

# CONSUMER GUIDE

## CONTRACT OF APPOINTMENT



### CONSUMER GUIDE TO SCA (Vic) COPYRIGHT CONTRACT OF APPOINTMENT – OWNERS CORPORATION MANAGER AUGUST 2011

SCA (Vic) has prepared this guide with a view to providing consumers a better understanding of the terms and conditions of the SCA (Vic) Copyright Contract of Appointment-Owners Corporation Manager [“SCA (Vic) CoA”] that you have received.

This publication is not intended as legal advice, nor should it be interpreted as such.

This guide does not include comments with regard to every sub clause in the SCA (Vic) CoA.

Users of this guide are encouraged to seek their own independent legal advice before they enter into any contract, including the SCA (Vic) CoA with a Registered Manager who is a member of SCA (Vic).

#### Page 1

The Reference Schedule includes:

- Identification of the parties to the SCA (Vic) CoA;
- Contact details of the parties, including the chairperson of the Owners Corporation (“OC”);
- The term of appointment. Note the automatic annual renewal provision that if no notice is given it continues for another year.

#### Page 2

Clause 1 Insurance details are provided including:

- The Manager’s professional indemnity insurance details;
- The Manager’s Australian financial services licence and authorisations. OCs must insure as a basic function, and this is one of the key functions the Manager performs. To do this the Manager must by law be a trained Authorised Representative who can maintain claims history collect and pay premiums and attend to administration of claims;
- Details of the Manager’s entitlement to insurance agency fees and commissions. It is the OC not the Manager that decides where to place the insurance. Insurance commissions are the result of an administrative cost saving. Management fees are currently subsidised by insurance commissions. Premiums are the same for OCs whether

the OC deals directly with the insurer or uses the services of the Manager to arrange the insurance;

- Current practice for insurance commissions as endorsed by SCA (Vic). Conditions applicable to the Manager receiving commission include that the interest of the client is the paramount criterion.

#### Page 3

Clause 2.1 The Manager’s annual fee is specified and how it is to be paid.

A description of the services to be provided by the Manager in respect of the annual fee payment is listed including:

- Accounting;
- Insurance for the OC;
- Documentation of records and maintenance of the Register of the OC;
- Annual general meeting;
- Maintenance;
- Guidance to OC on compliance;
- General implementation of decisions of the OC.

#### Page 4

Clause 2.2 Additional tasks which may be performed by the Manager and charged by hourly rate or fixed fee are listed. These are payable on presentation of invoice.

#### Page 5

Clause 2.3 Amounts that may be claimed for disbursements paid by the Manager are listed. This includes the OC resolving to

charge a fee of \$150 for an OC certificate, and to reimburse this amount to the Manager.

Clause 2.4 This clause provides for the Manager's fees and additional fees to be reviewed and increased annually by the AWOTE index or 5% whichever is greater; and disbursement fees to be reviewed and increased annually.

### **Pages 6 & 7**

Clause 3 This clause provides that the OC delegates to the Manager all powers and functions of the OCs that are necessary to enable the Manager to perform the duties under the SCA (Vic) CoA. This is essential for the OC to function in a timely and effective manner.

Clause 4 Authority is provided to the Manager to disperse OCs funds for the purposes specified in the SCA (Vic) CoA.

Clause 5 The duties and obligations of the Manager are listed including:

- The functions of the Manager;
- The duties of the Manager;
- The obligations of the Manager. Please note that if there is a committee the OC must have a secretary, which can be the Manager. The role of secretary is onerous for owners but is that which the Manager has historically performed. To deal with the possible conflict of interest which arises out of the Owners Corporations Act 2006 ("Act"), the SCA (Vic) CoA provides that the Manager will act as secretary only if so appointed and will not have any vote on committee;
- Warranties given by the Manager.

### **Page 8**

Clause 6 This clause deals with assignment of the SCA (Vic) CoA to a new Manager. The OC must not unreasonably withhold consent to the appointment of the new Manager. If a proposed new Manager provides written evidence of registration as a Manager pursuant to Part 12 of the Act and that the new Manager is a current member in good standing of SCA (Vic), then the OC must approve the assignment of the Appointment to the new Manager. The new Manager must also covenant to comply with the SCA (Vic) CoA.

Clause 7 In this clause the OC gives a number of indemnities to the Manager for loss or damage including negligence except to the extent that any loss is caused by or contributed to by the Manager's dishonesty or fraud. The Manager is an administrator providing secretarial type services not, for

example, an expert provider of essential services, OH&S, or the assessment of works. Further the OC indemnifies the Manager for all reasonable costs reasonably incurred in connection with any matter relating to the OC or its property or in consequence of the Manager being a party to any proceeding relating to the OC. Managers implement the decisions of the OC, they do not make decisions, but nonetheless are sometimes joined in proceedings when there is a dispute within the OC.

### **Page 9**

Clause 8 A variety of mechanisms are provided to enable an OC to terminate the Manager's services including:-

- termination for fundamental breach after written notice;
- termination after the initial term by the OC at a general meeting only – the OC by this clause agrees and resolves that the committee does not have power or function to terminate the SCA (Vic) CoA. The SCA (Vic) CoA can accordingly only be terminated by resolution at a general meeting of the OC.

Clause 8.5 provides that the Manager must within 28 days of lawful termination return all records and funds relating to the OC.

### **Page 10**

Clause 9 Sets out the obligations of the OC under the SCA (Vic) CoA and includes provisions among others that the OC must:-

- At all times have a chairperson to deal with the Manager;
- Give the chairperson or substitute representative appropriate powers;
- Appoint a grievance committee;
- Make the Manager aware of any defects or hazards in the OC property;
- Resolve that the SCA (Vic) CoA can only be terminated at a general meeting;
- Read the insurance product disclosure statement;
- Obtain valuations of cost of reinstatement and replacement of the OC buildings;
- Not issue notice convening an AGM or SGM or arrange a ballot without giving notice to the Manager.

Clause 9.3 Notice of meetings of the committee and subcommittees must be provided to the Manager. Copies of minutes of the committee and subcommittees must be provided to the Manager.

Clause 9.4 The chairperson must be appointed as Representative and binding instructions to the Manager may only be given

by the Representative, Substitute Representative, secretary or committee.

### **Page 11**

Clause 9.5 Responsibility for repairs and maintenance under this clause rests with the OC. The Manager is not liable for any defects in the OC property. This clause also provides among other matters that:-

- The Manager is not required to inspect OC property or attend itself to any repairs and maintenance or other works;
- The OC acknowledges that it is the entity in control of the premises and accepts obligations to ensure safety of any persons at the premises;
- The OC will ensure compliance under the Occupational Health and Safety Act 2004 (Vic) ("OHS Act");
- The OC indemnifies the Manager against claims for the loss or damage as a result of any breach by the OC under the OHS Act.  
For example, there are OH&S risks with holding meetings on site.

### **Pages 12 & 13**

Clause 10 Dispute resolution involving the OC, lot owners or occupiers, but not involving complaint against the Manager, is dealt with in accordance with the Rules of the OC. This clause provides that the Manager is entitled to payment of additional fees and charges if required to participate in such dispute resolution process.

Clause 10.2 provides for dispute resolution involving complaints against the Manager and sets out the procedure to be adopted. Whilst complying with Part 10 of the Act it improves the Model Rule process by better defining the process and parties.

Clause 10.3 gives the parties the opportunity to refer the dispute to an expert for determination.

Clause 10.5 This clause provides for determination and recovery of the costs and

expenses incurred by the OC arising out of any breach of the Act the Regulations or the Rules from the party in default or breach and evidences the OC resolution to recover such costs and expenses.

### **Page 14**

Clause 11 Sets out additional conditions including:

- an Entire Agreement provision;
- a Severance provision;
- certain transitional arrangements to accommodate the coming into operation of the Act; and
- If agreed, amendments may be made by including Special Conditions.

### **Page 15**

Clause 12 sets out a dictionary of defined terms used in the SCA (Vic) CoA.

Clause 13 provides for payment of GST.

### **Page 16**

Clause 14

Operates to appoint the Manager and provides for declarations and signature of the OC under seal.

### **Conclusion**

SCA (Vic) hopes that you find this consumer guide useful to better understand the SCA (Vic) Contract of Appointment Owners Corporation Manager. You are however reminded that while this guide is intended to give consumers of OC management services a better understanding of the terms and conditions of the SCA (Vic) Contract of Appointment and to help you work better with your manager, this guide is not intended as legal advice, nor should it be interpreted as such.

Consumers are encouraged to seek their own independent legal advice before they enter into and sign any contract, not just to the SCA (Vic) Contract of Appointment between their OC and their Manager.