

**Real Estate Institute of Victoria** – for advice on selecting a manager and to complain about managers who are members of REIV.

Telephone: 9205 6677. Visit: [www.reiv.com.au](http://www.reiv.com.au)

**Tenants Union of Victoria Ltd** – free advice about rights and responsibilities of tenants. Helps with tenants' complaints. Membership is open to all tenants.

Telephone: 9416 2577 (Ask for details of tenants' services in metropolitan and country areas.)

Visit: [www.tuv.org.au](http://www.tuv.org.au)

**VCAT – (Victorian Civil and Administrative Tribunal)**

– deals with disputes across a range of areas including disputes about goods and services.

Telephone: 9628 9830 (Civil Claims List)

Visit: [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au)

#### FURTHER READING

These selected publications deal in more detail with issues affecting body corporate living.

Libbis, Simon (2001) *Subdivisions with the Lot: a complete guide to subdivisions, bodies corporate and sales 'off the plan'*, Law Crest, Melbourne (A subscription service updated periodically)

Puregger, M. I. (1956) *How to Chair Meetings*, Jacaranda Press

Tenants Union of Victoria (1998) *Tenant's Handbook*, 8th edition, Tenants Union of Victoria, Melbourne

Valentine, Nina (1993) *Chairing and Running Meetings*, Penguin Books

Victoria Law Foundation (1999) *Working it Out: a user's guide to dispute resolution processes*, Victoria Law Foundation, Melbourne

Victoria Law Foundation (2000) *Neighbours, the law and you: a consumer guide to neighbourhood law*, Victoria Law Foundation, Melbourne

# Common ground

YOUR GUIDE TO  
BODY CORPORATE LAW  
AND LIVING



# COMMON GROUND – YOUR GUIDE TO BODY CORPORATE LAW AND LIVING

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*Richard Coverdale Director of Publishing, Victoria Law Foundation*

## COMMON GROUND

This booklet is written for the approximately 750 000 Victorians who, as unit owners or occupiers, are members of a body corporate or who live in a property run by a body corporate.

It is important that your body corporate is active and does its job conscientiously and democratically. This booklet will help you ensure this. It explains:

- what a body corporate is and does
- how it is set up and why
- your rights and responsibilities as a member of a body corporate
- how a body corporate should operate
- how to resolve disputes if they arise.

This information should enable you as a unit owner or occupier to participate effectively in making fair and democratic decisions with other owners about joint assets.

This booklet is published in response to the new *Subdivision (Body Corporate) Regulations 2001*<sup>1</sup>, which came into effect in Victoria on 17 April 2001. These Regulations together with the *Subdivision Act 1988* define how bodies corporate must operate. The Regulations and the Act, which are administered by the Department of Infrastructure, also apply to bodies corporate created under strata titles and cluster titles legislation before 1989.

**The Regulations and Act do not apply to stratum titles or company share units.**

This booklet focuses on the residential body corporate, not industrial or commercial bodies corporate.

It is available electronically on the Internet:

**[www.victorialaw.org.au](http://www.victorialaw.org.au)**

<sup>1</sup>The Regulations use the term 'lots' to refer to what are usually called 'units', 'flats' or 'apartments'. In this booklet we use the term 'unit' to mean all of these.

*This booklet is a general guide to the law on residential bodies corporate and is not intended as a substitute for legal advice. In case of a dispute, you are strongly urged to seek the assistance of a lawyer or one of the agencies listed in the back of this booklet. While care has been taken to ensure the accuracy of the material contained in this publication, no responsibility can be taken for any errors or omissions.*

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## WHAT IS A BODY CORPORATE

Bodies corporate provide a legal framework in which unit owners or occupiers can enjoy common property together. Common property may include driveways, paths, stairs, passages, lifts, lobbies, common garden areas and other facilities set up for use by all members and occupiers of the units. Under the *Subdivision Act 1988* (the Act) if a plan of subdivision contains common property then a body corporate is created when that plan is lodged with and registered by the government Registrar of Titles.

When you buy a unit that is part of a body corporate, you automatically become a member of that body corporate. When you sell a unit, the new owner replaces you as a member of the body corporate. Tenants cannot be members of the body corporate.

As an owner in a body corporate, you will have a separate Certificate of Title to your own home just like other homeowners. Your Certificate of Title will include a share in any common property. The title is otherwise the same as any other residential property.

As a member of a body corporate you are responsible for decisions about repairs, maintenance and insurance not just for your own home but also for the property you own jointly with others.

### IS COMMON PROPERTY EQUALLY SHARED?

**Your lot entitlement is your share of the ownership of common property and body corporate assets.**

**Your 'lot liability' (normally the same share as your lot entitlement) is your share of the responsibility for the expenses of the body corporate.**

The registered plan of a subdivision shows your lot entitlement and lot liability, usually set out as a percentage of the total subdivision. These entitlements and liabilities are initially allocated by the developer based on an assessment of relative values at the time of subdivision.

If you think your share of the costs is not right, try to get the other owners to agree on a better arrangement. You may need legal advice. To change formal lot entitlements and lot liabilities you have to get a unanimous resolution of the members. This is not easy but it is also possible to apply to a court to make such a change. The Registrar of Titles must record all changes so that owners or prospective owners can check their entitlement and liability.

Sometimes there is more than one body corporate created in a plan of subdivision. This often happens in large multi-storey developments when different unit owners are entitled to own different common property. If the plan for your subdivision includes the statement 'limited to common property', then your body corporate has a limited function. For example, it may be responsible for a swimming pool that only some unit owners are entitled to use. You should check these details carefully when you are buying a unit.

## WHAT DOES A BODY CORPORATE DO?

A body corporate is a legal entity so any action it takes should be based on the Act and Regulations that set out its legal functions. These legal functions are:

- to manage, administer, repair and maintain the common property
- to organise compulsory insurance and any other insurance for the body corporate
- to issue body corporate certificates to prospective buyers and others who want them
- to ensure that the Regulations and the rules of the body corporate are complied with.

The Regulations give a body corporate powers to perform these functions including financial powers and the capacity to appoint or employ people to help it do the work. If your body corporate has never met, the Regulations enable you to take steps to convene one.

## HOW DO YOU STAY IN TOUCH WITH YOUR BODY CORPORATE?

All bodies corporate must keep a letterbox and put up a sign that tells tenants and owners how to contact the body corporate. The sign can be placed on the letterbox of a member who is responsible for the body corporate mail. If the body corporate has a manager, it must put up a sign giving the manager's name and address and the body corporate number. (This number is allocated by the Registrar of Titles at the time the body corporate is created. This is explained further under 'What is a body corporate?' on page 1.)

The body corporate must keep records of the full name and address of all its members. If you sell your unit you must inform the body corporate of the name and address of the new owner within one month of settlement. If you are a member of a body corporate but you do not live in your unit or you are going away for more than three months you must advise your body corporate of your new mailing address as soon as possible. This ensures that you and all members are kept fully informed of anything that may affect you or your property.

### THE BODY CORPORATE CERTIFICATE

A body corporate certificate (Form 3 – all forms attached to the Regulations are listed on page 25) contains the following basic information:

- the body corporate number
- the names of vendor and purchaser (as appropriate)
- the current annual fees paid and owing and any special fees or levies and when they are due
- any repairs or work the body corporate has performed or is about to perform that may mean paying additional costs
- the current insurance cover and renewal date
- whether the body corporate has submitted any additional rules to the Registrar
- any financial liabilities and contracts not otherwise shown or budgeted for above
- any lease, licence or special privilege affecting the common property

- any agreement to provide services to members and occupiers for a fee
- any legal proceedings or any circumstances that may give rise to proceedings
- whether any proposal has been made for the appointment of an administrator
- whether a manager has been appointed.

You can get a body corporate certificate by applying to the body corporate and paying the current fee of \$50.00 (plus GST if applicable).

### ACCESS TO INFORMATION

As a member of a body corporate you have a right to access information. If you or your representative or a mortgagee of a unit asks, the body corporate *must* make the accounts and minutes of meetings of the body corporate available for inspection at any reasonable time.

Bodies corporate are not normally required to send out minutes after meetings (see under 'What is a quorum?' on page 9). But your body corporate must keep minutes of meetings for the life of the body corporate in case there are disputes about any decisions made. Your body corporate must also keep financial records; these can be kept on a computer, providing they can be inspected

### LOOKING AFTER YOUR TENANTS

If you own a unit but you do not live in it, you must give your tenants a copy of the rules of the body corporate when they move in and a copy of any new rules as they are made. This will help your tenants to understand any rights and obligations over and above those set out in the tenancy agreement. Body corporate rules and decisions cannot replace the requirements of the *Residential Tenancies Act*.



## HOW DO BODIES CORPORATE OPERATE?

### GETTING STARTED

The Regulations require that within six months of the registration of a plan of subdivision, the person who applied for registration must call a meeting of body corporate members. At that first meeting, which is the first Annual General Meeting (AGM), all of the following documents must be given to the new body corporate:

- the full name and address of each member
- a copy of the plan of subdivision, building plans and other similar documents
- a copy of the Act and Regulations
- all forms necessary under the Regulations (see full list on page 25)
- any current insurance policies covering the property
- copies of all warranties and guarantees and the names of all companies, tradespeople or suppliers who provided them
- books to enable the body corporate to keep minutes, accounts and other records
- a common seal for the body corporate (see under ‘The common seal’ on page 8)

### RUNNING YOUR BODY CORPORATE

A body corporate can manage its own affairs through meetings or ballots of members but as a means of getting tasks done between meetings or ballots your body corporate will need to:

- set up a committee (see under ‘Forming a committee’ on page 6) and appoint a secretary
- appoint a manager (either paid or unpaid)

- delegate, that is give authority to, the secretary or the manager to act on your behalf between meetings or ballots. (All delegations should be in writing.)

### *Limits on delegation*

The Regulations prevent a body corporate from handing over the right to make decisions about:

- powers or functions requiring a special resolution or a unanimous resolution
- the conduct of an AGM or a special general meeting (as distinct from arranging these)
- the power to remove a committee or officer of the body corporate (including the secretary and manager)
- the power to delegate.

If a body corporate delegates to the secretary or manager the power to do things it must be on condition that:

- the secretary can only sub-delegate in turn to a member of the body corporate
- the manager can only sub-delegate in turn to an employee of the manager.<sup>2</sup>

### FORMING A COMMITTEE

If your body corporate has 13 or more members you must elect a committee at each AGM. (Bodies corporate with fewer than 13 members can elect a committee, but don’t have to.) The committee must have at least three but not more than 12 members. All committee members must be members of the body corporate or hold proxies on behalf of members of the body corporate (see under ‘What is a proxy?’ on page 11).

Committee members hold office from the day of their election until a new committee is elected at the AGM. Committee members can stand for re-election. Your body corporate may decide at any meeting to add or remove a committee member or replace or remove the whole committee.

If there is a vacancy on your committee between AGMs, the remaining members of the committee may co-opt another member of the body corporate or a *proxy* for a member. However, providing there are at least three remaining committee members, they may carry on without filling the vacancy.

<sup>2</sup> Existing delegations under the old Regulations remain in force until the first AGM after 17 April 2002, unless cancelled earlier.

### *How a committee works*

The Regulations set out the following rules for running your committee:

- a quorum for a committee meeting is at least half of the members of the committee
- the members of the committee must appoint a committee member to be its chairperson
- the committee must present a report of its activities to the AGM of the body corporate
- bodies corporate must keep minutes of all meetings including:
  - the date, time and place of the meeting
  - the names of members and holders of proxies who were present
  - the names of people who provided proxies, and
  - the voting on any resolutions.

### **THE ROLE OF THE SECRETARY AND THE MANAGER**

Managers and secretaries have a responsibility to act fairly and according to the decisions of the members. It is a good idea for the committee to prepare a written position description clearly setting out the tasks the secretary and the manager should undertake. The secretary must be a member of the body corporate; the manager doesn't have to be. Many bodies corporate choose to employ a manager. Some managers are only part time or are appointed to carry out specific functions for the body corporate. Many managers work for more than one body corporate.

### *Employing a manager*

If your body corporate wants to employ a manager who is to be paid, it must first complete Form 4 (see under 'List of forms attached to the regulations' on page 25) indicating the manager's fee. The manager is directly accountable to the body corporate and must submit an annual report of the activities undertaken to each AGM.

The body corporate cannot employ a manager unless the manager holds professional indemnity insurance, which indemnifies against any claims of negligence arising from work the manager or their employees do. This insurance must be sufficient to meet claims up to at least \$2 000 000 a year (see under 'Insurance' on page 17).

A body corporate may dismiss the secretary or manager at an AGM or special general meeting, if there is good reason to be dissatisfied with the way they have done the job. It may also be possible for you as a member or one of a group of members to take action against the manager through the Civil Claims List at VCAT (see VCAT under 'Where to go for help' on page 25).

It is advisable to seek legal advice before taking any of these actions.

### **THE COMMON SEAL**

**A common seal is a rubber stamp showing the body corporate registration number.**

It is put on documents (such as the official forms mentioned) to show that people acting for a body corporate have been authorised by a resolution passed by the body corporate. The common seal can only be used in the presence of two members who must record next to the seal that they witnessed the use of the seal by signing their name, printing their full name and address and stating their capacity as witnesses. This should prevent anyone acting without the consent of the members.



### **MAKING DECISIONS**

The Regulations encourage you, as a member of your body corporate, to participate in decisions that affect you and it makes sense to do so to protect your interests. These decisions can be made:

- by postal ballots
- by attending annual general meetings or special general meetings.

## ANNUAL GENERAL MEETINGS

If the body corporate receives or pays out money in the financial year it must have an AGM. All AGMs (other than the first one) must be called by the secretary, or the chairperson of the committee or the manager acting on the authority of the committee. If there is no committee, the manager or you as a member may call the AGM.

Items that must be on the agenda of each AGM include:

- a report of the manager's activities (if there is a manager)
- the annual financial statement (sent out with the notice of the meeting)
- a report of the committee's operations (if there is a committee).

## SPECIAL GENERAL MEETINGS

The secretary, the manager, the chairperson of the committee or the committee may call a special general meeting whenever there is a matter requiring decision by the members such as rules, repairs or use of facilities.

Meetings can also be called to discuss any issues and attempt to resolve disputes. You need to establish a group of members holding at least 25 per cent of all the lot entitlements before you can ask the secretary, the manager the chairperson or the committee to call such a meeting. If they fail to call the meeting as requested or if there is no secretary, manager, chairperson of the committee or committee, then you may arrange a special general meeting.

## NOTICE OF MEETINGS

Each member must be given at least 14 days written notice either hand-delivered or posted to their last known address. This notice must set out the time and place of the meeting and the general nature of any business to be discussed at the meeting. If any *special resolutions* (see page 12) or *unanimous resolutions* (see page 12) are to be moved at a meeting their text must be set out on the notice. The notice of each meeting must state that a member has the right to appoint a proxy.

## WHAT IS A QUORUM?

**A quorum is at least 50 per cent of the members of the body corporate or, failing that, at least 50 per cent of the total lot entitlements.**

To conduct business legally at a meeting you need a certain number of members in attendance – a quorum. A meeting can go ahead without a quorum, but all decisions taken at that meeting are interim decisions and the secretary or the manager or the committee chairperson must send a notice of all those decisions to all members within 14 days of the meeting.

Interim decisions become full decisions of the body corporate if nobody calls for a special meeting within 29 days of the date of those interim decisions, or when a later meeting confirms them.

## CHAIRING MEETINGS AND VOTING

Your body corporate can elect someone, including the manager, to chair body corporate meetings. That is up to you as body corporate members to decide. However where a committee is formed, the members of that committee must appoint a member to chair their meetings. Two excellent pocket-book guides on running meetings and the role of office bearers are recommended at the end of this booklet. (See under 'Further reading' on page 27.)

A vote is usually taken by a show of hands but a member may, before or after a vote is taken, ask that a written ballot be taken. If a written ballot is taken after a vote by show of hands has been counted, the decision of the written ballot overrides the decision of the vote by show of hands. Voting by written ballot must be based on lot entitlement, which means that some votes may be worth more than others. (See under 'Is common property equally shared?' on page 1, for an explanation of 'lot entitlement'; this is what will determine the value of your vote.)

Where a vote is taken, it is normally one vote for each unit. Matters are decided by a simple majority of votes cast (more than 50 per cent), except those required by the Regulations to be unanimous resolutions or special resolutions. If your body corporate fees are in arrears or you have other amounts owing to the body corporate you are

not entitled to vote at all – not in person, by ballot or by proxy – except when a special resolution or unanimous resolution is required. You can, however, still participate in meetings and access body corporate information.

If the voting is tied and the chairperson is a member of the body corporate or votes as proxy for a member, the chairperson can have a second or casting vote. If the vote is tied and the chairperson does not exercise a casting vote, the motion fails.

## POSTAL BALLOTS

If it is difficult to get members to attend meetings, postal ballots are a good way to have all members participate. You must allow voters at least 14 days after the ballots have been sent out to return their ballots. The closing date for ballots must be clearly stated.

To pass an ordinary resolution you need a majority of the votes returned by the closing date. If the number of votes returned by that date is less than the number needed for a quorum, the resolution fails. Matters requiring special resolutions or unanimous resolutions must achieve the majority required for those types of resolutions.

Your body corporate must keep a record of all resolutions made by postal vote.

## WHAT IS A PROXY?

**A proxy is a person you authorise to attend a body corporate meeting for you.**

Your proxy can speak or vote for you (including at a ballot) or represent you on a committee. You may state how your proxy is to vote on particular matters.

Your proxy arrangement must be in writing on a Form 6 and delivered to the secretary of the body corporate. Once the secretary receives it your proxy can act from the start of the next meeting. Your proxy arrangement lapses after 12 months or earlier if specified on your Form 6.

To prevent possible conflict of interest, if your proxy is not a member of the body corporate, they are not allowed to vote on matters that relate to the delegation of powers and functions, or the appointment, payment or removal of the manager of the body corporate. For example, when

managers are proxies they must abstain from voting on their own fee or re-appointment.

## WHAT IS A SPECIAL RESOLUTION?

**Special resolutions are required for some decisions to do with fees and levies, penalty interest, works costing more than twice the annual fee, additional insurance, additional rules, leasing or licensing common property or the use of property by the public.**

These resolutions must be set out on the notice of the meeting issued at least 14 days before the meeting.

To pass a special resolution by show of hands at a meeting you need at least 75 per cent of the total number of eligible votes in favour (note: one vote for each unit).

To pass a special resolution by a written ballot you need at least 75 per cent of the total lot entitlements in favour.

## WHAT IS A UNANIMOUS RESOLUTION?

**A unanimous resolution is required when fundamental decisions are proposed such as changing lot entitlements and liabilities or selling common property.**

To pass a unanimous resolution by show of hands at a meeting you need all votes of all the unit owners. To pass a unanimous resolution by a written ballot you need the total lot entitlements of all the units.

As with special resolutions, the text of any proposed unanimous resolution must be placed on the notice of meeting issued at least 14 days before the meeting.



## MANAGING MONEY

### FEES

A body corporate sets fees to cover general administration and maintenance, insurance and other ongoing costs. These are sometimes called annual fees but the body corporate can decide the times for their payment – annually, half-yearly or quarterly. As a body corporate you decide the level of fees, how they are paid and who will collect them. This needs to be clear to all members.

Your body corporate can also levy special fees or charges to cover extraordinary items of expenditure. If the amount proposed is more than twice the amount of the annual fees, it must be passed by a special resolution (see under ‘What is a special resolution?’ on page 12). This safeguards against unreasonable charges being made for unnecessary works. Some bodies corporate prefer to set up a reserve fund to meet unforeseen costs. Consideration should be given to the management and safekeeping of this money.

If you don’t pay your fees or other levies you lose your right to participate in some decisions of the body corporate. You can still attend meetings, but you can only vote where a special resolution or unanimous resolution is required.

### SPENDING MEMBER FEES

Your body corporate can borrow, repay and invest money and establish and operate bank accounts.

It can buy and sell personal property (such as a washing machine for a communal laundry) for the use of members, the occupants of units and the public. It can lease or obtain a licence for personal property (such as lawn mowers) for the use of the members and the occupiers of units.

It can pay people or appoint volunteers to assist in the performance of its functions. It can provide services such as

gardening or window cleaning or arrange for people to do these jobs.

It can pass additional rules concerning finance but these rules have to be carried by a special resolution of the body corporate and registered as part of its rules.

By passing a special resolution, the body corporate may allow members of the public to use the common property (for example, a tennis court) or the personal property (for example, tennis racquets) of the body corporate when members do not require them. It can charge a fee for this use. By special resolution, the body corporate may lease or license the whole or a part of the common property. For example, it may lease a room for functions.

### RECOVERING DEBTS

A body corporate can sue members or other people to recover debts. By passing a special resolution, bodies corporate may charge penalty interest on money owed by members after the due date for payment of the general fees and charges. The Regulations set a limit on this interest rate. It is the official interest rate (published regularly in the Law List in *The Age*) minus at least two per cent.

### KEEPING BOOKS

Your body corporate must record all financial transactions in up-to-date account books. They must compile financial statements covering all income, expenditure, assets and liabilities and send an annual financial statement to members with the notice for the AGM. Members are entitled to see the books of accounts on request at any reasonable time.

How much financial record keeping your body corporate needs to do will depend on its size and the complexity of its transactions. If your body corporate has an annual turnover of \$50 000 or more it needs to be registered for GST. Your body corporate may decide to employ an accountant to help establish a financial record keeping system that best suits its needs.

Although the Regulations do not require an audit of the financial accounts, your body corporate is encouraged to appoint an auditor to do this. (As members you will have to pay for this service.)



## REPAIRS AND MAINTENANCE

### COMMON PROPERTY

One of the main functions of the body corporate is to maintain the common property around the units. It has the legal responsibility and the power to carry out any necessary repairs, maintenance and other works on common property. Common property includes:

- moveable or fixed items regarded as part of the common property (such as carpets in lobbies, fire extinguishers and air-conditioners)
- services related to the common property (such as pipes and cables)
- the equipment and services for which an easement (for water and sewerage, for example) exists for the benefit of the units and common property.

The body corporate may not be responsible for maintaining any service that is for the benefit of only one unit. As the owner of that unit you may have to pay even if the service passes through the common property or other units. You would have to negotiate with the other owners to get the job done.

### INDIVIDUAL UNITS

All members have a legal obligation to maintain their units, and the services exclusively serving them, in a state of 'good and serviceable repair'. If the eaves of a building on your unit overhang another unit or common property, you are responsible for their maintenance.

If the outward appearance or state of repair of your unit is run down or adversely affects the other members' enjoyment of the units or common property, the body

corporate can order you to make improvements.

When served with a notice by the body corporate to do repairs or maintenance, you must have them carried out within 28 days of the notice. If you have not complied within this time, the body corporate can arrange to have the work done.

Your body corporate has the power to recover the cost of work undertaken substantially for the benefit of some of the units from the owners of those units. The amount payable is calculated on the basis that the unit that benefits more pays more, although this is not always easy to calculate and can cause disputes. (See under 'Resolving disputes' on page 20.)

### CAN THE BODY CORPORATE AUTHORISE A PERSON TO ENTER A UNIT?

Your body corporate can authorise someone to enter your unit on its behalf:

- to inspect, maintain or replace any structural or service component of the building for which the body corporate is responsible
- to carry out repairs, maintenance or other works.

However, it must give you at least seven days written notice unless a lesser time is agreed or there is an emergency. An emergency includes:

- a problem with essential services such as gas, water, or sewerage
- a leak, cracking or problem likely to affect the immediate safety of the building.

If your unit is rented to tenants, the body corporate must give the same notice as required under the *Residential Tenancies Act 1997*. The body corporate can authorise someone to enter the unit at any time between 8 a.m. and 6 p.m. on any day (except a public holiday) if at least 24 hours written notice has been given to the tenant stating the reasons for entry.

### CAN YOU DECORATE THE INSIDE OF YOUR UNIT?

As an owner you have the right to renovate and decorate the interior walls even if they are your boundary. This

means you can put up curtains, paint or paper walls, hang pictures and install floor coverings and light fittings without referring to the body corporate. However, unit owners should advise the body corporate before starting any renovation or decoration to ensure there are no additional rules (for example, requiring carpets not tiles to reduce noise) and to prevent disputes arising out of disruption to other residents (for example, when trades people's vehicles or building materials take up car parking space).



## INSURANCE

Your body corporate must have both *public liability insurance* for the common property and *reinstatement and replacement insurance* for all buildings on the common property. (In multi-storey developments bodies corporate must have both public liability insurance and reinstatement and replacement insurance for the whole building.)

By special resolution (75 per cent majority), the body corporate may take out additional insurance covering the common property or the units or any liability resulting from the conduct of its office bearers. Some bodies corporate agree to insure all the units for both public liability and reinstatement and replacement costs to ensure that any action that needs to be taken can be taken without delay.

The minimum compulsory insurance may or may not be sufficient to cover individual units, so it is advisable to check if additional insurance has been taken out by your body corporate and to cover any gap in the insurance of your own unit (including your home contents).

Buyers and sellers of units should be aware that the *Sale of Land Act 1962* allows a purchaser to get out of a contract to buy a unit up until settlement date if the required insurance is not in place.

**Public liability insurance covers any compensation your body corporate has to pay for accidents or incidents on the common property that result in:**

- any person's injury or death or illness
- any damage to or loss of property.

Your public liability insurance must cover your body corporate for a minimum of \$10 000 000.

**Reinstatement and replacement insurance must cover accidents or incidents (like fire) that result in costs to:**

- remove debris and replace, repair or rebuild the property to 'as new' condition; and
- to pay for architects, tradespeople and others engaged in the replacement, repair or rebuilding of the damaged property.



## ABIDING BY THE RULES

As a member you must comply with the Regulations and rules of the body corporate.

### STANDARD RULES

Six standard rules apply to all bodies corporate; these are found in Form 1 of the Regulations (see under 'List of forms attached to the regulations' on page 25). As a member you must abide by these rules and ensure that your tenants do so too.

You must not:

- use or let the common property be used in ways that unreasonably interfere with or prevent its use by other members or occupants of units or their families or visitors
- park a vehicle or let one be parked on the common property so as to obstruct a driveway or entrance to a unit or in any place other than in a specified parking area
- use or let a unit be used for any purpose which may be illegal or injurious to the reputation of the development or cause a nuisance or hazard to any other member or occupier of any unit or their families or visitors
- make or allow any undue noise in or about the common property or any unit
- make or allow music or machinery noise which may be heard outside a unit between the hours of midnight and 8.00 a.m. (All Victorians have to honour the *Environment Protection Residential Noise Regulations*, which vary according to the source and type of noise – for example, vehicles, power tools, music, domestic appliances. The times at which noise can be made also vary from weekday to weekend.)
- keep an animal on the common property if you have been given notice to remove it after the body corporate has agreed that the animal is causing a nuisance.

Obviously, these rules must be interpreted in the context of each situation.

### ADDITIONAL RULES

Your body corporate may want to make other rules such as time restrictions on the use of a common facility such as a tennis court. A body corporate may make additional rules or change or cancel existing rules so long as they are not inconsistent with any Victorian law or the *Standard Rules*. If a body corporate wants to do this, it must pass a special resolution and lodge that resolution and the changes with the Registrar (on Form 2) with a copy of any other rules currently in force. There is a fee to be paid to the Registrar.

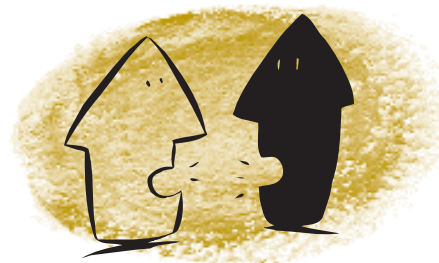
New or amended rules do not come into effect and cannot be enforced until the Registrar has recorded them. However, any existing rules of a body corporate recorded by the Registrar before the start of the new Regulations on

17 April 2001 remain in force, providing they are compatible with the Act or the new Regulations.

Additional rules are not necessary if an existing law covers the matter. For example, Council regulations on incinerators, dumping rubbish and domestic animals causing nuisance apply to all residents including those in bodies corporate.

Additional rules lodged with the Registrar represent an agreement between the members that is legally enforceable. However, it must be recognised that there are limits to the powers of bodies corporate. The Regulations say that members 'must comply with the rules of the body corporate and these Regulations' and that a body corporate can 'take any action necessary or desirable to ensure that these Regulations and the rules of the body corporate are complied with'. However, the Regulations do not spell out powers to deal with breaches of the rules and Regulations. (See under 'Resolving disputes' below.)

You will be able to get a copy of the body corporate rules from your secretary or manager but your body corporate may charge you for these.



### RESOLVING DISPUTES

The success of your body corporate will depend on all members being tolerant of differences and developing positive relationships. Preventing disputes arising in the first place is the smartest strategy. For example, it is important that everyone knows there are rules and Regulations and where they can find out about them. Tenants do not normally go to body corporate meetings, so you need to make sure that your tenants know the rules.

## WORKING IT OUT YOURSELF

When disputes occur, it is essential to act promptly to resolve them. If disagreements are left to fester, living in a body corporate can become unpleasant. Taking legal action should be the last resort: it is often unnecessary, costly, time consuming, can cause bitterness and does not necessarily produce a solution acceptable to all concerned.

The Regulations are designed to encourage everyone to have their say and to deal with issues as they arise before they get out of hand. The Regulations and standard rules are underpinned by the principle that each owner has obligations and responsibilities including taking into consideration the rights of other members of the body corporate and their tenants.

Neighbourhood disputes about noise, parking, visitors, pollution (including litter, burning off, disposing of oil and paint) and animals should be covered either by the standard rules, by council by-laws and EPA Regulations. If you have a concern about something that one of your neighbours is doing, it is always best to approach them directly first.

Disputes arising out of inefficiency, real or perceived, in the functions of bodies corporate (such as the maintenance of the common property, the size of levies or the responsibility for repairs) are best raised, discussed and resolved at meetings. (See the sections above on meetings and use your right to participate in and even initiate meetings.)

Some useful tips for resolving disputes.

- Know where you stand. It is no good complaining about something if you don't know the rules and Regulations. Find out the facts before you raise a concern in public.
- Think about the outcome you want to achieve. See if you can think of options for solving the problem: there might be more than one way of restoring the peace.
- Be fair and reasonable. Put your case clearly, and listen to the other side, focusing on the issue rather than the personalities. Be polite; try not to offend people. The persons concerned might be willing to negotiate if you show goodwill, and remember you will have to maintain a good relationship with them after it is all resolved.

- Use the existing avenues such as members' meetings. Put the issue on the agenda of a committee meeting. Talk things over.
- If you are not good at putting your ideas to a meeting, try to put them in writing. A simple letter to your body corporate could have three parts stating:

*What is happening to cause concern (the problem)*

*What effect this is having on you and your family (its effect)*

*What you would like to see happen (an outcome).*

## GETTING HELP FROM OUTSIDE

If you feel your own attempts to settle a disagreement have reached a dead-end, you might benefit from the help of the professional skills of a mediator such as those employed by the Dispute Settlement Centre of Victoria (see under 'Where to go for help' on page 25). The services of the centre are mostly free. You can also refer to other services listed below. There are some excellent publications aimed at helping people prevent or resolve disputes too.

If there is a dispute between the members of your body corporate and your manager, you can ask the Institute of Body Corporate Managers or the Real Estate Institute of Victoria to investigate any complaints about your manager, if they are a member of these bodies.

Finally, some disputes are not really about the body corporate at all. They might be between tenants and owners as landlords. Look at the *Residential Tenancies Act 1997* to solve these disputes. Major disputes over alleged fraud or misappropriation of money are best dealt with by existing mechanisms under criminal law through the courts. Contact the police or your solicitor for advice.

## TAKING LEGAL ACTION

If your attempts to resolve the dispute fail, you or anyone with an interest in your body corporate may apply to the Magistrate's Court for an Order or Declaration to resolve a dispute. In some cases, a matter might go to higher courts. You should seek advice before taking legal action – legal action can be expensive.

## HOW WELL DOES YOUR BODY CORPORATE WORK?

A checklist for members or people thinking of buying into a body corporate.	Yes	No	Not sure
Do members participate in the body corporate and live well together? <i>See all sections</i> .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is there a clearly marked letterbox and sign? <i>See 'How do you stay in touch with your body corporate' on page 3</i> ...	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are members' names and addresses up-to-date? <i>See 'Getting started' on page 5</i> .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are annual general meetings held? <i>See 'Annual general meetings' on page 9</i> .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is the common seal used correctly? <i>See 'The common seal' on page 8</i> .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are proper records available? <i>See 'Access to information' &amp; 'Keeping books' on pages 4 &amp; 14</i> .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is a bank account with proper signatories and proper financial records kept? <i>See 'Keeping books' on page 14</i> .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are all members' fees paid? <i>See 'Fees' on page 13</i> .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has a special resolution been passed to charge penalty interest? <i>See 'Fees' &amp; 'Recovering debt' on pages 13 &amp; 14</i> .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is the body corporate debt free? <i>See 'Spending member fees' &amp; 'Keeping books' on pages 13 &amp; 14</i> .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does a reserve fund exist or does the body corporate levy special fees? <i>See 'Fees' on page 13</i> .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is all compulsory insurance current? <i>See 'Insurance' on page 17</i> .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is additional insurance held? <i>See 'Insurance' on page 17</i> .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has a manager been appointed? <i>See 'Employing a manager' on page 7</i> .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are fees paid to the manager? <i>See 'Employing a manager' on page 7</i> .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are powers delegated to the manager in writing? <i>See 'Running your body corporate' &amp; 'The role of the secretary and the manager' on pages 5 &amp; 7</i> .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does the manager have professional indemnity insurance? <i>See 'Employing a manager' on page 7</i> .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has a secretary been appointed? <i>See 'The role of the secretary and the manager' on page 7</i> .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are the secretary's duties in writing? <i>See 'The role of the secretary and the manager' on page 7</i> .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are the rules of the body corporate clear? <i>See 'Abiding by the rules' &amp; 'Additional rules' on pages 18 &amp; 19</i> .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are tenants kept informed of rules and decisions affecting them? <i>See 'Abiding by the rules' on page 18</i> .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are the current rules lodged at Land Registry? <i>See 'Additional rules' on page 19</i> .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are uses of the common property agreed? Any leases or licences? <i>See 'Spending member fees' on page 13</i> .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has an active committee been established? <i>See 'Forming a committee' on page 6</i> .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are disputes handled promptly & effectively? <i>See 'Resolving disputes' on page 20</i> .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## LIST OF FORMS ATTACHED TO THE REGULATIONS

All the forms mentioned in this booklet are published as part of the Regulations, which can be purchased from Information Victoria, 356 Collins Street, Melbourne 3000, or downloaded from [www.dms.dpc.vic.gov.au](http://www.dms.dpc.vic.gov.au).

**Form 1:** Standard rules

**Form 2:** Notification of making, amendment or revocation of rules

**Form 3:** Body corporate certificate

**Form 4:** Appointment of manager

**Form 5:** Change of address

**Form 6:** Body corporate plan number proxy form

**Form 7:** Notice of application to wind up body corporate

**Form 8:** Application to cancel or amend plan

**Form 9:** Application for alteration of lot entitlement and liability

**Form 10:** Application for removal of restriction

**Form 11:** Application by body corporate for alteration or cancellation of scheme of development

**Form 12:** Application by registered proprietor for alteration or cancellation of scheme of development

## WHERE TO GO FOR HELP

### **Australian Institute of Conveyancers (Vic Division) Inc**

*– advice on buying and selling units.*

PO Box 843, Glen Waverley 3150

Telephone: 9887 8967

**Australian Taxation Office** – *advice on GST and other taxation matters.* Offices in Melbourne, Box Hill, Cheltenham, Dandenong, Geelong and Moonee Ponds. Telephone 13 2861 in the first instance.

**Seniors Information Victoria** – *a service of the Council on the Ageing (Vic). Free confidential information and advice and referral service.*

Shop 5, CAE Centre

256 Flinders Street

Melbourne 3000

Telephone: 1300 13 50 90

**Community Legal Centres** – *free advice from over 40 centres. Check locality near you through the Federation of Community Legal Centres.*

Telephone: 9602 4949

**Department of Infrastructure** – *administers the Body Corporate Regulations. Regional offices can help with how the Act and the Regulations apply, but can not give legal advice.*

Telephone: 9655 6666 for your regional office

Visit: [www.doi.vic.gov.au](http://www.doi.vic.gov.au) (Body corporate pages updated regularly).

**Dispute Settlement Centre of Victoria** – *free advice on dispute resolution and mediation.*

Telephone: 9603 8370 (toll free outside Melbourne

1800 658 528) Visit: [www.justice.vic.gov.au/disputes](http://www.justice.vic.gov.au/disputes)

**Financial and Consumer Rights Council** – *provides advice on managing debts and consumer complaints.*

Telephone: 9614 5433 or 1800 134 139 (toll free)

**Institute of Body Corporate Managers** – *for advice on selecting a manager and to complain about managers who are members of the Institute.*

Telephone: 9629 7373

**Land Information Centre** – *copies of plans of sub-division, body corporate numbers, names and addresses of owners of units and copies of rules.*

Telephone Customer Service: 8636 2831

Visit: [www.land.vic.gov.au](http://www.land.vic.gov.au)

**Law Institute of Victoria** – *free consultation with a solicitor (\$20 administrative fee); referral service Dial-a-Law.*

Telephone: 9607 9311 (Dial-a-Law 9602 5000)

Visit: [www.liv.asn.au](http://www.liv.asn.au)

**Municipal Councils** – *copies of plans of sub-divisions, names and addresses of unit owners, information about rates and advice on noise and air pollution.*

**Office of Consumer and Business Affairs** – *advice on all residential tenancy enquiries and complaints.*

Telephone: 9627 6444 or 1800 136 716

Visit: [www.consumer.vicnet.net.au](http://www.consumer.vicnet.net.au)