

**OWNERS CORPORATIONS  
IN VICTORIA:  
A manual for owners, occupiers  
and managers**

**Rebecca Leshinsky**

**Simon Libbis**



Published by Hybrid Publishers

Melbourne Victoria Australia

© Rebecca Leshinsky, Simon Libbis 2008

This publication is copyright. Apart from any use as permitted under the Copyright Act 1968, no part may be reproduced by any process without prior written permission from the publisher. Requests and inquiries concerning reproduction should be addressed to the Publisher, Hybrid Publishers, PO Box 52, Ormond, Victoria 3204, Australia.

[www.hybridpublishers.com.au](http://www.hybridpublishers.com.au)

First published 2008

This publication is not intended to be and is not a complete or definitive statement of the law on the relevant subject matter. It is sold with the understanding that the authors and publisher are not engaged in rendering legal advice. No person should take any action or refrain from taking any action in reliance upon the contents of the publication without first obtaining advice from a competent practitioner. The authors and the publisher and each of them expressly disclaim liability for any loss or damage suffered by any person arising out of any errors or omissions in this publication or any reliance in part or in full upon the contents of this publication.

National Library of Australia Cataloguing-in-Publication data:

Author: Leshinsky, Rebecca.

Title: Owners corporations in Victoria : a manual for owners, occupiers and managers / Rebecca Leshinsky.

ISBN: 9781876462727 (hbk.)

Victoria. *Owners Corporations Act 2006*.

Condominium associations--Law and legislation--Victoria.

Community property--Law and legislation--Victoria.

Real property--Law and legislation--Victoria.

Dewey Number: 346.9450433

Printed in Australia by Hyde Park Press

## Contents

Foreword	ix
Acknowledgements	xi
Chapter 1: Structure	1
The need for an owners corporation	1
Creation of owners corporations	1
Common property	3
Membership of the owners corporation	4
Limited owners corporations	5
Multiple owners corporations	6
Owners corporations in two-lot subdivisions	6
Lot entitlement and liability	7
Rules	8
Managers	9
Chapter 2: Operation	10
New regime for Victoria	10
What is an owners corporation?	10
Transitional provisions and the Act	10
What the owners corporation must do	11
Power to bring legal proceedings	13
The common seal	13
Financial management	13
Accounts and audit	14
Repair and maintenance problems	15
Maintenance plan and fund	15
Asset management – Repair and maintenance	16
Owner’s obligations	16
Exclusive benefit	17
Who pays?	17
Substantial benefit	17
Boundaries and other threshold issues	17
Insurance	17

Leasing or licensing common property	18
Owners corporation register	18
Owners corporation certificate	19
Owners corporations and privacy legislation	20
Meetings	20
Special general meeting	21
Ballots	21
Decisions of owners corporations	22
Committees	23
Chapter 3: Disputes	26
First tier – internal dispute resolution	26
Second tier – CAV conciliation or mediation	27
Third tier – VCAT orders	27
VCAT exemption orders	27
VCAT may refer matter to County Court	28
Chapter 4: Managers	29
Appointment of manager	29
Duties of managers	30
Registration of managers	31
Chapter 5: Making changes	31
Types of changes	33
Lot liability and entitlement	34
Rules	35
Merging	35
Staged subdivision	36
Development applications and use of common property	37
Dissolution	38
<b>Appendixes</b>	<b>41</b>
Appendix 1	
Victorian subdivision model	43
Appendix 2	
Plan of Subdivision for a body corporate (now known as owners corporation)	44
Appendix 3	
Model rules for an owners corporation	52

Appendix 4	
Notice of change to the rules	56
Appendix 5	
Contract of appointment of a manager	57
Appendix 6	
Fee notice	71
Appendix 7	
Final fee notice	74
Appendix 8	
Maintenance plan	76
Appendix 9	
Notice of repairs or maintenance	81
Appendix 10	
Sample owners corporation register	82
Appendix 11	
Sample request to inspect register	85
Appendix 12	
Sample owners corporation certificate	86
Appendix 13	
Sample request for copy of owners corporation certificate	90
Appendix 14	
Proxy form	91
Appendix 15	
Notice of Annual General Meeting	93
Appendix 16	
Notice of General Meeting	94
Appendix 17	
Sample minutes of meeting	95
Appendix 18	
Notice of ballot to lot owners	97
Appendix 19	
Sample ballot to committee members	98
Appendix 20	
Complaint form	99
Appendix 21	
Notice to rectify breach	101

Appendix 22	
Final notice to rectify breach	104
Appendix 23	
Statement of advice and information for prospective purchasers and lot owners	106
Glossary	108
Frequently asked questions about owners corporation and common property	116

## Foreword

Melbourne has changed over the past ten years. It has gone from a city which supported low- and medium-rise development to one where high-rise mixed-use living and working is encouraged by State, regional and local planning policy. The city now supports one of the tallest buildings in the world, the Eureka Tower in Southbank. More people want and need to work and live in high-rise buildings. Victoria's population increased from 2007 to 2008 by some 82, 430 people (*The Age*, 1 August 2008, p. 1). According to the Census for Land Use and Development (CLUE), the population of the City of Melbourne is approximately 81,000 and grew by 4,466 people (almost 6 per cent) in the 2006-07 year (see CLUE statistics for City of Melbourne at <http://www.melbourne.vic.gov.au/info.cfm?top=91&pg=870>).

This shift has not only made the city more interesting but also more complex with the need for fresh laws to accommodate a different way of life. The new *Owners Corporations Act* applies to city and regional areas across Victoria with high-rise, medium-density and industrial developments with an owners corporations model.

*The Body Corporate Book* published nearly a decade ago is now out of date. The new legal regime covering bodies corporate (now called owners corporations) may be based on the old model but it is also quite distinct. *Owners Corporations in Victoria* aims to set out in plain English how the new system works and what are the rights and responsibilities of members, occupiers and those who manage residential, office, industrial and mixed-use buildings with an owners corporation in Victoria.

For readers who own a copy of *The Body Corporate Book*, we encourage you to either dispose of it or to shelve it as the law has now changed sufficiently to warrant *Owners Corporations in Victoria*.

**Table 1: Residential apartments in Melbourne City Centre**

(source: *The Age*, Wednesday, 27 June 2007, p. 3)

<b>2002</b>	22,016
<b>2004</b>	26,180
<b>2006</b>	32,136

## **Acknowledgements**

I would like to thank Leslie Clements, who originally set me on this path when I was an articled clerk and to Louis de Vries, publisher of Hybrid Publishers, who is eternally supportive and patient with of all of my endeavours. Many thanks also to my son, Adam, who assisted in designing Appendix 1.

R.L.



# Chapter 1

## Structure

Prior to the *Subdivision Act*, bodies corporate (now called owners corporations) could only be created on strata and cluster plans of subdivision. Now they can be created on any plan of subdivision. Owners corporations created on earlier strata and cluster plans are now all covered by the *Owners Corporations Act*, the *Subdivision Act* and their respective Regulations.

It is possible to have a plan with an owners corporation and no common property. However, where common property is created, there must be an owners corporation. The diagram in Appendix 1 illustrates the available options.

### **The need for an owners corporation**

When a subdivision is being carried out, consideration should be given as to whether the creation of an owners corporation is appropriate or necessary. The only time that it is compulsory is where the plan creates common property. Otherwise, there is no obligation to create an owners corporation.

Some developers try to avoid creating an owners corporation. This can be done even in a building subdivision provided that no common property is created. On the other hand there are some subdivisions with no common property where an owners corporation is required to be created. This is usually where there is a subdivision of a building that does not have separate services. The authority providing those services will usually only agree to the subdivision if an owners corporation is created.

### **Creation of owners corporations**

Section 27 of the *Subdivision Act* provides that a plan may create one or more owners corporations. Any owners corporations created will be incorporated on registration of the plan of subdivision and any

common property shown on the plan will be owned by the members of the owners corporation in the shares shown as lot entitlement on the plan.

The owners corporation has a separate legal identity and owns the common property as nominee for the lot owners. The number which is allocated to the owners corporation is the registration number of the plan of subdivision. As a separate legal entity, the owners corporation can sue and be sued. Although the owners corporation resembles a company, it is not covered by the legislation that regulates corporations.

If a plan of subdivision creates an owners corporation, then it will have as a separate sheet on the plan, an owners corporation schedule. Most of the information in relation to the owners corporation is contained in the owners corporation schedule attached to the plan. That, effectively, provides the structure of the owners corporation. The plan will show what areas are common property. Appendix 2 shows a Plan of Subdivision for an owners corporation.

The owners corporation is a separate legal entity and this makes it easier for members to make decisions by majority vote to manage the common property. Decisions of the members of the owners corporation must be by majority, whether or not the lot owners reside in their units. As the owners corporation has an obligation to manage the common property, it is important for it to effectively operate so as to contribute to the overall value of the lots and the common property.

### **Common property**

It is important to ensure that the boundaries of common property on the plan are clearly and correctly identified. Failure to do this could have unintended consequences. A plan will often define the common property as the area not included in the lots. What constitutes a lot then becomes of paramount importance.

An example of how problems can arise is where there is a multi-storey building. The lots are defined by reference to the building line on the ground. The upper levels, however, have balconies which are outside the vertical line that extends up from the building line. If common property is defined as being everything outside the lots then the balconies will be common property and will not be owned by the owners of the particular units to which they are attached. Clearly, this is not intended but it does happen.

Another example would be a multi-storey building on which the top storey has the use of the roof area above it. Quite often the upper boundary of a unit is defined as the ceiling. If this were the case then the roof above the top storey would be common property and would not be owned by the owner of the unit.

The boundaries between lots and common property are significant in numerous subdivisions. If something is common property then it is the responsibility of the owners corporation. It is, therefore, important to ensure that the whole of the lot is included in the definition and does not become part of common property because of some oversight. Great care needs to be taken where the boundaries of lots have upper and lower limits as what is above and below the lot will become common property.

Where the boundary between lots and common property is a structure such as a wall, it is important to identify what part of that structure is the boundary. A plan must indicate this. The plan in Appendix 2 is a subdivision of a building and in the notations on the plan it identifies the location of the boundaries. The plan is that of a strata plan which preceded the more modern Plan of Subdivision. Many buildings in Melbourne and its surrounds are strata plans and now all are covered by the owners corporation regime where there is common property on site. It is important to carefully examine a strata plan (or Plan of Subdivision). Some boundaries are the median of structures whereas others are the exterior or interior faces of those structures. When those structures require repairs or maintenance the cost will need to be borne by either the owners corporation or the lot owner depending on whether all or part of those structures are lots or common property. In order to ascertain this the location of the boundary needs to be identified.

Strata plans and plans of subdivision are not always easy to read and it is often better to consult a surveyor when in doubt. Traditionally, a thick continuous line with no measurement represents a vertical or near-vertical boundary along or inside a wall or fence. A thick broken line with measurements represents a vertical or near-vertical boundary which does not lie along or inside a wall or fence. Where there is a common boundary (such as a wall, fence, ceiling or floor) between two lots or a lot and common property, and the plan does not provide otherwise, the boundary between them is the middle of that wall, fence, ceiling or floor.

## Chapter 2

### Operation

#### **New regime for Victoria – *Owners Corporations Act 2006***

On 31 December 2007, the *Owners Corporations Act 2006*, and the *Owners Corporations Regulations 2007* came into force. A fresh regime for bodies corporate, now known as owners corporations, is operating in Victoria. This reflects a strategic long-term approach to deal with changing demographics, and the nature of how people reside and work across the State of Victoria. Small blocks of flats are no longer the common model. High-rise apartment buildings, middle-density town house estates, mixed-use buildings and master plan estates (MPE) are on the rise. Consumer Affairs Victoria noted in 2005 in its *Final Report of the Owners Corporation Review*, that there were more than 65,000 owners corporations in Victoria, incorporating over 480,000 lots.

#### **What is an owners corporation?**

An owners corporation is defined in the *Owners Corporations Act* to mean an owners corporation that is incorporated by registration of:

- a plan of subdivision; or
- a plan of strata subdivision; or
- a plan of cluster subdivision.

A Statement of Advice and Information for Prospective Purchasers and Lot Owners must be attached to the vendors statement or section 32 that is prepared when a property is being sold (Appendix 23 notes a copy of CAV's Statement of Advice and Information for Prospective Purchasers and Lot Owners).

#### **Transitional provisions and the *Owners Corporations Act***

To accommodate the move to the new regime, a number of transitional provisions are in place. They are listed in section 205 and Schedule 2 of the *Owners Corporations Act*.

In particular, the following are important:

- Subdivision bodies corporate are deemed to be owners corporations and despite the change of name, are to be the same body (Schedule 2, Clause 3)
- A reference to a subdivision body corporate (however described) must be read as a reference to an owners corporation (Schedule 2, Clause 4)
- The rules of the body corporate in force immediately before the commencement of the *Owners Corporations Act* continue to be in force to the extent that they are not inconsistent with the *Owners Corporations Act* or the Owners Corporations Regulations (Schedule 2, Clause 5)
- A body corporate certificate (Form 3) issued before the commencement of the *Owners Corporations Act* is deemed to be an owners corporation certificate under the *Owners Corporations Act* (Schedule 2, Clause 6)
- A committee or subcommittee of a body corporate existing before the *Owners Corporations Act* is deemed to be a committee or subcommittee under the *Owners Corporations Act* (Schedule 2, Clause 7)
- A resolution of a body corporate in force before the *Owners Corporations Act* will continue to be valid to the extent that it is not inconsistent with the *Owners Corporations Act* or the regulations (Schedule 2, Clause 8)
- Any delegation will continue to be in force under the *Owners Corporations Act*; however, if inconsistent with the *Owners Corporations Act*, it will be in force until the first annual general meeting of the owners corporation (Schedule 2, Clause 8(3)).

### **What the owners corporation must do**

The *Owners Corporations Act* imposes a number of obligations and duties upon the owners corporation and its members and occupiers. As a creature of statute, the owners corporation does not have unlimited powers; it must be able to find authority for everything it does. In addition to things that it must do, there are other things that it has the power to do. If an owners corporation acts in a way that is outside its power then the particular act will not be valid.