

Rules

Overview

Changes to the legislation regarding the Owners Corporation Rules will perhaps be the most impactful amendments of the 2020 reforms. All owners and occupants are bound by the Rules of the corporation, and for many this is the aspect of living in strata that directly impacts their day to day lives.

Important and fundamental changes have been made to the nature of what the Rules can do, including with regard to the keeping of pets, as well as access to the common property and the equitable distribution of cost within an Owners Corporation.

What is new?

For all owners corporations established on or after 1 November 2020, the rules of the Owners Corporation are the default rules set out in schedule 1 of the Unit Titles (Management) Regulation 2011 (the Regulation). These rules cover matters such as building or altering structures in a unit, the use of the common property and pets in units.

For all Owners Corporations established before 1 November 2020, the rules of the corporation that existed before 1 November succeed the amendments and will carry forward as they have been amended over time.

However, any rule that has been amended before 1 November 2020 has no effect if it contradicts the Act, including the new provisions of the Act.

Therefore, it is possible that an Owners Corporation will discover that some of its rules that were previously enforceable have no effect after 1 November 2020.



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Pet Friendly Rules

Prior to the 2020 strata reforms the keeping of pets in a strata property were expressly dealt with in a fixed section of the act, which did not allow for an Owners Corporation to modify to suit their individual preference via a rule.

The new legislation now allows an owners corporation to make specific pet friendly rules to eliminate the need for residents to apply for permission, while also retaining a fixed section of the act to prescribe the process for seeking approval in the event that a pet friendly rule does not exist.

For more information about the rules relating to keeping an animal, please see the Pets fact sheet.

Special Privilege Rules

From 1 November 2020, the granting of an exclusive right over common property to an owner (or group of owners) for a period of 3 months or longer must be done by way of a Special Privilege Rule, which must be agreed by Special Resolution.

A Special Privilege Rule creates a specific Rule of the owners corporation to establish the exclusive use right, which is enduring and registerable on title along with all other Rules of the corporation. Additionally, any owner who has been granted a Special Privilege over common property in the past will have that right terminated on 1 July 2021 if they do not obtain a Special Privilege Rule before that date.

Importantly, a Special Privilege Rule also functions to establish arrangements relating to the cost of servicing and maintenance to the common property that is subject to a Special Privilege Rule.

The effect of this change will enable an Owners Corporation to partition off certain areas of common property and infrastructure to certain user groups, and have the associated cost met by the relevant user or group.

For example, in the case of a mixed-use building with ground floor commercial restaurants, and residential units above ground floor, it will be possible to establish Special Privilege Rules for the commercial units to have exclusive use of ground floor toilets accessed by the public and patrons of their businesses. The cost of cleaning and maintaining those toilets can also be applied to the commercial units with the Special Privilege, to the exclusion of the residential units of the building.

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Special Privilege Rules cont.

Using the same example, the residential units might have a swimming pool located on an upper floor podium. The residential units can therefore be granted the exclusive use of that amenity and also carry the costs associated with cleaning and maintenance, to the exclusion of the commercial units.

Similar examples could be applied to developments with a mixture of townhouses and apartments.

The outcome is a fairer user pay system that can respond to the specific nuances of each building.

Protections are built into the legislation so that any Special Privilege Rule passes a “fairness test” in the event of a dispute.

Amendments to Rules by Developer

Prior to the 2020 strata legislation amendments, the Rules for an owners corporation could not be amended from the default rules (contained in the legislation) automatically given to it upon registration until after the Developer Control Period had expired (after 1/3 of units had settled).

However, from 1 November 2020 a developer will have the ability to amend the Rules during the Developer Control Period providing that the amendments were disclosed in the sales contract to each buyer who purchased off the plan.

This will enable a developer to consider the specific needs of their project and curate the way the owners corporation will operate with regard to access to common property and amenity, as well as the equitable apportionment of associated costs.

References

Unit Titles (Management) Act 2011 (as amended) (www.legislation.act.gov.au)

Division 6.2	Rules—particular matters
Division 6.2.1	Special privileges in relation to common property
Section 112A	Special privileges in relation to common property
Section 33	Restriction corporation during developer control period
Section 33A	Developer control period—ACAT authorisation of actions