Disposing of Goods Abandoned on Common Property – NEW LAWS

As from 1 July 2020, new laws apply to disposal of goods abandoned on common property and association property of strata schemes and community associations. New legislation came into force on that date, amending various acts and effectively transferring regulation of goods abandoned on strata common property from the Strata Schemes Management Act 2015 ("SSMA") to the Uncollected Goods Act 1995 ("Act") and extending this to community associations.

Key points:

- The procedures previously available under the SSMA are no longer available.
- For the purposes of the Act, uncollected goods includes:
    - goods which an owners corporation reasonably believes have been abandoned or left behind on common property of the strata scheme, and
    - goods which the managing agent or secretary (if no managing agent has been appointed) of a community association reasonably believes have been abandoned or left behind on association property.
- There is a potential issue with the Act, in that it contemplates a "Depositor", being a person who gives possession of goods and a "Receiver", being a person who takes possession of goods. This reflects the original purpose of the Act, where goods are left with someone else by agreement, say for storage or repair. This doesn't really fit a strata context, where the person who abandoned the goods will likely never have given possession of them to the owners corporation and may or may not be the owner. The only practical solution for the owners corporation is to give notice to the person believed to have abandoned the goods, copied to the apparent owner (if not the same person).
- A person disposing of goods will have no liability if they have done so in accordance with the Act or an order of the Tribunal.
- The Act divides goods into various categories and applies different rules for each:
    - Perishable goods and rubbish may be disposed of without restriction.
    - Low value uncollected goods are uncollected goods having a value of less than $1,000. The party in possession of such goods may dispose of them in "an appropriate manner" if they have given the owner written notice of their intention to do so and the owner has been given at least 14 days to collect the goods. They

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may move or store low value uncollected goods in an appropriate manner.

- Medium value uncollected goods are uncollected goods having a value of at least $1,000 but less than $20,000. A party in possession of medium value uncollected goods may dispose of them by public auction or private sale for a fair value, if the party in possession of the goods has given the owner written notice of their intention to do so and the owner has been given at least 28 days to collect the goods. They may move or store uncollected goods in an appropriate manner.

- High value uncollected goods are uncollected goods having a value of at least $20,000. A party in possession of high-value uncollected goods may only dispose of them in accordance with an order of the Tribunal, but may move or store high value uncollected goods in an appropriate manner.

- Personal documents are defined in the Act and include identity documents, records, photos and memorabilia. A party in possession of personal documents may dispose of them after giving written notice to the owner of their intention to do so and giving the owner at least 28 days to collect them. The party in possession of personal documents must dispose of them by secure destruction or returning them to the owner.

- Motor vehicles are subject to an additional requirement, being that the party disposing of them must obtain a personal property securities register certificate confirming that they are not encumbered and a police certificate confirming that they are not stolen.

- Notices may be served electronically by email or messaging service specified by the addressee for that purpose, representing another reason why strata managing agents should attempt to obtain consent to email service from lot owners and occupiers.

- A party disposing of uncollected goods must keep appropriate records for at least 12 months in the case of low value uncollected goods and otherwise for six years.

- The Tribunal is given power to make an order for disposal of the goods.

- The Tribunal can also make various orders on application by the Depositor or other person having an interest in the goods, but imposes time limits:

  - an order requiring the Receiver to pay compensation for uncollected goods disposed of by the Receiver otherwise than in accordance with the Act.

    Application must be made within the following time limits:

    - low or medium value goods – within 60 days of the date on which the Receiver gave a disposal notice or (if no notice was given) within 60 days of the date on which the goods were left in the possession of the Receiver.

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- high value goods and personal documents - within 90 days of the date on which the Receiver gave a disposal notice or (if no notice was given) within 60 days of the date on which the goods were left in the possession of the Receiver.

- an order requiring the Receiver to pay compensation for uncollected goods damaged after being left in the possession of the Receiver and before being claimed by the person entitled to them.

  Application must be made within the following time limits:

  - low or medium value goods – within 60 days of the date on which the Receiver gave a disposal notice or (if no notice was given) within 60 days of the date on which the goods were left in the possession of the Receiver.

  - high value goods and personal documents - within 90 days of the date on which the Receiver gave a disposal notice or (if no notice was given) within 90 days of the date on which the goods were left in the possession of the Receiver.

- an order that the Receiver deliver uncollected goods into the Depositor's or other person's possession.

  Application must be made within 180 days of the date on which the Receiver gave a disposal notice or (if no notice was given) within 180 days of the date on which the goods were left in the possession of the Receiver.

- an order requiring the Receiver to pay the proceeds of sale or an amount equivalent to the value of the uncollected goods to the Depositor or person.

  Application must be made within 180 days of the date on which the Receiver gave a disposal notice or (if no notice was given) within 180 days of the date on which the goods were left in the possession of the Receiver.

Key takeaways

- New laws effective from 1 July 2020 govern the disposal of abandoned goods on common property.
- The Uncollected Goods Act 1995 now regulates abandoned goods previously covered by the Strata Schemes Management Act 2015.
- Different rules apply for the disposal of perishable goods, low, medium, and high value uncollected goods.
- Personal documents must be securely destroyed or returned to the owner after proper notice.
- Motor vehicles require additional checks before disposal, including a personal property securities register certificate.

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