



LookUpStrata

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TISHER LINER FC LAW

Horizon

Dispute Resolution
Process in Victoria

| By Phillip Leaman &
Joel Chamberlain



Welcome

TISHER LINER FC LAW



PHILLIP LEAMAN 2021
RECOGNIZED BY
Best Lawyers

Phillip Leaman | LLB(Hons) Bcom
Principal Lawyer

WHAT WE DO:

Our very experienced team can provide assistance to owners corporations, committees, lot owners and managers in a range of owners corporations legal matters including:-

- General advice and governance;
- Interpretation of plans of subdivision, common and private lot boundaries;
- Levy recovery;
- Building defect claims and water act claims;
- Adverse possession, easement and amendments to plans of subdivisions;
- Creation and enforcement of owners corporations rules;
- Preparing leases and licences over common property’;
- Advice on repairs and maintenance and the application of the benefit principle; and
- Prosecuting and defending claims made at VCAT by Owners Corporations and Lot owners..

Welcome

Horizon Strata



Joel Chamberlain | Senior OCM
Horizon Strata Management Group

WHAT WE DO:

Our experienced team provide Owners Corporation Management to a select number of medium and large sized buildings in Melbourne. We offer a range of services including:-

- Owners Corporation Management for single and multi OC's;
- A commission free environment, including with insurance renewals;
- Financial assistance and guidance for Committee's;
- Services and contract review which lead to sourcing alternative cost saving options;
- Management and support for projects such as combustible cladding and building defects;
- Support and advice with overturning long term 25-30yr building management contract;
- Provide support, education and guidance to Committee's to make informed decisions;



OVERVIEW

Horizon

TISHER LINER FC LAW

1. What is the formal dispute resolution process under the Owners Corporations Act, Regulations and Rules.
2. How to avoid disputes in the first place
3. How must OC's do?
4. What happens if the dispute is not resolved

Legal Framework

The current relevant legislation that governs disputes

Part 10 of the Owners Corporations Act 2006 (Sections 152 to 159)

Part 11 of the Owners Corporations Act 2006 (Sections 162 to 169) for going to VCAT

(We wont talk about short stay disputes today)

Legal Framework

*Owners Corporations Regulations 2018 (Schedule 2
Model Rules and Model Rule 7)*

Model Rules and any Registered Rules on Title



AVOIDING
DISPUTES

How to avoid disputes

Complaints and Breaches happen regularly, how do we avoid these or at the very least, find a resolution before they escalate.

In general, the 80/20 rule applies with complaints or breaches. 80% of the time, an issue can be resolved with a few simple steps. However, 20% of the time, they will develop into a formal complaint under Part 10.

Simple Steps

Often the person causing the breach is unaware of the rules or their obligations under the Act. Simple contact or communication with the person allegedly in breach should resolve the issue. This includes:

- **Phone call** – can be the best way to humanise the issue
- **Email**
- **Letter** - more formal and generates a record

Limit Breaches Where Possible

Receiving a breach can cause the party to become defensive or confrontational. It is recommended to exhaust all reasonable options before initiating any formal process under Part 10 or the Rules.

The formal process requires effort, time and commitment, not only from the OCM and parties involved, but for the Committee and possibly the Grievance Committee or entire OC.

Lot Owner
Initiated
Complaint

Process

- Lot owner or occupier or manager may make a complaint (s152 (1)).
- Complaint must be in writing in approved form. See here:
<https://www.consumer.vic.gov.au/library/forms/ho-using-and-accommodation/owners-corporations/complaint.doc>
- Complaints cannot be about personal injury or about monies owing to an OC.

Process

The OC must decide:

- To take action under Part 10 in respect to the alleged breach; or
- Apply to VCAT for an order requiring the person to rectify the alleged breach; or
- To take no action in respect to the alleged breach

Process

The OC cannot go to VCAT before following the dispute resolution process under the Rules and the OC is satisfied that the matter has not been resolved through that process.

The OC must have reasonable grounds that the person has committed the alleged breach before going to VCAT

Process

If the OC takes no action it must give written notice of the decision to the person who made a complaint and set out the reasons for the decision to take no action.

It is important to remember that if the OC decides not to take action in respect of the alleged breach, it does not need to hold follow any subsequent steps set out in the rules, such as holding a grievance meeting.

Process

If the OC wants to take action, it must give:

- 1. Notice to Rectify Breach - Person has 28 days to rectify.**

If breach not rectified, OC may:

- 1. Give more time to comply;**
- 2. Give a Final Notice;**
- 3. Not proceed with further action.**

Lot Owner
Initiated
Complaint

Process

Final Notice

- **Must be in approved form;**
- **Person has 28 days to rectify the breach;**
- **Must state that if breach is not rectified the OC may apply to VCAT**

Process

If Final Notice not complied with, OC may:

- 1. Go to VCAT;**
- 2. Decide to take no action**

The OC's decision must be provided in writing and giving to the person making the complaint and the person the subject of the complaint.

Lot Owner
Initiated
Complaint

AGM Reporting

The number of complaints and the nature of complaints must be reported at the AGM. Review section 159 of the Owners Corporations Act 2006 as to what is and is not to be included in the report. The report must not identify the person who made the complaints or the lot owner or occupier alleged to have committed the breach.

OC
Initiated
Complaint

If an owners corporation is aware of a breach, it need not follow the process in Part 10.

It can provide a Notice to Comply and a Final Notice, but may not be required to before it goes to VCAT.

Grievance Procedure applies to disputes involving a lot owner, manager or occupier or the OC:

- 1. The party making the complaint must prepare a written statement in the approved form.**
- 2. If there is a grievance committee it must be notified of the dispute.**
- 3. If there is no grievance committee the OC must be notified.**
- 4. The parties to the dispute must meet to discuss the dispute with the grievance committee or the OC.**

5. Meeting must occur within 28 days.

6. Meeting may be in person or by phone or video conferencing.

7. A person may appoint a person to act or appear on their behalf.

8. The grievance committee may obtain expert evidence to assist with the resolution of the dispute.

9. If the dispute is not resolved, the OC must notify the parties of their rights to take further action under Part 10.

Practical
Advice

- **The OC should be encouraged to provide open and transparent communication to lot owners.**
- **Managers should act early and try and open a dialogue early between parties in dispute.**
- **Use the formal process if informal means fail.**
- **Sometimes parties need to sit in the room with an independent party to air their grievances and have their 'day in court'**

Practical
Advice

- **If the manager is not a party to the dispute have the manager or a lawyer independently chair the dispute meeting so the parties feel that they are getting a fair go.**
- **Make sure everyone has a reasonable opportunity to present their side of the story.**
- **Make sure reasons for not taking action are reasonable and properly thought out.**
- **Consult with a lawyer if not sure**



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QUESTIONS?