

Complaints.



One of the aspects of owning and/or living within an Owners Corporation that may be new and challenging to many people is being much more closely situated to immediate neighbours than you may have been previously in a non-strata dwelling, i.e. a stand alone house.

Whether due to this closer proximity, different lifestyles, or differences in opinion over the management of the Owners Corporation or even day-to-day practices, it is quite common for disagreement or complaints to arise between fellow members and residents of the Owners Corporation.

Attempt a civil, informal resolution.

At first instance the recommendation of The Knight and your Manager is always to attempt a civil, informal resolution. A polite discussion with the other party, or similarly polite but assertive written communication regarding the misuse of your car park or recent noise disturbance etc. – whatever the matter of your complaint is.

The Owners Corporations Act grants a limited authority to the Owners Corporation to hear formal Owners Corporation complaints. The intention and function of these statutory provisions is to work towards a mutually acceptable resolution of the circumstances that give rise to the complaint. The Act does not provide the authority for punitive measures to the Owners Corporation (i.e. fines), nor may the Owners Corporation make orders upon either complainant or respondent.

Submitting a formal complaint.

Should your initial, direct efforts be unsuccessful, you may wish to consider submitting a formal complaint. Please contact your Manager with The Knight if this is the case, who will provide you with the prescribed form.

The complaint must cite either a rule, statutory provision or regulation that is asserted to have been breached, and must cite a respondent – being another lot owner or occupier. The Owners Corporation Committee cannot be the respondent. It should be noted that disagreement with action of the Owners Corporation or Committee does not give grounds for a valid complaint. Please note that complaints cannot be made in this context relating to a personal injury, per the Owners Corporations Act.

Once an Owners Corporation Complaint is received, the Owners Corporation has a statutory process to follow, that involves the complainant, the respondent, the Owners Corporation Committee, and the Owners Corporation Manager to minute any decisions made or agreements reached.

Owners Corporation Grievance Committee.

The body of the Owners Corporation that review and manages complaints is the Owners Corporation Grievance Committee, which is comprised of members of the Committee. If a Grievance Committee is not separately appointed and constituted, then the full Committee will act as the Grievance Committee.

Once a formal Owners Corporation Complaint is received in the prescribed form, the Manager will provide a copy to the Grievance Committee. The Grievance Committee must then decide whether or not to take action in regards to the alleged breach cited in the complaint. If the Grievance Committee elects not to take any action, the Grievance Committee must then inform the complainant formally, and set out the reasons for the decision.

If the Grievance Committee believes an alleged breach has occurred, it may take action by either issuing of a Breach Notice, or making an application to VCAT to seek an order in relation to the complaint.

Following the Dispute Resolution process.

However, before either of those actions may be taken, the Dispute Resolution process in the Owners Corporation Rules must be followed and completed.

If the Owners Corporation's Registered Rules have a Dispute Resolution process, then that should be



followed as it is dictated. If, at the end of that process, there is no resolution of the matter, then the Owners Corporation may either issue a Breach Notice or make an application to VCAT (as could the complainant).

If no Dispute Resolution process is stipulated, then the process defaults to that of the Model Rules, which requires that within 14 days of receiving a formal complaint, a Grievance Meeting is held with the complainant, the lot owner and the Grievance Committee.

If the Grievance Committee determines that the complaint is not a valid Owners Corporation matter, and decide to take no action, then the complainant will be notified of the reason for no action being taken. Complaints must relate to an alleged breach of the Owners Corporation Act, Regulations, or Rules of the Owners Corporation.

Grievance Meetings.

The purpose of this meeting, often referred to as a Grievance Meeting, is to aim for a mediated, mutually acceptable resolution of the circumstances that gave rise to the complaint. If this cannot be achieved, then either the complainant or the Owners Corporation Committee may make an application to VCAT, seeking an order in relation to their complaint.

At the completion of the Dispute Resolution process stipulated in either the Model or Registered Rules of the Owners Corporation, if there has been no resolution to the complaint, the Owners Corporation may take action in the form of making an application to VCAT for an order, or the issuing of a Breach Notice.

Issuing a Breach Notice.

Generally speaking, the recommendation of The Knight is that the complainant be the party to escalate a matter to VCAT, rather than the Owners Corporation taking on the legal and costs burden on behalf the private complainant. However this is a matter for the Committee to decide, should this step be reached.

Alternatively, should the Owners Corporation choose to issue a Breach Notice, stipulating a required remedy of the breach within 28 days. If remedy does not occur, a Final Breach Notice and further 28 day period for remedy may be issued. Should no remedy be achieved, this will provide a second, alternative basis for the Owners Corporation to seek an order at VCAT.

Please note, once the Dispute Resolution process has been followed, if action is to be taken seeking an order at VCAT, a Special Resolution is not required for initiating the legal proceedings.

Formal complaints must be reported to the Annual General Meeting. The report must note the number and nature of complaints, but must not identify either the complainant or respondent.

This article is for reference purposes only and is not intended to be a comprehensive review of the developments in the law and practice or to cover all aspects of the subject matter. It does not constitute legal or other advice and should not be relied upon this way. Readers should take legal or other advice before applying the information containing in this publication.

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