

Chapter II Responsibilities and Rights of Owners

Responsibilities of owners

When an owner purchases a flat in a multi-storey building, he is not only entitled to the exclusive possession of his flat, but he also co-owns the common parts of the building with other owners. The formation of an OC facilitates the organization of owners to effectively manage their building.

Where an OC is formed, it will legally represent all owners in the management of the building. However, this does not mean that the owners themselves no longer have the responsibility to manage the building. The formation of an OC does not affect the individual owners' responsibility in respect of the common parts of the building.

An OC may be held liable for making compensation for any accidents arising from the improper management or lack of maintenance of the building. If the OC is unable to make compensation, the party concerned may apply to court for the winding up of the OC under the provisions of Part X of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32). Similarly, if the OC is unable to discharge its debts and liabilities, such as maintenance fees in arrears, the creditor may also apply to court for the winding up of the OC. In the winding up of an OC, the owners shall be liable, both jointly and severally, to contribute, according to their respective shares of ownership, to the assets of the OC to an amount sufficient to discharge its debts and liabilities.

As such, all owners of a building, being members of the OC, should actively take part in the affairs of the OC and the management of the building in order to maintain the common parts in a state of good and serviceable repair.

Sections 33 and 34

Generally, owners are obliged to –

- comply with the resolutions passed at a general meeting of the OC or at a meeting of the MC;
- share and make timely payment of the management expenses and other funds in respect of the building, including the maintenance costs for the common parts of the building, in accordance with the DMC of the building and the BMO;
 - ◆ If an owner has the right to the exclusive possession of any part of a building or has the exclusive right to the use, occupation or enjoyment of that part, the owner is obliged to maintain that part in good repair and condition even though there is no such requirement under the DMC of the building.
- comply with the provisions in the DMC of the building and the BMO, and avoid acting contrary to such provisions, such as change of use of his flat and unlawful occupation of the common parts of the building;
 - ◆ No person may convert the common parts of a building to his own use unless such conversion is approved by a resolution of the owners' committee (if any).
 - ◆ In addition, no person may use or permit to be used the common parts of a building in such a manner as –
 - unreasonably to interfere with the use and enjoyment of those common parts by any owner or occupier; or
 - to cause a nuisance or hazard to any person lawfully in the building.

Section 34H

Section 34I

What is an owners' committee?

An owners' committee means an owners' organization formed under and in accordance with the DMC. Its composition, operation details, duties and powers shall be such as the DMC may set out. An owners' committee is not a body corporate.

Where an MC has been appointed and an OC formed in respect of a building, the members of the MC shall be deemed to be the owners' committee and shall have all the functions, powers and duties of the owners' committee under the DMC.

Sections 34D and 34K

- take an interest in matters relating to the OC and building management by, for example, attending general meetings of the OC and exercising their voting rights.

Rights of owners

Being a member of an OC, an owner may exercise his rights to monitor the operation of the OC and the MC in the following manner –

General meetings of the OC

- Attend any general meeting of the OC and vote on each resolution. At any general meeting of the OC, the owner shall, unless the DMC otherwise provides, have one vote in respect of each share which he owns.
- If an owner is unable to attend a general meeting, he may appoint a proxy to attend and vote at the meeting. The appointed proxy shall be treated as being the owner present at the meeting.

Para 3(5)(a) of Sch. 3

Para 4(1) and 5(2) of Sch. 3

The appointed proxy may vote at the meeting on behalf of the owner. An owner should therefore appoint someone he trusts to be his proxy.

- An owner can give his views on the operation of the OC to the MC or request the MC chairman to convene a general meeting of the OC to discuss and pass resolution on the matter concerned.
 - ◆ The MC chairman shall convene a general meeting of the OC at the request of not less than 5% of the owners for the purposes specified by such owners within 14 days of receiving such request, and hold the general meeting within 45 days of receiving such request.
 - “5% of the owners” shall be counted in terms of the number of owners, without regard to the shares owned by such owners.
 - In this case, “to convene a meeting” means giving notice of the meeting while “to hold the meeting” means causing it to actually take place.

Para 1(2) of Sch. 3

Section 5B and Sch. 11

MC members

- Owners may run for the office of MC member, or appoint any owner whom they think fit to be member of the MC by resolution passed at a general meeting of the OC.
- If owners are dissatisfied with the performance of individual MC members, they may, by resolution passed at a general meeting of the OC, remove from office and replace any MC member.

Para 5 of Sch. 2

Section 14(2)

- If owners are dissatisfied with the performance of the MC, they may –
 - ◆ by a resolution passed at a general meeting of the OC, appoint an administrator and thereafter dissolve the MC.
 - It is important to note that the quorum at such general meeting of the OC shall be 20% of the owners.
 - A resolution shall have no effect until it is certified as correct by the person presiding at the meeting and lodged with the Land Registry within 14 days after the date of the meeting.
 - ◆ make an application to the Lands Tribunal for an order to dissolve the MC and appoint an administrator.

Section 30(1)

Para 5(1) of Sch. 3

Section 30(2)

Section 31

What are the powers and duties of an administrator? What is the term of his appointment?

- An administrator shall have all the powers and duties of an MC and of the MC chairman, secretary and treasurer.
- An administrator shall, within 7 days of his appointment or the termination of his appointment, give notice thereof to the Land Registry.
- If an administrator is appointed by a general meeting of the OC, he shall hold office from the date upon which a certified copy of the resolution is lodged with the Land Registry until the appointment of another administrator or a new MC.
- If the administrator is appointed by the Lands Tribunal, the Tribunal may specify the term of his appointment.

Section 32

Section 30(3)

Section 31(2)

Information about the OC

- Owners may know about the operation of the OC and MC from the documents displayed in a prominent place in the building which include –
 - ◆ notice of an MC meeting;
 - the MC secretary shall display the notice at least 7 days before the date of the meeting.
 - ◆ notice of a general meeting of the OC;
 - the MC secretary shall display the notice at least 14 days before the date of the meeting.
 - ◆ certified minutes of meeting of the MC and general meeting of the OC;
 - the MC secretary shall display the certified minutes within 28 days of the date of the meeting, and cause the minutes to remain so displayed for 7 consecutive days.
 - ◆ copy of the summary of the income and expenditure of the OC;
 - the MC treasurer shall display a copy of the summary in a prominent place in the building once every 3 months, or at shorter interval as the MC may select, and cause it to remain so displayed for 7 consecutive days.
 - ◆ notice containing the particulars of a legal proceedings to which the OC is a party.
 - the OC shall –
 - ❖ within 7 days of receiving any court documents commencing the proceedings; or
 - ❖ within 7 days of issuing any court documents commencing the proceedings,display a notice in a prominent place in the building for 7 consecutive days.

Para 8(2) of Sch. 2

Para 2(2) of Sch. 3

**Para 10(4B) of Sch. 2
and para 6(3) of Sch. 3**

Para 2 of Sch. 6

Section 26A

What shall be included in the notice?

The notice shall contain particulars of the proceedings, which may include –

- ✓ the capacity of the parties of the proceedings;
- ✓ the case number of the legal action and the forum of the case (i.e. whether it is commenced in Lands Tribunal, District Court, High Court etc.);
- ✓ nature of the case; **and**
- ✓ the amount claimed by the plaintiff (where OC is the defendant) or to be claimed by the OC (where OC is the plaintiff), or the remedies or relief sought if they are not monetary in nature (e.g. injunction order, declaration etc.)

- Owners can also obtain copies of the following documents –
 - ◆ certified minutes of meetings of the MC and general meetings of the OC;
 - ◆ financial statements of the OC;
 - ◆ the accountant's reports (if the financial statements are required to be audited by accountants under the BMO);
 - ◆ the summary of the income and expenditure of the OC;
 - ◆ the policy of insurance and any receipt for the premium in respect of that policy.
- Owners can also inspect the following documents –
 - ◆ the books of account;
 - ◆ the policy of insurance and any receipt for the premium in respect of that policy;
 - ◆ the register of owners maintained by the MC secretary.

**Para 10A(2) of Sch. 2
and para 6A(2) of Sch. 3**

Para 3 of Sch. 6

Section 28

Section 27(2)

Section 28

Section 38

- Owners can also inspect the bills, invoices, vouchers, receipts and other documents referred to in the books and records of account and other records at the request of not less than 5% of the owners or at the order of the court.
 - ◆ 5% of owners should be counted in terms of the number of owners, without regard to the shares owned by the owners.

**Para 1A, 1B and 1C of
Sch. 6**

Section 5B and Sch. 11

Lands Tribunal

- Owners can apply to the Lands Tribunal for a ruling on any building management matter.

Section 45 and Sch. 10

The disputes between owners and the OC very often arise because of insufficient understanding of the provisions of the BMO on the part of owners or MC members or misunderstanding between the two parties. Owners and MC members should try to settle the disputes through communication and mediation.

Owners are advised to seek independent legal advice before taking any legal action.