

# OWNERS CORPORATION CERTIFICATES HAZARDS

Practitioners have done well to navigate the introduction of owners corporation certificates but more problems lie ahead.

The introduction of the *Owners Corporations Act* 2006 (the Act) on 31 December 2007 has caused many teething problems for conveyancing practitioners.

There is also potential for ongoing problems as clients become aware of their obligations under the Act.<sup>1</sup>

## Transitional problems

Practitioners have managed to get through the tricky time over New Year when the Act came into operation.

The transitional provisions deemed a body corporate certificate prepared before 31 December 2007 to be an owners corporation certificate. However, the transitional regime was silent on whether the attachments required under sub-s151(4)(b) must be provided.

The safest course is to comply with sub-s151(4)(b) and add the attachments to existing body corporate certificates.

Practitioners should also be wary of their s32 statements in circulation containing body corporate certificates prepared before 31 December 2007; it is advisable to review the currency of the information in the body corporate certificate and the s32 statement as a whole.

Inaccuracies in the body corporate certificate could give the purchaser grounds for rescinding the contract under sub-s32(5) of the *Sale of Land Act* 1962 (Vic).

## Inactive owners corporations

The biggest problem going forward for practitioners is the large number of inactive owners corporations in existence.

An owners corporation certificate is required each time a property is sold that is affected by an owners corporation. The problem is that many vendors do not realise that their unit is affected by an owners corporation.

The *Subdivision Act* 1988 (Vic) specifies that a plan of subdivision may provide for the creation of an owners corporation. Where there is common property in the subdivision there must be an owners corporation created (s27A); however, it is also possible for

an owners corporation to be created where there is no common property.

Practitioners need to carefully review the subdivision plan to confirm whether an owners corporation exists. If one does exist then an owners corporation certificate must be prepared.

The Consumer Affairs website [www.consumer.vic.gov.au](http://www.consumer.vic.gov.au) has a sample owners corporation certificate which includes provision for the company seal at the end of the document together with the signatures of two members.

There is also provision for the certificate to be prepared by instrument of delegation under s11 of the Act. These appear to be alternative requirements.

The Act makes no reference to the certificate being signed or sealed and the form is only a sample, not a prescribed form. While this supports the argument that the certificate does not need to be sealed or signed by delegation it would, at the very least, need to be authorised by the owners corporation.

Therefore, it would be prudent to have it signed pursuant to a delegation or sealed and witnessed, as provided by the sample certificate.

Where practitioners are acting for a vendor faced with an inactive owners corporation, one method of obtaining an owners corporation certificate quickly would be:

- to have the vendor prepare an owners corporation certificate in accordance with the sample;
- prepare a resolution of the owners corporation authorising the vendor to prepare the owners corporation certificate and authorising the owners corporation seal to be affixed to it: s20;
- resolutions of the owners corporation may be made by ballot: s90. If short for time, the vendor may want to door-knock the other unit owners and ask for their agreement to the resolution, although it should be noted that lot owners have 14 days to respond: s85. The sticking point to this strategy for larger subdivisions is that lot owners can only arrange a ballot if they are nominated by lot owners whose entitlements total at

least 25 per cent of all lot entitlements for the owners corporation: s83;

- resolutions of this type only require a majority vote: s86;
- when the common seal is affixed it needs to be witnessed by two people who are lot owners of different lots and members of the owners corporation: s21. If one person owns all of the lots then one signature will be enough; and
- many owners corporations will not have a company seal and so one will need to be made.

## Off-the-plan subdivisions

The Act does not directly address certification requirements for off-the-plan developments.

Owners corporations are defined under the Act to mean body corporates incorporated by registration of a plan of subdivision.

Given that off the plan developments do not have a registered plan of subdivision at the time s32 statement obligations arise, they appear to escape the certification requirements imposed in sub-s32(3) of the *Sale of Land Act* 1962 (Vic).

## Conclusion

A good knowledge of the Act is essential and practitioners are encouraged to read the Act carefully. Practitioners must also advise their clients of the risks of not complying with the s32 requirements so that ultimately it is the client's informed choice as to what steps are taken.

Practitioners should take every opportunity to refer clients to, or give them copies of, the fact sheets and other information on the consumer affairs website [www.consumer.vic.gov.au](http://www.consumer.vic.gov.au).

This column is provided by the LEGAL PRACTITIONERS' LIABILITY COMMITTEE. For further information ph 9670 2001 or visit the website [www.lplc.com.au](http://www.lplc.com.au).

1. For more on the Act, see "Change of scenery", page 85 of this edition and "Big changes for the world of communal living", January/February 2008 *LJ*, page 38.