

Owners Corporations & Acting for older apartment owners

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Many high-rise apartment buildings are going up in and around Melbourne. The next five to ten years will see people starting to choose to age in place, thereby desiring to stay in their own apartments and surrounds, rather than move to a retirement village. NORCS, naturally occurring retirement communities, within private apartment buildings are becoming more popular in cities such as New York, where people wish to continue to live on in their apartments. There is certainly scope for this thinking in Melbourne. Over time, apartment owners and occupiers, via strategic and cooperative planning, can work with other owners and the owners corporation committee, to ensure there are adequate amenities in common areas to support the needs of ageing residents.

Solicitors acting for apartment owners, occupiers and investors need to be informed about their clients' duties and obligations, as well as the involvement of committee members and property managers. As part of my role as Senior Law Lecturer at the Australian Catholic University, I have been undertaking research into owners corporation dispute resolution processes, as well as contemplating the place for NORCS and the role they will play in Australian owners corporations. I will be presenting findings from my work on Owners Corporation matters and dispute resolution strategies at apartmentlaw.com.au as well as in occasional Green's List newsletters. I am available to speak to you about owners corporation issues and related owners corporation dispute resolution strategies.

Listed below are some tips for owners corporation owners, occupiers and investors:

Nine OC tips:

- 1. Does the owners corporation need to be notified if I am away in hospital or overseas?** A lot owner who does not occupy the lot or who will be absent from the lot for more than 3 months must advise the owners corporation of the lot owner's mailing address in Australia for service of notices and any changes to it as soon as possible.
- 2. Can there be an owners corporation on a plan of subdivision which has no common property?** Yes, an owners corporation can be created on any plan of subdivision and there is no requirement that common property be created on that plan. If, however, common property is created on the plan then there must be an owners corporation.
- 3. Is a maintenance plan required?** Only if you are a *prescribed owners corporation* are you required to prepare a maintenance plan and establish a maintenance fund. This should still not stop you from planning ahead. Prescribed owners corporations have more than 100 lots (including storage lots, car parking lots, and accessory or ancillary lots), **OR** collect more than

\$200,000 in annual fees in a financial year.

4. **Many plans do not indicate which part of the walls are the boundary. How do you know whether it is the interior face, the exterior face or the middle of the wall?** Generally, where a plan does not define which part of the structure is the boundary, then it is to be taken to be the middle of that structure.
5. **What is a limited owners corporation?** Properties with multiple owners corporations 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. This may be a particular building on site in which you have an apartment.
6. **Do lot liability and entitlement for an owners corporation need to be the same?** No, they do not. Lot entitlement should reflect the relative value of each lot and lot liability should be based on the reasonable apportionment of owners corporation expenses between lots.
7. **Can a member of the owners corporation appoint someone else to attend meetings and vote on their behalf?** Yes. A member may appoint a proxy to attend meetings and vote on their behalf.
8. **Can a member who has not paid their owners corporation fee vote at meetings?** A non-financial member is not entitled to vote at owners corporation meetings unless a unanimous resolution is required to vote for a particular matter.
9. **Can the rules of the owners corporation be changed?** New owners corporation rules can be made and existing ones changed if there is a special resolution of the owners corporation. Before being effective, the rules must be lodged at Land Victoria.

See further, *Owners Corporation in Victoria* by Rebecca Leshinsky & Simon Libbis (Hybrid Publishers)