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Owners Corporation Act Review
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Consumer Property Acts Review - Issues Paper No.1

Conduct and Institutional arrangements: estate agents, conveyancers and owners
corporation managers

Introduction

Consumer Affairs Victoria (CAV) is currently undertaking a review of the provisions under the *Owners Corporations Act 2006* that regulate the conduct of owners corporation managers.

Since the *Act* commenced on 31 December 2007, various stakeholders have raised a number of conduct-related concerns. In response to these concerns, the Minister for Consumer Affairs has asked Consumer Affairs Victoria to review the provisions of the *Act* in relation to the following:

- the appropriate length of management contracts
- unfair terms in management contracts
- managers' fees
- managers' conflicts of interest
- managers' conduct
- managers' record keeping and
- unsuitable managers.

The purpose of the review is to identify and develop options for consideration by the Minister for Consumer Affairs.



As part of this review, the Minister for Consumer Affairs has approved the release of an issues paper for public consultation. The purpose of the issues paper is to seek stakeholder feedback on the above issues, and if needed, the approaches to addressing the issues, including any regulatory controls.

Southbank Residents Association

Southbank Residents Association (SRA) is a community non-profit organisation, aiming to bring together and support the interests of all who live or work within Southbank, on matters such as planning and development, traffic issues, lack of public school, open space and other matters important to residents.

SRA is the convener of the Southbank Owners Corporation Network (SOCN), which is a forum for our building memberships to work together and discuss common areas of interest when it comes to apartment living in Southbank.

Southbank Residents Association welcomes this review and are glad for the opportunity to participate. The *Act* has been in effect for almost 9 years and SRA believes that this review will provide stakeholders with further clarity now and into the future.

This submission is made on behalf of Southbank Residents Association and we would like to acknowledge significant input from SOCN members.

1. Part A – Estate Agents and Conveyancers

SRA has chosen not to make comment on Part A - Estate Agents and Conveyancers as this section has little relevance to our organization and our members.

2. Part B – Conduct of Owners Corporation Managers

Registration and unsuitable managers

Are there benefits in aligning the eligibility requirements for an owners corporation manager to the extent practical with those of estate agents?

Yes, with estate agents or other likeminded individuals.

What are your views on whether owners corporation managers should be separately licensed or be part of an estate agent's licence?

Yes, because they can be stand-alone businesses and not forced to be a real estate agency.

Is it appropriate to extend the current regulatory criteria to include serious criminal offences?

Yes



What would be the benefits and costs of placing requirements on owners corporation managers to hold professional indemnity insurance as a condition of practice?

The benefits would outweigh the costs, therefore it should be a requirement for OC managers to hold professional indemnity insurance as a condition of their practice.

Conflicts of interests and other duties in procuring goods and services

In your experience what is the current practice of owners corporation managers in relation to disclosure of commissions?

Full disclosure. Anything less we would not be inclined to enter into a relationship with an agency.

Do commissions and discounts have an adverse impact on premiums for insurance, and if so, how does this manifest?

Potentially it does. This is why regulatory framework is so important. All commissions should be disclosed.

What are the non-regulatory approaches that could be considered to ensure commissions and other payments do not distort the market?

We do not feel there are any non-regulatory approaches that could be taken to adequately address this.

Unfair terms in management contracts

What are the main concerns about unfair contract terms in management contracts?

- Good governance and disclosure
- Being locked in to the contract
- Excessive incremental charges

Are there other types of unfair terms that should be considered? If so, what are they and how common are they? Why might they be unfair?

Being locked in to the same OC management company for an excessive period. It would seem this is common practise for newly established buildings. However, this would be unfair as the OC is unable engage the services of a more desirable OC management company.

Ending long-term management contracts

Should any distinction be drawn between the required contractual terms for initial and subsequent management contracts? If so, why? How would such a distinction be drawn?

Two years should be the set period for any initial contract for a new development. Thereafter it should be 12 months and approved at the AGM year-on-year.



What is your view as to contractual terms for the renewal of management contracts? For example, should there be any rules about terms such as automatic renewals or renewals at the prerogative of the manager only?

Renewal of management contracts should be approved annually at the AGM with enough notice to allow for discussion at the AGM. There should be no provisions for any of the rules to be considered by the manager only, but instead by the OC at the AGM.

Are there other issues that require a regulatory response relating to long-term management contracts?

No because long-term contracts should be regulated.

Managers' conduct around voting

How can concerns about managers' influence on voting be addressed?

We have not seen any examples of this occurring. We are unsure as to how this can be addressed, besides reminding the manager about being mindful of their influence on voting. It would be very difficult to precisely define the role of an OC manager in OC elections, and any text may create more problems than it solves. It may be better to leave the assessment of the OC manager to the OC itself. All voting should be transparent.

Financial transparency

How can concerns about fraudulent financial conduct be addressed? Would it be preferable in the context of financial transparency and accountability to require separate owners corporation funds to be kept in separate accounts?

It should be mandated that there are separate accounts.

What proportion of managers still use pooled accounts, and what would be the realistic costs and time required to transition to the use of separate accounts? Where possible, include the basis for these estimates.

We are not aware of any, but we insist that all OC managers should use separate accounts and are against the practice of pooling accounts.

Conclusion

Thanks for the opportunity to make a submission on this review and we look forward to the next phase of the process.

Tony Penna
President
Southbank Residents Association