



Alert! Alert! Alert!

New Requirements for Section 32 Statements

As of 31 December 2007, Section 32 Statements will need to include an **owners corporation certificate**, where the property is affected by an owners corporation within the meaning of the *Owners Corporations Act 2006* (Vic) ('the Act'). In short, the new requirements will apply to any property in a subdivision which has common property.

The Act, which comes into operation on 31 December 2007, creates a new legislative framework in which body corporates, now called owners corporations, must operate. Significantly for conveyancing practitioners, the Act amends section 32 of the *Sale of Land Act 1962* (Vic) ('the SLA') to include a new subsection 32(3A). **This new subsection requires that a current owners corporation certificate and the attachments referred to in subsection 151(4)(b) of the Act be included in any Section 32 Statement where the property is affected by an owners corporation.**

Subsection 151(4)(a) of the Act sets out that the owners corporation certificate must include **prescribed information** in relation to the matters listed in (i) to (xiii) of that subsection, including:

- fees
- insurance
- repairs and maintenance
- funds held by the owners corporation
- liabilities and contingent liabilities
- contracts, leases, licences and agreements affecting common property
- services provided to lot owners and occupiers and the public
- notices and orders served on the owners corporation
- details of any legal proceedings
- manager's details.

Subsection 151(4)(b) of the Act requires that the certificate be accompanied by:

- a copy of the owners corporation rules
- an information statement (Form 2 in Schedule 2 to the draft regulations)
- a copy of all resolutions made at the last AGM
- a statement advising that further information can be obtained by an inspection of the owners corporation register.

A fee of \$150 inclusive of GST is prescribed for the certificate. **Practitioners need to be familiar with the details** of the prescribed information in the regulations, available in draft form on the Consumer Affairs Victoria website at www.consumer.vic.gov.au under Consultations & Reviews.

Failing to include an owners corporation certificate in the Section 32 Statement, or providing false information in the certificate, will give the purchaser a right to

rescind the contract at any time before settlement. This is subject to any right that may exist under subsection 32(7) to excuse the vendor's non-compliance.

Under the transitional provisions in Schedule 2 of the Act, current **body corporate certificates issued before 31 December 2007** under the Subdivision Regulations, are **deemed owners corporation certificates.** Therefore Section 32 Statements containing current body corporate certificates issued before 31 December 2007 can be used after 31 December 2007.

Practitioners may still encounter transitional problems with this legislative change after 31 December 2007. In reality, some owners corporations may be disorganised and slow to issue a certificate, despite the requirement to issue within 10 days of a request under subsection 51(3). Practitioners should resist any pressure from vendors and selling agents to deliver incomplete documents in the client's rush to 'sign up' a purchaser. Even when owners corporation certificates are provided to practitioners they may be incomplete or unreliable, and will need to be checked against the requirements of the Act and the regulations.

Act NOW to avoid the risk of a negligence claim

- Inform your staff of the new requirement, and update your precedent documents.

If acting for a Vendor

- Identify any files on which you have prepared a Section 32 Statement where no contract has yet come back to your office. If the Statement does not contain a body corporate certificate, the client should be advised not to use the Section 32 Statement on or after 31 December 2007 unless:
 - a body corporate certificate is obtained before 31 December 2007; or
 - an owners corporation certificate is obtained on or after 31 December 2007.
- **Section 32 Statements prepared on or after 31 December 2007 must contain an owners corporation certificate (and all attachments) or a deemed owners corporation certificate under the transitional provisions.**
- Check that **all of the information** required is included in any owners corporation certificate that you annex to a Section 32 Statement. The requirements of subsections 151(4)(a) and 151(4)(b) are extensive, and accuracy is critical. Ask your client to check the accuracy of the information in any owners corporation certificate.
- An owners corporation facing a claim may assert that a certificate was given on its behalf without proper authority. Although practitioners should be able to rely on the 'indoor management rule', it may be appropriate in some cases to also check the credentials of the person supplying the certificate to you.

If acting for a Purchaser

- Advise clients of any rights of rescission they may have.

Postscript

Since this bulletin was issued the regulations have been passed. Reference to schedule 2 should now be schedule 3 of the regulations.

Some practitioners have also drawn to our attention an ambiguity in the transitional provisions. Although a body corporate certificate is deemed to be an owners corporation certificate under the transitional provisions, it is not clear whether the attachments required under section 151(4)(b) must still be provided. The safest course is to comply with section 151(4)(b) and attach the documents required from 31 December even when you have a body corporate certificate issued before 31 December.

Legal Practitioners' Liability Committee
14 December 2007