

# Consumer Affairs Victoria

## Bodies Corporate Factsheet

# Changes to body corporate laws

March 2006

*There are around 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 multi-storey high rise apartment buildings – a new Owners Corporation Act will be introduced into Parliament in 2006.*

### ***Need more information?***

Call Consumer Affairs Victoria Helpline on 1300 55 81 81.

### **Scope of the new legislation**

The new Owners Corporation Act will incorporate relevant sections of the current Subdivision (Body Corporate) Regulations 2001 and Subdivision Act 1988. It will build on and enhance these provisions to give owners corporations the powers that are necessary to carry out their functions, and require them to exercise them responsibly.

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.

### **Clarifying the powers of the committee**

The new Act establishes that the committee can do all the things the owners corporation can do by ordinary resolution; that is, 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 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

### **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.

### **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** – The 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 and 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 has 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 “enable true and fair financial statements to be prepared and audited.” 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.

The threshold for prescribing an owners corporation will be set out in regulations that will be drafted after the new Act is enacted. However under the new Act, prescribed owners corporations 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

## 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 plan.

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.

The current provisions for the AGM notice (with financial statements), proxies, postal ballots, quorums, interims decisions, voting rights and minutes continue unchanged.

## Developers

At the moment, there are no limitations on the developer's role in the owners corporation. Under the new Act, during the time the developer exercises the majority vote in the owners corporation, they must act responsibly and in the interests of the owners corporation, and 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

One of the most significant areas of change in the new Act is in the appointment and supervision of 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.

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## Legislative process

An exposure draft of the new Owners Corporation Act was released for public comment in December 2005. The exposure draft can be downloaded from the Consumer Affairs website on **www.consumer.vic.gov.au** – go to Public Consultations and Reviews and then to Body Corporate Review. Submissions close on **31 March 2006**.

Once the Act is finalised, it will be introduced into Parliament and regulations will be drafted for public consultation. When they are finalised, the new legislation will take effect, which is expected to occur in 2007.

## 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

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Information on Bodies Corporate is available from:

### Consumer Affairs Victoria

2/452 Flinders Street

Melbourne 3000

Telephone: 1300 55 81 81

Website [www.consumer.vic.gov.au](http://www.consumer.vic.gov.au)



The information contained in this fact sheet is of a general nature only and should not be regarded as a substitute for a reference to the legislation or professional advice.  
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