

Under the Radar – the Owners Corporation Act 2006

On 1 January 2008, new legislation came into existence which affects 65,000 “bodies corporate” and one in four people in Victoria.

Bodies Corporate are now known as Owners Corporations.

The new Act is the trigger for significant changes to the operations of these entities, as well as the developers, builders, residents and the managers who attend to the daily needs of the corporations. The Act is now in play and compliance is required.

New requirements have been introduced which require the “applicant for the registration of the plan of subdivision” – which is traditionally the developer – to provide detailed information and documentation to the Owners Corporation (OC) at its first meeting.

There is now an obligation to provide:

- an owners corporation register
- any accounts or records made on behalf of the OC
- books to enable the OC to keep necessary minutes, accounts and other records
- the maintenance plan for prescribed OCs

(where there are more than 100 lots or annual fees of \$200,000 or more)

- a copy of the plan of subdivision and all related building plans, planning documents and other similar documents
- a copy of the new Act and regulations together with the Subdivision Act 1988 and its regulations;
- any contracts, leases and licences binding on or benefiting the owners corporation
- any insurance policies in force in relation to the property
- the name of the companies, tradespeople or suppliers who provided a warranty of other guarantee on any matter for which the OC is responsible together with copies of those documents
- the common seal of the OC.

Owners Corporations and their committees will therefore be armed with the necessary documentation to take action against the

By Andrew Whitelaw, Partner, Rigby Cooke Lawyers

developers or builders for defective or incomplete building work, at any time within the limitation period set out in the *Building Act 1993*; namely in ten years following the date of the Occupancy Permit Or the Certificate of Final Inspection (as the case may be).

In addition, the developer who registers the plan of subdivision must “act honestly and in good faith and with due care and diligence in the interests of the owners corporation”.

The developer must also take “all reasonable steps to enforce any domestic building contract entered into by the developer in respect of the land in the plan of subdivision.”

This obligation exists:

- for five years from the date of the registration of the plan of subdivision;
- for a breach of contract to the extent that it relates to the common property; and
- which the developer is aware of ought reasonable to be aware.

These changes now place responsibility on developers to ensure builders have performed their obligations under building contracts where common property is involved. It also enables the Owners Corporations to call upon developers to take action for breaches of building contracts and where defective and incomplete works exist.

See disclaimer below

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 Industry leaders
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Building and Construction Team
 03 9321 7836
 awhitelaw@rigbycooke.com.au
 Level 13, 469 La Trobe Street, Melbourne VIC 3000 Australia
 www.rigbycooke.com.au