

**SUBMISSION TO
CONSUMER PROPERTY LAW REVIEW**

General Overview of the Owners Corporation Industry

*(Issues which should be raised even though
they are not included in either
Issues Paper No 1 or Issues Paper No 2)*

**BY
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8 March 2016**

EXTRACT

Increasing numbers of Victorians own, occupy and work in Owners Corporations. Investment in this sector by developers and purchasers is immense. This in turn increases pressure on governments to better regulate every facet of the industry, from development through to ownership and management.

Whilst Government and its agencies are working to better understand the issues confronting the industry, and amend legislation to protect consumers, there exists a basic degree of ignorance within the community which unless addressed will ensure that amendments to legislation will fall on many deaf ears.

If the aim is to protect Victorians and their investments, any changes to legislation as well as marketing such changes must include a concentration on education of all aspects of Owners Corporations. This must naturally include purchasers, but must also consider vendors, and every profession connected to the development, planning, approval, construction, marketing, selling, financing and transacting of strata community real estate.

Until all stakeholders across the spectrum of Owners Corporations understand Owners Corporation legislation as well as their own responsibilities, the problematic issues around Owners Corporations will continue to multiply and property owners will continue to be aggrieved.

AUTHORS' NOTE

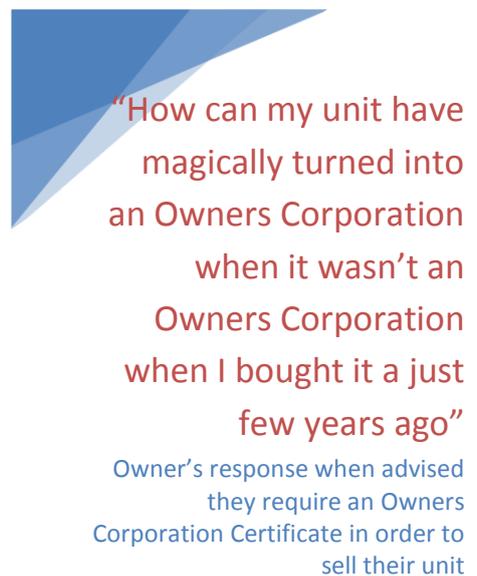
This submission is solely the personal view of the author and reflects experiences of the author in the Central Highlands region of Victoria. It is not prepared on behalf of the MBCM Group and does not necessarily reflect the views or either MBCM Head Office management or other MBCM franchisees.

PURPOSE OF THIS REVIEW

- To identify opportunities to modernise and improve the legislation, taking into account stakeholders' experiences and industry developments since each Act came into operation.
- To examine whether the legislation efficiently and effectively regulates the conduct of licensed practitioners involved in the sale of land, real estate transactions and management of Owners Corporations.
- To recommend changes to improve the way the legislation operates.

BUT SOMETHING IS MISSING... THAT IS:

- To develop an understanding of the degree of community ignorance of all the facts to do with Owners Corporations in order to identify the root causes and develop remedial action *(it is all very well to improve legislation but this effort will be less than successful unless the community is made to understand:*
 - (a) what Owners Corporations are*
 - (b) that if they own a unit in a strata community they are members of that Owners Corporation, and*
 - (c) that as owners they are required to comply with legislation*



INTRODUCTION

A LITTLE HISTORY

In order to identify opportunities to improve legislation it will be helpful to understand some of the history behind the growth of the strata industry, which has led to many of the issues that the industry now faces, and which legislation is retrospectively attempting to address.

It is a fact that strata community living (ie those owning and occupying units in Owners Corporations) is growing spectacularly, and the amount of money being invested in this sector by developers and purchasers is immense. This in turn increases pressure on governments to better regulate every facet of the industry, from development through to ownership and management.

Yet incredibly, the fact that Owners Corporation legislation exists is broadly unknown by far too many developers and owners. Research conducted by MBCM Ballarat, together with anecdotal evidence from the peak industry body (Strata Community Australia) indicates that awareness by just about everyone in “the industry” in general is abysmal. Included in this are developers, owners and other industry professionals.

I believe this is a hidden issue with Owners Corporations which is of major importance to future problem-free growth in strata community living. It is an issue that is grossly misunderstood, but in my view is actually a key ‘big picture’ strategic issue, which unless resolved will cause increasing problems to the Owners Corporation industry. So many problems (many of which end in the VCAT) could be avoided if all parties had a basic understanding of the facts of Owners Corporations.

The bottom line is that even with all the research undertaken in relation to Owners Corporations, seemingly all of it is predicated on an incorrect premise – an assumption that everyone has a good

general knowledge about Owners Corporations. Unfortunately the truth is the exact opposite, so any research with an incorrect premise will be flawed and cannot result in robust conclusions.

Our empirical research over an extended period of time suggests that knowledge of Owners Corporations is simply non-existent for far too many people. They don't know and therefore they don't care. As a result too many units end up being sold without the purchasers being advised they are buying a unit in an Owners Corporation.

It is the premise of this submission that it is in this area that work must be done by Government and its agencies to ensure that every part of the industry becomes more aware of Owners Corporations and the various pieces of legislation that govern them. This in turn will assist in educating current and future owners.

OWNERS CORPORATIONS – A COMBINATION OF IGNORANCE, APATHY AND COMPLACENCY

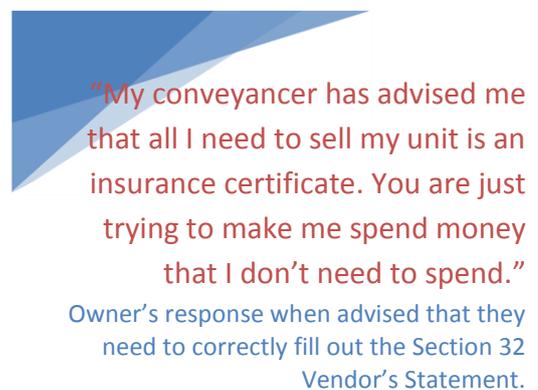
THE GROWTH OF STRATA LIVING

The growth of strata developments is striking. One in four Victorians now own or occupy a unit in an Owners Corporation. Within the next few years this will be one in three. Successive governments and councils are keen to promote higher density inner-city living. Whilst this challenge has been accepted positively, the industry's eagerness to build and sell sometimes means that the Owners Corporations are not set up correctly and those involved in marketing and selling the units do not pass on vital information. This works against the best interests of those people who purchase the units.

Such rapid expansion makes the OC industry one of the very few in Australia that is growing rapidly and is therefore very attractive. Lots of people and organisations talk about this growth but no one is researching what is happening within this growth. If they do it tends to be anecdotal and small scale research (particularly the mainstream media and internet chat rooms) which tend to focus on any negative experiences that some owners and occupiers experience.

Unfortunately it is an industry that is poorly understood, not just by those who own and occupy strata units, but also by many professionals who are involved in designing, building, selling and conveying strata units – all professionals who should know better. I refer to the entire spectrum of stakeholders, including developers, builders, surveyors, finance providers, local council planning departments, real estate agents, conveyancers and solicitors.

Empirical research conducted by our company over several years has led us to the conclusion that the level of general ignorance is quite astounding and depressing. The worst part is, nobody seems to be aware of this. Because ignorance and apathy is by definition not highly visible perhaps they just don't know.



IGNORANCE IS THE INDUSTRY'S OWN FAULT

In many ways this ignorance is the strata industry's own fault. The OC management industry has traditionally been the preserve of small 'mom & dad' type businesses. Whilst the industry is slowly becoming more strategic, the business viewpoint of many of these numerous small businesses is quite introspective, tactical and myopic, being mostly concerned with growing their own little business. It has also led to a number of poor practices on behalf of OC managers (and unfortunately an occasional element of dishonesty) which must be controlled and weeded out.

Because the Owners Corporation pie has been growing so rapidly, it has been relatively easy for everyone to succeed in getting a piece of it. Thus in spite of themselves, these small businesses grow to provide a level of success and comfort for their owners. It is easy however, to be a captain in a calm sea.

OC MANAGEMENT – A FRAGMENTED INDUSTRY

The OC management component of the Owners Corporation industry is incredibly fragmented, with hundreds of people and organisations claiming to be OC Managers. The result of this is that there has been little thought to 'big picture' strategic planning across the industry. Rapid growth has meant that nobody has bothered to ask what is happening at the most basic level.

At this basic level, a number of questions relate to the processes of developing, selling, buying and managing Owners Corporations. The common thread however appears to be ignorance and misunderstanding, as well as an element of misinformation being provided by other professionals, particularly in the selling and conveyancing of both off-the-plan, new and existing older properties.

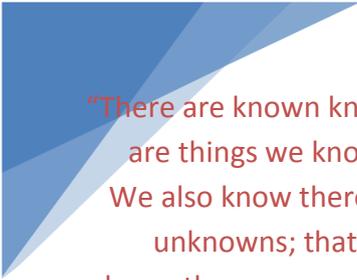
STAGES WHERE ISSUES BESET OWNERS CORPORATION

In the beginning, an Owners Corporation starts off as an idea, an investment opportunity for the developer as well as a future investment opportunity for purchasers. Problems which beset Owners Corporations later in their lifecycle start when the development is still a concept.

○ **PLANNING, DESIGNING AND SELLING OFF THE PLAN - DEVELOPERS**

Typically a developer finds a property that is ripe for development (or redevelopment). Developers trust their architects and surveyors to get the Plan of Subdivision right. Following purchase, that sets off a chain of activity which results in the units being sold off the plan. It is common to find almost everybody involved during this phase have a poor understanding of Owners Corporations.

Issues: Too many developers only want to involve themselves in the process of construction and marketing. At the last minute they go to their real estate agent or solicitor and advise them that they have finished construction, most of the units have been sold off the plan, some have already settled and the Owners Corporation is now ready to set up. By the time the development is complete, any



"There are known knowns; there are things we know we know. We also know there are known unknowns; that is to say we know there are some things we do not know. But there are also unknown unknowns – the ones we don't know we don't know ... it is the latter category that tend to be the difficult ones."

Donald Rumsfeld
former US Secretary of Defence

errors or issues that could have been easily sorted out have become locked in and intractable. Some developers fail to understand that their builders insurance ceases upon receipt of their Certificate of Occupancy. As a result my company has uncovered several developments that have been totally uninsured for extended periods of time. This sets off a flurry of activity to arrange quotes and insurance cover notes.

Remedial Strategy: Professional OC Managers should be involved in the development process from the planning stages.

Recommendations:

- (a) Create a campaign to ensure that developers understand that the best time to start talking with a professional strata manager is early in the development process.*
- (b) Whilst Councils are keen to promote development of higher density living, they do not seem to believe they have any responsibility beyond providing the planning permits. Ensure that local council planning departments are included in this information loop and that there is a requirement that they provide Owners Corporation information to developers along with every OC planning permit.*

- **SURVEYORS.** Too many surveyors simply do not get the fundamentals of Plans of Subdivision correct. Far too often they do not understand the Lot Entitlement/Liability schedule and make basic errors. Once the Plan is registered and lots sold off, these problems are locked in, cannot be changed without considerable cost and effort and cause frustration and anger for incoming owners.

Remedial Strategy: Surveyors to be made more aware of the importance of their input to OC development Plans of Subdivision.

Recommendations:

- (a) Surveyors should receive regular advice relating to specific Owners Corporation issues and should also be required to attend refresher workshops.*
- (b) Information sheets could be provided on specific topics.*
- (c) Recourse for owners to litigate against surveyors who fail in their responsibility to correctly prepare Plans of Subdivision.*

- **LOCAL COUNCILS.** Local councils are keen to progress higher density and infill developments, but don't see it is any business of theirs to provide any information to developers and builders about what they are about to build. This is a vital connection point, and occurs at the beginning of every development. A connection here could provide the single most important point at which many subsequent Owners Corporation issues could be resolved.

- *Remedial Strategy: Compel Local Council Planning Departments to become an integral part of the Owners Corporation planning process.*

○ *Recommendations:*

- (a) Planning Departments should provide an Owners Corporation information pack to every developer as part of the planning approval.*
- (b) Compel developers to complete documentary evidence that they understand all the processes and requirements of building an Owners Corporation development.*

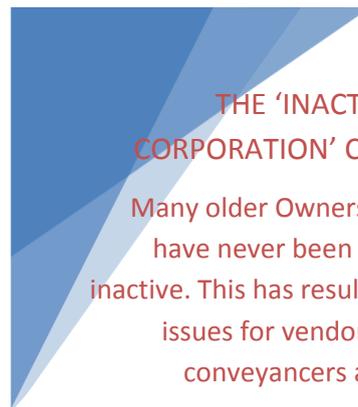
- **CONVEYANCERS AND SOLICITORS.** Some conveyancers and solicitors have not kept up with legislation and still settle properties the same way they have been doing for years (ie without bothering with OC Certificates or even filling out the Section 32 correctly). It is common in the industry to find legal professionals and conveyancers who have clearly not kept up with changes in Owners Corporation legislation. Far too many Owners Corporation properties are sold without ANY information provided on the Section 32. It is also common to find conveyancers with differing interpretations as to what is required to sell a unit in an Owners Corporation.

As a result, far too many people purchase units without understanding that they have actually bought a unit in an Owners Corporation. Some of these people then express disbelief. Some become angry. Some owners refuse to pay fees as they don't believe they are in an Owners Corporation. Subsequently, some refuse to have anything to do with the Owners Corporation. The resultant problems have to be dealt with by other owners, by managers, and ultimately by the VCAT.

- Remedial Strategy: *Mandate that all purchasers of units in Owners Corporations be provided with sufficient information that they understand what they are buying. It is absolutely imperative that every legislative aspect of the purchase is consistent AND mandatory. Alternative or optional approaches only cause further confusion.*

- Recommendations:

- Ensure that it is mandatory for properly completed Owners Corporation Certificates to accompany ALL Section 32 Vendor's Statements.*
- Require all conveyancers and solicitors to attend updates on Owners Corporation law and amendments (similar to the accounting, medical and other professions in maintaining CPD points).*
- To protect purchasers, it is absolutely imperative that the ability to simply write "Inactive Owners Corporation" by a vendor on a Section 32 is removed, as this is an invitation for vendors to hide vital information that potential purchasers should know about.*



THE 'INACTIVE OWNERS CORPORATION' CONUNDRUM

Many older Owners Corporations have never been set up and are inactive. This has resulted in massive issues for vendors, purchasers, conveyancers and managers.

Recent amendments to the Owners Corporations Act 2006 allowing such properties to be specified as 'inactive' have simply made the situation worse by adding to confusion rather than removing it.

Owners Corporation Certificates must be a mandatory attachment to the Section 32 Vendor's Statement for every sale of an Owners Corporation unit. Only by ensuring this will every owner fully understand the ramifications of owning a unit in an Owners Corporation.

- **EXISTING DEVELOPMENTS**

INACTIVE OWNERS CORPORATIONS

The Act amended the SLA (Sale of Land Act) so that if an Owners Corporation is inactive, the vendor's statement only needs to specify this, and that it is no longer compulsory to attach an Owners Corporation certificate to a vendor's statement.

However, the same information currently set out in an Owners Corporation certificate MUST BE PROVIDED BY A VENDOR IN THE VENDOR'S STATEMENT.

This amendment was initiated because the former requirement to provide an Owners Corporation certificate was believed to have been problematic for properties subject to inactive Owners Corporations. The result is confusion. Some conveyancers have taken this to mean that no information is required at all in the Section 32 and proceed to settle the property sale. Others understand that whilst a Certificate is not required, the same information is required in the body of the Section 32, and advise the vendor that this information is absolutely required.

This amendment was predicated on the premise that all vendors are scrupulously honest. In fact, too many properties with known inherent problems are sold to unsuspecting buyers in this manner.

- Remedial Strategy: *Ensure that purchasers are provided with sufficient information to assist them to understand they are actually buying a unit in an Owners Corporation.*
- Recommendations:
 - (a) *Remove confusion in legislation. Ensure that fully completed Owners Corporation Certificates are MANDATORY for every sale of a unit in an Owners Corporation. Only in this way can future purchasers (particularly of older units) have confidence in what they are buying.*
 - (b) *Ensure that OC Certificates may only be completed by professional OC managers (ie not completed by the vendor.)*

- **VENDORS.** Some sellers of property express disbelief when told they actually own a unit in an Owners Corporation and that appropriate OC Certificate information is required on the Section 32, and to achieve that the Owners Corporation needs to be set up. Some vendors hide behind the 'inactive Owners Corporation' clause in the 2014 amendments. And of course many older developments have many issues to hide. The younger and more up-to-date conveyancers are concerned about potential professional risk if the sale falls over or if a purchaser discovers they have bought a 'lemon' and decide to take the matter to court.



"But I already have the building insured with my own policy – my real estate agent advised me that I had to do that"

Owner's response when advised that their Owners Corporation must be covered by a comprehensive strata policy which includes Public Liability insurance on the common property..

- Remedial Strategy: *Ensure that when signing a contract for sale that vendors understand the fact that their unit is within an Owners Corporation and must provide a properly completed Owners Corporation Certificate.*

- Recommendations:

- (a) *Educational awareness campaign for sellers and general public.*
- (b) *Ensure that conveyancers and solicitors provide the correct professional advice.*
- (c) *Ensure that a unit in an Owners Corporation may not be sold without a properly completed Owners Corporation Certificate provided by a professional manager – not by the vendor.*

- **REAL ESTATE AGENTS.** As a general rule, real estate agents are sadly uninformed when it comes to just about anything relating to Owners Corporations. Frequently, they consciously steer away from

advising clients that the chosen unit is in an Owners Corporation, because they don't want anything to get in the way of the sale. Real estate agents should be required to study aspects of Owners Corporations law as well as partake in ongoing education, particularly about the beneficial aspects of living in a strata unit. It should be mandatory for real estate agents to disclose that a unit is part of an Owners Corporation.

- Remedial Strategy: *Real estate agents must ensure that when signing a contract for sale that vendors understand the fact that their unit is within an Owners Corporation*
- Recommendations:
 - (a) *Legislation ensuring it is mandatory to advise clients if the property they are providing finance for is a member of an Owners Corporation.*
 - (b) *Provide educational opportunities for real estate agents through their peak industry bodies.*
 - (c) *Ensure that conveyancers and solicitors provide the correct professional advice.*
 - (d) *Ensure that a unit in an Owners Corporation may not be sold without a properly completed Owners Corporation Certificate provided by a professional manager – not by the vendor.*
- **FINANCE PROVIDERS.** Banks and financiers typically don't understand the risks they carry on behalf of the mortgage holder if Owners Corporation insurance is inadequate or non-existent, or if a property sale falls over at settlement because (under the Sale of Land Act) the purchaser can rescind the contract right up to the moment of settlement, if the information on the Section 32 is incorrect or inadequate.
 - Remedial Strategy: *It should be mandatory for providers of finance to ensure that purchasers understand the fact if their unit is part of an Owners Corporation*
 - Recommendations:
 - (a) *Legislation ensuring it is mandatory to advise clients if the property they are providing finance for is a member of an Owners Corporation.*
 - (b) *Provide educational opportunities for banks and finance providers through their peak industry bodies.*
- **PURCHASERS.** Unfortunately all too often the last to find out the truth of what they have purchased. And all too often after the event they discover that the property they have purchased has issues or intractable problems – which could and should have been averted if the above recommendations were implemented. Far too often these Owners Corporation units are of the “Inactive” variety.

Purchasers are frequently referred to professional OC managers after they have purchased an existing unit which has known existing problems. These problems can be structural or they can relate to the Plan of Subdivision, or indeed numerous other issues. The question typically asked by the frustrated new owner is “What can I do now”. In reality the answer is very little.

CAVEAT EMPTOR DOESN'T WASH!

It is important to accept that most often it is not the fault of the purchaser. So often buyers express surprise and concern when they receive the new owner's information package from MBCM Ballarat which congratulates them on their purchase of a unit in their Owners Corporation and mentions the

quarterly fees and Owners Corporation insurance. Responses typically include “but I bought a separate unit” or “but this is a townhouse – what do you mean I have to pay fees”.

The problem initially arose because they were ignorant of the proper process, or accepted misinformed advice from a professional (often real estate agent or conveyancer). Once again, they didn't know what they didn't know to ask.

HOW CAN THE OWNERS CORPORATION MANAGEMENT PROFESSION ASSIST?

The most recent set of amendments to the Owners Corporations Act 2006 have simply aggravated the situation and caused added confusion (particularly in relation to “Inactive” Owners Corporations.) Legislation requires that Owners Corporations must be managed. Unfortunately far too many are neither set up nor are they managed. Many of those that are self-managed are managed poorly. And because of ignorance about the work that Owners Corporation managers do to enhance the value of their clients' properties, far too many owners view their management companies as an unnecessary and expensive expense.

MBCM BALLARAT'S RESPONSE SHOULD BE THE INDUSTRY'S DEFAULT RESPONSE

A large component of our marketing campaign each year is to offer community education. Unfortunately our efforts can only ever reach a tiny audience. Our belief is that community education must be conducted on a much broader scale. If the Government is serious about protecting the interests of its citizens, there is much greater scope for delivering community education programs.

We achieve community education in numerous ways:

COMMUNITY RADIO: We are provided with a fortnightly opportunity on local community radio to discuss living in Owners Corporations or aspects of legislation about strata.

LOCAL NEWSPAPER: Fairfax newspapers provide a free column in the Domain Real Estate section every 5 weeks for us to prepare an article about various aspects of Owners Corporations. This column is now being networked to every regional Fairfax newspaper in Victoria and Southern New South Wales.

TRAINING / INFORMATION SESSIONS: We have been very successful in offering information sessions tailored to all the key target groups previously mentioned. In addition to real estate agencies and banks, we have been invited to provide sessions to surveyors, conveyancers groups, finance companies, accountants and Rotary Clubs – in fact, anyone who will listen.

CONCLUSION

As increasing numbers of Victorians own, occupy and work in Owners Corporations, it is heartening to see Government and its agencies working to understand the issues confronting the industry.

If the aim is to protect Victorians and their investments, any changes to legislation as well as marketing such changes must include a concentration on education of all aspects of Owners Corporations. This must naturally include purchasers, but must also consider vendors, and every profession connected to the development, planning, approval, construction, marketing, selling, financing and transacting of strata community real estate.

Until all stakeholders across the spectrum of Owners Corporations understand Owners Corporation legislation as well as their own responsibilities, the problematic issues around Owners Corporations will continue to multiply and property owners will continue to be aggrieved.

And they will ultimately blame government for their problems.

ABOUT MBCM BALLARAT

MBCM Ballarat is known for providing professional and reliable strata management solutions in our clients' local communities. Specialising in the set-up and professional management of residential, commercial and industrial Owners Corporations, we are committed to providing our clients with industry leading service and expertise.

MBCM is the only brand in Strata Management that thinks globally and acts locally. The marriage between the best systems and imparting these at a local community level, through motivated and passionate franchise owners, is truly unique. It's this unique quality that ensures we develop and maintain strong relationships with each of our Owners Corporations and the reason for our enduring success since 1987.

MBCM Mission

We act on behalf of local strata corporations to ensure their common property is well-maintained and protected. To this end, we guide the decision making process and we manage common property projects so as to improve the value of our clients' properties.

MBCM Vision

To be recognised as Australia's leading strata management brand operating at a local community level through motivated and passionate franchisees.

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8 March 2016