changed so 50% or more (rather than more than 50%) of lot owners with 50% or more (rather than more than 50%) of lot entitlements supporting the change can approach VCAT for a ruling.

I will provide a real example of how the current laws appear to be inadequate:

* + The developer subdivides a large inner-city block to create six individual lots and common property.
	+ The developer allocates the following lot liability/entitlements:

Lot 1 0.769%

Lot 2 24.615%

Lot 3 24.615%

Lot 4 24.615%

Lot 5 0.769%

Lot 6 24.615%

* + The developer (and extended family members) are owners of lots 1, 2 and 5.
	+ The remaining three lot owners (lots 3, 4 and 6) question why lots 1 and 5 do not share equal entitlement/liability. The reason provided is that these two lots do not use the common driveway.
	+ These three lot owners believe that in allocating the lot liability/entitlements, the developer did not consider the amount that would be just and equitable for the lot owners to contribute towards the administrative and general expenses of the owners corporation, nor were the value or size of the lots considered.
	+ These three lot owners raise the issue at an AGM, however, the resolution is defeated as the extended family vote against the resolution (it needs to be unanimous).
	+ These three lot owners, whilst representing 73.845% of lot liability and entitlement are unable to apply to VCAT for a review as they don't represent over 50% of the number of lot owners (6). They represent exactly 50%.
	+ These three lot owners are left in a situation where they believe the allocation is unjust and inequitable, and cannot apply to VCAT for a review.

Unfortunately, whatever formula is used, it will be 'worked' around. As a result, I recommend that any lot owner at any time should be able to apply to VCAT for review.

Thank you for the opportunity to provide this submission by email. I’ve also posted a signed copy.

Yours faithfully

Matthew McCrory