

Guide to owners corporations

Owning, managing and living
in a unit or apartment



DEPARTMENT
OF JUSTICE

Additional copies

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Disclaimer

Because this publication avoids the use of legal language, information about the law may have been expressed in general statements. This guide should not be relied upon as a substitute for the *Owners Corporations Act 2006* or professional legal advice.

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Introduction

An owners corporation manages the common property of a residential, commercial, retail, industrial or mixed-use property development.

Owners of flats, apartments or units are usually members of an owners corporation, previously known as a 'body corporate'. All bodies corporate became owners corporations on 31 December 2007, when the *Owners Corporations Act 2006* came into force. This law sets out the duties and powers of owners corporations.

An owners corporation is automatically created when a plan of subdivision containing common property is registered at Land Victoria. Examples of common property may include gardens, passages, walls, pathways, driveways, lifts, foyers and fences.

The plan of subdivision shows the parcels of land that can be sold separately. These are called 'lots'. The lot owners are the members of the owners corporation for the property.

More than one owners corporation can be created in a subdivision of land or buildings.

A person who owns property under an owners corporation automatically becomes a member of that owners corporation. As a member, that person has legal and financial responsibilities to the owners corporation.

What should I do before buying a property managed by an owners corporation?

Get a copy of the owners corporation certificate and inspect the owners corporation register. These documents contain important information about fees, allocation of lot liability and lot entitlement, and legal liabilities.

The owners corporation certificate is part of the vendor's statement, also called a 'section 32', after section 32 of the *Sale of Land Act 1962*. The section 32 contains information which the seller must provide to the buyer advising of restrictions such as covenants and easements, outgoing rates and any other notices such as compulsory acquisition.

The lot owner selling the property must ensure the certificate is included in the section 32. A buyer can also purchase the certificate from the owners corporation.

Retirement villages

Many retirement villages have owners corporations. In a strata title village, the unit owners are automatically members of the owners corporation. They have the right to attend owners corporation meetings and stand for election to the owners corporation committee.



You can find more information about owners corporations in retirement villages at consumer.vic.gov.au/retirementvillages.

For more information and forms to help your owners corporation, visit consumer.vic.gov.au/ownerscorp

For more information on owners corporation managers, visit consumer.vic.gov.au/ownerscorpmanagers

Common terms

Plan of subdivision

A plan of subdivision depicts the break-up of a piece of land, showing parcels of land called 'lots', that can be sold separately. The plan of subdivision is registered at Land Victoria and an owners corporation is automatically created if the plan includes common property.

The plan of subdivision defines and governs the ownership of land, buildings and airspace. It sets out private lots, common property and each lot owner's voting entitlements and financial contributions.

Land Victoria registers and allocates numbers to the plan of subdivision and any owners corporations created by that plan.

Lots

A lot is a part of land, buildings and airspace on a plan of subdivision that can be separately owned and sold. Technically, lots are those parts of land, buildings or airspace that are not common property, road or a reserve, and include accessory lots such as car spaces, storage bays and storerooms.

Lot entitlements and lot liabilities

These are set out in the plan of subdivision.

- 'Lot entitlement' refers to a lot owner's share of ownership of the common property and determines voting rights.

- 'Lot liability' represents the share of owners corporation expenses that each lot owner is required to pay.

These entitlements and liabilities are determined by the developer at the time of subdivision.

Common property

This includes any parts of the land, buildings and airspace that are not lots on the plan of subdivision. It may include gardens, passages, walls, pathways, driveways, stairs, lifts, foyers and fences. The common property is collectively owned by the lot owners as 'tenants-in-common'. Floor coverings and fixtures within a lot are usually the property of the lot owner.

Multiple owners corporations

These are most common in large, multistorey buildings, commercial properties, or developments that combine residential and non-residential lots.

Properties with more than one owners corporation will usually have:

- an unlimited owners corporation, which owns the common property, and
- one or more limited owners corporations, which will apply to only some lots.

Multiple owners corporations give groups of lot owners access to and responsibility for certain parts of the property.

Multiple owners corporations

A person buys a ground floor unit in a multistorey building. The title includes off-street parking. As a lot owner, this person will be a member of the owners corporation. They may also be a member of the owners corporation responsible for the parking spaces, but not a member of the owners corporation responsible for the lifts.



Where a property has multiple owners corporations, it is important for lot owners to be aware that these owners corporations affect their lot.

Common seal

An owners corporation must have a common seal, available from a stationery shop, which contains the owners corporation's name and represents the signature of the owners corporation.

The owners corporation certificate must be sealed using the common seal, which must include the plan of subdivision number.

It must be used on all documents created by a resolution passed by the owners corporation; for example, contracts for services, making additional rules or the appointment of a manager. **The use of the common seal must be witnessed by two lot owners. If the seal is being affixed to an owners corporation's certificate, a manager or chairperson may also witness the use of the seal.** Misuse of the common seal can have serious financial and legal consequences.

For more information and forms to help your owners corporation, visit consumer.vic.gov.au/ownerscorp

The operation of owners corporations

Classes of owners corporations

Depending on their size, owners corporations have different levels of responsibilities and duties.

Two-lot subdivisions are exempt from many of the legal requirements placed on larger owners corporations, such as:

- requirements for notices of fees
- procedures for meetings and decision-making
- keeping records and an owners corporation register
- having insurance for the owners corporation.

Prescribed owners corporations, which have more than 100 lots or collect more than \$200,000 in annual fees in a financial year, have additional obligations such as:

- establishing a maintenance plan
- having financial statements audited every year
- obtaining a valuation every five years of all buildings it is required to insure.

Levels of owners corporations

An owners corporation operates at four levels:

1. The owners corporation, consisting of all the lot owners.
2. The committee, consisting of elected lot owners or their proxies.
3. A delegate of the owners corporation, for example, a manager, chairperson, secretary, lot owner or employee.
4. A delegate of the committee. The committee may delegate to a lot owner, a manager or sub delegate to a member of the committee.

All owners corporations, committees and delegates must act honestly and in good faith. They must exercise due care and diligence in carrying out their functions, powers and activities.

For more information and forms to help your owners corporation, visit consumer.vic.gov.au/ownerscorp

Obligations of owners corporations

An owners corporation must:

- manage and administer the common property
- repair and maintain the common property, fixtures and services
- take out and maintain required insurance
- raise fees from the lot owners to meet financial obligations
- prepare financial statements and keep financial records
- provide owners corporation certificates when requested
- keep an owners corporation register
- establish a grievance procedure
- carry out any functions and duties under the *Owners Corporations Act 2006*, the *Owners Corporations Regulations 2007*, the owners corporation rules and any other law or regulation
- ensure compliance with *Owners Corporations Act 2006*, the *Owners Corporations Regulations 2007* and rules.



Property maintenance

Maintenance plans

An owners corporation maintenance plan must cover:

- major capital items for repair and/or replacement over the next 10 years
- the present condition of those items
- when the items or components will need to be repaired or replaced
- the estimated cost of their repair and replacement
- the expected life of those items or components once repaired or replaced.

Consumer Affairs Victoria recommends that as part of responsible asset management all owners corporations should have a maintenance plan. Only prescribed owners corporations must have a maintenance plan and maintenance fund.

If an owners corporation has a maintenance plan then it must have a maintenance fund to cover the cost of works in the plan.

The owners corporation is required to report on implementation of its maintenance plan, if it has one, at each annual general meeting.

Upgrades, renovations and alterations to the common property

An owners corporation can only make significant alterations to the use or appearance of its common property if the changes are listed in the maintenance plan, or approved by special resolution at a general meeting.

A special resolution is also required if the common property is to be upgraded, renovated or improved and the:

- estimated total cost is at least double annual total fees, or
- works require a planning or building permit.

Urgent works to ensure safety or prevent significant loss or damage do not require a special resolution. This applies only to the work necessary to address the safety, loss or damage.

Lot maintenance and renovations

Lot owners in an owners corporation are entitled to renovate or refurbish the **interior** of their apartment or unit. A lot owner must notify the owners corporation if the renovations require a building or planning permit.

A lot owner must also keep the **exterior** of their lot in 'good and serviceable repair'. Its appearance must not affect other lot owners' use and enjoyment of the property. If an owner fails to keep the exterior in good and serviceable repair, an owners corporation can, in writing, order the owner to carry out repairs.

If the requested repairs are not carried out within 28 days, the owners corporation can perform the work without the lot owner's approval and charge the owner for the cost.

Records

The *Owners Corporations Act 2006* and other laws, such as Commonwealth tax laws, require owners corporations to keep records; for example, financial statements, ballot results and voting papers.

Owners corporation register

All owners corporations, except two-lot subdivisions, must establish and keep an owners corporation register which is a summary of its activities, undertakings and membership.

The register must be available for inspection free of charge. A manager can charge the owners corporation for supervising inspections of the records and register.

The owners corporation must provide copies of the register at a reasonable fee if requested.

Owners corporation certificates

All owners corporations must issue an owners corporation certificate within 10 business days to any person who submits a written application (available from consumer.vic.gov.au) which may be accompanied by a fee.

The certificate must contain specific information and have relevant documents attached, for example, current quarterly or annual fees for the lot and the owners corporation rules.

For more information and forms to help your owners corporation, visit consumer.vic.gov.au/ownerscorp

Financial management

Lot owners risk financial and legal consequences through poor financial management of the owners corporation.

An owners corporation is responsible for actions taken on its behalf by delegates, such as a professional manager or committee member. It can pass on costs incurred by these actions to members by raising fees. **There is no limit to a lot owner's financial and legal liability for actions of the owners corporation or its delegates.**

An owners corporation should seek professional help to manage its financial responsibilities.

An owners corporation has the power to:

- set fees to cover general administration, maintenance and insurance
- levy special fees for extraordinary expenditure
- establish a maintenance fund to cover the cost of works in the maintenance plan
- borrow money
- invest money
- recover money owed
- charge penalty interest
- operate a bank account.

Fees

The owners corporation sets annual fees to cover ongoing costs such as general administration, maintenance and insurance. Special fees can be levied for extraordinary or unexpected expenditure.

Owners pay fees according to lot liability and cannot vote on ordinary resolutions if they owe money to the owners corporation.

An owners corporation can pass a resolution to charge the penalty rate of interest on unpaid fees (this rate is set by law and published on the Department of Justice website). The owners corporation can take action to recover unpaid fees in the Magistrates' Court of Victoria or at the Victorian Civil and Administrative Tribunal (VCAT).

An owners corporation or its manager cannot charge a lot owner any other fees or charges, such as an 'administration fee', for overdue owners corporation fees.

Audits

Consumer Affairs
Victoria recommends
that all owners
corporations have
their accounts audited.



Prescribed owners corporations
must have their financial statements
audited every year.

Insurance

Financial records

An owners corporation must keep financial records that:

- record all its income, expenditure, assets and liabilities
- enable it to make true and fair reports of its financial situation
- record and explain all financial transactions for income tax and GST purposes, as required by the Australian Taxation Office.

Financial records can be kept in hard copy or in an electronic form. A free e-record system is available on the Australian Taxation Office's website (see ATO link at end of Guide).

The financial records must be kept in a safe and secure place.

For more information and forms to help your owners corporation visit consumer.vic.gov.au/ownerscorp

All owners corporations must take out reinstatement and replacement insurance for all buildings on the common property and for incidental costs of the replacement or repair of damaged common property. This insurance must also cover services shared with a person other than the owners corporation or any of its members, such as pipes and cables for gas, electricity, water or data.

Owners corporations must also take out public liability insurance of not less than \$10 million for common property.

Two-lot subdivisions are exempt from these requirements but should take out these forms of insurance if there are buildings on common property.

A prescribed owners corporations must, every five years, obtain a valuation of all buildings it is required to insure.

For more information and forms to help your owners corporation, visit consumer.vic.gov.au/ownerscorp

Decision-making

An owners corporation makes a decision or resolution when its members vote. Decisions can be made by an ordinary, special or unanimous resolution, which require different percentages of the votes.

Votes are allocated according to lots or lot entitlements, not by number of individuals.

Resolutions may be made by a meeting or ballot of the owners corporation, a meeting or ballot of the committee, or by a decision of a delegate. Only ordinary resolutions not required to be made at a general meeting can be delegated.

The decision-making hierarchy

The owners corporation (all the lot owners):

- keeps control of all decision-making
- can delegate powers, but only for matters that do not require a general meeting
- can overturn an earlier decision of the owners corporation. Only an owners corporation general meeting can do this
- can appoint sub-committees to advise the owners corporation. Sub-committees cannot make binding decisions.

The committee:

- can make decisions, except on matters that must be decided at a general meeting
- cannot overturn decisions of the owners corporation.

A delegate:

- can make decisions within the limits set by the owners corporation
- cannot overturn a decision of the owners corporation or the committee.

Annual general meeting

An owners corporation must hold a meeting of all lot owners if it receives or pays out money during the financial year. This is called the annual general meeting.

The annual general meeting is the main opportunity for lot owners to discuss issues concerning their property and elect the committee and office bearers for the next year.

Written notice of an annual general meeting must be provided to lot owners at least 14 days before the meeting.

The time between the annual general meetings for an owners corporation must not exceed 15 months.

Agenda

The lot owners, committee members and manager should organise an agenda that identifies items for discussion. More information on what must be included in the agenda is available from consumer.vic.gov.au/ownerscorp.

Resolutions

There are different types of resolutions that require different percentages of votes to pass. These include:

- ordinary resolutions, which require the agreement of at least 50 per cent of lot owners
- special resolutions, which require the agreement of at least 75 per cent of lot owners
- unanimous resolutions, which require agreement from all lot owners.

Delegations

Delegation of powers enable a chairperson, secretary, manager or committee to make decisions on behalf of the owners corporation and carry out day-to-day tasks without having to call a general meeting.

Some powers cannot be delegated, including all matters requiring a unanimous resolution, a special resolution or an ordinary resolution at a general meeting.

Minutes of meetings

The owners corporation must arrange for minutes of all meetings to be kept and available for inspection. The minimum required information for the minutes is available from consumer.vic.gov.au/ownerscorp

Proxies

If a lot owner cannot attend a meeting, another person can be appointed as a 'proxy' to represent and vote on behalf of the lot owner. It is illegal for someone to demand or require another person to give a proxy.

Powers of attorney

A person acting under a power of attorney for a lot owner may vote on the lot owner's behalf at a general meeting or ballot. An attorney can only act for more than one lot if they are a member of the lot owner's family. It is illegal for someone to demand or require another person to give a power of attorney.

Special general meetings

All meetings other than annual general meetings are called special general meetings. These can be convened by the owners corporation manager, chairperson or secretary, or a lot owner nominated by lot owners who have at least 25 per cent of the total lot entitlements.

Activating an owners corporation

An owners corporation must hold its first general meeting within six months of registration with Land Victoria. If this has not been done, owners representing 25 per cent or more of lot entitlements can agree to call the inaugural annual general meeting. Alternatively, you may apply to VCAT for an order compelling the owners corporation to hold an annual general meeting.

After this first meeting, an owners corporation is only required to have an annual general meeting if it receives or pays out money in a financial year.

For more information and forms to help your owners corporation, visit consumer.vic.gov.au/ownerscorp

Committees

An owners corporation with 13 or more lots must elect a committee at each annual general meeting.

Owners corporations with fewer than 13 lots may elect a committee if they choose, but it is not mandatory.

Membership of a committee

A committee must have between three and 12 members, who must be lot owners or hold proxies for lot owners. There must not be more than one committee member from any one lot. Once elected, the committee members hold office until a new committee is elected.

The chairperson and secretary

A committee must elect a chairperson and a secretary by ordinary resolution (majority vote) at a general meeting. Failure to fill either of these positions may mean the committee and its decisions are not lawful.

The committee's chairperson and secretary also become the chairperson and secretary of the owners corporation.

The chairperson's main role is to host meetings which allow fair and open discussion and stick to the agenda, so decisions can be made.

The secretary is responsible for tasks including managing correspondence and organising meetings.

The chairperson and secretary can only be removed by majority vote at a general meeting. Revocation of either role does not affect that person's membership of the committee.

If an owners corporation does not have a committee, the lot owners:

- must elect a member to be the chairperson
- must elect a member to be secretary.

Failure to fill either of these positions may mean that a meeting of the committee is not called correctly and could make the proceedings of the committee meeting invalid.

Removing committee members

Lot owners can remove a committee, or a committee member, by ordinary resolution at a general meeting.

If there is a casual vacancy on a committee, the remaining members can invite another lot owner, or a person holding a proxy for a lot owner, to be a member of the committee.

The vacancy does not have to be filled if three or more members remain on the committee.

Committee meetings

Quorums

A quorum is the minimum number of members needed to transact business at a meeting. For a committee meeting, the quorum is at least half the committee members. When there is no quorum, the committee can only make interim resolutions.

Procedures

A committee meeting may be called by the owners corporation, the committee, its chairperson or secretary, the manager of the owners corporation or a delegate of the owners corporation.

Committees can make decisions by ballot or at meetings by a show of hands.

Minutes

The committee must keep accurate minutes of every meeting. Among other things, the minutes must include the date, time and place, names of those present and all resolutions.

For more information and forms to help your owners corporation, visit consumer.vic.gov.au/ownerscorp

Managers

Many owners corporations use paid professional managers to assist with finances, insurance, administration, meetings and maintenance.

An owners corporation may appoint a manager to carry out any powers or functions it is able to delegate by a ballot. The owners corporation usually delegates powers to a manager in a contract or instrument of delegation. This enables the manager to make decisions on behalf of the owners corporation. The appointment must be in writing or through a contract.

Some owners corporations may be self-managed by a committee or a lot owner who has been delegated powers on a voluntary basis.

Registration and professional indemnity insurance

All paid owners corporation managers must register with the Business Licensing Authority and have professional indemnity insurance. Registration applies to management businesses, rather than each individual manager who may be an employee of the business.

People aged under 18, bankrupts, or those who do not have professional indemnity insurance cannot register as a manager.

You can check a manager's registration on the Business Licensing Authority's public register of owners corporation managers. This register includes details of any orders made against a manager.

Duties of managers

All professional managers must:



- register with the Business Licensing Authority
- be appointed by an instrument or by contract of appointment
- act honestly and in good faith
- have professional indemnity insurance
- hold all owners corporation money in trust
- account separately for money held for each owners corporation it manages
- report to the owners corporation at each annual general meeting
- report to the committee as required
- lodge an annual statement with the Business Licensing Authority.

Removing a manager

A manager may be 'removed' by not renewing their contract of appointment.

Removing a manager before expiry of their contract raises complex legal and contractual issues.

An owners corporation should:

- require a general meeting or postal ballot to remove a manager. Alternatively, any delegate authorised to remove a manager can do so without advising lot owners
- follow the process for the removal or termination of the manager outlined in the contract of appointment.

The owners corporation may also apply to VCAT for an order terminating the manager's contract.

Once a manager's appointment is terminated, the manager has 28 days to return all funds and records to the owners corporation.

For more information and forms to help your owners corporation, visit consumer.vic.gov.au/ownerscorp

Rules

All owners corporations have rules for the control, management, use or enjoyment of common property and lots. The rules cover day-to-day issues such as parking, pets and noise.

If an owners corporation does not make its own rules, a set of model rules outlined in the Owners Corporations Regulations 2007 (Schedule 2) applies.

If the owners corporation adopts its own rules, they must be registered with Land Victoria. Otherwise they will be void and unenforceable and the model rules will apply.

All lot owners and tenants must be given a copy of the rules before they move in.

Owners corporations can apply to VCAT to enforce rules and the tribunal can impose penalties for breaches of rules.

Owners corporations can make rules for:

- health, safety and security
- committees and sub-committees
- management and administration
- use of common property
- use of and works to lots
- design of lots
- behaviour
- dispute resolution
- notices and documents
- use of the common seal.

Communication

All owners corporations are required to keep a letterbox and/or a sign displaying their current contact details.

Owners corporations should have a policy on how day-to-day communication between a lot owner and the owners corporation can be made. The policy should be part of the rules and may specify how and when the chairperson, secretary or the manager can be contacted and what to do if there is an emergency. This policy should be given to all new lot owners and tenants or be displayed on a notice board.

For more information and forms to help your owners corporation, visit consumer.vic.gov.au/ownerscorp

Complaints and disputes

Complaints to the owners corporation must be in writing, in an approved form. The owners corporation may decide to take no action, but must provide the person making the complaint with written reasons for this decision.

The *Owners Corporations Act 2006* sets out a process to help owners corporations deal with grievances. This process may involve three steps:

- internal dispute resolution
- conciliation through Consumer Affairs Victoria
- applications to VCAT.

The owners corporation must have an internal dispute resolution process to handle complaints about breaches of the rules and other disputes. This must be used before going to VCAT.

Grievance procedure

An owners corporation should use the model rules for grievance and complaint procedures set out in the *Owners Corporations Regulations 2007*.

The owners corporation may develop its own rules for handling grievances – these must be recorded at Land Victoria and must not conflict with any Act, regulation, or natural justice.

Lodging a complaint with Consumer Affairs Victoria

Lot owners, occupiers and owners corporation managers do not have to use the owners corporation grievance procedure. They can make a complaint to Consumer Affairs Victoria.

Consumer Affairs Victoria may decline to consider a matter if the owners corporation has not used the internal resolution process.

Consumer Affairs Victoria will determine if a complaint can be conciliated. Conciliation involves negotiation between the parties to reach an agreed resolution and avoid proceedings in VCAT. Consumer Affairs Victoria can only conciliate a matter if all parties agree to the conciliation.

VCAT

VCAT can impose penalties for breaches of rules and make a wide range of other orders.

For more information and forms to help your owners corporation, visit consumer.vic.gov.au/ownerscorp

Useful contacts

Business Licensing Authority

1 300 13 54 52
bla.vic.gov.au

Victorian Civil and Administrative Tribunal (VCAT)

55 King Street
Melbourne VIC 3000
vcat.vic.gov.au

Australian Taxation Office

13 28 66
ato.gov.au

Information Victoria

505 Little Collins Street
Melbourne VIC 3000
1300 366 356
information.vic.gov.au

Owners Corporations Victoria (formerly Institute of Body Corporate Managers Inc (Victoria))

Suite 106
134-136 Cambridge Street
Collingwood VIC 3066
03 9416 4688
ocv.org.au

Land Victoria

570 Bourke Street
Melbourne VIC 3000
03 8636 2010
land.vic.gov.au

Law Institute of Victoria

470 Bourke Street
Melbourne VIC 3000
03 9607 9311
liv.asn.au

Real Estate Institute of Victoria

335 Camberwell Road
Camberwell VIC 3124
03 9205 6666
reiv.com.au

Your local council



consumer.vic.gov.au



1300 55 81 81



consumer@justice.vic.gov.au

Victorian Consumer & Business Centre
113 Exhibition Street
Melbourne 3000

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