

OWNERS CORPORATIONS: MAKE YOUR OWN RULES

The rules of an owners corporation are an opportunity for a community of lot owners to set out their vision for, and expectations about, how they will live together. In this article, we will explore why owners corporation rules are important, how you can check what rules apply to an owners corporation and how to change them.

What is an owners corporation?

An owners corporation (formerly known as a body corporate) is typically created when a plan of subdivision that contains common property is registered by the Land Titles Office.

An owners corporation is the legal entity responsible for managing and administering common property on a plan of subdivision.

What is common property?

Common property is an area in a development that is owned by and is for the use and enjoyment of all affected lot owners. The plan of subdivision shows which areas of a development are common property and which areas are privately owned lots.

Who controls an owners corporation?

Lot owners have ultimate control of an owners corporation. They exercise this control by voting at a general meeting of lot owners or in a postal ballot.

At a general meeting, lot owners may elect a committee of up to 12 individuals to make decisions for the owners corporation.

Like lot owners, committees make decisions by holding committee meetings or by conducting a committee postal ballot.

Lot owners can also appoint a manager to make decisions for the owners corporation and to carry out some of the owners corporation's functions.

What are owners corporation rules?

Owners corporation rules are rules made by an owners corporation that are registered with the Land Titles Office.

Once registered, they bind the owners corporation, lot owners, tenants, sub-tenants and lot occupiers.

Why are rules important?

Clear and sensible rules are a hallmark of any effective community and can improve the quality of living and working in a development that has common property.

Good rules help make everyone's rights and responsibilities certain and assist to reduce misunderstanding and conflict.

Well drafted rules also make running an owners corporation more effective and efficient.

Why don't owners corporation laws contain all the necessary rules?

Every development is unique.

Developments range in size (from 2 lots to 500 or more lots). Some developments include extensive common facilities (such as a swimming pool) and multiple owners corporations whilst others do not.

Further, the preferences of one community of lot owners are often different to other communities.

Accordingly, the *Owners Corporations Act 2006 (Act)* includes some fundamental obligations but leaves the detail to be set out in rules tailored for each development.

The model rules

The Act prescribes a set of model rules for owners corporations.

The model rules are generic and are not suitable for many developments.

A copy of the model rules are available from Consumer Affairs Victoria's website:
<https://www.consumer.vic.gov.au/library/forms/housing-and-accommodation/owners-corporations/model-rules-for-an-owners-corporation.doc>

When do the model rules apply?

If an owners corporation does not make rules then the model rules apply to it.

Further, each of the model rules acts as a 'gap filler'. If a model rule provides for a matter and the rules of an owners corporation do not provide for that matter, then that specific model rule is deemed to be included in the rules of the owners corporation.

How can an owners corporation make its own rules?

A developer can make initial rules for an owners corporation by lodging the rules together with the plan of subdivision that creates the owners corporation.

Rules can be subsequently made, amended or revoked by a vote of lot owners.

Rules only take effect when they are registered with the Land Titles Office.

How many lot owners need to support a change of rules?

A special resolution of the owners corporation is required to make or amend rules. This requires at least 75% of all lot owners to vote in favour of the new rules, or, if a ballot or poll is taken, at least 75% of the total lot entitlements of affected lots.

What if I can't get 75% support?

If at least 50% of all lot owners vote in favour of new rules, then the resolution will become an interim special resolution. An interim special resolution becomes a special resolution after 29 days unless 25% of lot owners vote against the resolution.

What sort of rules can be made?

An owners corporation's power to make rules is limited to rules concerning specific matters, including:

- Health, safety and security
- Committees and sub-committees
- Management and administration
- Use of common property
- Lots
- Design
- Behaviour of persons
- Dispute resolution
- Notices and documents
- Use of the common seal.

Further, rules that unfairly discriminate against a lot owner or a lot occupier or that are inconsistent with or limit rights under any legislation are invalid.

Accordingly, care must be taken when drafting rules to ensure that the rules are enforceable.

Which rules apply to my owners corporation?

The rules of an owners corporation are registered with the Land Titles Office.

A copy can be purchased from Land Data Victoria. See: <https://www.landata.vic.gov.au/>

If the owners corporation has a manager you can ask the manager for a copy of the rules. Whilst a manager is not obliged to provide you with a copy, most managers are content to do so. If you obtain a copy of the rules from a manager, you should make sure that the rules are the current copy registered with the Land Titles Office.

If the manager is unwilling to assist, you can request to inspect the records of the owners corporation. Under the Act lot owners have a right to inspect the records of the Owners Corporation free of charge. The records of the owners corporation will include a copy of the owners corporation's rules.

I want to change the rules. What do I do?

A change of rules is best initiated by the committee of the owners corporation with the support of an experienced lawyer.

If you are a member of your owners corporation's committee, you can raise the matter at the next committee meeting. It is often helpful to have an experienced lawyer present who can guide the committee through this process.

If you are not a member of your owners corporation's committee, you can raise the matter with the manager of your owners corporation. Alternatively, you can raise the matter at the next general meeting of the owners corporation or consider nominating yourself to be elected as a member of the committee.

If you are a lot owner and would like to update the rules yourself, you can arrange for the new rules to be drafted. You can also arrange a postal ballot to pass the new rules. To arrange the necessary postal ballot you will need the support of either the chairperson, secretary or manager of the owners corporation. Alternatively, you will need to be nominated by lot owners whose lot entitlements total at least 25% of all lot entitlement.

How can we assist you?

We can assist you to achieve your goals.

For new rules, we can:

1. Consult with you and other stakeholders to draft new rules.
2. Assist you to obtain the necessary resolution to make the new rules.
3. Register the new rules with the Land Titles Office.

For existing rules, we can:

1. Advise you in relation to the enforceability of an existing rule.
2. Advise you in relation to a breach of a rule, including taking steps to enforce a rule.

Questions?

Please feel free to contact Terry Zakis of our office if you have any questions or require any assistance.

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