

1 November 2020

Executive Committee Members

Key amendments that have been made to the Unit Titles (Management) Act 2011. These amendments will be effective as of 1st of November 2020. We ask that you review these amendments and where necessary discuss with other members on how they may affect your Unit Plan.

Please find below a summary of the Legislation Amendment:

Common Seal

- Unit Plans no longer need common seals; where common seals are not held, two Executive Committee members can sign documents, or the manager can sign if this function has been delegated.

Special Privileges

- Special privileges can be granted relating to the use of Common Property for up to a maximum of 3 months by special resolution however:
- There needs to be a stipulation within the special privilege confirming who is responsible for maintaining the Common Property over which the special privilege has been granted (either the Owners Corporation or the grantee).
- There are new provisions around the granting of special privileges that include that specific provisions must include the obligations arising with respect to maintenance attached to the special privilege. A major change is that the threshold to pass a special privilege right will be by special resolution and no longer an unopposed resolution. All existing special privilege rights will terminate with effect from 1.7.2021. So current Special Privileges will need to be reconsidered.

Maintenance

- New developments require the developer to implement a maintenance schedule for maintenance of the common property
- Owners Corporations will need to prepare a maintenance schedule to identify regular maintenance or servicing required for common property and buildings – which must include warranties for systems and manuals etc., kicks in from second AGM after 1.11.2020
- New section outlining what needs to be considered in a maintenance plan

Animals

- For new owners/tenants the Owners Corporation still have a consent process, but such consent must not be unreasonably withheld, and Owners Corporation must respond within 3 weeks, otherwise approval is deemed to have been granted
- There is a new Pet Default Rule which can be adopted, or Owners Corporation may adopt an alternate rule provided it is consistent with the legislation. If no alternate pet rules are adopted, then from second AGM after 1.11.2020 the new default rule will automatically apply.
- Assistance animals cannot be denied
- Rules can be updated to accept pets at the complex (these can specify a number / type of pets which can be housed at a unit without notice)
- Rules cannot preclude pets from residing at a complex
- Owners Corporations and Executive Committees can delegate their responsibilities / decision making to managers
- Pet friendly rules apply to tenants despite this being inconsistent with the residential tenancy terms.
- Pet Friendly Rules – Owners Corporations can make rules which do not require approval of the Owners Corporation or delegates. This can specify the number and types of animals, cleaning and maintenance requirements, requirements for written notice to be given to the owners corporation, supervision requirements when pet is on common property, requirements around securing animal so it does not escape a unit unsupervised and any other items which may be reasonably necessary to ensure the animal does not cause nuisance or a risk to health and safety.

Mixed-use Units

- Definition of mixed-use units
- Advice that Executive Committee's must have at least a member who is an owner of a residential and one member who is an owner of a non-residential unit (where feasible)
- An owner or EC member may apply to ACAT for an order requiring an election to be held to satisfy this requirement.

Meetings:

- The Chairperson must chair the general meetings of the Owners Corporation and Executive Committee and set the agenda in accordance with any guidelines set, see Unit Titles (Management) (Meeting Agenda) Guidelines 2020 4.
- Where there is a mix of units residential /non-residential, then the EC should consist of a representative of at least one of each unit type.
- An Executive Committee may delegate formally to a sub-committee or 1 or more executive members
- The Owners Corporation and the Executive Committee may meet and vote electronically on special/ordinary resolutions, but this must be approved at a General Meeting by ordinary resolution.
- Executive Committee must keep minutes and give them to all members of the owner's corporation within 14 days of a meeting, any meeting, from 1.11.2020

Contributions

- Resolution to update / change the level of levies / method of calculation of levies now requires only special resolution although there is a raft of requirements for this and ACAT can ultimately override.
- If a special resolution has changed the level of sinking fund levies, the level of required levies must be specified within the AGM agenda.
- It is now possible to create a rule whereby a particular owner pays contribution on a basis other than unit entitlement that relates to a particular benefit or obligation associated with such cost, ie; a user pays system, by way of special resolution. This will facilitate split budgets basis for contributions for services that benefit/service some unit owners and not others.

Rules

- Sets out where alternative rules are invalid
- Makes specific mention that rules prohibiting a unit owner from keeping an animal or allowing an animal to be kept within the unit or on common property in any circumstance is not acceptable.
- Registration of alternative rules must be registered within 3 months after the date of the special resolution, if this is not done then the resolution is taken to have never been made.
- Broad outline of special privilege and requirements for all parties.
- Only default rules 1.4, 1.5 and 1.6 can be amended

Disputes:

- ACAT may be approached to dispute unreasonable rules and special privilege.
- There has been a broadening of ACAT abilities when it comes to pets and nuisance allowing them to make/issue 'any other order the ACAT considers will end the nuisance or the unreasonable interference with use or enjoyment.

Executive Committee

- Must keep minutes for up to 7 years (rather than the previous 5)
- Detail any resolutions passed
- Executive Committee meeting minutes must be provided to owners within 14 days of the meeting being held.

Audit

- Must have financials Audited if either:
- The number of units in the unit's plan is more than 100
- The annual budget of the owner's corporation is greater than 250,000
- Audit outcomes / opinion in relation to the annual financial statements must be provided at the Annual General Meeting
- Comes in the being from the second AGM after 1.11.2020

Communication / meetings

- People are now allowed to officially participate in meetings electronically
- Owners Corporations can determine, by ordinary resolution, to implement a method of voting on matters or a class of matters (email etc)
- The person will only be able to vote if they would have been able to vote at a general meeting (need to be financial).
- The Executive Committee may keep and distribute the minutes, records, or books of account in an electronic form. Part 2.1 (4)

Decisions about defective buildings

- **Developer / builders** will no longer be entitled to vote on matters relating to building defects, including potential litigation, unless permitted by special resolution or through a declaration from ACAT.

Proxy votes – an individual cannot exercise

- A person must not exercise more than the following number of proxy votes in a vote on a matter at a general meeting: (a) if there are more than 20 units in the units plan — a number that is not more than 5% of the total number of units; (b) in any other case — 1 (s3.26(4) Sch3)

Electronic voting

Owners Corporation 's and Executive Committee's may meet and vote electronically on special/ordinary resolutions, but the decision to do so must be approved by ordinary resolution

Insurance claims

Any insurance claims to be made against a policy held by the Owner Corporation must be lodged by the Owner Corporation with the insurance provider and the Owner Corporation must pay any excess on the claim. There may be regulation to make provision for payments of excess by unit owners or proportion of the premium payable for the policy by unit owners by way of a general fund contribution