

# Unit titles management in the ACT: What you need to know

September 2018



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# Introduction

## Why read this guide?

**If you are thinking about buying or moving into a unit, then this guide is a must read for you!**

Unit living is a great way to be close to town and city centres and suits a wide range of buyers – from those looking to break into the market, to upsize (or often downsize), and those seeking to enjoy the benefits of common facilities.

At this exciting time you may have a few questions about your rights and responsibilities as buying or owning a unit is very different to buying or owning a house.

Information in this guide is for assistance only and you will need to obtain further information from your real estate agent and solicitor. **It does not replace independent legal or financial advice.**

To make this guide a little easier to digest we have explained some common terms you may come across, answered some frequently asked questions and at the start of each chapter included some key points.

If you have any questions there are plenty of places you can turn to including Access Canberra and the useful contacts section at the end of this guide.

## **If you ALREADY own a unit or apartment – you should keep reading too!**

This guide includes key information for existing owners and renters living in units. It's a good idea to refresh your memory on your rights and responsibilities to ensure you enjoy unit living to the fullest!

You may even pick up a few things you may not have known. It's a good idea to make some notes and highlight key points as you go so you can easily reference them in the future.

We've also given you some space on the side of each page to make any notes to come back to at a later stage.

## **If you are a real estate agent/solicitor/ other professional – read this guide, tag it and share it!**

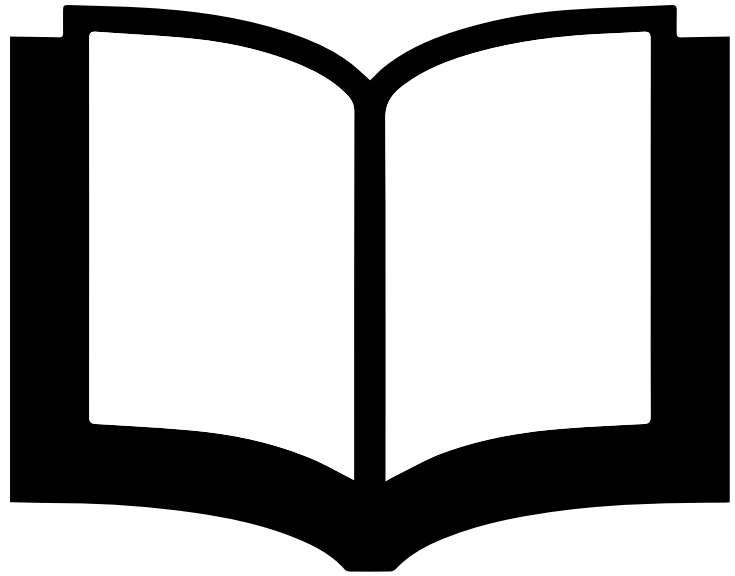
Grab some hard copies or bookmark the link to this electronic guide! This guide is a great resource for you to use, but also to share with your clients. It breaks down some complex information about unit living in an easy to understand way. It shouldn't replace the information you may provide to your clients – but rather complement it.

## **If you are already part of an executive committee ...**

Firstly thank you for the contribution you make to support unit living! If you are thinking of joining an executive committee, be ready for challenges but also rewards. This guide will address some common questions and some tricky areas when it comes to management. We hope it assists.

## **None of the above?**

You never know when you may make the move to unit living, so give it a read!



# Chapter 1 – The 101

**We'll begin with key terms you will see throughout this guide and in other paperwork or unit materials. We'll also cover the important legislation.**

Don't skim over this section – reading it will make understanding the rest of this guide much easier! It will also be a useful section to come back to as a reference again and again.

## So what legislation supports unit management?

- the [Unit Titles Act 2001 \(the Unit Titles Act\)](#) regulates arrangements under which land in the ACT can be subdivided into units with common property and registered as a unit plan.

Commonly, unit title properties in the ACT are referred to as residential flats, units, apartments or townhouses. Also, some retirement villages, office buildings and commercial properties are classified as unit title properties.

### The main Act to be aware of is:

- the [Unit Titles \(Management\) Act 2011 \(the Management Act\)](#) which deals with the management of an owners corporation, the rights of individual owners and the owners as a group, the responsibilities of owners, the owners as a whole and the Executive Committee, which manages day to day issues and how the owners corporation makes decisions.

## So why do I need to know about legislation?

It's where rights and responsibilities stem from and what governs unit living. It is important if you ever need to understand why a requirement or responsibility is in place.



### Did you know?

**In other states 'unit title' may be known as 'strata title'. We'll use unit title in this guide.**

## Knowing your As from your Bs:

Units are generally broken into two categories – Class A and Class B. How can you tell the difference?

- **Class A Units:** are generally multi-storey apartments. The owner owns the inside of the unit to the mid-point of shared walls and may own a subsidiary, such as a car parking space. The owners corporation is responsible for maintaining the outside of the building and surrounding area to the boundary of the units plan (known as common property).
- **Class B Units:** are generally townhouse style units and other types of units (ie units stand on their own piece of land and may have garden area). The owner owns the inside and the outside of their unit and to the mid-point of any adjoining walls. The owners corporation has maintenance requirements for common land but not for buildings on Class B units unless this has been authorised by a special resolution.



### Did you know?

You can check which your unit is by checking the title of the unit on the 'Certificate of Title'. You can also ask your agent or solicitor or for those who have purchased, it should be in your contract for sale.

## NO LUCK?

Do a title search through Access Canberra for a small fee. More information is available at <https://actlis.act.gov.au>

**We've tagged this section for you as you'll come back to it again and again**

### Other terms and words you'll see in this Guide - from A-Z!

**Administrative fund:** must be set up by the owners corporation. It receives funds to pay for the ordinary running costs of administration of the units plan.

**Annual General Meeting – or AGM:** owners corporations must hold an annual general meeting each year. At this meeting an Executive Committee is elected to manage day-to-day business. Administrative and sinking fund budgets and levy contributions are also agreed and set.

**Authorised Representative:** if a unit is owned by two or more owners, one owner must be authorised to be the representative for the unit. The Management Act outlines functions of authorised representatives.

### Wait but ... what if a company owns the unit?

The company must appoint an officer or employee of the company to represent them and notify the owners corporation in writing.

**Common property:** these are areas which belong jointly to all of the owners such as courtyards, pool or gym areas, driveways and gardens. The owners own this area together and all have rights to use it. Your body corporate fees or levies support their use, management and upkeep.

**Contributions:** often known as levies<sup>1</sup> these are the amount owners must contribute for managing and maintaining the common property each year. The amounts are agreed at the annual general meeting and are paid into the administration and sinking funds.

**Easement:** the right to cross or otherwise use someone else's land for a specified purpose, even though they are not the owner. Easements are usually granted to access drainage, sewerage, or supply of water or gas.

**Executive Committee:** are the owners elected at the annual general meeting to run the day-to-day business of the owners corporation.

**General Meeting:** meetings of owners corporation members. Meetings other than AGMs are sometimes referred to as special general meetings.

**Mortgagee notice:** when a person has defaulted on their mortgage a notice is issued by the mortgagor (eg bank) to the mortgagee. The notice gives the mortgagor (eg bank) certain powers.

**Owners Corporation:** if you purchase a unit you automatically become a member. The owners corporation is sometimes also referred to as the 'body corporate'.

**Owners Corporation Manager:** can be appointed by the owners corporation (for a fee) to help run the day-to-day business of the owners corporation.

<sup>1</sup> Levies and fees are different things. A levy is what you pay to the owners corporation as determined by the budget, eg general and sinking fund levies. A fee is something you may be charged for a particular service, eg access to records.

**Quorum:** is the minimum number of people that need to be present at an executive committee, general or annual general meeting before a decision can be validly made.

**Reduced Quorum:** two or more people present at the meeting who are entitled to vote on a motion. But if decisions are made by a reduced quorum they have to be notified to all owners within 7 days, do not come into effect unless notification is given, do not come into effect for 28 days and can be overturned by a petition of the majority of owners entitled to vote at the meeting.

**Resolutions:** there are four different types of resolutions ordinary, special, unopposed and unanimous. Each requires a certain percentage of votes or requirements.

**Rules:** these must be followed by unit owners. They cover things such as use of common property, repairs and maintenance, noise and nuisance.

### Wait but ... what is the difference between House Rules and Default Rules?

(not the television program!)

House rules: are more informal ('courtesy') and unenforceable guidelines for owners and tenants in the complex, and helps to explain how the rules will be put into effect. This includes whether poster notices can be placed in common areas, guidelines for the use of recreational facilities, or rules for using storage and laundry facilities.

Default rules: The Act contains a default set of rules, but owners corporations can amend these in a general meeting by special resolution. These rules include payment of rates, repairs and maintenance, and prohibit hazardous or illegal use of the unit.

**Sinking fund:** a fund and associated plan must be set up by the owners corporation when there are four or more units. The plan covers the cost of major future maintenance and replacement or repair of common areas (ie. painting outside of the building, driveway refurbishment, plumbing repairs).

**Special purpose fund:** may be set up by the owners corporation to cover specific expenses (ie. upgrading all windows to double glazed).

**Sinking Fund Plan:** is adopted at an AGM and updated regularly. The sinking fund plan is required to anticipate expenditure over a significant period of time, and for large recurring or one-off costs.

**Subsidiaries:** areas separate to a unit but owned by a unit owner. (ie. storeroom, shed, garage or carport). A unit subsidiary will show on the units plan as belonging to the unit.



#### TIP

Ask your real estate agent or conveyance solicitor before you purchase a unit - 'Exactly what do I own? Are there any subsidiaries to the unit?'

**Unit Entitlement:** is the value of the unit relative to other units in the units plan. It is used to determine voting weight and the apportionment of funds and levies for the owners corporation between the owners. In general, the bigger the unit the higher the levies and the higher the voting right.

**Units Plan:** approved documents for a unit title property development. It is used to determine voting weight and the apportionment of funds levies for the owners corporation between the owners. In general, the bigger the unit the higher the levies and the higher the voting weight.

**Unit Title Certificate:** (often called a Section 119 certificate) is issued by the owners corporation to an eligible person upon request. It has information relating to the executive committee and financial detail of the units. It must be included with a contract for sale when a unit within a registered units plan is being sold.

**Unit Titles Act 2001:** the ACT legislation that regulates arrangements under which land can be subdivided into units with common property and registered, including development statements for staged developments.

**Unit Titles (Management) Act 2011:** the ACT legislation that governs the day to day management of owners corporations.



## Chapter 2 – Thinking of buying a unit?



### TOP TIPS

1. Buying a unit is different to buying a house – you are buying into a small community
2. You need to follow rules (as do all owners and tenants)
3. Common property – know what and where it is and the fees and levies to maintain it
4. Know what's in your units plan and what you own
5. Check the condition of the premises and the sinking fund
6. Get legal advice and ensure you have all the documents and reports to make an informed purchasing decision.

### Some key things you need to know:

#### You will be buying into a community

Unit plans are effectively small communities. This can have great benefits and is often a key drawcard for this type of living.

However it does mean (due to the close proximity and the sharing of common spaces) that your activities can impact on your neighbours and vice versa. There may also be restrictions to some of the things you do such as where on the site you can park your car or when and how you can renovate.

This can differ from owning your own standalone home. Understanding these differences before moving in can help reduce issues down the track and keep neighbours (and you) happy!

Speaking of impact, it is also a good idea to find out what other facilities may be included in a units plan such as commercial space for cafés, shops or businesses. This may impact upon your decision to purchase a property.

#### There are rules

Check (and double check) the owners corporation rules so you know what is expected of you and any restrictions. Rules are enforceable.

You should check if the rules will meet your expectations now and into the future. Rules may cover such things as if you can erect sunshades on your balcony, the positioning of air conditioning units or installing pay television.

As noted in the 101 there are also “house rules” which are unenforceable. They are agreed behaviours and etiquette for those living in a complex or plan. (More on rules in the next Chapter).

## Common amenities and costs

Unit living often comes with some great common facilities such as gardens, pools, gymnasiums, paved areas or barbecue spots. As you may expect there will be costs to maintain them which you will need to contribute to through the owners corporation.

It's also a good idea, like any property purchase, to consider the age of the premises, its condition and when it comes to units specifically - the amount held in the sinking fund.

The sinking fund supports capital maintenance and repairs. The fund total is shown on the unit title certificate. Check what contribution you would be expected to make to the fund and keep in mind that (like most fees and charges) contributions may increase over time.

Executive Committees are required to give members notice of contribution changes to the sinking fund. Members can expect contributions to increase over time.

## You can buy 'off the plan' – but know the pros, cons and responsibilities

Simply put, buying 'off the plan' is purchasing a unit before it has been built. When buying a unit off the plan, you should be aware that delays in completing the building or defects may defer settlement and when you can move in.

It could also lead to deposit money being tied up for significant periods of time. It is important to seek legal advice from your solicitor prior to signing a contract for sale when buying off the plan.



### KEY TIP

**Ask your solicitor to go over the contract with you so you understand the developer's rights, your responsibilities and any special conditions.**

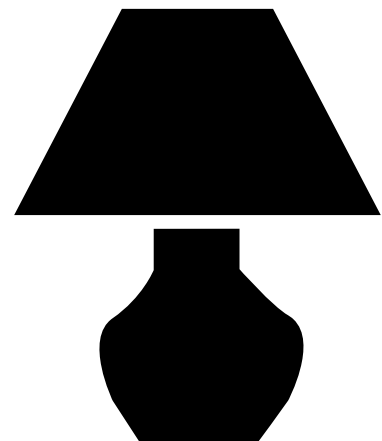
## Key documents and reports – make sure you have them and understand them

You know the large bundle of paper you get when you get a contract for sale for a property? As weighty as it is it includes important documents to inform you of your purchase.

You should take them to your solicitor and discuss them. It is important to ask questions if anything is unclear.

### Check you have the following documents:

- draft contract for sale**  
(prepared by the seller, or their solicitor, before the unit is offered for sale. The contract will contain certain conditions, which are required to be included)
- unit title certificate (or Section 119 certificate)**  
(this is issued by the owners corporation and provides information on the amount of the current contribution to the funds for the unit, any outstanding contributions, the balance of the funds for the owners corporation, information about each insurance policy held by the owners corporation, where the records of the owners corporation (such as minutes and the rules) can be inspected)
- title search**  
(sets out the legal owner/s and any interests in the unit, such as a mortgage)



- copy of the units plan or proposed units plan**  
(has diagrams of the development, including each unit and the common property, whether it is to be a staged development and the schedule of unit entitlements)
- building conveyancing inquiry**  
(information such as a certificate of occupancy, survey certificate and approved plans\*)
- building and compliance inspection report**  
(provides details about the structural soundness of the unit\*)
- pest inspection reports**  
(provides details of any termite or other pest infestations\*)
- Energy Efficiency Rating (EER) statement**  
(provided by an accredited energy assessor)
- current asbestos assessment advice**  
(or copy of asbestos assessment report if asbestos has been identified)
- a copy of the last two years of minutes of owners corporation and the executive committee meetings**  
(only required for Class A units)

(\*not required for Class A units)

**TIP**

**If you are interested in buying the unit, you have a right to inspect the records of the owners corporation. These documents can support you in making an informed decision about whether to invest in the unit.**

If you purchase a unit, it is important to ensure that you or your solicitor notifies the owners corporation in writing that you have purchased the unit to ensure that you receive notice of meetings and contributions and can vote at meetings.

## Handy checklist - questions to ask

Take this with you to your real estate agent and conveyance solicitor.

- What exactly am I buying?**  
(what will I own, what are the shared facilities/common property?)
- Is the unit a Class A or B?**  
(what does this mean for me when it comes to maintenance or common areas?)
- Does the unit complex suit my lifestyle now and into the future?**  
(think available car spaces, visitor parking, stairs or access points, common facilities, proximity to schools/public transport)
- What are the common property and maintenance costs?**  
(think swimming pool, barbecue area, lifts and gardens)
- What are the likely costs now and into the future?**  
(what is the condition/age of the building and common facilities? Does the sinking fund hold sufficient funds for future maintenance costs?)
- Is the units plan self-managed or is a manager employed?**  
(does this impact on levies or my responsibilities?)
- Are there any known disputes in the complex?**  
(ongoing legal disputes and the costs of these or any significant conflicts in the community)
- Are any of the units in the plan affected by 'Mr Fluffy' loose fill asbestos insulation?**  
(If so, the affected unit may need to be demolished in the future – you may want to consider location of the affected property or any known timing of demolition/rebuilding activity)
- What rules are in place? How will they affect me?**  
(pets, parking, noise etc. also consider 'house rules' and established etiquette)
- Do I intend to rent the unit?**  
(Be aware of additional responsibilities such as land tax or insurance. Rules need to be made a condition of any tenancy agreement and owners corporation informed)
- What inspections have been done? Do I have copies of the reports?**  
(building condition, structural checks, pest inspections etc)
- Have I spoken to a member of the executive committee?  
Or another resident?**  
(you don't need to but it might help your decision making and if the units plan is the right fit for you)

In the next few sections we will fill you in on some of the important topics you may need some for information on.

# Chapter 3 – Rules and why we need them

**Rules are important to ensure your rights are respected and also for the enjoyment and safety of living in a complex or plan.**



## TOP TIPS

1. Know the rules of a units plan prior to purchase or rent
2. Respect the rules and be aware that all owners and occupiers are bound by the rules
3. Ensure tenants are provided copies of the rules and know their responsibilities
4. 'House rules' are not binding but should be followed for the courtesy of everyone.

Under the Management Act, owners must abide by the rules of a units plan. In addition to the owner, an occupier of a unit is also bound by the rules.

It is important that if an owner rents a unit, that tenants are aware of, and abide by, the rules. Owners are liable, along with their occupiers, for any breach of the rules.

## How rules are set

Default rules are contained in the Management Act ([see Attachment A](#)). Owners corporations can amend the default rules by special resolution (more than two thirds vote) and register the change on the common property title with Access Canberra. House Rules can be amended by ordinary/simple majority resolution.

It is important to note that amended rules have no effect if they:

- are inconsistent with the Management Act or any other ACT law
- give a function to the corporation that is not incidental or secondary to the exercise of its functions under the Management Act
- prohibit or restrict any dealing with a unit, such as a transfer, sale, lease, or mortgage
- prohibit or restrict any dealing with the equitable estate of a unit owner in the common property.
- prohibit or restrict the installation and operation of sustainability or utility infrastructure.

## Rules are not made to be broken ... but what if they are?

If the executive committee reasonably believes an owner or occupier of a unit is breaching the rules and will continue to do so, it can issue a rule infringement notice.

The notice should explain rule/s breached and action the owner or occupier needs to take to stop it.

The executive committee may go to the ACT Civil and Administrative Tribunal (ACAT) seeking an order that the person comply with the rules if the behaviour/action continues.



#### TIP

**Another owner or occupier can ask the executive committee to issue a rule infringement notice.**

Owners corporations do not have the authority to issue “fines” or “fees” for breaking the rules. Enforcement of the rules must be sought through an ACAT order.

### What are ‘house rules’?

‘House rules’ are more informal (‘courtesy’) guidelines for owners and tenants in the complex - such as whether posters or notices can be placed in common areas or around ensuring junk mail doesn’t build up around mail boxes. They also contain useful information, for example how to apply for approval of a pet.

They are established by some owners corporations and do not form part of the owners corporation rules.

They are therefore not enforceable under the Management Act. Owners corporations need to keep the house rules up to date and ensure new owners receive copies, preferably prior to purchase or rent.

### Pets: what you need to know

Pets play an important role in our lives and often become key members of our family. For many people the question of what pets may be permitted is a critical one in determining if the purchasing of a unit or moving into a particular complex will work for them now and into the future.

It is important for prospective buyers or renters to check with the owners corporation if a pet can be kept and that occupiers have the necessary permissions to keep a pet.

The owners corporation may give consent with or without condition but the owners corporation’s consent must not be unreasonably withheld.

When it comes to deciding if a pet can be kept in a complex owners corporations may like to adopt rules about how they and the executive committee will give or refuse consent for pets. Having clear rules will ensure understanding between members as well as a transparency in decision making.

For example some owners corporations may prefer to make decisions on pet requests on a case by case basis by ordinary resolution in general meetings.

Alternatively the owners corporation might make an ordinary resolution about how the executive committee is to give or refuse consent on behalf of the owners corporation. For instance, the owners corporation might make a resolution to require the executive committee to make decisions about the keeping of animals within a defined timeframe by ordinary resolution and for the executive committee to give written notice about its decision to the unit owner or occupier.

If a dispute arises about the keeping of an animal, the owners corporation or a unit owner/occupier can apply to ACAT to resolve the matter.

### What if there are issues?

Often issues, particularly if raised early and respectfully, can be addressed quickly. For example another owner may not realise the impact a behaviour or action is having on their neighbour but once brought to their attention, they can alter their behaviour.

Disputes can however arise between an owner and an owners corporation, the owners corporation and the owners corporation manager, or the owners corporation and a service contractor.

An independent mediator can be engaged to help work through issues and find solutions or you can consider as a final step, formal application for dispute resolution to ACAT.

### **Communicating with the owners corporation**

Owners must know how to contact the Executive Committee and the Manager (if any).

It is the responsibility of all unit owners to provide written notice to the owners corporation, within 14 days, if any of the following events happen:

- transfer of a unit lease
- instrument lodged which identifies a change in ownership
- a change in the owner's name or address for correspondence
- a change in the occupancy of the unit
- a vacancy in occupancy of a unit longer than 30 consecutive days.

This is important to make sure everyone is on the same page.

# Chapter 4 – What’s mine and what’s ours? (Common property)

**Pools, gyms, barbecue areas, gazebos, driveways and visitor parking. The common property of a units plan are for all unit owners – enjoy!**



## TOP TIPS

1. All unit owners share in and can enjoy common property
2. Know what areas are common property in your units plan
3. The owners corporation manages the common property
4. Owners contribute to the maintenance of common property.

## What is common property?

Common examples of common property include:

- outside lighting
- letterboxes
- steps and paths
- swimming pools, saunas and gymnasiums
- tennis courts and playgrounds
- gardens and barbecue areas
- garbage areas
- elevators, stairwells and hallways
- driveways and visitor parking.

Common property is not always just land - for example it may include a roof over class A units or be pipes or utilities.

## Who manages and maintains it?

The owners corporation manages the common property on behalf of all unit owners and is responsible for the control, maintenance, management and administration of the common property.

Unit owners support common property maintenance by providing contributions to the administrative, sinking and special purpose funds. The levies are determined at the owners corporation’s annual general meetings.

Levies reflect the range of facilities within the common property (ie. common property including a swimming pool, barbecue area and tennis court will attract a higher contribution than if the common property only includes shared garbage bin facilities).

The executive committee can approve minor use of the common property upon application by an owner, for example installation of an air-conditioning unit or awning where it would extend over the common property.



The owners corporation may change aspects of easements on the common property by special resolution. It may also, by ordinary resolution, grant an easement or any other right over the common property for the purpose of the installation, operation or maintenance of sustainability or utility infrastructure.

**TIP**

**Registered units plan documents show what areas are common property.**

**Something is broken - who calls a tradesperson?**

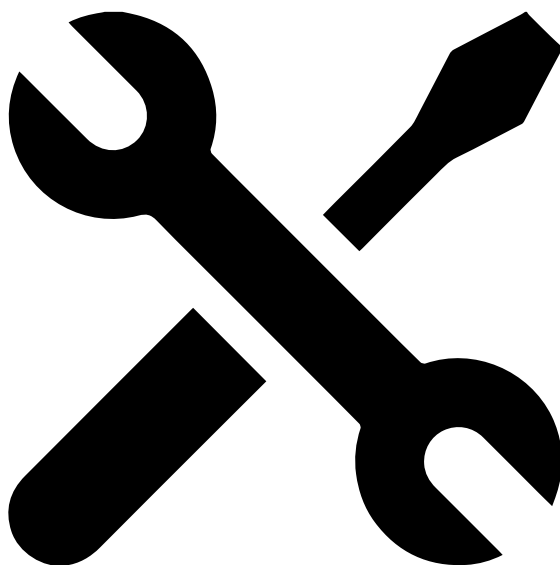
The owners corporation must repair common property and owners must maintain and repair anything within their unit.

If an owner has a problem and a tradesperson finds the fault is on common property, the owner will need to contact the owners corporation or manager prior to engaging the tradesperson to fix the problem.

If the matter is urgent, the owners corporation may authorise the tradesperson to go ahead with the work to avoid further damage. If it is not, the matter may be referred to the owners corporation insurer who will determine the work required to rectify the problem.

If an owner engages their own tradesperson to work on common property, without the permission of the owners corporation, they could be responsible for payment of those services. The owners corporation may have prior arrangements with specific tradespersons and engaging another tradesperson may compromise arrangements with their tradesperson and insurers.

Information on who you should contact in the event of a problem should be available to you in the house rules, if not, contact the manager or the executive committee.



# Chapter 5 – Committees and corporations

Owners corporations and committees play an important role in not only supporting unit living, but in maintaining and administering unit plans.



## TOP TIPS

1. Know your committees from your corporations – and get involved!
2. If you are on a committee or corporation – know your responsibilities and requirements
3. With great (corporation or committee) responsibility comes great ... opportunity ... to support unit living!
4. Know how to contact your executive committee and how they can help you.

## What is an owners corporation and an executive committee?

An owners corporation is made up of the owners in a units plan. When you purchase a unit, you automatically become a member.

The executive committee is elected by the owners at the annual general meeting to run the day-to-day business of the owners corporation. Upon establishment of the owners corporation the executive committee is also established.

Until the first annual general meeting of the owners corporation, the executive committee comprises all the members of the owners corporation, that is, each unit owner.

## What does an owners corporation do?

- controls, manages and administers the common property
- establishes funds for property management and maintenance, including a 10 year Sinking Fund Plan for future repairs and capital maintenance
- sets owners corporation contributions each year
- engages service contractors to carry out work, maintenance or repairs
- enforces the rules (previously called “articles”) of the owners corporation
- meets the insurance obligations in the Management Act
- maintains the building(s), the common property and all balconies in all units
- holds annual general or special meetings of owners
- keeps minutes of meetings and prepares accounts
- records details of the ownership and occupancy of units in the corporate register, including the address for service for unit owners
- provides, on request, a copy of the unit title certificate to a unit owner (eg unit seller) or other eligible person who has an interest in a unit or the common property
- provides a copy of the records of the owners corporation on request by a unit owner or other eligible person
- employs a manager (if required and agreed).

## **Restrictions on new owners corporations – ‘developer control period’**

The Management Act includes a number of restrictions on the decisions that can be made by owners corporations from registration of the units plan up until at least one-third of the unit entitlement is held by people other than the developer (called ‘the developer control period’).

The restrictions are designed to protect off-the-plan purchasers, future unit owners and the owners corporation from being bound to long term or indefinite contracts and arrangements that were entered into early on.

During the developer control period the owners corporation cannot enter into any contract unless:

- the contract is disclosed in each contract to sell a unit in the units plan
- either the contract is for a period not longer than 2 years OR the ACAT authorises the corporation entering into the contract in accordance with the subsection 3 of the Act.

During this period the owners corporation cannot change the rules of the owners corporation or approve the keeping of an animal in a unit unless this right was reserved in each contract to sell a unit in the units plan.

### **The fine print:**

A developer cannot exercise three or more proxy votes at a general meeting if the matter decided relates to development, unless each contract for sale of a unit in the units plan contains a “proxy disclosure statement” and each proxy vote is exercised in accordance with the proxy disclosure statement.

## **The obligations of the executive committee**

Prior to the owners corporation’s first annual general meeting, (which must be held within three months of the registration of the units plan), all owners are members of the executive committee and decisions made by the executive committee may only be made by special/two thirds resolution.

From the first annual general meeting the owners must elect an executive committee. The executive committee exercises the functions of the owners corporation including matters relating to the:

- common property
- financial affairs of the owners corporation
- approval of annual financial statements and budgets for presentation to the members at each general meeting
- office holder functions and the supervision of the owners corporation manager if applicable.

In the case of there being three or less members of the owners corporation, all members become part of the executive committee. Where there are four or more members of the owners corporation the members must decide by ordinary resolution at a general meeting to have from three to seven executive committee members or by special resolution if there are to be eight or more executive committee members.

Where the number of members of the owners corporation is equal to or below the number of executive committee members, all of the owners corporation members become executive committee members whether they are elected or not.

Following the owners corporation's first annual general meeting the executive committee must elect office holders. The office holders are the chairperson, secretary and treasurer. The executive committee may elect a person to two or more positions. The functions of treasurer and secretary can be delegated to the owners corporation manager.



## Key roles and what they do

### The chairperson:

- chairs meetings of the owners corporation and executive committee
- sets the agenda for general and executive meetings in consultation with the secretary and owners corporation manager (if there is one)
- talks with the secretary, treasurer and owners corporation manager (if there is one) about the exercise of their functions.

### The secretary (on behalf of the executive committee):

- gives notice of meetings of the executive committee and general meetings
- prepares and sends executive committee members minutes of executive committee meetings
- prepares and sends members of the owners corporation minutes of general meetings
- keeps records of the owners corporation (other than financial records)
- gives notices required under legislation.

### The secretary (on behalf of the owners corporation):

- gives certificates required under legislation
- prepares and answers correspondence.

### The treasurer (on behalf of the owners corporation):

- gives each unit owner a determination of the general fund and sinking fund contributions
- pays all amounts the corporation receives into the corporation's account
- acknowledges receipt of, and accounts for, amounts paid to the corporation
- pays amounts the corporation spends out of the corporation's account as authorised by the executive committee.

**The treasurer (on behalf of the executive committee):**

- keeps the financial records
- provides financial reports which monitor the performance of the owners corporation
- prepares and certifies the annual financial statements.

**The executive committee must keep:**

- minutes of its proceedings and meetings including a record of all resolutions made
- a copy of any court order given to the owners corporation
- any authorisation by the Environment, Planning and Sustainable Development Directorate given to the owners corporation
- proper records and accounts in relation to the owner corporation's assets and liabilities and all amounts received and paid by the owners corporation
- records for a minimum of five years. Financial penalties apply if these records are not kept.

**Executive committee code of conduct:**

Joining an executive committee carries with it a lot of responsibility. In agreeing to give up free time to fulfil a voluntary role and becoming involved in the day to day operations of the owners corporation and community, many may find the experience both rewarding and at times challenging. The executive committee code of conduct is at Schedule 1 of the Management Act.

Sometimes you may not see eye to eye with fellow committee members on certain issues. The obligation first and foremost is to work for the benefit of the owners corporation which has appointed you. You must act together in its best interests when carrying out your functions.

**Fine print:**

If a committee member carries out functions honestly and without recklessness, the Management Act protects individuals from civil liability.

Members of an executive committee are bound by a code of conduct. They must also have a commitment to acquiring an understanding of the Management Act relevant to their role and have a good understanding of the code of conduct.

**Members of an executive committee must:**

- act honestly and fairly and with reasonable care and diligence
- act in the best interests of the owners corporation, unless it is unlawful to do so
- take reasonable steps to ensure that members comply with the Management Act, including the code of conduct
- disclose any conflict of interest before the committee
- not use their position as a member to gain, directly or indirectly, an advantage personally or for someone else
- not exert undue influence on the owner of a unit in the units plan.

# Chapter 6 – Meetings and why you should go

The owners corporation holds three types of meetings: executive committee meetings, annual general meetings and other general meetings. It may sound like a lot but it is important owners get involved.



## TOP TIPS

1. As an owner it is important to attend meetings to have your say, vote when needed, receive updates and keep across key issues or concerns of the units plan
2. Quorums are critical when it comes to decision making in meetings
3. It is important that meetings are held effectively to support attendance.

## Executive committee meetings

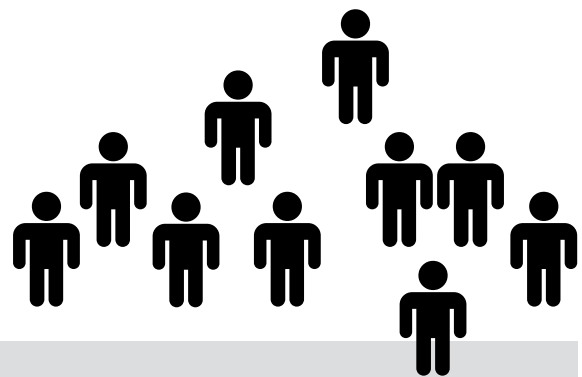
Executive committee meetings are held to progress the decisions of the annual general meeting and general meetings, manage common property, oversee the owners corporation's financial affairs, commission routine repairs and maintenance, task the owners corporation manager, agree to actions on the infringement of rules or the late payment of contributions.

An executive committee can hold meetings as often as necessary and can be called by any committee member with no less than seven days notice. A quorum (the minimum number of members present) is needed before a decision can become valid.

## What is a quorum – how does it work?

A quorum is determined by how many members there are on the executive committee and whether the executive committee has an odd or even number of members. If the executive committee has an odd number of members the number of members plus one divided by two must be present to form a quorum. As an example, where the executive committee comprises seven members the required number of members to form a quorum would be seven plus one divided by two, so four members would need to be present.

Where the executive committee has an even number of members the number of members divided by two plus one must be present to form a quorum. As an example, where the executive committee has eight members the required number of members to form a quorum would be eight divided by two plus one, so five members would need to be present.



## TIP

There is no provision to allow decisions to be made at an executive committee meeting where a quorum is not present.

Matters raised at an executive committee meeting must be decided by the majority present. If the votes on a matter are equal the chairperson has a casting vote unless the executive committee comprises only two executive committee members, in which case all matters must be decided by unanimous vote. Matters that require a resolution by the owners corporation, cannot be decided at an executive committee meeting.

If the chairperson is not present or leaves during the executive committee meeting for any reason, the executive committee members present must elect another executive committee member to chair the meeting.

### **Annual General Meetings (AGM)**

The annual general meeting (AGM) agrees the budget and the contribution amounts for each financial year, approves the sinking fund plan, elects an executive committee, accepts the financial statements and approves, among other things, general policy for the management of the owners corporation, alterations or additions to units, maintenance plans for the common property, amendments to rules and the appointment of a manager.

#### **Key points:**

- an owners corporation must hold an AGM each financial year
- the first AGM must be held within three months of registration of the units plan
- each subsequent AGM must be held within 15 months of the last one
- in most cases, the quorum for an AGM for a units plan with three or more members is not less than half the total number of members present at the meeting<sup>2</sup> (note, proxy votes count towards a quorum but absentee votes do not)
- the executive committee must give notice of the AGM to each member of the owners corporation and each mortgagee's representative (if any)
- 14 days notice of a meeting should be provided for an AGM where ordinary and/or special resolution decisions are to be made
- if a motion is to be moved that requires an unopposed or unanimous resolution, notice should be received by the owner 21 days prior to the meeting.

#### **The notice must include:**

- time, date and place the meeting is to be held
- copies of the annual financial statements and general fund budget
- if the person being notified is entitled to vote on all (or any) of the motions and, if not, why not
- where a member is not entitled to vote because a mortgagee notice has been given, details of the notice including the name and address for correspondence of the mortgagee's representative
- text of the motion if it requires an unopposed resolution or unanimous resolution
- a proxy form and absentee voting paper approved by the executive committee.

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<sup>2</sup> For a units plan with only two members, both must be present for a decision to be made.

General meetings, sometimes referred to as special general meetings must also be notified showing the time, date and place of the meeting 14 or 21 days before and include the text of unopposed or unanimous resolutions and whether the owner is entitled to vote.



#### TIP

A sample agenda for an annual general meeting is at [Attachment B](#).

### Want to put a motion forward as an owner?

Owners can ask for a motion to be put on the agenda for an annual general meeting for the executive committee to consider. The motion should be accepted if permitted by the Act, sufficient notice is given, it is relevant and is not vexatious.

### General meetings

Executive committees can call a meeting of the owners corporation in addition to an AGM if the owners corporation needs to decide significant policy issues, agree on urgently needed action or significantly revise previous decisions.

Notice is provided to each member and the meetings provide an opportunity for owners to meet face-to-face and to discuss issues affecting the owners corporation.

While it is not compulsory for owners to attend general meetings it is a great way for owners to get involved and have their say. A general meeting must also be called where the executive committee receives a written request from at least one quarter of owners.

### Making meetings effective

It is important to make the meetings effective to encourage attendance and repeat attendance! Some key things to think about are below and at [Attachment C](#).



#### TIPS

- **make sure the timing and agenda of the meeting is provided (and re-confirm it at the start of the meeting)**
- **keep the meetings on track by balancing speakers and business raised**
- **support a respectful, efficient and effective meeting by ensuring a diversity of views are raised and disrespectful or offensive commentary is called out and addressed**
- **support accessibility of meetings by thinking about location and timing – when would it be most convenient for people to attend? Can everyone hear speakers when they talk? Can those with limited mobility still attend at the venue?**
- **provide water and consider refreshments if the meeting goes for more than 60 minutes or spans over a meal time**
- **consider enlisting a relevant expert if matters to be discussed are technical in nature to support the conversation and answer questions with authority**
- **work to improve each meeting and seek feedback from members of what works for them so meetings are useful**
- **provide records or minutes of meetings in a timely way, capturing key points and actions succinctly.**



# Chapter 7 – Have your say: voting and resolutions

**It is important for owners to have their say in matters that may impact them in a units plan. If owners have questions around voting they should talk to the executive committee in the first instance.**



## TOP TIPS

1. Exercise your vote and have your say
2. If you are not available to attend, consider a proxy or absentee vote
3. Be aware there are different types of resolutions.

## Who can vote?

Unit owners. Each unit carries a vote. It can be exercised by the owner, the representative of a group of owners, the representative of a company owner or the mortgagee's representative if a unit is subject to a mortgage and a mortgagee voting notice is in force.

Each person entitled to vote on a resolution must:

- not owe the owners corporation any money
- be present at the meeting, or
- appoint another person present at the meeting as a proxy (permitting the person to vote on the resolution), or
- have cast an absentee vote on the resolution.

## The fine print:

ACAT can also order that a person is not entitled to vote on a motion.

Where the motion relates to a staged development and the motion relates to an uncompleted stage of the development, only people outlined above in relation to the units in the uncompleted stage are entitled to vote. Whereas, if the motion relates to a completed stage, only the people outlined above in relation to the units in the completed stage are entitled to vote.

Where an owners corporation has two or less members, a unanimous resolution is passed if no votes are cast against the resolution and at least one vote is cast in favour of the resolution.

## Proxy and absentee Voting

Proxy voting and absentee voting are used when a person is not able to attend a meeting. A proxy vote counts towards a meeting quorum and for decisions taken at the meeting. An absentee vote counts towards a decision taken at the meeting, but does not count towards making up a quorum. People may appoint a proxy

to vote on their behalf and direct how the proxy is to use their vote. The executive committee must approve a form to appoint a proxy. A person may cast an absentee vote by using an absentee voting paper approved by the executive committee and giving it to the owners corporation before the meeting.

#### The fine print:

Proxy votes count towards the quorum for the meeting but absentee votes do not. A person who casts an absentee vote is taken to have voted on the resolution, except for the purpose of constituting a quorum. A person must not appoint a proxy for more than one year. The owners corporation manager or a service contractor cannot be appointed as a proxy. A person who is not a member of the owners corporation may be appointed as a proxy.

### Resolutions:

There are four types of resolutions that can be passed by an owners corporation: ordinary, special, unopposed and unanimous.

#### Ordinary resolution

An ordinary resolution is passed at a general meeting (number of votes in favour of the resolution being greater than votes cast against it).

Ordinary resolutions are usually required for decisions about administrative matters. All decisions made at a general meeting must be made by ordinary resolution unless the Management Act requires otherwise.

#### The fine print:

Where an owners corporation has more than two members an ordinary resolution is passed where the number of votes for is greater than the number of votes against unless a poll is taken. A poll can be demanded on an ordinary resolution by anyone present at the meeting and entitled to vote. In the case of a poll the value of each vote is determined as a proportion of the unit entitlement.

Where an owners corporation has two or less members an ordinary resolution is passed if no votes are cast against the resolution and at least one vote is cast in favour of the resolution. Further, each person entitled to vote on the resolution must be present at the meeting (or has cast an absentee vote or given a proxy permission to vote on their behalf).

### Special resolution

A special resolution is passed at a general meeting when the number of votes cast in favour of the resolution is greater than the number of votes cast against it and the number of votes against the resolution is less than a third of the total number that can be cast by people present at the meeting including proxy votes. In short this means two thirds plus one vote.

Some decisions may only be made by a special resolution for example, to amend rules, and establish a special purpose fund. Special resolutions can only be voted on by owners who have paid all amounts owing to the owners corporation at the time of the meeting.

#### The fine print:

As above, a poll can be demanded on a special resolution by anyone present at the meeting and entitled to vote. The special resolution is passed when the voting value of the votes for is greater than the voting value of the votes against and the voting value of the votes against is less than a third of the total votes.

Where an owners corporation has two or less members a special resolution is passed if no votes are cast against the resolution and at least one vote is cast in favour of the resolution.

## Unopposed resolution

An unopposed resolution is a resolution passed at a general meeting when no votes are cast against the resolution and at least one vote is in favour of the resolution. Certain decisions, such as amending the method for determining the proportions of contributions to a sinking fund, may only be made by unopposed resolution.

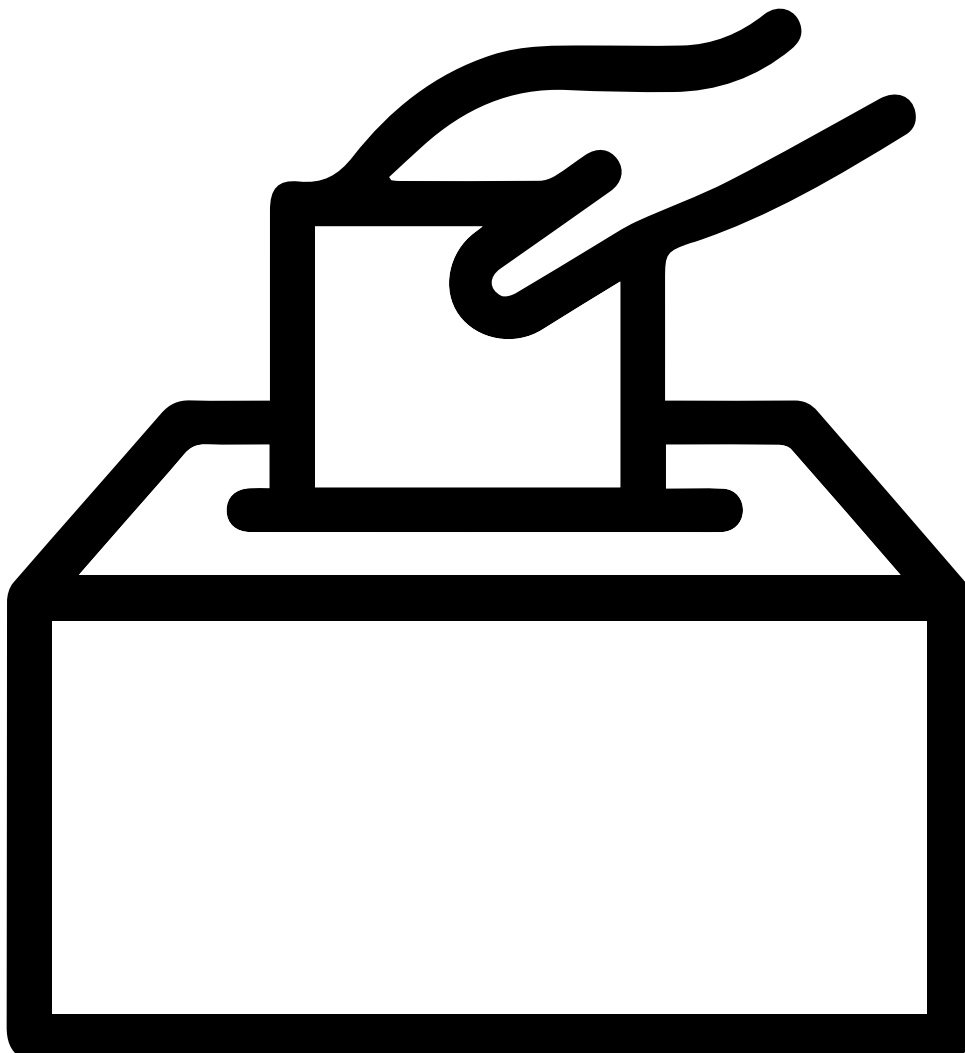
## Unanimous resolution

A resolution at a general meeting is passed when each owner casts a vote in person, by proxy or by absentee vote and no votes are cast against the resolution and at least one vote is cast in favour of the resolution.

Unanimous resolutions are required for certain decisions, such as when an owners corporation wishes to seek an exemption from insurance requirements or where there are limited number of members. A unanimous resolution fails if only one owner does not vote.

### The fine print:

Where an owners corporation has more than two members, a unanimous resolution is passed when all people entitled to vote are present at the meeting or have appointed another person as proxy to vote at the meeting or have cast an absentee vote. Decisions made by a units plan with only two members must be unanimous.



# Chapter 8 – Responsibilities of the owners corporation



## TOP TIPS

1. There are important responsibilities for owners corporations including around financial management, record keeping, insurance and allowing access to documents.
2. Know as a prospective purchaser which documents you can access and as an owners corporation which ones to keep and how to provide access to them to those eligible.

## Financial management

The owners corporation is responsible for managing the finances of the units plan so that it can meet its ongoing expenses and capital maintenance obligations in relation to the building and common property. For more information see next Chapter!

## Records

An owners corporation must establish and maintain a corporate register with details about each unit and the corporation. This includes:

- name and address for correspondence of the unit owners, or if owned by a company, the company's representative
- if a mortgagee voting notice has been given, the name and address for correspondence of the mortgagee's representative
- if the corporation is notified in writing, the name and address for correspondence with anyone else with an interest in the unit and details of the interest
- name of the occupier of the unit including the owner if they occupy the unit
- names of each current executive committee member
- if the corporation is notified in writing, the name and address for correspondence of anyone with an easement over the common property and details of the easement.

The executive committee must also keep:

- minutes of its proceedings including general meetings
- details of every resolution of the corporation at meetings
- copy of any court order given to the owners corporation
- records of owners corporation's assets and liabilities, including all amounts owing to, and by, the corporation
- all amounts received and paid by the owners corporation.

The executive committee must keep these records for at least five years.

## Insurance

The owners corporation must insure all buildings against:

- fire, lightning, tempest, earthquake and explosion
- riot, civil commotion, strikes and labour disturbances
- malicious damage
- bursting, leaking and overflowing boilers, water tanks, water pipes and associated apparatus
- impact of aircraft (including parts of, and objects falling from, aircraft) and of road vehicles, horses and cattle.

The owners corporation must also take out a building insurance policy which covers reinstatement or replacement of the insured buildings against the above risks. These are two distinct statutory obligations.

The owners corporation must apply without delay, any monies it receives under the insurance policy for damage to, or destruction of, any building on the land to rebuilding and reinstating the building or:

- death, bodily injury or illness of anyone
- loss of, or damage to, the property of anyone.

The owners corporation or unit owners may also take out additional insurance if desired. It is a good idea to revalue the property every three to five years and maintain insurance for at least that value.

The owners corporation is responsible for paying any insurance excess where a claim is made against the owners corporation insurance.

Owners are strongly advised to have contents insurance for items not covered by the owners corporation's insurance.

## Access to owners corporations records or corporate register

An eligible person for a unit or the common property may request information from the owners corporation. This includes:

- the owner, or another person with an interest in the unit, or in an easement over the common property
- representative of a company unit is owned or part owned by
- a person authorised in writing by either of the above.

The Environment, Planning and Sustainable Development Directorate can also access this information as necessary for the administration of the Management Act. Courts can also request information.

Requests for information must be in writing and be accompanied by any fee fixed by the owners corporation up to the maximum set by Regulation. The corporation must allow access of the documents within 14 days of the application for information being submitted.

An eligible person for a unit or the common property may request information relating to:

- names and addresses of the executive committee
- current insurance policy or policies taken out by the owners corporation
- receipts for all premiums paid under the current policies
- annual general meeting minutes detailing any resolutions that exempt the owners corporation from taking out insurance.

This should be provided free of charge within 14 days.

### **Requests for Unit Title Certificates**

Upon receipt of a written request from an eligible person for a unit or the common property, the owners corporation must, within 14 days of the request, also provide the eligible person with a unit title certificate. A fee may apply.

Information contained in the unit title certificate must include:

- name and contact details of each member of the corporation's executive committee and corporation's manager (if applicable)
- location where the corporation's records can be inspected, and the name and contact details of the person to be contacted to arrange inspection
- For each insurance policy held by the corporation –
  - > the type of insurance policy
  - > the name of the insurer that issued the policy
  - > the amount of the liability held by the corporation.
- For the general fund and the sinking fund, at the date the certificate is signed –
  - > the amount of the current contribution to the fund for the unit
  - > the date the contribution for the unit is due
  - > the period the contribution for the unit is for
  - > whether the contribution for the unit is paid or unpaid
  - > the balance of the funds for the owners corporation.

Information and records held by the owners corporation remain the property of the units plan it relates to.



#### **TIP**

**Fees around records should not exceed those outlined by [Access Canberra](https://www.accesscanberra.act.gov.au). Information is on the Access Canberra website at: [www.act.gov.au/accessCBR](https://www.act.gov.au/accessCBR)**

# Chapter 9 – Show me the money (and how it is managed)

The financial situations within units plans vary greatly depending upon what facilities exist within the common property. It is important owners understand what levies they may be required to pay but also how funds are managed. Finance management is also critical for owners corporations and executive committees.



## TOP TIPS

1. Know the different types of funds, their purpose and requirements
2. Be aware there might be proportionate calculations in levies for funds
3. As an owner you may incur interest penalties if payment contributions are late.

## General and Special Funds

The owners corporation has an account with a bank, credit union or building society and must pay all amounts it receives into, and pay all amounts it spends from the account.

An administrative fund for general administration purposes is also established and funds for special purposes can be created. At each annual general meeting the owners corporation must approve a general fund budget by ordinary resolution for the administrative fund and any special purpose funds.

The general fund may only be used to make payments that have been approved in the general fund budget or by ordinary resolution.

For the financial year for which the annual general meeting is being held, the general fund budget must detail:

- an estimate of the total contributions (sometimes referred to as body corporate levies) to be paid into the general fund by the owners corporation members
- estimations of any other amounts to be paid into the general fund such as proceeds of the sale of owners corporation property or fees to inspect records
- estimations of payments to be made out of the general fund such as the maintenance of common property, insurance premiums and other recurrent expenses.



### TIP

**Day to day maintenance expenses may include common area cleaning, grass mowing, minor common property maintenance.**

General fund contributions paid to the owners corporation, proceeds from the sale of owners corporation personal property, and any fees received for record inspections and information must be paid to the general fund.

The owners corporation determines the contribution required by each member to be paid to the general fund. The contribution for each unit may be a proportional share of the total general fund contribution in accordance with the unit entitlement, or a proportion of the total general fund in accordance with a method set out in an unopposed resolution.

Where the contribution is to be proportional to a unit entitlement, it is calculated by dividing the total general fund contribution by the total of the unit entitlement and then multiplied by the individual unit entitlement.

**Example:** If the total general fund contribution is \$20,000 for the financial year and the total unit entitlement is 10, an individual unit with a unit entitlement of 1 would need to contribute \$2,000. For another unit with a unit entitlement of 3 the contribution would be \$6,000.

The owners corporation must give each unit owner a notice of the determination of general fund contributions which includes:

- contribution payable for the unit and other units
- the general fund for which the contribution is required, the proportion of the contribution to be paid into each fund, and the total amount to be paid into each fund
- proportion of the total general fund contribution payable for the unit and how the proportion is determined
- date when the contribution is required if payable in full (which must not be later than 28 days after the date of the notice)
- if payable by instalments, the dates on which the instalments are required
- how the contribution is to be paid
- any discount for early payment decided by the owners corporation (if applicable)
- interest payable for late payments.

An owners corporation may also agree to establish a special purpose fund for a particular purpose by a special resolution. The money collected in this fund can only be used for the purpose for which the fund was created, for example a garden makeover or urgent maintenance not planned for in the sinking fund. The contributions payable to a special purpose fund will be determined and agreed to by the owners corporation when approving the general fund budget for each financial year.

## Sinking Funds

A sinking fund provides for the future maintenance and upkeep of the common property. This may include:

- painting common property
- new property purchase, renewal or replacement (such as replacement of lifts in a multistorey building or barbecues on the common property)
- renewal, replacement or repair of common property fixtures and fittings
- other capital expenses for which the owners corporation is responsible.

If there are four or more units in a units plan, the owners corporation must establish and maintain a sinking fund. Unit plans with less than four units are not required to have a sinking fund unless the owners agree.



The sinking fund must be separate and distinguishable from all other money and funds of the owners corporation. If an owners corporation establishes a sinking fund, it must prepare and approve a sinking fund plan. Payments from the sinking fund can only be made if they are consistent with the approved sinking fund plan.

The sinking fund plan must be approved by ordinary resolution within 12 months of the first annual general meeting for the ten year period beginning on the first day of the financial year following approval and include:

- expected expenditure for at least the ten year period of the plan
- each financial year's total contributions required from members to meet the expected sinking fund expenditure

**TIP**

**Sinking fund plans must be reviewed within four years of the plan being approved and every five years after each review.**

The owners corporation must approve a new sinking fund plan no later than 12 months before the end of the ten year period for which the current plan relates. The owners corporation may also amend its sinking fund plan at any time and should also review it on a regular basis to ensure it covers the important items that need to be addressed - things can, and will change, so be prepared!

The sinking fund plan is required to anticipate expenditure over a significant period of time, and for large recurring or one-off costs. For example, if the owners corporation anticipates expenditure to be \$1,000 for general maintenance in most years and \$50,000 every eight years to repaint the property the total expenditure in the first eight years would be \$58,000, the equivalent to \$7,250 per year as shown below.

*Table 1: Sample sinking fund where general maintenance is expected to be \$1,000 most years, and \$50,000 for painting property every eight years.*

**Sample Sinking Fund**

Annual	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
<b>Contributions</b>	\$7,250	\$7,250	\$7,250	\$7,250	\$7,250	\$7,250	\$7,250	\$7,250	\$7,250	\$7,250
<b>Expenses</b>	-\$1,000	-\$1,000	-\$1,000	-\$1,000	-\$1,000	-\$1,000	-\$1,000	-\$51,000	-\$1,000	-\$1,000
<b>Result</b>	\$6,250	\$6,250	\$6,250	\$6,250	\$6,250	\$6,250	\$6,250	-\$43,750	\$6,250	\$6,250
<b>Balance</b>	\$6,250	\$12,500	\$18,750	\$25,000	\$31,250	\$37,500	\$43,750	\$0	\$6,250	\$12,500

The actual expenditure from the sinking fund will never meet the planned amount, and it will be necessary for the owners corporation to amend the plan from time to time to reflect the circumstances as they change.



Another example may be where annual expenditure is \$1,000 in most years and \$50,000 every eight years as above, however also includes a one off expense of \$50,000 in the third year. The owners corporation may choose to save the first \$50,000 in the first three years and the next \$50,000 over the following five years as shown below.

Table 2: Sample sinking fund where general maintenance is expected to be \$1,000 most years, \$50,000 for painting property every eight years, and a one off expense of \$50,000 in the third year.

### Sample Sinking Fund

Annual	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
<b>Contributions</b>	\$17,650	\$17,650	\$17,650	\$11,000	\$11,000	\$11,000	\$11,000	\$11,000	\$7,250	\$7,250
<b>Expenses</b>	-\$1,000	-\$1,000	-\$51,000	-\$1,000	-\$1,000	-\$1,000	-\$1,000	-\$51,000	-\$1,000	-\$1,000
<b>Result</b>	\$16,670	\$16,670	-\$33,330	\$10,000	\$10,000	\$10,000	\$10,000	-\$40,000	\$6,250	\$6,250
<b>Balance</b>	\$16,670	\$33,340	\$0	\$10,010	\$20,010	\$30,010	\$40,010	\$10	\$6,260	\$12,510

Alternatively, the owners corporation may elect to save for the first \$50,000 in the first three years on top of the usual \$7,250 as shown below.

Table 3 Alternative sample sinking fund where general maintenance is expected to be \$1,000 most years, \$50,000 for painting property every eight years, and a one off expense of \$50,000 in the third year.

### Alternative Sample Sinking Fund

Annual	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
<b>Contributions</b>	\$23,916	\$23,916	\$23,916	\$7,252	\$7,250	\$7,250	\$7,250	\$7,250	\$7,250	\$7,250
<b>Expenses</b>	-\$1,000	-\$1,000	-\$51,000	-\$1,000	-\$1,000	\$1,000	-\$1,000	-\$1,000	-\$1,000	-\$1,000
<b>Result</b>	\$22,916	\$22,916	-\$27,084	\$6,252	\$6,250	\$6,250	\$6,250	-\$43,750	\$6,250	\$6,250
<b>Balance</b>	\$22,916	\$45,832	\$18,748	\$25,000	\$31,250	\$37,500	\$43,750	\$0	\$6,250	\$12,500

The contribution for each unit may be a proportional share of the total sinking fund contribution in accordance with the unit entitlement, or a proportion of the total sinking fund in accordance with a method set out in an unopposed resolution.

Where the sinking fund contribution is to be proportional to a unit entitlement it is calculated by dividing the total sinking fund contribution divided by the total of the unit entitlement, and then multiplied by the individual unit entitlement.

Similar to the general fund, the owners corporation must give each unit owner a notice within one month of the annual general meeting detailing the sinking fund contributions for the financial year which includes:

- contribution payable for the unit and others (if proportionate – how it was determined)
- total sinking fund contribution for the financial year
- date payable, if paid in full (which must not be later than 28 days after the date of the notice) and how it is to be paid
- if payable by instalments, the date when the instalments are payable
- any discount for early payment or interest for late payment.

## Discounts

The owners corporation may, by ordinary resolution, decide to apply a discount to general or sinking fund contributions owing by a unit owner. This may apply to amounts paid in full or instalment before the due date or in another way stated in the resolution.

## Amounts owing

It is important for unit owners to pay contributions on time so the owners corporation can fulfil their responsibilities such as paying the insurance premium or necessary maintenance undertaken on common property.

If a unit owner does not pay by the due date an interest fee is charged at 10%. The owners corporation may, by special resolution, decide to raise the annual rate of interest up to 20%. The owners corporation can also recover the amount with interest as a debt from the unit owner.

The owners corporation may also register a charge over the unit by lodging it with Access Canberra. A charge is a liability over the unit title and would be indicated when a prospective buyer performs a title search on the unit. A charge will not be revoked until the amount and interest have been paid and a revocation is lodged and registered at Access Canberra.

## Annual financial reports

At each annual general meeting the executive committee must present to the owners corporation annual financial statements. These cover the period from when the last annual financial statements were prepared and include the owners corporation's assets and liabilities, amounts owing to and by the owners corporation, and all amounts received and paid by the owners corporation. These records must be kept for at least five years.

For the first annual general meeting the annual financial statements must cover the period from when the units plan was registered.



# Chapter 10 – Managers

**There is no requirement to appoint a manager. But if an owners corporation does, there are some things you should know.**



## TOP TIPS

1. Managers can be appointed to support an owners corporation with business
2. There are requirements and responsibilities for managers
3. While functions and activities can be delegated to a manager, responsibility remains with the executive committee
4. Appointment of a manager is not mandatory.

An owners corporation may appoint a manager by ordinary resolution.

Although it is not mandatory, there are many benefits to appointing a manager for your owners corporation. A skilled manager will have a range of efficient systems and procedures to assist in management of your complex, will have comprehensive knowledge of the relevant legislation that affects the operation of an owners corporation, will understand basic maintenance requirements of your building and have access to proven, reliable tradesmen and consultants, and will be able to act as a mediator, advisor, facilitator and secretariat.

An owners corporation manager must be:

- a person licensed as a real estate agent under the *Agents Act 2003*; or
- a person holding a conditional real estate licence under the *Agents Act 2003* who only intends to act as an owners corporation manager; or
- a member of the owners corporation; or
- someone else who is not a manager of another owners corporation and whose income as the owners corporation manager is not the person's primary source of income.



The manager is appointed to assist the owners corporation to deliver on their responsibilities. It is important to make sure expectations and responsibilities are outlined comprehensively (and in writing!) so there is no disconnect in delivery and support. Managers must respond to requests in a timely way.

An owners corporation manager can be appointed for any period but for no more than three years. The conditions of the appointment must include information about remuneration, functions to be exercised by the manager and any other conditions agreed to.

It is important to consider what functions the owners corporation require from a manager and find one which meets these needs.

After three years, the owners corporation must pass an ordinary resolution to either reappoint the existing manager under a new contract or elect to appoint a new manager if one is needed.

An owners corporation may end a manager's appointment for a remedial breach under the Management Act. The Management Act specifies the circumstances in which an owners corporation manager commits a remedial breach. The owners corporation must follow a process including giving written notice and allowing 14 days to respond.

**TIP**

**Responsibility for functions sits with the owners corporation or executive committee even though functions can be delegated to a Manager.**

Owners corporation managers must abide by the code of conduct at Schedule 1 of the Management Act and:

- act honestly, fairly and professionally
- exercise reasonable skill, care and diligence
- act in the best interests of the owners corporation
- keep the owners corporation informed of any significant development or issue about an activity carried out for the owners corporation
- take reasonable steps to ensure that the manager's employees comply with the Act when exercising the manager's functions
- have a good working knowledge and understanding of the Management Act
- not accept an engagement for another owners corporation if that would be in conflict with the manager's duty to, or interests of the owners corporation
- ensure goods and services are sourced competitively
- provide the owners corporation records as required under the Management Act.

# Chapter 11 – Key contacts

## Access Canberra

**Access Canberra administers the laws governing the management of units plans and is responsible for:**

- providing information regarding units plans and unit titles;
- guidance regarding legislative requirements;
- the registration of units plans;
- regulation of real estate agents, including when acting as owners corporation managers.

Website: [www.act.gov.au/accessCBR](http://www.act.gov.au/accessCBR)

Phone: 13 22 81

## ACT Civil and Administrative Tribunal

ACT Civil and Administrative Tribunal provides a formal dispute mechanism for disputes within units plans.

Address: ACT Health Building, Level 4, 1 Moore Street, Canberra City ACT 2601.

Phone: (02) 6207 1740

Website: [www.acat.act.gov.au](http://www.acat.act.gov.au)

## ACT Law Society

ACT Law Society provides information on their website about tenancy agreements and unit titles.

Address: Level 4, 1 Farrell Place, Canberra City ACT 2601

Phone: (02) 6274 0300

Website: [www.actlawsociety.asn.au](http://www.actlawsociety.asn.au)

## Conflict Resolution Service

Conflict Resolution Service can provide assistance in resolution of disputes in units plans.

Address: Level 2 and 3, Griffin Centre, 20 Genge Street, Canberra City ACT 2601

Phone: (02) 6190 7100

Website: [www.crs.org.au](http://www.crs.org.au)

## Elections ACT

Elections ACT provides information on elections for organisations.

Address: Ground Floor, North Building, 180 London Circuit, Canberra City ACT 2601

Phone: (02) 6205 0033

Website: [www.elections.act.gov.au](http://www.elections.act.gov.au)

## Legal Aid ACT

Legal Aid ACT provides free legal information and education.

Address: 2 Allsop Street, Canberra City ACT 2601

Phone: (02) 6243 3411

Website: [www.legalaidact.org.au](http://www.legalaidact.org.au)

**Owners Corporation Network of the ACT**

Owners Corporation Network of the ACT is a voluntary, non-government organisation of owners and provides information and assistance to owners.

President: [president@ocnact.org.au](mailto:president@ocnact.org.au)

Vice president: [vicepresident@ocnact.org.au](mailto:vicepresident@ocnact.org.au)

Secretary: [secretary@ocnact.org.au](mailto:secretary@ocnact.org.au)

Treasurer: [treasurer@ocnact.org.au](mailto:treasurer@ocnact.org.au)

Address: 40/43 Blackall Street, Barton ACT 2600

Website: [www.ocnact.org.au](http://www.ocnact.org.au)

**Strata Community Association (ACT)**

Strata Community Association (ACT) is the peak industry body for the strata sector in the ACT, with roles including advocacy, training, and education for managers and their clients. Members include strata management agencies and their employees, suppliers of services to the strata industry, owners corporations, and individuals.

Email Address: [president.act@strata.community](mailto:president.act@strata.community)

Website: [www.strata.community/states/act](http://www.strata.community/states/act)

# Attachment A

## Default rules

The following are the default rules as set out in the Management Act.

### 1. Definition – default rules

(1) In these rules:

**executive committee representative** means a person authorised in writing by the executive committee under rule 10 (4).

**owner occupier or user**, of a unit, includes an invitee or licensee of an owner, occupier or user of a unit.

(2) A word or expression in the Act has the same meaning in these rules.

### 2. Payment of rates and taxes by unit owners

A unit owner must pay all rates, taxes and any other amount payable for the unit.

### 3. Repairs and maintenance

(1) A unit owner must ensure that the unit is in a state of good repair.

(2) A unit owner must carry out any work in relation to the unit, and do anything else in relation to the unit, that is required by territory law.

### 4. Erections and alterations

(1) A unit owner may erect or alter any structure in or on the unit or the common property only –

(a) In accordance with the express permission of the owners corporation by unopposed resolution; and

(b) In accordance with the requirements of any applicable territory law (for example, a law requiring development approval to be obtained for the erection or alteration).

(2) Permission may be given subject to conditions stated in the resolution.

### 5. Use of common property

A unit owner must not use the common property, or permit it to be used, to interfere unreasonably with the use and enjoyment of the common property by an owner, occupier or user of another unit.

### 6. Hazardous use of unit

A unit owner must not use the unit, or permit it to be used, so as to cause a hazard to an owner, occupier or user of another unit.

### 7. Use of unit – nuisance or annoyance

(1) A unit owner must not use the unit, or permit it to be used, in a way that causes a nuisance or substantial annoyance to an owner, occupier or user of another unit.

(2) This rule does not apply to use of a unit if the executive committee has given an owner, occupier or user of the unit written permission for that use.

(3) Permission may be given subject to stated conditions.

(4) Permission may be withdrawn by special resolution of the owners corporation.



**8. Noise**

- (1) A unit owner must not make, or permit to be made, such a noise within the unit as might (in the circumstances) be reasonably likely to cause substantial annoyance to an owner, occupier or user of another unit.
- (2) This rule does not apply to the making of a noise if the executive committee has given the person responsible for making the noise written permission to do so.
- (3) Permission may be given subject to stated conditions.
- (4) Permission may be withdrawn by special resolution of the owners corporation.

**9. Illegal use of unit**

A unit owner must not use the unit, or permit it to be used, to contravene a law in force in the ACT.

**10. What may an executive committee representative do?**

- (1) An executive committee representative may do any of the following in relation to a unit at all reasonable times:
  - (a) if the committee has reasonable grounds for suspecting that there is a breach of the Act or these rules in relation to a unit – inspect the unit to investigate the breach;
  - (b) carry out any maintenance required under the Act or these rules;
  - (c) do anything else the owners corporation is required to do under the Act or these rules.
- (2) An executive committee representative may enter a unit and remain in the unit for as long as is necessary to do something mentioned in subrule (1).
- (3) An executive committee representative is not authorised to do anything in relation to a unit mentioned in subrule (1) unless –
  - (a) The executive committee or the representative has given the owner, occupier or user of the unit reasonable notice of his or her intention to do the thing; or
  - (b) In an emergency, it is essential that it be done without notice.
- (4) The executive committee may give written authority to a person to represent the corporation under this rule.

**11. Seal of owners corporation**

For the Attaching of the seal of the owners corporation to a document to be effective -

- (a) the seal must be attached by decision of the executive committee; and
- (b) the seal must be attached in the presence of two executive members; and
- (c) the executive members witnessing the attaching of the seal must sign the document as witnesses.

# Attachment B

**AUSTRALIAN CAPITAL TERRITORY  
OWNERS CORPORATION  
ANNUAL GENERAL MEETING AGENDA TEMPLATE**

**Financial Year:**

**Time:**

**Date:**

**Place:**

## **1 MEETING OPENING**

- 1.1 Election of chairperson (if necessary)
- 1.2 Apologies
- 1.3 Proxies
- 1.4 Quorum

## **2 MEETING PROCEDURES AND PROTOCOLS**

## **3 MINUTES OF PREVIOUS MEETING**

- 3.1 Minutes of last meeting dated xx / xx / xxxx
- 3.2 Action list of business arising out of minutes

## **4 GENERAL BUSINESS**

- 4.1 Appointment of or report from owners corporation manager (where appointed)
- 4.2 Presentation of financial statements
- 4.3 Details of insurance, valuation and review
- 4.4 Proposed budgets
- 4.5 Proposed contributions

## **5 CORRESPONDENCE**

## **6 ELECTION OF EXECUTIVE COMMITTEE**

## **7 ANY OTHER BUSINESS**

## **8 NEXT MEETING**

- 8.1 Date for next meeting
- 8.2 Items for next agenda

## **9. MEETING CLOSURE**

# Attachment C

## Example procedures for meetings

**These procedures are an example only and do not form part of the Management Act. Owners corporations may adopt their own procedures or use some of the example procedures as long as they are consistent with the Management Act.**

### Key tips:

1. **Make sure the timing and agenda of the meeting is provided (and re-confirm it at the start of the meeting)**
2. **Keep the meetings on track by balancing speakers and business raised**
3. **Support a respectful, efficient and effective meeting by ensuring a diversity of views are raised and any negative or offensive commentary is called out and addressed**
4. **Support accessibility of meetings by thinking about location and timing – when would it be most convenient for people to attend? Can everyone hear speakers when they talk? Can those with limited mobility still attend at the venue?**
5. **Consider enlisting a relevant expert if matters to be discussed are technical in nature**
6. **Work to improve each meeting and seek feedback from members of what works for them so meetings are useful.**

The chairperson should ensure that meetings are respectful, efficient and effective. It is important that owners have an opportunity to voice their opinion or ask questions.

Keep meetings to time by making everyone aware of timeframes and that the speakers for and against motions know how long they can present for. If there is a technical matter that requires a decision, it may be appropriate and may assist the meeting to invite an expert to address the meeting and answer questions.

1. The following procedures should be observed at owners corporation and executive committee meetings. Subject to any suspension of, or amendment to these procedures which is agreed to by members at a meeting by ordinary resolution:
  - a. the mover of a motion must not speak for more than an agreed period like ten minutes.
  - b. subsequent speakers must be allowed 'reasonable time like five minutes, and the mover of the proposition five minutes to reply (the meeting may, however, by ordinary resolution, extend in a particular instance the time permitted by this rule.)
  - c. whenever an amendment to an original motion is proposed, a second amendment is treated as a foreshadowed motion and is not considered until the first amendment has been decided.
  - d. if an amendment is carried, the amended motion will replace the original motion and may itself be amended.
  - e. if an amendment is defeated, a further amendment may be moved to the original motion, however, only one amendment shall be submitted to the meeting for decision at one time.
  - f. if the meeting attempts to amend a unanimous or unopposed resolution or any other resolution the text of which has been provided to owner so that it is markedly different to the resolution notified, the resultant decision can be subject to challenge at ACAT and may be declared void.
  - g. the mover of every original motion, but not of an amendment, must have the right to reply. Immediately after this, the question must be put from the chairperson. No other member must speak more than once on the same question, unless permission is given for an explanation, or where the attention of the chairperson is called to a point of order.
  - h. any discussion on a motion or amendment may be closed by a resolution 'That the question be now put' being moved, seconded and carried. Such resolution must be put to the meeting without debate.
2. Any motions and amendments must be submitted in writing if requested by the chairperson.
3. Any member, or any visitor invited to attend the meeting by the executive committee, may speak on any issue at a meeting with the permission of the chairperson.
4. Procedures may be suspended for any period by ordinary resolution.

