

# End of transition period for compliance with new Companies Act: what it means for HOAs

The new Companies Act came into force on 1 May 2011. All of the new act's provisions to do with directors' duties, conduct and liability, members' rights to receive notice or have access to information, directors' and members' meetings and the adoption of resolutions automatically applied from that date. Any other provisions of the company's memorandum of incorporation (MOI) that were in conflict with the new act still applied, but only for the duration of the "transition period", which ends on 30 April 2013.

The imminent end of the transition period has prompted many slightly panicked questions, via email as well as on the various discussion forums that we host, about what non-profit HOA companies have to get done before May.

Any provisions of the HOA's MOI that are in conflict with the new act will automatically be void and of no legal effect from 1 May 2013. The same is true for any rules or members' agreements made before 1 May 2011 that are in conflict with any unalterable provision of the act. If the HOA wants to retain any provision that relates to an alterable provision of the act, the MOI has to be changed before the end of April or that provision will cease to apply. That does not mean that the HOA can't have those provisions. The HOA could change the MOI, amend the rule or enter into the modified agreement at any later date, but there would be a break in continuity between 1 May 2013 and whenever the new provisions are filed with the commission. It is advisable to find out what provisions in the MOI will automatically become invalid and, if it is possible, change the MOI to incorporate these provisions before the end of April 2013.

## Transparency, accountability and governance

Of much more significance are the requirements in the new act to do with the transparency, accountability and governance of companies and the duties and accountability of directors and prescribed officers. These have been in place for nearly two years and there are serious consequences for companies and individuals in companies who do not comply with these requirements. Non-compliance can result in the commission issuing a compliance notice. Failure to make the changes or implement the remedies listed in a compliance notice can result in prosecution or an administrative fine.

HOAs and their directors can take comfort from the principle that serious sanction for non-compliance with the Companies Act generally hinges on whether the non-compliance is deliberate. However, once a compliance notice is issued there are no excuses. It is advisable to know exactly what the act requires for compliance and get your MOI updated to reflect that position so that the executives are not misled by provisions that no longer apply.

For more, visit: <https://www.bizcommunity.com>