

Unit 1 - The committee

Overview

This unit describes the role of the committee and what powers and restrictions might apply to it. Member eligibility, how elections are conducted and committee meetings are also addressed. At the end of the unit there will be an assessment where you will be asked to complete a questionnaire.

The question format will be multiple choice, yes/no or true/false. If you get a question wrong you will be directed to the correct answer. For a complete understanding of this unit, it is suggested you begin at Topic 1, however if you are confident you have a particular level of knowledge, you are free to begin at any topic of choice.

Please note: In order to receive a certificate of completion for this unit, you must achieve at least an 80% pass rate.

Resources

In each of the topics listed below are references to the relevant sections of the *Body Corporate and Community Management Act 1997* (the Act), the *Body Corporate and Community Management (Standard Module) Regulation 2008* (the Standard Module). There will also be a Glossary of Terms at the end of the unit. References to the Act will be defined by a capital A followed by the section number e.g. **(A. s55)**. References to the Standard Module will be defined by a capital SM followed by the section number e.g. **(SM. s109)**. Additionally, you may be provided with links to other relevant information sources e.g. fact sheets and other legislation. References to adjudicators' orders will be defined firstly by the scheme name and then a reference to the order number and the year e.g. **(Sanctuary Bay-Order. 0012-2005)**.

Topics Covered

- Topic 1: The role of the committee
- Topic 2: Committee meetings
- Topic 3: Committee spending
- Topic 4: Restrictions on the committee
- Topic 5: The committee and the body corporate manager
- Topic 6: Composition
- Topic 7: Eligibility
- Topic 8: Nominations
- Topic 9: Elections
- Topic 10: Term of office
- Topic 11: Filling vacancies

Topic 1 - The role of the committee

The committee is the administrative arm of the body corporate and is charged with the day to day running of the body corporate. The committee is empowered to act for the body corporate (A. s100) and must put in place the lawful decisions of the body corporate (A. s101).

There must be a committee (SM s7). However, the body corporate may choose to engage a body corporate manager and may in writing authorise the body corporate manager to exercise some or all of the powers of the committee.

Alternatively, the body corporate may engage a body corporate manager to carry out the functions of the committee including the executive positions. This type of engagement is different from the usual body corporate manager engagement as described above and is known as a Chapter 3 Part 5 engagement. If a body corporate chooses to make this type of engagement it is effectively engaging the body corporate manager to be the committee, with all the powers of the committee. Under this type of engagement there will not be a committee. In these rare circumstances, this type of engagement may occur when there is insufficient interest of members to form a committee.

Topic 2 - Committee meetings

There is no minimum or maximum number of committee meetings to be held. The committee may meet as frequently as it needs.

Calling a meeting

The secretary usually calls a committee meeting, however if the secretary is absent the chairperson can call the meeting. If the secretary or the chairperson receives a written request by enough committee members to form a quorum, the meeting must be held within 21 days. If the meeting is not held or both the secretary and the chairperson are absent then any other member of the committee authorised by enough committee members to form a quorum can call the meeting (SM s44).

Note: The secretary does not have the power or authority unilaterally to declare when meetings of the committee are to be held (Order 0179-2000).

Notice

7 days written notice must be given to each committee member. However, the committee may reduce the period of notice to at least 2 days if all voting members have agreed, either at the last meeting or in writing.

At the same time notice is sent to committee members, advice of the meeting must be:

- placed on the notice board (if the body corporate maintains one); and
- given to each lot owner, including a copy of the agenda for the meeting, unless the owner has instructed the secretary that he or she does not want to receive a meeting notice (SM s45).

Place of meetings

The committee may decide where to have meetings however, a meeting must not be held more than 15km from the scheme land if half the number of committee members needed for a quorum object in writing to the secretary (SM. s46).

Agenda

The notice of the meeting must include an agenda stating the substance of the issues to be considered. The committee may also consider other issues not included on the agenda at the time of the meeting. The agenda must also include a motion to confirm the minutes of the last meeting as well as a motion to confirm any resolutions passed outside of a committee meeting (SM s47).

Chairing a meeting

The chairperson must chair all committee meetings. If the chairperson is absent, another member may be chosen by the voting members present to chair the meeting (SM. s48).

Quorum

A quorum is the minimum number of members that must be present in order to conduct a meeting. For a committee meeting, a quorum is at least half the voting members of the committee.

Example:

1. If there are 6 voting members of the committee, a quorum is 3.
2. If there are 7 voting members of the committee, a quorum is 4.

A voting member is counted as 1. If the voting member also holds a [proxy](#) for another member, the voting member is counted as 2.

To avoid doubt, non-voting members are not counted for deciding if there is a quorum (SM. s49).

Attendance

Lot owners who are not committee members have the right to attend a committee meeting. The lot owner must give the secretary at least 24 hours written notice of their intention to attend and there are limitations on the items for which they can be present. For example, the committee may decide a lot member cannot be present when there is discussion on, and a decision about, a breach of by-laws, or when there is a dispute between the body corporate and the owner. When a lot owner is present, it must be remembered the person is there only as an observer, and can be asked to leave by a majority decision of the committee members (SM. s51).

Non-voting members (body corporate managers and caretaking service contractors) have a right to attend committee meetings. For example, the caretaking service contractor would be expected to and should have a thorough knowledge of the maintenance requirements and relevant issues of the scheme. For this reason, it is advantageous to the body corporate for the caretaking service contractor to be involved in discussions concerning the scheme at committee meetings. However, there are particular occasions when the committee should have the power to decide whether the non-voting member is present at the committee discussions or the vote. They are automatically excluded while the committee decides whether or not to exercise the power. Notwithstanding these provisions, a non-voting member should, as a matter of course, advise the committee where there is an issue in which the person has an interest, and leave the meeting before any discussion takes place and a vote is taken (SM. s50).

Voting

Each voting member is entitled to 1 vote on any matter to be decided. A voting member who is an executive member has only 1 vote regardless of whether the person holds more than 1 of the executive positions.

A motion is passed at a meeting of the committee if a majority of voting members present, either personally or by proxy and entitled to vote, are in favour of the motion (SM. s52).

A non-voting member is not entitled to vote at a committee meeting (SM s12).

Voting outside a meeting

The committee may resolve matters without formally holding a meeting. Often referred to as a "flying minute", decisions may be made in this manner if all

committee members are given written notice of the motion and a majority of the voting members gives written agreement to the motion.

In an emergency, the notice of the motion may be given to as many members as is practicable to contact. The notice does not need to be in writing and could be given orally or by some other form of communication. Similarly, the committee member's agreement could be given orally or by some other form of communication.

At the same time a notice of the motion is sent to committee members, or as soon as reasonably practicable, advice of the motion must also be given to each lot owner unless the owner has instructed the secretary he or she does not want to receive a meeting notice.

The secretary or another member authorised by a majority of voting members may give the notice.

Any motion voted on under these provisions must be confirmed at the next committee meeting (SM. s54).

Conflict of interest

If a committee member has a direct or indirect interest in any issue that the committee is considering, and that interest is likely to conflict with the performance of the member's duties, the member must disclose that interest to the committee and cannot vote on the issue. This also applies to voting members who hold a proxy for another voting member (SM s53).

For example:

- Sally and John are both committee members. Sally holds a proxy for John. Sally is a partner in a pool cleaning company that is tendering for pool cleaning services for the scheme. Sally therefore has a conflict of interest and cannot vote in her own right and cannot vote using John's proxy.
- As before, Sally holds a proxy for John. John is a co-director in a landscaping company currently engaged by the body corporate. The committee are voting to terminate the service. Sally is aware of John's interest. While Sally can vote on her behalf, she cannot vote by using John's proxy.

Proxies

A voting member of the committee may appoint another voting member as their proxy. A voting member of the committee can not hold more than 1 proxy.

The secretary or the treasurer may only appoint a proxy with the committee's approval.

A proxy given for a committee meeting has effect for only 1 meeting and lapses after the meeting.

A proxy may only be exercised if a properly completed proxy form is given to the secretary before the start of the meeting at which the proxy is to be used. The body corporate or the committee can decide whether proxies must be delivered at an earlier time

Finally, the body corporate may decide that it will prohibit the use of proxies altogether or just for particular things. In order to do so the body corporate must pass a special resolution to that effect (SM. s100 - s102).

Carrying out resolutions

Even though a committee might have passed a resolution, it may only carry out that resolution if no notice of opposition is received (SM s56).

However, there are exceptions (SM s57)

- In an emergency (for example to repair a burst water pipe on the common property), the committee may carry out the resolution so long as the cost of the repairs is within the relevant limit for committee spending or an adjudicator has authorised the committee to do so.
- The body corporate has, by ordinary resolution, authorised the committee to act.
- The provisions of Section 56 do not apply to a resolution that authorises a committee member to carry out a stated function of the body corporate (e.g. mowing the common property lawns) provided the cost of carrying out the function (e.g. purchase of mower fuel) is not greater than either \$200 or \$5 multiplied by the number of lots in the scheme; or involves a decision of a routine, administrative nature.

A **notice of opposition** is a document signed by or for the owners of at least half the lots in the scheme which opposes the resolution of the committee. The notice of opposition must be given to the secretary within 7 days after receiving a copy of the minutes of the meeting at which the resolution was passed. If the resolution was passed outside a committee meeting, a copy of the resolution must be provided.

Meeting minutes

The committee must take full and accurate minutes. Full and accurate minutes include the following:

- Date, time and place of the meeting
- Names of those in attendance (including their capacity)
- Proxies tabled
- The wording of each question decided
- Votes for and against
- Details of correspondence, reports, notices or other documents tabled
- Time the meeting closed
- Secretary's name and contact address

Additionally, the committee must also keep full and accurate records. Full and accurate records include:

- The date the notice of the motion was given
- The names of the committee members who were given notice
- The words of the motion voted on
- The names of the committee members who voted
- The number of votes for and against the motion

The secretary must provide a copy of the meeting minutes to each committee member and lot owner as well as any resolution voted on outside a meeting unless

the owner has instructed the secretary that he or she does not want to receive a copy of the minutes.

The copy of meeting minutes or any resolution voted on outside of a meeting must be provided within 21 days of the event and may be delivered in one of the following ways:

- By handing it directly to the person
- By mail
- By facsimile
- By sending it electronically (SM s55)

Topic 3 - Committee spending

The committee, as the administrative arm of the body corporate, is charged with the day to day running of the body corporate. However, committee spending is limited and naturally money must be available in the budget before the committee can spend. If sufficient funds are not available, the committee may need to consider calling a general meeting to amend the budget or raise a special levy (SM s151; s141).

Limit of spending

The "relevant limit for committee spending" is defined in the Dictionary to the Standard Module. The relevant limit for committee spending can be set by ordinary resolution of the body corporate. If no amount is set, it is an amount determined by multiplying the number of lots in the scheme by \$200. For example, the relevant limit for a body corporate composed of 6 lots is \$1200 (200×6).

However, there are circumstances under which the committee can spend above the relevant limit. Some examples follow:

- the spending is specifically authorised by ordinary resolution of the body corporate; or
- the owners of all lots included in the scheme have given written consent; or
- an adjudicator is satisfied the spending is required to meet an emergency and authorises it under an order made under the dispute resolution provisions; or
- the spending is necessary to comply with:
 - a statutory order or notice given to the body corporate; or
 - the order of an adjudicator; or
 - the judgement or order of a court.

If a series of proposals forms a single project, and the cost of the project is more than the relevant limit of the committee spending, then the cost of carrying out any one of the proposals is taken to be more than the relevant limit. The committee cannot break down a single project into smaller components in order to bring the project within the limit of committee spending (SM s151).

Example

The committee for a scheme composed of 25 lots is limited to spending \$5000 (25 x \$200). The committee decide to renovate the main foyer and have obtained quotes. Broken down, the costs are; tiles \$2800; paint \$1200; light fittings \$3000. Even though the individual quotes are below the committees' limit, the committee can not carry out any of the refurbishment projects, as whole the project is well above the limit.

Topic 4 - Restrictions on the committee

As well as limiting or restricting the spending of the committee, other issues including the committee's decision making are also restricted (SM s42). The following restrictions apply:

The committee cannot:

- Fix or change a levy contribution. These decisions are reserved for the body corporate at general meeting. However, an exception exists in accordance with the provisions of Section 141(3) and (4) of the Standard Module. This section provides that the committee may issue an interim levy to cover any shortfall in the budget between the end of the body corporate's financial year and the time of the annual general meeting;
- Change the rights, privileges or obligations of owners, e.g. changing the by-laws;
- Make a decision the body corporate must make either by ordinary resolution, special resolution, resolution without dissent or majority resolution;
- Make a decision on a matter which the body corporate has previously decided by ordinary resolution that can only be made by the body corporate by an ordinary resolution;
- Start a proceeding, except for:
 - a proceeding to recover a debt from an owner (outstanding levies);
 - a counterclaim, third-party proceeding or other proceeding in which the body corporate is already a party;
 - a proceeding regarding a by-law contravention; or
 - a proceeding for the enforcement of an adjudicator's order.
- Pay its members remuneration, allowance or expenses unless:
 - the body corporate has authorised the expenditure by ordinary resolution and full disclosure about the remuneration etc has been disclosed and included in an explanatory schedule accompanying the voting paper.;
 - the expenses are for attending a committee meeting and are not more than \$50 and would not result in a member being reimbursed more than \$200 over a 12 month period (SM s43).

Body corporate authorisation of expenditure

Any motion seeking body corporate authorisation of committee members expenditure must state the full amount sought and the reasons the expenses were incurred. The motion must be accompanied by an explanatory schedule giving full details of the remuneration, allowances or expenses.

Topic 5 - Committee and body corporate manager

As we saw in Topic 1, the body corporate may choose to engage a body corporate manager and to authorise the body corporate manager to exercise some or all of the powers of the committee (A s119).

Usually, an engagement of this type will authorise the body corporate manager to exercise the powers of the secretary and treasurer. This means the body corporate manager will be responsible for such things as calling committee and general meetings, sending out levy notices, by-law contravention notices, forwarding the minutes of meetings and managing the body corporate funds.

However, the authorisation of the committee's powers to the manager by the body corporate does not mean the committee no longer has any power. The regulations state the authorisation cannot prevent the executive members of the committee from exercising any or all of the authorised powers. For example, the secretary still has the power to call a committee meeting if requested to do so (see "Calling a meeting" under Topic 2: Committee meetings)

Also, the authorisation must not prevent the executive members from directing the body corporate manager on how to exercise their authorised powers.

Finally, the regulations also state the body corporate, in writing, may revoke the authorisation at any time.

Topic 6 - Composition

The committee is composed of the executive members (chairperson, secretary and treasurer), the ordinary members and non-voting members (SM s9).

Voting members

The term "voting member" is defined in the Dictionary to the Standard Module and means a member of the committee other than a non-voting member. Therefore the chairperson, secretary, treasurer and ordinary members are voting members.

Non-voting members

Body corporate managers and caretaking service contractors are automatically non-voting members of the committee (SM s12).

The required number

The committee consists of the required number of voting members. The required number is defined in the Dictionary to the Standard Module as at least 3 but not more than:

- 7, if there are 7 or more lots in the scheme;
- The number equalling the number of lots, if there are less than 7 lots. For example, if there are 5 lots, 5 is the maximum.

Topic 7 - Eligibility

A committee should be more representative of the lot owners as it will consist only of persons who are lot owners or persons with a connection to lot owners such as a family member, a director or secretary of a corporate owner (a company) or a person appointed under a power of attorney to act for a lot owner.

In Topic 6 it was shown that a committee consisted of voting and non-voting members. The non-voting members were defined in Topic 6; we will now define the voting members.

Persons who are eligible to be voting members

The members of the body corporate (the lot owners) are eligible to be voting members of the committee. Alternatively, the lot owners may nominate another eligible person. As lot owners may be individuals, corporations or subsidiary schemes in a layered scheme, the regulations define who those lot owners may nominate (SM. s10). The following definitions will provide more information:

An individual

A lot owner who is an individual may nominate a person of a following category:

- themselves; or
- another member of the body corporate; or
- a person whom they have appointed as their power of attorney; or
- a member of the individual's family.

Family means:

- The individual's spouse, including de factos (see S 36 of the *Acts Interpretation Act 1954*).
- The individual or their spouse's children who are over 18 (including a step child or adopted child).
- The individual's parents or step parents.
- The individual's brother or sister.

Note: Only 1 co-owner of a lot can be a voting member of the committee at any one time. An exception to this applies and is described in Topic 9: Elections-Ordinary positions.

A corporation

A lot owner that is a corporation may nominate:

- a director;
- a secretary; or
- another nominee.

A subsidiary scheme

The body corporate for a subsidiary scheme may nominate a representative to sit on the committee of the principal scheme. The representative must be a member of the committee for the subsidiary scheme. If the committee has not appointed a representative, the chairperson automatically fills this role.

Persons who are NOT eligible to be voting members

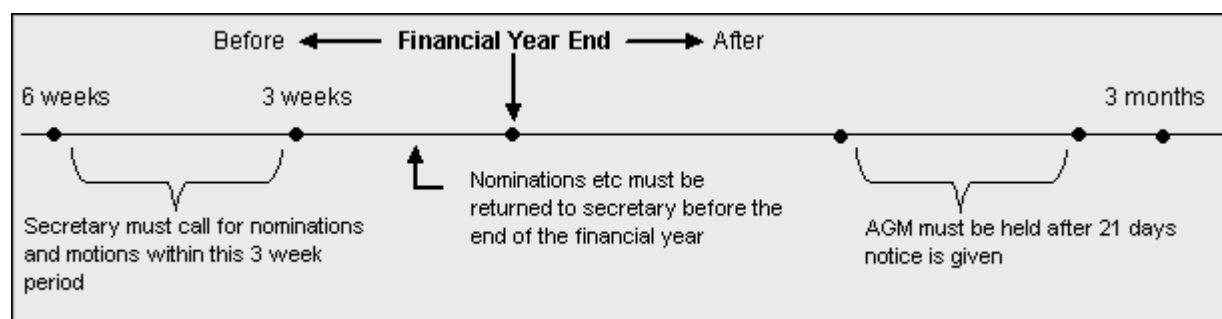
- Body corporate managers;
- Service contractors;
- Letting agents;
- Associates of body corporate managers, service contractors or letting agents (associates are defined in the Act s309);
- A person (other than the authorised letting agent for the scheme) who conducts a letting business for a number of lots in the scheme;
- a member of the body corporate or a person nominated by a member of the body corporate is not eligible to be a voting member of the committee if the member owes a body corporate debt when the members of the committee are chosen; and additionally the lot owner may not nominate a person for membership if the lot owner owes a debt when the nomination is received by the secretary (SM S10; S16).

Topic 8 - Nominations

Prior to every annual general meeting, the secretary must give each lot owner a notice inviting the lot owner to nominate an individual for committee membership (SM. s16).

- The secretary has a 3 week period in which to do this;
- The notice must be given at least 3 weeks before, but not earlier than 6 weeks before, the end of the body corporate's financial year;
- All completed nominations must be returned to the secretary by the end of the body corporate's financial year; and
- The secretary must forward written notice to the candidate acknowledging that the nomination has been received. While there is no specific timeframe for this, it must be done as soon as is practicable.

The diagram below illustrates these provisions together with the timeframes for convening the annual general meeting.



The notice inviting nomination

There is no prescribed or approved form of notice inviting nominations. The secretary must draft the notice in a way that informs the lot owner they may nominate one person for election as an executive member or an ordinary member; or if they own more than one lot, that the owner may nominate as follows –

- (a) if the owner owns 2 lots or there are fewer than 7 lots included in the scheme—the owner may nominate 2 persons;

Examples—

1 Ms Jones owns 3 lots in a scheme that includes 6 lots. Ms Jones may nominate 2 persons for election.

2 Ms Smith owns 2 lots in a scheme that includes 8 lots. Ms Smith may nominate 2 persons for election.

- (b) if the owner owns more than 2 lots and there are 7 or more lots included in the scheme—the owner may nominate 3 persons.

Example—

Mr and Mrs Brown own 5 lots in a scheme that includes 12 lots. Mr and Mrs Brown may nominate 3 persons for election.

Additionally, the notice must advise that the owner may nominate themselves or another individual in accordance with the provisions of section 10(b)(i) of the Standard Module. Alternatively, if the owner is a corporation or the body corporate for a subsidiary scheme, it may nominate in accordance with 10(b)(ii)

or (iii) of the Standard Module as described in Topic 7: Eligibility. Also, the notice must state that:

- a member of the body corporate or a person nominated by a member of the body corporate is not eligible to be a voting member of the committee if the member owes a body corporate debt when the members of the committee are chosen; and
- the lot owner may not nominate a person for membership if the lot owner owes a debt when the nomination is received by the secretary.

Nominating

There is no prescribed or approved nomination form. However, there are quite specific provisions in the regulations to be complied with when nominating. Failure to comply with these provisions may result in a nomination being rejected.

As members of bodies corporate may be aware, it is sometimes difficult for a body corporate to find sufficient numbers to form a committee. Rather than risk having nominations rejected for minor flaws, the body corporate may need to consider producing a nomination form that the secretary sends with the notice inviting nomination providing owners with clear directions about nominating.

The requirements for nomination

Nominations must be in writing and must contain the following (SM. s18):

Signing

- A nomination from a lot owner nominating themselves must be signed and dated by lot owner; and
- A nomination from a lot owner nominating another individual must be signed and dated by the individual, countersigned by the lot owner (or a person acting under the authority of the lot owner) and must state the lot owner's lot number.

Other details to be included

- The surname and either the first given name or other name or abbreviation by which the candidate is generally known;
- The position or positions the candidate is nominated for; and
- Whether the candidate is a lot owner.

If the candidate is not a lot owner the nomination should also include:

o the candidates residential or business address; and
o the category under which the candidate is eligible for nomination.

- Any payment sought by the candidate for carrying out the duties of a committee member. For example a committee member may request travelling expenses.

Topic 9 - Elections

The committee elections, much like the Federal and State elections, must be conducted in a way to ensure that all persons entitled to vote have the opportunity to do so and the security of their vote is maintained. Naturally, to guarantee a fair election, the process needs to cover many situations and a number of steps including the election and individual ballots.

General provisions

The committee must be chosen at each annual general meeting of the body corporate (SM s13). However committee members may also be appointed at an extraordinary general meeting or casual vacancies may be filled at a committee meeting (see Topic 11: Filling Vacancies) (SM s13). However there are exceptions to this. Please see "Special conditions" for more information.

The elections must be held in accordance with sections 16 to 27 of the Standard Module however the body corporate may, by special resolution, decide that the elections may be held in another way. However, the method chosen must be fair and reasonable. Additionally, the ballot must be a secret ballot unless the body corporate has passed an ordinary resolution to hold open ballots (SM s15).

Section 91 of the Standard Module provides that a returning officer must be appointed if a motion is to be decided by secret ballot. While no similar provisions mandate the appointment of a returning officer for elections to be held by secret ballot, the body corporate could, by ordinary resolution, choose to appoint a returning officer.

The election of the committee members must be the last item of business on the agenda of the annual general meeting. The election of members takes effect immediately after the close of the meeting (SM s24).

The ballots must be held in the following order and each ballot may proceed to the count only after the person chairing the meeting allows enough time for votes to be cast and closes the ballot:

- Chairperson;
- Secretary;
- Treasurer; and
- ordinary members.

Candidates and their scrutineers may watch the count.

The following information is based on the provisions of sections 16 to 27 of the Standard Module.

Special conditions

- Elections do not need to be held if the following apply:
 - There are only 2 lots in the scheme and both are owned by 1 person;
 - or
 - There are more than 3 lots in the scheme and all are owned by 1 person.

In the above examples the committee consists of the 1 person (or their representative) who holds all the positions on the committee.

- Elections do not need to be held if the following apply:
 - There are only 2 lots in the scheme and the 2 lots are in different ownership; or
 - There are more than 3 lots in the scheme and there are only 2 different owners for all the lots.

In the above examples the committee consists of 2 individuals who are owners, or the nominees of lot owners, and they must decide between themselves who will hold the positions of the executive members of the committee. If they cannot agree, the positions of the executive members are jointly held by both of them.

Conduct of elections at the annual general meeting

After nominations close, the secretary must prepare ballot-papers for any positions for which a ballot is required e.g. A ballot will not be required if there is only 1 nomination received for the position of chairperson, secretary or treasurer as the person will be declared elected unopposed (SM s26).

Separate ballots must be held for the chairperson, secretary, treasurer and ordinary members. However, it is not necessary to have separate ballot-papers for each position.

Provided the nominations comply with the regulations (see Topic 7: Eligibility and Topic 8: Nominations), the secretary must prepare the ballot-papers listing the candidates for each position in alphabetical order. The ballot-paper must also state whether the candidate is a lot owner. If the candidate is not a lot owner, the name of the lot owner who nominated the candidate must be stated together with the candidate's residential or business address.

Finally, if the candidate is seeking any payment from the body corporate for carrying out the duties of a committee member, the details of that payment must be shown on the ballot-paper (SM s21).

We will now look at conducting the elections either by secret ballot or by open ballot.

Secret ballot (SM. s21)

To ensure the secrecy of the ballot is maintained, the secretary must include (with the notice of the annual general meeting) the following ballot material:

- the ballot-papers;
- an envelope simply marked "ballot-paper"; and either:
 - a separate particulars envelope; or
 - a particulars tab that forms part of the ballot-paper envelope.

The particulars envelope or the particulars tab must have space for certain information to be provided by the person voting. This information is necessary to confirm the persons entitlement to vote (e.g. if the person owes a body corporate debt they are not entitled to vote when choosing members of the committee). The particulars envelope or the particulars tab must list:

- The lot number (for which the vote is exercised);
- The name of the lot owner; or
- The name of the person having the right to vote; and
- The basis on which the person has a right to vote (e.g. a person acting under a power of attorney for a lot owner).

How to vote

1. Beginning with the chairperson, secretary and treasurer, the voter must place a mark next to the candidate they wish to vote for.
2. For ordinary members, the voter places a mark next to as many candidates they wish to vote for.
3. The completed ballot-paper must then be placed in the ballot-paper envelope which is then sealed.
4. If a particulars envelope has been issued, place the ballot-paper envelope inside the particulars envelope and complete the details as listed above, sign and date the envelope.
5. If a ballot-paper envelope including a particulars tab has been issued, complete the details on the particulars tab as listed above and sign and date the particulars tab.
6. Give the completed particulars envelope with the ballot-paper envelope enclosed, or the ballot-paper envelope with the completed particulars tab attached, to the secretary (or the returning officer, if the body corporate has appointed a returning officer). Alternatively the envelope can be forwarded to the secretary (or returning officer) so that the secretary (or returning officer) receives it before or at the annual general meeting.

All completed ballot-papers must remain in the custody of the secretary until the annual general meeting.

Scrutiny of votes

At the meeting, the secretary must pass all particulars envelopes or ballot paper envelopes to the person chairing the meeting. The person chairing the meeting must:

- confirm that the persons casting the votes are eligible to vote in the election (by checking the details on each of the particulars envelopes or the particulars tabs);
- take the ballot paper envelopes out of the particulars envelopes or detach the particulars tabs from the ballot paper envelopes;
- place all the ballot paper envelopes in a container in open view of the meeting and thoroughly mix the envelopes;
- take each ballot paper out of its envelope.

The chair must record the count of votes for each ballot in the minutes of the meeting.

The person chairing the meeting can delegate a function defined in the section to a person attending the meeting who is not a candidate for the position and who, in the chairperson's opinion, has sufficient independence.

Open ballot (SM. s22)

The secretary must include with the notice of the annual general meeting the following ballot material:

- the ballot-papers;
- an envelope marked "ballot-paper" self addressed to the secretary.

How to vote

1. Beginning with the chairperson, secretary and treasurer, the voter must place a mark next to the candidate they wish to vote for.
2. For ordinary members, the voter places a mark next to as many candidates they wish to vote for.
3. Sign the ballot paper.
4. Write the lot number on the ballot paper.
5. Place the completed ballot-paper in the ballot-paper envelope and again write the lot number on the back of the envelope.
6. Either give the ballot-paper envelope to the secretary or forward it to the secretary so that secretary receives it before or at the meeting.

Scrutiny of votes

At the meeting the secretary must pass any ballot-papers or ballot paper envelopes to the person chairing the meeting. The person chairing the meeting must:

- confirm the persons casting the votes are eligible to vote in the election (by checking the details on each of the particulars envelopes or the particulars tabs);
- if the ballot paper is in a ballot-paper envelope, take the ballot paper out of the envelope.

The chair must record the count of votes for each ballot in the minutes of the meeting.

Conduct of ballot at the annual general meeting

Executive positions (SM s26)

If there is only 1 nomination received for any of the positions of chairperson, secretary or treasurer, a ballot will not need to be held. The person chairing the meeting will simply declare the person elected unopposed (SM s26).

However, if for any of the executive positions there have been no nominations, the subsequent steps should be followed:

- The person chairing the meeting must invite nominations for the position/s and must accept nominations either:
 - from the body corporate members present at the meeting; or
 - in writing from members of the body corporate not present.

Note: the person/s nominated must be eligible.

A member of the body corporate cannot nominate more than 1 person for a position even if the member is the owner of more than one lot. However, a lot owner may nominate for more than one position.

If more than 1 person has been nominated for a position, a ballot will be necessary and the person who receives the highest number of votes is declared elected.

Once the voting has been completed, if 2 or more nominees receive the same number of votes, the deadlock may be decided by chance in a way the meeting decides.

Ordinary positions (SM s27)

The ballot for ordinary positions can only be counted after the executive positions are filled.

If a person who has nominated for both an executive and ordinary position is elected as an executive member their nomination as an ordinary member has no effect and they cannot be elected as an ordinary member.

If the number of candidates nominated for ordinary member positions plus the number of elected executive positions is **not more than** the required number of members for the committee, the person chairing the meeting must declare the candidates elected as ordinary members.

Also, if the number of candidates nominated for ordinary member positions plus the number of elected executive positions is **less than** the required number of members for the committee, the person chairing the meeting must invite nominations at the meeting for ordinary positions to bring the total number of all committee members to not more than the required number.

This means nominations must be invited:

- in a scheme of 7 or more lots - where the number of nominations is fewer than 7; or
- in a scheme of fewer than 7 lots - where the number of nominations received is fewer than the number of lots in the scheme. (EN P87)

Usually the co-owners of a lot are restricted from having more than 1 co-owner on the committee (see Topic 7: Note) however, an exception exists. In the above scenario where the number of candidates is **less than** the required number, if 1 co-owner of a lot has been elected to the committee, not more than 1 other co-owner of the lot may be nominated as an ordinary member of the committee, but only to bring the number of voting members of the committee to 3.

The person chairing the meeting must invite nominations for the position/s and must accept nominations either:

- from the body corporate members present at the meeting; or
- in writing from members of the body corporate not present.

Note: the person/s nominated must be eligible.

A member of the body corporate cannot nominate more than 1 person for a position even if the member is the owner of more than one lot.

Even though a member may have nominated for a particular position, they are entitled to nominate for another position.

If the number of candidates nominated for ordinary member positions plus the number of elected executive positions is **more than** the required number of members for the committee, the person chairing the meeting must proceed with the ballot for ordinary members.

Depending on how many candidates there are and the number of ordinary positions to be filled, the persons who receive the most number of votes, in descending order, must be declared elected as ordinary members.

Once the voting has been completed, if 2 or more nominees receive the same number of votes, the deadlock may be decided by chance in a way the meeting decides.

Note: If a person has already been elected to an executive member position, any mark against their name on a ballot paper for ordinary member positions is void.

Declaring the vote (SM s28)

The following procedures must be complied with:

The Chairperson

The person chairing the meeting must declare the result of the election and must state the number of votes cast for each candidate.

The Minutes

The number of votes cast for each candidate must be recorded in the minutes of the general meeting.

The Tally Sheet

A voting tally sheet must be kept for the general meeting.

For each open ballot, the voting tally sheet must include:

- a list (by lot number) of the votes rejected;
- the reason for each rejection;
- the total number of votes counted for each candidate.

For each secret ballot, the voting tally sheet must include:

- a list (by lot number) of the votes rejected before the ballot paper envelopes were opened;
- a list of the votes taken out of the ballot paper envelopes, but rejected as informal;
- the reason for each rejection;
- the total number of votes counted for each candidate.

The voting tally sheet may be inspected at the meeting by any of the following:

- a voter at the meeting
- a candidate
- the returning officer (if appointed)
- the person chairing the meeting
- the scrutineer appointed by a candidate.

Failure to elect a committee at the annual general meeting (SM. s29 and 30)

An extraordinary general meeting must be called if the following applies:

At the annual general meeting:

- at least 1 person is elected as an executive or ordinary member of the committee; and
- at least 1 executive position is not filled; or

- the total number of voting members is less than 3; and
- a body corporate manager has not been engaged under a Chapter 3 Part 5 engagement.

The extraordinary general meeting must be **called within 1 month** after the annual general meeting.

The extraordinary general meeting must be called by the elected member of the committee, or if there is more than 1 elected member, the elected members acting jointly.

The extraordinary general meeting must be **held within 2 months** after the annual general meeting.

Appointing committee members at the extraordinary general meeting (SM. s31)

The body corporate may appoint a person who is eligible to be a member of the committee to fill any vacancy. It is not necessary to conduct an election as normally the case for the annual general meeting. For example, invitations to nominate do not need to be sent to lot owners.

If 1 co-owner of a lot has been elected to the committee, not more than 1 other co-owner of the lot may be nominated as an ordinary member of the committee, but only to bring the number of voting members of the committee to 3.

The body corporate cannot appoint a person if the persons appointment would result in the committee being composed of more than the required number.

Engagement of a body corporate manager under Division 10 (SM. s32)

The agenda of the extraordinary general meeting must also include a motion to approve the engagement of a body corporate manager under Chapter 3 Part 5.

The motion will only be considered if:

- at least 1 executive member position is not filled; or
- the total number of voting members is less than 3.

If the motion is considered, it must be the last item of business on the agenda.

Topic 10 - Term of Office

A member's position becomes vacant if the member:

- dies;
- resigns by written notice to the chairperson or secretary;
- is not present personally or by proxy at 2 consecutive meetings of the committee without the committee's leave;
- is convicted of an indictable offence (whether or not a conviction is recorded);
- is removed from office by an ordinary resolution of the body corporate; or
- becomes ineligible to hold the position

A member becomes ineligible if:

- they were a member of the body corporate at the time the member was elected but has since sold their lot and are therefore no longer a member of the body corporate; or
- they were not a member of the body corporate but were nominated by a member of the body corporate who has since sold their lot and therefore no longer a member of the body corporate.

Another example of when a member is no longer eligible is when the member is engaged as a body corporate manager or service contractor or is authorised as a letting agent.

Note: If the body corporate engages a body corporate manager under a Chapter 3 Part 5 engagement, all committee member positions are vacated and **there will not be a committee.**

Topic 11 - Filling vacancies

At a general meeting (SM. s37)

If the member is removed from office by an ordinary resolution of the body corporate at a general meeting, the body corporate may at the same general meeting appoint a person who is eligible to fill the vacancy.

It is not necessary to conduct an election as would normally be the case for the annual general meeting. For example, invitations to nominate do not need to be sent to lot owners.

Filling vacancies at committee meetings (SM. s38)

The committee has the authority to fill vacancies. If a member's position becomes vacant, so long as there are sufficient numbers to form a quorum, the committee may, within 1 month after the position becomes vacant, either:

- call a committee meeting and appoint a person to fill the vacancy; or
- call a general meeting to choose a person to fill the vacancy.

If there are not sufficient numbers to form a quorum, the committee must call a general meeting to choose a person to fill the vacancy.

Note: If a member is removed from office by an ordinary resolution of the body corporate at a general meeting, and the body corporate has filled the vacancy at the same general meeting, the above options for the committee do not apply.

Unit 2 - General meetings

Overview

In this unit we will look at convening and holding a general meeting, the meaning of "voter" for a general meeting and how votes are cast for open motions and by secret ballot. We will also consider the relevance of the financial year for the scheme; the submission of motions and the setting out of motions by lot owners and the committee, and the duty of the body corporate to keep records. At the end of the Unit there will be an assessment where you will be asked to complete a questionnaire.

The questions will be multiple choice, yes/no or true/false. If you get a question wrong you will be directed to the correct answer. For a complete understanding of this unit it is suggested that you begin at Topic 1, however if you are confident that you have a particular level of knowledge you may begin at any topic.

Note: In order to receive a certificate of completion for this unit you must achieve at least an 80% pass rate.

Resources

In each of the topics listed below references to the relevant sections of the Act, the Standard Module Regulations will be provided. There will also be a Glossary of Terms at the end of the unit. References to the Act will be defined by a capital A followed by the section number e.g. **(A. s55)**. References to the Standard Module will be defined by a capital SM followed by the section number e.g. **(SM. s109)**. Additionally, you may be provided with links to other relevant information sources eg, fact sheets and other legislation. References to adjudicator's orders will be defined firstly by the scheme name and then a reference to the order number and the year e.g. **(Sanctuary Bay-Order. 0012-2005)**.

Topics Covered

- Topic 1: Introduction to general meetings
- Topic 2: Calling a general meeting
- Topic 3: Holding a general meeting and voting
- Topic 4: Procedures at general meetings
- Topic 5: Amending motions at general meeting and use of proxies
- Topic 6: Poll vote at general meetings
- Topic 7: Keeping records
- Topic 8: The annual general meeting
- Topic 9: A requested extraordinary general meeting

Topic 1 - Introduction to general meetings

There are two kinds of meetings relevant to the business of running a body corporate: "committee meetings" and "general meetings." General meetings are open meetings for all lot-owners, or their representatives, and all lot-owners must be invited to attend a general meeting. There are detailed provisions in the Act and the Modules about how a general meeting must be called and held. In the following topics these provisions will be covered.

General meetings are the means by which the body corporate deals with matters of business that are beyond the powers of the committee to determine.

Once a year, the body corporate must hold an Annual General Meeting (**AGM**). All other general meetings are called "Extraordinary General Meetings" (**EGMs**) (SM. S64). The AGM must be called and held each year within 3 months after the end of the scheme's financial year, (SM. S66) and must consider certain specific motions, ('statutory motions'). An EGM may be held at any time in compliance with the time limits and procedures set out in the Act and the Modules, and a group of owners may request the committee to convene an EGM which will be a requested extraordinary general meeting.

At a general meeting (whether an AGM or EGM), motions proposed on an agenda are put to the vote. Only those motions on the agenda can be voted on, and therefore the business of managing the body corporate is by previously proposed motions, and not by discussion and proposals put from the floor. There can be no votes taken on "other or general business" although members may of course discuss whatever they please at the meeting, and canvass views for a subsequent meeting at which a motion is presented.

One vote only may be exercised for each lot in the scheme.

Voting is generally "**open**" (see Topic 2: Voting papers for open motions) although certain motions are required under the Act or the Regulations to be voted on secretly. **Secret voting** (see Topic 2: Secret voting papers) requires that a ballot is held, with voting papers being deposited in a way so that the identity of the voter cannot be ascertained.

The body corporate must keep certain **records** (see Topic 7: Keeping records of General Meetings) about general meetings and the votes taken on motions.

Persons who are not lot-owners may be invited by the committee to attend a general meeting. For example, a prospective contractor for the scheme such as a body corporate manager, or landscape gardener, can address the members on their expertise. Such persons have no right to attend a meeting except by invitation. If a lot-owner wishes to bring another person to the general meeting, such a person may be invited by a majority of those present at the meeting to remain, or to address the meeting. Only lot-owners or their authorised representatives have a right to attend.

There is nothing in the legislation about how many general meetings a scheme should have (other than the annual general meeting) or how long they should be. Basic meeting etiquette applies to general meetings in that the chairperson may keep such order as is required. For example, a chairperson may put a time limit on submissions on a motion in order to prevent lengthy speeches or one person dominating a meeting. Common courtesies, such as allowing all speakers an equal amount of time, and keeping remarks formal and polite apply.

Topic 2 - Calling a general meeting

Calling a meeting - time and place

A general meeting may be called by a member of the committee, including a non-voting member, if they are authorised to do so by a resolution of the committee. (SM. S65). An extraordinary general meeting may also be requested by lot-owners.

A **notice** of the general meeting must be given to all lot owners. If not personally delivered, the notice should be sent to the lot owner's address for service, which appears on the **body corporate roll**.

The address for service must be an Australian address (SM s194) but if no address for service is given, then the address for service is the residential or business address whether inside or outside Australia, as last notified to the body corporate by the lot owner.

The meeting must be held at least 21 days after the **notice** is given to lot-owners (SM. s74) and must be held not more than 15km (measured in a straight line on a horizontal plane) from scheme land unless the committee notifies owners of another location and gives owners a reasonable opportunity to object in writing. If owners of at least 25% of the lots in the scheme object, then the meeting cannot be held at the alternative venue (SM. s75).

There has been an adjudicator's order in which calculation of 21 days, and the definition of "given" is discussed. (Order 0496-2004 *Buon Vista CTS 14325*). There is a view that the Act intends to define a posted notice is "given" when it is sent out by the secretary, and not when it is likely to have been received in the ordinary course of posting. For hand delivery or physical delivery, the better view is that the notice is "given" when it is received.

Submitting motions

In general

Lot owners may submit motions at any time throughout the year to the secretary and those motions must be included on the next general meeting agenda at which it is practicable to include them (SM. s69(2)).

For the annual general meeting

When the secretary sends a notice out to lot-owners seeking nominations for committee member positions to be filled at the AGM (see Unit 1: The Committee, Topic 8: Nominations), the lot-owners must at the same time be invited to submit motions for inclusion on the AGM agenda.

Restrictions on motions

Certain motions must not be considered by the body corporate more than once in a body corporate's financial year (SM s69(4)). They are:

- a motion proposing that the regulation module for the scheme be changed;
- a motion proposing that remuneration paid to a particular service contractor be changed;
- a motion proposing the amendment of the engagement of a person as a service contractor, or the authorisation of a person as a letting agent, if as a

result of the amendment, the engagement or authorisation would include a right or option of extension or renewal.

Note: A motion, submitted by a member of the body corporate, may only be included on the agenda for an **AGM** if the secretary receives the motion before the end of the body corporate's financial year (see Topic 8: The annual general meeting - What is the date of our financial year?) (SM s69). However, no such restrictions apply to the committee. The committee in preparing an agenda under Section 76 of the Standard Module may include motions proposed by the committee.

The notice of general meeting

The **notice** must be in writing and must state the time and place of the proposed meeting. It must be given to the owner of each lot in the scheme at least 21 days before the meeting is to be held, either in person or by sending to the owner's address for service.

The notice must contain:

- an **agenda**,
- a proxy form, and;
- if the lot owner is a company, a company nominee form to advise the body corporate of the name of the nominee who will cast the vote on behalf of the company.
- voting papers for open motions;
- the secret voting papers and associated material;
- an explanatory schedule where appropriate, as well as any documents which are required by legislation to accompany the notice.

Additionally, the notice of an annual general meeting must contain a copy of the Register of reserved issues (SM s201).

The agenda

The agenda for any general meeting must be prepared by the committee, and must include the substance of all the motions submitted by the committee, including, for a motion with alternatives, the substance of each alternative. The agenda must also contain all motions submitted by lot owners; and a motion to confirm the minutes (see Topic 4: Procedures at general meetings - Keeping minutes) of the last general meeting.

The voting papers

The secretary must prepare one voting paper for all "open" motions to be decided at the general meeting and a separate voting paper for any motions to be decided by a secret ballot, called "a secret voting paper." (SM. s71)

Voting papers for open motions

A voting paper must:

- state each motion in the form it was submitted without amendment;
- state the name and if applicable the lot number of the person who submitted it;
- state if the motion was submitted by the committee and if it is a statutory motion (see Topic 8: The annual general meeting - The statutory motions);

- state the type of resolution required to carry the motion e.g. a resolution without dissent, special resolution or ordinary resolution.

The voting paper must enable a voter to cast a written vote, for example, it must have space for a box with "Yes", "No" or "Abstain" to be ticked or circled. (SM. s71(5))

Secret voting papers and envelopes

A secret ballot is required for certain motions and some of the more common ones are listed below. In order to conduct a secret ballot the following voting material must be issued by the secretary.

- the secret voting papers;
- an envelope simply marked "secret voting paper" and either-
 - a separate particulars envelope or;
 - a particulars tab that forms part of the secret voting paper envelope.

The particulars envelope or the particulars tab must have space for certain information to be provided by the person voting. This information is necessary to confirm the persons entitlement to vote (e.g. if the person is an **un-financial** lot owner they are not entitled to vote). The particulars envelope or the particulars tab must list:

- The lot number (for which the vote is exercised).
- The name of the lot owner or;
- The name of the person having the right to vote; and
- The basis on which the person has a right to vote (e.g. a person acting under a power of attorney for a lot owner).

Motions which require a secret ballot are -

1. the engagement of a caretaking service contractor (SM. S114(2)(b)(ii));
2. the authorisation of a person as a letting agent (SM. S114(2)(b)(i));
3. an agreement to amend an engagement as a caretaking service contractor or as a letting agent to include a right or option of extension or renewal; (SM. S114(2)(b)(iii))
4. a motion where the body corporate has resolved by ordinary resolution at a general meeting that the motion be decided by secret ballot, or where the committee has recommended that the motion be decided by secret ballot; (SM. S88)

The secret voting paper must be marked with the words "secret voting paper" and must be accompanied by an envelope marked "secret voting paper". In addition, the secret voting paper envelope must have either a "particulars tab" on it which can be detached from the envelope without opening the envelope, or be accompanied by a second envelope into which the first envelope may be placed.

An explanatory schedule

In some circumstances, a voting paper must be accompanied by additional explanatory material in order to explain the effect or purpose of certain motions for the information of the voters. The explanation is contained in an **explanatory schedule**. The **explanatory schedule** is a separate document.

An explanatory schedule is required in the following circumstances -

1. to accompany a motion for the proposed budget to an AGM ;
2. where a motion is proposed to change the regulation module for the scheme;
3. where a motion with alternatives is proposed;
4. where an owner submits a brief explanatory note with his or her motion

The committee may also choose to send out explanatory material in a second separate "Committee Schedule" not related to one of the above topics, e.g. general explanatory material about new legislation or obligations of the body corporate (SM.S73(7)). Such additional material is restricted to providing appropriate background information.

A motion to change the regulation module

A motion to change the regulation module stated in the community management statement e.g. from Standard Module to Accommodation Module, must be accompanied by an explanatory schedule explaining the effect of the proposed change (SM. S73(5));

A motion with alternatives

A voting paper must be accompanied by an explanatory schedule if there is a **motion with alternatives** proposed. A motion with alternatives arises where 2 or more motions proposing alternative ways of dealing with the same issue are given to the secretary, (e.g., the secretary receives motions from 3 lot owners each proposing that a different body corporate manager is engaged).

The voting paper must list the substance of all the motions under **one motion** and that single motion becomes a motion submitted by the committee, e.g. " that a body corporate manager be engaged," and then the **alternatives** are listed under that motion with a blank space for voting purposes. A voter may vote for the motion and one of the alternatives, or vote against the motion. (SM. S72)

Note: If this procedure is not followed and more than one motion about the same issue is listed on the agenda or stated in the voting paper, all the motions about the issue are void. (SM. S72(5))

The explanatory schedule for a motion with alternatives must set out the original motion in the form in which it was submitted to the secretary; any explanatory note about the original motion from a lot-owner if the note is not longer than 300 words; and an explanation of how to vote **for** the motion and **one** alternative, or to vote **against** the motion.

For example

*"To vote on this motion, you must either vote **against** the motion OR vote **for** the motion and **1 alternative**."*

To vote against the motion-Mark 'No' opposite the motion on the voting paper. If you mark 'No', do not place a mark beside any of the alternatives.

To vote for the motion and 1 alternative-Mark the voting paper in 2 places. Firstly, mark 'Yes', opposite the motion on the voting paper. Secondly, mark 'Yes' opposite the alternative you want to vote for. You can vote for only 1 alternative."

A lot-owner's explanatory note

Where a lot owner submits a motion which itself contains an explanatory note of up to 300 words, the explanatory schedule sent by the secretary must include the lot-owner's exact words, and the explanatory material for such a motion must not contain material written by a person other than the submitter of the motion (SM. S73(6)) . This is to prevent comment on the motion which could lead to bias in the voting. For such a motion, the explanatory schedule may only give the number assigned to the motion, the submitter's name and the 300 words as submitted.

The proxy form

A voter who cannot attend a meeting in person may send along a proxy to vote for him or her. The proxy may be any named individual but must hold the voter's permission in the approved form which is BCCM Form 6 Proxy form for Body Corporate General Meetings available on the BCCM website (www.justice.qld.gov.au/bccm).

The proxy form only lasts until the end of the financial year or earlier time as may be stated on Form 6 by the giver of the proxy. A proxy cannot be irrevocable and cannot be transferred to a third person.

The proxy form must be given to the secretary before the start of the general meeting or at such earlier time up to 24 hours before the meeting as the body corporate may decide. (SM. S107).

Certain matters may not be voted on by a proxy vote e.g.

- an election for committee members (SM. S109(3)(c));
- a motion for approving the engagement of a body corporate manager, caretaking service contractor or letting agent (SM. S109(3)(f)); or
- any motion where voting is by secret ballot. (SM. S109(3)(g)).

The corporate nominee form

The body corporate must send out a **corporate nominee form** with the notice, even if the lot owner is not a corporation. This is not an approved form; however the Commissioner's Office has produced a form, "BCCM Form 8 Information for Body Corporate Roll" which includes a corporate owner nominee section.

Other documents

Other documents which must be sent out with a notice of a general meeting are :-

- disclosure of insurance details to an AGM (SM. S177);
- a copy of any audit to an AGM (SM. S155);
- a copy of the previous financial year's statement of accounts to an AGM (SM. S154);
- a copy of the proposed budgets for the forthcoming financial year to an AGM (SM. S139);
- any quotations for work the cost of which will render the works "major spending" (SM. S152);
- the ballot papers and an envelope marked " ballot paper" with particulars tab or separate particulars envelope for the election of committee by secret ballot, (SM.S21(6)), or
- the ballot papers and a self-addressed envelope to the secretary for the election of the committee by open ballot (SM. S22(6));

- a copy of the terms of the engagement or authorisation (if there is a motion to engage a body corporate manager , a service contractor or caretaking service contractor or to authorise a letting agent). This includes when the term of the engagement or authorisation begins and ends and any right or option of extension or renewal of the engagement or authorisation (SM. S114(2)(c)(i)). This provision would be most easily satisfied by sending a copy of the proposed contract;
- if there is a motion for an agreement to amend an engagement of a person or company as a service contractor, caretaking service contractor, or an authorisation as a letting agent, which includes a right or option of extension and renewal - an explanatory note in the approved form (BCCM FORM 20) explaining the nature of the amendment; (SM S114(2)(c)(ii)).
- if the motion is for another agreement to amend an engagement or authorisation, e.g. of a body corporate manager's contract - the terms and effects of the amendment. (SM S114(2)(c)(iii)) This provision would be most easily satisfied by sending a copy of the proposed contract.
- an explanatory note in the approved form "BCCM FORM 20" Explanatory note - proposal to amend (if there is a motion for an agreement to amend an engagement of a person or company as a service contractor, caretaking service contractor, or an authorisation as a letting agent, which includes a right or option of extension and renewal); (SM. s114(2)(c)(ii)).
- the terms and effects of the amendment (if the motion is for another agreement to amend an engagement or authorisation, e.g. a body corporate manager's contract) (SM. S114(2)(c)(iii)). This provision would be most easily satisfied by sending a copy of the proposed agreement.

CHECKLIST - DOCUMENTS FOR A GENERAL MEETING

- Notice including the following -
 - Agenda
 - Voting papers including -
 - Secret voting papers if required ;
 - Secret voting envelopes with particulars tab or separate envelope
 - An explanatory schedule if required
 - Any additional explanatory background material on a separate "Committee Schedule"
- Company nominee form
- Proxy form
- Other documents e.g. details of any contracts of engagement or agreements to amend contracts; Quotations for works for "major spending" if required
- Ballot papers [open or secret] for electing committee to AGM
- Proposed budget , financial statement of account, and audit if any to AGM
- Insurance details to AGM

Topic 3 - Holding a general meeting and voting

Quorum and meaning of "voter"

A **voter** for a general meeting is an individual who is a lot owner, or the representative of a lot owner, and whose name is entered on the body corporate roll. A voter may also be a nominee for a corporate owner; a subsidiary scheme representative; or a nominee of a corporation which itself is entered on the body corporate roll as the representative of a lot owner. (SM. S83(1))

There must be a **quorum** present in order to hold a meeting. A quorum for a general meeting is at least 25% of the number of **voters** for a meeting. (SM. S82(2)). In calculating the 25%, voters who may be disqualified from voting are counted as "voters" in a general sense. (Barard Management Pty Ltd v Tracey Carmont and the body corporate for Tudor Rose Court - (unreported) BD 552/03 District Court (Brisbane) and Order 0097-2002 Panorama Heights CTS 26748).

A representative of a voter is a person who is a guardian, trustee, receiver or other representative, or someone who is authorised to act on the voter's behalf by a power of attorney, provided that such attorney can not be the body corporate manager, service contractor or letting agent.

A representative must give to the secretary a copy of his or her authorisation, or must satisfy the secretary of his or her genuine representative capacity and provide the secretary with an address for service. A nominee for a company must also provide the secretary with a notice of the nomination under the seal of the company or corporation.

Two or more co-owners of a lot are counted as one voter. (SM. S82(6)).

Being "Present" at a meeting

Owners or authorised representatives are taken to be present for a general meeting if they either:

- attend personally; or
- send in a written voting paper; or
- send a proxy to vote on their behalf; or
- if the scheme has facilities and the body corporate has previously passed a resolution to allow electronic voting, by sending in an electronic voting paper, e.g. by email. (SM. S82).

However, before there is a quorum present, AT LEAST TWO voters must attend in person where the scheme has 3 or more voters.

In very small schemes, where the number of voters is fewer than three, AT LEAST ONE voter must be present personally before there is a quorum present.

If sufficient numbers to make a quorum are not present within 30 minutes of the time scheduled for the start of the meeting, the meeting must be adjourned to the following week at the same time and place, unless this is not practicable and all lot owners are advised personally or in writing of the new venue before the start of the adjourned meeting. (SM. S82(5)).

Adjourned meeting.

At the adjourned meeting, if a quorum is still not present within 30 minutes of the start, those persons present IN PERSON OR OTHERWISE form a quorum provided that the chairperson is present personally or the body corporate manager who is authorised by the body corporate to exercise the powers of the chairperson, is present personally.

The legislation requires the body corporate to hold an AGM. It is therefore imperative that the body corporate has the power to pass motions including adopting budgets, even though a quorum is not present at an adjourned meeting.

Who chairs the meeting?

The chairperson must chair all general meetings at which he or she is present. If the chairperson is not present, or the office of chairperson is vacant for any reason, those present at the meeting may elect any person with a right to vote, to chair the meeting.

A body corporate manager (who has been authorised to exercise the powers of the chairperson) may chair the meeting only if elected to do so by the persons present at the meeting, or if the body corporate manager is the only person forming a quorum at an adjourned meeting. The body corporate manager may otherwise advise and help the person chairing the meeting.

The chairperson does not have any more voting power at a general meeting than he or she has as a lot-owner of a particular lot or lots. A body corporate manager acting as a chairperson with the authority of the body corporate is not empowered to vote.

Power of the person chairing meeting to rule a motion out of order (SM. S81)

The person chairing the meeting has the power to rule a motion out of order. The chairperson must rule a motion out of order if:

- the motion (if carried) would -
 - conflict with the Act;
 - conflict with the regulation module governing the scheme;
 - conflict with a motion already voted on at the meeting;
 - be unlawful, or unenforceable for another reason; or
- the substance of the motion was not included in the agenda of the meeting (excepting a procedural motion for the conduct of the meeting or a motion to correct minutes).

If a motion is ruled out of order, the person chairing the meeting must give reasons for the ruling, and in respect of the first four points set out above, must explain that those present at the meeting and entitled to vote on the issue, may overrule and reverse the ruling if they wish to, by passing an ordinary resolution to do so. The reasons of the person chairing the meeting must be recorded in the minutes.

Losing the right to vote

If the owner of a lot owes a body corporate debt at the time of the meeting, he or she does not have the right to exercise a vote for a particular lot unless the motion requires a resolution without dissent (SM. S84). A mortgagee in possession also displaces the right of the registered owner to vote if the mortgagee advises the secretary in writing.

How an open vote is cast

One vote only may be exercised for each lot included in the scheme. For a vote to be recorded on a motion, the motion must be present on the agenda and stated in a voting paper accompanying the notice of the meeting (unless it is merely a procedural motion, a motion to correct minutes, or a motion to amend a motion).

A voter may vote on an open motion personally, by proxy, by casting a written vote, or by casting an electronic vote (e.g. by email) if the body corporate has decided that voters may record votes electronically. (SM. s86). However, there are some restrictions on the types of open motion which may be voted on by proxy.

Hands up!

Unless a ballot is required by the legislation or by-laws for the scheme, or the person chairing the meeting decides that a ballot is necessary to ensure an accurate count of votes, voting is by:

- a show of hands by those persons present, or;
- giving completed voting papers not later than the start of the meeting to the secretary or to the person chairing the meeting, if the secretary is not present.

A voter cannot give the completed voting paper to another person to hand to the secretary or chairperson.

The body corporate may decide by special resolution that voting is to be done another way. (SM. s87). Where there is one or more, but not all, co-owners of a lot present, the co-owner who is present votes as the owner of the lot. If there is a conflict between the votes of the co-owners, no vote is counted.

Written and electronic votes

A voter casts a **written vote** by completing the voting paper and giving it to the secretary by hand, by post or by fax before the start of the meeting. A voter casts an **electronic vote** by completing and signing the electronic form voting papers and sending the voting papers electronically (e.g. by email) to the secretary. Both written and electronic votes may be withdrawn by a voter (but not his proxy) at any time before the motion is declared.

How a secret vote is cast

One vote only may be exercised for each lot included in the scheme. For a vote to be recorded on a motion, the motion must be present on the agenda (Topic 2: Calling a general meeting, The Agenda) and stated in a voting paper (Topic 2: Calling a general meeting, The Voting papers) accompanying the notice of the meeting (unless it is merely a procedural motion, a motion to correct minutes, or a motion to amend a motion).

A secret vote can only be cast by running a secret ballot. Some motions are required by legislation to be held by secret ballot. The committee can recommend that a motion is decided by secret ballot, or the body corporate can decide by ordinary resolution at a general meeting that a motion or particular type of motion is decided by secret ballot. The decision of the body corporate to require certain resolutions by secret ballot lasts only until the end of the next AGM held after the general meeting at which the resolution is passed.

A voter who is present at the meeting may ask the secretary to provide him or her with a secret voting paper and secret voting paper envelope or particulars tab envelope, (Topic 2: Calling a general meeting, Secret voting papers and envelopes) and may withdraw a prior written vote and replace it, if the prior vote can be readily identified. (SM S89).

Written and electronic votes

A voter may vote on a motion decided by secret ballot by casting a **written vote** or an **electronic vote** (by email) if the body corporate has by ordinary resolution decided that electronic votes may be cast. A body corporate can only decide this if a system is in operation:

- to allow electronic votes to be received without disclosing the voter's identity, and
- reject a vote by someone who is not a voter for a general meeting.

A written vote is cast by marking the secret voting paper, "yes", "no" or "abstain", then placing the secret voting paper into the secret voting paper envelope (Topic 2: Calling a general meeting, Secret voting papers and envelopes) supplied by the secretary and sealing it.

Then the secret voting paper envelope is either placed into a "particulars" envelope, or there will be a "particulars" tab on the secret voting paper envelope. The voter must fill in the "particulars" tab or complete the "particulars" envelope by providing the following information:

- the number of the lot for which the vote is exercised;
- the name of the owner of the lot;
- the name of the person having the right to vote; and
- the basis on which the person has a right to vote (e.g., as a member of the body corporate).

Then the voter gives the completed particulars envelope or envelope with particulars tab to the returning officer (SM. S90), or forwards it to the returning officer so that it arrives before the votes are counted at the general meeting. The envelope must be received and held by the returning officer directly with no intermediary having access to the envelope. Voting papers sent via an intermediary have been held to be invalid (Orders 0409-2005 and 0536-2004).

Motions which may be by secret ballot

The body corporate may decide by resolution at a general meeting that a particular motion or motions on a particular subject must be decided by secret ballot. In that event, such a resolution applies for the period stated in the resolution, ending no later than the end of the next AGM held after the general meeting at which the resolution is passed. (SM. S88(3)(b))

If the committee recommends that a particular motion be decided by secret ballot, then sufficient time must be given for the required voting material (Topic 2: Calling a general meeting, The Notice of general meeting) to be prepared and sent out to lot owners. (SM. S88(2))

Note: Certain motions must be resolved by secret ballot (see Topic 2 - Calling a General Meeting, Secret voting papers and envelopes)

Voting on a motion with alternatives

When a number of motions about the same subject are proposed they must be dealt with as a **motion with alternatives**. Topic 2 - Calling a general meeting explained how the voting paper for a motion with alternatives must be prepared. We will now look at how the vote is counted.

The motion (**original motion**) under which all the **alternatives** are listed may be as simple as "Do you want to engage a body corporate manager". The **alternatives** are listed below the **original motion**. The explanatory note accompanying a **motion with alternatives** (described in Topic 2 - Calling a general meeting) advises the voter to either vote for the motion and 1 alternative or to vote against the motion.

Example of a motion with alternatives:

Motion 3. Do you want to engage a body corporate manager? Yes No

- *ABC managers P/L*
- *MNO Body Corporate Management P/L*
- *XYZ Community Services P/L*

Counting the vote

The chairperson or the returning officer must firstly determine whether the **original motion** is passed. The engagement of a body corporate manager requires an ordinary resolution of the body corporate. If there are more "Yes" votes than "No" votes, the original motion is passed.

In the above example 10 "Yes" votes are cast and 3 "No" votes are cast for the **original motion**. The **original motion** to engage a body corporate manager is passed and the count now moves onto the number of votes for each alternative.

Voting on the alternatives

- ABC managers P/L 3 votes
- MNO Body Corporate Management P/L 4 votes
- XYZ Community Services P/L 3 votes

The alternative with the highest number of votes is the decision of the body corporate. MNO Body Corporate Management P/L with 4 votes wins.

Restrictions on proxy use

While a member of the body corporate (the member) may appoint a person to act as their proxy (the proxy), there are a number of restrictions on their use. A proxy cannot be exercised:

- if the member is present personally at the meeting, unless the member consents at the meeting;
- on a motion, if the member has exercised a written or electronic vote on the motion;
- on the election of, or for otherwise choosing a member of the committee;
- on a vote to prohibit the use of proxies in any way at committee or general meetings;
- on a vote to change the regulation module for the scheme;
- on a vote decided by majority resolution;
- on a vote to engage a body corporate manager or a service contractor or an amendment or termination of either engagement;

- on a vote to authorise a person as a letting agent or an amendment or termination of the authorisation;
- on a motion decided by secret ballot;
- for general meeting of a principal scheme in a layered arrangement;
- if the general meeting is called to fill a vacancy under SM. s33C;
- when a regulation provides that a proxy cannot be exercised for a particular vote.

The role of the returning officer

The body corporate must appoint a **returning officer** for each general meeting at which there is to be a secret ballot. (SM. S91(1)). A lot owner cannot be a **returning officer**, nor can a body corporate manager, service contractor or letting agent, or their respective associates.

The **returning officer** will have duties as set out in the appointing instrument, and these may generally include: (SM. S91(3))

- deciding questions about eligibility to vote;
- receiving secret voting papers;
- counting votes, or inspecting the counting of votes; and
- deciding whether a vote is valid. (SM. S91(3))

The duties of the **returning officer** require specifically that he or she:

- checks that the outer "particulars" envelope or particulars tab carries details of a person who has a right to vote;
- removes the secret voting paper envelope from the outer "particulars" envelope, or removes the particulars tab;
- places the secret voting paper envelope in a receptacle in full view of the meeting and mixes them up;
- takes each secret voting paper out of the secret voting paper envelopes and inspects and counts the votes.
- ensures that each electronic vote received can be viewed by a person present at the meeting, inspected and counted. (SM. S89)

In addition, for a motion which is to be decided by special resolution, the **returning officer** must, prior to placing the secret voting paper envelope in the receptacle, record on the envelope, the contribution schedule lot entitlement of the lot for which the vote is cast. Upon opening the envelope and taking out the secret voting paper, the **returning officer** must record on the voting paper the contribution schedule lot entitlement for the lot for which the vote is cast.

After the votes are counted, the **returning officer** must provide the person chairing the meeting with the following documents:

- all the written voting papers, secret voting paper envelopes and particulars envelopes or particulars tabs;
- the number of electronic votes cast for and against the motion and abstentions on the motion;
- the total number of votes cast for and against the motion;
- the total number of abstentions;
- the number of votes rejected, and the reason for any rejected votes. (SM. S89)

The body corporate must keep all voting papers and envelopes for 6 years. (SM. S202 and S203)

Topic 4 - Procedures at general meetings

Secretary to provide papers for inspection

At all general meetings the secretary must have available for inspection by voters:

- the body corporate's roll,
- a list of persons who have a right to vote at the meeting,
- all proxy forms and
- voting papers.

Declaring the results of a motion and keeping a tally sheet (SM. s93)

The person chairing the meeting must **declare** the result of the voting on motions at the meeting. The chairperson does this by declaring for each motion the number of votes cast for and against, and the number of abstentions. These numbers must be recorded in the minutes of the general meeting. The body corporate must keep all voting papers and envelopes for 6 years. (SM. s202(c); SM. s203(3)(b); SM. s203(4)(a))

A **voting tally sheet** must also be kept to include for each decided open motion:

- a list of rejected votes identified by lot number;
- the reason for the rejection (e.g. see Topic 3: Holding a general meeting and voting, Losing the right to vote) for each rejected vote;
- a record of how each lot voted - whether for, or against, or whether there was an abstention from voting;
- the number of votes cast for and against the motion and the number of abstentions from voting on each motion;

The **voting tally sheet** must record for a secret ballot:

- a list of votes rejected from the count;
- the reason for the rejection (e.g. see Topic 3: Holding a general meeting and voting, Losing the right to vote) for each rejected vote;
- the number of votes cast for and against the motion and the number of abstentions from voting on the motion,

Note: The secret tally records the same information as for an open motion save that the identity of the voter or lot is not fathomable.

The tally sheet may be inspected at the meeting by voters or their proxies, the returning officer, or the person chairing the meeting.

Note: An abstention is **not** a vote **for** or **against** the motion.

Keeping minutes

The body corporate must ensure that full and accurate **minutes** are taken at each general meeting. "Full and accurate" is defined in the Standard Module as an inclusive list stating the following as a minimum:

- date, time and place of the meeting;
- names of persons present and the capacity in which they attended;

- details of proxies tabled;
- the words of each motion voted on;
- the number of votes cast for and against each motion and the number of abstentions from voting on the motion;
- if committee elections have taken place - the number of votes cast for each candidate;
- the time the meeting closed;
- the secretary's contact name and address;

Note: A copy of the minutes must be given to all owners within 21 days after the meeting (SM. S96)

Topic 5 - Amending motions and Use of proxies

How to amend a motion at a general meeting (SM. S94)

A voter may seek to **amend** a motion at the meeting provided the subject matter of the motion is not changed. A motion which seeks to amend the subject matter cannot be proposed.

The proposer proposes a "motion to amend the motion" and those present at the meeting or present by proxy, vote on the motion to amend. In counting the votes for the proposal to amend the motion, if a voter who is not present has already cast a [written or electronic](#) vote on the original motion as it stood, then his or her vote on the proposal to amend must be recorded as a vote **against**. A voter who is not present and who has not cast a written or electronic vote on the original motion must not be counted as voting for or against the proposal to amend.

Equally, if the proposal to amend is successful, and the original motion is amended, those who have previously cast a written or electronic vote on the original motion must be recorded as having cast a vote **against** the amended motion.

For example:

Adam in Lot 6 casts a written vote on the motion to install a barbeque by the east end of the pool on common property. He does not attend the meeting. At the meeting Eve, owner of Lot 3, who is present, agrees to the purchase of a new barbeque but proposes it be installed at the west end of the pool area instead. She therefore proposes that the motion is amended. It does not matter whether Adam has voted for or against the new barbeque being installed. Adam must be taken to have voted against the proposal to amend the motion, even if he has voted for the original motion for the installation of the barbeque at the east end, and those present know that he would not have cared where the new barbeque was positioned.

Those present at the meeting think that Eve's proposal is a good idea, and there is a majority in favour of the amendment, even though there are written votes which must be counted against. When the amended motion (for a barbeque to be installed at the west end) is voted on, Adam's vote must be counted against, regardless of how he voted on the original motion.

Amendment or revocation of resolutions already passed.

A resolution of a particular type may only be amended or revoked by a resolution of the same type, e.g. a special resolution may only be amended or revoked by a special resolution. The same applies to a resolution without dissent and an ordinary resolution. SM. S95)

Use of proxies for general meetings

A proxy must be given in the approved form (BCCM Form 6: Proxy form for body corporate general meetings). The appointment of the proxy is only effective if the voter or holder of the proxy gives the approved form to the secretary before the start of the meeting, (or such earlier time fixed by the body corporate however, this cannot be more than 24 hours before the meeting). The giving of the proxy may be by hand, by post or by fax.

The proxy holder may vote by show of hands at the meeting or by completing a written or electronic vote before the start of, or at, a general meeting.

Neither a body corporate manager, nor an associate of the original owner/developer or a body corporate manager can hold a proxy for a voter. (SM. S110(2))

If there are 20 or more lots in a scheme, a person cannot hold proxies for more than 5% of the lots, and if there are fewer than 20 lots in a scheme, a person can only hold one proxy.

A person who exercises a proxy for a voter or purports to vote on behalf of someone else at a general meeting without the right to do so, commits an offence liable to a fine in the Magistrates Court of a maximum of 100 penalty points (\$7,500).

The body corporate may at a general meeting prohibit the use of proxies altogether or for particular motions. The motion to restrict or prohibit the use of proxies must be carried by special resolution (SM. S107). To vote on such a motion, votes by proxy are prohibited (SM. S109(3)(d)(i)).

Restrictions

While a member of the body corporate (the member) may appoint a person to act as their proxy (the proxy), there are a number of restrictions on their use. A proxy cannot be exercised:

- if the member is present personally at the meeting, unless the member consents at the meeting;
- on a motion, if the member has exercised a written or electronic vote on the motion;
- on the election of, or for otherwise choosing a member of the committee;
- on a vote to prohibit the use of proxies in any way at committee or general meetings;
- on a vote to change the regulation module for the scheme;
- on a vote decided by majority resolution;
- on a vote to engage a body corporate manager or a service contractor or an amendment or termination of either engagement;
- on a vote to authorise a person as a letting agent or an amendment or termination of the authorisation;
- on a motion decided by secret ballot;
- for general meeting of a principal scheme in a layered arrangement;
- if the general meeting is called to fill a vacancy under SM. s38;
- when a regulation provides that a proxy cannot be exercised for a particular vote.

Topic 6 - Poll vote at a general meeting

Poll count for certain motions

A poll count is a count by reference to the contribution schedule lot entitlements for each lot, and not by reference to the lot itself.

At the meeting a person entitled to vote may ask for a poll for the counting of the vote on a motion decided by ordinary resolution (A s109). This does not apply to an ordinary resolution conducted by secret ballot. The person must ask for the poll in person at the meeting or on the voting paper on which he or she votes, whether or not he or she is personally present. The request can be made before or after the meeting has already voted on the motion. However, the request must be made before the meeting decides the next motion or if the motion for which the request for a poll count is made is the last motion to be considered, before the meeting ends.

If the poll is properly requested, one vote only may be exercised for each lot in the scheme, whether personally, by proxy or in writing. The motion is passed by ordinary resolution if the total of the contribution schedule lot entitlements for the lots which voted for the motion is more than the total of the contribution schedule lot entitlements for the lots which voted against the motion.

For example:

There are 7 lots in the scheme. The owners of Lots 1, 2, 4 and 5 vote against the motion. The owners of Lots 3, 6 and 7 vote in favour of the motion. The motion is defeated 4 - 3. Before the meeting goes on to decide the next motion, the owner of Lot 3 calls for a poll vote. Lot 3 has 30 lot entitlements on the contribution schedule, Lots 1, 2, 4 and 5 have 19 and Lots 6 and 7 have 25. The count is therefore $30 + 25 + 25 = 80$ in favour and $19 + 19 + 19 + 19 = 76$ against. The motion is therefore carried 80 - 76.

Topic 7 - Keeping records of general meetings

Keeping records

The body corporate must keep for **two years** all "associated general meeting material." (SM. s203(4)(a))

This includes:

- notices calling for nominations for committee positions;
- notices by owners requesting general meetings;
- notices of motions received, including explanatory notes for motions;
- nominations for election as a committee member;
- proxy appointment documents;
- completed voting papers (including ballot-papers and secret voting documentation) for motions and election ballots;
- voting tally-sheets or other records showing votes for motions and election ballots;
- notices of objection by lot owners to meeting locations;
- copies of instruments, notices and powers of attorney given to the body corporate in respect of representative voters. (SM. s202)

However, a body corporate must keep for **six years**, general meeting material which consists of notices of meetings, agendas and attachments including:

- (uncompleted) written voting papers;
- (uncompleted) ballot-papers;
- (uncompleted) secret voting documentation
- budgets;
- statements of account;
- certificates of auditors;
- tender documents; and
- other attachments accompanying notices; (SM.S202 definition - " associated general meeting material" at (c), SM.S203(3)(b) and SM.S203(4)(a))

Despite the above, a document may not be disposed of if it is a document having current relevance to the scheme.

Records may be kept in their original paper form or in photographic or electronic image form.

Access to records

The body corporate must allow interested persons to have access to body corporate records and must provide copies of records if the interested person is willing to pay the required fee as set out in the legislation. An "interested person" is defined as a lot owner or mortgagee; a prospective buyer of a lot; or another person or his agent, who satisfies the body corporate of a proper interest in the information sought. (A.s205).

Within 7 days after receiving a request from an interested person accompanied by the prescribed fee, the body corporate must allow inspection of the records, or give the interested person a copy of the record requested. The body corporate may be fined 20 penalty points in a Magistrates Court if such inspection is denied. The body corporate may only refuse an interested person an inspection or a copy of a document from the

records if the body corporate reasonably believes that the document contains defamatory material.

The body corporate may refuse access to an interested person if a legal proceeding has been started between the interested person and the body corporate and the records are privileged from disclosure. (SM. S204)

All members of the committee may have reasonable access to records without payment of any fee, save for where the body corporate reasonable believes that a document may be defamatory. (SM. S204)

Topic 8 - The annual general meeting

The legislation requires that certain additional procedures and motions are covered at the annual general meeting.

The annual general meeting must be held within 3 months after the end of the scheme's financial year. (SM. s66)

What is the date of our financial year?

It is essential for the body corporate to know when its financial year ends. The calculation is taken from the date of the first Annual General Meeting (AGM) unless another date has been fixed by the referee (a referee under the *Building Units and Group Titles Act 1980*) or by adjudicator's order.

For a scheme that was in existence at 13 July 1997 (the commencement of the Act):

- the financial year **ends** on the last day of the month **in which** the first annual general meeting was held for the existing plan* (for example, if the first annual general meeting was held on 10 May 1993, the financial year will be 1 June to 31 May); **or**
- the financial year **ends** on the last day of the month in which the anniversary date for the first annual general meeting was fixed by an order of the referee under the *Building Units and Group Titles Act 1980*. (s330(9)(a) and s330(9)(b) of the Act: Transitional provisions)

For a scheme which was established after 13 July 1997:

- the financial year **ends** on the last day of the month **immediately before** the month when the community titles scheme was established (for example, if the scheme was established on 10 May 1998, the last day of the financial year is 30 April each year, therefore the financial year will be 1 May to 30 April); **or**
- an adjudicator may make an order changing the financial year under the dispute resolution provisions of the Act ("financial year" defined in the Dictionary, Schedule 6 of the Act)

***Note:** An existing plan is a "building units plan" [BUP] or "group titles plan" (GTP) to which the Building Units and Group Titles Act 1980 applied before the commencement of the Act.

To find out when the scheme held its first annual general meeting you may need to check the body corporate records, or to find out when the scheme was established you may need to check the Community Management Statement (CMS). A copy of the CMS should be held in the records of the body corporate.

Changing the financial year or holding a meeting "out of time"

The financial year may only be changed by making an application to the Commissioner's Office (A s.283). Equally, a valid AGM may only be held in excess of three months after the end of the financial year by a declaratory order of an adjudicator.

Once the financial year is changed by declaratory order, the body corporate must register the change by recording a new community management statement (CMS). (A. s62(4)(b)).

Preparing for the AGM - before the end of the financial year



-Refer to the above diagram-

Since members of the committee must be chosen at each AGM, the secretary must seek nominations for committee membership at least 3 weeks before, but not earlier than 6 weeks before, the end of the body corporate's financial year. (SM. s16(4))

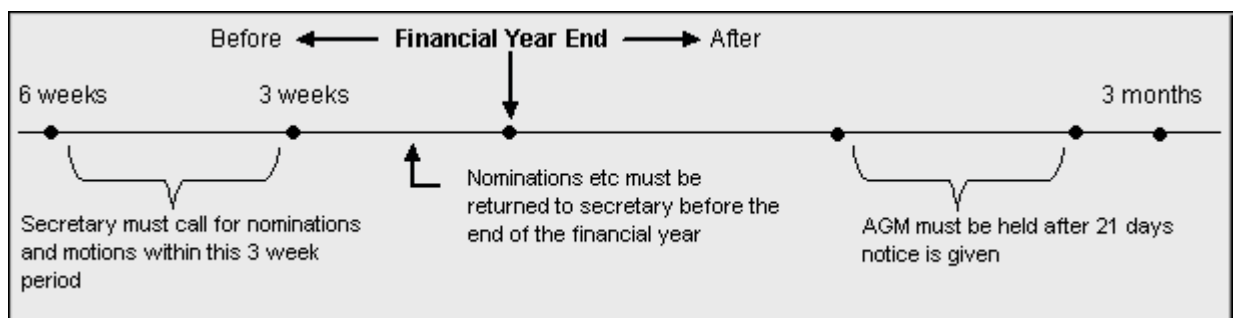
At the time the secretary sends out the notice to all lot owners inviting nominations for committee, lot owners must also be invited to submit motions for inclusion on the agenda for the AGM. (SM. s69(5))

Lot owners may submit motions at any time to the secretary prior to the date of the end of the financial year. All motions received by that date must be included on the agenda for the AGM (SM. s69(3)), with three exceptions:

- a motion proposing that the regulation module for the scheme be changed may only be put to a general meeting once in any financial year;
- a motion proposing that remuneration paid to a particular service contractor to be changed may only be put to a general meeting once during a financial year; or
- a motion proposing the amendment of the engagement of a person as a service contractor, or the authorisation of a person as a letting agent, if as a result of the amendment, the engagement or authorisation would include a right or option to extend or renew, may only be put to a general meeting once in any financial year.

Therefore, a second motion in any one financial year for the above items must not be included.

Preparing for the AGM- after the end of the financial year



-Refer to the above diagram-

Once nominations and motions have been received at the end of the financial year, the committee, at a committee meeting must draft an agenda for the AGM containing the motions, and set down the eligible nominees, for election to the committee. The committee may add its own motions to be put to the AGM.

The committee must draft administrative fund and sinking fund budgets for the forthcoming year to be put to the AGM, and fix contributions to be paid by lot-owners. (SM. s139(5), SM. s141)

A general meeting must be held at least 21 days after notice of the meeting is given to lot owners. (SM. s74).

The statutory motions (SM. s76(3))

The "statutory motions" concern those items that are the key administrative duties of the body corporate, and which the legislation requires be voted on by the body corporate at least once a year. The five are as follows:

1. presenting the body corporate's accounts for the financial year;
2. appointing an auditor of the body corporate's accounts for the next financial year, or not auditing the accounts;
3. adopting administrative fund and sinking fund budgets for the financial year;
4. fixing contributions to be paid by the owners of lots for the next financial year; and
5. reviewing each insurance policy held by the body corporate.

Preparing the proposed budgets

The committee must prepare two budgets - the administrative fund budget and the sinking fund budget - for adoption by the body corporate at each AGM (SM. S139(5)).

The administrative fund budget must contain estimates for the next financial year's reasonable and necessary spending for maintenance of the common property, insurance, and items of recurrent expenditure.

The sinking fund budget must allow for reasonable and necessary spending for the next financial year on items of a capital or non-recurrent nature, and must budget for a proportional reserve for the next 9 years.

The voting papers in respect of the budgets must be accompanied by an explanatory schedule which must include an explanatory note that the amount adopted as the annual budget may be more or less than the proposed budget by a variant of 10%. (SM. S140; SM. S73).

Note: The inclusion in the adopted budget of an item of expenditure does not automatically authorise the expenditure. (SM. S139(7))

Fixing contributions

The committee must propose on the basis of the budgets put forward, the contributions to be levied on lot-owners, and decide on the number of instalments and the date on which they are to be paid in the next financial year. (SM. S141)

Other documents to be sent out with the Notice for an AGM

- disclosure of insurance details (SM. S177);

- a copy of any audit (SM. S155);
- a copy of the previous financial year's statement of accounts (SM. S154);
- a copy of the Register of reserved issues (SM s201)

The First AGM

When a body corporate is established, the original owner or developer must call the first annual general meeting within 2 months of one of the following occurring:

- the sale of 50% of the lots in the scheme; or
- 6 months elapsing after the establishment of a scheme. (SM. s77)

The agenda for the first general meeting must adopt budgets, fix contributions, review insurance policies, choose committee members, provide for the custody and use of the body corporate seal, decide what by-laws should be amended or repealed, and decide whether or not to appoint an a auditor.

At the first AGM, the original owner/developer must hand over to the body corporate the documents and materials in his possession or control including:

- a register and inventory of assets;
- all plan specifications and building drawings showing pipes and wiring and other utility infrastructure;
- all insurance policies;
- the body corporate seal;
- budgets showing the estimated spending in the first year;
- estimated sinking fund forecast for the next 10 years including an estimate for painting common property;
- all relevant building contracts, and building certificates; and
- any other documents relevant to the scheme such as the body corporate roll, and correspondence. (SM. s79)

The original owner/developer must also hand over such documents at the first practical opportunity if they come into his possession after the first AGM has been held.

Topic 9 - A requested extraordinary general meeting

Requested extraordinary general meeting (SM. S67]

A general meeting may be requested by a group of lot owners. The body corporate must call an extraordinary general meeting if a notice signed by or on behalf of at least 25% of all the lots included in the scheme is given to the secretary, or in the absence of the secretary, the chairperson. The secretary may be presumed to be absent if there is no reply from the secretary at the address for service of the body corporate within 7 days.

The secretary or chairperson must decide on a date and call the meeting within 14 days of receiving the notice, and the meeting itself must be held within 6 weeks after the notice is given.

If the requested meeting is not called within 14 days, the lot owners who requested the meeting may ask another committee member to call the meeting, by sending a written request, and that committee member is obliged to call the meeting within 14 days. The secretary must provide to the relevant committee member, all the records or other documents of the body corporate reasonably required to enable the committee member to call the meeting and perform the functions of the secretary.

Unit 3 - Financial management

Overview

This unit describes the financial management arrangements that apply to a body corporate. At the end of the unit there will be an assessment where you will be asked to complete a questionnaire.

The question format will be multiple choice, yes/no or true/false. If you get a question wrong you will be directed to the correct answer. For a complete understanding of this unit, it is suggested you begin at Topic 1, however if you are confident you have a particular level of knowledge, you are free to begin at any topic.

Please note: In order to receive a statement of completion for this unit, you must achieve at least an 80% pass rate.

Resources

In each of the topics listed below references to the relevant sections of the Act, the Standard Module Regulations. There will also be a Glossary of Terms at the end of the unit. References to the Act will be defined by a capital A followed by the section number e.g. **(A. s55)**. References to the Standard Module will be defined by a capital SM followed by the section number e.g. **(SM. s109)**. Additionally, you may be provided with links to other relevant information sources e.g., fact sheets and other legislation. References to adjudicator's orders will be defined firstly by the scheme name and then a reference to the order number and the year e.g. **(Sanctuary Bay-Order. 0012-2005)**. Links to all of the above will be provided under the "Links" heading in each topic.

Topics Covered

- Topic 1: Body Corporate Financial Year
- Topic 2: Financial Institution Account
- Topic 3: Budgets
- Topic 4: The Administrative Fund and the Sinking Fund
- Topic 5: Contributions Levied on Owners
- Topic 6: Funds Administered by a Body Corporate Manager
- Topic 7: Statement of Accounts
- Topic 8: Audit
- Topic 9: Borrowing

Topic 1 - Body corporate financial year

A body corporate's financial year is not necessarily the same as the financial year used for taxation purposes (1 July to 30 June). The determination of a body corporate's financial year depends on whether the community titles scheme was established before or after the introduction of the *Body Corporate and Community Management Act 1997* (the BCCM Act).

It is essential for the body corporate to know when its financial year ends. The calculation is taken from the date of the first Annual General Meeting (AGM) unless another date has been fixed by the referee (a referee under the *Building Units and Group Titles Act 1980*) or by adjudicator's order.

For a scheme that was **in existence** at 13 July 1997 (the commencement of the Act):

- the financial year **ends** on the last day of the month **in which** the first annual general meeting was held for the existing plan* (for example, if the first annual general meeting was held on 10 May 1993, the financial year will be 1 June to 31 May); or
- the financial year **ends** on the last day of the month in which the anniversary date for the first annual general meeting was fixed by an order of the referee under the *Building Units and Group Titles Act 1980*. (SM. s330(9)(a) and s330(9)(b) of the Act: Transitional provisions)

For a scheme which was established **after** 13 July 1997:

- the financial year **ends** on the last day of the month **immediately before** the month when the community titles scheme was established (for example, if the scheme was established on 10 May 1998, the last day of the financial year is 30 April each year, therefore the financial year will be 1 May to 30 April); or
- an adjudicator may make an order changing the financial year under the dispute resolution provisions of the Act ("financial year" defined in the Dictionary, Schedule 6 of the Act)

***Note:** An **existing plan** is a "building units plan" [BUP] or "group titles plan" (GTP) to which the *Building Units and Group Titles Act 1980* applied before the commencement of the Act.

To find out when the scheme held its first annual general meeting you may need to check the body corporate records, or to find out when the scheme was established you may need to check the Community Management Statement (CMS). A copy of the CMS should be held in the records of the body corporate.

Topic 2 - Financial institution account

A body corporate must have one or more accounts at a financial institution, such as a bank, building society or a credit union, kept solely in the name of the body corporate. An account opened after 4 March 2003 must only be opened with the consent of the body corporate (A. s151).

All money received by the body corporate for payment into the administrative and sinking funds must be paid into the account. All payments from the administrative or sinking fund must be made from the account (SM s146).

Who may operate the financial institution account(s)

The financial institution account may be operated by any of the following:

- at least 2 members of the committee authorised by the body corporate to operate the account (known as "authorised members");
- a body corporate manager or associate of the manager authorised by the body corporate to operate the account (A. s151).

If a body corporate manager's contract has ended, the body corporate can provide written notice of this to the financial institution, using the approved form (BCCM Form 2). After this notice has been given by the body corporate, the financial institution must not allow the body corporate manager to operate the account (A. s151).

Topic 3 - Budgets

The body corporate must prepare an administrative and sinking fund budget each financial year for consideration at the annual general meeting. There is no reference in body corporate legislation to minimum or maximum amounts required for administrative and sinking fund budgets.

The budgets are estimates of anticipated expenditure by the body corporate and are the basis for fixing the annual contributions payable by the owners of each lot to the administrative and sinking funds.

A budget is adopted by an ordinary resolution of the body corporate. The inclusion of an item of expenditure in an adopted budget is not, of itself, authority for the expenditure. Body corporate expenditure must be authorised by the body corporate, either at a general meeting or by the committee which may authorise expenditure within its authorised limit (SM s139).

Note: Refer to Unit 1 "The committee", Topic 3 "Committee spending" for information about how much a committee is authorised to spend.

Administrative Fund Budget

The administrative fund budget must:

- contain estimates for the financial year of necessary and reasonable expenditure to cover:
 - the cost of maintaining common property and body corporate assets;
 - the cost of insurance;
 - other expenses incurred annually or more frequently (known as recurrent expenditure); and
- fix the amount to be raised by contributions to cover the estimated expenditure.

Example: The body corporate must estimate the day to day maintenance of the common property and assets (e.g. weekly gardening and pool maintenance).

Sinking Fund Budget

The sinking fund budget must:

- provide for necessary and reasonable expenditure from the sinking fund for the financial year;
- reserve a proportional amount to meet anticipated expenditure over at least the next nine years after the financial year, after taking into consideration:
 - anticipated expenditure of a capital or non-recurrent nature;
 - periodic replacement of major items of a capital nature;
 - other expenditure that should reasonably be met from capital; and
- fix the amount to be raised by contributions to cover the estimated capital amount.

Annual General Meeting Requirements

The committee is usually responsible for preparing the administrative and sinking fund budgets. However, a body corporate may authorise a body corporate manager to undertake this role as part of their contract of engagement. Copies of the proposed

budgets must be included with the notice of an annual general meeting for lot owners to consider at each annual general meeting (SM s139).

An explanatory schedule accompanying the notice of each annual general meeting must include an explanatory note informing lot owners that the amount of a budget adopted at the meeting may be more or less than the proposed budget amount by an amount equivalent to not more than 10% of the proposed budget amount (SM s73).

Does the body corporate have to accept the proposed budgets?

There is no obligation for the body corporate to accept the proposed budgets and lot owners are within their rights to vote 'no' if they do not believe that the budgets accurately reflect anticipated expenditure for the financial year. However, if a lot owner is considering opposing the proposed budgets, they would need to assess whether the proposed items of expenditure for the body corporate are reasonable and necessary.

Adjusting proposed budgets at the annual general meeting

A body corporate may adjust a proposed budget at an annual general meeting, provided:

- the amount of the adopted budget is not more or less than 10% of the proposed budget amount;
- the adjustment relates to a decision at the meeting about a motion on the agenda to approve spending; and
- the adjustment is approved by a majority of voters present and entitled to vote.

Explanation: The agenda contains motions to approve expenditure for certain items that are not included in the budget (an owner proposes a motion that the body corporate buy new pool furniture). If the motion to approve expenditure that is not included in the budget is passed; it will naturally mean an increase in the proposed expenditure for the year. To accommodate this, the proposed budget may be varied by 10%.

Example:

The administrative fund budget is proposed as \$100,000, a motion to purchase 10 deck chairs for \$5,000 (not included in the budget) is approved. The administrative fund budget may be adjusted at the annual general meeting to \$105,000.

If a proposed budget is adjusted, the contributions to be paid by lot owners must be proportionately adjusted. A copy of the adopted budget must be given to each lot owner with a copy of the minutes of the meeting (SM s140). An adjustment of a proposed budget by an amount of more or less than 10% would need to be addressed at a subsequent extraordinary general meeting of the body corporate.

Surplus Funds

A body corporate may find that it has surplus funds in its administrative or sinking funds. The legislation does not provide a clear direction on what to do in this situation. There is no provision within the legislation to return the surplus funds to lot owners. Therefore, the body corporate may, depending on the amount of the surplus and anticipated expenditure, propose a reduction in the budgets and contributions for the next financial year.

Topic 4 - Administrative fund and sinking fund

The body corporate must establish and keep both an administrative fund and a sinking fund. All amounts received by the body corporate for the credit of the administrative or sinking fund must be paid into the body corporate's financial institution account (SM s146).

Funds must not be transferred between the administrative fund and the sinking fund (SM s146).

Revenue - Administrative and sinking fund (SM s146)

The body corporate must pay into its sinking fund:

- the contributions raised to cover anticipated spending of a capital or non-recurrent nature, periodic replacement of major items of a capital nature and other spending that should reasonably be met from capital;
- amounts received from insurance policies for the destruction of items of a major capital nature; and
- any interest received from investment of the sinking fund.

Any revenue the body corporate receives that is not required to be paid into the sinking fund must be paid into the administrative fund.

Expenditure - Administrative and sinking funds (SM s148)

The sinking fund may be used to pay for:

- spending of a capital or non-recurrent nature;
- the periodic replacement of major items of a capital nature; and
- other spending that should reasonably be met from capital.

All other expenditure must be paid from the administrative fund.

All payments from the administrative and sinking funds must be made from the financial institution account and may only be made on receipt of:

- a written request for payment, such as an invoice; or
- written evidence of payment, for example, a receipt (SM s146).

Reconciliation statements (SM s149)

If a body corporate manager is authorised to administer the body corporate's administrative or sinking fund or if the body corporate decides by ordinary resolution that reconciliation statements must be prepared, a statement must be prepared within 21 days after the last day of each month for each account kept for the fund showing the reconciliation of:

- the financial institution statement showing amounts paid into and from the account during the month;
- invoices and other documents showing payments into and from the account during the month.

The reconciliation statement must be prepared by a body corporate manager who is authorised to administer the fund or otherwise the treasurer.

Topic 5 - Contributions levied on owners

The annual contributions payable by lot owners are decided at each annual general meeting (SM s141). The body corporate must, by ordinary resolution:

- fix, on the basis of its budgets, the contributions to be levied on the owner of each lot;
- decide the number of contribution instalments to be paid; and
- set the date on or before which the payment of each instalment is required.

Basis for determining contributions

Unless the Act or the regulation modules states otherwise, the contributions levied on the owner of each lot must be proportionate to the contribution schedule lot entitlement of the lot (SM s141). Building insurance is one such exception, which is usually calculated on the basis of the interest schedule lot entitlement of the lot.

Information about the lot entitlements is detailed in the community management statement for the community titles scheme, a copy of which can be obtained from the Land Titles Registry of the Department of Natural Resources and Water.

Unexpected expenses (SM s141)

If an unforeseen liability arises which has not been included in the budget, the body corporate must, at a general meeting and by ordinary resolution, fix a special contribution to be levied on each lot owner to meet the additional cost. The body corporate may choose to require the special contribution as a single amount or as a number of instalments over a period of time.

Interim contributions (SM s141)

The committee may set an interim contribution payable by lot owners before annual levies are fixed. Interim contributions are usually set to cover any shortfall in the budget between the end of the body corporate's financial year and the time of the annual general meeting. In these cases, the amount of contribution:

- must be subsequently offset against the annual contributions payable by lot owners;
- must be calculated on the basis of the level of contributions that applied for the previous financial year; and
- must relate as closely as practicable to the period from the end of the previous financial year to 2 months after the proposed date of the annual general meeting.

Contribution notice (SM s142)

The body corporate must give at least 30 days written notice of a contribution or instalment to lot owners. The notice must include:

- the total amount of the contribution levied on the owner;
- the amount of the contribution or instalment which is currently required;
- the date on or before which the contribution or instalment must be paid ("date for payment");
- any discount the owner is entitled to for payment by the due date;
- any penalty the owner is liable, for each month the payment is late; and

- any amount which is overdue, where applicable.

The contribution notice may also include notice about an amount payable by the lot owner to the body corporate for:

- a contracted service enjoyed by the owner (for example, cable TV); or
- an exclusive use or special right over common property enjoyed by the owner.

Note: Section 169 of the Standard Module provides that a body corporate may provide services for the benefit of lot owners and occupiers *by agreement* with the person for whom the services are supplied.

For example, a body corporate arranges for pest control of the common property and asks lot owners if they want to have their lots treated at the same time. The body corporate can only provide the service to lot owners who agree to have pest control treatment. While treatment of the common property would be paid for from body corporate levies, lot owners who agreed for their lots to be treated would be separately charged for this service.

Where should contribution notices be sent? (SM s142)

Contribution notices may be sent to a lot owner at their address for service provided to the body corporate or in another way that a lot owner has directed.

Discounts and penalties

The body corporate may choose to use discounts and penalties to encourage owners to pay contributions and instalments by the required date for payment.

If the body corporate is satisfied there are special reasons for allowing a discount, or waiving a penalty, the body corporate may allow the discount, or waive the penalty in whole or part (SM s145).

Discounts (SM s143)

The body corporate may, by ordinary resolution, fix a discount to be given to lot owners if a contribution or instalment is received by the date for payment specified in the contribution notice. The discount cannot be more than 20% of the amount payable.

Example: a body corporate has set a contribution of \$500, payable in 4 instalments of \$125. It has also fixed a discount of 10% for instalments received by the date for payment in the notice of contribution sent to owners. A lot owner receives a notice requiring payment of an instalment of \$125 by 30 June and pays the amount on 28 June. The owner is therefore entitled to a discount of \$12.50 on the instalment.

Penalties (SM s144)

The body corporate may, by ordinary resolution, impose a penalty to be paid by lot owners if a contribution or instalment is not received by the date for payment specified in the contribution notice. The penalty must consist of simple interest at a stated rate of not more than 2.5% for each month the contribution is in arrears.

Example: A body corporate has set a contribution of \$1000, payable in 4 instalments of \$250. It has also set a penalty of 2% per month. A lot owner receives a notice requiring payment of an instalment of \$250 by 30 June. The instalment is not paid

until 25 September. The owner is therefore in arrears for 2 months and liable to pay a penalty of \$10.

Outstanding contributions (SM s145)

If a contribution or instalment is not paid by the date for payment, the body corporate may recover the amount of the contribution or instalment, any applicable penalty and any costs *reasonably* incurred in recovering these amounts as a debt.

If a debt has been outstanding for 2 years, the body corporate must start proceedings to recover the amount within 2 months from the end of the 2 year period. However, this does not mean that the body corporate must wait 2 years before starting action to recover a debt.

The legislation does not provide specific direction on how a body corporate should recover debts. The Office of the Commissioner for Body Corporate and Community Management has no jurisdiction over debt recovery matters. The body corporate may therefore consider recovering outstanding amounts, through their local Magistrates Court as a minor debts claim.

If an owner, who owes a body corporate debt which includes a penalty, provides a payment towards the debt, the amount must be paid:

- first, towards the penalty;
- second, to reduce the outstanding contribution or instalment; and
- finally, towards any recovery costs for the debt.

A by-law that purports to impose a monetary liability may be invalid.

By-laws that purport to impose a monetary liability have been the subject of several adjudicators' orders. It has been held by adjudicators that a by-law which allows the body corporate to recoup legal costs or costs of debt collection from a lot owner who has contributions outstanding is unlawful. The body corporate is limited to recovering only those costs ordered by a Court. (Order 0219-2006 "Sailfish Point")

Liability to Pay a Body Corporate Debt (SM s145)

The liability to pay a body corporate debt for a lot may be passed on from the owner of a lot when the debt became payable to a person who becomes an owner of the lot before the debt is paid.

If there are 2 or more co-owners of a lot, the co-owners are liable to pay a body corporate debt in relation to the lot.

In situations where there is a transfer of ownership of a lot, a prospective purchaser should be supplied with a "**disclosure statement**" completed by the current owner. The disclosure statement should indicate, among other things, what the current body corporate contributions are for that financial year.

As part of the usual conveyancing searches, a prospective purchaser should obtain a body corporate "**information certificate**" (BCCM Form 13) from the secretary or body corporate manager, to confirm the information given by the previous owner in the **disclosure statement**. Any outstanding levies against the lot should be indicated on the **information certificate**. Usually, any outstanding levies are settled between

the seller and the purchaser at settlement. The new owner becomes responsible for any debt following settlement.

Note: If the owner of a lot owes a body corporate debt at the time of a general meeting, a person does not have the right to exercise a vote for their lot or for choosing a member of the committee, unless it is a motion that requires a resolution without dissent, (SM s84).

Topic 6 - Funds administered by the manager

Section 119 of the Act allows a body corporate to authorise a body corporate manager to administer its accounts. If a body corporate manager administers the administrative fund or the sinking fund under such an authorisation, the body corporate manager must comply with section 146 of the Standard Module, which regulates payments in to, and out of, the funds and the use of the body corporate financial institution account. (SM s147)

Revocation of body corporate manager's authority

Within 30 days after an authorisation to administer a fund is revoked, the body corporate manager must give the body corporate the following financial records:

- an income and expenditure statement for the fund for the financial year;
- a list of all amounts owing to, and payable from, the fund;
- a reconciliation statement for the account(s) kept for the fund for the most recently completed month;
- details of the most recent notice given to each lot owner requiring payment of a contribution;
- a record of all contributions paid by lot owners during the financial year;
- a balance sheet as at the termination day (if required by the body corporate); and
- any other financial record for the fund held by the body corporate manager.

Note: The above provisions relating to the return of financial records will not apply if the body corporate manager is given a notice under Section 206 of the Standard Module ("Return of body corporate property"). However, the notice must be given before the 30 day period ends.

Reconciliation statements (SM s149)

A body corporate manager who administers the funds under a Section 119 authorisation or is engaged to carry out the functions of the committee (SM Chapter 3 Part 5) must prepare, on a monthly basis, a "**reconciliation statement**" for each account kept for a fund.

The **reconciliation statement** must be prepared within 21 days after the last day of each month and must reconcile:

- the amounts shown on a statement from the financial institution at which the body corporate accounts are kept; and
- invoices and other documents showing payments into and out of the account during the month.

Topic 7 - Statement of accounts

The body corporate must keep proper accounting records and prepare a statement of accounts for each financial year, showing the income and expenditure of the body corporate for that year. The statement may be prepared on a cash or accrual basis (SM s154).

Accounts prepared on a cash basis (SM s154)

The statement of accounts prepared on a cash basis must disclose:

- total contributions paid in advance;
- total contributions in arrears;
- total outstanding penalties for the late payment of contributions;
- balances for all financial institution accounts and investments; and
- all outstanding receipts and payments.

Accounts prepared on an accrual basis (SM s154)

Accounts prepared on an accrual basis must show the assets and liabilities of the body corporate at the end of the financial year.

Other requirements (SM s154)

The statement of accounts must include:

- the corresponding figures for the previous financial year; and
- disclosure of all remuneration, allowances or expenses paid to each committee member.

Annual general meeting requirements (SM s154)

A copy of the statement of accounts must accompany the notice of the annual general meeting held after the end of the financial year for which the accounts are prepared.

Topic 8 - Audit

At each annual general meeting of the body corporate, lot owners may decide to have the statement of accounts audited. The legislation requires that a body corporate must have its statement of accounts for each financial year audited, by an auditor unless:

- the scheme is a **basic scheme** (A s10); and
- the body corporate passes a special resolution not to have the statement audited.

(SM s155)

Motion for special resolution (SM s155)

The motion for the special resolution must be expressed in the following form:

'that the body corporate's statement of accounts for the financial year (insert year) not be audited'.

The following note must accompany the motion:

'NOTE: If you want the accounts to be audited, vote **'no'**; if you do not want the accounts to be audited, vote **'yes'**.'

Even if the body corporate decides not to have its accounts audited for a particular financial year, the body corporate may vote to have its accounting records audited for a particular period or project and appoint an auditor to carry out the task. An ordinary resolution is required to approve a motion for this purpose.

The Auditor

An auditor is appointed by ordinary resolution of the body corporate and the motion for agreeing to the auditor must be included in the agenda for the annual general meeting and include the name of the auditor proposed to be appointed (SM s155).

Qualifications and experience

An auditor cannot be a member of the committee, a body corporate manager or an associate of either of these persons (SM s155).

An auditor is defined at Schedule 6 of the Act as:

- a person who is registered as a company auditor; or
- has the qualifications and experience outlined in the regulation module*; and
- includes an unincorporated body of auditors.

*The **Standard Module** provides a number of levels of qualification for auditors. One of the following will apply:

The person must—

(a) be a member of—

(i) CPA Australia and entitled to use the letters 'CPA' or 'FCPA'; or

(ii) the Institute of Chartered Accountants in Australia and entitled to use the letters 'CA' or 'FCA'; or

(iii) the National Institute of Accountants and entitled to use the letters 'MNIA', 'FNIA', 'PNA' or 'FPNA'; and

(b) have a total of 2 years auditing experience, whether or not continuous.

Auditor's Certificate (SM s155)

The role of the auditor is to inspect the prepared financial statements and provide a certificate that indicates whether the statements disclose all relevant information and provide a true and fair view of the financial position of the body corporate.

In cases where the auditor considers the statement of accounts does not accurately reflect the body corporate's financial situation, the auditor is required to identify the deficiencies in the statement.

A copy of the auditor's certificate must be sent out with the notice of the annual general meeting following the certificate being given to the body corporate.

Topic 9 - Borrowing

Power to borrow (SM s150)

The body corporate may borrow amounts on the security agreed between the body corporate and the person from whom the funds are borrowed.

An ordinary resolution is required to borrow any amounts up to \$250 multiplied by the number of lots in the scheme.

A resolution without dissent (i.e. there are no votes against the motion) is required for greater amounts.

Unit 4: Maintenance

Overview

This unit addresses maintenance responsibilities within a community titles scheme. It will cover maintenance of the common property, lots and utility infrastructure. There will be an explanation of survey plans and how the boundaries of lots and the common property for a scheme are defined under the different plans of subdivision. At the end of the Unit there will be an assessment where you will be asked to complete a questionnaire.

The question format will be multiple choice, yes/no or true/false. If you get a question wrong you will be directed to the correct answer. For a complete understanding of this unit it is suggested that you begin at topic 1, however if you are confident that you have a particular level of knowledge you may begin at any topic.

Please note: In order to receive a statement of completion for this unit you must achieve at least an 80% pass rate.

Resources

In each of the topics listed below references to the relevant sections of the Act, the Standard Module Regulations. There will also be a Glossary of Terms at the end of the unit. References to the BCCM Act will be defined by a capital A followed by the section number e.g. **(A. s55)**. References to the Standard Module will be defined by a capital SM followed by the section number e.g. **(SM. s109)**. Additionally, you may be provided with links to other relevant information sources e.g. fact sheets and other legislation. References to adjudicator's order will be defined firstly by the scheme name and then a reference to the order number and the year e.g. **(Sanctuary Bay-Order. 0012-2005)**. Links to all of the above will be provided under the "Links" heading in each topic.

Topics Covered

- Topic 1: Common property, assets, lots and utility infrastructure
- Topic 2: Survey plans
- Topic 3: Building format plans and maintenance responsibilities
- Topic 4: Standard format plans and maintenance responsibilities
- Topic 5: Authorising maintenance
- Topic 6: Maintenance of exclusive use areas
- Topic 7: Responsibility for maintenance - dividing fences
- Topic 8: Responsibility for maintenance - pest control
- Topic 9: Supply of services
- Topic 10: Improvements to common property by the body corporate
- Topic 11: Improvements to common property by a lot owner
- Topic 12: Statutory easements
- Topic 13: Power of entry

Topic 1: Common property, assets, lots and utility infrastructure

At the basic level the BCCM Act and the regulation modules provide the body corporate must maintain the common property and lot owners must each maintain their lot.

In this and the following sections we will look at the basic maintenance responsibilities and some of the more complex situations, where both the function of a utility service and its location are important when determining maintenance responsibilities. Firstly, we will look at:

- Common property and assets
- Lots
- Utility infrastructure and utility services

Common property and assets

Common property is described in the footnote to *Section 10* of the BCCM Act as follows:-

"Common property, for a community titles scheme is, effectively, freehold land forming part of the scheme land, but not forming part of a lot included in the scheme".

Assets acquired by the body corporate may also be incorporated into the common property and will need to be maintained by the body corporate.

For example assets may include the following:

- pool furniture for use around a common property swimming pool;
- gardening equipment;
- a boat; or
- freehold land acquired for the use of owners and occupiers (e.g. adjoining land purchased to use as a tennis court).

The body corporate must maintain common property and assets in good condition (SM. s159s and s165). Any parts of a building that are structural in nature (eg the supporting framework of a building in a building format plan) must be maintained by the body corporate in a structurally sound condition regardless of whether those parts of the building are common property or part of a lot (SM. s159).

Lots

A lot owner is responsible for maintaining their lot in good condition (SM. s170). An occupier of a lot is required to keep parts of the lot that can be readily seen from another lot or common property in a clean and tidy condition (SM. s170).

Utility infrastructure and utility services

In addition to maintaining the common property and lots, the legislation also assigns responsibility for maintaining the utility infrastructure within a community titles scheme.

Utility infrastructure includes:

- cables;
- wires;
- pipes;
- sewers;
- drains;
- ducts;
- plant and equipment that supply lots or common property with a utility service; and
- a device for measuring the reticulation or supply of a utility service.

Utility services include:

- water reticulation or supply;
- gas reticulation or supply;
- electricity supply;
- air conditioning;
- telephone service;
- a computer data or television service;
- a sewer system;
- drainage;
- a system for the removal or disposal of garbage or waste; or
- another system or service designed to improve the amenity, or enhance the enjoyment, of lots or the common property. (A. Schedule 6 Dictionary).

While most of the utility infrastructure is considered common property for a community titles scheme and is therefore the body corporate's responsibility to maintain, there are some exceptions. If all three (3) of the criteria listed below apply to the section of utility infrastructure in question, the owner of the lot will be responsible for its maintenance (A. s20) (SM. s170).

Utility infrastructure that is not considered common property

Utility infrastructure that:

1. supplies a utility service to only one lot; and
2. is within the boundaries of the lot; and
3. is not within a boundary structure for the lot

Also, if a utility service, such as a hot water system or an air conditioning system, supplies just one lot, the lot owner must maintain it regardless of where it is located.

In order to establish maintenance responsibilities, the common property and lots in a scheme must be accurately identified. The registered survey plan for a community titles scheme clearly shows the boundaries of the common property and the lots in the scheme.

Special Note:

Section 20 of the BCCM Act was amended by the *Water and Other Legislation Amendment Bill 2007*. The explanatory notes to the amendment state:

The policy intent is that for all new community titles schemes established after 1 January 2008, water meters will be owned by the water service provider supplying water to the scheme, who will also be responsible for maintaining and replacing the meters, rather than being owned and maintained by the body corporate.

Clause 4 therefore amends section 20(1) to provide that common property for a community titles scheme does not include utility infrastructure that is a device for measuring the reticulation or supply of water (a water meter) for a community titles scheme established after 1 January 2008, and in relation to which a compliance request is made under the Plumbing and Drainage Act 2002 after 31 December 2007.

In the following topics we will look at the different plan types and see how the boundaries can affect responsibility.

Topic 2: Survey plans

The survey plan for a community titles scheme shows the boundaries of the common property and the lots in the scheme. There are various types of survey plans, and boundary definitions may differ depending on the type of plan registered. The two most common types of survey plans are:

- Building Format Plan (formerly known as a Building Units Plan (BUP)); and
- Standard Format Plan (formerly known as a Group Titles Plan (GTP)).

Copies of the registered plans for community titles schemes may be purchased from the Land Registry of the Department of Environment and Resource Management.

Building Format Plan (BFP)

A building format plan is a type of subdivision that usually occurs within a building. While the term 'strata title' is not used in Queensland, most building format plans are a subdivision in 'strata', that is, each level of the building is subdivided to create the lots (units) in the scheme.

A suburban "6 pack" or multi-storey residential unit block are both examples of community titles schemes normally established under a building format plan of subdivision.

A building format plan of survey defines the boundaries between lots and the common property using the structural elements of a building, including, for example, floors, walls and ceilings.

Boundaries defined

Where a lot is separated from another lot or the common property by a floor, wall or ceiling, the boundary is normally the centre of the wall, floor or ceiling (*Section 48C and 49C (4) of the Land Title Act 1994*). The walls, floor or ceilings that are on the boundary between lots or lots and the common property are known as **boundary structures**.

For more information on boundaries see [Topic 3: Building Format Plans \(BFP\)](#).

Standard Format Plan (SFP)

A standard format plan defines land horizontally with references to marks on the ground. For example, survey pegs in the ground.

As an example, a standard format plan may include a townhouse complex, where the individual lots would normally comprise a building and land (front and/or back yards).

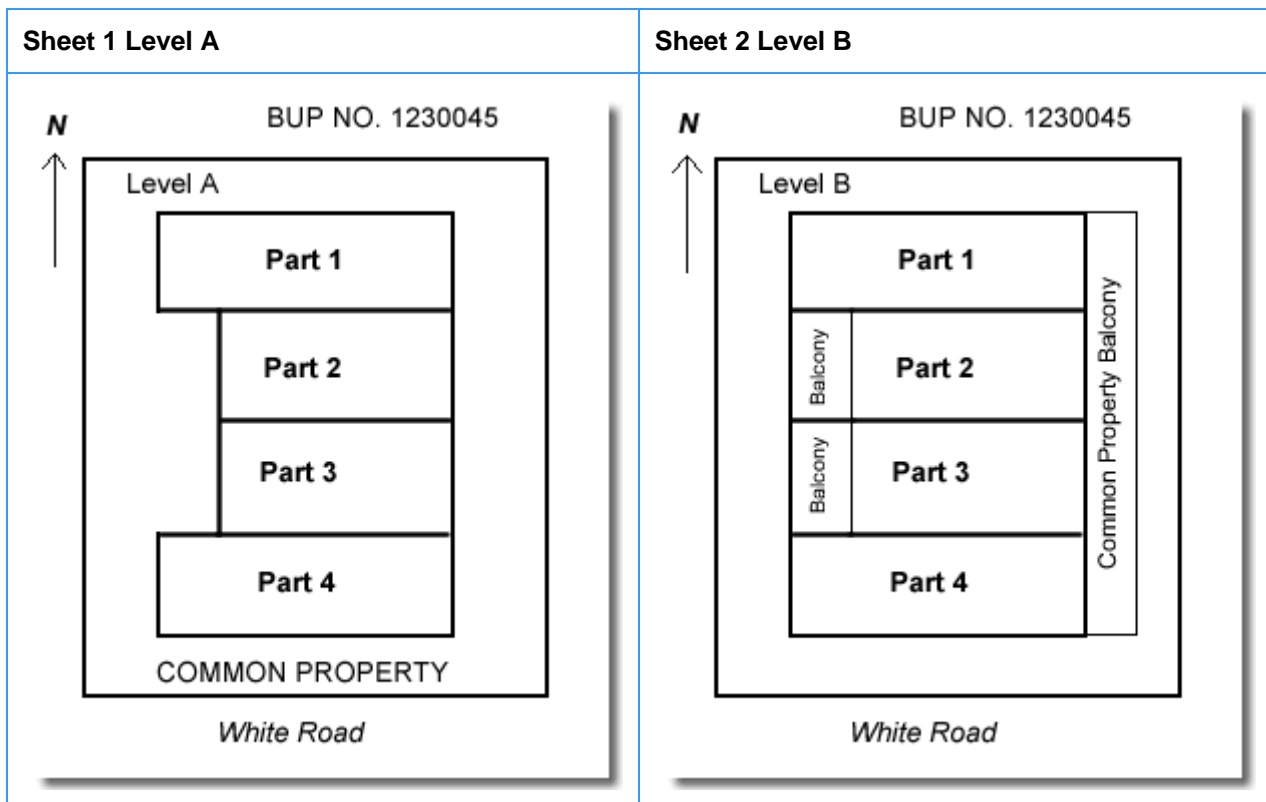
Boundaries defined

The boundaries of lots and the common property on a standard format plan are defined by bearings and measurements taken when the land is surveyed.

For more information on boundaries see [Topic 4: Standard Format Plans \(SFP\)](#).

Topic 3: Building format plans and maintenance responsibilities

The following diagrams represent a typical building format plan or building units plan of a two level building and indicate how common property and lots may be represented on a survey plan. Each level of a multi-storey building will be shown on a separate sheet on the survey plan.



Boundaries

In the building format plan above, the boundaries of a lot are represented by **hard black lines**. The plan of level A (on the left) shows the common property around the building and part of the 4 lots (probably garages on the ground floor). The plan of level B (on the right) shows the level above and the remaining part of the 4 lots including balconies on two lots (lots 2 and 3) and a common property balcony running along the eastern side of the building. In the example on the right, the common property balcony is clearly labelled however, on some plans; areas of common property may not be so plainly defined. On those plans the surveyor may simply outline an area with a thin line. For example, if the common property balcony was not labelled, the **thin line** outlining it indicates it is outside the boundaries of the lots and is consequently common property.

In contrast to the common property balcony, there is a balcony attached to the western side of Lots 2 and 3. The **hard black lines** define the boundary of Lots 2 and 3. The **thin line** shows that each balcony is within the boundary of Lots 2 and 3. Consequently, the owners of these two lots have the responsibility to maintain the balconies in good condition. Where a balcony is included in a lot, as in this example, the boundary is normally the face of the balcony.

Although not shown in this plan, survey plans may show other parts of common property, such as visitor car parking spaces, carports, tennis courts or swimming pools. The common property and the lots collectively make up the scheme land.

Maintenance under a Building Format Plan

- The body corporate
- The lot owner

The **body corporate** is usually responsible for:

- the maintenance of the outside of the building including exterior doors, windows and balcony railings (including the balustrade on a private balcony);
- gardens and lawns on common property;
- the foundations of the building;
- roofing structures, including roofing membranes that provide protection for lots or common property;
- essential supporting framework, including load-bearing walls;
- generally any doors or windows, and their fittings, that are situated in a boundary wall between a lot and the common property (including common property balconies). This also includes garage doors and their fittings.

(SM. s159)

Even though a balcony may form part of an owner's lot, it has been held that bearers and joists and their associated fixing brackets and bolts are considered to be part of 'essential supporting framework' and therefore the body corporate's responsibility to maintain (**Opal Terraces-Order. 0126-2001**).

Additionally, it has determined that the waterproofing membranes on balconies will also be the responsibility of the body corporate to maintain. (**Costa D'Ora Apartments-Order. 0018-2006**).

The **lot owner** is usually responsible for:

- doors and windows leading onto a balcony that forms part of the lot;
- kitchen, bathroom, bedroom cupboards;
- sinks, dishwashers, garbage disposal units, shower screens and shower trays.

(SM. s159, s170)

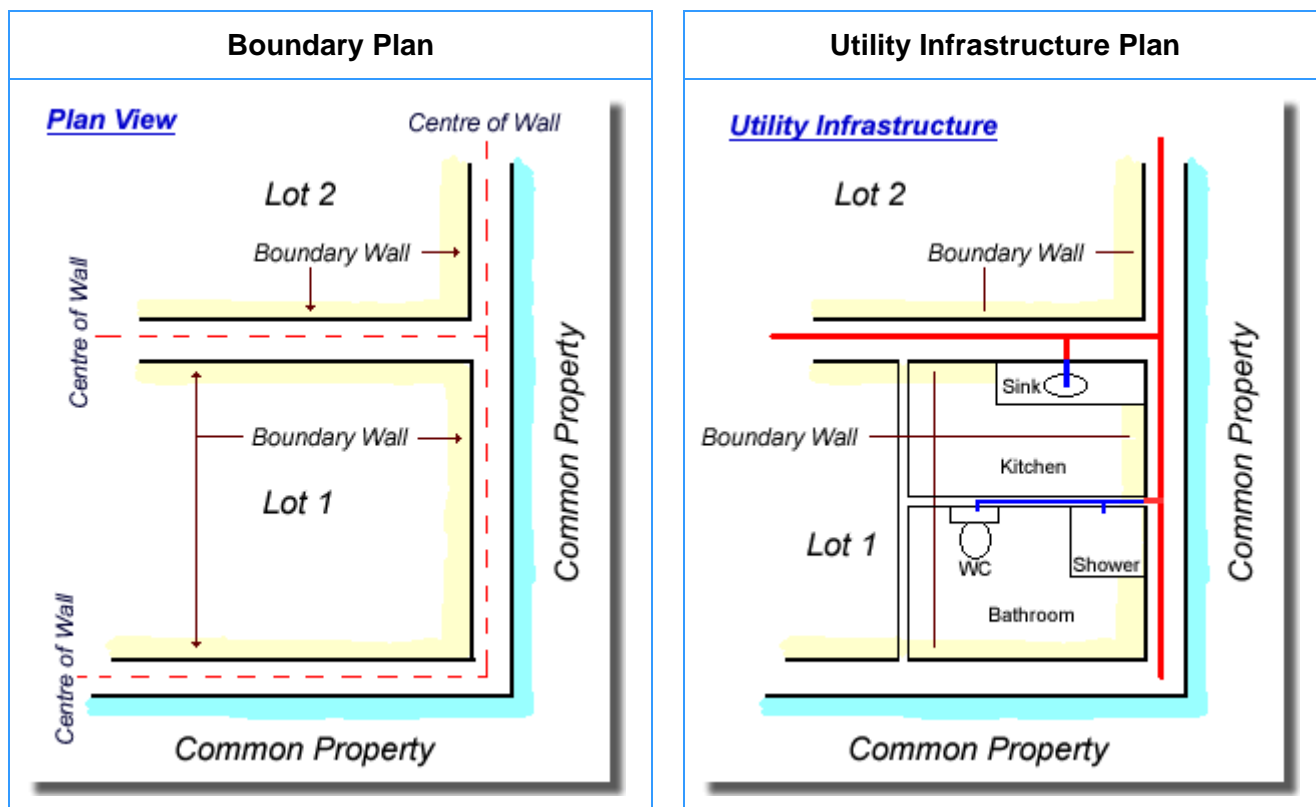
A **lot owner** is also usually responsible for:

- any fixtures or fittings installed by the lot owner for their own benefit (SM. s159);
- an area of common property or a body corporate asset that the lot owner has the benefit of, that is the subject of an exclusive use by-law (SM. s173).

Utility infrastructure responsibilities under a Building Format Plan

The plan on the left below shows the boundaries between lots, and lots and the common property. The boundary between lots and lots and the common property is usually the centre of the wall, floor or ceiling (*Section 48C and 49C (4) of the Land Title Act 1994*). The walls, floor or ceilings that are on the boundary between lots or lots and the common property are known as **boundary structures**.

The plan to the right below identifies some elements of utility infrastructure.



The **body corporate** is usually responsible for:

- The cold water pipes or cables shown in **red** on the utility infrastructure plan on the right above, as they are located within a boundary structure (walls between lots or lots and the common property).

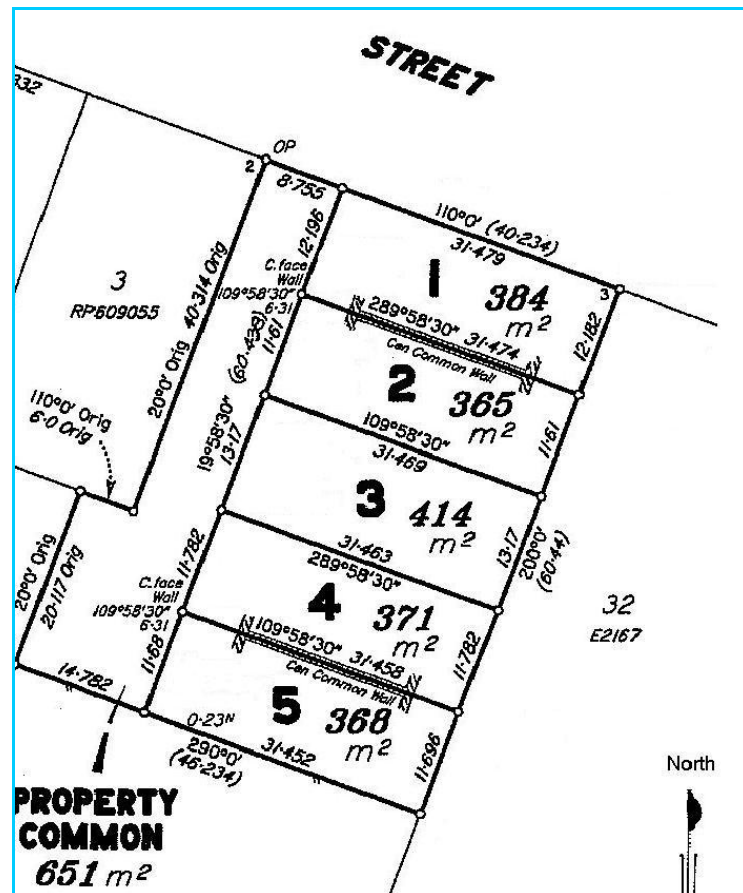
The **lot owner** is usually responsible for:

- The cold water pipes or cables shown in **blue** on the utility infrastructure plan on the right above, as they service Lot 1 only, and are located within an internal wall and not a boundary structure;
- A hot-water system, including the associated pipes and wiring, supplying the service solely to the lot, whether or not the system is located on common property;
- An air-conditioning system, including the associated pipes and wiring, supplying the service solely to the lot, whether or not the system is located on common property.

Topic 4: Standard format plans and maintenance responsibilities

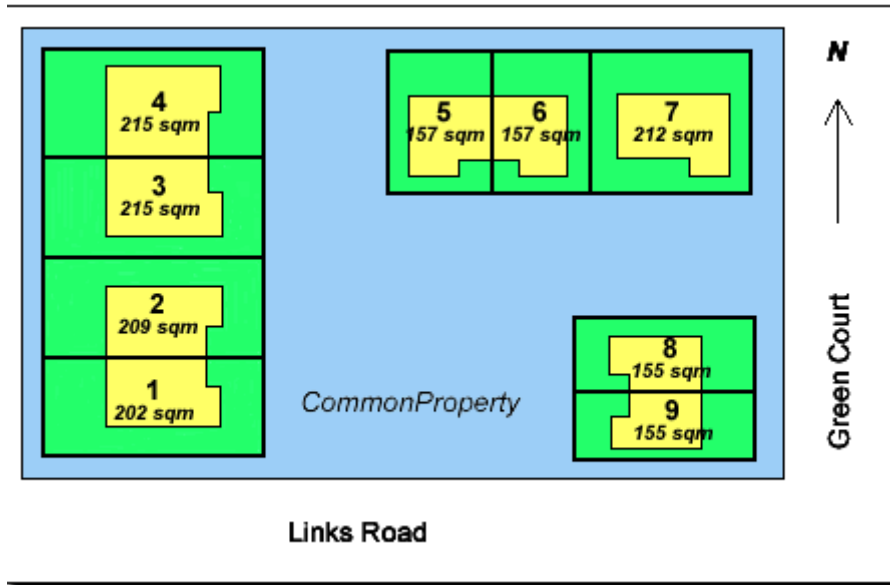
- Boundaries
- Maintenance
- Common walls
- Utility infrastructure

The diagram below represents a Standard Format Plan or a Group Titles Plan showing the lots and common property.



Boundaries

The boundaries of lots are defined by dimensions (usually in metres eg 31.452) and bearings (described as 290 0') shown on the survey plan, along with marks placed on the ground at the time of the survey (e.g. survey pegs at the corners of the lot).



With reference to the above diagram:

- the **hard black lines** define the boundary of lots and the common property;
- the common property (blue), the lots (green) and the buildings (yellow).

Note: each building is within the boundary of each lot.

Maintenance under a Standard Format Plan

The **body corporate** is usually responsible for:

- The common property, including roads, gardens and lawns on common property (SM. s159);
- Some elements of utility infrastructure that are common property (A. s20).

The **lot owner** is usually responsible for:

- Their lot, including all lawns and gardens within the boundary;
- Maintenance of their part of the building, including painting, the exterior walls, doors, windows and roof with the exception of some elements of utility infrastructure;
- The building foundations and roof to the extent that those areas are within their own lot boundary.

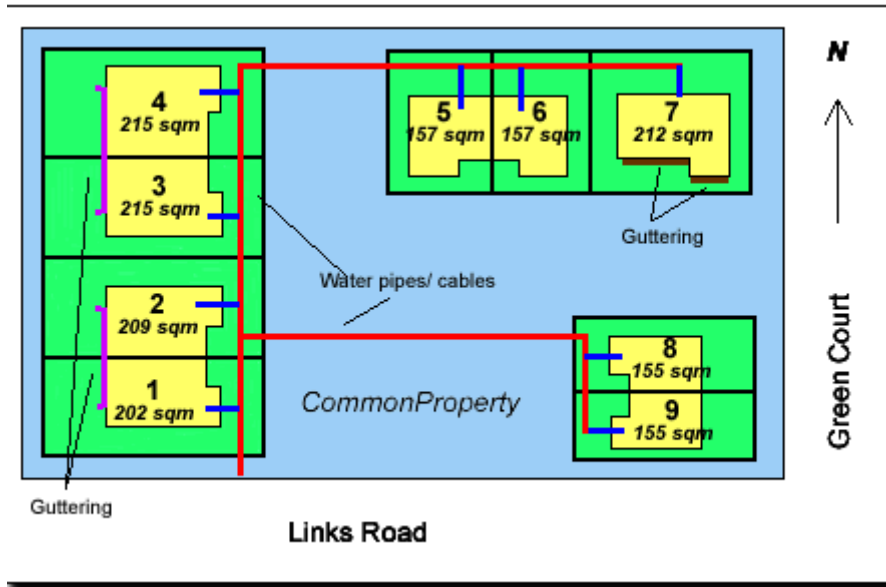
(SM. s170)

Common walls

Under a standard format plan where buildings have **common walls**, an adjudicator has held that the owners of lots sharing a common wall will be jointly responsible for any maintenance issues relating to the common wall. The body corporate has no maintenance responsibility because there is no common property involved (**Cheddington-Order. 0292-1998**).

Utility infrastructure responsibilities under a Standard Format Plan

The diagram below represents a Standard Format Plan showing some elements of utility infrastructure.



The **body corporate** is generally responsible for:

- The water pipes or cables shown in **red** on the utility infrastructure plan above, as these supply the service to more than one lot (refer to the definition of utility infrastructure in the glossary);
- The guttering, and associated downpipes shown above in **pink** which span two lots (between 1 and 2 and between 3 and 4), supplying a service to more than one lot;
- Any television antenna that services two or more lots.

The **lot owner** is generally responsible for:

- The water pipes or cables shown in **blue**, as they are located within the lot boundary and service one lot only;
- The guttering and associated downpipes shown in **brown** above on Lot 7, as they service only that lot.

Important note: The body corporate cannot attempt to circumvent the maintenance provisions of the legislation.

A motion passed by a body corporate or its committee cannot alter what the legislation provides. For example, the body corporate has no authority to levy lot owners in respect of painting their lot buildings in a scheme created under a standard format plan. The legislation specifically provides lots and consequently the buildings on the lots are the individual lot owner's responsibility to maintain (SM. s170). The body corporate cannot assume to change this responsibility.

Where a body corporate has passed such a resolution, adjudicators have, in relation to a dispute resolution application, overturned the body corporate's decision and have ordered that any levies collected in relation to such decisions must be refunded. (**Bayview Villas Brighton-Order. 0590-2004**).

Similarly, adjudicators have invalidated by-laws that relate to the body corporate maintaining lots because of their inconsistency with the relevant legislation. (**Glen Eden-Order. 0756-1999**)

However, the body corporate can offer to supply a service which may include entering into an agreement with individual lot owners with regard to maintenance. See 'Topic 9 Supply of Services' for more information.

Topic 5: Authorising maintenance

The cost of maintaining common property forms part of the annual budget set by the body corporate (refer to Unit 3: Financial Management). The committee may make decisions that concern the day to day administration of the body corporate, including maintenance of common property that falls within the committee's expenditure limit.

The "relevant limit for committee spending" is defined in the Dictionary to the Standard Module. The relevant limit for committee spending can be set by ordinary resolution of the body corporate. If no amount is set, it is an amount determined by multiplying the number of lots in the scheme by \$200. For example, the relevant limit for a body corporate composed of 6 lots is \$1200 (\$200 x 6). If the total cost of maintenance is above the committee's spending limit, the maintenance must be authorised at a general meeting by an ordinary resolution of the body corporate (SM. s151).

Major spending and the requirement for quotes

If the cost of carrying out maintenance is greater than the "**relevant limit for major spending**", at least 2 written quotes must be obtained and presented for lot owners to consider when voting on a motion at a general meeting (SM. s152). The "**relevant limit for major spending**" by the scheme can be set by ordinary resolution of the body corporate. If no amount is set, it is the lesser of:

- an amount determined by multiplying the number of lots in the scheme by \$1100; or
- \$10000.

In cases where 2 quotes have been obtained, the motion should be presented as a motion with alternatives (SM s72, s73). If there are exceptional reasons for not being able to provide 2 quotes, a single quote must be obtained and accompany the notice of the meeting considering the motion (SM. s152).

If a motion involving major spending is proposed by the committee, the committee must obtain the relevant quotes. Alternatively, if the motion is proposed by a lot owner, the proposer of the motion is required to obtain the quotes and give them to the secretary (SM. s152).

Copies of quotes must accompany the notice of the meeting considering the motion. In cases where quotes are large, summaries of quotes and advice where the complete documents may be inspected must accompany the notice of the meeting considering the motion (SM. s152).

Note: Section 151 provides that the body corporate can, by ordinary resolution, set the committee's limit of spending. Therefore, it is possible for the body corporate to set the limit to an amount greater than the limit for major spending for the scheme (SM s152). If this is the case and the committee is proposing to carry out work etc that is more than the relevant limit for major spending but less than the relevant limit for committee spending, the committee must obtain and consider at least 2 quotes for carrying out the work (SM s153).

Unforeseen expenses

If the need for maintenance arises which has not been included in the budget, the body corporate must convene a general meeting and by ordinary resolution, fix a special contribution to be levied on each lot owner to meet the additional cost. The body corporate may choose to require the special contribution as a single amount or as a number of instalments over a period of time. In these cases, the contribution to be levied on each lot owner is calculated on the basis of the contribution schedule lot entitlement of the lot (SM. s141).

Note: Limits for committee and major spending may vary under other regulation modules.

Topic 6: Maintenance of exclusive use areas

What is an exclusive use by-law?

An exclusive use by-law for a community titles scheme is a by-law that attaches to a particular lot, giving the occupier of the lot sole use to the rights and enjoyment of a defined area of the common property, a body corporate asset or other special rights (A. s170).

An exclusive use by-law may attach to a lot only if:

- the lot owner agrees in writing; and
- a resolution without dissent is passed consenting to the recording of a new community management statement (A. s171).

By-laws for a community titles scheme are contained in the scheme's community management statement (CMS). The CMS should be consulted firstly, to confirm whether an exclusive use by-law applies to a particular lot in a scheme and secondly, to find out what the by-law states in relation to maintenance responsibilities.

A copy of the CMS may be obtained from the Department of Natural Resources and Water.

Maintenance of exclusive use areas

The responsibility to maintain the part of the common property that is the subject of an exclusive use by-law is transferred to the owner of the lot who has the benefit of the exclusive use area, unless the by-law specifically states otherwise (SM. s123).

Under an exclusive use-by law, a lot owner's maintenance responsibility usually extends to those parts of the common property from which the owner derives a benefit as a result of the exclusive use by-law, such as the lawns and gardens on common property land over which exclusive use has been granted. Typically, the lot owner will also be responsible for general maintenance of the exterior walls and windows that lead onto the exclusive use area. However, it does not include parts of the common property which are not directly related to the right of exclusive use, such as common property utility infrastructure that runs through an area of exclusive use (**Hillside Gardens - Order. 0215-2001**).

Adjudicators have also determined that unless specified in an exclusive use by-law, the body corporate remains responsible for all structural maintenance (including the membrane and roof coverings) as well as the maintenance and repair of the slab or footings of the building (**Pisces Apartments - Order. 0655-2001; Parkview Lodge - Order. 0442-1999**).

Improvements to exclusive use areas

An exclusive use by-law may contain specific clauses which authorise the lot owner, who has the benefit of the by-law, to make stated improvements, such as installing fixtures and alterations to the part of the common property to which the by-law applies.

If the by-law does not contain any specific authorisations, the lot owner will need to seek the body corporate's approval before making any improvement. A special resolution passed at a general meeting of the body corporate is required to authorise an improvement with a value of more than \$250 (SM. s124).

Topic 7: Responsibility for maintenance - dividing fences

The body corporate for a community titles scheme is taken to be the owner of the scheme land for the *Dividing Fences Act 1953* (A. s311).

The responsibility for maintenance of dividing fences is not specifically addressed in body corporate legislation. However, a number of adjudicator decisions have addressed the subject, with the general position set out below. It should be noted that the specific circumstances of a particular situation may alter these broad guidelines.

- A dividing fence between a lot and the common property is shared equally between the owner of the lot and the body corporate.
- A dividing fence between two lots is shared equally between the lot owners.
- A boundary fence between a lot and an adjoining property is shared equally between the body corporate and the adjoining property owner. Even if the boundary fence is a fence forming the boundary of a lot and an adjoining property, the body corporate is generally held to be responsible, as the fence is the boundary of the scheme land.

(Cleveland Mews - Order. 0624-1999).

The maintenance of the perimeter fence is a shared responsibility between the body corporate and the adjoining property owner for both building format plans and standard format plans of subdivision **(The Groves Townhouses No. 2 Lawnton - Order. 0511-2002).**

Other issues relating to dividing fences may fall within the definition of a “dividing fence” under the *Dividing Fences Act 1953*. Further information may be obtained from the Dividing Fences Section of the Department of Justice, which administers this legislation.

Topic 8: Responsibility for maintenance - pest control

Following from the general maintenance principles, the **body corporate** is usually responsible for any pest inspection, prevention and treatment work carried out on common property. A **lot owner** is individually responsible for any pest inspection and treatment carried out within their lot.

In the case of termites, if, under a building format plan where the common property is immediately adjacent to the building and an infestation originating from common property has resulted in work being carried out to repair an owner's lot, an adjudicator has ordered that the cost of the consequential damage is to be paid by the body corporate (**Panorama 22 - Order. 0461-2001**).

Under a standard format plan of subdivision, adjudicators have also held that where there has been evidence of termite infestation on the common property for the scheme, each lot owner has an obligation to take preventative measures to maintain their lot in good condition. In situations where the lots in a building have a common wall with other lots, the only way for owners to effectively protect their property from possible infestation is for all owners in the building to jointly carry out a preventative termite treatment (**Raceview Gardens - Order. 0325-2000**).

Topic 9: Supply of services

A body corporate may offer to supply one or more of the following services to owners and occupiers of lots:

- maintenance services, which may include cleaning, repairs, painting, pest control or extermination or mowing;
- communication services, which may include installation and supply of telecom, intercom, computer data or television;
- domestic services, which may include electricity, gas, water, garbage removal, air-conditioning or heating.

(SM. s169)

For example, in a scheme created under a standard format plan, a body corporate can arrange a painting contractor to paint lots in the scheme for owners who wish to participate in the offer. However, this offer is purely optional. Lot owners cannot be forced to participate in this type of arrangement. The body corporate may recover the cost of providing such a service individually from owners who have accepted the offer. These charges cannot and must not form part of body corporate levies.

A body corporate or its committee cannot pass a motion that requires lot owners to accept an offer to provide a service for the benefit of owners and occupiers of lots. Additionally, a body corporate cannot pass a by-law that compels a lot owner to participate in such an arrangement for the supply of services (**Cambridge Street Town Houses - Order. 0274-2000**).

Body corporate may carry out maintenance work required of owners and occupiers

A body corporate may carry out work required of owners and occupiers (for example, where they have failed to maintain the lot) and recover the reasonable cost of carrying out the work from a lot owner as a debt (SM. s171). This applies to work that an owner or occupier is obliged to carry out under:

- the Act or one of the Regulation Modules, including a provision requiring an owner or occupier to maintain a lot in the scheme;
- a notice given under another State Government or Commonwealth Act;
- the community management statement for the scheme, including the by-laws;
- an adjudicator's order; or
- the order of a court.

An adjudicator has held that a body corporate cannot simply decide to undertake work on an owner's lot. Firstly, it is up to the lot owner to undertake that work. However, if the owner refuses, or does not undertake the work within a reasonable time, or the work undertaken is defective, the body corporate may then have a right of involvement (**La Pacifique Port Douglas - Order. 0425-2002**).

Topic 10: Improvements to common property by the body corporate

The ways in which a body corporate and its committee may authorise maintenance were addressed in 'Topic 5: Authorising Maintenance'. Improvements to the common property, however, are dealt with differently.

An “**improvement**” includes:-

- the erection of a building;
- a structural change;
- a non-structural change, such as the installation of air-conditioning.

(A. Schedule 6 Dictionary)

The body corporate may authorise improvements to the common property. There are four circumstances where improvements to the common property may be authorised. The following table explains each:

Cost of improvements*	Authorised by
<u>Within 'Basic improvements limit'</u> (\$300 X the number of lots in the scheme subject to SM s151).	The committee
<u>Within 'Ordinary resolution improvement range'</u> (An amount that is more than the 'basic improvement limit' but not more than \$2000 X the number of lots in the scheme).	Ordinary resolution of the body corporate
An amount over the 'ordinary resolution improvement range' (see above).	Special resolution
Otherwise	Adjudicator's order

*Cost of the improvements, or, if the improvements together with associated improvements, form a single project, the cost of the entire project. (SM s163)

Improvements v Maintenance

In any proposal to carry out work on the common property the body corporate must decide whether a proposed project is a maintenance issue or an improvement to common property. An adjudicator referred to a passage from Lord Justice Denning's judgement in *Morcom v Campbell-Johnson & Ors (1955)*, which helps to differentiate between maintenance and improvements and states:

“It seems to me that the test, so far as one can give any test in these matters, is this: if the work which is done is the provision of something new for the benefit of the occupier, that is, properly speaking, an improvement; but if it is only the replacement of something already there, which has become dilapidated or worn out, then, albeit that it is a replacement by its modern equivalent, it comes within the category of repairs and not improvements.”

A particular case that was adjudicated involved rendering, as opposed to replacing cracked bricks and replacing mortar. It was held that rendering was a finish applied over brick walls and would provide something new (an improvement) for the benefit of the owners, rather than replacing something existing with its modern equivalent (maintenance). (**Paloma - Order. 0161-2000**)

Topic 11: Improvements to common property by a lot owner

If asked by a lot owner, the body corporate may authorise the owner to make an improvement to the common property for the benefit of the owner's lot (SM. s114).

A lot owner may only make an improvement to the common property if authorised by ordinary resolution of the body corporate. However, if the improvement is a minor improvement*, the committee may give approval.

*an improvement with an installed valued of \$3000 or less. (SM. 164).

The owner of the lot must comply with the conditions of an authority given and maintain the improvement in good condition (SM. s164).

Air-conditioning units

The installation of an air-conditioner which impacts on common property is an improvement requiring body corporate approval. To obtain approval, the lot owner must submit a motion to that effect to the secretary to be placed on the agenda of the next general meeting. It is not a decision that can normally be made at committee level. However, installation of an air conditioner solely within the boundaries of an individual lot can usually be approved by the committee.

Topic 12: Statutory easements

A lot owner is usually required to obtain the authority of the body corporate before work is carried out on common property for the benefit of their lot. However, the *Land Title Act 1994* provides for easements that exist for the benefit of lot owners and the common property. These easements are known as 'statutory easements'. Statutory easements cover a number of situations, including easements for support, easements for supplying a utility service and easements for shelter.

The statutory easements establish a lot owner's rights against other lots and common property in the scheme, such as the supply of utility services.

Example—

The hot water service for a lot is located on the ground floor of the common property. The pipe from the hot water service travels up the building and eventually through the concrete slab separating a first floor unit from the lot owner's second floor unit. A plumber has traced a water leak to the pipe in the dividing slab. It is impractical and expensively prohibitive to jackhammer the slab in order to fix the leak. The statutory easement would allow the lot owner to re-route the pipe either over the common property or through another lot to re-establish a reliable supply.

Important note: Rights under a statutory easement must not be exercised in a way that unreasonably prevents or interferes with the use and enjoyment of a lot or common property (A. s68).

Topic 13: Power of entry

The body corporate may, under the BCCM Act authorise a person to enter a lot or common property that is the subject of an exclusive use by-law to:

- carry out an inspection and find out whether work the body corporate is authorised or required to do is necessary; or
- perform work the body corporate is authorised or required to carry out.

Power of entry may be exercised at any time in an emergency situation, with or without written notice. In other cases, at a reasonable time after at least 7 days written notice is given to the lot owner or occupier of the lot, if the owner is not the occupier.

A person must not obstruct an authorised person from exercising their power of entry.

(A. s163)

Unit 5: By-laws

Overview

This Unit will look at the by-laws applicable to a body corporate. It will provide information on how to determine what by-laws apply; provide information on how a body corporate may add to or remove by-laws and how a body corporate can enforce its by-laws. At the end of the Unit there will be an assessment where you will be asked to complete a questionnaire.

The question format will be multiple choice, yes/no or true/false. If you get a question wrong you will be directed to the correct answer. For a complete understanding of this Unit it is suggested that you begin at Topic 1, however, if you are confident that you have a particular level of knowledge you may begin at any topic.

Please note: In order to receive a statement of completion for this unit you must achieve at least an 80% pass rate.

Resources

In each of the topics listed below references to the relevant sections of the Act, the Standard Module Regulations or the Explanatory Notes will be provided. There will also be a Glossary of Terms at the end of the Unit. References to the BCCM Act will be defined by capital A followed by the section number e.g. **(A. s55)**. References to the Standard Module will be defined by capitals SM followed by the section number e.g. **(SM. s109)**. References to the Explanatory Notes will be defined by capitals EN followed by the page number e.g. **(EN. P99)**. Additionally, you may be provided with links to other relevant information sources e.g. fact sheets and other legislation. References to adjudicator's orders will be defined firstly by the scheme name and then a reference to the order number and the year e.g. **(Sanctuary Bay-Order. 0012-2005)**.

Topics Covered

- Topic 1: What are by-laws?
- Topic 2: How to make, amend and remove by-laws
- Topic 3: Exclusive use by-laws
- Topic 4: History of by-laws
- Topic 5: Limitation of by-laws
- Topic 6: How to enforce by-laws

Topic 1 - What are by-laws?

General by-laws

By-laws are a set of rules that a community titles scheme adopts that regulate the use of common property and lots within the scheme. By-laws for a community titles scheme are provisions that appear in the community management statement (CMS) for the scheme, under the heading of "BY-LAWS" (A s168).

The body corporate has the power to make specific by-laws allowing it to administer, manage and control common property and body corporate assets and regulate the use and enjoyment of lots, common property (including utility infrastructure), assets, services and amenities supplied by the body corporate (A s169).

By-laws usually regulate matters such as the keeping of animals, noise, parking and appearance of lots. The body corporate may either adopt standard by-laws as set out in the BCCM Act or alternatively make specific by-laws that better suit the schemes individual circumstances. Owner/occupiers are usually required to seek written approval to meet the conditions set out in the by-law, for example By-law 9 of the standard by-laws under the BCCM Act provides in part;

9 Storage of flammable materials

(1) The occupier of a lot must not, without the body corporate's written approval, store a flammable substance on the common property.

The restricted issues for committees, defined in Section 42 of the Standard Module provide, in part, that the committee is restricted from making a decision on a matter that may only be passed by resolution without dissent, special resolution or ordinary resolution of the body corporate. For example Section 139 of the Standard Module provides that the body corporate must, by *ordinary resolution*, adopt 2 budgets for each financial year.

However, the absence of any wording in the by-laws requiring these types of resolutions would indicate that the committee has the authority to give its written consent to, or refusal of, a request for approval. An exception would be if the body corporate has previously passed an ordinary resolution to restrict the committee from granting approval in by-laws.

House rules

On many occasions bodies corporate pass motions (usually by ordinary resolution) at general meeting that they refer to as "house rules". However, there is no provision in the legislation that gives the body corporate power to enforce "rules".

Exclusive use by-laws

An exclusive use by-law attaches to a lot in the scheme, and gives the occupier of the lot exclusive rights and enjoyment (or other special rights) to a part of the common property or a body corporate asset. Exclusive use by-laws are usually contained in Schedule E of the CMS. The body corporate may impose conditions on the granting of an exclusive use by-law. For example, the owner may be asked to make payments for car parking or a requirement that the person with the exclusive use carries out the maintenance (A s170).

Where is the CMS held?

The CMS is effectively a "blueprint" for the scheme and is a document recorded in the Land Registry of the Department of Environment and Resource Management. Along with the by-laws, the CMS also contains other relevant information about the scheme including the scheme name, the regulation module

applying to the scheme and the Schedule of Lot Entitlements. On modern CMS's by-laws are shown at Schedule C.

Land Registry locations

For information on your closest Land Registry Office, forms and lodgement fees please phone: 07 3227 6666 or go to www.nrw.qld.gov.au/contactus/property

Topic 2 - How to make, amend and remove by-laws

General by-laws

From time to time a body corporate may wish to make new by-laws, or amend or remove existing by-laws. As we have already seen, the by-laws for a community titles scheme appear in Schedule C of the CMS for the scheme. Accordingly, any changes to the by-laws would require an amendment to Schedule C. In order to do this the body corporate must consent to a new CMS being lodged for registration in a Land Registry Office.

What type of resolution is required?

Provided the change to the CMS is limited to a difference in the by-laws (other than a difference in an exclusive use by-law (see following)), the body corporate would need to pass a special resolution to consent to the recording of a new CMS (A s62).

What's next?

Section 54 of the BCCM Act provides that the existing CMS can not be amended. Instead, a new CMS must be recorded to replace the current version. The section also provides that in giving its consent, the body corporate does not need to have the new CMS before it. Section 55 of the Act then provides that any motion to change the CMS may only be submitted by the committee, a lot owner or the body corporate manager (provided the regulation module applying to the scheme authorises the body corporate manager to submit the motion).

What this means in practical terms, is that each proposed change to the CMS would be presented as a separate motion at the general meeting. Any motion to adopt a new by-law, or amend or repeal an existing by-law, must be passed by special resolution (other than exclusive use, see below). The body corporate, by passing all or some of the motions relating to by-laws, has in effect given its consent to the recording of a new CMS (A s62). The committee or the body corporate manager (if authorised to do so under the body corporate manager's engagement) must prepare the new CMS incorporating the change. The new CMS can then be lodged for registration in a Land Registry Office (A s63).

Time limit for lodging new CMS

The body corporate must lodge a request to record a new CMS within 3 months after the body corporate consents to lodging the new CMS (A s65).

Exclusive use by-laws

Unlike the "general by-laws" which require a special resolution, an exclusive use by-law requires, among other things, a resolution without dissent to pass (A s62). See Topic 3.

When do by-laws take effect?

A by-law comes into force on the day the Registrar of Titles records the community management statement containing the by-law or a later date stated in the by-law (A s179).

Topic 3 - Exclusive use by-laws

Exclusive use by-laws are generally contained in Schedule E of the community management statement.

What is the purpose of exclusive use by-laws?

An exclusive use by-law attaches to a lot and gives the occupier of the lot exclusive rights and enjoyment, or other special rights to a part of the common property or body corporate asset identified in the by-law.

How are they made?

An exclusive use by-law may only attach to a lot if the lot owner agrees in writing before the relevant motion granting exclusive use is passed by a resolution without dissent at a general meeting of the body corporate.

Exclusive use by-laws may have conditions attached. For example the body corporate may require the owner to make periodic payments to the body corporate (SM s173).

The common property or body corporate asset to which an exclusive use by-law applies, must be specifically identified in the by-law or allocated either by the original owner (an authorised allocation) or by 2 or more lot owners under a reallocation agreement (an agreed allocation) (A s171).

How can exclusive use be cancelled?

Section 171 of the BCCM Act further provides that an exclusive use by-law may stop applying only if the lot owner agrees in writing or votes personally in a resolution without dissent consenting to the recording of a new community management statement that does not contain the exclusive use by-law. Again, a new community management statement must be lodged with the Land Registry Office and will only take effect when it is recorded by the Registrar of Titles.

As we saw in Topic 2, if the body corporate passes a resolution relating to by-laws, it has in effect given its consent to the recording of a new CMS (A s62). This would also apply to a resolution granting or removing an exclusive use by-law. The committee or the body corporate manager (if authorised to do so under the body corporate manager's engagement) must prepare the new CMS which can then be lodged for registration in a Land Registry Office.

Maintenance responsibilities

Unless there is a particular provision in the exclusive use by-law to the contrary, the lot owner who has exclusive use or other rights is responsible for the maintenance and operating costs for that part of the common property (SM s173).

The legislation does not specifically identify what features of the common property the lot owner is responsible for, however there have been a number of adjudicator's orders that have clarified this point. For example, adjudicators have determined that doors and windows located in exterior walls that adjoin common property to which exclusive use has been granted are the responsibility of the lot owner to maintain.

There have also been orders where the adjudicator has defined the body corporate's area of responsibility in exclusive use areas. For example, adjudicators have determined that, in a building format plan where the area of common property, the subject of exclusive use, provides shelter or support for the general benefit of the scheme, the body corporate is responsible for the maintenance of those elements (e.g. roofs and foundations).

Relevant orders which define these responsibilities are: Parkview Lodge – order: 0442-1999; Hillside Gardens – order: 0215-2001 and Sailport – order: 0360-2007.

Topic 4 - History of by-laws

As we have already seen the by-laws for a community titles scheme appear in the CMS under the heading of "BY-LAWS" (A. s168). It is often thought that if a scheme was established prior to the BCCM Act, then the by-laws in schedule 4 of the BCCM Act will apply and the scheme by-laws were changed when the BCCM Act came in.

This is not so.

Before the commencement of the BCCM Act in 1997 community management statements did not exist. Prior to 1997, bodies corporate were subject to the "statutory" by-laws in the applicable act and a body corporate could resolve to add to its by-laws and submit a document called a Notification of Change of By-Laws for registration with the Registrar of Titles.

The BCCM Act at its commencement on 13 July 1997 acknowledged that existing plans registered under the *Building Units and Group Titles Act 1980* would require a CMS to identify, among other things, their by-laws. The transitional provisions of the BCCM Act provide that "existing" plans became new plans under the BCCM Act and that an "interim" CMS would apply.

The transitional provisions further provide that if after three years the interim statement was still the CMS for a scheme the Registrar of Titles would record a "standard" CMS to replace the "interim" statement.

The standard CMS states at Item 5. By-Laws that the by-laws are "taken to be those in effect as at 13 July 2000...." meaning those by-laws that applied prior to that date.

Many bodies corporate still have a standard CMS and if that is the case a search at a Land Registry Office must be conducted to ascertain what by-laws apply. For example, the body corporate, at times, may have added or removed by-laws and recorded these as a Notification of Change of By-Laws. These will appear under "dealings" in a search of the common property title for the scheme.

If there is no Notification of Change of By-Laws recorded, the by-laws will be those that were contained in the legislation that applied to the scheme or plan when it was first registered, subject to the following sections. The Land Registry will be able to identify the registration date and the act under which the plan was registered.

The following sections provide information on the by-laws under those acts.

Building Units Titles Act 1965-1972

A body corporate established under the *Building Units Titles Act 1965-1972* (BUTA) was subject to the by-laws contained in the First and Second Schedule of BUTA. BUTA provided that a body corporate could, by unanimous resolution, add to, amend or repeal the First Schedule by-laws. BUTA further provided that no addition or amendment to the First Schedule by-laws would have effect until the body corporate lodged a notification of change of by-laws with the Registrar of Titles (Land Registry of the Department of Natural Resources and Water).

Similarly, the Second Schedule by-laws could be added to, amended or repealed. But unlike the First Schedule by-laws, these changes only required authorisation by special resolution and additionally the body corporate did not have to lodge any form of notification with the Registrar of Titles.

Building Units and Group Titles Act 1980

With the introduction of the *Building Units and Group Titles Act 1980* (BUGTA), the First Schedule by-laws under BUTA no longer applied. By-law 1 of the Second Schedule in BUTA was inconsistent with BUGTA and no longer had any effect. By-law 2 of the Second Schedule (animals) still applied. The transitional provisions of BUGTA provided at Section 5(10) that the former by-laws would still be the by-laws applying to the plan.

On 3 October 1988, BUGTA was amended. The amendments effectively meant that the former by-laws (Second Schedule by-laws and any additions, or amendments etc) plus the Third Schedule by-laws of BUGTA that were not inconsistent with the former by-laws were part of the by-laws. However, due to the provisions of Section 5 (10B) it would appear that a body corporate was required to lodge a notification with the Registrar of Titles within 6 months of the commencement date (3 October 1988) for the additions or amendments to be recognised. Accordingly, it seems that a body corporate that did not lodge a notification would simply retain the Second Schedule by-law (animals) under BUTA and the Third Schedule by-laws under BUGTA.

Body Corporate and Community Management Act 1997

By-laws should now be contained on the Community Management Statement (CMS) which is registered with the Department of Environment and Resource Management.

The BCCM Act provides “statutory” by-laws set out in Schedule 4.

For schemes established after 13 July 1997 a developer is required when registering a new community titles scheme to also register the first CMS. If the new CMS does not include provisions that “are or purport to be” by-laws then automatically, the “statutory by-laws at schedule 4 of the BCCM Act will apply. (A s168(2))

Where can I get copies of the CMS?

Information on obtaining copies of the CMS or “dealings” can be obtained from the Land Registry Office of the Department of Natural Resources and Water, please phone: 07 3227 6666 or go to www.nrw.qld.gov.au/contactus/property

Topic 5 - Limitation of by-laws

The BCCM Act promotes self-management of community titles schemes. One example of this is by enabling the owners (the body corporate) to decide the by-laws that apply to their scheme.

However, by-laws must be consistent with the provisions set out under the BCCM Act.

Limitations

While the body corporate may be able to make by-laws, the legislation places limitations on the content. Section 180 of the BCCM Act provides:

180 Limitations for by-laws

- (1) If a by-law for a community titles scheme is inconsistent with this Act (including a regulation module applying to the scheme) or another Act, the by-law is invalid to the extent of the inconsistency.

Example for subsection (1)—

If a by-law for a community titles scheme purporting to give a body corporate manager, service contractor or letting agent exclusive use of common property is inconsistent with the regulation module applying to the scheme, the by-law is invalid to the extent of the inconsistency.

- (2) Subsection (1) does not apply to an inconsistency between a by-law and a local law or UDA by-law if the inconsistency is about keeping animals on scheme land.
- (3) If a lot may lawfully be used for residential purposes, the by-laws can not restrict the type of residential use.
- (4) A by-law can not prevent or restrict a transmission, transfer, mortgage or other dealing with a lot.

Examples—

1 A by-law can not prevent the owner of a lot from leasing or mortgaging a lot.

2 A by-law can not prevent the sale of a lot to a person under or over a particular age.

- (5) A by-law must not discriminate between types of occupiers.

Example—

A by-law can not prevent a tenant from using a pool on the common property.

- (6) A by-law (other than an exclusive use by-law) must not impose a monetary liability on the owner or occupier of a lot included in a community titles scheme.

Even though a by-law is recorded in the CMS for a scheme it does not mean the by-law is enforceable or valid. Section 115L(2)(b) of the *Land Titles Act 1994* states it must not be presumed the by-laws for the scheme included in the CMS are valid and enforceable just because it has been recorded with the Registrar.

Bodies corporate are ultimately responsible for ensuring the by-laws they adopt are consistent with the BCCM Act and other relevant legislation. Should a dispute arise regarding the validity of a by-law an aggrieved person may wish to lodge a dispute resolution application with the Commissioner's Office for the by-law to be ruled invalid by an adjudicator.

Topic 6 - How to enforce by-laws

The body corporate is responsible for enforcing its by-laws. The committee as the administrative arm of the body corporate is usually responsible for ensuring all owners and occupiers comply with the by-laws. However, owners and occupiers can also commence enforcement action if certain conditions are met. Enforcement action usually commences with the issue of mandatory notices, however there are limited circumstances in which the service of a notice is not required.

Preliminary procedures by the body corporate

The body corporate may give a contravention notice to an owner or occupier where it reasonably believes that the person is contravening a by-law, and where, given the circumstances, it is likely that the contravention will continue. If an owner or an occupier fails to comply with a contravention notice, the body corporate can commence enforcement action. (A s184)

The decision to serve a contravention notice can be made by the committee or by the body corporate in a general meeting.

Enforcement action by body corporate

The BCCM Act prescribes penalties for failure or breach of certain parts of the legislation. Where a penalty provision is made, such penalties may be imposed by a Magistrates Court, acting under powers given by section 19 of the *Justices Act 1886*.

A person who fails to comply with a contravention notice commits an offence and penalties, up to a maximum of 20 penalty units, may be applied by the court.

The body corporate may commence proceedings in the Magistrates Court against an owner/occupier who fails to comply with a contravention notice.

Alternatively, the body corporate may lodge a BCCM Form 22 Conciliation Application form with the Commissioner's Office.

The decision to commence enforcement action can be made by the committee or by the body corporate in a general meeting.

Preliminary procedures by an owner or occupier

An owner or occupier who 'reasonably believes' that another owner or occupier has contravened the by-laws may also commence enforcement action. However, they must carry out a preliminary step before taking such action.

The owner or occupier ('the complainant') must ask the body corporate to issue a contravention notice to the person who is allegedly contravening the by-laws. The BCCM Act requires that the approved form (BCCM Form 1) be used to request the body corporate to issue the contravention notice. (A s185)

Enforcement action by owner or occupier

If the body corporate does not advise the owner who issued the BCCM form 1, within 14 days after receiving the request, that the contravention notice has been issued,

the complainant may lodge a BCCM Form 22 Conciliation Application form with the Commissioner's office.

Note: there is no provision in the BCCM Act for an owner/occupier to commence proceedings in the Magistrates Court.

Types of contravention notices

1. Continuing contravention notice

The body corporate may give a continuing contravention notice to an owner or occupier where it reasonably believes that the person is contravening a by-law, and where, given the circumstances, it is likely that the contravention will continue. An example of this type of contravention is where an owner or occupier is displaying a sign on the lot in contravention of the by-laws.

The purpose of this notice is to require the person to remedy the contravention. The details that must be included in the notice are contained in the BCCM Act (A s182(4)). While there is no prescribed form, BCCM Form 10 may be used as a guide and is available from the Commissioner's Office or from its website at: www.justice.qld.gov.au/3271.htm.

2. Future contravention notice

The body corporate may serve a future contravention notice on an owner or occupier if it reasonably believes that the person has contravened a by-law and the circumstances of the contravention make it likely that the contravention will be repeated. This notice would be appropriate where it is known that an owner has a party on the first Friday of every month which always goes on late and contravenes the noise by-law. The body corporate may give the owner notice that if this contravention is repeated, proceedings can be commenced in the Magistrates Court without any further notice.

The purpose of the future contravention notice is to require the person not to repeat the contravention. The details that must be included in the notice are set out in the BCCM Act (A s183(4)). Again, there is no prescribed form, however BCCM Form 11 may be used as a guide and is available from the BCCM Office or from its website at: www.justice.qld.gov.au/3271.htm.

The future contravention notice has effect for 3 months after it is given to the person or a shorter period mentioned in the notice (A s183(5)). It is important to include the legislative requirements on the contravention notice otherwise an owner may lodge a dispute application and the contravention notice may be ruled invalid (see **Lillian Court Order 0340-2007**).

Copy of contravention notice to be given to owner

If the body corporate issues a contravention notice to an individual who is not the owner of a lot included in the scheme they must also give a copy of the notice to the owner of the lot. The copy of the notice must be given to the owner when or as soon as practicable after the notice is given to the occupier (A s187).

Dispensing with 'preliminary procedures'

The body corporate or a lot owner or occupier may lodge an application without giving a preliminary notice (as described above) if the requirements set out in the BCCM Act are met (A s186), namely:

1. 'special circumstances' justify the dispute being resolved urgently. Special circumstances include contraventions which:
 - a. are likely to cause injury to people or serious damage to property
 - b. are a risk to people's health or safety
 - c. are causing a serious nuisance to people
 - d. for another reason, give rise to an emergency; or
2. the by-law contravention is incidental to an application for an order under section 281 of the BCCM Act (namely an application for an order to repair damage or reimburse amount paid for carrying out repairs). The application must initially be for an interim order of an adjudicator.

Delegating authority for enforcing by-laws

At times the resident manager's contract may contain a clause requiring them to ensure occupiers comply with the by-laws. The contract may also require the manager to serve contravention notices as necessary. However, the decision to serve a contravention notice must be authorised by a resolution of the committee. (A s.97)

The resident manager's role

The resident manager is usually on-site daily and as a result will often become aware of problems associated with compliance with the by-laws. If this occurs the resident manager should notify the committee about the breach. Acting in the role of a non-voting committee member, the resident manager could simply 'let the committee know'. However, to formally notify the committee, the BCCM Act provides that notice of the breach should be given to the committee in the approved form (BCCM Form 1). The committee may then pass a motion to issue a contravention notice.

Managing relationships

While there is a formal process for dealing with breaches of by-laws, there may be occasions where a less formal approach will be more appropriate. Minor breaches may often be easily dealt with by simply drawing a person's attention to the infringement. A quiet word in a person's ear can at times be more productive than a heavy-handed approach, and quite often nothing more comes of it. A heavy-handed approach may cause resentment at being formally served with a contravention notice and the person then digs in their heels. The heavy-handed approach for minor breaches from the outset can have an adverse effect on ongoing relationships and lead to future disputes.