



Owners Corporations and Passing Resolutions

The TLFC Resolution Cheat Sheet

Owners Corporations make decisions by passing resolutions. Under the *Owners Corporations Act 2006 (Vic)* (**the Act**), some decisions require the unanimous approval of lot owners, others only require 75% and the rest of them can be passed by a simple majority. However, it can be difficult to understand either a decision falls under a particular category and how the decision needs to be made to be effective. Owners Corporations are required to pass resolutions which comply with the Act in order to make valid and legal decisions. We will explain some of the different types of resolutions and provide some examples of when they may be required in this resolution cheat sheet.

What is an Ordinary Resolution?

Section 3 of the Act provides that an ordinary resolution means a resolution other than a special or unanimous resolution. This means that all decisions of the Owners Corporation other than special and unanimous resolutions can be ordinary resolutions. An ordinary resolution is passed by a simple majority of the votes.

What is a Special Resolution?

Section 96 of the Act provides that a special resolution of an owners corporation is a resolution passed by:

- a) if a ballot or poll is taken, 75% of the total lot entitlements of all the lots affected by the owners corporation; or
- b) in any other case, 75% of the total votes for all the lots affected by the owners corporation.

What is a Unanimous Resolution?

Section 95 of the Act provides that a unanimous resolution of an owners corporation is a resolution passed by:

- (a) if a ballot or poll is taken, the total lot entitlements of all the lots affected by the owners corporation; or
- (b) in any other case, the total votes for all the lots affected by the owners corporation.

In what circumstances will some of these resolutions apply?

Each Owners Corporation is unique. For example, 2 lot subdivisions have their own requirements. Depending on how many lots are in the Owners Corporation will determine which resolutions will apply. As a general guide, we have created a list of scenarios in which different resolutions may apply. Please note that this table is a general guide and may not apply to your specific Owners Corporation. It is always important to obtain legal advice if you are unsure of whether a resolution can be passed by an ordinary resolution, unanimous resolution or special resolution and how you count votes:

<u>Resolutions</u>	
<u>Unanimous Resolution</u>	
Amending the Plan of Subdivision or to dispose of part or all of the common property	Subdivision Act 1988 - SECT 32
Multiple single dwellings with common property may resolve that the lot owner of each single dwelling is responsible to insure their lot.	Owners Corporations Act 2006 - SECT 61A
To resolve that, if there is no common property, each lot owner must arrange for the lot owner's own insurance.	SECT 63

Special Resolution	Section of the OC Act 2006
To provide a service to lot owners/occupiers or the public	SECT 12(1)(a)
To enter into agreements for the provision of services to lot owners or occupiers of lots	SECT 12(1)(b)
The Owners Corporation may lease or license the whole or any part of the common property to a lot owner or other person	SECT 14
The Owners Corporation may obtain a lease or licence over any land	SECT 15
The power to bring legal proceedings outside the civil jurisdictional limit of the Magistrates' Court or VCAT	SECT 18
Levying fees to cover extraordinary items of expenditure for repairs and maintenance (if more than double the total amount of the current annual fees set)	SECT 24
The Owners Corporation may borrow money (if the amount exceeds the amount of the current annual fees of the Owners Corporation set under section 23)	SECT 25
Paying money out of a maintenance fund other than in accordance with the approved maintenance plan	SECT 44
Making a significant alteration to common property	SECT 52
Approve the carrying out of upgrading works for the common property and the levying of fees for that purpose	SECT 53
Confirming a contract of appointment of a Manager where a related party who acts as proxy and manager is appointed	SECT 89C
Tier 1 Owners Corporations may opt out of the requirement to appoint an OC Manager	SECT 119(1A)
Make, amend or revoke the rules of the owners corporation	SECT 138
Ordinary Resolution- Examples prescribed by the Act to be ordinary resolutions	
Determine that the common seal is no longer required and can be destroyed	SECT 18A
Borrow money if the amount borrowed does not exceed the amount of the current annual fees of the owners corporation set under section 23	SECT 25
Amend an approved maintenance plan	SECT 37(1A)
To elect a Committee of more than 7 members	SECT 103
A resolution to pay money out of the maintenance fund in accordance with the approved maintenance plan	SECT 43
Insure an insurable interest in the land affected by the OC and relating to the performance of its functions	SECT 62
Calling a committee meeting (although a committee meeting can be called in other ways too)	SECT 108
Reverse the decision to opt out of the Tier 1 OC to appoint an OC Manager	SECT 119(1B)
If a matter is within the civil jurisdictional limit of the Magistrates' Court and an Owners Corporation is authorised to do so by ordinary resolution, the owners corporation may commence, defend or continue any legal proceeding in the Magistrates Court, VCAT or a court of another State or a Territory that corresponds to the Magistrates' Court	SECT 18

Subject to a committee having an appropriate delegation (by express resolution of the Owners Corporation or through the statutory delegation and not having restrictions placed on their delegation) a Committee is able to make decisions on behalf of the Owners Corporation for almost all matters which are ordinary resolutions but cannot resolve matters which are special or unanimous resolutions.

It is important that Owners Corporations ensure that the requirements for calling meetings or ballots, considering proxies and counting votes complies with the Act. For legal assistance on corporate governance of Owners Corporations or other legal matters related to an Owners Corporation, please contact **Phillip Leaman** pleaman@tffc.com.au or a member of our **Owners Corporation Team** at ocenquiry@tffc.com.au

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