

SECTION 86 NOTICE FLOW CHART (ACT)

This is a flowchart outlining the recommended steps to take when issued with a section 86 notice by the Chief Officer (Fire and Rescue). Note: notices under section 86 of the Emergencies Act 2004 apply to buildings that are likely to present a risk, from fire or other hazard, to public safety or to the safety of people who are at the premises.

Chief Officer must give reviewable decision notice stating how to apply, including any time limitations, to ACAT for review (s 186 Emergencies Act 2004, s 67A ACT Civil and Administrative Tribunal Act 2008 and r 7 ACAT Regulations 2009).

STEP 1

Chief Officer issues s 86 notice directing Owners Corporation to take action to reduce the risk within a period of time or to prevent other people from entering the premises. (s 86-89 Emergencies Act 2004)

Time period for Owners Corporation to take action to reduce the risk is at the discretion of the Chief Officer (s 87 Emergencies Act 2004). Note: Contravention of the s 86 notice is an offence (s 94 Emergencies Act 2004).

STEP 2

General meeting for Owners Corporation to pass resolution to appeal s 86 notice.
(please see sample resolution overleaf)

STEP 3

Engage relevant expert (fire safety or building expert) to address concerns raised.

STEP 4a

Consider merits review in the ACT Civil and Administrative Tribunal. (s 68 ACT Civil and Administrative Tribunal Act 2008, s 187 Emergencies Act 2004)

STEP 4b

Consider judicial review in ACT Supreme Court. (ss 4A, 5 and 6 Administrative Decisions (Judicial Review) Act 1989)

28 days from the day the decision made to start judicial review proceedings (s 10 Administrative Decisions (Judicial Review) Act 1989).

STEP 5

KB and expert engage collaboratively with Registrar to reach an out-of-court resolution

NEED HELP?

Please Contact: Chris Kerin at Kerin Benson Lawyers, Level 8, 65 York St, Sydney NSW 2000
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SAMPLE RESOLUTION TO BE PASSED AT EGM

RESOLVED: that the owners corporation provide full authority to the executive committee and approve taking any steps, including the seeking of legal advice or services and the commencement of court proceedings, in relation to any section 86 notice issued, or which will be issued, by the Chief Officer (Fire and Rescue) (the **Notice**).

The sole condition on the exercise of this authority is that the executive committee use reasonable endeavours to seek to obtain a resolution of the Notice on the most advantageous terms available, taking into account all the circumstances including the advice of its experts and legal advisers. Other than this condition, the executive committee has no limit on the above authority and may enter into and execute on behalf of the owners corporation any document required to resolve the Notice.

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