



NEW REGIME FOR OMCS

**Suzanne Bainton
Liston & Company**



Section 3 of the MUD Act

Applies to developments where no unit was sold prior to the 01/04/2011

Applies to developments where there are apartments. Does not apply to house only managed developments

Requirements to be met prior to the first sale.



Requirements of Section 3 - an OMC

An OMC is to be incorporated. This must be a company if there are more than 5 units.

For smaller developments the OMC can be a co-ownership structure

The words "Owners' Management Company" must be in the name



Requirements of Section 3 – an OMC

The voting structure must be one vote per unit

In mixed use developments the voting structure has to be fair and equitable.



Requirements of Section 3 – an OMC

The directors of the OMC can be developer nominees. Balance of voting rights adjusts when 50% of units sold.

Developer directors can enter into contracts subject to 3 year rule.



Requirements of Section 3 – Certificate of compliance re fire safety

A Certificate of compliance re fire safety is to be furnished to the OMC

This ensures no apartment is occupied without compliance with fire safety.



Requirements of Section 3 – OMC Agreement

The developer has to enter into a contract with the OMC “setting out the rights and obligations of each of those persons relating to the completion of the development”

Requirements of Section 3 – OMC Agreement

The Law Society has issued a template agreement based on a building agreement for a new property.

The developer agrees to build and completely finish the common areas in a good and substantial and workmanlike manner.



Requirements of Section 3 – OMC Agreement

The developer serves a completion notice when the common areas are completed.

The OMC carries out an inspection and a snag list.

Dispute resolution procedures in relation to defects



Requirements of Section 3 – OMC Agreement

Warranty for minor defects for 6 months and major defects for 18 months.

On completion certificates of compliance are to be furnished together with the Schedule 3 documents.

Service charges for unsold units to be paid within 7 days of completion. Entitled to a credit for costs incurred after first sale (but not sinking fund contribution)



Requirements of Section 3 – Transfer of common areas

The bare legal interest in the estate is to be transferred to the OMC. The relevant parts of the common areas are to be transferred.

Those parts of the common areas necessary for quiet and peaceful occupation. This can be difficult to interpret in practice. Consequence is that budget may be phased.

Requirements of Section 3 – Transfer of common areas



The beneficial interest remains with the developer.

The developer has the right to use the estate.



Requirements of Section 3 – Transfer of common areas

Transfer of common areas does not relieve developer of obligation to comply with planning and building regulations.

Developer to continue insurance and indemnify OMC against claims

Comments



It is well intentioned but can be difficult to implement in practice. What are the relevant parts? How to divide phases of schemes?

Gives the OMC and owners a level of protection not previously the case.

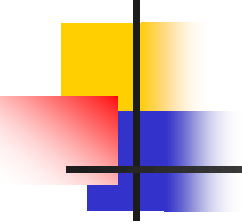


Comments

The strength of the covenant from the developer in the OMC Agreement may be questionable.

The transfer of the legal title could be seen as a loss of negotiating position for the OMC and the transfer contain a power of attorney for the developer to sign deeds for the units.

Comments



The regime is only coming on stream now and its implementation in practice when the common areas are completed will determine its worth.



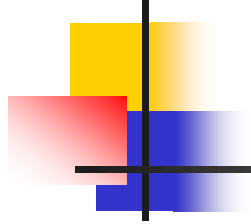
Other post MUD issues for OMCs

- Statutory obligation to pay a service charge – including for unsold units
- Remedy under for building defects – sections 13 and 24 (5) (I)
- Imposition of levy for expenditure – how to be apportioned/what % approval is required



Other post MUD issues for OMCs

- Transfer of common areas in existing developments – no penalty
- Replies to pre contract queries where OMC aware of defects



THANK YOU