



OWNERS CORPORATION INFORMATION SHEET

The law has a number of special requirements when a property that is affected by an Owners Corporation is going to be sold. These requirements can mean that the preparation of the obligatory Vendor's Disclosure Statement is delayed until an Owners Corporation Certificate is obtained from the Owners Corporation Manager and may require the vendor to pay an insurance premium that the vendor was not expecting

OWNERS CORPORATION CERTIFICATES (OCC)

Many Owners Corporations are well managed, either by a 'local' manager who is one of the owners or by a 'professional' manager engaged for that purpose. Generally speaking large scale apartment developments retain a professional manager who will provide an Owners Corporation Certificate for a fee and even the smaller managers usually undertake this task expeditiously. The fee is about \$150 in respect of each Owners Corporation and the Certificate is usually provided within 10 days of request.

However not all Owners Corporation have appointed Managers. Smaller, two, three and four lot Owners Corporations may have existed for many years without an operational Owners Corporation. This presents a problem in relation to provision of an OCC. A common way of overcoming this problem was for the vendor's solicitor to prepare a standard OCC revealing no meetings, no fees and no insurance and for the vendor to sign that OCC and include it in the Vendor's Statement. However, as a result of amendments in 2014, such an Owners Corporation has been deemed to be "inactive" and no OCC is required. This has simplified the situation in relation to TWO lot Owners Corporations.

However this option is not available for the sale of a lot in an Owners Corporation of MORE THAN TWO lots as s.11 of the Sale of Land Act requires that a vendor of a lot affected by an Owners Corporation must ensure that the Owners Corporation has insurance in place as required by the Owners Corporation Act and that Act (s.60) REQUIRES the Owners Corporation to take out public liability insurance in respect of common property (such as a common driveway). TWO lot plans are exempt from this requirement (s.7) and may therefore be exempt from providing an OCC if otherwise "inactive"; that is they have not met and have no fees.

INSURANCE

The difficulty with an Owners Corporation of more than two lots that does not have a Manager is that no-one will have arranged this common property insurance. Individual owners simply pay their own building insurance and no common property insurance is taken out. Indeed an individual owner will often make the point that a careful inspection of their individual building insurance policy reveals that it extends to cover the owner's liability in relation to common property. But that is irrelevant as the Act requires the Owners Corporation to "have" the insurance, not the individual owner. That there is likely to be "double insurance" in such cases is equally irrelevant.

Many Owners Corporations ignore this common property insurance obligation for many years with no consequence. But the problem arises for any owner who decides to sell. Section 11 of the Sale of Land Act requires that the insurance be in place at the time of sale and gives the purchaser the right to AVOID the contract at any time up until settlement if the insurance is not in place. No vendor can afford to knowingly enter into a contract that can be avoided by the purchaser at any time; therefore compliance with s.11 is practically mandatory.

The vendor is under time pressure to organise this common property insurance quickly as the sale process has begun. Whilst it is possible for the vendor to approach other owners to contribute to this insurance, that often does not work out as the other owners may not be contactable or may have no interest in contributing to this expense which, unless they too propose to sell, holds no real benefit for them. The selling owner then generally arranges the insurance at their own expense so that the proposed sale can proceed and is very unhappy about having to incur this unexpected expense (usually around \$500). Whilst the vendor is able to require the purchaser to contribute to this expense in relation to the balance of the year after settlement as part of the adjustment process, this can only be for a proportional share of the premium based on the number of lots in the plan. Only that proportion that relates to the lot sold can be adjusted and the vendor has to bear the balance of the premium if the vendor is unable to recover a contribution from other lot owners, which is unlikely.

A half-way house in this scenario is that one of the owners, whilst not acting as a Manager, has arranged common property insurance and other owners have contributed to the cost. In that case the vendor can provide an informal OCC setting out the insurance particulars and a statement that for all other purposes the Owners Corporation has been "inactive".