

## STRATA LIFE AUTUMN 2013

### IN THIS ISSUE

- 1 Cost of Damage Rectification to Common Property
- 2 VCAT fees to increase over 300 percent
- 3 Stamp of approval: understanding owners corporation certificates
- 3 Is your building standing up to the heat?
- 4 The good and bad of buying off the plan
- 4 SCA (Vic) & The Victorian Homeless Fund - Update
- 5 Egg-cellent Strata Cupcakes for Easter
- 5 Reforming the Fences Act 1968

### Welcome to Strata Life

Whilst we don't seem to know what this Autumn weather has in store for us, we have heard a lot recently from the Planning Minister, Matthew Guy as to some developments on our horizon.

With this in mind, this edition of Strata Life offers some guidance when buying into an Owners Corporation: Consumer Affairs Victoria explains the importance of the Owners Corporation Certificate, where to find it and what information it will provide. TressCox Lawyers offer guidance on the good and bad of buying off the plan. And both CHU and PL Plumbing share with us a behind the scenes look at the impact of the weather on, and protection of, your investment.

Remember, any queries or to find out more simply call SCA (Vic) on 9416 4688.

We hope you enjoy this edition of Strata Life and we take this opportunity to wish you all an egg-cellent Easter!

**Rob Beck,**  
GENERAL MANAGER



Click on the headings below to find out more about the projects on Melbourne's horizon.

**\$160 Million Residential Development for Docklands Approved** According to Mr Guy, two residential towers, to be part of the New Quay precinct, have been approved and will consist of a 43 level residential tower with 244 apartments and a 16 level residential tower with 181 apartments. Mr Guy noted that the development will also include a new 5,000 square metre urban park.

**Fishermans Bend Urban Renewal Area Rezoned** Mr Guy has declared the Fishermans Bend Urban Renewal Area (FBURA) "a site of [s]tate significance" and rezoned the 240 hectares to Capital City Zone, a move which will expand Melbourne's Capital City Zone by more than 50%. According to Mr Guy, 5,000 apartments will be built in the area over the next decade. The FBURA will consist of the Lorimer, Montague, Sandridge and Wirraway Precincts, said Mr Guy.

**\$800 Million Project for Melbourne CBD Approved** Planning Minister Matthew Guy has approved plans for an \$800 million inner residential and commercial project at 250 Spencer Street in Melbourne's CBD. According to Mr Guy, the proposal will include approximately 3,000 apartments in six mixed-use towers ranging approximately from 39 to 63 storeys. Mr Guy noted that an extensive environmental assessment will be conducted prior to the first stage of development.

## Cost of Damage Rectification to Common Property

*Scott Overy, CHU Underwriting Agencies*

Victoria in 2012 was free from major natural catastrophes impacting high concentrations of strata properties. This was a welcome relief from the previous three years where, as the below table shows, the opposite occurred:

YEAR	LOSS	DAMAGE CAUSED
2009	Bushfires	\$1.1 billion
2010	Hail storm	\$1.1 billion
2011	Severe storm	\$488 million
2011	Severe storm	\$729 million

**Insured damages from natural catastrophes impacting Victoria<sup>1</sup>**

1. <http://www.insurancecouncil.com.au/industry-statistics-data/disaster-statistics/historical-disaster-statistics>

CONTINUE PAGE 2

FROM PAGE 1

Whilst there is much debate on whether these events are getting more severe and increasing in frequency, what we do know is that these events cause great financial hardship for individuals and communities.

The cost of everyday claims - which include such things as general water damage, malicious damage and broken windows - have risen significantly over the last couple of years, but the impact has been masked by the sheer volume of catastrophe-related damage.

As a general rule insurance costs should at the very minimum increase each year in line with claims inflation, which has run at between 1.5 & 2.0 times the rate of CPI over the last three decades.<sup>2</sup> In the last twelve months claims inflation has increased significantly more than this for everyday claims.

There have been a number of macroeconomic drivers pushing the cost of claims upward - they include:

1. The sheer number and severity of catastrophe claims
2. A building boom in Victoria
3. The mining boom in other States

These three drivers have created huge demand for labour and materials (shortages). Additionally:



4. Some Owners Corporations (OCs) have chosen not to undertake regular maintenance work or have defects rectified, which has led to increased damage to property.

There has been a significant contraction in the first three drivers, which should result in the lowering of costs charged by builders. This is a proactive conversation that needs to occur with all builders you engage to undertake OC work.

To stop damage occurring in the first place, or minimise it when it does happen, the OC has to take responsibility for maintenance and defect rectification, have in place sound risk management processes and ensure that regular maintenance is performed. For example:

- Attention to items such as the regular cleaning of gutters and maintenance to the roof can substantially reduce the chance of water ingress during a storm.
- Old pipes that are degrading should be replaced to reduce the amount of burst pipe claims, and trees lopped to minimise falling branches.
- Common area pathways and driveways should be monitored regularly for any trip and fall hazards in order to reduce the potential for liability claims.

Proactive steps such as these will lower claims frequencies and costs.

Electing to take a higher excess may assist in reducing insurance premiums, but it will not take the expense away. The insurer will pay less due to the higher excess, and the difference is picked up by the OC and/or the lot owner - who have to pay all amounts below the excess. Damage has to be fixed to ensure legal requirements under the Owners Corporations Act 2006 (VIC) are adhered to.



2. Cordell Building Indices  
– Cordell Housing Price Index - CHIP

## VCAT fees to increase over 300 percent

VCAT proposed fees for most small cases to increase over 300% and some much, much more. The objective is higher cost recovery by increasing fees because there's some private [versus public] benefit, but not so high that it prevents access to justice for users. The same thing was recently adopted by comparable courts eg Magistrates Court. All submissions are currently being considered by the Department of Justice, although it was proposed to have commenced 1 March 2013, with a 3yr lifespan.

SCA (Vic) has made a submission that we agree with the RIS proposal and rationale [despite that it will mean massively increased fees for OCs].

Fees increase by 312 percent for 2,500 or 85 percent of all OC matters (less than \$10k), by changing them from the 'community fee' to be a new 'Level 3' fee where the nature of the matter justifies a higher fee.

Fees increase by 1,194 percent for 500 or 15 percent of all OC matters, by reallocating them from the 'community fee' to be a new fee for amounts in dispute between \$10k-\$100k or no monetary value.

The rationale is that OC matters are currently charged the 'community fee' but are [along with Domestic Building, Fair Trading]:

- Increasingly commercial in nature, and/or
- Involve large claims
- Usually involve parties with the ability to pay a higher fee and raise questions with a lesser benefit than some other cases as the decision turns on the facts of the case and do not inform a general understanding of the scope of the relevant law
- Many matters are more costly to run than others for which the community fee is currently also charged

## Stamp of approval: understanding owners corporation certificates

An up-to-date and accurate owners certificate is critical to avoiding problems with the sale and purchase of a unit, flat or apartment.

When a property in an owners corporation is advertised for sale, an authorised owners corporation certificate and accompanying documents must be included in the vendor's statement (section 32).

### What it must contain

The certificate must contain information, including the current quarterly or annual fees for the lot, the date to which fees have been paid and the total unpaid fees or charges for the lot. It must also contain details of repairs, maintenance or other work that may incur extra charges, and insurance cover details and whether members can arrange their own insurance.

For a full list of details that must be on the owners corporation certificate, visit the **Records – owners corporations page** on Consumer Affairs Victoria's website

The certificate must have these documents attached:

- the owners corporation rules (as registered with the Land Victoria)
- the Statement of advice and information for prospective purchasers and lot owners (Word, 55KB)
- all resolutions made at the last annual general meeting
- a statement that more information about prescribed matters is available by inspecting the owners corporation register.

### Who can request a certificate and what does it cost?

Under the *Owners Corporations Act 2006*, an owners corporation must issue an owners corporation certificate to any person who submits a written application. The owners corporation may charge a fee up to, but not more than, \$150. It can also elect not to charge.

Upon receiving such a written request, the certificate must be issued within 10 business days.

If the certificate relates to a lot affected by more than one owners corporation, a separate certificate must be issued for each and the owners corporation may charge a separate fee.

### Requesting a certificate

Remember to check that it is authorised. Look for the:

- name of the person who prepared the certificate
- capacity or authority of the person to prepare the certificate, and
- date that the certificate was prepared and issued.

For more information and to obtain copies of Consumer Affairs Victoria's Sample owners corporation certificate and Request for a copy of owners corporation certificate, visit [consumer.vic.gov.au/owners-corporations](http://consumer.vic.gov.au/owners-corporations) and [consumer.vic.gov.au/owners-corporation-managers](http://consumer.vic.gov.au/owners-corporation-managers).



To support the Victorian Government's commitment to reduce the burden of 'red tape' on businesses and the community, Consumer Affairs Victoria is reviewing Section 32 of the Sale of Land Act 1962. The first stage of public consultation closed on Thursday, 20 December 2012 and Consumer Affairs Victoria received a number of submissions that can be viewed at [consumer.vic.gov.au/section32review](http://consumer.vic.gov.au/section32review)

## Is your building standing up to the heat?

You don't have to think back too far to remember those days of extreme heat this summer when we were all starting to melt! Now take a moment to cast your mind to what was happening to your building under those conditions.

Building and roofing materials expand with heat and contract with cold.

Sealant on joins to window frames and balconies can eventually dry out and fail after a couple of years and a few extreme days. Balcony tiles can pop, roof tiles can slide, roof screws can work themselves up, dry ground can compress, buildings can move and fixings can loosen. The good news is there is not much rain at the beginning of summer but these effects will be felt later.

Come summer end, a good inspection around the property and the roof could save you from being left exposed to wet weather when the seasons change.



## THE GOOD AND BAD OF BUYING OFF THE PLAN

*Andrew Whitelaw, Partner, Building and Construction, TressCox Lawyers*

Despite the downturn in the economy, demand for new apartments remains high and buyers continue to be enamoured with purchasing properties off the plan. What are the benefits and pitfalls?

The advantages of buying off the plan include:

- The certainty of buying property at a fixed price and current market value;
- The ability to select certain finishes and fixtures prior to the property being constructed;
- A delayed settlement which allows buyers additional time to finance the purchase;
- Potential stamp duty savings.

It's easy to let emotion get the best of us when buying property. The prospect of having design input when it comes to the construction of one's home is difficult to resist. The idea that you're getting a great deal by buying off the plan is even more of an incentive. However, putting these temptations to one side, buyers also need to be aware of the various pitfalls associated with this type of purchase.

You can't inspect a property before deciding to buy it because it doesn't exist yet. While a buyer might be able to take a computer generated virtual tour of the house or apartment to be, they can't walk into a room and start arranging the furniture. Instead, a buyer must use their imagination to conjure up a mental picture of what the property will look and feel like.

Buyers also have no involvement with the builder during the construction process. It's left to the developer to liaise with the builder and ensure any changes to the plans, specifications or layout are communicated to buyers. They're also responsible for passing on any individual requests from buyers for amendments to the plans or design. In my experience, these issues can often be confused or lost in translation.

As a result, the buyers' expectations regarding the quality of finishes and fixtures can be different to the actual end product. Disappointment over the finished property can lead to disputes about what was 'promised' or represented before a contract was entered into. It's for this reason buyers ought to carefully review the plans and specifications prior to committing in order to gain an understanding of precisely what will and won't be included.

There's usually only a short period of time allowed in a contract for buyers to notify the developer of defects in the construction works. Once this period has expired, buyers need to deal directly with the builder in relation to any further issues that arise. This process can be tiresome and difficult to navigate, particularly if the builder is unwilling to return to the property to rectify any defects. If this is the case, buyers might need to seek legal advice as to what recourse is available to them.

There are various legislative mechanisms in place across Australia aimed at protecting buyers who buy off the plan. A common issue that arises is a buyer's ability to rescind a contract of sale if a plan of subdivision is not registered within a specified period. In Victoria, the statutory default period is 18 months and in Queensland it's three-and-a-half years. A different approach has been taken in New South Wales, where there isn't a default period and parties can agree on the relevant timeframe. However this doesn't preclude a buyer from electing to proceed with an off the plan purchase even if the plan of subdivision is not registered by the specified contractual date.

Buyers should review their rights and obligations before buying off-the-plan. What starts out as a dream investment can turn in to a nightmare if all parties don't fully appreciate the consequences of their actions.

*"The article first appeared in the August edition of the Australian Property Investor Newsletter"*

 **TressCox**  
LAWYERS

### SCA (Vic) & The Victorian Homeless Fund - Update

You may recall in our last edition of Strata Life, SCA (Vic) proudly donated to the completion of a brand new house as part of a Victorian Homeless Fund [VHF] project.

The house has since been handed over to the Women's Property Initiative, and we are pleased to have received a letter from the tenant family of the new house expressing their gratitude for the myriad of opportunities this has opened up to them, and their ability to change their future outlook.

We hope to hear more on their progress and are proud to be part of this initiative.





## EGG-CELLENT STRATA CUPCAKES FOR EASTER

*As previously featured in Womansday*

### INGREDIENTS

- » 3/4 cup heavy cream
  - » 3/4 cup skim milk (or just 1 1/2 cup whole milk)
  - » approx. 1/2 loaf of dense bread
  - » 5 eggs
  - » 3-4 oz. cheese of your choice, shredded, try gruyere or Swiss
  - » 1/2 tsp salt
  - » pepper to taste
  - » olive oil or butter
- Option: You can add in bacon, sausage, cheeses, sautéed green onion or other chopped vegetables to make it healthier and more delicious

### DIRECTIONS

- Use cupcake tin and place cupcake liners or brush generously with olive oil or butter.
- In a large bowl, mix the eggs with the milk and whisk.
- Add salt and pepper.
- Place a 1 1/2 inch chunk of bread in each cupcake liner and pour in enough egg batter to fill almost to the top of tin, leaving about a cm of space to allow cupcake to rise.
- Add in other items if using.
- Bake in 375 degree preheated oven for about 17-18 minutes.
- Remove from oven.
- Sprinkle grated cheese on each cupcake.
- Place back in oven for 2 minutes until melted.

## Reforming the Fences Act 1968

The government is considering reforming the Fences Act 1968, to provide greater certainty for adjoining owners and fairer, more efficient procedures for undertaking fencing works. The proposed reforms are summarised in the position paper. SCA (Vic) has made a submission that we agree with the proposed reforms as summarised. Submissions closed 21 February.

The Fences Act governs the liability of occupiers of land to contribute to the costs of constructing and maintaining dividing fences between parcels of land. The emphasis of the Act is on neighbours dealing with each other and, failing agreement, the power of the Magistrates' Court to make a binding order. Among other things, the Fences Act has been widely criticised as unhelpful in its lack of guidance around neighbours' respective fencing obligations.

#### Copyright and disclaimer:

This publication is for general information purposes only. SCA(Vic) has taken all reasonable measures to ensure that the material contained in this newsletter is correct. However, SCA(Vic) gives no warranty and accepts no responsibility for the accuracy or the completeness of the material. Readers are advised not to rely solely on this information when making any decision. Readers should seek independent advice before making any decision.

SCA(Vic) reserves the right at any time to make changes as it deems necessary.

Copyright strictly enforced. © 2003–2013 Strata Community Australia (Vic) Inc.



## STRATA LIFE

**Questions? Comments? Articles?**

Contact:  
[info.vic@stratacommunity.org.au](mailto:info.vic@stratacommunity.org.au)  
 or phone 9416 4688