

Owners Corporation Network (ACT) Newsletter

Issue 1 May 2013

President's Welcome

This newsletter is the first of a proposed quarterly publication. The OCN web site will remain as the foremost means of communication to members and future members. The web site also provides the means for members to share experiences with fellow members of the network.

The voluntary Committee also encourages members to address issues to the Committee via the web site or via direct telephone calls (if necessary) and from time to time these communications between members and the Committee will direct us to new projects of common interest.

Some of the current projects are briefly described in this newsletter. There are several others described on the web site and several papers are included there to address issues.

Building Quality Forum Update

This ACT Government initiative has a long term objective to redraft ACT Building Acts in support of improving building quality. Some specific purposes include:

- Increased number of mandated inspections of building work
- Improved builder and trade licensing conditions including licences in line with building complexity
- More stringent complaints processes on building non-compliance and application of penalties administered by Registrar of Construction Occupations and Commissioner of Fair Trading
- Establishment of pro-prosecution and rectification orders policies directed at builders and developers
- Improved trade skill requirements and training
- Improved regulations to ensure adequate building documentation and

supervision including the roles of designated architects and engineers

- New and enhanced insurance to protect owners

This forum has a comprehensive program of tasks timetabled to achieve the objectives through to the end of 2014.

The OCN attends and contributes to all Building Quality Forum meetings.

Defects and Approaches to Rectify Them

Recently built residential complexes in the strata sector continue to have significant building defects especially in the common property areas.

Research from the University of NSW has shown as many as 85% of all apartments in NSW (mostly Sydney) have serious defects. A survey in the ACT by ACTPLA shows Canberra has a similar problem.

The OCN continues to raise these problems with Government particularly by working with them on the Building Quality Forum.

However it is very important that owners and OCs also inform the Government via ACTPLA (Registrar of Construction Occupations) of their defects. Record keeping of the defects and early action by OCs is critical.

For new buyers, close examination of the past history and performance of developers and their selected builder can help consumers avoid future costly defect rectification actions involving either litigation or negotiation. A recent series of builders going into administration also highlights the need for buyer research.

JACS Fact Sheets

Did you know that justice and Community Safety UACS) have published a very useful set of Fact Sheets on the Unit Titles (Management) Act? Find them at:

www.justice.act.gov.au/review/view/17/title/unit-titles

Your manager Is your employee

Most large and medium sized OCs employ a body corporate manager and possibly a building manager (caretaker). Although a contract sets the basis for this relationship, the best managed OCs have a strong positive relationship between their Executive Committee and the managers. For smaller/moderate sized OCs self-management with accounting support is a viable option.

Insurance Excesses

Many managers are advising OCs to pass resolutions that owners will be required to pay any excess on insurance claims.

Managers are arguing that as Section 100 of the UT(M)A says that the ACT government may make regulations shifting payment of the excess to unit owners, it is prudent for owners corporations to jump the gun and demand owners pay any excess now. The managers' organization, Strata Communities Australia, is advising managers to do this. **If your OC has passed such a motion it is void.** OCs have **NO** power to collect insurance excesses from owners. If you have paid the excess, demand your money back because you were charged under false pretenses and a void resolution.

The OCN understands the Government is carefully considering the impact of changes in the area of "who pays the excess". Impacts could include:

- Initiatives to combine policies - contents and parts of the building insurance, particularly in Type B complexes (townhouses)
- Variations in contributions to reflect improvements to a given unit
- The need to consider equity where an insurer arbitrarily increases excesses for all units on the basis of bad practices by one owner
- Significant increases in insurance excess amounts - well beyond \$1000 for each event
- Need to ensure that owners with bad track records are the ones who should pay big excesses

The OCN will work closely with the Government legislators in reviewing any proposed Regulations.

Who controls access to owners contact details?

Many executive committees are still having difficulties contacting members of the owners corporation because their managers argue that Privacy Principles preclude them giving this information to executive committees. **This argument is completely wrong.** Executive committees are fully entitled to this information. If you are having this problem, look at the relevant section of the Act on the OCN website at web.ocnact.org.au and then go to Paper 11 for suggested letters to your manager and other helpful advice.

Owners corporations' websites

A number of owners corporations have developed websites as a simple way of ensuring owners and residents have access to current information and basic resource documents.

Some are quite elaborate like www.wybalenagrove.org.au. Others are much simpler. Some managers are running similar websites with fairly mixed results.

Once again, managers **cannot** refuse access to owners and residents email addresses to facilitate operation of these information resources.

Some owners corporations also have internal telephone directories, to ensure residents can quickly contact neighbours in an emergency or just to invite them over. Once again managers cannot stop this happening.

Trust Accounts

Is your manager telling you that your owners corporation accounts have to be managed as trust accounts under the Agents Act? If so direct their attention to page 13 of the "Office of Regulatory Services publication Guide" to the obligations of owners corporation managers available at: www.ors.act.gov.au/publication/view/1773/title/guide-to-the-obligations-for and require that your accounts be operated as Section 68 of the Unit Titles (Management) Act requires.

Borrowing from your Sinking Fund to stop your Administration Fund going into deficit

Managers are advising OCs that there is no barrier to this practice in the ACT. This advice is highly dubious. Some managers are going so far as to suggest that it is OK if the Admin Fund is in deficit at the end of the financial year so long as there is a plan to pay the Sinking Fund back. Section 88 of the UT(M)A provides that OCs may only make payments from Sinking Funds that are consistent with Sinking Fund Plans. Section 83 details what can be funded by sinking fund plans and it certainly does not cover water bills or insurance excesses.

More importantly the initial problem suggests that OCs are not collecting levies that can adequately fund their expenses. Dubious internal borrowing does not resolve that. Setting levies at realistic levels does.

Paper 8 on the OCN (ACT) website discusses Sinking Funds and Sinking Fund Plans.

Executive committee and Managers Codes of Conduct

Did you know that your Executive Committee and manager are bound by Codes of Conduct?

The Codes require that both Executive Committee members and managers know the Acts, comply with the Code, act with honesty, fairness, care and diligence for the benefit of the owners corporation, do not act in misleading, deceptive or unconscionable ways and disclose conflicts of interest.

Managers must also ensure that their employees abide by the Code, services are provided at competitive prices and required records are kept.

Failure to abide by the Codes is actionable in ACAT.

Individual Water Metering and Environmental Sustainability

The UT(M) Act supports these owners corporation initiatives and their managers should do everything possible to provide support. The summary of a member's case study is included below.

Electricity, Water and Gas are supplied to either an owner or tenant who signs for

these services when taking up residential occupancy.

Each individual residential property has meters for both Electricity and Gas with both a service and usage charge. Supply of water under an Owners Corporation structure often passes through one meter on the main line at point of entry to the complex with total water usage and cost going to the Owners Corporation. A budget is set on water usage which is part of the total budget in the complex.

Each individual residence pays for water usage as part of their Owners Corporation levy based on their unit entitlement.

Owners Corporations structures can be either A (often apartments in several stories) or B (often townhouses or detached units) class.

We can contribute to the environmental and sustainability of water a vital resource if individual water meters can be installed. Control on water usage is then carried out by each individual user as each individual resident pays.

If individual water meters can be installed then a fairer and equitable cost to owners can be obtained by applying the 'user pays' principle. The existing Water and Sewerage account that each owner has for service charge will also include usage charge same as in Electricity and Gas service provision.

Peter Herbert arranged for the installation of individual water meters to fifty four townhouses in a class B Owners Corporation structure.

There may be a modified procedure for class A complexes.

A feasibility study can be arranged to determine if individual water meters can be installed. Many stakeholders are involved and a varied procedure is required to carry out this task depending on the particular circumstances. Some considerable effort may be required but the end result could be financially and environmentally beneficial.

To understand likely benefits, potential costs, possible obstacles, and the role of ACTEW please contact: Peter Herbert (0409 123 531) Email: pherbert@grapevine.com.au

Resolving Disputes

Disputes will occur in OCs. The ORS publication *Unit Title Dispute Resolution Guide*, at

www.ors.act.gov.au/publication/view/1775/title/unit-titles-dispute-resolution-guide can be very helpful to dealing with them.

If your dispute has become so heated and protracted that outside intervention is necessary to find a solution, have a look at Paper 14 on the OCN website and consider whether you should approach ACAT (the ACT Civil and Administrative Tribunal).

ACAT seeks to mediate solutions in the first instance but it has the power to rescind EC and OC decisions and substitute its own. It is a less formal forum than the usual court. You don't have to have a lawyer. But you need to be able to make clear what the problem is, what parts of the UT(M)A or your Articles have been infringed and propose a lawful and practical solution.

ACAT may have already decided an issue similar to yours, so have a look at our web site under projects to review recent ACAT decisions on OC matters. Not all ACAT decisions are reported so check with the ACAT Registry on (02) 62071740 or at tribunal@act.gov.au.

If there is no relevant decision discuss your problem with the ACAT Registry. Contact the OCN Executive on the numbers below and discuss your issues with someone not directly involved but able to offer advice.

Then if you are convinced that taking the matter to ACAT is the best way to protect your rights, do it.

Renew your OCN membership

If you haven't already done so, please pay your \$10 annual fee or \$10 plus \$1 per unit for corporate members in one of these ways

By cheque sent to :
The Treasurer OCN (ACT)
PO Box 6035
Kingston ACT 2604

Or by direct deposit to OCN's account,
BSB 082-980 Acc No 829 382-063,

and then email the Treasurer at treasurer@ocnact.org.au that you have paid your fee.

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