Body Corporate Practice

a guide for Committees and Owners

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Preface and Acknowledgements

This book is primarily intended for Committees – to assist them in their work, but many Owners and service providers may find it of interest too.

The Queensland Body Corporate and Community Management legislation, - the Act and Regulation Modules - is the most complex and prescriptive Strata Title legislation in Australia – and probably the World.

Currently the Legislation is more than 1,250 pages in length, and in order to compile a 'Guide' we have endeavoured to provide a useful working knowledge of the more important issues for Committees, whilst keeping it to a manageable size.

There are many more resources out there, and the Office of the Commissioner also provides an advice line and email enquiry service, but their remit does not extend to providing legal advice, and so the 'general advice' they may provide might not be sufficient for your purposes at the time.

In curating this content, we have made extensive use of the excellent resources available on the Govt website – "Office of the Commissioner for Body Corporate and Community Management". This material was especially useful to us as a framework which we then built on, and where we thought it helpful for the purposes of this Guide, we have edited it and supplemented it with other content. Where content was sourced from other parties, we have endeavoured to indicate and acknowledge the party.

Special thanks to Julie Stead for the hours she put in 'proofing' the manuscript. Julie provides Returning Officer services to the Strata industry:

ReturningOfficer.com.au

The book is available in various formats: PDF, an online FlipBook, Kindle ebook for Kindle devices and the Kindle-app for iOS, Android, Mac, and PC, and a paperback version is available from Amazon. The PDF version will always be free. The Amazon Kindle ebook version will be priced at about $0.99 and the paperback version is priced to only cover Amazon's costs + postage. Links to all versions are on the Forum site detailed below.

There is a dedicated web-forum for matters relating to this book and any other Body Corporate issue you'd like to discuss, or see discussed. See details on the following page.

K. M. Jordan – contributing author, editor, publisher.

Park Avenue Strata Management

Forum for Body Corporate discussion

We maintain a dedicated web-forum for matters relating to this book, and we welcome your comments and suggestions (for future revisions), as well as any Body Corporate discussions which you may think will be of interest to others, or for which you're seeking advice or opinions from others.

Here's the link to the Forum:

Body-Corporate-Practice.discussion.community

You can visit the forum and read the content without registering, but to post any comment or start a new topic, you'll need to register – see the 'Sign-up' link top RH side of the Home page.

Contributors

Staff from the Office of Commissioner for Body Corporate and Community Management

Over the years the Commissioner's Office has produced an enormous amount of educational material on the Act and Regulations that serves to summarise the most important sections of the legislation as it continually strives to assist all parties involved with Bodies Corporate. And it has maintained this content and updated it as the legislation evolved.

In addition to the main content on their website that serves to summarise the most important sections of the legislation, the Office issues a regular newsletter, 'Common Ground' that features a particular topic in each issue. Also of importance are the 'Practice Directions' issued from time to time which are a useful guide to how the Office handles varies matters, and its expectations of those who interact with the Office.

We have made extensive use of these excellent resources as the material was especially useful to us as a framework which we then built on. Where we thought it helpful for the purposes of this Guide, we have edited it and supplemented it with other content.

Chris Irons – former Commissioner for BCCM

With an unmatched perspective on the Strata sector, Chris Irons is a thought leader for Strata issues and dispute resolution. For over 5 years Chris was Queensland's Commissioner for Body Corporate and Community Management, the only role of its type in the world. After working for well-known Strata law firm Hynes Legal, Chris is now an independent Strata consultant, working under the banner of Strata Solve and helping clients to untangle their Strata issues with tailored solutions.

Chris brings to the table over 2 decades of leadership in public policy development and is a nationally accredited mediator. He is a frequent media and content contributor on Strata issues. Chris is well-known for his ability to get to the heart of Strata problems, focussing on cause rather than effect, and also for his mantra of inform and educate. In Strata, Chris firmly believes knowledge is power. Strata Solve combines Chris's one-of-a-kind perspective, skillset and knowledge to help his clients save time, money and emotional toil.

In his capacity as independent consultant, Chris is Senior Vice-President of the Board of Strata Community Association (Qld), which is the Strata industry peak body. Chris is also the President of Northside Connect, a not-for-profit community and legal services provider based on Brisbane's northside. Chris is the human slave to a happily-retired former racing greyhound, which has all necessary Strata approvals. You can contact Chris here:

StrataSolve.com.au/contact/

Chris contributed the Chapter: All About Dispute Resolution, and the Chapter: 'Challenging' People in Strata

Andrew McNair – Energy Options Australia

Andrew is the Principal Consultant, and Director of Energy Options Australia and has had over thirty one years experience in the electricity industry in areas of generation, distribution and retail. Prior to Energy Options Australia, Andrew worked for companies including Queensland Electricity Commission, SEQEB / Energex and CitiPower.

Andrew's core expertise is in providing electrical / energy management consulting services to commercial and industrial customers. Over the last 9 years Andrew has been involved primarily in providing specialist services to Bodies Corporate in the area of energy efficiency, energy contracting and utility on-supply.

Andrew has extensive knowledge and 'first hand' experience in the implementation of measures to effectively manage electricity supply costs and his key areas of expertise include energy efficiency advice, tendering and contract negotiations, and training and up-skilling personnel to manage electricity costs.

EnergyOptionsAustralia.com.au

Andrew contributed the Chapter: 'Saving on Electricity'

Amanda Farmer – 'Your Strata Property'

Amanda Farmer is a Strata lawyer with over 16 years' experience advising Strata Owners, Communities, Managers and developers. As a Fellow of the Australian College of Strata Lawyers, Amanda is a recognised expert in the field of Strata Law.

Amanda is the owner of Lawyers Chambers, a boutique legal practice in Sydney, focusing on NSW Strata and Community Title Law. Amanda is also the founder of Women in Strata - a networking and support group for women working in Strata Management.

Amanda's podcast, 'Your Strata Property', delivers reliable, accurate and bite-sized information to property owners struggling to understand the often-complex world of Strata and community living.

As a resident in a Strata scheme herself, Amanda is particularly passionate about helping residents to understand and implement the important steps towards a more peaceful experience of community living.

YourStrataProperty.com.au

Amanda contributed the Chapter: 'The ONE Thing that Dramatically Improves Apartment Living'

Kim Jordan – Park Avenue Strata Management

Founded Strata3 Group (acquired by PICA Group)

Founded Park Avenue Strata Management

ParkAvenueStrata.com.au

Some Terms used

1. **Apartment** = **Lot** = **Unit**. These are terms used to describe the individually owned dwelling spaces in the Community Title Scheme.

2. **Body Corporate** = **Scheme** = **Community Title Scheme (CTS)**. These are terms used to describe the same sort of entity Australia-wide i.e. a building, or group of buildings that are made up of individual apartments (or Lots).

3. **Committee** The elected members of the Body Corporate that run the affairs of the Body Corporate on a day-to-day basis. It comprises elected Voting Members: Chairman, Secretary & Treasurer (referred to Executive Members) and can include Ordinary Members who are also Voting Members. The Committee can include Non-Voting Members e.g. a Body Corporate Manager, a Caretaking contractor – these are automatically Non-Voting Members.

4. **Layered Arrangement, Principal and Subsidiary Schemes** Where a development (typically large) comprises multiple Schemes arranged in a hierarchical titling structure with a Principal Scheme and one or more Subsidiary Schemes. These arrangements only form a small percentage of Strata developments.

5. **Levies = Notices of Contributions** The amounts Owners are required to contribute – usually issued quarterly – to support the operating costs of the Scheme both for the Administrative Fund cost items, and towards the Sinking Fund which provisions for future maintenance or replacement of assets and facilities.

6. **Lot Entitlements = Contribution Lot Entitlements & Interest Lot Entitlements** Lot Entitlements in Community Titles Schemes establish each Owner's share of costs, their voting rights, and their share of Common Property and other assets. Refer to the Chapter about Lot Entitlements for further detailed explanations.

7. **Regulation Modules** = **Standard Regulation Module; Accommodation Regulation Module; Commercial Regulation Module; Small Schemes Module; Specified Two-Lot Schemes Module.**
   As well as the BCCM Act there are these Regulation Modules which are subordinate legislation under the Act, and set out more detailed laws that apply to a Body corporate. Every Scheme is regulated by one of these particular Modules, and which one applies, is detailed in the Scheme's Community Management Statement (CMS).

8. **Strata Management Company** = **Body Corporate Management Company** (**BCM**) = **Strata Title Management Company** These are terms used to describe the administration company that assists the Strata Title Scheme/Body Corporate to manage their Strata Community.

9. **Survey Plans = Building Format Plan (BFP); Standard Format Plan (SFP)** These define the method of subdivision used to create the Scheme. In addition to these two most commonly used subdivision methods, there is Volumetric Plan Subdivision. Refer to the Chapter on Maintenance for further explanation of these subdivision plan types.

10. **The Act or the BCCM Act** Body Corporate and Community Management Act (BCCM Act) – QLD.

What a Body Corporate is

A Body Corporate is a legal entity which is created when land is subdivided and registered under the Land Title Act to establish a Community Titles Scheme (CTS). All of the Owners in a Community Titles Scheme are automatically members of the Body Corporate when they buy their Lot.

Community Titles Schemes allow you to privately own an area of land or part of a building, as well as share Common Property and facilities with other Owners and Occupiers.

The above explanation is a rather 'dry' one - an explanation reduced to the simplest legal basics. But an expanded version, and some of the history, is somewhat more interesting, starting with the Australian 'invention' that is now the basis of Title Registration of most property in all States of Australia and many other countries – the **Torrens Title** system.

Torrens Title is a land registration and land transfer system, in which a State creates and maintains a register of land holdings, which serves as the conclusive evidence (termed "indefeasibility") of Title of the person recorded on the register as the proprietor (Owner), and of all other interests recorded on the register.

Ownership of land is transferred by registration of a 'Transfer of Title', instead of by the use of Deeds. The Registrar provides a 'Certificate of Title' to the new proprietor, which is merely a copy of the related folio of the Torrens Title Register. The main benefit of the system is to enhance certainty of Title to land and to simplify dealings involving land.

Its name derives from Sir Robert Richard Torrens (1814–1884), who designed, lobbied for, and introduced the private member's bill which was enacted as the Real Property Act 1858 in the Province of South Australia, the first version of Torrens Title in the world. Torrens based his proposal on many of the ideas of Ulrich Hübbe, a German lawyer living in South Australia. The system has been adopted by many countries and has been adapted to cover other interests, including credit interests (such as mortgages), leaseholds and **Strata Title**. [courtesy Wikipedia, - edited for this book]

Strata Title and the Body Corporate

Strata Title is a form of ownership devised for multi-level apartment blocks and horizontal subdivisions with shared areas. The word 'Strata' refers to apartments being on different levels, but Strata Titling is also the general term used for horizontal subdivision in Qld.

Strata Title was first introduced in 1961 in the State of New South Wales to better cope with the legal ownership of apartment blocks. Previously, the only adequate method of dividing the ownership was by way of Company Title which had a number of defects, such as the difficulty of

instituting mortgages - there are still some apartment buildings in the country under Company Title.

The term Strata Title and the whole legislative mechanism can also be applied to horizontal subdivision townhouse-style developments in Australia.

Other countries that have adopted the Australian system (or a similar variant) of apartment ownership include: Canada (Alberta, British Columbia), Fiji, India, Indonesia, Malaysia, New Zealand, the Philippines, Singapore, South Africa and the United Arab Emirates. Other countries have legislation based on similar principles but with different definitions and using different mechanisms in their administration.

Strata Title Schemes are composed of individual Lots and Common Property. Lots can be apartments, garages, storerooms, or other such spaces, and each is shown on the Title as being owned by a Lot Owner. Common Property is defined as everything else on the parcel of land that is not part of a Lot, such as common stairwells, driveways, roofs, gardens and so on.

The Torrens Title system of property registration has been extended to provide coverage over ownership registration of Strata Title Lots. [courtesy Wikipedia - edited for this book]

Finally, contrary to popular belief, Strata Title Lots in Australia, are freehold Lots, - and are part of the Torrens Title Registration system.

What a Body Corporate does

The Body Corporate is given powers under the legislation to carry out its necessary duties.

The Body Corporate:

- maintains, manages, and controls the Common Property on behalf of Owners;
- determines budgets (Administrative Fund and Sinking Fund) and so decides the amounts to be paid by the Owners, via the Levies, to make sure the Body Corporate can operate;
- makes and enforces its own rules, called By-Laws, which advise Owners and other people who live in the Scheme what they can and cannot do;
- takes out insurance such as public risk insurance over the Common Property and building insurance;
- manages and controls Body Corporate assets;
- keeps records for the Body Corporate, including Minutes of Meetings, Roll of Owners details, financial accounts, Register of Assets, Register of Improvements to Common Property by Owners, Register of Engagements, and Authorisations;
- The Body Corporate makes decisions about these and other things at General Meetings and through the Committee.

Things to be Aware of in Buying a Strata Property

This information is relevant to Bodies Corporate that are registered under the BCCM Act. (i.e. legislation other than the BCCMA applies to some Bodies Corporate).

If you are thinking about buying into a Community Titles Scheme—that is, buying a Lot (unit, apartment, etc.) on a property that has a Body Corporate—you may want to learn more about its particular situation.

This section will help you decide what searches you might wish to do, if any, and give you an understanding of what your responsibilities as a Lot Owner would be.

When you decide to buy a unit that is a part of a Community Titles Scheme, you may need to find out:

- the role of the Body Corporate
- what you will have to pay
- what the Body Corporate will maintain.

About Ownership in a Strata Scheme

Owning a Lot in a Community Titles Scheme brings certain obligations beyond those of owning a detached house.

You should carefully consider whether living or investing in a Community Titles Scheme suits your lifestyle and financial needs.

When you buy a Lot in a Community Titles Scheme you are automatically a member of the Body Corporate.

As an Owner, you cannot 'opt out' of being a part of the Body Corporate.

Legislation

The BCCM Act is the legislation that regulates most Bodies Corporates in Queensland. It sets out the rights and responsibilities of people involved with Bodies Corporate.

A number of Regulation Modules complement the legislation and are designed to meet the needs of different types of Community Titles Schemes.

The Regulation Modules set out rules including those relating to:

- Committees

- General Meetings
- financial management
- property management
- insurance

Every Owner should know which Regulation Module applies to their Scheme.

The relevant Regulation Module that applies to a particular Strata Title Scheme is detailed in the Community Management Statement (CMS) for the Scheme. The CMS for the Scheme also contains the By-Laws for the Scheme, the Lot Entitlement Schedules, and other important aspects that Owners should be aware of.

Maintenance

The Body Corporate is responsible for maintaining the Common Property and in some situations certain elements of a building that are not Common Property.

The survey plan for a Community Titles Scheme establishes the boundaries between the Lots and the Common Property.

Bodies Corporate are most commonly registered under 2 different types of survey plan. They are either:

- Building Format Plan BFP (previously Building Units Plan, BUP)
- Standard Format Plan SFP (previously Group Titles Plan, GTP).

  [note that a Volumetric Format Plan may apply to some Schemes]

Every Owner should know what type of plan applies to their Lot because it is important in determining whether or not an area is Common Property and who is responsible for what maintenance.

You will not only have certain rights and responsibilities for your own property, but also for the Common Property shared with other Owners in your complex.

It is important to find out what the costs for maintenance and general upkeep of the Common Property will be.

Common Property ranges from a shared driveway or letterbox to lifts, stairways, swimming pools, tennis courts, roadways and in some cases, even golf courses.

See also the chapter dedicated to Maintenance.

Levies

As an Owner you will need to contribute financially to day-to-day running costs of the Scheme by paying regular 'Levies'. Levies are issued by way of a 'Notice of Contributions'.

Levy amounts vary between Schemes depending on the condition and age of the Common Property and shared facilities e.g. pools, tennis courts, marinas etc. Running costs are likely to increase over time.

Failure to pay Levies on time may attract a high rate of penalty interest (up to 30% pa) and additional costs.

When considering purchasing a unit in a Community Titles Scheme, you should find out if there are any Levies and charges still owed by the current Owner. As the new Owner you would be liable to pay any outstanding amounts, however your conveyancing solicitor should take into account any amounts owing for Levies and other debts to the Body Corporate, Council Rates etc. and make adjustments to the settlement figures so that the **seller** pays their appropriate portion. It is the responsibility of your conveyancing solicitor to be aware of these charges and to ensure correct apportionment between the buyer and seller.

What often causes confusion for incoming Owners is that they will receive a Levy Notice from the Body Corporate Manager, and the new Owner notices that for part of the Levy Period, they were not yet the Owner, but they don't realise that this portion of the Levy period has been taken into account in the settlement adjustments by their conveyancing solicitor, so they received a 'credit' for this amount in the settlement figures, leaving them to now pay the total Levy amount.

By-Laws

By-Laws are an additional set of rules particular to each Scheme that regulate the behaviour of Owners, Occupiers and their invitees on the Common Property and within their Lots.

By-Laws often cover a range of issues, such as noise, pets and parking.

You should find out the By-Laws for the Scheme you are considering buying into, so you know what you can and can't do, or what you need to ask permission for once you become an Owner.

The By-Laws applicable for each Body Corporate are part of the Community Management Statement (CMS) for the Scheme.

See also the chapter dedicated to By-Laws

Your Role as an Owner

Owners of Lots in Community Titles Schemes have a number of duties and obligations. An Owner:

- is responsible for keeping their Lot in good condition
- may be responsible for maintenance of an area of Common Property over which they have a right of Exclusive-Use
- must obey the By-Laws that apply to the Scheme
- must not:
    a) cause a nuisance or hazard;
    b) interfere unreasonably with the use or enjoyment of another Lot;
    c) interfere unreasonably with the use or enjoyment of the Common Property by a person who is lawfully there.

Information Sources:

If you are looking at buying into a Community Titles Scheme you may want to contact the Body Corporate Manager as detailed below and obtain more details about the particular property, or engage a professional Strata Search Agent to search the Body Corporate records for you.

Body Corporate Secretary or Body Corporate Manager

You can find the contact information for the Body Corporate Secretary or Strata Manager on the Disclosure Statement that must be supplied with your Contract of Sale.

Information Certificate

You can purchase a Body Corporate Information Certificate (Form 13) to confirm any annual Levies you will be required to pay, and any outstanding Levies or other charges owed to the Body Corporate.

You may become liable for any outstanding Levies once you are the Owner.

The Body Corporate will charge you a fee for an Information Certificate.

Access to Body Corporate records

You can also conduct a search and/or ask for copies of Body Corporate records.

When asking for copies of records, you will need to be specific about what you want to see. This process can be daunting if you're not familiar with it, and engaging a professional Strata Search

Agent to conduct the search is often the best way to achieve the outcome of finding important details about the Strata Scheme, and is definitely recommended. You will be charged a fee by the Body Corporate Manager to access the records, and will be charged for any copies you request.

Records Search by a professional Search Agent

Rather than trying to obtain important documents and information relevant to a Body Corporate and a particular Lot yourself, you can have a professional Search Agent perform that work.

The cost of a records search by a professional Strata Search Agent will be in the order of about $300, and considering the overall purchase price of the property under consideration, this is a small consideration.

Here are three of these search agents:

MyBodyCorpReport.com.au MyBodyCorp Report

Strata.com.au Purchasers Strata Inspections

Pentons.com.au Pentons

Professional Search Agents have 'check-lists' similar to this list below that highlight what they look for and report on:

- ascertain whether the Body Corporate, and their Committee is functioning 'as intended' i.e. as the legislation requires;
- how well the Committee gets along with each other and any Resident Caretaker;
- whether there are specific interest groups and whether they are divisive and costly to the Body Corporate;
- whether legal expenses are of any significance due to some specific issues;
- whether the Body Corporate is in dispute Adjudication frequently, and the reason behind such disputes;
- whether maintenance is conducted properly or using a 'band-aid' approach;
- whether Special Levies are being issued in-lieu of adequate budgeting;
- any significant defects in Common Property, buildings, plant, assets;
- how recent the Sinking Fund Analysis Report is;
- how recent the Insurance Valuation Report is;
- details of the insurances currently in place;
- the state of the Sinking Fund balance

Titles Registry

Community Titles Schemes are registered with the Titles Registry.

Copies of the Community Management Statement (CMS) and survey plans will help you find out more about the Scheme you are wanting to buy a property in.

You can purchase a copy of the CMS (and the BMS if applicable) or survey plans for your Scheme. Some searches can be done online, usually there will be a fee.

The Titles Registry can be contacted on 1300 255 750 for further information, and this is the current link to their website:

Qld.Gov.au/housing/buying-owning-home/property-land-valuations/property-search

Community Management Statement (CMS)

Every Body Corporate has a CMS particular to the Scheme.

The CMS identifies, among other things:

- any proposed future development of the Scheme;
- Lot Entitlement Schedules (used to calculate your Levies);
- relevant By-Laws;
- the Regulation Module that applies to the Scheme;
- If there is an 'Architectual Code' or 'Landscaping Code' that applies to the Scheme. If so, these will work 'in concert' with certain of the By-Laws and detail how Owners and the Body Corporate must approach and handle various issues regarding the buildings and grounds.

Survey plans

Survey plans help you identify the boundaries of your Lot and the Common Property.

They also help identify any areas of Common Property which are defined 'Exclusive Use' (EU) and attach to your Lot.

The survey plan should tell you if your Scheme is registered under a Building Format Plan (BFP) or Standard Format Plan (SFP).

See also the section on Maintenance for further related information.

Appendix 4

Refer to Appendix 4 at the end of this book for a list of more resources.

Things to be Aware of in Selling a Strata Property

Note that the discussion below relates to the current situation in Queensland in relation to Seller Disclosure, but significant changes to this are on the way!

The Commercial and Property Law Research Centre delivered their Final Report on 'Seller Disclosure in Queensland' in 2017 and the Government is now preparing legislation to introduce some very significant changes to the current requirements – all in the interests of streamlining the current processes, and making it easier for buyers to be acquainted with the important aspects of the property they are proposing to purchase.

Currently, obligations a Seller will have, include obligations under the terms of the Contract of Sale - for example a Standard REIQ Contract of Sale, and also obligations under the BCCM legislation.

Disclosure Statement under BCCM Act Sect. 206

This relevant section of the BCCM Act requires a Seller to provide to the proposed Buyer, before any Contract of Sale is entered into, the following information:

(a) the name, address and contact telephone number for the Secretary of the Body Corporate or the Body Corporate Manager if they are providing Administrative duties for the Body Corporate
(b) the amount of Annual Contributions currently fixed by the Body Corporate as payable by the Owner of the Lot; and
(c) identify Improvements on Common Property for which the Owner is responsible; and
(d) list the the Body Corporate Assets required to be recorded on the Body Corporate Assets Register; and
(e) state whether there is a Committee for the Body Corporate (or a Body Corporate Manager is engaged to perform the functions of a Committee); and
(f) include other information prescribed under the Regulation Module applying to the Scheme.

It is important to note that any Disclosure Statement, as detailed above, which is provided to the Seller by the Body Corporate, or Body Corporate Manager, is required to be signed by the Seller, not the Body Corporate or BCM. And the information the BCCM Act requires to be included on this BCCM Disclosure Statement (as detailed above), is NOT the only information a Seller is obligated to make a proposed Buyer aware of!

Implied Warranties – BCCM Act Sect. 223

This is a critically important section of the BCCM legislation for Sellers as it basically requires the Seller to advise any proposed Buyer about any matter relating to Defects (latent or patent), or any actual, contingent or expected liabilities of the Body Corporate that are not part of the Body Corporate's normal operating expenses. And, the Seller is deemed to have knowledge of a matter if the Seller has actual knowledge of the matter or ought reasonably to have knowledge of the matter.

Furthermore, a Body Corporate currently has no obligation to provide such information as part of any Disclosure Statement under the BCCM legislation – but a Seller or Buyer can seek access to all Body Corporate records to try and satisfy themselves about these matters. As mentioned elsewhere, the engagement of a professional Search Agent, (approximate cost $300) is strongly recommended.

The ONE Thing that Dramatically Improves Apartment Living

This Chapter was contributed by Amanda Farmer - Director, 'Your Strata Property'

There is a secret to peaceful, profitable apartment living, and I'm going to share that secret with you here.

Over my 16 years working with apartment residents, Owners, Committee Members and Strata Managers, this one thing comes up again and again as the thing that separates the "terrific" Strata Communities from the "terrible".

In my experience:

A. if this thing exists, - your community enjoys:

- High property values
- Neighbourly relationships
- Enjoyable (or at least short!), productive Meetings
- Lower Strata Management fees
- Lower Building Management fees
- Lower legal fees
- Less or no Adjudication and court litigation
- Community events and engagement
- Upgrades and improvements to Common Property
- Timely and effective repairs and maintenance
- Happier residents all round

B. if this thing does <u>not</u> exist, - your community invariably suffers from:

- Reduced property values
- Conflict between neighbours
- Long, drawn out, uncomfortable Meetings
- High Strata Management fees
- High Building Management fees
- High legal fees
- Adjudication and court litigation
- No sense of Community and no engagement in Community activities
- Poor repairs and maintenance
- Lack of improvements to Common Property

- Disengaged, angry, irritable residents

You want A LOT of the Category A characteristics, and NONE of the Category B, right?

So how do you get there? What is this ONE thing?

The ONE THING is…

I won't keep you in suspense for too long.

The one thing is:

A properly functioning Strata Committee.

Of the many buildings I've been involved with over the years, it's the buildings with compliant, transparent, engaged, enthusiastic Committees that tick most of the Category A. items, and avoid the Category B. items.

Sounds simple huh? Well, not so.

It takes an incredible amount of hard work, commitment, stamina, and skill to make a Strata Committee work well, and to ensure that the Committee is effectively serving the broader Body Corporate.

When you also consider the fact that the positions held by Committee Members are most often volunteer, unpaid positions, the idea of sitting on a Committee begins to look less and less attractive to owners.

BUT with a great Committee, comes a great Community. One that all residents LOVE to live in, Owners LOVE to own in and others want to buy into.

The impacts of getting this one thing right reverberate deeply.

So, what makes a great Strata Committee?

The great Strata Committees I've worked with, watched from afar or been a part of, all have at least some of the following elements:

1. They conduct regular Committee Meetings (usually monthly, depending on the size of the building)

2. They have an awareness of and compliance with their legal obligations - both as Committee Members, a Committee as a whole, and as a Body Corporate.
3. They have a good working relationship with the Body Corporate Manager, involving them in all Meetings, seeking and taking their advice and involving them in decision making
4. Committee Members have a range of skills and come from a range of backgrounds: from retirees to young first homeowners, and are gender diverse
5. The majority of Committee Members are Owner occupiers
6. Committee Members understand the need to keep themselves up to date when it comes to the often changing legal and regulatory environment.

I WANT ONE! What next?

All of the above sounds like a pretty desirable situation - one that you'd like your building to be in, I'm sure.

So, how you do you get your building one of these super-star Strata Committees? Or how do you transform your current, dysfunctional Committee in to one of these high performers?

I believe there are two key action items any Strata Committee wanting to pick up its game needs to start with.

These are:

1. Regular Committee Meetings
2. Awareness of and compliance with legal obligations

In my experience, Committees that have at least these two items right are leaps and bounds ahead of their lost and confused counterparts.

Although I've listed them separately, these are also two items that absolutely go hand-in-hand: in order to know and meet your legal obligations, Strata Committee Members need to be meeting regularly. Strata Committees that meet regularly, have a forum in which to discuss, commit to and comply with their legal obligations.

What a neat circle.

I highly recommend that Strata Committee Meetings are formal, held in person as much as possible, and held in compliance with the Regulation Module applying to the Strata Scheme.

Committees who can get those two items right are well on their way to becoming the kind of high-functioning, super-star Committees that will dramatically improve the apartment living experience for every Owner and resident in their Community.

Visit Amanda's 'Your Strata Property' website here: YourStrataProperty.com.au

The Committee, and Member roles

"A decision (properly made) of the Committee, is a decision of the Body Corporate."

So, that gives the Committee very substantial authority, albeit that there are a few caveats:

a) All Resolutions/Decisions of the Committee need to be validly made i.e. correct procedures followed as are detailed below, and at a formal Committee Meeting, or by way of a properly conducted **V**ote **O**utside of a **C**ommittee Meeting (VOC).
b) The matter being decided is one that the Committee isn't prohibited from making a determination on i.e. it isn't a 'Restricted Matter' for the Committee.

The Body Corporate must elect a Committee at each Annual General Meeting. The Committee is made up of Lot Owners or people who act for them.

The Committee is in charge of:

- the administration and day-to-day running of the Body Corporate;
- deciding on proposed Budgets (and resulting Levies) to put to the Body Corporate for formal approval at General Meeting;
- making decisions on behalf of the Body Corporate;
- putting the lawful decisions of the Body Corporate into effect.

Unless otherwise stated, the following information applies to Schemes under these Regulation Modules:

Standard Module, Accommodation Module, Commercial Module

How the Committee is Elected

Number of Committee Members required:

- If the Scheme has fewer than 7 Lots, the maximum number will be equal to the number of Lots.
- If the Scheme has more than 7 Lots, the maximum will be 7—unless it is a Principal Scheme in a Layered Arrangement that has decided to increase its maximum number of Committee Members (but to no more than 12).

Owners that wish to Nominate for a position on the Committee need to ensure their Nomination Form is received by the Secretary or Body Corporate Manager before the end of the Body Corporate's financial year.

If insufficient Nominations have been received prior to the Meeting, and so the Committee is not filled to the 'maximum number' by the prior-received Nominations, the Chairperson must call for Nominations for Committee positions from the floor of the Meeting until the required maximum number is reached – or an attempt made. *[Note that this is a change from prior legislation where only the 'Minimum' number of Voting Members of a Committee needed to be achieved and then there was no mandatory requirement to call for further Nominations. Now (as it really always should have been), the emphasis is on attempting to fill the Committee.]*

The Committee will usually include a Chairperson, Secretary and Treasurer (known as the Executive positions). A person may hold all or any 2 Executive positions (but not an Ordinary Member position in addition to one or more Executive positions).

If multiple Nominations are received for any of the Executive positions, or more Nominations received for Ordinary Member positions than there are positions available, a ballot needs to be conducted. If the Scheme is under the Standard Regulation Module, and the Body Corporate has previously determined at General Meeting that a Secret Ballot is not required for a Committee ballot, then an Open ballot must be conducted, otherwise the Committee election must be determined by Secret Ballot, and a Returning Officer can be engaged but that is not mandated by the legislation.

Nominating for a Committee Position

Submitting a Committee Membership Nomination

Before the Annual General Meeting each year, the Secretary (or the Body Corporate Manager) must send a written invitation to each Lot Owner, giving them the opportunity to make a Nomination for Committee membership.

The invitation must be distributed to each Lot Owner at least 3 weeks before, but no more than 6 weeks before, the end of the financial year for the Scheme.

If an Owner wants to make a Nomination, they must send it back to the Secretary (or BCM) before the end of the Body Corporate's financial year.

When the Secretary (or BCM) receives a completed Nomination Form, they must let the Owner know they have received it. They must do this 'as soon as practicable', but (unfortunately) they are not required to say whether or not it is a valid Nomination at this time – so it is strongly recommended you specifically ask if your submission is valid!

Note that for a Scheme under the Commercial Module, there is no requirement for the Secretary (or BCM) to invite Nominations in the manner described above. Nominations can simply be invited at the AGM.

Number of Nominations Owners can submit

Each Lot Owner can only Nominate one eligible person for Committee Membership. However, the one person Nominated can be Nominated for more than one position on the Committee.

If there is more than one Owner of a Lot, only one Nomination may be made by the Owners of that Lot.

If multiple Lots are owned

If an Owner owns more than one Lot in the Scheme, they may be able to Nominate more than one person, as follows:

An Owner who owns two Lots can nominate two people.

An Owner who owns more than two Lots can Nominate:

- two people if there are less than seven Lots in the Scheme, OR;
- three people if there are more than seven Lots in the Scheme.

Examples: Ms Jones owns three Lots in a Scheme that includes six Lots. Ms Jones may nominate two people for election.

Mr and Mrs Brown co-own five Lots in a Scheme that includes twelve Lots. Mr and Mrs Brown may nominate three people for election.

Cannot owe the Body Corporate a debt

A Lot Owner cannot Nominate anyone for Committee Membership if the Lot Owner owes the Body Corporate money when the Secretary (or BCM) receives their Nomination.

Who is eligible to be nominated

The following sets out who Lot Owners can nominate for Committee Membership.

Who an individual can nominate:

A Lot Owner who is an individual can Nominate any of the following individuals:

- themselves;
- another Lot Owner;
- a person they have appointed as their Power of Attorney;
- a member of their family. [A family member means: the Lot Owner's spouse (including 'de facto' spouse); children of the Lot Owner (or the Lot Owner's spouse) who are over 18 (including a step-child or adopted child); the Lot Owner's parents or step-parents; the Lot Owner's brother or sister.]

Usually only 1 Co-Owner of a Lot can be appointed as a Voting Member of the Committee, on the basis of the ownership of that Lot, at a time. In some situations, if there are no other Nominations, more than 1 Co-Owner can be appointed to the Committee at the same time.

Co-Owners

While people who own the same Lot can both be nominated, a person who owns a Lot cannot be a Voting Member of the Committee at the same time as:

- a member of their family
- a person acting under authority of a Power of Attorney given by the Owner of the Lot
- a Co-Owner of the same Lot.

This would be unless:

- the minimum required number of Committee Members (3) has not been reached, OR;
- they own more than one Lot.

Who a Corporation can Nominate

A Lot Owner that is a Company may Nominate any of the following individuals [an authorised Corporate Nominee would need to submit the Nomination on behalf of the Company]:

- another Lot Owner
- a director of the Corporation
- the secretary of the Corporation
- another Nominee of the Corporation.

Who a Subsidiary Scheme can Nominate

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.

People who are not eligible to be Voting Members

A person is not eligible to be a Voting Member of the Committee if they:

- are a Body Corporate Manager for the Scheme, OR;
- are a Service Contractor for the Scheme, OR;
- are a Letting Agent for the Scheme, OR;
- conduct a letting business for multiple Lots in the Scheme, OR;
- are an Associate of any of the above, OR;

- are a Lot Owner who owes money to the Body Corporate when the Committee is chosen, OR;
- have been Nominated by a Lot Owner who owes money to the Body Corporate when the Committee is chosen.

Note that for a Scheme under the **Commercial Module**, a 'Service Contractor' e.g. a Facilities Manager is not prohibited from being elected to a Voting Member position if they were Nominated by an Owner, providing the 'Service Contractor' is not an 'Associate' of the Body Corporate Manager for the Scheme. Furthermore, under the Commercial Module, a Lot Owner can Nominate any individual to be a Committee member – there are not the familial, or Owner associations as are required by the other Modules.

Chairperson Role

The Chairperson must chair all General Meetings and Committee Meetings they attend. If the Chairperson is not at a Meeting, the voters who are there can choose another person to chair that Meeting.

When chairing a General Meeting , the Chairperson's duties include:

- ruling a Motion 'out-of-order' if it is: unlawful or unenforceable, if it conflicts with a By-Law, or if the substance of the Motion was not included in the Agenda for the Meeting;

  [If the Chairperson rules a Motion 'out-of-order' they must give reasons, and give the Meeting the chance to overturn their decision.]

- declaring the results of votes on Motions at the Meeting;
- confirming that each ballot paper is the vote of a person who has the right to vote in the Committee election (where a ballot for a Committee position is needed);
- declaring the result of an election for a Committee position.

Except for the matters detailed above, the Chairperson does not have more authority than anyone else on the Committee.

Essentially, 'Meeting governance' is the Chairman's role.

However, where a Scheme has contracted Management Rights i.e. there is a Caretaker/Manager, then that Manager's contractual Agreement with the Body Corporate will normally nominate the Chairman, by default, as the single person to be the 'contact point' with the Caretaker, unless the Committee decides that it will be another person. And a similar 'contact point' default arrangement also normally applies for the Body Corporate Manager with the Chairman as Committee liaison.

Secretary Role

The Secretary's duties include:

- sending out Notices for Meetings;
- asking for and receiving Nominations for Committee positions before an Annual General Meeting. If a Notice inviting nominations is forwarded to Lot Owners, the Secretary must also invite Owners to submit Motions for the Meeting;
- preparing the ballot papers for the Committee election, and sending them and the other material with the Meeting Notices;
- having all of the following available for viewing by voters at a General Meeting: the Roll, a list of the persons who have the right to vote at the Meeting, all Proxy forms and Voting Papers;
- receiving the completed Voting Papers for a General Meeting;
- receiving the completed Proxy forms for General and Committee Meetings;
- receiving Committee ballot votes for any Committee election.

The Secretary often takes Minutes of Meetings, although the legislation does not require them to do so, and some other person may be asked to carry out that duty e.g. the Body Corporate Manager.

If the Body Corporate has engaged a Body Corporate Manager, then generally the Body Corporate will authorise the BCM to perform the Secretary's duties, but the Body Corporate Manager must never act outside of the Committee's wishes or directions.

Treasurer Role

The Treasurer's duties under the legislation are limited.

A Treasurer may prepare budgets, manage funds and prepare Levy Notices, although the legislation does not require them to so, and some other person may be asked to carry out that duty e.g. the Body Corporate Manager.

If the Body Corporate has engaged a Body Corporate Manager, it may authorise the Body Corporate Manager to carry out the Treasurer's duties, but the Body Corporate Manager must never act outside of the Committee's wishes or directions.

Non-voting Members of the Committee

If the Body Corporate engages a Body Corporate Manager or a Caretaking Service Contractor, they are automatically Non-Voting Members of the Committee. As the name indicates, a Non-Voting Member does not have a right to vote on Committee decisions, but can otherwise fully participate in a Meeting, and, of course, play an important role.

Restrictions on Committee Decisions

No single Committee Member can make a Committee decision – valid Committee decisions are made by a majority vote of the 'Voting Members' of the Committee.

The Committee **cannot** make decisions about:

- setting or changing a Body Corporate Levy
- changing the rights, privileges, or obligations of Lot Owners
- decisions that must be made at a General Meeting by Ordinary Resolution, Special Resolution, Resolution Without Dissent or Majority Resolution
- Starting a legal proceeding, unless it is:
    a) to recover a liquidated debt against the Owner of a Lot;
    b) related to a proceeding where the Body Corporate is already a party;
    c) for an offence under the By-Law contravention provisions of the Body Corporate and Community Management Act ;
    d) a dispute resolution application lodged with The Office of the Commissioner for BCCM;

- Paying money to Committee Members unless it is:
    a) less than $50 incurred by a Committee Member attending a Committee Meeting, or;
    b) not more than $300 reimbursed to a Committee Member in a 12month period.

Code of Conduct for Committee Members

This is the statutory Code of Conduct for Voting Members of the Committee under the BCCM Act

1. Commitment to acquiring understanding of the Act, including this Code
A Committee Voting Member must have a commitment to acquiring an understanding of this Act (including this Code of Conduct), relevant to the Member's role on the Committee.

2. Honesty, fairness, and confidentiality
(1) A Committee Voting Member must act honestly and fairly in performing the Member's duties as a Committee Voting Member, and;
(2) A Committee Voting Member must not unfairly or unreasonably disclose information held by the Body Corporate, including information about an Owner of a Lot, unless authorised or required by law to do so.

3. Acting in Body Corporate's best interests
A Committee Voting Member must act in the best interests of the Body Corporate in performing the Member's duties as a Committee Voting Member, unless it is unlawful to do so.

4. Complying with the BCCM Act and this code

A Committee Voting Member must take reasonable steps to ensure the Member complies with this Act (including this Code of Conduct), in performing the Member's duties as a Committee Voting Member.

5. Nuisance

A Committee Voting Member must not
(a) cause a nuisance on Scheme land; or
(b) otherwise behave in a way that unreasonably affects a person's lawful use or enjoyment of a Lot or Common Property.

6. Conflict of interest

A Committee Voting Member must disclose to the Committee any conflict of interest the Member may have in a matter before the Committee.

Some Attributes of a Good Committee Member

- A Member that is always considerate of other Members (and Owners) and respects that they are entitled to their views on issues, and to express those views – albeit in a reasonable manner.
- A Member that isn't disruptive in Meetings.
- A Member that doesn't join in order to further a particular personal agenda.
- A Member that always tries to attend the Meetings, and always responds promptly to email, VOC voting, etc.
- A Member that respects the protocol of Committee Meeting discussions and doesn't initiate or promulgate gossip about internal Committee matters to non-Committee members of the community.
- A Member that does some preparation for each Meeting in reviewing the prior Minutes, reading the upcoming Agenda, and reviews the correspondence and financial reports, and alerts the Body Corporate Manager, and other Members of any queries they might have on any of the material or upcoming issues.
- A Member that takes some care when considering matters before the Committee and always 'acts reasonably' in arriving at their decision on each matter – and provides their reasons for their decisions.
- A Member that makes some effort to gain some reasonable understanding of the legislation, or at least those parts of the legislation that impinge on matters they have to take into account in conducting Committee and Body Corporate affairs.

Six Indicators a Committee is Functioning Well

1. **The Committee Meetings are short and productive.**
   When Committee Meetings drag on much beyond an hour and a half at most, it's a sign that perhaps the Meetings are not being run well, and it's also likely there are other problems.
   Of course there are always reasons that will be offered for long drawn-out Meetings, but rarely is there any cogent justification that things need to be this way.
   Invariably there will be some matters a Committee has to deal with that are more difficult and maybe complicated, but when discussion bogs down, or is becoming unproductive, it's probably time to change tack and consider some catalysts that might move things forward e.g. getting some outside expertise and guidance or setting up a Sub-Committee to work on the matter outside of the Committee formal Meeting forum.

2. **Agenda items aren't carried forward Meeting after Meeting without resolution.**
   A Committee that is working well won't have items on its Agenda that have been carried forward for what seems like ages without being resolved. Issues that aren't being resolved in a reasonable timeframe perhaps need to be handled differently – again, maybe seeking outside advice as a catalyst, or establishing a Sub-Committee to address them and report back to the Committee.

3. **Members are courteous and respectful of each other.**
   This is so critical. Good Committees are always polite and respectful of other Members and acknowledge their right to have an opinion. A diversity of opinion maybe, but voiced in a reasonable way.

4. **Members are aware of the 'Code of Conduct' and conduct themselves accordingly.**
   All Members need to be aware of this statutory Code that they are expected to adhere to, and the principles behind it.

5. **The Committee Minutes include the reasoning behind decisions.**
   See **Appendix 2**. In relation to this important issue.

6. **A good deal of work is achieved outside of the formal Meetings.**
   Things need to be done outside of the formal Committee Meetings if matters are going to progress with any efficiency.
   A Committee where the Members appreciate that they need to keep communicating with each other, and their Body Corporate Manager, between formal Meetings, is a sign that the Committee is working well.
   And the formal Meetings will be so much more productive, efficient, and shorter when the 'nuts and bolts' have already been sorted, and all that is required is for the Committee to briefly discuss the issue and formally vote on it if that is necessary.

Committee Member Absence from Meetings

A Committee Member's position becomes vacant if they are not present personally or by Proxy at two consecutive Committee Meetings without 'leave of absence' being granted by the Committee, however a Committee may have agreed to 'attendance' via telephone or other electronic means.

Committee Resolutions/Decisions

Each Voting Member of the Committee has 1 vote on any matter decided by the Committee. Even if an Executive Member holds more than 1 position on the Committee, they still have only 1 vote. For example, if a person is both a Secretary and a Treasurer, they only have 1 vote on the Committee.

To vote, a Voting Member of the Committee must be present at the Meeting (and they can be present by videoconference or teleconference if the Committee has approved such methods of participation), or represented by a Proxy – see further information below about Proxy use for Committee members.

No single Committee Member can make a Committee decision – valid Committee decisions are made by a majority vote of the 'Voting Members' of the Committee.

Rights of Owners to Submit Committee Motions

If an Owner wants the Body Corporate Committee to decide an issue, they can submit a Motion to be considered by the Committee.

A copy of the 'Owner-Submitted Motion' can be given to the Secretary (or the Body Corporate Manager): personally, by post, or by electronic communication.

The Committee should not make a decision about an 'Owner-Submitted Motion' if:

- it is a Restricted Issue for the Committee, or;
- it conflicts with the Act, Regulations or any By-Law, or a Motion already voted on at the Committee Meeting, or;
- it is unlawful or unenforceable.

If the Committee can make a decision on an 'Owner-Submitted Motion', they will need to decide within 6 weeks after the day the Motion was submitted (i.e. the 'decision period')—unless the Committee needs more time.

If more time is needed to consider the 'Owner-Submitted Motion', the Committee will need to give the Owner who submitted the Motion written notice within the 'decision period', and the notice will need to state:

- that the Committee needs more time to decide, and;
- why the Committee needs more time, and;
- a reasonable deadline for the Committee to decide about the Motion (i.e. an 'extended decision period')—no more than 6 weeks after the 'decision period'.

The Committee doesn't have an obligation to (but may) make a determination about an 'Owner-Submitted Motion' if the Lot Owner has, within the last 12 months, submitted:

- a Motion about the same issue, or;
- 6 or more Motions.

The Committee will need to advise the Lot Owner if this is why they are not going to make a decision on their Motion.

The 'Owner-Submitted Motion' will be deemed 'not passed' if the Committee does not decide within the 'decision period' or 'extended decision period'.

Conflict of Interest

If a Committee Member or their Proxy is about to vote on a Motion being decided at a Committee Meeting or by a vote outside a Committee Meeting (a VOC) they must disclose any direct or indirect interest in the issue.

If a Member discloses a direct or indirect interest in the issue the Member is not entitled to vote on a Motion involving the issue.

This applies if the interest could conflict with the appropriate performance of the Member's duties.

[Note that these 'Conflict of Interest' considerations do not apply to any Lot Owner (including a Committee Member or Caretaker), when it comes to voting on Motions at a General Meeting.]

Committee Member's Right to Vote if Debt Owed

A Committee Member will not be able to vote at a Committee Meeting or vote outside a Committee Meeting (a VOC) if, at the time of the vote:

- they owe a Body Corporate debt, or;
- they are not a Lot Owner, but the entity (Company or person) that nominated them owes a Body Corporate debt.

A Proxy cannot be exercised for a Committee Member who owes a Body Corporate debt.

A Committee Member that owes a debt, cannot exercise a Proxy for another Member.

Passing the Committee Motion

A Motion is 'Carried' at a Committee Meeting if a majority of Voting Members present and entitled to vote, have voted in favour of the Motion. If there is a tied vote the Motion is lost.

For example, if there are 7 Voting Members present, a majority is 4 Members. If there are 6 Voting Members present, 4 votes will still be needed to pass a Motion.

Proxies

A Voting Member of the Committee can appoint another Voting Member of the Committee as their Proxy. The Proxy can then vote for the Committee Member at a Committee Meeting.

To appoint a Proxy, the Voting Member must complete the Proxy form and give it to the Secretary (or Body Corporate Manager) before the start of the Committee Meeting (or at an earlier time if one is set by the Body Corporate).

Restrictions on Proxy use for Committee Meetings

There are restrictions on the use of proxies for Committee Members at their Meetings.

Restrictions include:

- A voting member of the Committee can only hold 1 Proxy.
- The Secretary or Treasurer can only appoint a Proxy with the Committee's approval.
- A Body Corporate Manager or a Caretaking Service Contractor cannot hold a Proxy for a Voting Member of the Committee (because they are Non-Voting members).
- A Proxy cannot be used for a Committee Member who owes a Body Corporate debt.

A Proxy lasts for 1 Committee Meeting and ends after that Meeting.

The Body Corporate can pass a Special Resolution to limit or ban Committee proxies.

A Proxy cannot be exercised for a Committee Member who owes a Body Corporate debt.

A Committee Member that owes a debt, cannot exercise a Proxy for another Member.

Voting outside a Committee Meeting (VOC)

The Committee can make decisions without holding a formal Committee Meeting. This is sometimes called a 'flying minute' or a 'VOC'.

To vote outside a Committee Meeting, notice of the Motion must be given to all Committee Members. The Committee Members must vote on the Motion in writing (or by electronic submission).

Committee Members must ensure their vote is received by the Secretary or BCM within 21 days of the VOC Notice being given.

Advice of the Motion must be given to all Lot Owners at the same time that Committee Members are notified of the Motion.

Passing the Motion

The Motion is decided if:

- A majority of the Voting Members of the Committee entitled to vote on the Motion (not just a majority of those who return a vote) agree to the Motion, i.e. the Motion is '**Carried**' OR;
- half or more than half of all the Voting Members of the Committee do not agree to the Motion, i.e. the Motion has then been '**Defeated**'.

If the Committee Members do not decide within 21 days of receiving notice of the VOC, the Motion is considered to be not agreed to.

A copy of the outcome of the Motion must be given to each Committee Member and Lot Owner. The decision about the Motion must be confirmed at the next formal Committee Meeting.

To pass a Motion a majority of all Voting Members who are voting and are eligible to vote (not just a majority of those who return a vote on the VOC) must be in favour of the Motion.

A record of the Motion voted on must be given to all Committee Members and all Owners within 21 days after the Motion is decided.

Emergency vote

In an emergency, notice of the Motion only needs to be given to those Committee Members that it is reasonably practical to contact.

Votes can be made verbally or in some other form. Advice of the Motion can be given to Owners when it is reasonably practical to do so.

Any Motion voted on outside a Committee Meeting (a VOC) must be confirmed at the next formal Committee Meeting.

Who can call a Committee Meeting

A Committee Meeting is called by either:

- the Secretary
- the Chairperson in the Secretary's absence
- in the absence of both the Secretary and Chairperson, any other Committee Member can call a Meeting if sufficient Members to form a Quorum agree to the calling of a Meeting.

The Meeting must be held within 21 days after the Secretary or Chairperson receives the request to call it.

If the Meeting is not held within 21 days, the Meeting may be called by another Member of the Committee if enough Members to form a Quorum agree.

The Secretary and Chairperson may be presumed absent if no reply is received to the request within 7 days after it has been sent to the Body Corporate address for service.

Meeting notices

Written notice of a Meeting must be given to each Committee Member (including Non-Voting Members). The notice must be given at least 7 days before the Meeting or at least 2 days if all Voting Members agree in writing or agreed at the last Meeting.

Each Lot Owner must be given a copy of the notice and Agenda (unless they request otherwise). It must also be put on the Body Corporate notice board, if one exists.

Agenda

The notice of the Meeting must include an Agenda that lists the issues to be considered, however the Committee can also consider other issues that are not on the Agenda.

The Agenda must 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 (by way of a VOC).

Quorum for a Committee Meeting

A Quorum is the minimum number of Members that must be present before a Meeting can start. For a Committee Meeting a Quorum is at least half the Voting Members of the Committee.

If there are 6 Voting Members of the Committee, a Quorum is 3.

If there are 7 Voting Members of the Committee, a Quorum is 4.

Chairing a Meeting

The Chairperson must chair all Committee Meetings he or she attends. If the Chairperson is absent, another Member can be chosen to chair the Meeting by those present who are eligible to vote.

Who can Attend a Committee Meeting

Non-Voting Committee Members can attend Committee Meetings but will be required to be absent for certain Agenda items if decided by the Committee. For example, if the Committee are discussing the person's contracted engagement the person must not be present. (This does not apply to Schemes under the Commercial Module.)

Lot Owners or their Representatives who are not Committee Members (non-members) have the right to attend a Committee Meeting.

A Lot Owner or their Representative must give the Secretary (or BCM) at least 24 hours written notice of their intention to attend.

A Representative of an Owner when giving notice of intention to attend will need to include:

- their residential or business address, and;
- the name of the Lot Owner they are representing, and;
- evidence the Owner has asked them to represent them at the Meeting, unless their name is already on the Body Corporate Roll as a Representative for that Lot Owner, and;
- whether they are: a member of the Owner's family, acting under the Power of Attorney of the Owner, director, secretary, or other nominee of a company that owns the Lot.

Any Lot Owner or their Representative can be asked to leave for certain Agenda items (for example, a discussion or vote on a By-Law contravention by the Lot Owner) if decided by the Committee.

Any other person can be invited to attend a Committee Meeting by the Committee (a majority vote of the Committee).

A Non-Member attending does not have the right to speak to the Meeting unless invited to do so, and they can be directed to leave if they do not comply with a Committee direction at the Meeting.

Minutes of a Committee Meeting

The Committee must keep 'full and accurate' Minutes of each Committee Meeting. Full and accurate Minutes include:

- the date, time, and place of the Meeting
- the names of people present and details of the capacity in which they attended the Meeting (e.g. a Committee Member or a Lot Owner or the Representative of a Lot Owner)
- details of Proxies tabled
- the words of each Motion voted on
- the results of voting on Motions, including the votes 'For' and 'Against'
- details of any correspondence, reports, notices, or other documents tabled
- the time the Meeting closed
- details of the next scheduled Meeting
- the Secretary's name and contact address.
- See also **Appendix 2**. regarding the Committee giving reasons for decisions.

The Minutes of a Committee Meeting must be given to each Lot Owner within 21 days of the Meeting unless the Lot Owner has told the Secretary in writing that they do not want to receive a copy of the Minutes.

Notice of Opposition

The Notice of Opposition provision only applies to Schemes under the Standard Module Regulation.

A Notice of Opposition is a document, signed by or for the Owners of at least half the Lots in the Scheme opposing a 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 or a copy of the result of a vote outside a Committee Meeting (VOC) at which the Resolution was passed.

However, a Notice of Opposition cannot be given if:

- it involves spending of not more than either $200 or $5 multiplied by the number of Lots in the Scheme (whichever is greater), and;
- it involves a decision of a routine, administrative nature.

When the Committee can Act on its Decision

A Committee can act on the passed Resolution only if:

- no Notice of Opposition is given (Standard Module only), OR;

- there is an emergency (for example a burst water pipe on the Common Property) and the spending is within the relevant limit for Committee spending or an Adjudicator has authorised the Committee to do so, OR;
- the Resolution has been previously approved by Ordinary Resolution at a General Meeting, OR
- the Resolution is of a routine, administrative nature and the cost is not more than the greater of $200 or $5 multiplied by the number of Lots in the Scheme.

Informal Committee Meetings

The legislation is 'silent' on Informal Committee Meetings, - there is no prohibition on them - and Adjudicators have acknowledged that they do occur – but there have been warnings!

There is also no doubt that an informal Meeting of the Committee can be very helpful in streamlining the Committee's Agenda, and serving a useful purpose in discussion on matters to assist in arriving at a consensus and preferred direction, BUT Committees need to always be aware, that a Committee decision can only be valid if it was made either at a formal Committee Meeting, or by way of a validly conducted VOC. So it's not difficult really – if at the Informal Meeting the Committee has decided it wants to do something, then following the Informal Meeting, the Chairman or other Member delegated to do so, ensures that either a VOC is issued on the matter, or, if a formal Meeting is imminent, the matter is on the Agenda of the Meeting so as the Committee can vote on it.

So, a few guidelines:

- To ensure transparency, and avoid any divisiveness, it is recommended that whenever possible all of the Committee are invited to any Informal Meeting;
- Be aware that no decision can be binding until it has been formally voted on by the Committee by way of a VOC, or at a formal Committee Meeting;
- Adjudicators have warned that Informal Meetings even with follow-on VOCs should never become such a 'feature' (or substitute) that Owners might suspect that formal Committee Meetings are being avoided for a reason!

Sub-Committees

The legislation is 'silent' on the Committee establishing a sub-Committee. There is no prohibition on them - and Adjudicators have acknowledged that it is a practice that is used in some Bodies Corporate.

But there are some provisos that are the same as for Informal Committee Meetings. For example, a sub-Committee will normally be set up as a temporary affair to assist the Committee in investigating a particular matter and make recommendations back to the Committee. Any sub-Committee has no formal standing or authority, and a decision of the sub-Committee is not a

decision of the Committee, and is not binding on the Committee or the Body Corporate but is just a 'tool' to assist the Committee. A sub-Committee might be composed of just some of the Committee Members, but it might also include Owners who aren't Committee members, or might include outside consultants – there are no rules on the composition or the operation of any sub-Committee.

Whenever the Committee decides to set up a sub-Committee for a particular purpose, it would be good practice for the Committee Minutes to reflect that decision, and indicate that in due course the sub-Committee will report back to the Committee so that the Committee can further consider the matter involved.

Committee spending

The following information is for Community Titles Schemes registered under the:

- Standard Module
- Accommodation Module

[There is no Committee Spending Limit for Schemes operating under the Commercial Regulation Module, except that the Committee cannot approve any spending on an 'Improvement' to CP.]

Committee spending limits

(See also **Appendix 1.**)

- The relevant limit for Committee spending (how much money a Committee can spend) can be changed by Ordinary Resolution of the Body Corporate (i.e. a Motion voted on by the Owners at a General Meeting). There is no minimum or maximum limit that the Body Corporate can set.
- If no amount is set by a General Meeting Resolution the relevant limit is calculated by multiplying the number of Lots in the Scheme by $200.
- For example, in a Body Corporate with 6 Lots, the relevant limit is $1,200 ($200 x 6).

GST included

- The Committee must allow for any goods and services tax (GST) in its spending.
- For example, the Committee spending limit for a Scheme made up of 12 Lots is $2,400 (12 x $200).
- The Committee has a quote for maintenance of $2,300 plus GST. The total amount, including the GST is $2,530. This is more than the Committee's spending limit of $2,400.
- The Committee would need approval by Ordinary Resolution at a General Meeting to accept this quote.

Available funds

- Before the Committee approves any spending within its limit it will need to be sure there is enough money allocated in the Budget for the specific expense.
- The Committee can call a General Meeting to amend the Budget or raise a Special Levy if there is not enough money available.

Spending in stages

The Committee cannot divide a single project into smaller parts in order to bring the project within its spending limit.

For example, the Committee for a Scheme made up of 25 Lots is limited to spending $5,000 (25 x $200). The Committee wants to renovate the main foyer and has obtained quotes. The costs are:

- tiles $2,800
- light fittings $3,000
- paint $1,200

Even though each quote is below the Committee's limit, it cannot start the renovations because the whole project is over the spending limit.

The Committee would need approval by Ordinary Resolution at a General Meeting to commence it.

Spending over the Committee spending limit

(See also **Appendix 1.**)

The Committee can only spend over its Relevant Limit if:

- the spending is authorised by an Ordinary Resolution of the Body Corporate, OR;
- the Owners of all Lots in the Scheme have given written consent, OR;
- an Adjudicator has authorised the spending to meet an emergency, OR;
- the spending is needed to comply with a statutory order or notice given to the Body Corporate, or the order of an Adjudicator, or the judgment or order of a court, OR;
- the spending is for the required insurance policy premiums.

Quotes for spending

- The number of quotes that a Committee needs to consider when making decisions is determined by the 'Relevant Limit for Major Spending'.
- The Body Corporate may set the 'Relevant Limit for Committee Spending' higher than the 'Relevant Limit for Major Spending' by the Scheme.

- The Committee must have at least 2 quotes for any spending that is more than the 'Relevant Limit for Major Spending' by the Scheme.
- For example, if the 'Committee Spending Limit' is $12,000 and the 'Major Spending Limit' is $10,000, any spending over $10,000 but under $12,000 can be approved by the Committee if it gets and considers at least 2 quotes.
- The Body Corporate can obtain extra quotes even if the legislation does not require it.

The 'Major Spending Limit' = the lesser of $10,000 or $1,100 x the number of Lots in the Scheme. (For a Principal Scheme, this 'number of Lots' includes the Lots in the Subsidiary Schemes.)

Spending that is not permitted

- The Committee cannot spend more than the 'Committee Spending Limit'.
- It can only spend on items provided for in the Budget.
- If there is no provision in the Budget for the expense, the Committee cannot authorise the spending even if the amount is within its spending limit.
- A Committee cannot spend on items that are required to be approved by a General Meeting Resolution.
- A Committee should not spend funds above the level approved by the Body Corporate.

Improvements to Common Property

A Body Corporate Committee can organise Improvements to the Common Property. The authority of the Committee is again set by spending limits.
[Note that for Schemes under the Commercial Regulation Module, the Committee cannot approve spending on any 'Improvement to Common Property', all such matters must go before a General Meeting.]

Removing a Committee Member

The legislation provides TWO ways that a Committee Member can be removed from office. One is convoluted and difficult, the other is far simpler – but there is a catch.

The Body Corporate can begin action under the legislative provisions relating to a breach of the Committee 'Code-of-Conduct'. It is a rather complicated process as you can see below. The Body Corporate must:

- First pass an Ordinary Resolution deciding to give the Committee Member a breach notice, and;

- give the Committee Member a breach notice that includes the things stated in the relevant section of the Regulation that applies to the Scheme, and;
- allow the Committee Member to make a written response to the notice, and;
- pay the Committee Member's costs of sending out the response, if asked, and;
- attach the breach notice to the Agenda of the General Meeting considering a Motion to remove the Member from the Committee.

Alternatively, a Motion (Ordinary Resolution) can simply be put on the Agenda of a General Meeting by the Committee or any Owner, and if Carried, the Member is immediately removed from office. No reason needs to be stated in the Motion, and no Explanatory Note needs to be included – and perhaps it would be wise not to because there is an implied requirement in the legislation that if the reason, or one of the reasons, for removing the Member is a 'Code-of-Conduct' issue, then the matter should be addressed by the first, and more arduous method.

Filling a Vacancy on the Committee

If a Member has been removed from office by way of a General Meeting Motion, then the vacancy must be filled by way of a Motion at the same General Meeting, or by calling a new General Meeting – there is no need to call Nominations, although the Committee is not precluded from doing that if they wish.

If the vacancy has arisen in another way e.g. a Member voluntarily resigns, or becomes ineligible to continue in office because, say, they sell their Lot, then the Committee can themselves decide to fill the vacancy with whoever they want, albeit the person needs to fulfill the eligibility requirements.

Liability Protection for the Committee

A Committee Member is not civilly liable for an act done or omission made in good faith and without negligence in performing the person's role as a Committee Member.

However this protection does not extend to a Committee Member, acting outside of their Committee Member role, that publishes any defamatory matter.

Body Corporate Managers (BCMs)

Code of Conduct for BCMs

Body Corporate Managers are not 'Service Contractors' as defined by the Legislation. They are contracted by the Body Corporate to supply administrative services, however Body Corporate Managers and Service Contractors share this common Code of Conduct.

1. Knowledge of Act, including this Code of Conduct

A Body Corporate Manager or Caretaking Service Contractor must have a good working knowledge and understanding of this Act, including this Code of Conduct, relevant to the person's functions.

2. Honesty, fairness, and professionalism

(1) A Body Corporate Manager or Caretaking Service Contractor must act honestly, fairly, and professionally in performing the person's functions under the person's engagement.

(2) A Body Corporate Manager must not attempt to unfairly influence the outcome of an election for the Body Corporate Committee.

3. Skill, care and diligence

A Body Corporate Manager or Caretaking Service Contractor must exercise reasonable skill, care, and diligence in performing the person's functions under the person's engagement.

4. Acting in Body Corporate's best interests

A Body Corporate Manager or Caretaking Service Contractor must act in the best interests of the Body Corporate unless it is unlawful to do so.

5. Keeping Body Corporate informed of developments

A Body Corporate Manager or Caretaking Service Contractor must keep the Body Corporate informed of any significant development or issue about an activity performed for the Body Corporate.

6. Ensuring employees comply with Act and this Code of Conduct

A Body Corporate Manager or Caretaking Service Contractor must take reasonable steps to ensure an employee of the person complies with this Act, including this Code of Conduct, in performing the person's functions under the person's engagement.

7. Fraudulent or misleading conduct

A Body Corporate Manager or Caretaking Service Contractor must not engage in fraudulent or misleading conduct in performing the person's functions under the person's engagement.

8. Unconscionable conduct

A Body Corporate Manager or Caretaking Service Contractor must not engage in unconscionable conduct in performing the person's functions under the person's engagement.

Examples of unconscionable conduct—

1. taking unfair advantage of the person's superior knowledge relative to the Body Corporate

2. requiring the Body Corporate to comply with conditions that are unlawful or not reasonably necessary

3. exerting undue influence on, or using unfair tactics against the Body Corporate or the Owner of a Lot in the Scheme

9. Conflict of duty or interest

A Body Corporate Manager or Caretaking Service Contractor for a Community Titles Scheme (the first Scheme) must not accept an engagement for another Community Titles Scheme if doing so will place the person's duty or interests for the first Scheme in conflict with the person's duty or interests for the other Scheme.

10. Goods and services to be supplied at competitive prices

A Body Corporate Manager or Caretaking Service Contractor must take reasonable steps to ensure goods and services the person obtains for or supplies to the Body Corporate are obtained or supplied at competitive prices.

11. Body Corporate Manager to demonstrate keeping of particular records

If a Body Corporate or its Committee requests, in writing, the Body Corporate Manager to show that the manager has kept the Body Corporate Records as required under this Act, the manager must comply with the request within the reasonable period stated in the request.

Getting the best out of your BCM

Reasonable expectations of your BCM

- Prompt and courteous responses
- Minimal administrative errors
- Accurate management of the financials
- Excellent knowledge of the BCCM legislation
- Productive Committee Meeting contributor
- Personable and approachable

The above list isn't all of the facets we could list of course, but it's a compilation of the more important attributes.

So what should a Committee's approach be to their relationship with their BCM?

We would suggest they make their reasonable expectations – like the list above- well known to the Manager, and if there are any prolonged shortcomings, or lapses, they respectfully point these out to the Manager, and expect a meaningful response as to getting things back on track.

If matters don't improve, it could be productive to speak with the Portfolio Manager's supervisor, or a senior manager (or owner) of the business.

Deciding to switch to another management company should be a last resort – it is usually a big step, and sometimes the outcome isn't what was hoped for. Any new company will of course 'promise the world' when pitching for your business, but it's all up to the actual Portfolio Manager who will be handling your account, and it won't always turn out well.

The other frustration for Committees is when the management company switch Portfolio Managers on a Body Corporate – and with some companies, these portfolio 'musical chairs' can be undesirably frequent.

Changing BCMs

Don't make changing Managers a first resort when experiencing issues. Try to work with the Portfolio Manager, and, if necessary senior company personnel, to get things working the way the Committee wants them – give the BCM a chance to get things fixed, and attending to any 'issues' earlier rather than later is always best.

If it is a 'personality clash' type of issue, then talking to the management of your BCM about giving you a different Portfolio Manager, might be a better solution than changing management companies – it's certainly an alternative worth considering.

If, finally, the Committee decides a change of BCM is the route they need to go down, then the Committee should embark on a bit of research, interviews, and talking to some of the clients (Committee Members) of possible candidate companies.

Price shouldn't be the most important criteria that is focused on! The Committee wants to make an excellent selection to put before Owners at General Meeting, and the BCM's ability to work well with the Committee should surely be the overriding consideration – not achieving the lowest price.

Digitisation of Body Corporate Records

This matter is a bit of a 'ticking time-bomb'. Why? Because currently in the legislation there are no prescriptive guidelines about the standards for how this should be done. So, as things stand at the moment, a BCM on their way out, can handover to the incoming BCM, gigabytes of digitised records that are unsorted, uncategorised, and with files with meaningless names. And this 'handover' is likely compliant with the current legislative requirements. This is currently happening, and needs intervention from the Govt.

Almost all Bodies Corporate would have no idea how their records will be handed across to their next BCM – but they have reason to be concerned. Unfortunately, getting a true and accurate answer to the question will be another matter entirely.

General Meetings i.e. an AGM or EGM

There are only two types of Body Corporate General Meetings:

a) The Annual General Meeting (AGM), which must be held annually, and;
b) An Extraordinary General Meeting (EGM) - any General Meeting that isn't the AGM, is an EGM.

The Annual General Meeting

At an Annual General Meeting, your Body Corporate will decide matters such as:

- annual budgets
- annual Levy contributions
- insurance
- the election of the Committee.

The Body Corporate must hold an Annual General Meeting each year.

The Annual General Meeting should take place:

- within 3 months of the end of the Body Corporate's financial year
- at least 21 days after the notice of the Meeting is given to Lot Owners.

[Note that if circumstances arise that make it reasonable and/or unavoidable for a Body Corporate to be late in holding their AGM, the Commissioner has indicated that it is now no longer necessary to make formal application to have this approved.]

The Secretary must send a letter to all Lot Owners 3 to 6 weeks before the end of the Body Corporate's financial year, inviting Lot Owners to submit Motions for the Annual General Meeting, and inviting Nominations for Committee positions.

The financial year

The financial year for a Body Corporate is rarely the same as the tax year (1 July to 30 June). The financial year for your Body Corporate is determined by either the year the Body Corporate was set up or by the date of the first Annual General Meeting, or a date approved by an Adjudicator's Order e.g. a Body Corporate can make application to change their financial year date.

Who can call an Annual General Meeting

The following people can call the Annual General Meeting:

- a Voting Member of the Committee (usually the Secretary) who has been authorised by the majority of the Committee Voting Members
- a Non-Voting Member of the Committee (i.e. a Body Corporate Manager) who has been authorised by the majority of the Committee Voting Members
- someone who has been authorised by an Adjudicator's order.

Electronic Voting

A Body Corporate first needs to have resolved by an Ordinary Resolution at General Meeting to allow Owners to vote electronically as the first step to introducing it as a voting option and part of the Meeting process.

Once this Resolution is on record, Electronic Voting can be used at all future General Meetings.

The relevant instructions about how Owners are to vote electronically, if that option is available, should be sent with the rest of the Meeting documentation.

The vote must be made according to the Electronic Transactions (Queensland) Act 2001, and the relevant sections of the BCCM Act and the Regulation Module applying to the Scheme.

The Electronic Voting platform used for the voting needs to be capable of:

- rejecting votes cast by a person who is either ineligible to vote, OR has already voted on the Motion, AND;
- only allow the Secretary to receive the votes (or the Body Corporate Manager if they have been so authorised by the Committee), unless the Vote is a Secret Ballot Vote, then the Returning Officer should be the only person to receive the Voting Papers.

The instructions provided to Owners need to make it clear if the Electronic Voting platform is capable of accepting a vote after the Meeting has commenced, or if all voting via the platform needs to be completed prior to the Meeting commencing – even 24 hours before commencement if that is what the instructions state.

Voters should be able to withdraw their electronic vote at any time before the result is declared. If the electronic voting platform doesn't provide for this, then the Body Corporate Manager and/or Committee need to ensure it can be done by manual intervention.

Electronic Secret Ballot Voting

Electronic Voting platforms will either be capable of facilitating voting on a Secret Ballot, or they won't. The Committee and Body Corporate Manager need to make Owners aware of the situation, and always endeavour to comply with the legislative requirements for Secret Ballots.

With Secret Ballots, the Electronic Voting platform needs to provide access to the nominated Returning Officer, with the Chairperson or Body Corporate Manager being sent the vote results after they've been certified by the Returning Officer.

Electronic Voting for Committee Elections

The Electronic Voting platform may also be capable of facilitating these ballots.

Overriding Consideration

The overriding consideration is always that Owners must not be discriminated against, and no Owner, or class of Owner should be disadvantaged in regard to their right and ability to exercise a vote.

Make sure your preferences are known

Don't assume the Body Corporate Manager has your current preferences properly recorded. If you want Voting Papers mailed to you, rather than emailed, make sure they know. If you're happy to vote electronically, let them know. You must advise your wishes in this regard in writing.

Giving Lot Owners Notice of the Meeting

Each Lot Owner must be given a written notice of the Annual General Meeting. It is the Secretary's job (usually done by the Body Corporate Manager) to send the Notice taking into account information about who is authorised to call the Meeting.

The Notice must be given to the Lot Owner personally or sent to the address for service for the Lot, or via email, or by making it available via an on-line portal (if the Owner has accepted that method of delivery as being acceptable).

The Meeting Notice & documentation sent to Owners must include:

- the time and place of the Meeting
- an Agenda
- a Proxy Form
- a Company Nominee Form
- a Voting Paper for all Open Motions

- any Explanatory Schedule or explanatory material
- relevant attachments and documents for each Motion as might be required by the Regulation Module applying to the Scheme
- Committee ballots—including Secret Voting documentation if required
- copies of proposed budgets
- insurance details, including, the name of the insurer, amount of insurance cover, type of cover (a summary), amount of the premium, date the cover expires, details of any commission payable to the Body Corporate Manager
- a statement of accounts
- a copy of the Register of Reserved Issues.

For all Motions to be decided by Secret Ballot, the documentation sent to all Owners must also include:

- a Secret Voting Paper;
- an envelope marked 'Secret Voting Paper' with attached 'Particulars Tab'; OR, a separate outer 'Particulars Envelope', with separate envelope marked 'Secret Voting Paper' to go inside the 'Particulars Envelope';
- instructions regarding electronic voting if that facility is also being made available.

Agenda

The Agenda must include:

- any Motions submitted by the Committee
- any Motions submitted by Lot Owners—which the Secretary must have received before the end of the Body Corporate's financial year
- a Motion to confirm the Minutes of the previous General Meeting (AGM or EGM)
- any Statutory Motions, including:
    a) Presenting the Body Corporate's financial accounts for the financial year;
    b) Appointing an auditor of the Body Corporate's financial accounts for the next financial year, or deciding not to audit the accounts;
    c) Adopting Administrative Fund and Sinking Fund budgets for the financial year;
    d) Reviewing each insurance policy held by the Body Corporate.

Voting papers

The Secretary (or Body Corporate Manager) must prepare one Voting Paper that includes all Open Motions to be decided at the Annual General Meeting.

The Secretary must also prepare a Secret Voting paper for any Motion/s to be decided at the Meeting by Secret Ballot. If there are two or more Motions that need a Secret Ballot, they can appear on the same Secret Voting Paper.

A Voting Paper must:

- state each Motion, as it was submitted, to be considered at the Meeting—including any 'Group of Same-Issue Motions'
- state the name and Lot number of the person who submitted the Motion or state 'Motion proposed by the Committee'
- state the type of Resolution needed for each Motion
- allow Voters to record a written vote on each Motion to be considered at the Meeting
- say 'Secret Voting Paper' (if it is a Secret Voting Paper)
- state if there is an Explanatory Note for the Motion included in the Explanatory Schedule
- give instructions on how a Voter can vote electronically for an Open or Secret Motion (if it is an option).

Explanatory Schedule

The Explanatory Schedule is part of the Notice of an Annual General Meeting. It includes material about Motions on the Agenda such as:

- any Explanatory Note (of no longer than 300 words) about a Motion given to the Body Corporate by an Owner (the Explanatory Note is optional and is supplied by the person submitting the Motion)
- an Explanatory Note that the Administrative Fund or Sinking Fund budget may be adjusted
- the Motions submitted to the Body Corporate and voting instructions for a Group of Same-Issue Motions.
- for a Motion proposing a change to the Regulation Module an Explanatory Note in the approved form explaining the effect of any proposed change.

The Committee may include an Explanatory Note to the Owners' Motions if the Committee's Explanatory Note is included with the Notice of Meeting on a separate Explanatory Schedule.

The Committee is not subject to a word limit when including an Explanatory Note.

The Different Types of Motion Resolutions

The 'Ordinary Resolution'

Ordinary Resolutions are the most common type of General Meeting Resolution.

A Motion is passed by Ordinary Resolution if the votes counted for the Motion ("YES" votes) are more than the votes counted against the Motion ("NO" votes).

Most Voting Paper (VP) styles used by Body Corporate Managers include a third selection a Voter can make – to opt to "ABSTAIN".

Voters that either select/circle "ABSTAIN" or choose to make no selection at all for a particular Motion (they have therefore abstained from voting on the Motion whether they've circled "ABSTAIN" or not) play no role in the calculations to decide whether the Motion has been 'CARRIED' or not. What's tallied are the "YES" votes and the "NO" votes.

Examples of Motions which need an Ordinary Resolution include:

- adopting Administrative and Sinking Fund budgets
- setting annual Body Corporate Contributions.

Each Lot has 1 vote on a Motion that can be decided by Ordinary Resolution, however, a person entitled to vote can ask for a 'Poll Vote' which will then entail the Votes being counted differently – see details below.

When a Poll Vote can and can't be used

A Poll Vote can only be used on a Motion that is to be decided by Ordinary Resolution, and additionally, a Poll Vote cannot be used on a Motion that is to be determined by way of a Secret Ballot.

When voting normally on a Motion to be decided by Ordinary Resolution, each Lot has 1 vote, but a Poll Count is a different way of counting votes for the Motion, that takes into account the Contribution Lot Entitlements for each Lot that has voted.

Asking for a poll

Any person entitled to vote at a General Meeting can ask for votes to be counted by way of a Poll Count (but only on a Motion to be decided by Ordinary Resolution).

The person must ask for the Poll Count:

- in person, at the Meeting
  OR,
- on the Voting Paper, whether or not the Voter is present at the Meeting, OR;
- by sending a request for a Poll Count on a particular Motion, to the Secretary or BCM prior to the Meeting, allowing sufficient time for the request to be received and processed.

The request for the Poll Count:

- can be made whether or not the Meeting has already voted on the Motion, and;
- can be withdrawn by the person who asked for it at any time before the Poll Count process is finished.

The request for a poll must be made:

- before the Meeting decides the next Motion (if it is not the last Motion) or,
- before the Meeting ends (if it is the last Motion).

Counting votes if a Poll is asked for

Instead of counting each vote 'For' and 'Against' a Motion, a Poll counts the Contribution Lot Entitlements of the Lots voting 'For' and 'Against' the Motion.

The Motion is passed only if the total 'Contribution Lot Entitlements' of the Lots that vote 'For' the Motion are more than the total Contribution Lot Entitlements of the Lots that vote 'Against' the Motion.

For example, a Scheme has 8 Lots, and all Lot Owners are entitled to vote on a Motion that is to be decided by Ordinary Resolution.

Three Owners vote 'For' the Motion ("YES" votes) and 5 Owners vote 'Against' the Motion ("NO" votes). The Motion is lost, because there are more votes 'Against' the Motion than in favour of the Motion.

However, an Owner immediately asks for a Poll Vote. The votes must now be re-counted taking into account the Contribution Lot Entitlements for the Scheme.

The Owners of 3 Lots voted in favour of the Motion. These Owners have different Contribution Lot Entitlements.

Lot 1 has 1 Contribution Lot Entitlement.

Lot 2 has 3 Contribution Lot Entitlements.

Lot 3 has 4 Contribution Lot Entitlements.

The tally of the votes 'For' the Motion is 8.

The Owners of the other 5 Lots voted 'Against' the Motion. These Owners all have 1 Contribution Lot Entitlement each.

The tally of the votes 'Against' the Motion is 5.

Under the Poll Vote count method, the Motion is 'Carried' — 8 in favour and 5 against.

NOTE: Any Owner (or his representative) who is contemplating calling for a Poll Vote needs to be sure about the possible Lot Entitlement calculations – the Poll Vote count might well deliver them an outcome the opposite of what they were hoping for!!

The 'Special Resolution'

A Motion is passed by Special Resolution only if:

- at least two-thirds of the votes cast are in favour of the Motion, **and**;
- the number of votes 'Against' the Motion is not more than 25% of the total number of Lots in the Scheme, **and**;
- the total Contribution Lot Entitlements of the votes 'Against' the Motion is not more than 25% of the total Contribution Lot Entitlements for all Lots in the Scheme.

All 3 conditions must be met for the Motion to pass by Special Resolution. If any one of the conditions is not met the Motion is not Carried.

The types of Motions which need a Special Resolution include:

- consent to record a new Community Management Statement (CMS) to change the Body Corporate By-Laws (not including Exclusive-Use By-Laws, which require a 'Resolution Without Dissent')
- an improvement to Common Property costing more than $2000 times the number of Lots in the Scheme.

'Resolution Without Dissent' (RWD)

A Motion is passed by 'Resolution Without Dissent' only if there are no votes 'Against' the Motion.

Examples of Motions which need a 'Resolution Without Dissent' are:

- a proposal to sell or dispose of part of Common Property
- to consent to record a new Community Management Statement (CMS) to amend or add an Exclusive-Use By-Law.

'Majority Resolution'

'Majority Resolutions' are uncommon.

A Motion is passed by Majority Resolution if the votes counted for the Motion ("YES" votes) are more than 50% of the Lots whose Owners are entitled to vote on the Motion. Votes must be in writing. Proxies are not allowed.

An example of a Motion which needs a Majority Resolution is a Motion to transfer a Letting Agent's Management Rights.

Grouping of 'Same-Issue Motions'

The legislation amendments that came into force in 2021 replaced the 'Motion with Alternatives' requirements for dealing with Motions about the same issue e.g. multiple quotes for the same works, with a new method, called – 'Group of Same-Issue Motions'

Here's how it works:

If there are 2 or more Motions proposing alternative ways of dealing with the same issue, these Motions must be grouped together. The Committee must list these 'original Motions' as a 'Group of Same-Issue Motions' on the Agenda and the Voting Paper.

A voter can:

- vote "YES" to any or all Motions in the group;
- vote "NO" to any or all Motions in the group;
- "ABSTAIN" from voting on any or all Motions in the group.

To determine which Motion in the group is successful, there are 2 main steps:

- identify the 'Qualifying Motions', and;
- identify the successful 'Qualifying Motion'.

Identifying the 'Qualifying Motions'

Each Motion in the group will have a Resolution type (e.g. Ordinary Resolution or Special Resolution) and there may be a mix of Motions with different Resolution types within a group.

A Motion can only pass if it first satisfies the requirements of its Resolution type. A Motion that receives enough votes to satisfy its Resolution type is called a 'Qualifying Motion'.

If there is only 1 'Qualifying Motion' in the group, it is then automatically the decision of the Body Corporate.

If there are no 'Qualifying Motions', the decision of the Body Corporate is that is no original Motion in the group was 'Carried'.

Identifying the successful 'Qualifying Motion'

The 'Qualifying Motion' that receives the highest number of "YES" votes will be the successful Motion.

Where 2 or more 'Qualifying Motions' receive an equal-highest number of "YES" votes, the "NO" votes against the Motions will also be considered. In this case, the Motion with the least "NO" votes against it will be the successful Motion.

Where 2 or more "Qualifying Motions' are tied on their "YES" votes and their "NO" votes, the successful Motion will be decided by chance. The form of chance to be decided at the Meeting e.g. drawing straws, tossing a coin.

Explanatory Material for a 'Group of Same-Issue Motions'

If a Voting Paper contains a 'Group of Same-Issue Motions', then the Explanatory Schedule that forms part of the Meeting documentation must include the following information:

(a) the title of the 'Group of Same-Issue Motions' as shown on the Agenda for the meeting;

(b) a list of each original Motion that is part of the 'Group of Same-Issue Motions';

(c) each original Motion whose substance is stated in the form in which it was submitted;

(d) any Explanatory Note about each original Motion, given to the Secretary (or the BCM) by the submitter of the original Motion, provided the note is no longer than 300 words;

(e) an Explanatory Note stating that:

(i) voters may vote on each of the original Motions that are part of the group; and

(ii) votes are counted for all original Motions that are part of the group before the Body Corporate's decision is determined; and

(iii) if a Motion is a 'Qualifying Motion', the Motion qualifies to be a decision of the Body Corporate; and

(iv) an original Motion cannot be amended at the General Meeting; and

(v) if no original Motion receives sufficient votes to pass according to the type of Resolution required for the Motion the decision of the Body Corporate is that none of the original Motions are passed.

Example of a 'Group of Same-Issue Motions' – Foyer Refurbishment

This example calls into play two important sections of the Legislation – 'Improvement to Common Property by a Body Corporate' and 'Grouping of Same-Issue Motions'.

In this hypothetical Scheme comprising 25 residential apartment Lots, Joe Bloggs is the Owner of Lot 12.

Three months out from the Body Corporate's financial-year end, Joe sent an email to the Body Corporate Manager and Committee which included details of a Motion for re-painting and re-carpeting the foyer, and requested that the Motion be included on the Agenda of the forthcoming AGM.

Joe's proposal was a modest one, covering re-painting, replacement of the carpet and furniture.

Refurbishment of the foyer had been on most of the Owners' minds for some time – and a 'spruce up' was well overdue.

The Committee had been busy with other matters, but the arrival of Joe's proposed Motion now took some precedence because if the Owners were only presented with this option, it stood a good chance of 'getting up'.

The Committee could try and talk Joe into withdrawing or modifying his Motion, but after a deal of discussion the Committee felt it would be better for them to put up a similarly priced option, but a better one. The Committee felt that Joe's proposal had two major drawbacks. Firstly it provided for only one option for the re-painting colours, and only one design and choice for the replacement carpet, and both were nearly identical to the existing colours. The other issue was that the Committee felt that this could be a lost opportunity, and now was the time to suggest a major upgrade of the foyer – and the installation of air-conditioning, replacement of all glass with tinted glass, and replacement of carpet with marble tiles, were all discussed at length.

The Committee quickly set up a Sub-Committee to get to work, and it was decided to engage an interior decorator consultant to work-up proposals.

By the time the financial year-end had arrived, the Committee's plans for their foyer proposals were firmed up. They would submit three Motions.

The first of the three Committee Motions would be a similarly modest one to Joe's proposal, just new furniture, re-painting, and re-carpeting, but with a modern colour palette that the Committee felt sure Owners would prefer over Joe's proposal. Joe's proposal was to cost $7,800, the Committee's similar proposal was to cost a bit more at $9,500.

But it was the Committee's full refurbishment proposal that was to be the focus of everyone's attention for the next few months. It was costed at $52,000 and would require a lot of marketing and lobbying by the Committee if it was going to be successful. But the Committee, and those Owners who were already enthusiastic about it realised the significant increase in value such a beautiful entrance foyer would bring to the building.

To fund this more expensive proposal, the Committee were faced with the Sinking Fund Report only provisioning $15,000 for foyer maintenance, and with significant other building works imminent, did not think it prudent to exceed a contribution from the Sinking Fund greater than the current indicative provision of $15,000 without supplementing the Fund with additional contributions. So it was decided that a Sinking Fund Special Levy for the balance would be proposed to Owners.

At about this time, the Body Corporate Manager advised the Committee of another 'hurdle' for the full-upgrade option, - that the proposal contained costly elements that didn't constitute 'like-for-like replacement' e.g. marble tiles replacing carpet, and it also incorporated some totally new items e.g. air-conditioning. This, the Body Corporate Manager advised meant that the proposal constituted an '**Improvement'** to Common Property, rather than just '**Maintenance**' of Common Property, and this in turn meant that this Motion would require a 'Special Resolution' because the cost of the total project exceeded the 'Ordinary Resolution Improvement Limit', which is $2,000 x number of Lots in the Scheme – in our case here, that equals $50,000.

So, much more expensive, and needing the more onerous 'Special Resolution' to 'getup'. It was going to be a challenge.

To further complicate matters, the cost of the Committee's refurbishment proposal also exceeded the 'Major Spending Limit' for the Scheme ($10,000) and so the Committee would have to obtain at least two quotes for the work, and submit at least two of those quotes as separate Motions, - with those Motions also forming part of the 'Group of Same-Issue Motions'.

Here are the basics of the four Motions:

Joe Bloggs' Motion – Ordinary Resolution required, Cost $7,800, monies to come from the Sinking Fund.

Committee's First Motion - Ordinary Resolution required, Cost $9,500, monies to come from the Sinking Fund

Committee's Second Motion - Special Resolution required, Cost $52,000, to be funded as follows:

$15,000 from the Sinking Fund reserves, and;

$37,000 by way of a Sinking Fund Special Levy, over four periods. All Lots have equal Contribution Lot Entitlements, so this would represent a Special Levy of $370 per Lot for each of the four instalments.

Committee's Third Motion - Special Resolution required, Cost $55,000, to be funded as follows:

$15,000 from the Sinking Fund reserves, and;

$40,000 by way of a Sinking Fund Special Levy, over four periods. All Lots have equal Contribution Lot Entitlements, so this would represent a Special Levy of $400 per Lot for each of the four instalments.

The Voting Paper

Because these four Motions are each about foyer refurbishment, they must be handled as a '**Group of Same-Issue Motions**'.

It is the Committee's responsibility to organise the Agenda and Voting Paper, and so the Committee can decide how these four Motions are ordered on the Voting Paper, albeit that the legislation mandates that a Group of Same-Issue Motions must be listed in the following order on the Voting Paper:

- Any Resolutions Without Dissent, then;
- Any Special Resolutions, then;
- Any Majority Resolutions, then;
- Any Ordinary Resolutions.

As you can see below, our group of four Motions are listed in the required order.

Motion 6.1

Group of Same Issue Motions – 'FOYER REFURBISHMENT'

Submitted by: The Committee

Special Resolution

That the Body Corporate accepts the quotation from Urban Commercial Outfitters for $52,000 inclusive of GST for refurbishment works to the foyer, all in accordance with the terms and conditions and specification as included with this Meeting documentation.

Monies for the works to be provided as follows:

$15,000 from the Sinking Fund reserves, and;

$37,000 by way of a Sinking Fund Special Levy, over four periods. All Lots have equal Contribution Lot Entitlements, so this would represent a Special Levy of $370 per Lot for each of the four instalments. These Special Levy instalments will issue at the same time as the normal Levy period timing.

Explanatory Note: *The Committee obtained two quotes for the refurbishment project. The Committee is happy with the cheaper of the two, and recommends a 'Yes' vote to this Motion and a 'No' vote to Motion 6.2*

YES	NO	ABSTAIN

Motion 6.2

Group of Same Issue Motions – 'FOYER REFURBISHMENT'

Submitted by: The Committee

Special Resolution

That the Body Corporate accepts the quotation from City Interiors for $55,000 inclusive of GST for refurbishment works to the foyer, all in accordance with the terms and conditions and specification as included with this Meeting documentation.

Monies for the works to be provided as follows:

$15,000 from the Sinking Fund reserves, and;

$40,000 by way of a Sinking Fund Special Levy, over four periods. All Lots have equal Contribution Lot Entitlements, so this would represent a Special Levy of $400 per Lot for each of the four instalments. These Special Levy instalments will issue at the same time as the normal Levy period timing.

Explanatory Note: *The Committee obtained two quotes for the refurbishment project. The Committee is happy with the cheaper of the two, and recommends a 'Yes' vote to Motion 6.1 and a 'No' vote to this Motion (6.2)*

YES	NO	ABSTAIN

Motion 6.3

Group of Same Issue Motions – 'FOYER REFURBISHMENT'

Submitted by: The Committee

Ordinary Resolution

That the Body Corporate accepts the quotation from Urban Commercial Outfitters for $9,500 inclusive of GST for painting and carpeting works to the foyer, all in accordance with the terms and conditions and specification as included with this Meeting documentation.

Monies for the works to come from the Sinking Fund.

YES	NO	ABSTAIN

Motion 6.4

Group of Same Issue Motions – 'FOYER REFURBISHMENT'

Submitted by: Lot 12, Joe Bloggs

Ordinary Resolution

That the Body Corporate accepts the quotation from Acme Painters and Decorators for $7,800 inclusive of GST for painting and carpeting works to the foyer, all in accordance with the terms and conditions and specification as included with this Meeting documentation.

Monies for the works to come from the Sinking Fund.

YES	NO	ABSTAIN

The Voting Outcome

With our hypothetical AGM, let's say the votes on our 'Group of Same Issue Motions' went like this:

Motion 6.1

Group of Same Issue Motions – 'FOYER REFURBISHMENT'

Submitted by: The Committee

Special Resolution

YES: **21**	NO: **2**	ABSTAIN: **2**

This being a Special Resolution Motion, it must fulfil these three conditions in order to 'pass':

- at least two-thirds of the votes cast are in favour of the Motion, **and**;
- the number of votes 'Against' the Motion is not more than 25% of the total number of Lots in the Scheme, **and**;
- the total Contribution Lot Entitlements of the votes 'Against' the Motion is not more than 25% of the total Contribution Lot Entitlements for all Lots in the Scheme.

And because the vote does pass all three of these conditions, then in the parlance of 'Group of Same-Issue Motions', it is deemed to be a **'Qualifying Motion'**.

Motion 6.2

Group of Same Issue Motions – 'FOYER REFURBISHMENT'

Submitted by: The Committee

Special Resolution

YES: **0**	NO: **20**	ABSTAIN: **5**

This being a Special Resolution Motion, it must fulfil these three conditions in order to 'pass':

- at least two-thirds of the votes cast are in favour of the Motion, **and**;
- the number of votes 'Against' the Motion is not more than 25% of the total number of Lots in the Scheme, **and**;
- the total Contribution Lot Entitlements of the votes 'Against' the Motion is not more than 25% of the total Contribution Lot Entitlements for all Lots in the Scheme.

Because the vote does NOT pass any of these three conditions, it is deemed **NOT to be a 'Qualifying Motion'.**

Motion 6.3

Group of Same Issue Motions – 'FOYER REFURBISHMENT'

Submitted by: The Committee

Ordinary Resolution

YES: **15**	NO: **5**	ABSTAIN: **5**

This is an Ordinary Resolution Motion, and meets the condition of more 'Yes' votes than 'No' votes, and so this also is deemed to be a '**Qualifying Motion**'.

Motion 6.4

Group of Same Issue Motions – 'FOYER REFURBISHMENT'

Submitted by: Lot 12, Joe Bloggs

Ordinary Resolution

YES: **5**	NO: **15**	ABSTAIN: **5**

This is also an Ordinary Resolution Motion, but doesn't meet the condition of more 'Yes' votes than 'No' votes, and so this is **NOT a 'Qualifying Motion'**, and is now 'out of the race'.

Final Outcome of 'Foyer Refurbishment' Vote

Motions 6.1 and 6.3 are both **'Qualifying Motions'** and the deciding factor is now down to which of these two 'Qualifying Motions' received the greater number of 'Yes' votes, and it was Motion 6.1, so that Motion is the decision of the Body Corporate in this Foyer Refurbishment matter.

Who is Allowed to Vote at a General Meeting

An individual (referred to as a 'Voter') can vote at an AGM or EGM if that individual has their name recorded on the Body Corporate's Roll as the:

- Owner of a Lot, OR;
- Representative of a Lot Owner, OR;
- Nominee of a Corporation that owns a Lot, OR;
- Representative for a Subsidiary Body Corporate, OR;
- A person that has a valid Power of Attorney (P.O.A.) with rights to vote on the relevant matter.
- However, if a Body Corporate debt (any amount) is owed by a Lot, then no vote can be cast by that Lot except on a Motion to be decided by Resolution Without Dissent.

More Limits & Rules about 'Voters':

An appointed Representative can't be the Original Owner except by way of a P.O.A. given under Sect 211 or 219 of the Act., **AND**;

Can't be the BCM, or Caretaking Contractor, or other service contractor, **AND**;

A Representative appointed by way of a P.O.A. can only act for more than ONE Lot if:

(a) the Owner of each Lot is the same person, **OR**;

(b) for each Lot, the Representative is a family member of the Lot Owner, **OR**;

(c) the P.O.A. is given under Sect 211 or 219 of the Act.

[Note that this limitation on a P.O.A. doesn't currently apply to a person appointed as a Representative of the Owner by way of some other instrument e.g. a letter of appointment.]

Power of Attorney given to the Developer by a Lot Owner

Most Owners that buy an apartment 'Off-the-Plan' will provide to the Developer the right to exercise a 'limited' Power of Attorney (POA), or a Proxy on their behalf, or both. The Developer's solicitor will usually include these Power of Attorney and Proxy provisions in the Sales Contract documentation.

What these Power of Attorney and Proxy provisions are for

A Developer will generally want to ensure certain General Meeting Motions proceed in a manner that aligns with his interests in the Scheme.

Usually however, significant Motions will be passed at an EGM held shortly after the Scheme is Registered, and before any Lot sales are settled. The Developer at this stage is the sole Lot Owner and so the exercise of any POAs or Proxies is not required, but for any subsequent General Meetings, with other Lot Owners now 'on-board', the Developer may choose to exercise POAs held to ensure voting on any relevant Motions proceeds as he wishes.

The type and Extent of POAs given to Developers

The BCCM Legislation requires that a prospective Owner must be provided with a 'POA Disclosure Statement' that sets out the ways in which the POA may be exercised, and for what purposes – hence it is a 'limited' POA, limited in accordance with that Statement.

Sect 211 of the BCCMA covers a POA given by a prospective Owner to the Developer, in relation to a Lot in an existing Scheme. This POA has a maximum duration of one year.

Sect 219 of the BCCMA covers a POA given by a prospective Owner to the Developer, prior to the Scheme being Registered i.e. an 'Off-the-Plan' purchase. This POA expires one year after the Scheme is established or changes.

A typical 'POA Disclosure Statement', will include details and provisions that enable the Developer to exercise a Vote on almost any Motion. In addition there is also a provision that allows the Developer to act as Proxy for the Owner, albeit this would seem to be of limited or zero usefulness given that a POA is more 'powerful' under the BCCM legislation.

Disclosure of all POAs is a mandatory requirement

The Legislation requires a Developer to provide to the Body Corporate for its records, all details of any POAs held.

Exercise of a POA by the Developer

There is no requirement for a Developer to advise the Lot Owner that a POA held is going to be exercised, and so when it happens, it often comes as a surprise to the Owner who may have forgotten that they executed the POA section of the Contract documentation. A Lot Owner may

have submitted a Vote on a Motion or Motions that the Developer, exercising a POA, also votes on, and so in these circumstances, the Lot Owner's Vote will not be counted.

Determining if a Quorum Exists

This process is a bit more complicated than might be initially thought when reading through the legislation, however Adjudication case law and District Court case law has served to clarify things – but putting this into daily practice takes a degree of care if mistakes are to be avoided. Calculating a Quorum is a dynamic thing – for example, a Company Nominee Form submitted just prior to the Meeting commencing will change the Quorum calculations if prior to that there was no Nominee form on file.

Quorum = 25% (rounded up) of 'Voters' who are 'Present', with two of those 'Present' being 'Present Personally' i.e. in attendance at the meeting in person or by way of video or teleconference facility.

(A Scheme can vote at General Meeting and by Special Resolution to reduce the default 25% - but the minimum permitted is 10%. A Scheme can also, separately, decide by General Meeting decision that only ONE Voter needs to be 'Present Personally' rather than the default two Voters. Additionally a Scheme can decide by Ordinary Resolution that a 'Voter' is considered 'Present Personally', as distinct from just 'Present', at a Meeting if they Vote by electronic means, such as by video or teleconferencing conferencing)

Three primary issues need to be determined:

1. how many '**Voters**' are in the Scheme at the time of the General Meeting (because this is a dynamic number), **and**;
2. how many '**Voters**' are '**Present**' for the General Meeting.
3. Of the '**Voters**' that are '**Present**', how many are '**Present Personally**' ('Present Personally' is defined as present at the Meeting in person, or in attendance by way of video or teleconference type facility.)

A '**Voter**' for a General Meeting of the Body Corporate is an individual that has their name recorded on the Body Corporate's Roll as the:

- Owner of a Lot, OR;
- Representative of a Lot Owner, OR;
- Nominee of a Corporation that owns a Lot, OR;
- Representative for a Subsidiary Body Corporate, OR;
- A person that has a valid Power of Attorney (with rights to vote on the relevant matter).

[Note that a Proxy/Proxy holder is NOT a 'Voter' – it is the Owner or Representative of the Owner that appoints the Proxy that is, and remains, the 'Voter', - the action of appointing a Proxy does not pass the 'Voter' status to the Proxy.]

'Voters' = any individual, (irrespective of whether the Lot owes a debt),

(a) **whose name is entered on the Body Corporate's Roll as the Owner of a Lot in the Scheme, or the Representative, Proxy, Power of Attorney, or Corporate Nominee of the Lot Owner, or;**

(b) **who is a subsidiary Scheme representative.**

A 'Voter' = Owner, Representative, POA, Corporate Nominee, and is only counted once. But this 'count once' rule does not apply to a Proxy holder.

'Present' = those 'Voters' who are 'personally present', or have submitted a Voting Paper or Electronic Vote. 'Voters' that represent a Lot that owes a Body Corporate debt are still counted as 'Voters' – but may not exercise a vote except on a Motion to be decided by Resolution Without Dissent.

If a 'Voter' appoints a Proxy, then that Voter is automatically deemed to be 'Present'.

For more detailed explanation and analysis on Quorum Calculation you can download this PDF document.

ParkAvenueStrata.com.au/docs/QuorumCalculation.pdf

Open Ballots and Secret Ballots

Open Ballots

Most Motions of a General Meeting will be decided by the process of 'Open Voting' or an 'Open Ballot'.

Voting in person at the Meeting

You can vote in person at a General Meeting by:

- a show of hands
- giving a completed written Voting Paper to the Secretary (or if the Secretary is not present, the person chairing the meeting) before the Meeting commences.

Voting by Voting Paper

You can make a written vote by completing a Voting Paper and giving it, or sending it, to the Secretary (or the Body Corporate Manager) before the start of the General Meeting.

A written vote can be given by hand, by post, by email, or by fax.

Voting by Proxy

A Proxy is a person who represents a Voter at a General Meeting.

A Proxy is appointed by completion of the Proxy Form and giving or sending it to the Secretary (or Body Corporate Manager) before the start of the Meeting (unless an earlier time is set by the Body Corporate).

A Proxy:

- can be appointed by anyone who has the right to vote at a General Meeting
- must be a named individual
- cannot be transferred to a third person
- ends at the end of the Body Corporate's Financial Year (unless a shorter period is listed on the Proxy Form).

Voting electronically

A Body Corporate can decide by Ordinary Resolution to allow Voters to vote electronically – it can't be compulsory, only one of the options.

The electronic voting platform utilised needs to ensure compliance with the legislative provisions of the BCCM Act and Regulations for Open Votes (and for Secret Votes if the platform facilitates Secret Ballot voting).

Secret Ballots

The Legislation prescribes that some particular Motions must be decided by way of a Secret Ballot rather than an Open Ballot. The reasons for this are that these matters may be sensitive, contentious, or linked to valuable contracts e.g. matters involving the Contract Agreements with Caretakers and Managers.

Apart from those types of Motions where the Legislation makes it mandatory for the voting to be by way of a Secret Ballot, a Committee or Body Corporate can determine that some other Motion is to be determined by a Secret Ballot.

Secret Ballot Voting can only be done by way of the special Secret Ballot Voting Papers issued, OR by way of an electronic voting platform if the Body Corporate has previously agreed to allow electronic voting.

The Body Corporate MUST engage a Returning Officer for any Meeting where there is any Motion on the Agenda to be decided by a Secret Ballot – no exceptions!

In the case of Committee Election Ballots, if they are required to be conducted by way of Secret Ballot, there is no Legislative requirement to engage a Returning Officer for the Committee Secret Ballot – however a Body Corporate could still decide to engage one.

For Schemes under the Standard Regulation Module a Secret Ballot for Committee election is the mandatory default, which can be changed to an Open Ballot for Committee elections by way of a General Meeting Ordinary Resolution.

For Schemes under the Accommodation or Commercial Regulation Modules an Open Ballot for Committee election is the mandatory default, which can be changed to a Secret Ballot for Committee elections by way of a General Meeting Ordinary Resolution.

Confidentiality and Secret Ballots

The whole premise of the Secret Ballot provisions is to separate the credentials of the Voter, from their Vote – so that it is never able to be determined how a particular Voter cast their Vote. But what if a particular Voter doesn't care about this confidentiality – doesn't care if how they voted is known? Well, that aspect was considered by an Adjudicator, and that Adjudication has now provided some guidance for Returning Officers.

[Florentino Apartments QBCCMCmr 253 (21 May 2015)]

In essence, one Voter identified themselves by writing their details on the Secret Ballot Paper, and the Returning Officer invalidated their vote because of this. The Adjudicator's reasoning for the Order that the Vote shouldn't have been invalidated was that the Secret Ballot process was in place to protect Voter confidentiality, if they wished to avail themselves of it, but if a Voter made their details known and thereby linked how they voted to their credentials, this was not a reason to invalidate the Vote.

Here are excerpts from the Order:

"…It is evident that the purpose of the Secret Ballot process is to ensure that the identity of the Voter is kept separate from the Vote, so that the way each person has voted is not known. This ensures that Owners are free to Vote as they choose, without risking repercussions. As such, the system exists to protect the Voter. Secrecy is the means to this end, and not the end itself…

The specific voting procedures in the Legislation exist to protect Voters from having their voting intentions disclosed without their consent. It does not of itself prevent Voters from choosing to disclose their voting intentions…

I do not consider that the fact that this Vote was identifiable affected the integrity of the Secret Ballot. Accordingly, I do not accept that there was any valid basis to reject the Vote. I will make an order declaring that the Vote was validly cast."

Use of Proxies

Prohibited Use of Proxies:

1. **For the Election of Committee Members**
- Standard and Accommodation Modules – Proxies cannot be exercised.
- Commercial Module – Proxies are permitted
2. **When appointing a BCM, Caretaker, or other Service Contractor OR amending or terminating their Contract**
- Applies for all Regulation Modules
3. **For any Motion to be decided by Secret Ballot**
- Applies for all Regulation Modules

When a Proxy is invalid

(and so all votes cast by the Proxy holder are also invalid)

- When the 'Voter' that appointed the Proxy is an invalid Voter (see 'Who is Allowed to Vote at a General Meeting' section)
- No prescribed Proxy Form correctly completed and signed is on file on the Roll.
- When the Proxy exceeds the prescribed maximum number that can be held by one person. (5% if the number of Lots in Scheme is equal or greater than 20, and 1 if the number of Lots in the Scheme is less than 20)

  [Note that a Proxy holder is not a 'Voter', but rather is the agent of a 'Voter', and so the Voter behind the Proxy must be validated.]

Companies/Corporations and Proxies

A Company cannot appoint a Proxy

Despite the Crown Towers Adjudication the law hasn't changed, and the legislation is quite clear: only a 'Voter' can appoint a Proxy, and a 'Voter' must be an individual – and a Company/Corporation isn't the 'Voter' entity, it is the Nominee appointed to represent that Company/Corporation. In the Crown Towers Adjudication, the Adjudicator excused the fact that the Proxy form named the Corporation as the Proxy nominating entity rather than the Company Nominee – because the Nominee relevantly signed the form, and so was seen as the Proxy nominating entity.

A Company Nominee can appoint a Proxy.

(so can a POA, Mortgagee in Possession, Authorised Representative – any of these can, themselves, appoint a Proxy).

Amending a Motion at the Meeting

A Motion (other than an Original Motion that is part of a 'Group of Same-Issue Motions') can be amended at a General Meeting by the people present and who have a right to vote, BUT, an amendment cannot change the subject matter of the Motion.

The person chairing the Meeting must introduce a Procedural Motion to enable a vote to take place by those present and entitled to vote.

If the Procedural Motion to amend the original Motion is Carried, then the original Motion, once amended, is referred to as the Amended Motion.

Counting the votes for the Procedural Motion and the 'Amended Motion'

When counting the votes 'For' and 'Against' a Procedural Motion to amend a Motion, or counting the votes for the 'Amended Motion' itself, a person who is not present at the Meeting personally or by Proxy, but would, if present, have the right to vote, then:

- if the person had not cast a hard copy or electronic vote on the Motion in its original form—must not be counted as voting 'For' or 'Against' the Procedural Motion to amend, or the Amended Motion; or
- if the person had cast a hard copy or electronic vote on the Motion in its original form—must be counted as voting 'Against' the Procedural Motion to amend, and the Amended Motion

Declaring a Motion 'Out-of-Order'

The legislation requires the person chairing the Meeting to rule any Motion 'Out-of-Order' if the Motion would, if it was 'Carried':

- conflict with the Legislation or the Body Corporate By-Laws, OR;
- conflict with another Motion already voted on at the Meeting, OR;
- be unlawful or unenforceable for another reason, OR;
- the substance of the Motion was not included on the Agenda for the Meeting.

Reasons must be given

The person chairing the Meeting must give reasons for ruling a Motion out-of-order, and these reasons must be recorded in the Minutes.

Overruling the Chairman's 'Out-of-Order' Decision

Those who attend the Meeting and are entitled to vote may, by Ordinary Resolution, reverse an 'Out-of-Order' ruling. Such a reversal vote would be by way of a Procedural Motion and must be recorded in the Minutes.

Deadlines for Submitting Votes for a Meeting

Hardcopy Voting Papers for the Open Motions i.e. not any Motions to be decided by Secret Ballot, need to be received by the Secretary (or the Body Corporate Manager) before the commencement of the Meeting.

Hardcopy Voting Papers for any Secret Ballot Motions need to be received by the Returning Officer before the RO commences the vote count.

If a system for handling **voting electronically** has been implemented, and that system can accept votes whilst the Meeting is in progress, then the deadline for submission of a Vote would be before the Chairman closes off votes on each particular Motion. If there are limitations of the voting system's capabilities in this regard, then all Voters should be made aware of them to avoid misunderstandings. Additionally, the Committee or the Body Corporate Manager may have decided that electronic voting closes off prior to the Meeting commencing, and maybe even 24 hours or so prior. Again, this information needs to be made known in advance to all Owners so they can prepare accordingly.

For those in **attendance at the Meeting, either personally or by way of video or teleconference** (if those arrangements have been approved by the Body Corporate), then voting on a Motion is closed when the Chairman announces that the votes on the Motion have been counted.

Except by Order of an Adjudicator, no Vote on an Open Motion or Committee election Open Ballot can be counted if it is received by the Secretary or Body Corporate Manager after the Meeting has ended.

Except by Order of an Adjudicator, no Vote on a Motion to be decided by Secret Ballot or a Vote for Committee election by Secret Ballot can be counted if it is received by the Returning Officer after the Meeting has ended.

The Role of the 'Returning Officer'

When a 'Returning Officer' must be used

The Body Corporate MUST engage a Returning Officer for each **General Meeting where any Motion is to be decided by Secret Ballot**.

This includes Meetings where it is not a legislative requirement that a particular Motion be determined by Secret Ballot, but the Committee or Body Corporate decided to have it determined by Secret Ballot.

For example, if the Committee is proposing a Motion, considered to be contentious, to repaint part of the Common Property a different colour, they may decide that the Motion would be better determined by way of Secret Ballot - and so in this case engagement of a Returning Officer would be mandatory.

In this example, the substance of the Motion did not require a Secret Ballot however the Committee opted for the Motion to be conducted by Secret Ballot, and so the Returning Officer is mandated

Note that when Secret Ballots are used to determine Committee positions, there is no legislative requirement to have a Returning Officer handle the Committee election Secret Ballot.

[Note: Many Bodies Corporate under the Standard Regulation Module have determined by passing an Ordinary Resolution at General Meeting that Committee election Ballots will be decided by Open Ballot rather than the default Secret Ballot. Where the decision to determine Committee positions by Open Ballot was made at some previous General Meeting, it would require a decision at a subsequent General Meeting to reverse that decision, and require a Secret Ballot.]

Additionally, the Committee could decide to engage a Returning Officer for a General Meeting even if all Motions were to be decided by Open Ballot i.e. there were no Secret Ballot Motions – a Committee might take that action where they felt additional governance and assurance would be achieved (and be desirable) by having a Returning Officer responsible for the vote count, supervising eligibility of Voters etc.

How is a ‘Returning Officer’ appointed

The Returning Officer needs to be appointed by the Body Corporate by way of an ‘Instrument of Appointment’ executed by the Committee as representative for the Body Corporate. The appointment of a Returning Officer needs to be by way of a formal Committee Resolution.

This ‘Instrument of Appointment’ should outline what duties the Returning Officer is to perform for the Body Corporate in relation to the relevant Meeting, such as:

- deciding questions about eligibility to Vote and voting entitlements;
- receiving Secret Voting Papers;
- counting Votes, or inspecting the counting of Votes;
- deciding whether a Vote is valid.

‘Returning Officer’ eligibility

The following persons are not eligible for appointment as a Returning Officer for a Body Corporate:

- the Owner of a Lot included in the particular Scheme;
- a person engaged as a Body Corporate Manager or Service Contractor, or authorised as a Letting Agent; OR any ‘associate’ of these.

‘Returning Officer’ - Knowledge of the Legislation

In order to effectively carry out their duties, it is essential that a Returning Officer for Strata Meetings has a good working knowledge of all the sections of the legislation that are relevant to those duties.

What are the functions, powers, and responsibilities of a ‘Returning Officer’

The functions and powers of the Returning Officer should be summarised in the ‘Instrument of Appointment’ executed by the Committee on behalf of the Body Corporate, however, notwithstanding the details in this ‘Instrument of Appointment’, the Returning Officer must ensure compliance with the very prescriptive legislative instructions concerning Voter eligibility, how Secret Ballot Voting Papers are to be handled, and how the vote determination process takes place at the Meeting (or remotely if the Meeting is being conducted via video link).

Electronic Voting and the 'Returning Officer'

Electronic Voting software platforms are relatively new to Strata administration, and there is, understandably perhaps, some confusion with the implementation and roll-out.

With regard to Secret Ballots and Electronic Voting, a Returning Officer must still be engaged, and the fundamental and underlying principle outlined in the Legislation regarding the separation of the Lot Owner details, and how the Lot Owner voted, must be maintained by whatever voting platform is used.

In addition, the role of the Returning Officer in being the sole person with authority to validate or invalidate a Vote, must remain in force.

Whilst email is an 'electronic' means of conveyance of information, and that includes an Owner's Voting Paper, email of itself, can never satisfy the principle of separating the Voter's credentials from their Vote.

Electronic Voting platforms for use in Strata need to be built from the 'ground up' to ensure compliance with the relevant BCCM Legislation.

Special Requirements for the First AGM

Documents and materials to be given to Body Corporate at or before the first Annual General Meeting

Obligations of the Original Owner (Developer)

At (or before) the First Annual General Meeting, the Original Owner must give the following to the Body Corporate:

(a) a Register of Assets containing an inventory of all Body Corporate Assets;

(b) if a Development Approval (DA) was required for development on the Scheme land—a copy of the Development Approval;

(c) all plans, specifications, diagrams and drawings of buildings and improvements forming part of Scheme land, as built, showing water pipes, electrical wiring, drainage, ventilation ducts, air-conditioning systems and other utility infrastructure;

(d) the Community Management Statement currently recorded for the Community Titles Scheme, and an editable version must be supplied to easily facilitate the Body Corporate amending the CMS and registering a New CMS at any stage in the future;

(e) all policies of insurance taken out by the Original Owner for the Body Corporate;

(f) copies of documents relating to any claim made against a policy of insurance taken out by the Original Owner for the Body Corporate;

(g) if a fire and evacuation plan under the Fire and Emergency Services Act is required under that Act for a building on the Scheme land—a copy of the plan;

(h) an independent valuation (for replacement purposes) for each building the Body Corporate must insure;

(i) documents in the Original Owner's possession or control relevant to the administration of the Community Titles Scheme, including the Body Corporate's Roll, books of account, Meeting Minutes, Registers, any Body Corporate Manager or Service Contractor engagement or Letting Agent authorisation, correspondence, and tender documentation;

(j) documents in the Original Owner's possession or control relevant to the buildings or improvements on Scheme land, (other than excluded documents), including—

(i) contracts for building work, or other work of a developmental nature, carried out on Scheme land;

(ii) Certificates of Classification for buildings and fire safety certificates;

(k) copies of any contracts or agreements for the supply of utility services to the Body Corporate;

(l) copies of any documents relating to warranties for—

(i) buildings or improvements forming part of Scheme land; and

(ii) any item of plant and equipment forming part of the Common Property; and

(iii) any other Body Corporate Asset;

(m) Administrative and Sinking Fund Budgets showing the Body Corporate's estimated spending for the first financial year;

(n) a detailed and comprehensive estimate of the Body Corporate's Sinking Fund expenditure for the Scheme's first 10 financial years that must include an estimate for the repainting of Common Property and of buildings that are Body Corporate Assets;

(o) a copy of any Proxy Form under which the Original Owner is the Proxy for an Owner of a Lot;

(p) a copy of any document under which the Original Owner derives the representative capacity for an Owner of a Lot;

(q) the Body Corporate's seal.

The documents mentioned above must be given to the Body Corporate in hard copy and electronic form.

If documents of the types mentioned above come into the Original Owner's possession after the Body Corporate's first Annual General Meeting, the Original Owner must give the documents to the Body Corporate at the earliest practicable opportunity.

'Excluded documents' referenced in (j) above means Certificates of Title for individual Lots, or documents evidencing rights or obligations of the Original Owner that are not capable of being used for the benefit of the Body Corporate or an Owner, other than an Owner who is the Original Owner, of a Lot.

Special Requirements for the Second AGM

Defect Assessment Report Motion

The Agenda of a Body Corporate's second Annual General Meeting must include a Motion proposing the Body Corporate engage an appropriately qualified person to prepare a defect assessment report.

Note that this requirement doesn't automatically mean that the Body Corporate is required to obtain a defect report – merely that they must consider the matter and vote on the Motion. If the Motion isn't carried, then there is no requirement for a report to then be obtained.

If the Motion is 'Carried' then a report must be commissioned. The report must cover the property on Scheme land (other than 'Assets' that the Body Corporate must insure for full replacement value).

For Schemes being developed progressively, a Defect Assessment Notice Motion must be put on the Agenda for the first Annual General Meeting after:

- a new Community Management Statement is lodged, and;
- property that the Body Corporate must insure, is included on Scheme land.

Maximising Meeting Efficiency

Many Owners will have experienced chaos before a Meeting commences, chaos during a Meeting, long delays before a Meeting officially starts, long delays in the counting of Motion Votes and announcing the results, argumentative and disruptive members in the audience – we've all experienced some or all of these symptoms.

It's definitely not a good look for all concerned, and it rightly frustrates and annoys Owners who just want to get it over and get back home.

So what's the answer to all this chaos and the delays? It's actually pretty simple – get as many Owners as possible to 'pre-vote' prior to the Meeting i.e. get their votes submitted in the three weeks prior – after all, they have the Meeting documentation and Voting Papers all this time.

And how best to encourage Owners to 'pre-vote'? Three primary ways:

- Instruct the Body Corporate Manager to always include a 'pre-paid addressed' envelope so that posting back the completed Voting Paper is easy for Owners, and;
- Instruct the Body Corporate Manager to implement Electronic Voting so that Owners have this option as well as the option of completing the physical Voting Papers, and;
- Promote and encourage all Owners to vote prior to the Meeting by a prominent note in the Meeting documentation, and with follow-up email prompts during the three-week period leading up to the Meeting.

When you have a situation where 80% or more of Owners have pre-voted, and so the numbers turning up at the Meeting that haven't yet submitted their Voting Papers is low, you'll find Meetings will start more promptly, generally will flow more efficiently, and everyone will be happier.

Sometimes Owners might be reluctant to pre-vote because they feel they want to listen to Meeting discussion on one or more of the Motions. That's perfectly understandable, however they have a few options – they can still pre-vote, and then after Meeting discussion and when the Chairman puts the Motion forward for the vote, change their vote if they wish, or, pre-vote on most of the Motions, and don't vote on the ones they want to hear discussion about, and then 'vote from the floor' on those particular Motions.

Finances

Administrative and Sinking Funds

A Body Corporate must have an Administrative Fund and a Sinking Fund and Budgets for these Funds must be prepared every financial year.

The Budgets for these Funds forecast how much the Body Corporate expects to spend. In turn, how much each Owner pays in Body Corporate Levies, depends on these Budgets that the Body Corporate approves.

Preparing Budgets

The Committee must prepare the Budgets for Owners to consider and vote on at each Annual General Meeting. A copy of the proposed Budgets must be included with the Annual General Meeting documentation sent to every Owner. Usually the Body Corporate Manager will prepare draft initial Budgets for the Committee to consider and amend/approve, and those 'Committee-approved' Budgets would then go forward to the General Meeting for the Owners to vote on.

Budgets must be approved by a formal Committee Resolution (by way of a VOC is acceptable), and then approved by Ordinary Resolution at the AGM.

Changing Budgets

At the AGM, it may be thought desirable to change the Budget, and to assist with this process, an Explanatory Note telling all Owners that the Budget might be adjusted is required to be included in the Explanatory Schedule for every AGM.

A Body Corporate can only adjust a proposed Budget at an Annual General Meeting if:

- the amount of the adjusted Budget is not more or less than 10% of the Budget originally proposed, and;
- the adjustment is because of a decision at the Meeting on a Motion (on the Agenda) to approve spending, and;
- the adjustment is approved by a majority of Voters present (either in-person or electronically) and entitled to vote.

Budgets cannot be adjusted just because Owners think the amounts are too high or too low – Budgets must always be compiled on the basis of how much money needs to be raised in order to comply with the Legislative requirements.

If adjusted, a copy of the approved Budget must be given to each Owner with a copy of the Minutes of the Meeting.

The Levies that Owners need to pay must be adjusted if the proposed Budget is changed.

Budget Increases

The cost of goods and services often increases from year to year. Body Corporate Levies would therefore normally, but not necessarily, increase to account for rises in the Consumer Price Index (CPI).

In addition, a correctly compiled Sinking Fund Forecast report will have the contributions increasing each year in an orderly and indexed fashion so as to avoid substantial increases year-on-year.

All Bodies Corporate are different, so levels of spending (and Levies) needed must be tailored for the particular building.

There is a range of information that can help the Body Corporate prepare its Budget. Owners and the Committee can get several quotes for goods or services when deciding how much they need to spend.

It is worth noting too, that it is often a meaningless observation to compare one building's Budgets and Levies to another building without doing detailed analysis between the two buildings. All buildings are different, and often there are big differences, e.g. Lifts, Caretakers, Gym, Pool, Gardens and Grounds, the age of buildings, state of the Sinking Fund and the Sinking Fund Forecast report etc. etc.

Spending

Putting an item of expenditure in a Budget is not authority to spend that money.

The actual spending must be authorised by the Body Corporate, either at a General Meeting or by the Committee (within its Spending Limit), for each item or project.

Some expenses should only be paid from the Sinking Fund (e.g. the replacement of major capital items like fences or Common Property carpets).

All other expenditure should be paid from the Administrative Fund. The Body Corporate cannot transfer money from one Fund to the other.

Administrative Fund

Money Paid into the Administrative Fund

Money that needs to be paid into the Administrative Fund includes:

- Owners' Contributions to the Administrative Fund
- interest from investing Administrative Fund money
- fees paid for inspection of records or copies of Body Corporate documents, albeit that if these services are carried out by the Body Corporate Manager, their contract may entitle them to retain those fees.
- any amount received that is not required to be paid into the Sinking Fund.

Money Spent from the Administrative Fund

Money in the Administrative Fund can be spent on anything that is not required to be paid from the Sinking Fund, including:

- regular and routine maintenance of the Common Property, e.g. gardens and grounds
- insurance charges
- administrative expenses—such as secretarial fees and postage.

Administrative Fund Budget

The Administrative Fund budget must estimate the necessary and reasonable expenditure for the financial year for:

- maintaining Common Property and Body Corporate assets
- insurance charges
- other routine costs e.g. Body Corporate management fees, electricity, etc.

The fund must set the amount to be raised by Owner Contributions to meet the expected costs.

Sinking Fund

Money Paid into the Sinking Fund

Money paid into the Sinking Fund includes:

- Owners' Levy Contributions to the Sinking Fund
- interest received from the Sinking Fund's investments, e.g. Term Deposits;
- money from insurance pay outs (for major, capital items that are destroyed or damaged).

Money spent from the Sinking Fund

Money in the Sinking Fund can be spent on:

- big or one-off items, like painting or structural repairs to Common Property
- replacing major items, like Common Property fences or carpets
- other items that should reasonably be met from capital, like pool furniture.

Sinking Fund Budget

The Sinking Fund Budget must:

- provide for necessary and reasonable spending for the current financial year
- reserve an amount to meet likely spending for at least 9 years after the current financial year.

In the 10-year period (current year plus the next nine years), it must allow for:

- likely spending of a capital or non-recurrent nature (e.g. painting of a building)
- replacement of major capital items (e.g. replacing Common area carpets)
- other costs that should reasonably be met from capital.

The Fund must decide the amount to be raised from Levy Contributions to cover these expected capital costs.

Planning ahead

A Body Corporate needs to Budget for major capital spending for the current financial year and the next 9 years. Whilst the Committee or an Owner can estimate the likely spending requirements, it is recommended that a professional quantity surveyor (or the like) is asked to prepare a Sinking Fund Forecast. Many professionally produced Sinking Fund Forecasts look out beyond ten years because of the long life of some building and infrastructure items of plant and equipment, and this can be helpful to the Body Corporate.

See also the Chapter **'The Art of Budgeting'** for more hints and advice.

Investing monies

The Body Corporate can invest money from the Sinking Fund (or the Administrative Fund, but it will be rare for a Scheme to have any significant surplus monies in this Fund) if it's not needed immediately. This investing must be carried out: *"…in the way a trustee may invest trust funds"* – and, of course, always with the overarching requirement that it must be "reasonable".

The Trusts Act, Qld. Outlines considerations a Trustee needs to make when investing monies – here is the relevant excerpt:

Part 3, Sect 24 The Trusts Act, Qld 1973

Matters to which trustee must have regard in exercising power of investment

(1) Without limiting the matters a trustee may take into account when exercising a power of investment, a trustee must, so far as they are appropriate to the circumstances of the trust, have regard to the following matters—

(a) the purposes of the trust and the needs and circumstances of the beneficiaries;

(b) the desirability of diversifying trust investments;

(c) the nature of and risk associated with existing trust investments and other trust property;

(d) the need to maintain the real value of the capital or income of the trust;

(e) the risk of capital or income loss or depreciation;

(f) the potential for capital appreciation;

(g) the likely income return and the timing of income return;

(h) the length of the term of the proposed investment;

(i) the probable duration of the trust;

(j) the liquidity and marketability of the proposed investment during, and at the end of, the term of the proposed investment;

(k) the total value of the trust estate;

(l) the effect of the proposed investment for the tax liability of the trust;

(m) the likelihood of inflation affecting the value of the proposed investment or other trust property;

(n) the cost (including commissions, fees, charges, and duties payable) of making the proposed investment;

(o) the results of a review of existing trust investments.

(2) A trustee—

(a) may obtain, and if obtained must consider, independent and impartial advice reasonably required for the investment of trust funds or the management of the investment from a person whom the trustee reasonably believes to be competent to give the advice; and

(b) may pay out of trust funds the reasonable costs of obtaining the advice.

--- End of Trusts Act excerpt---

So, if a Committee is proposing to invest some of the Body Corporate's funds, it needs to be able to demonstrate to Owners that the proposed investment can be justified as both 'reasonable' and 'in the way a trustee may invest trust funds'.

It is up to the Body Corporate to decide how to manage and invest its funds.

A Body Corporate is liable for Income Tax – currently charged at the full corporate tax rate - and so investment returns will need to be declared in the Scheme's annual tax return to the ATO.

Normal Levies & Special Levies

A Body Corporate must, every year at its AGM set the new Budgets for the Administrative Fund and Sinking Fund, and from those new Budgets, the consequential Levies, the 'Normal Levies', will be determined. In addition to those 'Normal Levies' a Body Corporate might, at the same time, ask Owners to approve the setting of a **Special Levy**. This would usually be done to raise funds for some special project, or some unexpected and significant expense that had not been previously anticipated or forecast for the Administrative Fund or the Sinking Fund. Because it's a 'one-off' cash input that's required, it's appropriate (but not mandatory) for the funds to be raised by way of a dedicated 'Special Levy' rather than by a 'once-off' increase to either the Administrative Fund or Sinking Fund. The side-benefit of doing the raising by way of a 'Special Levy' over a step-change increase to the 'Normal Levies' is that a prospective purchaser would be able to see what the 'Normal Levies' are going to be, and this 'once-off' Special Levy – and would also be able to find out the reason for the temporary 'Special Levy'.

A 'Special Levy' isn't necessarily levied on Owners by way of a single instalment, and in fact most Special Levies would be spread over a few instalments i.e. Levy Periods, and in some cases could run for years.

As discussed elsewhere though, Special Levies shouldn't be used as a way of avoiding the statutory responsibility a Body Corporate always has of making every attempt to forward-provision for all major anticipated and expected capital expenditure for the next ten years – by way of a properly operated Sinking Fund.

A need to raise additional funds can become apparent sometime through a Body Corporate's financial year, and too far out from the next AGM for it to be addressed then. If such a liability arises for which no provision, or inadequate provision, has been made in the current Budget, the Body Corporate must hold an EGM and by Ordinary Resolution determine a Special Levy to be shared across all Owners towards the liability.

Discounts for Prompt Payment

This is an optional arrangement a Body Corporate can introduce at any time, by way of an Ordinary Resolution being passed at General Meeting. If introduced, it can be discontinued at any time in the future – but only by way of passing another Ordinary Resolution at General Meeting.

The Body Corporate, in the Motion putting the discount in place, stipulates the amount of discount which is to apply, and this cannot exceed 20% of the Contribution stated on the Levy Notice.

Penalties for Late Payment

This is another optional arrangement a Body Corporate can introduce at any time, by way of an Ordinary Resolution being passed at General Meeting. If introduced, it can be discontinued at any time in the future – but only by way of passing another Ordinary Resolution at General Meeting.

The Body Corporate, in the Motion putting the penalty for late payment facility in place, stipulates the penalty interest rate that is to apply, and this must consist of simple interest at a stated rate, of not more than 2.5%, for each month the Contribution is in arrears.

Repayment of any Amounts Owing

Any monies received from an Owner must be paid:

1. first, towards any penalties owing; then,
2. second, in reduction of any outstanding Levy Contributions; then,
3. third, towards any recovery costs of any debt.

Auditing Body Corporate Accounts

Statement of accounts

A statement of accounts shows the Body Corporate's income and spending for the year.

At its Annual General Meeting each year, the Body Corporate must make a decision about auditing the accounts. Owners vote to decide if the accounts are audited or not.

Motion Not to Audit

The Body Corporate can pass a Motion at its Annual General Meeting not to audit its accounts. The Motion is required to be passed by Special Resolution.

The legislation requires this Motion 'Not to Audit' to be worded and presented in a very particular way.

The Motion 'Not to Audit' must:

1. be in the form: "that the Body Corporate's statement of accounts for the financial year (state the financial year concerned) not be audited" and
2. have voting instructions (an explanatory note) saying: "If you want the accounts to be audited, vote 'No'; if you do not want the accounts audited, vote 'Yes'.

An Owner wanting Body Corporate accounts to be audited should vote 'No' to the Motion not to audit the accounts.

If a Motion not to audit the accounts is not passed, the Body Corporate must have its accounts audited. It will need to also pass a Motion to appoint an auditor (and name the auditor), which must be passed by Ordinary Resolution.

If an auditor is engaged, the auditor must provide a certificate reporting on the accounts. A copy of the certificate must be included with the Notice of the next Annual General Meeting to be held after the certificate is received by the Body Corporate.

Audit at other times

If the Body Corporate decides at the Annual General Meeting not to audit its statement of accounts for a particular financial year, it can at any time:

- pass an Ordinary Resolution to audit the accounts for a particular period or for a particular project, (the Committee could also decide to conduct an audit) and;
- appoint an auditor.

Qualifications and experience of auditor

The auditor who is appointed by Ordinary Resolution of the Body Corporate must:

- be independent
- have appropriate qualifications and experience
- not be a Committee Member or a Body Corporate Manager.

The auditor examines the prepared financial statements and gives an opinion on whether the financial statements show all relevant information and provide a fair picture of the financial position of the Body Corporate.

The Legislation provides no advice or guidelines to auditors as to how they are to carry out the audit – that is up to the auditor, however a Committee could, if they wished, request the auditor to perform a more detailed and historical audit if that was the Committee's decision. Most Bodies Corporate however leave the matter up to the auditor.

Committee Spending

[This Committee Spending section also appears in the chapters on the Committee, and is intentionally duplicated here.]

The following information is for Community Titles Schemes registered under the:

- Standard Module
- Accommodation Module
- Small Schemes Module.

Committee Spending Limits

(See also Appendix 1)

- The relevant limit for Committee spending (how much money a Committee can spend on any single item or project) can be changed from the legislative default amount by Ordinary Resolution of the Body Corporate (i.e. a Motion voted on by the Owners at a General Meeting). There is no minimum or maximum limit that the Body Corporate can set.
- If no amount is set by a General Meeting Resolution the relevant limit is calculated by multiplying the number of Lots in the Scheme by $200.
- For example, in a Body Corporate with 6 Lots, the relevant limit is $1,200 ($200 x 6).

GST included

- The Committee must allow for any goods and services tax (GST) in its spending.
- For example, the Committee spending limit for a Scheme made up of 12 Lots is $2,400 (12 x $200).
- The Committee has a quote for maintenance of $2,300 plus GST. The total amount, including the GST is $2,530. This is more than the Committee's spending limit of $2,400.
- The Committee would need approval by Ordinary Resolution at a General Meeting to accept this quote.

Available funds

- Before the Committee approves any spending within its limit it will need to be sure there is enough money allocated in the Budget for the specific expense.
- The Committee can call a General Meeting to amend the Budget or raise a Special Levy if there is not enough money available.

Spending in stages

The Committee cannot divide a single project into smaller parts in order to bring the project within its spending limit.

For example, the Committee for a Scheme made up of 25 Lots is limited to spending $5,000 (25 x $200). The Committee wants to renovate the main foyer and has obtained quotes, and the costs are:

- tiles $2,800
- light fittings $3,000
- paint $1,200

Even though each quote is below the Committee's limit, it cannot start the renovations because the whole project is over the spending limit.

The Committee would need approval by Ordinary Resolution at a General Meeting to commence it.

Spending over the Committee spending limit

(See also Appendix 1)

The Committee can only spend over its relevant limit if:

- the spending is authorised by an Ordinary Resolution of the Body Corporate, OR;
- the Owners of all Lots in the Scheme have given written consent, OR;
- an Adjudicator has authorised the spending to meet an emergency, OR;
- the spending is needed to comply with a statutory order or notice given to the Body Corporate, or the order of an Adjudicator, or the judgment or order of a court, OR;
- the spending is for the required insurance policy premiums.

Quotes for spending

- The number of quotes that a Committee needs to consider when making decisions is determined by the 'Relevant Limit for Major Spending'.

- The Body Corporate may set the 'Relevant Limit for Committee Spending' higher than the 'Relevant Limit for Major Spending' by the Scheme.
- The Committee must have at least 2 quotes for any spending that is more than the 'Relevant Limit for Major Spending' by the Scheme.
- For example, if the 'Committee Spending Limit' is $12,000 and the 'Major Spending Limit' is $10,000, any spending over $10,000 but under $12,000 can be approved by the Committee if it gets and considers at least 2 quotes.
- The Body Corporate can obtain extra quotes even if the Legislation does not require it.

[The 'Major Spending Limit' = the lesser of $10,000 or $1,100 x the number of Lots in the Scheme. (For a Principal Scheme, this 'number of Lots' includes the Lots in the Subsidiary Schemes.)]

Spending That is Not Permitted

- The Committee cannot spend more than the 'Committee Spending Limit'.
- It can only spend on items provided for in the Budget.
- If there is no provision in the Budget for the expense, the Committee cannot authorise the spending even if the amount is within its spending limit.
- A Committee cannot spend on items that are required to be approved by a General Meeting Resolution.
- A Committee should not spend funds above the level approved by the Body Corporate.
- A Committee in a Scheme under the Commercial Module Regulation cannot approve expenditure for an Improvement to Common Property – this must be done by way of an Ordinary Resolution at General Meeting

Spending Approved at a General Meeting

(See also Appendix 1)

Is the spending for 'Maintenance' of Common Property, or for an 'Improvement' to Common Property?

For 'Maintenance'

No spending limit.

Only an Ordinary Resolution required.

If the cost exceeds the 'Major Spending Limit' at least two quotes must be put to Owners as options for Owners to choose between by way of a 'Group of Same-Issue Motions'.

The 'Major Spending Limit' = the lesser of $10,000 or $1,100 x the number of Lots in the Scheme. (For a Principal Scheme, this 'number of Lots' includes the Lots in the Subsidiary Schemes.)

For an 'Improvement'

By Ordinary Resolution providing:

- the cost is not more than $2,000 x the number of Lots in the Scheme, and
- there hasn't been a previous such approval in the current financial year – otherwise choose a Special Resolution, or wait until after the end of the current financial year to approve by Ordinary Resolution.

If the cost exceeds the 'Major Spending Limit' at least two quotes must be put to Owners as options for Owners to choose between by way of a 'Group of Same-Issue Motions'.

By Special Resolution providing:

If the cost exceeds the 'Major Spending Limit' at least two quotes must be put to Owners as options for Owners to choose between by way of a 'Group of Same-Issue Motions'.

The 'Major Spending Limit' = the lesser of $10,000 or $1,100 x the number of Lots in the Scheme. (For a Principal Scheme, this 'number of Lots' includes the Lots in the Subsidiary Schemes.)

Is it Maintenance or is it an Improvement?

[This Maintenance or Improvement section also appears in the chapter on Maintenance, and is intentionally duplicated here.]

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' because spending limits, and how the Body Corporate approves the proposal depends on whether the proposed works are 'Maintenance', or more properly an 'Improvement'.

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(maintenance) 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)

There have been a number of Adjudications concerning repainting of the building, and whether these projects constituted Maintenance or an Improvement. Where the proposed colour scheme was being significantly changed, Adjudicators have deemed this to be an Improvement, because of the 'change' factor. One such Adjudication is: Admiralty Towers II [2008] QBCCMCmr 151-2008.

See also **Appendix 1.** To see how this differentiation plays out in the way expenditure can be approved.

Income Tax and GST

Income Tax

Some, but not all 'Non-Mutual' income (see next section on 'Mutual and 'Non-Mutual') received by a Body Corporate is subject to income tax assessment, and so a tax return must be filed with the ATO. Bodies Corporate are taxed at the full corporate rate, currently 30%.

GST

The ATO advises as follows (edited):

For GST purposes, the Body Corporate is carrying on an enterprise.

It must register for GST if:

- *it is considered to be a non-profit body and its turnover is more than $150,000 (turnover must include Levies on Owners)*
- *it is not considered to be a non-profit body and its turnover is more than $75,000 (turnover must include Levies on Owners).*

It may be considered to be a non-profit body if there's no intention to distribute interest income or profits from rental or other activities to the members.

If a Body Corporate is registered for GST, the Levies it charges Owners will include GST. It can also claim GST credits on purchases made relating to maintaining and administering the property held in Common.

Since most Bodies Corporate would be classified as a non-profit body, the $150,000 threshold will apply, but if there are any doubts, the Committee should seek qualified advice.

If the Scheme is non-profit and the total amount of all annual Levies issued exceeds the GST threshold set for Bodies Corporate (currently $150,000) then the Scheme must register for GST,

obtain an ABN and Tax File Number, and submit Business Activity Statements (BAS) on a regular basis.

If the Scheme's total Levies are under the GST threshold, registration for GST is optional. To check whether this is a desirable option, it is recommended the Committee seek advice from a professional tax agent or similar professional financial advisor.

'Mutual' and 'Non-Mutual' Income

'Mutual Income' for the purposes of a Body Corporate is money paid into the Body Corporate funds by Owners e.g. Levy Contributions. 'Mutual Income' is not tax assessable.

'Non-Mutual' income is derived from external sources, for example interest on bank term deposits or income from other investments the Body Corporate may have. And additionally, any income derived from the leasing of Common Property is also classified as 'Non-Mutual Income'

All 'Non-Mutual Income' to the Body Corporate is tax assessable, BUT not always in the hands of the Body Corporate. Yes, it's a bit complicated, but 'Non-Mutual Income' like bank interest and investment dividends is tax assessable in the hands of the Body Corporate – the Body Corporate's tax agent should be including that taxable income in the Body Corporate's tax return. However one class of 'Non-Mutual Income' that is still taxable, but not in the hands of the Body Corporate, is income earned from the leasing of Body Corporate Common Property – or the like. And that income is taxable in the hands of the individual Owners – the Members of the Body Corporate.

Income received by a Body Corporate from the lease of Common Property, is not income to which the 'principle of mutuality' applies. Further, in accordance with Taxation Ruling TR 2015/3 income from leasing Common Property is not taxable income of the Body Corporate, but rather is taxable income to each Owner in proportion to their Contribution Lot Entitlements. As such, any amount received should be declared as income in the individual Owner's income tax returns. An example of 'Non-Mutual Income' that is considered taxable income to each Owner, would be lease payments from a mobile phone company for a mobile phone tower on top of the building. This is considered beneficial income to each Owner and is to be handled by each Owner when completing their private annual tax return (or the Company's tax return if the Lot is owned by a company).

Treatment of the income in this way is mandatory – a Body Corporate is required to comply with the relevant taxation law.

This all sounds a bit complicated from the Body Corporate's point of view, but is actually fairly straightforward. The suggested steps are:

- Each year, the tax agent that is appointed to process the Body Corporate's tax return should confirm the amount of 'Non-Mutual Income' (if any) that is required to be classed as assessable income of the individual Owners in the Scheme (it may be derived from more than one source), and then;

- Have the Body Corporate Manager prepare a simple Excel sheet apportioning this total applicable 'Non-Mutual Income' amount across all Lot Owners in proportion to Contribution Lot Entitlements, then;
- Send a copy of that printed Excel schedule to all Owners with an explanation of ATO ruling TR 2015/3, and the consequential requirement that the amount apportioned to them is to form part of their income for the purposes of assessing their taxable income. It is also recommended that Owners are advised that if they have any queries about the matter, they should ask their tax agent/accountant – not the Body Corporate or the Body Corporate Manager.

Note that most Bodies Corporate will have **no** 'Non-Mutual Income' that is taxable in the hands of the Owners.

Debtor Management

The management of debtors – Owners that owe the Body Corporate money – is an important function for the Committee, and they can be greatly assisted by the Body Corporate Manager, particularly if the Committee has well-thought-out policies and procedures established that the Body Corporate Manager can, to a large extent, automatically follow.

Also of great assistance is a debt collection agency (or law firm that also performs those functions) – but like all service providers, there are really proficient debt collection agencies, and the not-so-proficient.

A key requirement for a debt collection agent is that they report regularly (monthly) to the Body Corporate Manager on every active debtor case, and of their own volition actively manage each case, moving forward with each one, and only reverting to the Body Corporate when they need specific instructions as to how to proceed. It can be an excruciating process if the debt collection agent isn't actively moving each case forward, and needs constant prompting and enquiry from the Committee and Body Corporate Manager.

Debts claimed by a Body Corporate from an Owner may include:

- outstanding Levy Contributions;
- penalties for the late payment of Levy Contributions;
- costs reasonably incurred in recovering unpaid Contributions;
- amounts incurred by a Body Corporate in repairing damage caused by an Owner or in carrying out work which was the obligation of the Owner;
- agreed charges for the supply of services by the Body Corporate; or
- amounts an Owner is required to pay under an Exclusive-Use By-Law.

If a debt has been overdue for 2 years, the Body Corporate has a statutory obligation to start debt recovery within 2 months of that date, But this does not stop the Body Corporate from starting debt recovery earlier.

A debt dispute cannot be decided by an Adjudicator, but the Commissioner's Office can provide conciliation services to try and assist resolving any dispute about a debt. (Except that if debt recovery action has been started in the Queensland Civil and Administrative Tribunal QCAT or a court, the dispute cannot be conciliated. If debt recovery action is started after a conciliation application is lodged, the conciliation application must end.)

'Precedents' in Debt Collection

In managing debt collection cases, a Committee can decide to waive Penalty Interest (if Penalty Interest has been invoked for the Scheme), can decide to waive all or part of any debt collection costs, and can decide to put in place any sort of repayment plan.

But Committees often struggle with how to deal with individual debt collection cases when considering 'precedents' i.e. how they've dealt with other cases. Committees often feel that the decisions they took in regard to one case, set a precedent that they're obliged to be cognisant of, and perhaps follow in a case that's currently under review. However, the overriding consideration always needs to be another mandatory obligation on a Committee – and an obligation that is stated in their 'Code-of-Conduct' – that is to **act reasonably** in making their decisions. So what processes and interest forgiveness that was or wasn't applied to one debtor, may not necessarily be fair and reasonable to apply to the next debtor. An Owner, known to be in ill-health and struggling financially, needs to perhaps be considered differently to a millennial that has been a serial late-payer of Levies. The Body Corporate may have established debtor-management guidelines, but the principle of 'Acting Reasonably' should form part of those guidelines.

It is also good practice for the Committee to record some brief note in their Minutes giving their reasoning behind less or more leniency afforded – there is always the possibility of debtor cases ending up in the Magistrates Court, and a solid paper-trail will assist the Body Corporate in prosecution of their case.

Reviewing the Financial Statements

It's understandable that many Committee Members will shy-away from any detailed review of the Financial Reports, but we want to show you that it's actually really easy to do a meaningful look at these reports – and by doing so, it'll give you more confidence about oversight of financial matters, and you'll be playing a more substantive role on the Committee.

Whose Responsibility is Financial Management?

It is, solely, the Committee's responsibility – it is not the Body Corporate Manager's responsibility. But let's expand on that.

It is the statutory responsibility of the Committee to keep a close eye on both the expenditure and the reporting of that expenditure i.e. the Financial Reports, but the legislation has not made it solely the responsibility of the elected Treasurer to do this, and in fact the Treasurer has no specific statutory responsibilities. Under the legislative requirements this means that, like almost all of the Committee's duties and responsibilities, it is a responsibility that is shared across all of the Committee – even if the elected Treasurer is willing and able to undertake some of the detailed parts of checking financial reports and budgeting, the ultimate responsibility always remains with the Committee, collectively.

The Body Corporate Manager's responsibility is to perform the functions they are contractually bound to carry out, and to follow the lawful directions of the Committee. In regards to financial management functions, the management software the BCM uses will usually also perform the accounting and reporting functions, but the BCM must adhere to Committee requirements about the process involved with the authorisation of invoices – what to pay, when to pay it, what fund to pay it out of, and what account code to book it to. Each Committee will be somewhat different in how they interact with their BCM in relation to these matters. Some will have, over time, developed a trust with their BCM and will rely on the manager to handle the routine invoices without any specific instructions, while other Committees will have in place a strict 'Invoice Authorisation' procedure.

How often should the Committee be given Financial Reports?

As often as they request them. Most Committees will require, at least, these reports for each Committee Meeting, but in addition, they may require reports sent monthly to Members.

Timing of the Financial Reports for a Committee Meeting

For a few reasons, it's important that the Body Corporate Manager be requested to always send the Financial Reports at least a few days before the Committee Meeting is due – and preferably sent out with the Notice of Committee Meeting, which will usually be about a week prior to the Meeting. This timing gives each Committee Member adequate opportunity to give the reports some attention, but importantly it also gives the Body Corporate Manager time to respond to any queries Committee Members might have as they review the reports – and there'll always be some anomalies that need to be explained.

Don't 'ambush' the Body Corporate Manager

The most important reason for having the Committee receive the Financial Reports at least a few days prior to a Committee meeting is so they can, after reviewing the reports, get any queries they might have to the Body Corporate Manager well before the Meeting so that the Manager can get a meaningful response back to the Member, or the Committee as a whole. Committee Members should avoid waiting until the Meeting to 'dump' questions in front of the BCM if there was time to get them to the BCM earlier. After all, for a lot of these queries, the BCM will, understandably, need to interrogate the accounts and other data to get the answers, and getting the answers, before the Meeting is the most beneficial process.

So, don't ambush the Body Corporate Manager with questions about the financials that could have been asked in time to allow him or her to reply with an adequate response early, and ahead of the Meeting, and in so doing, the Committee Meetings will be more efficient and productive.

The 5-Minute End-of-Year Financial Statements Review

Yes, seriously, that's all it takes – it's very meaningful - and it requires no accounting knowledge.

The most important aspect of a review of the Financial Statements involves determining what **Income** and what **Expenditure** items were significantly 'over-budget' or 'under-budget'. This is a very easy and quick process – 5 minutes or thereabouts.

How to do it:

The 'Income and Expenditure' report (not the 'Balance Sheet') is what you want to focus on.

Starting with the '**Income'** section at the top, look at the 'Levies' cost-code and compare the amounts under the '**Budget'** column and the '**Actuals'** column. If there is a significant difference, circle those amounts as items needing explanation.

Now look at the list of '**Expenditure'** account-codes, and again, for each item, compare the '**Budget'** column and the '**Actuals'** column amounts, and highlight those if there is a significant variance over, or under. For example:

EXPENDITURE

Account Code	Budget	Actuals
Lift Maintenance	$27,000	$35,500

Relatively minor variances are perhaps not important, but where there is a significant variance to Budget, highlight the item.

This review will usually result in a number of cost-code items where there's been a variance of some significance to Budget i.e. over or under the Budgeted figure. And items that have an Actual expenditure significantly under what was expected, also need to be explained.

This list of Income and Expenditure items at significant variance to Budget should now be emailed to your Body Corporate Manager (preferably copying-in the other Committee Members), requesting details and explanation about each highlighted item. This is why the Committee needs the Financial Reports a few days prior to the Meeting date – to give both the Committee time to adequately review the reports, and to give the manager time to respond to queries.

On having received the manager's explanations on each of the highlighted items, are those explanations reasonable, are they cogent? If there were errors made in determining Budget assumptions, why were they made, and will steps be put in place to try and avoid similar errors in the future? But if the Budget amount is thought to still be what was expected, what is the cause for the unexpected over or under 'Actual' expenditure?

This sort of analysis, properly and rigorously done, will help ensure the financial management going forward is sound – and in addition the Committee will be better able to answer any questions from Owners about the financials.

[Note that reviewing the financial statements at year-end is somewhat less complicated than reviewing the statements part way through the Body Corporate's Financial Year. Where the statements represent the position part way through the year, the 'Actual' expenditure shown will be for less than the full year, and so some estimate of how that is tracking vs the full-year 'Budget' amount will be necessary.]

Making it easier

Often the way the Body Corporate Manager (or sometimes the Committee) have decided to configure the **Expenditure** account-code items is not conducive to easy monitoring of these Budget over-runs. For example, if there are Account Code items that are too broad and cover various classifications of maintenance, it makes diagnosis more time consuming. An Expenditure Cost Code of '**Gardens & Grounds**' might be better broken up into a few more codes, like:

Gardening – Contractual Maintenance

Gardening – Non-contractual Maintenance

Pool Maintenance

Garden Irrigation System

Green Waste fees

More Account Cost-Codes rather than less will make Budget preparation, and Financial Report analysis by the Body Corporate Manager and Committee easier. Cost-Codes that have multiple types of costs dumped into them can tend to become 'slush funds' that are difficult to monitor.

Expenditure paid from the wrong fund

Often, over-budget Actuals in the Administrative Fund are the result of costs being paid which should perhaps been more correctly paid from the Sinking Fund. These charges can be reversed by the Body Corporate Manager, and the appropriate correct entries made.

The Art of Budgeting

Desirable outcomes and attributes

A lack of volatility in Levy amounts, year on year, is a desirable outcome. Levies that suddenly jump 20%, even if they were down the previous year, is not what Owners want to experience. With their other recurring expenses, like rates and vehicle registration, there is an expectation that the fees will increase each year, but hopefully only by CPI percentages - and so Owners have, naturally, a similar expectation in regards to their Body Corporate Levies. But poor financial management by Committees (and poor advice by Body Corporate Managers) often – more often than not probably – results in Levies that are quite volatile, year-on-year.

Adequate provisioning for future expected and forecast costs, is a mandatory requirement of the Legislation, but many Committees think that some of this is optional – that they can avoid forward-provisioning for some known future capital expenditure, and opt instead to raise a Special Levy when that expense is imminent. But that is not a legal option!

The legislation explicitly requires, that the Sinking Fund budget, each and every year, **must**:

"Allow for raising a reasonable capital amount both to provide for necessary and reasonable spending from the Sinking Fund for the financial year, and also to reserve an appropriate proportional share of amounts necessary to be accumulated to meet anticipated major expenditure over at least the next 9 years after the financial year, having regard to—

> *anticipated expenditure of a capital or non-recurrent nature; and*
>
> *the periodic replacement of items of a major capital nature; and*
>
> *other expenditure that should reasonably be met from capital."*

So it is unlawful for a Committee not to factor in, and provision for, anticipated expenditure of a maintenance or capital nature. The alternative of putting off forward-provisioning and considering a Special Levy when the time comes, is unlawful.

The whole premise of Sinking Funds and Sinking Fund Analysis Reports and the Strata law surrounding them is to try and ensure fairness to all Owners as Lot ownership transitions through a building's life-cycle. If the legislation wasn't strict about this forward provisioning, and just allowed Bodies Corporate to strike Special Levies when major items need maintenance or replacement, Owners who are new to the building would be suddenly faced with a Special Levy for infrastructure replacement or repair that they had not enjoyed the amenity of.

Who Prepares the Budgets?

The Committee collectively (and not just the Treasurer!!) is responsible for producing the proposed Budgets.

Whilst the Body Corporate Manager will usually be best placed to know most about the financials, and so be best placed to compile initial proposed Budgets, it is the Committee that should then review, amend if necessary, and approve these initial proposed Budgets prior to them then going on the Agenda for approval at the AGM by all Owners. Approval of the proposed Budgets should be a formal Resolution of the Committee – by a VOC (circulated to all Owners) is OK.

The Significance of Updating the Sinking Fund Forecast and the Insurance Valuation Report

Insurance Valuation for replacement purposes

It is mandatory to obtain such a report, and mandatory to have it reviewed at least every five years.

It's common for insurance underwriters to index-up the 'building Sum Insured' by a percentage to assist in keeping the insured amount tied to the ever-changing building-cost index. If a Scheme's insurance is automatically indexed in this manner, then it should be largely insulated from any nasty shock in a significant increase in the Sum Insured when the report is reviewed each time. If the policy isn't indexed, maybe it would be a good idea to implement that.

Note that, for commercial buildings, annual auto-indexing of the building sum insured isn't as common.

Sometimes a situation arises, usually when a Valuation Report hasn't been obtained for quite a long period, where the new Valuation report indicates a recommended Sum Insured below the Sum Insured on the current insurance policy. In such cases, particularly if the difference is significant, the Committee might be well advised to have the insurer reduce the Sum Insured. In such instances a pro-rata rebate of part of the Premium may result.

Where a Valuation Report indicates a Sum Insured that is significantly above the Sum Insured on the current insurance policy, then the Committee needs to consider whether an immediate increase in the Sum Insured should be made.

Sinking Fund Forecast Report

Currently, unlike the Insurance Valuation report, there is no explicit Legislative requirement about how often this report needs to be updated/reviewed, BUT, there is a very clear implicit requirement to keep it current. That implicit requirement is contained in the prescriptive legislative instructions about how a Body Corporate (read Committee) needs to address putting together its Sinking Fund Budget. Here's what the legislation says:

"Allow for raising a reasonable capital amount both to provide for necessary and reasonable spending from the Sinking Fund for the financial year, and also to reserve an appropriate

proportional share of amounts necessary to be accumulated to meet anticipated major expenditure over at least the next 9 years after the financial year, having regard to—

anticipated expenditure of a capital or non-recurrent nature; and

the periodic replacement of items of a major capital nature; and

other expenditure that should reasonably be met from capital."

A Committee simply cannot comply with these instructions if the document they're working from to provide the forward-provisioning figures is years old and doesn't reasonably reflect the current status of the building, or current building and equipment costs!

A Sinking Fund Analysis report only reflects the current status of the building as soon as it's been initially prepared, or just reviewed and updated – in truth, probably not even then, and as months go by, and then years go by, it gets further and further from reflecting the actual status of the building. For example, the report lists all the expected capital expenditure 'events', as best forecast by the consultant. But what happens when forecast events in any one year don't take place? Say part or all of the building was scheduled to be re-painted, but the Committee decides that it doesn't need doing that year, and that it looks like it'll be good for another few years? The report's estimates and figures are now thrown completely out. The report assumes the painting was done and the Sinking Fund depleted accordingly, but that didn't occur. The report will therefore be recommending an end-of-year fund balance based on the assumption the building has been re-painted, but actually it is still to be repainted and the funds to do it need to be in the bank. As you can see this throws the Sinking Fund Report way out of kilter, and this same issue will be happening with a lot – even most – of the capital maintenance categories in the report.

How to fix it? It's really simple – get the Sinking Fund Analysis Report reviewed regularly – and that means every couple of years for most Schemes, and every year for large Schemes. The cost of a review, in the overall financial picture, is trivial.

And the best, and recommended way to have the review done is to insist the consultant preparing/reviewing it come out on-site to familiarise himself with the current building and infrastructure status, noting what maintenance and improvements have been carried out in recent years, and what needs to be considered for the next nine or so years – and try and ensure the Building Manager (if there is one) and some of the Committee Members work with him while he's on-site doing his walkaround inspection – this will help ensure he receives as much detail about the recent history concerning what's been done maintenance-wise to the property and plant, and what hasn't been done.

Even an experienced consultant needs input from the Building Manager, Body Corporate Manager, and selected Members of the Committee in order to end up with a report that accurately reflects both the current status of the buildings and Common Property, and what is planned for the future.

Having these frequent reviews of the Sinking Fund Analysis Report carried out gives the Committee and Body Corporate a lot of confidence that they are likely provisioning accurately, and

it will help avoid a 'shock' to the budgets and consequential Levies that is almost guaranteed when a report is suddenly reviewed after a number of years.

After the consultant delivers his report, the Committee should consider it to be a 'draft' only, and should take time to go through it carefully to see that it reflects what they discussed with the consultant in their meetings. It can be very helpful to have the consultant attend the next Committee Meeting and go through the new report with the Committee – it is almost inevitable that some amendments would come out of such a review meeting!

The ideal timing of the Insurance and Sinking Fund report reviews

The invitation for Owners to submit Nominations for Committee positions will normally be sent out by the Body Corporate Manager about five weeks prior to the end of the Body Corporate's financial year – and this is also an ideal time for the Committee to decide whether they want to get a review done of the Insurance Valuation report, and/or the Sinking Fund Analysis report. This timing easily permits the obtaining of quote/s for the report, issuing a VOC to the Committee to facilitate the decision, and scheduling with the selected consultant to visit site and prepare the updated reports – it can all be achieved by financial year end, ready for the Body Corporate Manager to commence compiling the draft budgets.

'Contractual' and 'Non-Contractual'

It is strongly recommended that you incorporate this method of account-code classifications into the Administrative Fund financials for those larger expense items that involve a contract with the provider – for example:

- Gardening - Contractual
- Gardening – Non-contractual
- Fire Protection – Contractual
- Fire Protection – Non-Contractual
- Lift Maintenance – Contractual
- Lift Maintenance – Non-Contractual

This simple enhanced arrangement allows for easier analysis of the financials i.e. variations to budget, and for easier compilation and review of proposed budgets. The amount to be paid, usually monthly, or quarterly, under the terms of any contract will usually be known and so variance to budget would be a matter to be pounced on and require explanation. And, there will often be additional expenditure, sometimes significant, due to works having been done (hopefully always with Committee knowledge) that fall outside the 'contractual duties'.

The ongoing, year-on-year, monitoring of these 'Non-Contractual' amounts will be far easier if they are quarantined in the accounts like this.

‘Contingency’ Account Codes

Over the years numerous Adjudication Orders have commented on ‘Contingency’ account codes i.e. specifically having a budgeted amount for contingencies, as well as opining about what a Body Corporate should do with monies in the Funds which are considered ‘surplus’.

In regards to setting up a specific account code for ‘Contingency’, this is definitely frowned upon, and the Committee should avoid the temptation. Better to work on getting the Budget as accurate as possible, then, if during the year an expense is incurred, for which there is no logical existing account-code currently in use, have the Body Corporate Manager add an additional Account-Code that is appropriate for the new expense item. In this way, when the financial reports are being reviewed as part of the process of compiling the new Budgets, this expenditure item that cropped up during the year can be evaluated i.e. is it likely to be recurring, should it be budgeted for in this new year.

Dealing with year-end surpluses

Administrative Fund

In regards to arriving at year-end with a **surplus** in the Administrative Fund, Adjudicators, have expressed the view that the Administrative Fund shouldn’t run with a permanent surplus i.e. Budgets for the new year should factor the prior year surplus such that the surplus is consumed in the coming financial year. This view though needs to be tempered with the other very desirable aim of keeping Levy volatility year-on-year, low - as far as is reasonably practical.

If a Body Corporate ended the year with, for example, a $30,000 surplus in the Administrative Fund, it could configure the Budgets for the next year such that Levies were reduced and the surplus was entirely used up. That tactic though has a few undesirable outcomes. Firstly, depending on how large the overall Fund amounts typically are, suddenly setting budget income $30,000 less than budgeted expenditure so that the surplus is all consumed will certainly reduce the Levies, and so please Owners, but unfortunately there’s likely to be a correspondingly nasty upwards correction the next year because not only will Budget Income need to return to normal, but it’s likely to need to be increased as well. Owners tend to have a short memory when it comes to recalling that they enjoyed a reduction in the prior year – and likely never understood the reason for it – if indeed it was ever explained to them. All Owners will see is a jump in their new Levies, and they won’t be pleased!

So Committees when faced with a year-end surplus should perhaps consider a phased reduction of that surplus i.e. plan to give it back to Owners over a few years rather than all at once i.e. reduce the Levy Income component of the Budget over a few years. This strategy will serve to reduce Levy volatility year-on-year, and is part of sound financial management.

There is no provision in the legislation permitting the wholesale return of any surplus funds – either Administrative or Sinking Fund - back to Owners. Surpluses need to be reduced by reducing Levy Income below expenditure.

Compiling the Administrative Fund Budget

A Body Corporate is required to set the Administrative Budget Income amount such that there will be sufficient monies in the Fund to meet all the anticipated expenses – it must, therefore, be a 'bottom-up' approach i.e. reviewing each and every cost account-code and reviewing the prior year's Budget and actual expenditure for that account-code and estimating what is the amount that should be budgeted for the coming year. There can be a temptation to 'work backwards' from what the Committee would like the Levies to be – but that is not the right approach, and can easily lead to significant year-end fund deficits, with the consequential necessity to re-pay that deficit the following year, and so more volatility in the Levies, and unhappy Owners.

Ensure that the 'Opening Fund Balance' i.e. the 'Closing Balance' from the prior year, is correct – this is a common error.

Estimate as closely as possible the larger account code items e.g. Caretaker's Salary, Insurance premiums, and Body Corporate management administration costs – all can be expected to increase annually, and some by more than CPI.

If the Body Corporate expects any legal fees, then there should be a provision made.

Finally, be aware that even though there may be specific provisions in a Budget for particular expenditure, and even if those Budgets are then approved at the AGM, there still needs to be specific approvals by the Body Corporate at General Meeting, or by the Committee if the amount is within their authorisation limits, for those monies to be spent. Approved Budgets are not sufficient authorisation to spend the funds!!

Compiling the Sinking Fund Budget

The Sinking Fund Analysis Report will indicate the suggested amount that needs to be raised for the coming year, but separately, the Committee needs to consider what known capital expenditure is actually expected to eventuate, AND whether that expenditure is factored into the Sinking Fund Report, because if it isn't, then that expenditure needs to be added to what the Sinking Fund Report indicated had to be raised.

The most important Sinking Fund Budget figure is the resulting Fund Balance expected at year-end, and this should (at least) match what the Sinking Fund Analysis Report shows for year-end expected balance.

And, as for the Administrative Fund Budget, ensure that the 'Opening Fund Balance' i.e. the 'Closing Balance' from the prior year, is correct.

There is no provision in the Legislation permitting the wholesale return of any surplus funds – either Administrative or Sinking Fund - back to Owners. Surpluses need to be reduced by reducing Levy Income below expenditure.

Explanation to Owners

Ideally, the Committee should draft an explanatory 'one-pager' note to Owners about the proposed Budgets, and include this note in the AGM documentation. This is particularly desirable where Owners are about to face an increase in Levies for the forthcoming year significantly above the current CPI environment.

It is possible to write a note in easy-to-understand language, outlining why, for example there is a significant increase proposed for either, or both of the Funds. Is it due to a need to now re-pay some over-expenditure the prior year, or a rise in anticipated expenditure for the coming year – or both. If these explanations are cogent and understandable, and reasonable – and explained well, it'll help head-off any hostility (and difficult questions) from the Owners.

Caretaking, Letting & Management Rights

[This discussion is primarily about Schemes under the Standard, Accommodation, and Commercial Regulation Modules – not Small Schemes or Specified Two-lot Schemes Regulation Modules.]

When an entity (or entities) has a Letting Authorisation Agreement with the Body Corporate to provide Letting Agent Services, they are usually said to hold the **Letting Rights** for the Scheme.

When an entity (or entities) has a contractual Agreement with the Body Corporate to provide building caretaking services, and they also have authorisation from the Body Corporate to provide 'Letting Agent Services' for the Scheme Lots, they are usually said to hold the **Caretaking Rights** for the Scheme.

Management Rights is the usual term used for the full package of the Rights and Authorisations above, and also usually includes some property rights in the form of 'Occupation Authority' or Exclusive Use over an area or areas of the Common Property. A Lot or Lots in the Scheme may also be linked with the Management Rights.

Aspects of Management Rights, and principally the way the Original Owner (the Developer) is able to settle Management Rights Agreements without Owner involvement, and consequently bind the Body Corporate to long-term Agreements, has made them probably the most contentious aspect of the Strata Title regime in Queensland.

This book is all about assisting Committees and Owners with Community living and understanding and dealing with the Legislation as it currently is, and so we won't be trying to address all of the pro and con arguments of the various factions that are either pro Management Rights or against them. What could be, what could have been, what may be in the future, isn't really of any help to Committees or Owners.

For readers who would like to delve deeper into the history and many aspects of Management Rights, including how they might be changed in the future, we recommend this Government 'Discussion Paper' from 2015.

ParkAvenueStrata.com.au/docs/ManagementRights.pdf

Caretaking Service contractors, and Letting Agent Authorisation

A Caretaker is a Service Contractor who is also authorised as a Letting Agent for the Scheme (or is an Associate of a Letting Agent for the Scheme).

The Caretaker generally (but not necessarily) owns or leases a Lot, and if they also hold the Letting Authorisation, run the Letting Agent business from that Lot, or from an office area that would usually be assigned to them by way of an 'Occupation Authority' grant – i.e. the office is on Common Property, but the Caretaker/Letting Agent is granted use of the area by way of the 'Occupation Authority' grant – or by way of a grant of Exclusive Use over the office area.

If the Caretaker/Letting Agent owns a Lot, they can vote at General Meetings just as any other Owner can. They are automatically (i.e. do not require to be nominated or elected) a Non-Voting Member of the Committee - they are ineligible to be a Voting Member.

The Caretaking Agreement with the Body Corporate will detail the Duties the Caretaker is paid to perform, as well as the Salary payable to perform those duties. The Duties may require the Caretaker to actually carry out the various works on Common Property – this is sometimes referred to as a 'Do Contract', or the Duties may require the Caretaker to just supervise that others e.g. Contractors, carry out the work – this is usually referred to as a 'Supervisory Contract'. Or, it may be a hybrid-mix with the Caretaker required to actually 'do' some things, and 'supervise' other things.

Letting Agent Authorisation

A Letting Agent is authorised by the Body Corporate to operate a Letting business on the Scheme, and let out Lots and collect rent for investor-owners. They must be licensed under the Property Occupations Act.

The Agreement between the entity holding Letting Authorisation Rights, will normally not require the Body Corporate to pay any fee or salary to the entity, nor would it require the entity to pay any fees to the Body Corporate.

There is no Legislative requirement for the entity holding the Letting Authorisation Rights to give the Body Corporate any details of Letting arrangements. (However Lot Owners have an obligation to supply to the Body Corporate tenant and Letting Agent details for any lease with a term greater than six months.)

Owners do not have to use the entity holding the Letting Authorisation Rights to let their Lots. They can choose to let their Lots privately or use an outside real-estate agent.

Residing on-site

There is no Legislative requirement for the holder of Caretaking or Letting Agent rights to reside at the Scheme, but the relevant Contractual Agreement they have with the Body Corporate would usually detail any such requirement, as well as the hours the Caretaking or Letting Agent is required to be available or contactable. There are Agreements that facilitate the Caretaking or Letting Agent residing off-site.

Engagement of a Caretaker & Terms

Caretaking Service Contractors are engaged by the Body Corporate, and their status is that they are not employees.

The Original Owner (usually the developer) who, in the 'Original Owner Control Period', and so being in total control of the Body Corporate, would usually be the entity to initially engage a Service Contractor (and/or authorise a Letting Agent). And that entity, i.e. the Original Owner (usually the developer) would set the initial contractual salary to be paid in accordance with the terms of the Agreement between the Caretaker and the Body Corporate. The Legislation requires that the salary paid should relate to the work done i.e. be able to be shown to be 'commercial rates'. Note that these Agreements will also normally include terms about annual salary increases.

If the Original Owner (usually the developer), does not engage a Service Contractor for building caretaking, or the original term of engagement expires, the Body Corporate may decide on a new engagement by Ordinary Resolution at a General Meeting, but, unlike the option the Original Owner has, the Body Corporate cannot sell the Service Contractor part of Management Rights (but can sell the Letting Agent Authorisation).

Length of Contractual Term

For any Service Contractor, as defined in the Legislation, and including a Caretaking Service Contractor, the minimum term of engagement is ONE year.

The maximum term of engagement of a Letting Agent Authorisation or Caretaker Service Contractor depends on the Regulation Module that applies to the Scheme.

The Standard Module allows for a maximum term of 10 years.

The Accommodation and Commercial modules allow for a maximum term of 25 years.

The Term of engagement includes any rights or options to extend or renew the contract—whether provided in the first engagement or agreed to later.

Amending a Caretaker's Agreement

Amending an engagement – Deeds of Variation

The Caretaking and/or Letting Agreements are contracts between the involved parties – usually the Body Corporate and the entity or entities that own the Management Rights.

Any amendment to such an Agreement, usually effected by way of the parties entering into a Deed of Variation, can only be executed where all the parties agree to the amendments and variations.

A Body Corporate, for their part, can agree to amend a current engagement with a Caretaking Service Contractor by passing a relevant Ordinary Resolution at a General Meeting.

Voting to amend a Caretaking and/or Letting Agreement

A Motion to amend a Caretaking Service Contractor engagement can be decided by Open Ballot unless the purpose of any amendment includes an option for Term extension or renewal – in these cases the Motion must be decided by way of Secret Ballot.

In either case, no Votes can be cast by Proxy.

Only once in any one Financial Year

A Motion about a Caretaking Service Contractor or Letting Agent Authorisation can only be considered once in a financial year if the Motion is about:

- increasing their pay
- extending their contract
- increasing their Authorisation term as Letting Agent.

Special requirements for advising Owners

The General Meeting documentation must include an Explanatory Note (in the approved form i.e. Form 20) explaining the amendment, and the amendment must:

- be in writing
- state the term of the engagement
- state the duties
- include the payment arrangements.

There is no requirement that the original Agreement be provided with the documentation supplied to Owners for the Meeting, but if a Deed of Variation is to be formally agreed on, then this should be included.

Statutory Review of a Caretaking Agreement

The Legislation provides that, in particular circumstances, either the Body Corporate, or the Caretaking entity can formally request a review of the Caretaking Agreement to ascertain whether the functions, duties, and remuneration provided under the Terms of the Agreement, are 'fair and reasonable'.

Whichever party triggers such a review – either the Body Corporate, or the Caretaker, they need to be careful about what they wish for, because the independent consultant that conducts the review may well make recommendations that were not hoped for by the initiating party!

As mentioned, this review process is only available in particular circumstances – these are the restrictions:

1. Only applicable to an Agreement that:
    - was entered into during the 'Original Owner Control Period', but the Control Period has now ended, and;

- hasn't been assigned, and;
- hasn't been the subject of a Review prior.

2. The Review must be completed within three years of the commencement of the Caretaking Agreement, or one year after the first AGM held following the end of the 'Original Owner Control Period' – whichever is the later date.

If the Body Corporate is the party to initiate the Review, this requires the passing of an Ordinary Resolution Motion at General Meeting requesting the Review.

In addition, for the Body Corporate to make final decisions about the Review outcome, the passing of an Ordinary Resolution Motion at General Meeting is required.

Note that for Motions about such a Review, if the Caretaker is an Owner, they cannot vote on the Motion, whether personally or by Proxy. This restriction on being allowed to vote on this sort of Motion also applies to any Owner that is an 'Associate' of the Caretaker.

If the parties cannot negotiate an agreed outcome following receipt of the Review, then it will require either party to initiate proceedings in QCAT in order to get a determination, or by application for a departmental Specialist Adjudicator to resolve the issues.

Transfer/Assignment of a Caretaking Agreement

An entity's right under an engagement as a Caretaking Service Contractor, or under an Authorisation as a Letting Agent, may be transferred.

So, if they secure Body Corporate approval (normally by way of a formal Committee Resolution, unless the Committee itself or the Body Corporate has decided such a matter should be by way of a General Meeting Resolution), a Caretaking Service Contractor can sell the business and assign the relevant Caretaking Rights agreement to the purchaser.

Because an assignment of Management Rights is normally able to be approved by the Committee, there is a temptation for the Committee not to engage a Strata Lawyer to advise the Body Corporate on the transaction. This is a mistake. A Committee has an obligation to ensure that for any legal transaction the Body Corporate enters into, the Body Corporate's interests are protected – that simply isn't possible unless the Body Corporate receives adequate legal advice about the transaction they are about to execute.

The Committee and/or the Body Corporate, in considering approving any assignment, can consider the following:

- the character of the transferee
- the financial standing of the transferee
- the terms of the transfer
- the competence, qualifications, and experience of the transferee
- any training the transferee has completed or is likely to complete

- the agreement of the transferor to pay the Body Corporate's reasonable legal and administrative costs incurred in considering and facilitating the transfer.

After being given the information necessary to decide on a transfer, the Committee (or Body Corporate if the matter is to be decided at General Meeting) has 30 days to decide.

The Committee (or Body Corporate if the matter is to be decided at General Meeting):

- cannot unreasonably withhold approval
- can ask to be reimbursed for reasonable costs incurred during the approval process
- cannot receive or ask for any other fee or reward for considering the transfer.

Fee May be Payable to Body Corporate on Transfer

The Legislation provides that if an engagement is transferred within 2 years of the initial contract date, the person transferring their business may be asked to pay a fee. The purpose/justification of such a fee is to help compensate the Body Corporate for the disruption, inconvenience, and additional work involved (usually for the Committee), caused by management changeover. So it is meant to disincentivise and compensate for Management Rights 'churn'.

The transfer fee will be either:

- 3% of the fair market value of the transfer if it is approved in the first year after the initial contract date
- 2% of the fair market value of the transfer if is approved after the first year but before the end of the second year after the initial contract.

The person transferring may ask the Body Corporate to waive the transfer fee if they are transferring because of genuine hardship. Information to support this claim should be given to the Committee.

Resolving Disputes between a Body Corporate and a Caretaker or Letting Agent

Some thoughts about disputes in this area…

1. This is a 'big stakes' zone because peoples' livelihoods, businesses, and life-savings can all be at risk. Management Rights businesses invariably are worth considerable amounts, and will often represent a significant proportion of the owner's total assets.

2. When the stakes are high, and under threat, the owners of the Management Rights will invariably, and understandably, seek out well-regarded legal representation to help them fight what they see as the threat to their livelihood and business.

3. A Committee, or some of its Members, might well think that 'issues' that have arisen between the Body Corporate and the Caretaker justify, and are worth, 'taking on' the Caretaker by way of provisions in the BCCM legislation like Remedial Action Notices, and ultimately the Termination or 'Move On' provisions, but going down this path without sufficient contemplation of the consequences is probably the biggest error of judgement a Committee can make.

4. Where conflicts arise about 'performance' of alleged Contractual Duties, Bodies Corporate should be carefully assessing the disputed duties where the Caretaker is accused of under-performing with due consideration as to whether the work required to be done is 'fair and reasonable' i.e. not just because the original Contracted duties list included it. For example, in many residential Strata complexes, what the landscaping and gardens originally were conceived like is far different after years of expansion and growth. Is the scope of works required of the Caretaker still 'fair and reasonable', or should perhaps the Body Corporate come to some modifications in scope, salary adjustment, or additional labour to assist? Any of these mutually agreeable resolutions would be far preferable for all parties than launching, or continuing with disputation.

5. Committees 'thought processes' about these disputes, once headed down the worst path, can become entrenched as the dispute becomes prolonged and 'festers'. Feelings and relationships become toxic, and factions in the wider Scheme community inevitably define themselves. In these scenarios, winning the battle (the war will almost certainly be lost) is what the Committee focuses on - often to the exclusion of anything else.

6. Committees might well read the sections of the Legislation concerning Remedial Action Notices, Termination and 'Move On' provisions, and form the impression that it sounds logical and easy – a 'step-by-step' process. But that's likely to be a fatal mistake. The roadside is littered with Bodies Corporate that thought like that and found out the hard way that this is a complex area of the Legislation, and making use of it isn't easy, and a guaranteed outcome is never likely. In fact the odds are that the Body Corporate will lose the battle – and the war will keep raging.

7. The reasons that implementing these sections of the Legislation is fraught are twofold. Firstly, as stated previously, these sections, and other related sections, of the Legislation are complex and errors in tactics and procedure are easily made. Secondly, because the stakes are high, it's more likely than not, that the dispute will end up before Special Adjudication in QCAT – and that's another problem. Because the stakes are high, because businesses and livelihoods are at risk, Specialist Adjudicators and Tribunal Members will be particularly cautious – decisions will definitely not be made lightly. And the best prepared case, by the best legal team, will not necessarily win!

8. For all the reasons above – and there are more, it should be clear that any Committee dealing with 'friction' or 'performance issues' with their Caretaker, owes the Body Corporate

and all Owners, the promise that they will only use the Legislative dispute provisions as a very last resort, and only then if the 'issues' truly warrant even considering going down this path.

9. Alternative dispute resolution methods, Specialist Conciliators, consultants that specialise in Strata dispute resolution – all these avenues should first be seriously considered and tried. A Committee needs to be able to explain to all Owners, firstly that the 'issues' being experienced need to be confronted head-on in this manner – as distinct from a 'workaround' or even concluding that it's probably not worth the fight, and secondly that if the matters can't be ignored, they have seriously and genuinely tried and committed to an alternative dispute resolution process first.

10. Finally, and by way of summary, a Committee faced with a Caretaker dispute should be asking themselves this question:
Are they 'acting reasonably' and 'acting in the best interests of all Owners' (both are statutory obligations), if they don't genuinely and with commitment, first pursue alternative dispute resolution strategies? Such strategies might well include engaging outside professional dispute resolution consultants, and might also include considering negotiated 'workarounds', - before heading down the 'nuclear option' path.

The Office of the Commissioner for Body Corporate and Community Management has limited jurisdiction to resolve disputes involving Caretaking Service Contractors.

In addition, the Legislation only recognises these disputes as between the Body Corporate and the Service Contractor. A Lot Owner cannot lodge a Dispute Resolution Application against a Caretaking Service Contractor.

If a dispute is deemed a '**Complex Dispute**', then the Office of the Commissioner for Body Corporate and Community Management dispute resolution service cannot adjudicate it.

A dispute is defined as a '**Complex Dispute**' if it is about a contractual matter relating to:

- an engagement
- the transfer of an engagement
- the terms of an engagement.

Complex Disputes may be determined by the Queensland Civil and Administrative Tribunal or by a Specialist Adjudicator appointed by the Commissioner.

Specialist adjudication

An application for Specialist Adjudication must nominate someone to act as the Specialist Adjudicator.

A Specialist Adjudicator can only be appointed if all parties to the dispute agree in writing on:

- the person nominated as Specialist Adjudicator, and;

- how much the Specialist Adjudicator will be paid, and;
- how the amount will be paid and who by, or an agreement that how the amount will be paid will be decided by the Specialist Adjudicator

The Commissioner must be satisfied that the nominated person has appropriate qualifications, experience and standing to perform the role.

Terminating a Caretaking Agreement

An engagement of a Caretaking Service Contractor, or an Authorisation of a Letting Agent, can be terminated:

- by mutual agreement between the parties to the Contract
- under the Terms of the Contract or Authorisation
- if the Caretaking Service Contractor, or an Authorisation of a Letting Agent is convicted of an indictable offence involving dishonesty, fraud, or assault
- if the Caretaking Service Contractor, or Letting Agent does not comply with a 'Remedial Action Notice'.

Terminating by agreement between the parties to the Contract

A Body Corporate can terminate their engagement with a Caretaking Service Contractor, or an Authorisation of a Letting Agent, if:

- it is agreed with the entity that is the other party to the engagement Agreement
- the Terms of the Agreement allow for termination of the engagement or authorisation.

The Body Corporate must agree to the termination by Ordinary Resolution at a General Meeting.

Terminating for conviction of offences

A Body Corporate can terminate their engagement with a Caretaking Service Contractor, or an Authorisation of a Letting Agent, if the person (or director, if a company):

- is convicted of an indictable offence involving fraud or dishonesty (whether or not a conviction is recorded), or;
- runs a business (involving the supply of services to the Body Corporate, or to Owners or Occupiers of Lots) that is against the law, or;
- is convicted on indictment of an assault or an offence involving assault (whether or not a conviction is recorded), or;
- transfers an interest in the engagement or Letting Authorisation without the Body Corporate's approval.

The Body Corporate must approve the termination by Ordinary Resolution by Secret Ballot.

Any Body Corporate that is intent on pursuing the route of Termination of Management Rights is strongly advised to engage a Strata Lawyer to advise them. There are many pitfalls.

Remedial Action Notice

A Body Corporate can terminate an engagement with a Caretaking Service Contractor, or an Authorisation of a Letting Agent, for:

- engaging in misconduct, or;
- being grossly negligent (i.e. extremely careless) in carrying out their functions under the engagement, or;
- failing to perform duties as required under the engagement, or;
- failing to comply with the relevant Code of Conduct, or;
- failing to comply with disclosure requirements.

Before they can terminate the Agreement, the Body Corporate must issue a 'Remedial Action Notice'. The decision to issue the notice can be made by the Committee, but it could also be a decision of the Body Corporate at General Meeting.

A 'Remedial Action Notice' must state:

- that the person has not met their obligation in a way mentioned above, and;
- specific details that identify the issue (e.g. the duties not carried out), and;
- a notice period (no less than 14 days) during which they must remedy the issue, and;
- that if they do not comply with the notice within the notice period, the Body Corporate can terminate the engagement.

The termination must be by Ordinary Resolution at a General Meeting. The Committee could decide that additionally it will be by Secret Ballot, but otherwise the Legislation only requires an Open Ballot.

If the engagement is terminated, the Caretaking Service Contractor, or an Authorisation of a Letting Agent cannot transfer their business with the Body Corporate to someone else – and this is partly why this is such a 'high-stakes' issue.

Any Body Corporate that is intent on pursuing the route of Remedial Action Notice is strongly advised to engage a Strata Lawyer to advise them. There are many pitfalls.

Forced Transferring the engagement

Instead of terminating an engagement or Authorisation the Body Corporate may make the Caretaking Service Contractor, or an Authorisation of a Letting Agent transfer it (i.e. assign/sell it to someone else with approval of the Body Corporate). And so they may be able to leave the Scheme with some financial return if the engagement is transferred.

The process is involved and very prescriptively defined in the Legislation.

Any Body Corporate that is intent on pursuing the route of Forced Transfer of Management Rights is strongly advised to engage a Strata Lawyer to advise them. There are many pitfalls.

Note that Caretakers who also have a Letting Authorisation, must comply with <u>both</u> these Codes of Conduct below.

Codes of Conduct for Caretaking Service Contractors

Caretakers are classified as Service Contractors

(Body Corporate Managers also share this particular Code of Conduct)

1. Knowledge of Act, including this Code of Conduct

A Body Corporate Manager or Caretaking Service Contractor must have a good working knowledge and understanding of this Act, including this Code of Conduct, relevant to the person's functions.

2. Honesty, fairness, and professionalism

(1) A Body Corporate Manager or Caretaking Service Contractor must act honestly, fairly, and professionally in performing the person's functions under the person's engagement.

(2) A Body Corporate Manager must not attempt to unfairly influence the outcome of an election for the Body Corporate Committee.

3. Skill, care and diligence

A Body Corporate Manager or Caretaking Service Contractor must exercise reasonable skill, care, and diligence in performing the person's functions under the person's engagement.

4. Acting in Body Corporate's best interests

A Body Corporate Manager or Caretaking Service Contractor must act in the best interests of the Body Corporate unless it is unlawful to do so.

5. Keeping Body Corporate informed of developments

A Body Corporate Manager or Caretaking Service Contractor must keep the Body Corporate informed of any significant development or issue about an activity performed for the Body Corporate.

6. Ensuring employees comply with Act and this Code of Conduct

A Body Corporate Manager or Caretaking Service Contractor must take reasonable steps to ensure an employee of the person complies with this Act, including this Code of Conduct, in performing the person's functions under the person's engagement.

7. Fraudulent or misleading conduct

A Body Corporate Manager or Caretaking Service Contractor must not engage in fraudulent or misleading conduct in performing the person's functions under the person's engagement.

8. Unconscionable conduct

A Body Corporate Manager or Caretaking Service Contractor must not engage in unconscionable conduct in performing the person's functions under the person's engagement.

Examples of unconscionable conduct—

1. taking unfair advantage of the person's superior knowledge relative to the Body Corporate

2. requiring the Body Corporate to comply with conditions that are unlawful or not reasonably necessary

3. exerting undue influence on, or using unfair tactics against the Body Corporate or the Owner of a Lot in the Scheme

9. Conflict of duty or interest

A Body Corporate Manager or Caretaking Service Contractor for a Community Titles Scheme (the first Scheme) must not accept an engagement for another Community Titles Scheme if doing so will place the person's duty or interests for the first Scheme in conflict with the person's duty or interests for the other Scheme.

10. Goods and services to be supplied at competitive prices

A Body Corporate Manager or Caretaking Service Contractor must take reasonable steps to ensure goods and services the person obtains for or supplies to the Body Corporate are obtained or supplied at competitive prices.

11. Body Corporate Manager to demonstrate keeping of particular records

If a Body Corporate or its Committee requests, in writing, the Body Corporate Manager to show that the manager has kept the Body Corporate Records as required under this Act, the manager must comply with the request within the reasonable period stated in the request.

Codes of Conduct for Letting Agents

This Code of Conduct applies to Caretakers that also hold Letting Agent Authorisation, and so both this and the previous Code apply to Caretakers.

1. **Honesty, fairness, and professionalism**

A Letting Agent must act honestly, fairly and professionally in conducting the Letting Agent business under the Letting Agent's Authorisation.

2. **Skill, care, and diligence**

A Letting Agent must exercise reasonable skill, care and diligence in conducting the Letting Agent business under the Letting Agent's Authorisation.

3. **Acting in Body Corporate's and individual Lot Owner's best interests**

Unless it is unlawful to do so, a Letting Agent must, as far as practicable, act in the best interests of the Body Corporate and individual Lot Owners.

4. **Ensuring employees comply with the Act and Code**

A Letting Agent must take reasonable steps to ensure an employee of the Letting Agent complies with this Act, including this Code, in conducting the Letting Agent business under the Letting Agent's Authorisation.

5. **Fraudulent or misleading conduct**

A Letting Agent must not engage in fraudulent or misleading conduct in conducting the Letting Agent business under the Letting Agent's Authorisation.

6. **Unconscionable conduct**

A Letting Agent must not engage in unconscionable conduct in conducting the Letting Agent business under the Letting Agent's Authorisation.

Examples of unconscionable conduct—

1. taking unfair advantage of the person's position as Letting Agent relative to the Body Corporate or the Owner of a Lot in the Scheme;
2. exerting undue influence on, or using unfair tactics against, the Body Corporate or the Owner of a Lot in the Scheme.

7. Nuisances

A Letting Agent must not—

(a) cause a nuisance or hazard on Scheme land; or

(b) interfere unreasonably with the use or enjoyment of a Lot included in the Scheme; or

(c) interfere unreasonably with the use or enjoyment of the Common Property by a person who is lawfully on the Common Property; or

(d) otherwise behave in a way that unreasonably affects a person's lawful use or enjoyment of a Lot or Common Property.

8. Goods and services to be supplied at competitive prices

A Letting Agent must take reasonable steps to ensure goods and services the Letting Agent obtains for or supplies to the Body Corporate are obtained or supplied at competitive prices.

Saving on Electricity

This Chapter was contributed by Andrew McNair - Director, Energy Options Australia

Desirable Outcomes

Energy (electricity, natural gas, etc) is an extensive subject and so we've endeavoured to outline just some of the more important aspects that are likely to be relevant to Strata Schemes' Committees and Owners.

Every Body Corporate has an obligation to try and deliver the best possible outcomes for the community, - and exploring the best possible energy supply alternatives, as well as ways energy consumption might be reduced, are matters that most Bodies Corporate will want to focus on at some stage. Engaging a consultant to assist will help ensure the Committee is receiving good and appropriate advice on which to base their decisions, and make recommendations to the Body Corporate as a whole.

Obtaining Supply Offers in the Retail Market

Retail offers are available for both Small and Large Strata Schemes.

Smaller customers would be medium sized Bodies Corporate spending up to around $20,000 per annum in electricity costs - larger Strata Schemes, with multiple towers can have very large energy costs.

There is a very good tool provided by the Government, that, while not foolproof, offers very good insight into the better deals available for smaller customers. The 'Energy Made Easy' website provides a comparison tool for small residential, strata, and business customers in Queensland (and the other States as well) for electricity and gas offers. The site can be accessed via the following link.

EnergyMadeEasy.gov.au

Larger Strata customers will need to negotiate more complex agreements or contracts that are binding for the term selected. The threshold (how many kWh you use) for a large customer varies between States. A large customer is QLD is one that uses 100,000 kWh or more per annum.

This is a good example where the engagement of a consultant will often deliver the best outcome at the time – it is a complex area, and not one where a Strata Scheme should venture without obtaining good advice.

Is an 'Embedded Network' the Way to Go?

'Embedded Networks' are private electricity networks that supply customers within a single site such as Strata apartment buildings, caravan parks and shopping centres. The Body Corporate or a specialised retailer can operate the network infrastructure to supply electricity to residents (and the Body Corporate Common Property), often at significantly reduced rates.

Converting to an Embedded Network is much harder of late due to increased competition, but more importantly a Strata Scheme effectively requires 100% of the residents to agree to become part of the Embedded Network, otherwise it becomes financially difficult to justify due to increased implementation costs. If the developer incorporated the Embedded Network at the building phase, this aspect isn't a problem, but retrospectively configuring one in an established Scheme could well be difficult.

If the community has the support and desire to implement an Embedded Network, it is recommended to engage a specialist to assist with the process. Plan for an implementation timeframe typically in the order of 6 to 12 months.

Most new developments now tend to be constructed with electricity Embedded Networks from the start, however residents technically can still choose their own retailer. Well operated Embedded Networks in larger buildings though will generally deliver lower electricity costs than would be achievable from any other market offer, making it less attractive for residents to want to opt out of the arrangements. However, many new Bodies Corporate with an Embedded Network should also consider engaging a specialist consult to review the arrangements (electricity, gas, hot water charges etc) to ensure the retailer is delivering what was promised to the developer and to ensure the Body Corporate and residents are receiving a competitive outcome.

Reducing Energy Consumption

Apart from reducing the cost of the energy for the Body Corporate, reducing the energy consumption in the Common Property areas can deliver good savings, particularly for older buildings. Things that might be worthwhile investigating include:

- Replacement of lights with energy efficient LED lamps and fittings, even better if they have sensors to automatically control the lights;
- Where basement areas are required to be mechanically ventilated, installing CO monitoring of carpark or basement ventilation systems, such that fans only run when gas levels require, can lead to big savings - with up to 80% energy saved compared to 24-hour operation;
- Using timers to control pool filtration pumps and heaters to avoid peak-demand times when energy costs are at their highest;
- Consider electric heat pumps rather than gas heating for pools;

- Set higher temperatures for air conditioning of foyers and other areas where that is an appropriate strategy;
- Installation of solar – see below.

Solar

Depending on the available roof space, the installation of solar collectors provides many Bodies Corporate with the opportunity to reduce the cost for the Common Property electricity. Care should be taken however to size the system to ensure all electricity generated is consumed at the time.

Most feed-in tariffs from retailers have reduced significantly to a point where it is not worth exporting any excess electricity from the solar installation to the network.

While batteries are an alternative to store the excess, they are still relatively highly priced, making it difficult to get a reasonable return.

Correctly sizing the solar system is the key, allowing for possible expansion at the appropriate time if roof space is available.

Should we be planning for Electric Vehicles?

The simple answer is 'Yes'. We cannot escape the fact that automotive industry is going through a revolution that sees electric vehicles at the forefront. Other future alternatives may include hydrogen fuel cells, but they appear still 5 to 10 years away before they become viable.

Electric vehicles are here now and Bodies Corporate need to prepare for existing and future occupants to be able to have access to some form of recharging facility.

Installation of community chargers in visitor car park spaces is a good first step. This can allow for reasonable charging times with a 'User-Pays' system for the energy used.

Installation of private chargers for individual car park spaces will depend on the ability for the existing electrical infrastructure in the building to have enough spare capacity available. It then also comes down to how the Body Corporate will meter the energy used for charging (i.e. can it be supplied from the Lot or from Common area supply circuits).

If there are capacity issues, the Body Corporate could also consider initially limiting the circuit for any individual charger to 10 – 15 amps single phase while further investigation is carried out to enable broader access for residents. If the electricity is supplied from the Common circuits, the Body corporate will need to consider installation of a separate meter to enable cost recovery from the residents.

Installation of 'Whole-of-Building' solutions will future-proof any building but will come at a significant cost. The advantage of some 'Smart Charging Systems' is that they have an overarching management system that controls the operation of the EV chargers within the building's electrical infrastructure's limitations and also within prescribed hours of the day to reduce high usage at 'Peak-Demand' times. These systems also include an easy payment system for the users.

Many of the EV charger suppliers can offer a comprehensive report for any building's existing infrastructure and how it might handle the installation of EV chargers. A good report will provide costings and an implementation plan for the short, medium, and long-term requirements of the building, and this will enable a Body Corporate to plan and budget for the future capital costs.

By-Laws

By-Laws are a set of rules that a Body Corporate makes to control and manage:

- the Common Property
- Body Corporate assets
- services and facilities provided by the Body Corporate
- the use of Lots.

The By-Laws of a Body Corporate form part of the Community Management Statement (CMS) which is recorded for the Scheme.

The Body Corporate should ensure all Owners and Occupiers have a copy of the Scheme's By-Laws so that everyone residing in the community is aware of their rights, responsibilities, and obligations.

Making and Changing By-Laws

Most Bodies Corporate inherit By-Laws that are initially put in place by the developer's solicitor – and they often are not suitably 'tailored' for the particular Scheme i.e. developer's solicitors may not turn their mind to 'fine-tuning' the By-Laws to suit the Scheme and its facilities. Given that this is how most By-Law packages originate, it's therefore not surprising that it's common to have a mismatch between what a Scheme really needs in its By-Laws, and what it's got!

A Body Corporate can make new By-Laws or change its existing ones at any time.

To do this a Body Corporate must pass a Motion to record a new Community Management Statement (CMS) that includes changes to the By-Laws.

Usually a Motion agreeing to change the By-Laws must be agreed to by a Special Resolution at a General Meeting, but if the change includes a new or amended Exclusive-Use By-Law, a Resolution Without Dissent (RWD) is needed.

The Body Corporate must register its new Community Management Statement (CMS) with the Titles Registry Office within 3 months from the date the Motion to change the By-Laws is passed.

A By-Law commences on the day the Titles Office registrar records the new Community Management Statement (CMS) that contains the By-Laws.

Recording By-Laws with the Titles Registry Office does not automatically make them valid i.e. they may be 'in-force', but almost certainly some will be invalid - there are many (probably most) Schemes that have some invalid, unenforceable, and illegal By-Laws in their By-Law set!

It is the Body Corporate's responsibility to take all reasonable steps to ensure its By-Laws are valid and enforceable – advice from a lawyer specialising in Strata Law is strongly recommended.

Invalid By-Laws

A Body Corporate can only (legally) make a By-Law on a matter allowed under the Body Corporate and Community Management Act.

By-Laws cannot:

- be inconsistent with the Act or any other legislation
- stop or restrict a sale, lease, transfer, mortgage, or other dealing with a Lot
- discriminate between types of Occupiers
- be unreasonable, when the interests of all Owners and Occupiers in the Scheme and the use of the Common Property are considered
- restrict the type of residential use of a residential Lot
- impose a monetary liability on an Owner or Occupier (except in an Exclusive-Use By-Law)
- stop an Owner or Occupier from installing solar hot water or solar power on their Lot because it affects the appearance of the building
- stop a person with a disability from having a guide, hearing or assistance dog on the Scheme.

If a By-Law does not comply with the legislation, it may be invalid.

If an Adjudicator decides that a By-Law is invalid, they may make the Body Corporate record a new Community Management Statement (CMS)—removing or amending the invalid By-Law.

Examples of invalid By-Laws:

Not consistent with the Act

A By-Law would be inconsistent with the *Body Corporate and Community Management Act* if it said that the Body Corporate did not have to hold Annual General Meetings.

Discriminates between types of Occupiers

A By-Law that only allows Owners and not tenants to use the Common Property swimming pool, would likely be discriminating between different types of Occupiers.

Monetary liability

A Body Corporate could not make a valid By-Law that made an Owner or Occupier pay a bond before moving in, because it would be imposing a monetary liability.

Unreasonable

A Body Corporate could not make a valid By-Law that unreasonably prohibited the keeping of a pet on a Lot.

‘Exclusive-Use’ By-Laws

An ‘Exclusive-Use’ (EU) By-Law is attached to a Lot in a Body Corporate. It gives the Occupier of that Lot the right to the Exclusive-Use (or other special rights) of a part of the Common Property or a Body Corporate asset.

For example, an Exclusive-Use By-Law may give the Occupiers of a unit an exclusive right to use the Common Property next to that unit as a courtyard, or part of the basement as a car space or storage space.

The part of the Common Property, or asset, is usually identified in the By-Law by words and or a sketch plan.

An Exclusive-Use By-Law cannot give rights to utility infrastructure that is Common Property or a Body Corporate asset.

Making an ‘Exclusive-Use’ By-Law

The rules for making Exclusive-Use By-Laws are stricter than those for making other By-Laws.

An Exclusive-Use By-Law may be attached to a Lot only if:

- the Body Corporate passes a Resolution Without Dissent (RWD) to record a new Community Management Statement (CMS) that includes the By-Law, and;
- the Owner of the Lot that benefits from the By-Law agrees in writing or votes personally on the Resolution.
- The Body Corporate must record the new Community Management Statement (CMS) that includes the Exclusive-Use By-Law with the Titles Registry Office within 3 months after passing the Resolution.

The By-Law will only apply when the new CMS is recorded at the Titles Office.

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.

Under an Exclusive-Use By-Law, a Lot Owner is usually responsible for maintenance of the area of the Common Property included in the Exclusive-Use By-Law such as the lawns and gardens.

Typically, the 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.

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.

Animal By-Laws

This information is relevant to all Community Titles Schemes in Queensland.

Having an animal in a Community Titles Scheme may be regulated by the Scheme's By-Laws, which form part of the Scheme's Community Management Statement (CMS).

There are many different types of By-Laws relating to animals, and the wording of your Scheme's By-Law will determine your rights and responsibilities about keeping animals there.

Guide, hearing, and assistance dogs

If you have a disability under the *Guide, Hearing and Assistance Dogs Act* and rely on your animal, you do not need to ask permission before bringing a dog into a Body Corporate property.

Concerns of Owners

Owners and Occupiers often have a range of concerns about having animals in a Community Titles Scheme. The main issue for a Body Corporate is the likelihood of a negative impact on Common Property, or on any person living at or visiting the Scheme.

The genuine concerns of most Owners can be eased by setting reasonable conditions, which may be more appropriate than outright refusal.

If you want to keep an animal on your Lot, you must check your Scheme's By-Laws to find out whether you can keep an animal or have an animal visit.

The By-Laws will also tell you if you need to ask permission from your Body Corporate to keep an animal - usually an Owner or Occupier will need to ask for permission.

A By-Law's inclusion in your Scheme's CMS does not automatically make it a valid By-Law. There are some limitations on By-Laws. For example, a By-Law must not be oppressive or unreasonable toward the interests of all Owners and Occupiers and the use of the Common Property. It is up to the Committee and Body Corporate to ensure the By-Laws they are registering are valid and enforceable, and the best way to achieve that, is to engage a specialist Strata lawyer to advise.

If there is no By-Law about animals

If there is no specific By-Law that regulates animals at the Scheme, you do not need to ask for permission to keep an animal within your Lot. However, you must still consider the other Body Corporate By-Laws, such as noise and nuisance.

You should consider if the animal is suitable for living in your Lot, as well as your Scheme, and whether your animal is likely to cause a nuisance to other Occupiers in your Scheme.

Nuisance

The Legislation prohibits Occupiers from using or permitting the use of their Lot in a way that causes a nuisance or interferes unreasonably with the use or enjoyment of another Lot or Common Property.

The Committee may withdraw approval for an animal if there is evidence the animal is causing a nuisance to other Owners or Occupiers of the Scheme.

Adjudicators have ordered the removal of animals where the person keeping the animal has not controlled their animal's behaviour, and that behaviour was found to be causing a nuisance.

Permissive Pet By-Laws

A common pet By-Law is one that allows animals provided you get approval first – with the Committee usually able to make the decision.

This type of By-Law is considered a 'Permissive By-Law' as it allows the keeping of animals with prior approval.

If you want to have an animal in a Body Corporate with this type of By-Law you should ask for permission by writing to the Committee. They cannot unreasonably refuse a request by a person asking to keep an animal on their Lot.

You can request approval if you are:

- an Owner
- an Occupier
- a prospective purchaser
- a prospective Occupier.

If the Body Corporate says no to your request, you may consider disputing the decision through the Commissioner's Office if you think the decision was unreasonable.

Conditions

Sometimes animal By-Laws include conditions that people living in the Body Corporate must comply with when they bring an animal into the Scheme.

If conditions are not written in the By-Law, the Committee can impose conditions at their discretion when giving approval to keep an animal in a Lot.

Conditions are used to minimise any impact from the animal on other Occupiers and Common Property. Conditions should reflect the circumstances of each individual case.

A Committee must act reasonably when setting conditions.

Common conditions

Common conditions Bodies Corporate might impose on the keeping of animals include:

- The animal is not allowed on the Common Property, except for the purpose of being taken in or out of the Scheme land.
- The animal must be on a lead or adequately restrained while on Common Property.
- The animal must not cause nuisance or interfere unreasonably with any person's use or enjoyment of another Lot or Common Property.
- The animal be kept in good health and free from fleas and parasites.
- Any animal waste must be disposed of in such a way that it does not create noxious odours or otherwise contaminate the Scheme.
- Reasonable steps must be taken to minimise the transfer of airborne allergens from the animal, such as regular vacuuming and/or grooming.
- The Committee can withdraw approval for the animal to remain on the Scheme if the specified conditions are not complied with.
- The approval only applies to the animal in the application and does not allow the keeping of any additional replacement or substitute animals on the Lot.
- If you do not comply with the conditions imposed by the Committee or written in the By-Laws, the Committee may withdraw approval for your animal and ask you to remove the animal from the property.
-

Prohibitive Animal By-Laws

Some Bodies Corporate have By-Laws that do not allow animals. These are called prohibitive By-Laws.

Some will prohibit all animals without exception. Others will prohibit all animals of a particular type, such as cats, dogs, or dogs over 10kg.

The Committee cannot approve an animal that the By-Laws prohibit.

If you, as an Owner, want to keep an animal in a Scheme with a prohibitive animal By-Law, you could propose a Motion to change the By-Law.

If your attempt to change the By-Law is not successful, you may consider disputing that decision and/or the validity of the By-Law through the Commissioner's Office.

Before Moving in with a Pet

Buying

When looking at buying a property in a Community Titles Scheme, you may want to ask the Body Corporate's permission to keep an animal on the Lot you wish to purchase.

The Commissioner's office does not have jurisdiction to resolve disputes between purchasers and Bodies Corporate, however, the Owner selling their Lot could attempt to resolve the matter, and then lodge a dispute application with the Commissioner's Office if they are unsuccessful.

They could name the purchaser as an 'interested party' for the dispute.

Renting

Tenants may also need to ask the Body Corporate's permission to keep an animal on their Lot, as long as the By-Laws and their tenancy agreement allow it.

Enforcing By-Laws

A Body Corporate is responsible for enforcing its own By-Laws.

Owners and Occupiers can also take action to enforce the By-Laws.

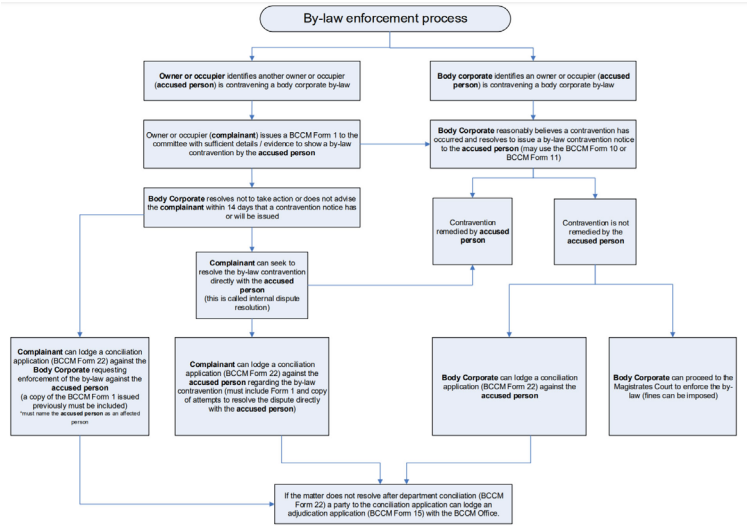
The steps that must be taken depend on who is enforcing the By-Laws.

Body Corporate enforcing By-Laws

'Practice Direction' 6 issued by the Commissioner for Body Corporate and Community Management details the processes that must be followed for the resolution of disputes regarding By-Law breaches.

This flow-diagram below is included with this Practice Direction, and PD6 can be viewed in full here:

Qld.Gov.au/law/housing-and-neighbours/body-corporate/disputes/practice-directions



If a Body Corporate believes that an Owner or Occupier is breaching the By-Laws, the Body Corporate can speak to the Owner or Occupier informally to try to resolve the issue.

If that doesn't work, the first formal step under the Body Corporate and Community Management Act is for the Body Corporate to give a By-Law Contravention Notice to the person it believes is breaching the By-Laws.

The decision to give a By-Law Contravention Notice can be made by the Committee, or the Body Corporate at a General Meeting.

The Body Corporate usually cannot take action to enforce the By-Laws until it has sent a By-Law Contravention Notice.

Types of contravention notices

Continuing Contravention Notice (BCCM Form 10)

The Body Corporate can give a Continuing Contravention Notice to an Owner or Occupier if it believes that they are breaching a By-Law, and it is likely that this will continue.

An example of this type of breach is where an Owner has made a change to the outside look of their Lot without the approval required in the By-Law.

The purpose of the notice is to ask the person to fix the problem within a certain time.

The notice must:

- say that the Body Corporate believes the person is breaching a By-Law
- detail the By-Law that the Body Corporate believes is being breached
- explain how the By-Law is being breached
- set a time period for the person to fix the problem

- explain that if the person does not comply the Body Corporate may:
    a) start proceedings in the Magistrates Court, OR;
    b) make a Conciliation Application.

The Continuing Contravention Notice can be used, or the Body Corporate can send a letter that says all those things.

Future Contravention Notice (BCCM Form 11)

The Body Corporate can give a Future Contravention Notice to an Owner or Occupier if it believes the person has breached a By-Law and it is likely that the contravention will be repeated.

This notice would apply if, for example, an Occupier often had parties which breached a noise By-Law. The purpose of the notice is to ask the person not to repeat the breach. The notice must:

- say that the Body Corporate believes the person has breached a By-Law
- detail the By-Law that the Body Corporate believes has been breached
- explain how the By-Law was breached
- tell the person not to repeat the breach
- explain that if the person does not comply with the notice the Body Corporate may
- start proceedings in the Magistrates Court
- make a conciliation application.

The Future Contravention Notice can be used, or the Body Corporate can send a letter that says all those things.

Who the Notice is Sent to

The Body Corporate sends the Contravention Notice to the person they believe has breached the By-Law.

If the Body Corporate believes an Occupier, who is not the Owner, has breached the By-Laws, the Contravention Notice must name the Occupier and not the Owner or property manager.

However, the Body Corporate must also give a copy of the notice to the Owner as soon as possible after giving the Notice to the Occupier.

Not Complying with a Contravention Notice

If a person does not comply with a By-Law Contravention Notice, the Body Corporate can decide to either

- start proceedings in the Magistrates Court for the offence of failing to comply with the Notice, or;

- apply for conciliation to enforce the By-Law.

A fine can be imposed by the Magistrates Court for failure to comply with the Notice.

If the Body Corporate decides to apply to the Commissioner's Office for formal Conciliation and this doesn't resolve the dispute, then the Body Corporate can apply to the Commissioner's Office for the dispute to be put before an Adjudicator.

Owner or Occupier enforcing By-Laws

An Owner or Occupier can take steps to enforce the By-Laws if they reasonably believe that:

- another Owner or Occupier has breached the By-Laws, and;
- it is likely the breach will continue or be repeated.

The Owner or Occupier can send an 'Approved Notice' (BCCM Form 1) to the Body Corporate asking that the Body Corporate send a Contravention Notice to the person they believe is breaching the By-Laws.

Taking it further

If the Committee does not tell the Owner or Occupier who is making the complaint (the complainant) within 14 days that a Contravention Notice has been issued, the complainant can apply for conciliation against the person they believe is breaching the By-Laws.

The complainant must try to fix the issue with the other person before they apply for conciliation.

If the Body Corporate advises that it has issued a Contravention Notice, but the complainant is not satisfied with their action to enforce it, the complainant can apply for conciliation against the Body Corporate.

A complainant usually cannot apply for conciliation about a By-Law breach unless they have given their Body Corporate an Approved Notice about the breach.

Urgent By-Law Issues

In some cases, a Body Corporate can make a Dispute Resolution Application without issuing a Contravention Notice, or an Owner or Occupier can make a Dispute Resolution Application without giving the Body Corporate a Notice about the breach.

This would apply if:

- the By-Law breach is incidental to an application for an order to repair damage or reimburse the cost of repairs arising from a breach of the Legislation,

  or;
- the application is for the 'Interim Order' of an Adjudicator

and

- there are 'special circumstances' which justify the dispute being resolved urgently — that is, if the alleged By-Law breach is likely to cause:
    a) injury to people or serious damage to property
    b) a risk to people's health or safety
    c) causing a serious nuisance to people
    d) for another reason, giving rise to an emergency.

'House-Rules'

In some respects, House-Rules fall into the same category as Informal Committee Meetings, and Sub-Committees in that you'll hear opinions such as: "they aren't approved, they're not anywhere in the Legislation so shouldn't be used…" etc. etc.

But like Informal Committee Meetings, and Sub-Committees (which we talk about elsewhere in this book), House-Rules can be incredibly useful to Strata communities. They're probably the only way to efficiently let occupants know about some of the more important, and useful, 'pointers' in regards to the complex.

As we're all only too well aware, the set of By-Laws for most communities are usually quite long, detailed and sometimes written in rather legalese-type language, and it's understandable that new Owners and new tenants will be loath to wade through them.

But Committees want and need all occupants to know about, and observe a few things – things that crop up frequently, often daily. Things like:

- Refuse disposal
- Parking guidelines
- Pool and other facilities guidelines
- Booking of facilities
- Fire and other emergency procedures

So producing an easily-readable, preferably 'one-pager' list of 'House-Rules' or 'Community Guidelines' is an excellent way to convey these matters to all members of your community.

And, another 'plus' is that they are easily able to be updated by the Committee as circumstances change.

As to the Legislation being 'silent' on House-Rules, one category of case-law on Strata i.e. Adjudicator's Orders certainly hasn't been silent. Adjudicators, have, multiple times, acknowledged their value and place in the operation of a Strata Community.

In the case of "*The Grove* [2018] QBCCMCmr 581", Adjudicator Rosemann stated:

> *It is common for Body Corporate Committees to make rules, often referred to as 'house rules', either pursuant to a specific By-Law such as By-Law 6 or without one. The making of such rules is not generally inconsistent with the Legislation and the rules can give useful guidelines on the use of Common Property facilities.*
>
> *However, such rules are not By-Laws, as they have not been adopted at a General Meeting and recorded in the CMS. Moreover, a Body Corporate cannot delegate its By-Law making power to its Committee. As such, house rules are not binding or enforceable even if they are contemplated in a By-Law. They are simply advisory.*

The most important proviso about 'House-Rules' is that they shouldn't conflict with any By-Law, but rather act in 'concert' with the By-Laws. Also, it makes sense to actually have a specific By-Law that addresses the House-Rules, and the authority for the Committee and Body Corporate to put them in place. As an example, here is the By-Law that The Grove had in place:

> **6. House Rules**
>
> **6.1** The Committee may make house rules concerning the Common Property and the recreational facilities; however, the house rules must not be inconsistent with these By-Laws.
>
> **6.2** The house rules have the same effect and are to be observed in the same manner as these By-Laws. The house rules are to be available to all guests, on the notice board and from the Body Corporate Manager.

In all of this, it's important for Bodies Corporate to be aware that unlike By-Laws, House-Rules can be difficult to enforce if there's a recalcitrant occupant. With a By-Law breach, the Legislation provides for enforcement procedures, but House-Rules might need to stand on their own, and that's why, if the main House-Rule 'pointers' are actually a re-wording of a relevant By-Law, the Body Corporate can fall back on the By-Law if enforcement becomes necessary.

So, House-Rules and Community Guidelines, can be a very good thing – just take care, lots of care, in their compilation. Keep them brief, friendly, to-the-point, aligned with the By-Laws where possible, and, up to date.

Approved Forms

The Legislation requires some communications to make use of not just a 'Notice', or 'Form', but to be submitted 'in the Approved Form' – note the use of the word 'in', not 'on'.

And for this purpose, the Director General has issued relevant 'Approved Forms' (sometimes also referred to as 'Prescribed Forms') – for a range of particular Body Corporate matters where it was obviously felt that the type and specifics of the information to be included needed to be defined and prescribed.

Examples of 'Approved Forms' are:

Proxy Form for General Meetings (BCCM Form 6)

Proxy Form for Committee Meetings (BCCM Form 7)

Body Corporate Information Certificate (BCCM Form 13)

Currently there are about 16 'Approved Forms'

If these 'Approved Forms' themselves aren't downloaded and used, but instead an alternative is designed, care needs to be taken that all the detail and information that the 'Approved Form' included and required is mirrored in an alternative design.

For example, a BCM might want to have an on-line Proxy Form facility, and so care needs to be taken with the design of that on-line form to ensure content and features are similar to the 'Approved Form'.

The Office of BCCM has also generated quite a number of additional forms – which they refer to as 'Office Forms' and these are just a suggested guide, but are generally a good choice to use or the basis for a Body Corporate Manager to then tailor their own version.

If the suggested 'Office Forms' aren't used, but alternatives are designed by a Body Corporate or their BCM, the onus is on the designer to ensure that what the legislation requires (or prohibits) to be included is complied with.

Examples of suggested 'Office Forms' are:

Notice of the AGM Form (BCCM Form 4)

Information for Body Corporate Roll (BCCM Form 8)

It is interesting to note that commonly used Forms such as the AGM Agenda, or Open Voting Paper, or Secret Ballot Voting Paper have no 'Approved Form', but all of these do have prescribed

matters that must be included, and even design aspects that must be followed. Care needs to be exercised in the design of these forms to ensure compliance.

As an example, the 'Voting Paper' has no 'Approved Form' and design has just evolved over the years, with design differences between different Body Corporate Managers. Most of these Voting Papers require the Voter to sign the form, and often require their signature on every page, but there is no such requirement in the Legislation.

And, almost every BCM's Voting Paper has the notations below each Motion for the Voter to select: 'YES', 'NO', 'ABSTAIN' – but the Legislation doesn't require the 'ABSTAIN' option. If a Voter makes no Vote Selection on a particular Motion, then the Voter has abstained from voting on that Motion, whether or not they circle 'ABSTAIN'.

This page on the Govt. BCCM website details current Forms, and a section also details Form History and includes details about which of the Forms provided are 'Approved Forms' and which are 'Office Forms'.

Qld.Gov.au/law/housing-and-neighbours/body-corporate/legislation-and-bccm/services/bccm

All About Dispute Resolution

This Chapter was contributed by Chris Irons - Director, Strata Solve and former Commissioner for Body Corporate and Community Management

The Bottom Line

While its services are first-class and it is literally one-of-a-kind, the Commissioner's Office is a place you will want to avoid if you can. Putting your energies into dispute prevention and avoidance will save you time, money, and an awful lot of emotional toil.

The Unique Nature of Strata Disputes

A dispute is a dispute is a dispute – right?

Not so for Strata disputes, which are unique. Think of it this way: if you are in dispute over, say, a commercial or contractual matter, you might go to arbitration, or get an order from the Court or Tribunal, and then that is that. It is highly unlikely you would ever see or hear from the other party again.

That is absolutely not the case for Strata disputes. Chances are, you will see the other party in the elevator. Or, in the car park. Or, in the lobby. Or, at a Committee or General Meeting. Unlike most other dispute types, Strata disputes mean that the parties to the dispute will continue to interact with each other into the future. Indeed, their futures will depend upon it. If you are going to be constantly interacting with a party you have a dispute with, then that can lead to increasing and exacerbated levels of angst, disquiet, and outright conflict. Accordingly, there is a strong need in Strata disputes to try to address the root cause of the dispute or at least, try to establish a minimum benchmark for how the parties can civilly interact.

In Strata, dispute resolution does not mean the parties have to be best friends forever. They just need to be able to get along and get things done. The formal Strata dispute resolution framework reflects this.

The Commissioner's Office: Also Unique…

Queensland's Office of the Commissioner for Body Corporate and Community Management, website here:

Qld.Gov.au/law/housing-and-neighbours/body-corporate/bccm

(or The Commissioner's Office, as it is often shortened to), is the only one of its type in the world. Virtually every other State, Territory and Country has a government agency providing Strata assistance. The Commissioner's Office is the only one which provides both information and dispute resolution in the same place, often by the same people. It is also the only Commissioner role of its type.

How it Operates

The Commissioner's Office is established under Chapter 6 of the Body Corporate and Community Management Act 1997. You can view the entire Act here:

Legislation.Qld.Gov.au/view/html/inforce/current/act-1997-028

If you want to get all philosophical, you could add that its very existence is a recognition by government that Strata can be complex and challenging and that there is a distinct public policy objective to be met from having the Commissioner's Office.

The Commissioner's Office provides two services: information, and dispute resolution. The Information Service provides information only (i.e., not legal advice or interpretation). It maintains an excellent website, filled with resources on just about every Strata topic imaginable, including a free, online training course for Committee Members. In addition to the website, clients can email a Body Corporate query, and have it responded to in writing, or they can use a toll-free number to obtain general information.

In the 5+ years I was Commissioner, my Office was just outside of where the information team was located. On some occasions, when we were short staffed, I also returned some of the information calls (a nerve-wracking experience, let me tell you). The bottom line is that I know that the information service can be an outstanding resource if used correctly and when expectations are properly set. That means having essential information to hand before you contact (plan of subdivision type, Regulation Module, etc.) and having made some rudimentary efforts to understand the issue already. Contacting the Commissioner's Office to seek a detailed interpretation of how a particular legislative clause might operate or calling to have a rant or lodge a complaint, are examples of where you will find no joy whatsoever.

The dispute resolution service is what is known as 'Exclusive Jurisdiction', which means that just about every Strata dispute in Queensland must get formally resolved in the Commissioner's Office. There are two dispute resolution methods used in the Commissioner's Office. The first is Conciliation, which is a form of guided mediation and a great way of getting to the 'root cause' I mentioned earlier. The success rate of these negotiated settlements is excellent, and I have seen plenty of cases of parties turning up for Conciliation, determined to not settle on anything, only to exit hours later shaking hands and clutching a solution they can all live with.

Then there's Adjudication, which is the legally-binding and appealable process which results in an Order which can be enforced in the Courts. Adjudicators are quasi-judicial and have some pretty wide-ranging powers to investigate matters and require information. Adjudication happens via written submissions – there are no hearings – and this means every Owner in the building will get a

chance to have their say. All orders are published and searchable, as is every submission. You can find them here:

Austlii.edu.au/cgi-bin/viewdb/au/cases/qld/QBCCMCmr

Whether it is Conciliation or Adjudication, the onus will always be on the applicant to run their application. And let me tell you, that can be a very challenging thing to do, as it means providing grounds and evidence. Little wonder then that a third or more of all Commissioner's Office applications have lawyers involved, which is not cheap.

When You Absolutely Need the Commissioner's Office

There are some things which will absolutely need the Commissioner's Office involvement. Genuine emergency spending or the need to seek an injunction on something happening are two examples of that. Some General Meeting processes will need Adjudication to sort things out, as might an instance of deliberate wrongdoing. To be perfectly blunt though, the vast majority of disputes that go to the Commissioner's Office probably don't need to and many of them should absolutely not be the subject of a quasi-judicial process.

Here is one such example of that:

ParkAvenueStrata.com.au/docs/DoormatDispute.pdf

...And Now, Why You Should Be Avoiding It

By all means, utilise the Commissioner's Office as a way of getting educated and informed. Read and absorb the website content. Attend the webinars and seminars and when you are absolutely stumped, perhaps then contact the Information Service.

When it comes to dispute resolution though, the mantra is simpler: avoid, avoid, avoid. Here are the Top 5 Reasons you should be avoiding going to the Commissioner's Office to resolve your Strata dispute:

1. Time: it might take as much as 9 months (or longer) for an Adjudication Order. Meantime, the disharmony festers.

2. Cost: there's an application fee, fees to obtain copies of submissions as well as the cost of spending your time on all the above. If you engage a lawyer, you're looking at $5-10k (or more) to have them represent you in the Commissioner's Office.

3. Stress: being locked in dispute is horrible. There is no fun to be had in lobbing grenades at each other or waking up in the middle of the night in a panic, wondering how or when your Strata issue is going to end.

4. Property Values Impacted: remember, each Adjudication Order (both finalised ones and ones which are ongoing) goes on the public record. If someone is looking to buy in your building and during conveyancing, sees a lengthy list of Adjudication Orders having been made, chances are they will not want to proceed with purchase.

5. You have better things to do. The staff at the Commissioner's Office are great and extremely professional. Let's face it though, you'd rather be interacting with other people if you have the choice…

Dispute Prevention, Not Dispute Resolution

So how do you avoid having to go to the Commissioner's Office? By focusing on dispute prevention, not resolution. Everyone would have heard the old saying that prevention is better than cure, or even an apple a day keeps the doctor away. That applies in Strata as well.

In my experience, the vast majority of Strata disputes begin well before the 'actual' dispute to hand started. In some cases, the seeds of dispute get sown years beforehand due to a careless remark, unsavoury interaction or a decision being made which was not well thought out or implemented. Resentment builds over time and then when the current dispute arises, it can be out of a sense of frustration or revenge.

Or, a Strata dispute comes about due to lack of knowledge. You would hope that if someone didn't know something, they would simply admit it, or they would find the qualified answer. People are imperfect though, and sometimes they would rather bluster and bluff their way through than admit not knowing something. That kind of thing happens a lot in Strata. Accurate information and supported education are a fantastic way of preventing disputes from escalating to a point they just do not need to be at.

Another prime example of Strata dispute prevention is where responsibilities are simply not carried out. For example, the Body Corporate has a statutory responsibility to maintain Common Property, and maintain it in a good condition! That is a fundamental aspect of community living. Yet when a Body Corporate does not carry out this maintenance, or prevaricates on it, or decides not to do it because it will be too expensive, they run the risk of creating dispute due to their inaction. The reverse can also be true, where action is taken but it is based on ill-considered decision-making or poor or unqualified advice.

For me, the ultimate form of dispute prevention is communication. That means communicating clearly, simply, transparently and in a timely manner. Where communication is unclear, or not present at all, a sense of concealment can arise and that is fertile ground for dispute. If time is

being taken to make a decision or take action, let the affected parties know and keep them updated. You would be surprised how effective that is in reducing anxiety.

Some Dispute Prevention Tools

Here are my Top 3 Dispute Prevention Tools for Strata:

1. **Qualified information and advice**: water ingress in Strata? Get a plumber or engineer. Concerns about the budget? Speak to an auditor. Want to know your legal position? Ask a lawyer. You don't ask a mechanic to do your root canal and if you don't know something in Strata, ask someone who does. Bush lawyers tend to make Strata disputes much worse than they need to be.

2. **Review your By-Laws**: By-Laws can be effective tools in getting everyone at a Strata scheme on the same page. An increasingly common By-Law is a so-called 'Communication By-Law', regulating how often and in what form communications can occur amongst parties. If you want to know just how effective a properly drafted By-Law of this type can be, read this adjudication order: ParkAvenueStrata.com.au/docs/TankTowerAdjudication.pdf

3. **Communicate right**: one size does not fit all in Strata and that is definitely the case with communicating. Different people will react in different ways depending on what is presented to them, and how. A much more formal communication will work in one instance, yet a far more informal approach might be better in another. Sometimes you might need the assistance of a third party to guide or facilitate communications to get outcomes (and yes, that is something I do professionally, in case you were wondering…)

The Takeaway

Whatever your role is in the great Strata stage show, dispute can easily find you and while the Commissioner's Office can do wonders to assist, your best bet is finding ways to prevent disputes from occurring at all. Your outcome should always be protecting your Strata investment – and your sanity. A protracted Strata dispute will do neither of those things.

Want to Know More?

Strata Solve can help prevent Strata disputes and it can also assist in resolving them. Contact us to find out more: StrataSolve.com.au/contact/

‘Challenging’ People in Strata

‘Difficult’ People in Strata: The Dangers of Labels, And How To Deal With ‘Challenging’ People

This Chapter was contributed by Chris Irons - Director, Strata Solve and former Commissioner for Body Corporate and Community Management

The Bottom Line

There are some tough situations and people to deal with in Strata – but calling them ‘difficult’ only makes things worse. Approaching things from a more nuanced perspective not only depersonalises things, but it also provides more tools to manage the situation.

‘Difficult’ People: Labelling Is a Mistake

We all know there are situations and people in Strata that are really hard to deal with. The temptation to label these people ‘difficult’ is therefore understandable. Yet I’d strongly argue it’s completely the wrong call. Why? Well, the instant you refer to someone as ‘difficult’, then that label sticks, indefinitely. It’s likely the only way you’ll ever think of them, which taints your interactions, your perceptions and, more problematically, how you make Strata decisions. If someone knows they’re thought of as ‘difficult’ then chances are that’s how they will continue to be. After all, what’s their motivation to be any different?

Why ‘Challenging’?

I prefer the term ‘challenging’ when referring to people in Strata because a challenge need not be negative. Many challenges are rewarding, constructive experiences. ‘Challenge’ also depersonalises things. Your Strata situation is about your property investment and enhancing its value: transactional and businesslike, in other words. It shouldn’t be about an emotive interaction with other parties.

So, How To Deal With Challenging People?

There are plenty of things I think you shouldn’t do when dealing with challenging people in Strata. The first and most obvious is to think less about challenging people and more about challenging

situations. Again, it depersonalises and creates an appropriate distance between you and the problems you are facing.

Enough of the should-nots. Here are my **Top 5 Tips** To Deal With 'Challenging People' in Strata:

1. **Mitigating Factors**: is there a reason why the person is the way they are? Medical conditions, financial difficulties, and English as a second language are common mitigating factors in someone being a challenging person in Strata. Understand the factors, and you understand the person – and their situation.

2. **Follow the Process**: in Strata, there is a process for everything. Follow it, consistently, each time, and you can virtually guarantee challenges will be minimised. I cannot tell you the number of times I have seen how a deviation from standard process leads to intense Strata situations.

3. **Be Transparent**: whether you're on the Committee, an Occupier, a contractor, or manager, if you are transparent about both your motives and actions, you will find things a lot easier to manage. Remember that 'transparency' means things like meaningful Minutes.

4. **Document, in Writing**: a log-book of interactions and communicating in writing – while avoiding monumental email tirades and needless 'reply all' missives – makes the situation more objective.

5. **Get A Strategy**: approach things in a considered fashion, with a plan in mind. Have an objective and a roadmap for getting there. You might need third-party assistance to get you in a strategic frame of mind.

The Takeaway

People are imperfect creatures and Strata can be a complex puzzle to unravel. Combined, they can create a perfect storm of intense, tough situations to manage. So be smart and strategic about it: find objectivity, avoid the labels, and take a methodical approach to challenging people in Strata. The effort taken save you time, money and stress and enhance your investment.

Want To Know More?

Strata Solve can help prevent Strata disputes and it can also assist in resolving them. Contact us to find out more: StrataSolve.com.au/contact/

Smoking in Strata

Well, it's been such a long time coming, but finally for Queenslanders living in Strata Communities, it may be easier to get that irritating (and hazardous) wafting cigarette smoke stopped.

A decade ago we wrote about the frustration of getting Body Corporate and Community Management Adjudicators to order a no-smoking rule because they had always deferred to a strange bit of (very ancient) case-law relating to 'Nuisance', and the attendant difficulties with satisfactorily proving that.

The breakthrough came late in December 2021 with a landmark new Adjudication that instead of focusing on 'nuisance', applied instead the 'hazard' factor of the drifting balcony 'passive' smoke.

The Body Corporate in question was Artique CTS 34902, and you can download a PDF of the Adjudicator's Order here:

ParkAvenueStrata.com.au/docs/ArtiqueCTS34902Adjudication.pdf

All Bodies Corporate should now consider the status of their By-Laws, and in regards to the Smoking issue, an appropriate and enforceable By-Law. The By-Law Artique had in place would be a good place to start – at least the Adjudicator seemed to think so.

Here's their Smoking By-Law:

SMOKING

1) An Occupier must not -
   a) cause a nuisance or a hazard, or
   b) interfere unreasonably with the use or enjoyment of another Lot, or
   c) interfere unreasonably with the use or enjoyment of the Common Property by persons lawfully on the Common Property, by smoking -
      i) anywhere on the Common Property,
      ii) on the balcony of a Lot in circumstances where another person's use or enjoyment of another Lot is unreasonably interfered with by the smoke drift, and
      iii) in a Lot in circumstances where another person's use or enjoyment of another Lot is unreasonably interfered with by the smoke drift.
2) An Occupier must not dispose of cigarette butts or ash by throwing such items from the balcony of a Lot and must dispose of cigarette butts or ash by putting such items in a closed container in their Lot.

Unreasonable Communications

When 'enough is enough'. When the type and volume of communications – usually emails and phone calls – from a Lot Owner to the Committee, the Body Corporate Manager, or the Caretaker, becomes unreasonable.

This is a situation that many Bodies Corporate will encounter from time to time, and it is something that can be seriously corrosive of relationships and Community harmony. It is also something that the recipients shouldn't have to tolerate, especially the Committee Members who are normally unpaid volunteers.

So what can a Committee and Body Corporate do when faced with such a situation?

Well, first and foremost, it's important that they establish with Lot Owners what clearly isn't acceptable, and this can be done in a variety of ways, e.g. by a dedicated letter to all Owners (and maybe all occupiers, if it is felt necessary to include tenants). It might also, be a matter highlighted in Committee Minutes, but might go largely unnoticed if this is the only avenue used. If the Body Corporate has a Communication Portal, that could be used. And finally, it might be by way of a targeted letter or email from the Committee to a relevant individual Lot Owner or Lot Owners.

But some Bodies Corporate are also deciding to create a specific By-Law to address the issue, and one of the benefits of this is that formal By-Law Contravention Notices can be issued as part of enforcement proceedings. Committees might consider getting such a By-Law in place before they actually need it!

One Scheme that went down that route after experiencing considerable problems was 'The Grove', and eventually departmental Adjudication was also resorted to. In that Adjudication, a 'responding' Lot Owner submitted that the Body Corporate's By-Law on Communications, was 'unreasonable' – the Adjudicator disagreed.

This is the Adjudication reference, and the extract from their By-Laws follows:

'The Grove' QBCCMCmr 581 (22 November 2018)

ParkAvenueStrata.com.au/docs/TheGroveAdjudication.pdf

By-Law - Communications

Communication with the Committee, Body Corporate Manager and Caretaker

Occupiers shall ensure that their communication with the Committee, Body Corporate Manager and Caretaker is sent in accordance with the following:

(a) Written communication shall only be sent by pre-paid post or email at the address of the Body Corporate Manager. Accordingly, no email may be sent to the Committee personally unless the Committee or Body Corporate Manager or Caretaker invites this mode of written communication;

(b) A maximum of one piece of written communication may be sent per week, unless the Committee or Body Corporate Manager or Caretaker invites additional written communication;

(c) Any item of written communication shall be limited to a maximum of 2 pages in length containing a maximum of 1,000 words;

(d) Verbal communications shall only be made by telephone to the Body Corporate Manager and Caretaker unless the Committee expressly invites verbal communication;

(e) Written and verbal communication with the Committee or Body Corporate Manager or Caretaker must always be courteous and not abusive or offensive;

(f) The Body Corporate Manager, Committee and Caretaker are permitted to disregard any communications that it reasonably considers fails to comply with the above requirements;

(g) The Body Corporate Manager, Committee and Caretaker are not required to acknowledge receipt of any written communication;

(h) The Body Corporate Manager, Committee and Caretaker must act reasonably in determining whether any communication requires a response, including considering whether the communication repeats matter addressed in previous communications.

Another example of a Scheme that had a By-Law on Communications, albeit a less explicit one than 'The Grove' is 'Tank Tower'. This was mentioned by Chris Irons in his Chapter: 'All about Dispute Resolution'.

The Tank Tower Adjudication can be found here:

ParkAvenueStrata.com.au/docs/TankTowerAdjudication.pdf

And this was the brief Tank Tower Scheme By-Law:

CORRESPONDENCE WITH COMMITTEE

Owners and occupiers must communicate with the Committee in a reasonable manner and not in any way which may become an annoyance or a nuisance to any Committee Member.

Insurance

Primary Insurance Requirements

A Body Corporate must have insurance cover for:

- Common Property
- Body Corporate 'Assets'
- Public Risk (Public Liability)
- every building that contains a Lot.

The insurance a Body Corporate must have is affected by the type of survey plan the Scheme is registered under, e.g. Building Format Plan (BFP), Standard Format Plan (SFP)

What the Policy Must Cover

The building insurance which a Body Corporate takes out must cover:

- damage to the building
- other costs to reinstate or replace the insured buildings (e.g. professional fees and costs for removing debris).

Under the insurance policy the property must be returned to as-new condition.

About Valuation Requirements

If the Body Corporate has to insure one or more buildings, it must get those buildings valued for the full replacement cost. An independent valuation must be done at least every 5 years.

Asking Advice

The Committee should only seek advice and recommendations about insurance cover from insurance professionals.

Body Corporate Managers are usually not accredited insurance professionals, and a Committee must resist any temptation to seek their BCM's opinion on any recommendations about a policy or any aspect of risks or cover, and Body Corporate Managers are well advised to never offer or provide any comments or response that might be construed as such advice.

Insurance definitions

The legislation defines the terms 'building' and 'damage'.

Building definition

A 'building' includes any improvements made to the building and fixtures added to the building. It does not include:

- temporary wall, floor and ceiling coverings, carpets, or;
- fixtures that can be removed by a lessee or tenant at the end of a lease or tenancy, or;
- mobile or fixed air conditioning units for a particular Lot, or;
- curtains, blinds or other internal window coverings, or;
- mobile dishwashers, clothes dryers or other electrical or gas appliances that are not wired or plumbed in.

So, all these items listed above, and others in similar categories, are not covered by the Body Corporate's insurance, and so Owners need to take out additional private insurance cover e.g. 'Contents Cover' in order to get insured for loss or damage to those types of items.

[Note that some Strata Insurance Policies are now including cover for 'Floating Floors']

Damage definition

Damage includes:

- earthquake, explosion, fire, lightning, storm, tempest and water damage, and;
- glass breakage, and;
- damage from impact, malicious act and riot.
- accidental damage;
- flood (automatic on some policies).

Please note the above is 'general advice', the Body Corporate's insurance broker should always be consulted about any detailed questions about policy matters.

Keeping Owners Advised

Each year the Body Corporate must provide to Owners, by way of inclusion in the AGM documentation issued, information about the insurance policies and any valuations that have been done. The information supplied about the **insurance policies** needs to include:

- insurance details, including;
- name of the insurer, and;

- name of the insurance broker or intermediary involved with taking out the policy, if applicable, and;
- amount of cover, and;
- type of cover (a summary of the categories of cover), and;
- amount of the premium, and;
- amount of any excess payable on events covered by insurance, and;
- date the cover expires, and;
- relevant details of any financial or other benefit from an insurer (or insurance broker or intermediary) for the insurance being taken out

The information about the **valuation** must include:

- date of the valuation, and;
- full replacement value of the buildings.

Keeping the Insurer advised

It's critically important (and a fundamental condition of the policy) for the Body Corporate to advise the Insurer about any new risk that may arise. It's a simple procedure for the Body Corporate Manager to just email the insurer (usually advising the broker is normal) with the details about the risk **and**, let the broker know what the Body Corporate is doing to mitigate the risk. It is the broker's responsibility to then advise the Underwriter.

The Committee should also instruct the Body Corporate Manager to provide regular updates to the broker about the situation.

All parties have a duty of disclosure to make sure the insurer is aware of the risk and any changes to that risk throughout the contract of insurance.

Advising of Improvements

The Body Corporate should advise the Insurer about all significant refurbishments/upgrades that Owners undertake to their Lots. The reason for this is that the Lot interior fixtures and fittings e.g. kitchens, major fitted appliances, and bathrooms, form part of the insured building that the Body Corporate's insurance policy covers, and the insurer will be assuming that these interior Lot fitouts are what was originally installed by the developer, however, if there was a major damaging incident, e.g. fire, then obviously the Owner would be expecting the insurance company to reinstate to the standard of their refurbishment/upgrade.

Approvals from the Body Corporate to Owners to carry out significant refurbishments should also place the onus on the Owner to advise the Body Corporate Manager of the details and approximate cost of the works when all is completed.

Similarly, and for the same reasons, the Body Corporate needs to advise the Insurer of all significant improvements to Common Property.

The Various Policy Components

Note! These listed Cover Category components below are typical of the majority of Strata Insurance Policies - with a particular policy then noting that a Category is, or is not covered, and if it is covered, then the amount of Cover, and what Excess might apply.

The actual Category description does vary from Underwriter to Underwriter, as do the specific Terms that apply.

This listing and explanatory notes are intended to give just a rudimentary understanding of the different Categories and Components of the Cover you will see on your Scheme's insurance policy – and reference to the Underwriter's Product Disclosure Statement (PDS) and/or referral to the Body Corporate's Insurance Broker is essential should you wish to delve deeper.

Primary Building Cover

The majority of the policies do cover the same thing. A 'building' includes any improvements made to the building and fixtures added to the building. It does **not** include:

- temporary wall, floor and ceiling coverings, or carpets
- fixtures that can be removed by a lessee or tenant at the end of a lease or tenancy
- mobile or fixed air conditioning units for a particular Lot
- curtains, blinds, or other internal window coverings
- mobile dishwashers, clothes dryers or other electrical or gas appliances that are not wired or plumbed in.

The majority of policies offer a full accidental loss or damage protection.

As a rule of thumb the building policy covers anything built in, professionally wired in, or professionally plumbed in.

Common Area Contents Cover (B/C Assets)

Common Area Contents refers to items owned by the Body Corporate, and located in Common areas. This includes, but isn't limited to, appliances, furniture, exercise or pool equipment, artwork and so on. Most Body Corporate policies cover these items against loss or damage.

Terrorism

Acts of terrorism had traditionally been an exclusion on all policies in the Australian market, however with the heightened risk, this has now changed. The Australian Government set up ARPC (Australian Reinsurance Pool Corporation) which charges a Terrorism Levy on some policies to provide funds in the event of a declared terrorist attack.

For more information, please visit their website - ARPC.Gov.au

Loss Due to Burglary

Theft of Body Corporate property is automatically covered on most Strata Insurance Policies. This property may form part of the building, or be contents/asset type items that are owned by the Body Corporate but not fixed to the building.

Loss of Rent & Temporary Accommodation

Loss of rent and temporary accommodation cover is generally automatically included on Body Corporate policies once the BUILDING component of the policy has been taken, and typically represents a sum insured that's typically15% of the building sum insured amount. For most risks this figure might seem unnecessarily high, however it's a standard percentage that cannot be amended in most cases, and when it's not being specifically charged for, there would be no saving in reducing it anyway.

Liability to Others(Public Liability)

This is a requirement by law, with most Schemes opting to take a sum insured between $10M and $30M - currently the mandatory minimum cover is $10M. This covers personal injury or property damage claims brought against the Body Corporate for their apparent negligence, and includes all legal fees to defend such an action.

Voluntary Workers Cover

This cover generally provides personal accident cover for owners undertaking voluntary work on behalf of the Body Corporate. The idea of this cover is to provide financial compensation for those Owners who sustain serious injury whilst undertaking this work, such as gardening or cleaning. If the Owner is being paid, this cover will not apply, and in this case, we'd recommend the Body Corporate contact Workcover Qld to discuss their requirements: WorkSafe.qld.gov.au

Workers Compensation

Cover in Qld normally via Govt. WorkCover, not the Strata Insurance Policy

Fidelity Guarantee

This insurance covers your Body Corporate for the loss of funds due to fraudulent misappropriation or embezzlement – by anyone.

Defamation

This is the oral or written communication of a false statement about another that unjustly harms their reputation and usually constitutes a tort or crime. This is typically an exclusion under Strata Insurance Policies.

[Note that there is protection provided by the BCCM Act for Committee Members against civil action being taken against them as a result of a Member or Members carrying out their duties as a Committee Member.]

Office Bearers' Legal Liability

This is an important cover that should be included in all Strata Insurance Policies. This covers the Committee Members (Office Bearers} against losses arising from alleged wrongful acts committed in the course of carrying out their duties.

Machinery Breakdown

Most policies automatically cover fusion for smaller items, however when it comes to large units such as lifts, air conditioning units, pumps, and compressors, it may be advisable to take Machinery Breakdown cover. However, before adding this onto your policy, it's worth considering the age of the equipment due to policy exclusions relating to wear & tear / gradual deterioration, as well as any current warranty, or maintenance agreement.

Catastrophe Insurance

In the event of a total loss that impacts an entire geographical region, or is deemed a declared State of Emergency, you could be underinsured without this cover. Catastrophe Insurance protects you against the escalation of building costs that occur due to a catastrophic event and generally provided at 15-30% of the Building Sum Insured.

Cost of Removal, Storage and Evacuation

All insurance policies are different in this respect; however, all Strata Underwriters should include this protection. There may be costs associated with removing debris from the site, storage

expenses or costs for evacuating the building, which will all be outlined in your policy wording documents.

Government Audit Costs and Legal Expenses

Not all policies include this protection, and the sums insured are usually different between underwriters, but anyone can get audited, and this cover would pay the accountants fees to handle this with the ATO or relevant authority.

Appeal expenses – Common Property health & safety breaches

With the Underwriters consent, they can extend cover to costs incurred relating to:

a) the imposition of an improvement or prohibition notice under any workplace, occupational health, safety, or similar legislation applying where the Insured Property is situated; or

b) the determination under any workplace occupational health, safety or similar legislation applying where the Insured Property is situated, by a Review Committee, Arbitrator, Tribunal or Court

Not all insurance policies have this extension of cover, so you need to read the relevant wording documents.

Legal Defence Expenses

This section of cover shouldn't be confused with Public Liability, as it's completely separate, and not all insurance companies offer this protection. Legal Defence Expenses covers the legal fees incurred by the Body Corporate to defend them against a third-party action for a financial loss.

Lot owners' fixtures and improvements (Cover per Lot)

Means any fixture or structural improvement, other than Floating Floors, installed by a Lot Owner for their exclusive use and which is permanently attached to or fixed to your building so as to become legally part of it, including any improvements made to an existing fixture or structure. This cover can only be used when the Building Sum Insured has been exhausted in a total loss claim scenario.

[Note that some Underwriters are now including 'Floating Floors' in this cover.]

Flood Cover

There are typically FIVE categories of policy cover collectively under 'Flood Cover'

1. **Flood**
   This is not always an automatic inclusion on a Strata Insurance Policy. Some insurers will now consider providing this cover as part of your policy with premiums adjusted accordingly. Flood cover is generally an optional policy enhancement and the Body Corporate's individual circumstances should always be considered when deciding on whether this product is essential or not for the Body Corporate.

   The official definition as defined by the Insurance Council of Australia is:

   > *"The covering of normally dry land by water that has escaped or been released from the normal confines of any lake, or any river, creek or other natural watercourse, whether or not altered or modified; or any reservoir, canal, or dam."*

   Please note the definition interpretation may vary between Underwriters. It is always recommended that a Product Disclosure Statement (PDS) for the relevant insurance policy is obtained, which will include the Policy Wording and provide full and detailed clarification for the Committee and Body Corporate.

   In relation to flood cover, whilst some may consider the Legislation specifics not quite prescriptive enough in regards to flood insurance requirement, one Adjudicator deemed it to be a requirement – particularly as the Scheme concerned was in a designated flood area i.e. property had been affected in earlier times.
   The Adjudication was:
   Winnipeg Grange [2013] QBCCMCmr 278(8th July 2013)

   In the Order, the Adjudicator commented as follows:
   "The Legislation requires the Body Corporate to have sufficient insurance cover to replace or reinstate any of the relevant areas of Scheme land to the condition that they were in when new, in the event that they are damaged. I consider that, without specific ***Flood Insurance*** *in place, there will be insufficient insurance to satisfy the legislative requirements.*

   I am further satisfied that it would be unreasonable to fail to obtain ***Flood Cover*** *over the property, given that the scheme is located in an area identified as a flood risk.*

   For these reasons I am ordering that the Body Corporate will obtain ***Flood Insurance****."*

2. **TSUNAMI (excluding tidal surge)**
   Defined as an underground earthquake or "seaquake" causing an action of the sea generally referred to as a tidal wave, the resultant damage that occurs to the insured property by a tsunami will likely be covered by the Strata Insurance Policy, but checking is

always recommended. Strata Insurance might exclude any action of the sea, high water or high tide or tidal wave, but tsunami cover is often 'written back' into the policy in such an Exclusion section. Similarly, interference with the support of land or buildings is excluded generally but a further 'write back' clause may extend cover for a tsunami and other specific circumstances.

3. **ACTION OF THE SEA OR INUNDATION OF THE SEA OR TIDAL SURGE**
   This type of event has traditionally been excluded from insurance cover other than from a Tsunami under Residential Strata policies. This included high tide, storm surge or tidal wave (unless as defined under the definition Tsunami). Your Strata Insurance Broker does however have access to a select range of insurers that will now include the cover if damage occurs as a result of Action of the Sea or Tidal Surge from a 'Named Cyclone Event'.

4. **RAINWATER OR STORMWATER**
   This type of loss or damage to the insured property occurs from an overflowing street or building gutter, drain or downpipe and is covered by the 'Building' section of the Insurance Policy unless same falls within the exclusions above.

5. **BURSTING, LEAKING AND OVERFLOWING OF WATER PIPE OR APPARATUS**
   The resultant damage from these events that occurs to the insured property is covered by the 'Building' section of the Insurance Policy. Generally the cause of the damage i.e. burst pipe, is not covered, just the resulting damage.

Registers to be Kept

Register of Assets

A Body Corporate Asset is an item of real or personal property bought or received by the Body Corporate. A Body Corporate Asset does not include property which becomes part of the Common Property.

For example, a rainwater tank is a Body Corporate Asset before it is installed. After it is installed, it forms part of the Common Property.

Any Assets valued at more than $1,000 must be listed in an Assets Register.

The Register must include:

- a brief description of the Asset
- if bought—its cost, as well as where and when it was bought
- if a gift—the estimated value, and details of who gave it to the Body Corporate.

Register of Engagements and Authorisations

The Body Corporate must have a Register of any engagements of Body Corporate Managers and Service Contractors as well as any authorisations of Letting Agents.

The Register must include:

- the name and address of the Body Corporate Manager, Service Contractor or Letting Agent
- their duties
- details of their remuneration (e.g. wages or allowances)
- the term of the engagement or authorisation
- information about any powers given to the Body Corporate Manager
- an original copy of the contract.

Register of Common Property Authorisations

If a Service Contractor or Letting Agent is allowed (authorised) to use the Common Property, or if a Lot Owner is allowed to improve the Common Property, information about this must be kept in a Register.

The Register must include:

- when the Resolution giving the authority was passed
- a description of the area of Common Property (the authorised area)
- any conditions made when the authority was given.

Note that because of this aspect of the Register of Common Property Authorisations: *"if a Lot Owner is allowed to improve the Common Property"*, this particular Register is also often referred to as the "**Improvements Register**"

Register of Improvements

See Register of Common Property Authorisations above.

Register of 'Exclusive-Use' Allocations

The Body Corporate must keep a Register of areas and assets affected by any Exclusive-Use By-Law. These are By-Laws that give a Lot Exclusive-Use of Common Property or Body Corporate Assets.

The Register must include details of the:

- relevant Exclusive-Use By-Law
- area of Common Property affected
- the Lot that benefits.

Register of 'Reserved Issues'

The Body Corporate can decide to stop its Committee from making decisions on particular issues. These are known as 'Reserved Issues'.

'Reserved Issues' can only be decided by an appropriate Resolution at a General Meeting.

The Body Corporate must keep a Register of 'Reserved Issues'.

The Register must include:

- a description of the issue
- the date of the decision to reserve the issue.

A copy of the Register of 'Reserved Issues' (if any) must be given to all Owners with the Notice of each Annual General Meeting.

[Note that the legislation details a number of 'Restricted Issues' that, by default, a Committee cannot make any determination about.]

Lot Entitlements

Lot Entitlements in Community Titles Schemes establish each Owner's:

- Body Corporate costs and voting rights
- Share of Common Property and other assets
- Lot value for calculating government rates and other charges.

Lot Entitlements are usually set by the original Owner (the developer) when the Community Titles Scheme is established.

The Lot Entitlement Schedules for your Community Titles Scheme are recorded in the Community Management Statement (CMS) for the Scheme.

There are two different Lot Entitlement schedules.

They are the:

- **Contribution Lot Schedule**
- **Interest Lot Schedule**

See an example below of how these schedules could appear in the Community Management Statement for a block of 6 units.

For each of the 2 schedules, each Lot (or unit) in the Scheme is identified and given a whole number for each Schedule. The aggregate or total of all of the Lot Entitlements is also shown—for the Contribution Schedule the aggregate is 66 Lot Entitlements. For the Interest Schedule it is 61.

	Lot Entitlement Schedules	
Lot No.	**Contribution**	**Interest**
1	11	10
2	11	10
3	10	10
4	14	12
5	10	9
6	10	10
Aggregates:	**66**	**61**

How Lot Entitlements are used

Contribution Schedule

The Contribution Schedule Lot Entitlements are used to calculate:

- each Owner's share of most Body Corporate costs (some costs, like building insurance premiums, may be divided in a different way)
- the value of an Owner's vote if a 'Poll Count' is called for when voting on an Ordinary Resolution.

Interest Schedule

The Interest Schedule Lot Entitlements are used to calculate:

- each Owner's share of the Common Property and Body Corporate assets if the Scheme ends (e.g. a Scheme could be terminated if Lot Owners agreed to dispose of the Scheme because they wanted to sell the property for redevelopment)
- the value of the Lot for calculating local government rates and charges, and other costs.

Levies & Lot Entitlements

Here is an example of how Lot Entitlements operate to apportion Body Corporate Budgets across all the Lots, and we use the six Lot Scheme as represented on previous pages.

Except for the Building Insurance Premium expense, all other expenses are apportioned in accordance with the Contribution Lot Entitlements. Because Interest Lot Entitlements are designed to represent a Lot's proportion of ownership of all the Common Property in a Scheme, the cost of the Building Insurance is apportioned in accordance with the Interest Lot Entitlements.

For this example, we'll assume the AGM approves the following budgets:

Admin Fund Budget (excluding Building Insurance) **$16,500** This $16,500 is apportioned in accordance with the Contribution Lot Entitlement Schedule, so $16,500/66 (66 being the aggregate of the Contribution Entitlements in this Scheme), resulting in an amount of $250 per Contribution Lot Entitlement.

Admin Fund Budget Building Insurance **$3,050** This $3,050 is apportioned in accordance with the Interest Lot Entitlement Schedule, so $3050/61 (61 being the aggregate of the Interest Entitlements in this Scheme), resulting in an amount of $50 per Interest Lot Entitlement.

Sinking Fund Budget **$3,960** This $3,960 is apportioned in accordance with the Contribution Lot Entitlement Schedule, so $3,960/66 (66 being the aggregate of the Contribution Entitlements in this Scheme), resulting in an amount of $60 per Contribution Lot Entitlement.

	Lot Entitlements		Admin $16,500	Admin $3,050	Sinking $3,960	
Lot No.	Contribution	Interest	$250 per Cont. Lot Entitlement	$50 per Interest Lot Entitlement	$60 per Cont. Lot Entitlement	Total Levies
1	11	10	$2,750	$500	$660	$3,910
2	11	10	$2,750	$500	$660	$3,910
3	10	10	$2,500	$500	$600	$3,600
4	14	12	$3,500	$600	$840	$4,940
5	10	9	$2,500	$450	$600	$3,550
6	10	10	$2,500	$500	$600	$3,600
	66	**61**	**$16,500**	**$3,050**	**$3,960**	**$23,510**

Admin Fund Budget (excluding Building Insurance) **$16,500**

Admin Fund Budget Building Insurance **$3,050**

Sinking Fund Budget **$3,960**

The Levy totals shown in the example are for the whole year, and of course it's normal for Levy Periods to be quarterly, so it would be this amount divided by four if that was the case.

Interim Levy

In normal practice, Bodies Corporate will, at each AGM, decide on the Budgets for the new financial year and strike Levies accordingly, and then also decide on Levies for the First Period of the next financial year because with the timing of the AGM there would be an extended period where no new Levies were able to be issued because none had been approved.

If a Body Corporate has quarterly Levies, the Budget Motions at the AGM will detail that an Interim Levy was issued for Period One and the Levies for the three remaining Periods are determined by subtracting the total amount represented by the Levies for Period One from the Budget total, and apportioning that across the three remaining Periods.

Maintenance

The Body Corporate and Owners are both responsible for maintenance in a Community Titles Scheme.

Sometimes it can be hard to work out who is responsible for what.

And, another important question is this one:

Is it an Improvement or is it Maintenance?

[This Maintenance or Improvement section also appears in the chapter on Finances - Spending, and is intentionally duplicated here.]

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 because spending limits, and how the Body Corporate approves the proposal depends on whether the proposed works are Maintenance, or more properly an Improvement.

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 (maintenance) 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)

There have been a number of Adjudications concerning repainting of the building, and whether these projects constituted Maintenance or an Improvement. Where the proposed colour scheme was being significantly changed, Adjudicators have deemed this to be an Improvement, because of the 'change' factor. One such Adjudication is: Admiralty Towers II [2008] QBCCMCmr 151-2008.

What Type of Subdivision?

Another important first step is to find out:

- which plan of subdivision your Scheme is registered under, and;
- what Regulation Module applies to your Scheme.

The Regulation Module is set out in the Community Management Statement (CMS) for each Community Titles Scheme.

Community Titles Schemes are registered under a plan of subdivision. This is recorded as a survey plan. The survey plan shows the boundaries of the Common Property and the Lots in that Scheme.

There are several types of survey plans. Boundaries will be defined differently depending on the type of plan registered. The 2 common types of survey plans are:

Building Format Plan (BFP)

Standard Format Plan (SFP)

Contact the Titles Registry Office (or your BCM) to get a copy of your Scheme's:

- registered Survey Plan (SP)
- Community Management Statement (CMS) - this will tell you what your Regulation Module is.

Once you know the boundaries of the Lots and Common Property, the Survey Plan, and the Regulation Module, you can work out what maintenance the Body Corporate is responsible for and what maintenance each Lot Owner is responsible for.

Maintenance of Common Property and Lots

A Body Corporate must maintain the Common Property in a good and structurally sound condition. The Owner of a Lot must maintain their Lot in good condition, and each Owner contributes to the maintenance of the Common Property.

Maintenance can include work that is needed to prevent damage. For example, a Body Corporate or Lot Owner may have to take steps to prevent termite damage to Lots or the Common Property.

An Owner may be liable if they do not maintain their Lot, and this subsequently causes damage to another Lot or Common Property.

A Body Corporate may also be liable if it does not maintain Common Property and that results in damage to a Lot.

Maintaining Lots and Common Property is different to making an 'Improvement'.

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.

Under an Exclusive-Use By-Law, a Lot Owner is usually responsible for maintenance of the area of the Common Property included in the Exclusive-Use By-Law such as the lawns and gardens.

Typically, the 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.

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.

Building Format Plan Maintenance (BFP)

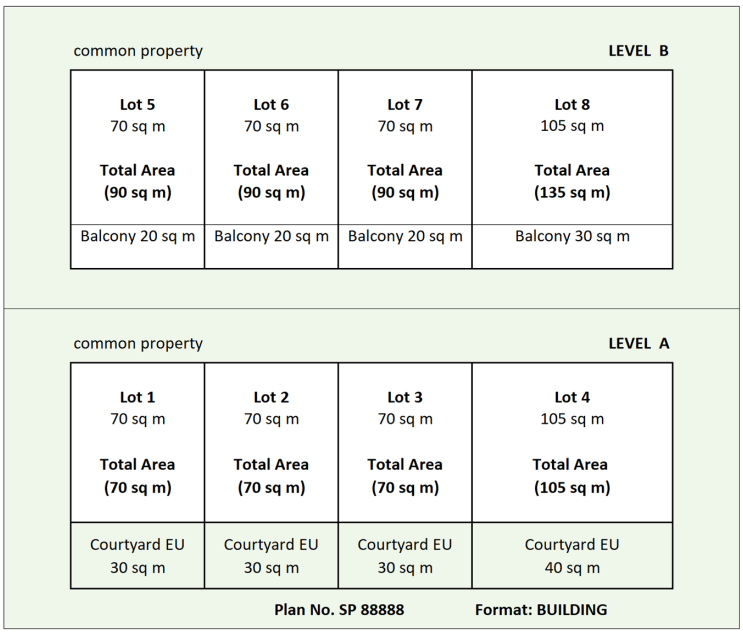
A Building Format Plan (BFP) is a form of subdivision which usually applies to multi-storey unit complexes, and in some cases, other developments like townhouses.

A Building Format Plan defines land using the structural elements of a building, including floors, walls, and ceilings.

Defining Lots and Common Property

The Land Title Act defines a **Building Format Plan** or BFP, (previously known as a **Building Unit Plan** or BUP), as follows: where one Lot is separated from another Lot or Common Property by a floor, wall or ceiling, the boundary of the Lot is the centre of the floor, wall, or ceiling.

This diagram below represents a typical 2-storey Building Format Plan, comprising 8 apartments, or Lots. It shows how Common Property, and Lots may be drawn on a plan.



The diagram above is a simplified representation of a Survey Plan for an 8 Lot Strata Subdivision by Building Format Plan (BFP).

On a Building Format Plan, the boundaries of a Lot are represented by hard black lines. The lower section of the diagram above illustrates Level A and shows the Common Property surrounding the building and the 4 ground-level apartments, each with its own courtyard. Note the thick black line separating the courtyard from the rest of the apartment area – this is indicating that the courtyard area isn't part of the Lot i.e. isn't 'On-Title', but has been 'attached' to the Lot by way of a grant of 'Exclusive-Use'.

Plans can also show visitor parking spaces, carports, or other features such as swimming pools. This Common Property and the Lots together make up the Scheme land.

The upper section of the diagram illustrates level B and shows the other 4 apartments, 5 to 8, with each having a balcony as part of the Lot.

The thin line separating the balcony from the rest of the Lot area indicates the balcony is forming part of the Lot i.e. it is 'On-Title'.

Body Corporate Maintenance – Building Format Plan (BFP)

The Body Corporate must maintain Common Property, as well as some things that are not on Common Property.

The Body Corporate is usually responsible for maintaining:

- the outside of the building
- the foundations and roof of the building

- roofing membranes that are not on Common Property but give protection for Lots or Common Property
- essential structural elements of the building (like foundation structures, roofing structures that provide protection and load-bearing walls) even if they are not on Common Property
- roads, gardens and lawns on Common Property
- facilities on Common Property (like swimming pools and barbeques)
- railings or balustrades on, or near to, the boundary between a Lot and Common Property, including the balustrade on a private balcony
- any doors or windows, and their fittings in a boundary wall between a Lot and the Common Property (including garage doors and their fittings)
- utility infrastructure (like equipment, pipes, and wiring) that is on Common Property, or in a boundary structure, or services more than one Lot.

Lot Owner Maintenance – Building Format Plan (BFP)

The Lot Owner is generally responsible for:

- the inside of the Lot, including all fixtures and fittings inside the Lot
- doors and windows leading onto a balcony that forms part of the Lot
- a shower tray used by the Lot, even if it is not within the boundaries of the Lot
- utility infrastructure (like equipment, pipes and wiring) that is within the boundaries of the Lot and only services that Lot
- utility infrastructure (including equipment and associated wiring and pipes) that is on Common Property, if it only services that Lot and is a hot water system, washing machine, clothes dryer, air-conditioner, or similar equipment
- any fixtures or fittings, including those on Common Property, that were installed by the Occupier of a Lot for their benefit
- Exclusive-Use areas the Owner has the benefit of, unless the Exclusive-Use By-Law says otherwise.

Paying for Maintenance – Building Format Plan (BFP)

The Body Corporate must consider its spending limits and budgets if it must spend money on maintenance.

The Body Corporate cannot pay for, or Levy Owners for, maintenance that a Lot Owner is responsible for (such as cleaning windows within a Lot), unless it:

- has an agreement with an Owner, and;
- charges that Owner for the cost of the work.

A Body Corporate can undertake maintenance and recover the 'reasonable cost' from the Lot Owner if the Owner has not done maintenance required under:

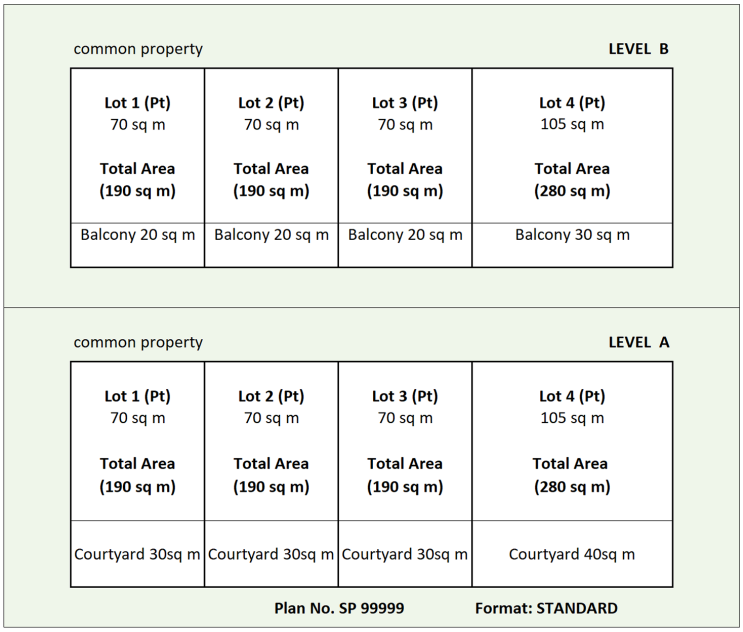
- Body Corporate legislation
- a notice given under other legislation

- the Community Management Statement (CMS), including the By-Laws
- an Adjudicator's order
- the order of a court or tribunal.

Standard Format Plan Maintenance (SFP)

A **Standard Format Plan** (SFP), previously known as a **Group Title Plan** (GTP), defines land horizontally, using marks on the ground or a structural element of a building (e.g. survey pegs in the ground or the corner of a building).

A Community Titles Scheme registered under Standard Format Plan can include a townhouse complex where each Lot has a building and a yard. The boundaries of Lots in the Scheme are defined by the measurements shown on the survey plan and any marks put on the ground when the survey was done.



The diagram above is a simplified representation of a Survey Plan for a 4 Lot Strata Subdivision by Standard Format Plan (SFP).

The boundaries of each Lot are represented by hard black lines. The lower section of the diagram illustrates Level A and shows the Common Property surrounding the building and the lower floor of each townhouse, each with its own courtyard. Note the thin line separating the courtyard from the rest of the floor area – is indicating that the courtyard area is part of the Lot i.e. is 'On-Title'.

The upper section of the diagram illustrates level B and shows the upper level of the townhouses, with each having a balcony on this level as part of the Lot.

The thin line separating the balcony from the rest of the Lot area indicates the balcony is forming part of the Lot i.e. it is 'On-Title'.

Paying for Maintenance – Standard Format Plan (SFP)

The Body Corporate is usually responsible for:

- The Common Property, including roads, gardens, and lawns on Common Property
- Some elements of utility infrastructure that are Common Property

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.

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.

The Body Corporate must consider its spending limits and budgets if it needs to spend money on maintenance.

The Body Corporate cannot pay for, or Levy Owners for, maintenance that a Lot Owner is responsible for (such as painting the building), unless it:

- has an agreement with an Owner, and;
- charges that Owner for the cost of the work.

A Body Corporate can carry out maintenance and recover the 'reasonable cost' from the Lot Owner if the Owner has not done maintenance required under:

- Body Corporate legislation
- a notice given under other legislation
- the Community Management Statement (CMS), including the By-Laws
- an Adjudicator's order
- the order of a court or tribunal.

Building Management Statement (BMS)

A Building Management Statement is an instrument (a registered document) established under the Land Title Act Qld. and forms part of the initial 'titling structure' that is utilised in particular developments where it is desirable to keep portions of the development separate from one or more Community Title Schemes which also form part of the development.

Typically it is used where the development comprises a Community Titles Scheme e.g. some residential apartments, and other sections of the building that are intended for retail or commercial use, but still need to access parts of the CTS Common Property and facilities, and/or access areas of other Lots in the BMS.

A BMS can be thought of as a 'super-easement', able to provide the provisions easements can, for example providing access rights, but able to achieve that more efficiently and with greater flexibility.

All the Lots that make up the BMS are bound by it.

Contents of Building Management Statement

(1) A BMS must contain provisions about the following:

(a) the supply of services to the Lots in the BMS;

(b) rights of access to the Lots in the BMS;

(c) rights of support and shelter;

(d) insurance arrangements.

(2) A BMS may contain provisions about the following:

(a) establishment and operation of a Building Management Group, (BMG);

(b) imposition and recovery of Levies, how Levy amounts are to be kept, and how Levy amounts are to be spent;

(c) property maintenance;

(d) architectural and landscaping standards;

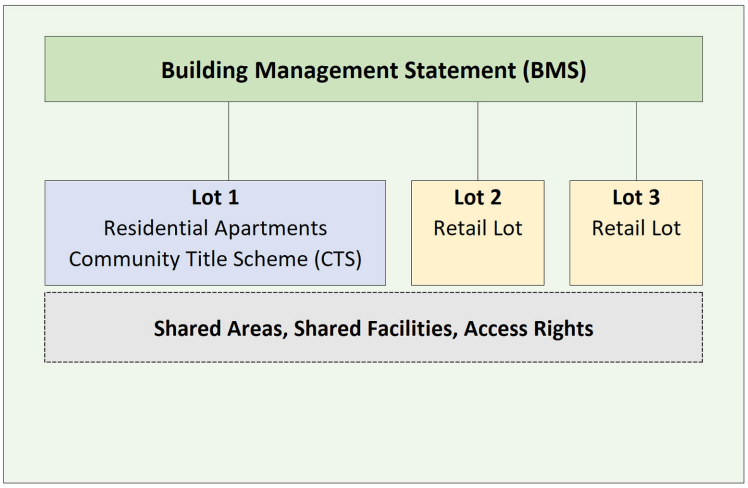
(e) dispute resolution;

(f) rules for common services and facilities;

(g) administrative arrangements;

(h) arrangements for accomplishing the 'extinguishment' of the statement;

(i) proposed future development.



A BMS is usually quite a complex document, and will often also include schedules that detail the various Shared Areas, Shared Facilities, Shared Plant and Infrastructure, and Assess Rights of the parties. These schedules will also usually detail the apportioned share of costs that will apply to the Lots in the BMS.

Because there will normally be many shared and apportioned costs in a development that operates under a BMS, budgeting will often be considerably more difficult than just a development comprising only a basic CTS.

It takes some skill and experience to initially establish the BMS and associated schedules properly, and if a Committee in a CTS or BMG feel that the BMS they have to work with is flawed, then it is strongly recommended that they engage a consultant that is well-versed with this type of work to look it over and make some recommendations. Committees have a responsibility to ensure these fundamental BMS issues are correct, and any problems resolved sooner rather than later.

Layered Arrangements

The Land Title Act (Qld) and the BCCM legislation provide for Community Title Schemes to be arranged in a hierarchical, layered Titling structure under a 'Principal Scheme' i.e. in a Layered Arrangement of Strata Title Schemes, there will always be one, that is the Principal Scheme – and it is at the top of the hierarchy.

Layering Strata Schemes in this way is most often done where progressive, or staged, development is taking place, but it can be retrospectively applied to a Scheme, usually a large Scheme, where the Owners feel that splitting off some of the Lots into their own Subsidiary Scheme makes sense – but retrospective layering is rare, and requires a Resolution Without Dissent as part of the process.

Basic Schemes

This is the term used to describe all Schemes that aren't part of a 'Layered Arrangement' – so most Bodies Corporate are 'Basic Schemes', and none of the Lots in a Basic Scheme, are themselves a Community Tile Scheme.

Principal Schemes

Only a Basic Scheme that is not a Subsidiary Scheme may become a Principal Scheme in a Layered Arrangement.

A Principal Scheme includes:

- at least 2 Lots (where at least 1 of those is a Basic Scheme), and;
- the land for all the Community Titles Schemes in the Layered Arrangement grouping, and;
- its own Common Property.

Only the following Regulation Modules can apply to a Principal Scheme:

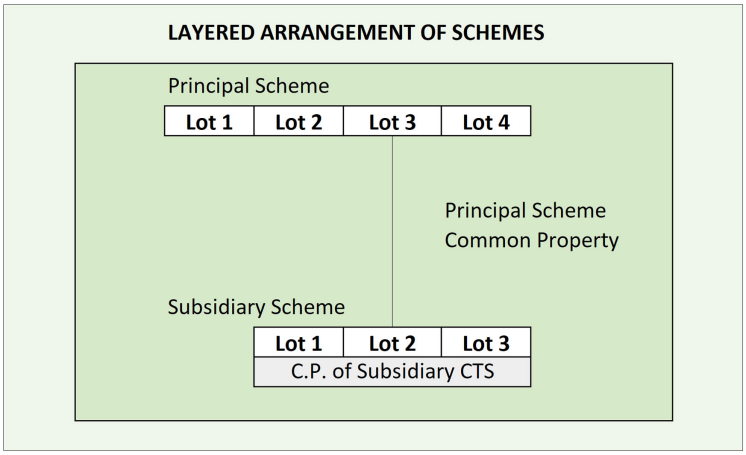
- Accommodation Module
- Commercial Module
- Standard Module.

Subsidiary Schemes

In a Layered Arrangement, every Community Titles Scheme other than the Principal Scheme is termed a Subsidiary Scheme.

The diagram below represents a simple 'Layered Arrangement', but in a more complex Layered Arrangement, there may be Subsidiary Schemes that have their own Subsidiary Schemes, but there must be at least one Subsidiary Scheme that is just a Basic Scheme.

A Subsidiary Scheme can be registered under any of the 5 Regulation Modules – it doesn't have the restrictions the Principal Scheme has in this regard.



The diagram above is a simplified representation of a Layered Arrangement.

In this example, Lot 3 in the Principal Scheme is a Subsidiary Scheme, comprising 3 Lots and its own Common Property.

Note that the Common Property of the Principal Scheme is 'owned' by all the Lots in the Principal Scheme, and that includes the Lots in the Subsidiary Scheme.

Subsidiary Scheme use of Principal Scheme Common Property

The extent to which Subsidiary Scheme Lot Owners may make use of the Common Property and Assets of the Principal Scheme will be detailed in the Community Management Statement of the Principal Scheme, and Subsidiary Schemes can expect to have to contribute for a share of the costs of this Common Property and Assets for which they enjoy the amenity. These contributions to the Principal Scheme would usually form an item in the annual Budgets of the Subsidiary Scheme. Costs will usually include both Administrative Fund type costs, and capital i.e. Sinking Fund type costs.

Committee Composition in the Principal Scheme

For a Basic Scheme, the 'maximum number' of Voting Members of a Committee is 7, however for a Principal Scheme, this can be increased from 7, to a maximum of 12, providing this increase has been decided at General Meeting by an Ordinary Resolution.

When Nominations for Committee invitations are sent out each year by the Principal Scheme, an invitation to Nominate must also be sent to the Subsidiary Scheme or Schemes.

There is no requirement for a Subsidiary Scheme to submit a Committee Nomination, but if they do, the 'Subsidiary Scheme Representative' will be either the Chairman of the Subsidiary Scheme Committee, or some other eligible person the Subsidiary Scheme decides to be their Representative.

The Subsidiary Scheme Representative could be Nominated for any or all of the Executive Positions on the Principal Scheme Committee, or as an Ordinary Member. If there is a ballot involved because there are multiple Nominations, the Subsidiary Scheme Representative may not get elected – there is no mandatory position available for a Subsidiary Scheme Representative.

Subsidiary Scheme Representative

As we've seen above, the Subsidiary Scheme Representative might not be a Principal Scheme Committee Member, but a Subsidiary Scheme must still always have a member that is the Subsidiary Scheme Representative for the Principal Scheme Body Corporate.

The Subsidiary Scheme Representative may submit Motions from their Subsidiary Scheme to be included on the Agenda of a Principal Scheme General Meeting.

The Subsidiary Scheme Representative is also the person who will cast votes on behalf of their Body Corporate at a General Meeting of the Principal Scheme.

The Subsidiary Scheme Representative must submit Motions and cast votes according to the directions of their Subsidiary Body Corporate. Votes cannot be exercised by Proxy at a General Meeting of the Principal Body Corporate by the Subsidiary Scheme Representative.

By-Laws in 'Layered Arrangements'

By-Laws form part of each CMS, and the Principal Scheme and each Subsidiary Scheme has its own CMS. However, when the Principal Scheme has a By-Law that contradicts a Subsidiary Scheme By-Law, the Principal Scheme's By-Law will prevail.

A Principal Scheme and a Subsidiary Scheme can make, change, or remove their existing By-Laws at any time, including Exclusive-Use By-Laws – all by way of recording a New CMS containing the changes.

Like all Basic Schemes, a Subsidiary Scheme, and a Principal Scheme is responsible for enforcing its By-Laws.

The steps to take depend on who is enforcing the By-Laws.

An Owner or Occupier can send an approved notice to their Subsidiary Body Corporate Committee to action, asking their Body Corporate to enforce some particular By-Law.

The approved notice can be completed by an Owner or Occupier within a Subsidiary Scheme who believes that:

- another Owner or Occupier has breached the By-Laws, and;
- it is likely the breach will continue or be repeated.

The Subsidiary Body Corporate can take direct action to enforce a Principal Scheme By-Law against the Principal Body Corporate—or against another Subsidiary Scheme or Owner or Occupier of a Lot within the Principal Body Corporate—in the same way as they would any Lot Owner within their own Body Corporate.

Appendix

1. Spending Limits Decision Diagram

Download the PDF document:

Spending in a Community Titles Scheme PDF

ParkAvenueStrata.com.au/docs/StrataTitleSpending.pdf

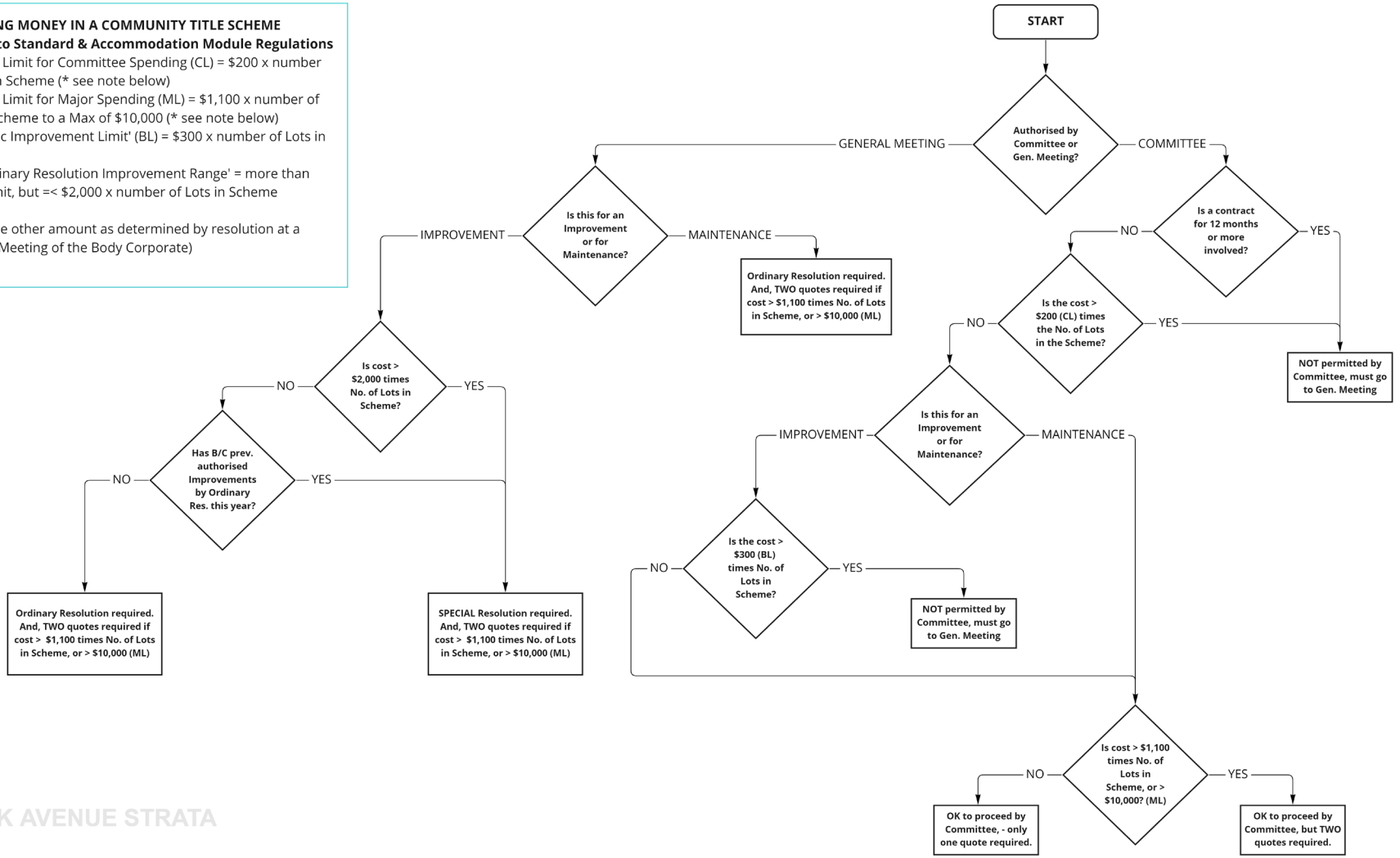
Download the Excel file:

Spending in a Community Titles Scheme (Excel)

ParkAvenueStrata.com.au/docs/StrataTitleSpending.xlsx

SPENDING MONEY IN A COMMUNITY TITLE SCHEME
applies to Standard & Accommodation Module Regulations
Relevant Limit for Committee Spending (CL) = $200 x number of Lots in Scheme (* see note below)
Relevant Limit for Major Spending (ML) = $1,100 x number of Lots in Scheme to a Max of $10,000 (* see note below)
The 'Basic Improvement Limit' (BL) = $300 x number of Lots in Scheme
The 'Ordinary Resolution Improvement Range' = more than Basic Limit, but =< $2,000 x number of Lots in Scheme

(*or some other amount as determined by resolution at a General Meeting of the Body Corporate)



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2. Does a Committee have to Provide the Reasoning Behind its Decisions?

In a financial press article about a 2019 court case involving the ACCC vs TPG Telecom, there was commentary about what constitutes 'adequacy' in board Minutes.

The opinion expressed in this article was that such Minutes need "essential detail, not extensive detail"

And that is almost exactly how the BCCMA Regulations describe what is required (as a minimum) of Committee Minutes. But what has long been held to satisfy this requirement is that, at a minimum, the (bare) details of every Resolution the Committee made should be recorded – and that bare minimum doesn't include any requirement for the Minutes to contain any explanation of the reasoning behind a Committee's decision.

Whilst a Body Corporate isn't governed by the Corporations Act, but rather the Body Corporate and Community Management Act and Regulations, there are still many similarities in how the Body Corporate Committee is expected to conduct their activities, and how a company board is expected to.

One matter that is similar is the production of Minutes of their Meetings – and specifically the content of those Minutes.

In addition, the Body Corporate Committee has a statutory requirement to 'act reasonably' in all its dealings for the Body Corporate and the Owners. And it is required to also adhere to its Code Of Conduct which forms part of the BCCMA.

Regarding Committee Meeting Minutes, the Regulations require that 'Full and Accurate' Minutes of every Committee Meeting are produced and distributed, and here are the minimum guidelines for what is to be included:

Full and accurate minutes, of a Meeting, means Minutes including each of the following—

(a) the date, time and place of the Meeting;

(b) the names of persons present and details of the capacity in which they attended the Meeting;

(c) details of proxies tabled;

(d) for each Motion voted on at the Meeting—

(i) the words of the Motion; and

(ii) the number of votes for and against the Motion;

(e) details of correspondence, reports, notices, or other documents tabled;

(f) the time the Meeting closed;

(g) details of the next scheduled Meeting;

(h) the secretary's name and contact address.

And the same requirements for Motions apply to Votes of the Committee made Outside of a Meeting (a VOC).

You'll see that the minimum requirement in relation to any Motions and Resolutions actioned by the Committee are these details: 'the words of the Motion and the number of votes for and against the Motion'. But is satisfying only the section of the Legislation that directly relates to the Minutes enough?

A Committee isn't required according to that particular section of the legislation, to provide any further explanation on how they arrived at their decision on a Resolution, and for some Resolutions this is quite significant. Consider a request from an Owner to install an 'improvement' to their Lot, say an air-conditioner, or an awning to provide sun screening. Or consider an application to keep a pet. Is it 'fair and reasonable' that the only information supplied to those Owners might be that their requests were rejected – with no reasons supplied, and no indications in the Minutes of how the Committee arrived at their decision? No indications of what issues were canvassed, how the 'pros and cons' were weighed up.

As we know, enshrined in the BCCM Legislation is the principle of 'acting reasonably' – the Body Corporate is required to do it, and the Committee is also. So the question needs to be asked, if the Committee Meeting Minutes provide no indications, not even a succinct paragraph, of how the Committee arrived at their important decisions, and advise what considerations they took into account, are they 'acting reasonably'?

Is a Committee doing a good job if it allows its Minutes to simply record the outcome of each Resolution, and the votes For and Against, without also supplying a succinct explanation on how it arrived at the decision? In the words of the article about the court case, "…Minutes should record not only the Resolutions reached by the board, but also some detail on how those Resolutions were reached."

You be the judge.

Kim Jordan – Park Avenue Strata Management

3. Visitor Parking – But Who is a Visitor?

You might wonder why the question of who is a visitor matters, and if you do, you are in the Strata minority. The ostensible abuse of visitor car parking privileges is the trigger for an enormous amount of Body Corporate angst.

This article reproduced with kind permission of Hynes Legal

Interestingly enough, the Body Corporate and Community. Management Act 1997 (BCCM Act) does not define who a visitor is, so we are left with dictionary definitions and adjudications (and perhaps even a dose of common sense, as scary as that may seem to be).

Let's start with the basics.

The By-Laws

You need to have a lawful visitor parking By-Law. A simple example is set out in Schedule 4 of the BCCM Act. If you don't have that, you have nowhere to go, and that means you should send us your CMS for a free By-Law review proposal, where we will tell you some of the other By-Laws you are missing too.

Dictionary definition:

A visitor is someone who (obviously enough) visits, which includes:

a) to pay a call on as an act of friendship or courtesy;
b) to reside with temporarily as a guest;
c) to go to see or stay at a place for a particular purpose;
d) to go or come officially to inspect or oversee.

Adjudications

As you would expect, there have been quite a few adjudications over the years. Some of the passages we have found illuminating (and our takeaway from each) include:

Picture Point [2004] QBCCMCmr 384

This was a dispute about short and long-stay occupants using the visitor car parks.

"There does seem to be some uncertainty about who constitutes a genuine visitor to the Scheme and will be entitled to use the visitor car parks.

There seems to be a general understanding that Occupiers of the Scheme are not entitled to use the visitor car parks.

However, the distinction between an Occupier and a visitor may not always be completely clear. As a general rule:-

• persons letting a unit for a week (including family or friends accompanying those persons for the majority of the period let) would be classed as Occupiers.

• persons just visiting for one or two nights of that period would normally be classed as visitors.

• similarly, if the relative of an Owner/Occupier regularly visits for one or two nights every month then that relative would normally be classed as a visitor.

The more difficult questions arise when a person stays with someone for a number of nights or on a very regular basis. In those cases, it will be necessary to look at all the circumstances to determine if they are an Occupier or a visitor."

Our takeaway: This was an early decision indicating the difficulties in actually deciding who a visitor was and confirmed that it was not as simple as whose name is on the lease.

Summer Waters [2004] QBCCMCmr 244

This was one where an Occupier's son stayed overnight at his parent's unit for seven nights over a 26-day period.

"It is not disputed that the ... son periodically visits the Scheme land, and on occasion, stays overnight. It is also not disputed that during these periods, the ... son parks his vehicle in an area of Common Property allocated for visitor car parking.

While it is arguable that this shows that the ... son is a regular visitor to the Scheme, in my view, regularly visiting the Scheme does not make a person an 'Occupier' of a Lot in the Scheme, even if on occasion those visits are on an overnight basis. As a result, I am not satisfied that the Respondent's son is an 'Occupier' for the purposes of the parking By-Law."

Our takeaway: Regular visitors who occasionally stay overnight are just that – visitors not Occupiers.

Gresham Gardens [2006] QBCCMCmr 355

This was one where an Occupier's son stayed overnight in his parent's unit two to three nights a week, every week.

'The question is whether [the son] falls within the category of "someone else who lives on the Lot" or is in the nature of a visitor or invitee.

Terms such as 'visitor' or 'invitee' are not defined in the Body Corporate legislation or the By-Laws. However, it seems to me that a visitor or invitee in this context refers to a person associated with an Owner or Occupier who is temporarily present on a Lot or Common Property, with or without invitation...

I am of the view that the factors to be considered in this issue are:-

• how long the person in question is present at the Scheme;

• how regularly; and

• for what purpose.

I do not consider it is necessary that a person stay overnight every night of the week to be an occupant.

A person who stays overnight in a residential Lot 2 or 3 nights on a regular basis could still be considered an Occupier.

I do not consider that the Lot must be the person's principal place of residence for them to be an Occupier of the Lot. It is conceivable that a person may occupy more than one residential abode.

If someone were to visit regularly but not usually stay overnight, or were to stay overnight for a few nights occasionally, I would not normally consider they were occupying the Lot. The key here, I believe, is the combination of two factors. Firstly, the respondent stays overnight for 2 or 3 nights (rather than just visiting during the day or evening) and in addition, the respondent is present on a very regular basis (every week, or at least most weeks). Moreover, with the respondent's place of work is nearby, it does not appear to be a temporary arrangement."

Our takeaway: If the person's presence is not temporary or occasional in nature, they may well be an Occupier (even when their principal place of residence is elsewhere).

127 Charlotte Street [2015] QBCCMCmr 19

This was one where employees of the resident manager were using the visitor car parks.

"I consider a 'visitor' would include anyone who is not an Occupier of a Lot, but who is genuinely visiting a Lot or the Scheme. I do not consider this is limited to residential or non-commercial visits. While a visitor may be a friend or family member visiting a tenant, they may also be a contractor such as an electrician visiting the Scheme to do work.

I would consider the employees of the resident manager to be Occupiers to the extent that they predominantly or regularly work at the building (as distinct from, for example, an employee who is based elsewhere but visits for an ad hoc Meeting). However, a cleaning contractor attending to clean one or more Lots would arguably fall within the designation of a visitor."

Our takeaway: a visitor could be a family member, friend or the electrician appearing as a one-off, but permanent or regular attendees may well not be visitors.

What does all this mean?

It depends on the circumstances.

Occupiers are definitely not visitors. We think a person is an Occupier if they have a right to use a Lot exclusively. In a permanent letting sense, this would come from the lease, and in a short-term letting sense, this would come from the licence they have to use the Lot from the Owner.

And before anyone asks, we don't think that an Occupier needs to be named on the lease or licence to be that. It is a matter of fact.

Regular attendees to the Scheme who use the visitor car parks:

- who definitely reside and work elsewhere are probably still visitors;

- who visit so regularly that they ought to be considered an Occupier would not be visitors;

- who have a link with the Scheme through work (as employees of someone on site or even locally to the Scheme) may not be visitors.

4. More Resources

[Got more (Qld) resource recommendations for us? Let us know on the Forum so we can investigate for future inclusion.]

4.1 Office of the Commissioner for BCCM

Main website entry point:

Qld.Gov.au/law/housing-and-neighbours/body-corporate/bccm

Advice telephone line: 1800 060 119

Submit a question via an on-line form here:

Qld.Gov.au/law/housing-and-neighbours/body-corporate/legislation-and-bccm/services/enquire

[Be aware that the Commissioner's office, via the phone advice line, and the emailed request service, cannot give legal advice or rulings—they can only provide you general information on the Body Corporate legislation, and detailed advice about the services the Commissioner's Office provides.]

4.2 BCCM Legislation

Qld.Gov.au/law/housing-and-neighbours/body-corporate/legislation-and-bccm/legislation

4.3 Database of BCCM Adjudicator's decisions

Austlii.edu.au/cgi-bin/viewdb/au/cases/qld/QBCCMCmr

4.4 'Strata Solve' Dispute Resolution

This consultancy is headed up by Chris Irons, formerly Queensland's Commissioner for Body Corporate and Community Management. Chris is a nationally accredited mediator, and an enthusiastic proponent of alternative dispute resolution.

StrataSolve.com.au

4.5 Hynes Legal – website resources

Hynes Legal maintain an excellent repository of resources, and in particular the large number of 30-minute webinars are a very accessible and highly recommended.

HynesLegal.com.au

4.6 Stratum Legal – website resources

Stratum Legal have a large number of excellent articles on many issues related to Bodies Corporate and Management Rights.

StratumLegal.com.au

4.7 Energy Options Australia

Specialist and independent electricity consultants to assist Bodies Corporate obtain competitive energy pricing, and provide advice on embedded networks.

EnergyOptionsAustralia.com.au

Email: info@EnergyOptionsAustralia.com.au

4.8 Body Corporate Law in QLD, Marc J. Mercier

Now in its Second Edition, this is a textbook and practitioner's reference on the law of Body Corporate in Queensland.

It provides an overview of the Body Corporate and Community Management Act 1997, associated Regulation Modules, other legislation, and policy documents that influence the interpretation and application of the law relating to Bodies Corporate. The 2nd Edition incorporates recent amendments to the Regulation Modules as well as elucidating key principles, notable case law and best practices that touch upon Strata litigation and Body Corporate management.

Print ISBN: 9781922509062

E-Book ISBN: 9781922509079

Print + E-Book bundle

Available from Wolters Kluwer

shop.wolterskluwer.com.au

4.9 LookUpStrata

A website and weekly emailed newsletter packed with everything Strata. It does cover all States, but content relative to Queensland is easily identified as all content is tagged for applicable States. Sign up for their regular weekly email to keep on top of everything.

LookUpStrata.com.au

4.10 Unit Owners Association QLD

The Unit Owners Association of Queensland or the UOAQ is a civil society group, representing the interests of owners of Strata Schemes in Queensland. The UOAQ has a forty-year history of volunteer service to Owners. We are funded by membership fees from individual Owners.

The UOAQ has three main activities including:

- Representing owners' interests to all levels of government
- Providing information
- Supporting owners

The UOAQ has three main campaigns in our Voice to Government program. These include:

- Preserve your residential amenity
- Management Rights vs owners' rights
- Caretaker disputes

Visit the UOAQ website: UOAQ.org.au

4.11 Australian Apartment Advocacy

Australian Apartment Advocacy is a not-for-profit agency that represents the 2.5 million Australians who choose an apartment as their home. The agency undertakes research with apartment owners and residents so as to advise government and developers about the needs of the apartment community.

The AAA also focuses on educating the general public about the benefits of apartment living and about the need for housing choice across the nation.

Managed by Samantha Reece, the Erin Brockovich of apartments (or Apartment Watchdog), AAA also assists apartment owners who face defects and issues with their builders, developers and strata managers.

Visit the AAA website: AAAdvocacy.net.au

5. Major Legislative Amendments 2021

[We have endeavoured to ensure all these 2021 amendments are incorporated into the main body of this book. If you detect that there is an area where the updates haven't been considered, please let us know via the dedicated Forum discussed in the opening pages.]

On 1 March 2021, the Body Corporate and Community Management (Standard Module) Regulation 2020 replaced the Standard Module regulation from 2008.

The government amended the regulation to:

- modernise Body Corporate procedures
- reduce Body Corporate costs
- enhance protection for Lot Owners.

The new Standard Module includes several changes to Committee Membership, elections, and procedures for Meetings.

Committee Membership changes

The changes to Committee Membership include limiting the ability for Co-Owners to be on the Committee at the same time and clarifying Committee Membership for where there are up to 3 Lot Owners.

They amendments clarify that the Chairperson must call for Nominations from the floor of an Annual General Meeting if the maximum number of Committee positions have not been filled.

Procedures for Electronic Voting on a Committee ballot have been modernised and Committee Members may not be allowed to receive benefits from contractors engaged by the Body Corporate.

Co-Owners

The new amendments have further restricted the ability for Co-Owners being on the Committee together.

A person who owns a Lot cannot be a Voting Member of the Committee at the same time as:

- a member of their family
- a person acting under authority of a Power of Attorney given by the Owner of the Lot
- a Co-Owner of the same Lot.

The exceptions to this rule are if:

- the minimum required number of Committee Members (3) has not been reached, OR;
- they own more than one Lot.

3 or fewer Owners

The new amendments clarify Committee Membership for when there are 3 or more Lots in a Scheme with up to 3 Owners.

The Members of the Committee can be:

- 1 person who owns all the Lots, OR;
- 2 people who own all the Lots between them, OR;
- 3 people who own all the Lots between them.

Multiple Owners should decide between themselves which executive positions they will each hold.

If the Owners can't decide who will hold the 3 executive positions, the owners jointly hold the executive positions.

Electronic Voting for Committee Ballot

A vote can be cast electronically if the Body Corporate:

- passes a motion by Ordinary Resolution at a General Meeting allowing electronic voting, AND;
- has a system for receiving Electronic Votes that rejects Votes cast by a person ineligible to Vote or who has already voted in the election, AND;
- only allows the Secretary to receive the Votes, AND;
- for Secret Ballots, does not disclose the identity of a Voter.

The Electronic Voting system may allow Votes to elect Committee Members to be cast by computer, smartphone, or tablet.

The Secretary or BCM should prepare the Electronic Ballot Paper after Nominations close, if needed.

Instructions for Electronic Voting must be sent with the Notice of the Annual General Meeting. To cast a Vote, Owners must follow the instructions.

Calling for Committee Nominations from the floor of the Meeting

Eligible persons need to Nominate for the Committee before the end of the Scheme's financial year.

If the Committee is not filled to the 'Maximum Number' at the Annual General Meeting, the Chairperson must call for Nominations for Committee positions from the floor of the Meeting.

The 'Maximum Number' of Committee Voting Members depends on the number of Lots in the Scheme.

If the Scheme includes fewer than 7 Lots, the 'Maximum Number' is equal to the number of Lots.

If it includes more than 7 Lots, the Maximum is 7—unless it is a Principal Scheme in a Layered Arrangement that has decided to increase its Maximum Number of Committee Members (to no more than 12).

Benefits from a Caretaking Service Contractor or Service Contractor

A Committee Member may only receive a direct or indirect benefit from a Caretaking Service Contractor or Service Contractor if:

a) for a benefit received from a Caretaking Service Contractor—the benefit is the supply of, or payment for, a Letting Agent business service conducted by the Contractor, OR;
b) for a benefit received from a Service Contractor—the benefit is the supply of, or payment for—
   i) a service that the Body Corporate has engaged the Contractor to provide, OR;
   ii) a service that an Owner of a Lot has engaged the Contractor to provide at market price OR;
   Example for subparagraph (ii) - *a gardening or maintenance service provided by a Service Contractor to Lot Owners*
c) otherwise—the Body Corporate has authorised the Member, by Ordinary Resolution, to receive the benefit.

Disclosure of benefits

Before a Body Corporate decides to enter into a contract (including insurance), the Body Corporate Manager and the Caretaking Service Contractor for the Scheme must disclose any associated:

- commission, OR;
- payment, OR;
- other benefit, including the amount of the benefit if is monetary.

Insurance

The Committee can spend above the Limit for Committee Spending to put in place or renew an insurance policy, if it is not a restricted issue.

The Committee must consider 2 insurance quotes if the cost of the insurance policy is above the Major Spending Limit for the Scheme.

Information about the Body Corporate insurance policy provided at the Annual General Meeting must include details of any insurance broker or intermediary involved with the policy.

Electronic Communications

Address for service

Your address for service for the Body Corporate Roll may include your email address.

If you give your email address to the Body Corporate as a part of your address for service, you are consenting to receive all documents from the Body Corporate by email.

If you have previously given your email address to the Body Corporate for the purpose of receiving documents, this email address will now be your address for service.

Giving of documents

Documents that the Body Corporate is required to give you (e.g. General Meeting documentation) or that you give the Body Corporate (e.g. a request to inspect Body Corporate Records) can be provided:

- in person, OR;
- by sending to your 'Address for Service' (including your email address), OR;
- in a way agreed to by you and the Body Corporate (e.g. a portal).

Serving documents on the Secretary or BCM

If an Owner must give a document or information to the Secretary, they can give it to a Body Corporate Manager instead if the manager is authorised by the Body Corporate to exercise some or all of the powers of the Secretary.

Body corporate roll

Owner responsibility

An Owner must update their details with the Body Corporate for Roll within 1 month (previously 2 months) after:

- a person becomes the Owner of a Lot, OR;
- a lease or sublease is entered into for 6 months or more, OR;
- an Owner engages a person to rent out their Lot, OR;
- the engagement of an agent or person renting out a Lot is terminated, OR;
- A mortgagee entering into possession of a Lot (i.e. when it is repossessed), must ensure the Roll details are noted accordingly.

Body corporate responsibility

The Body Corporate must record the information required for the Roll within 14 days of receiving the information.

Committee Meeting Amendments

Owner submitted Motions for Committee Meetings

A motion an Owner wants the Committee to consider at its next Meeting may be submitted by giving it to the Secretary (or the BCM):

- personally, OR;
- by post, OR;
- by electronic communication.

Committee decisions on Owner-Submitted Motions

The Committee cannot make a decision about any Owner-submitted Motion if:

- it is a Restricted Issue for the Committee, OR;
- it conflicts with the Act, Regulations, By-Laws, a Motion already voted on at the Meeting, or it is unlawful or unenforceable.

If the Committee can make a decision on a Motion, they must decide the Motion within 6 weeks after the day it was submitted (the 'Decision Period')—unless the Committee needs more time.

If more time is needed to consider the Owner's Motion, the Committee must give the Owner who submitted the Motion written notice within the decision period.

That notice must state:

- that the Committee needs more time to decide, AND;
- why the Committee needs more time, AND;
- a reasonable deadline for the Committee to decide about the Motion (i.e. an 'Extended Decision Period')—no more than 6 weeks after the Decision Period.

The Committee is not required to decide about a Motion (but may decide) if the Lot Owner has, within the last 12 months, submitted:

- a Motion about the same issue, OR;
- 6 or more Motions.

The Committee must advise the Lot Owner if this is why they are not considering the Motion.

The motion is considered 'not passed' if the Committee does not decide within the Decision Period or Extended Decision Period.

Electronic attendance

Voting and Non-Voting Committee Members—and in some cases Owners and certain Owner Representatives—can attend a Committee meeting electronically if authorised by the Committee.

The Committee can authorise Electronic Attendance:

- for a particular Meeting or any Meeting, AND;
- by a specific electronic means or any electronic means.

Attendance by owners and their representatives

A Representative of an Owner can attend Committee Meetings in place of an Owner.

An Owner or their Representative must give the Secretary (or BCM) written notice about attending a Meeting at least 24 hours before the Committee Meeting.

When giving notice, a Representative must include:

- their residential or business address, AND;
- the name of the Lot Owner they are representing, AND;
- evidence the Owner has asked them to represent them at the Meeting, unless their name is already on the Body Corporate Roll as a Representative for that Lot Owner, AND;
- whether they are a member of the Owner's family, acting under the Power of Attorney of the Owner, a director, secretary or other Nominee of a company that owns the Lot.

Committee voting

A Committee Member cannot vote at a Committee Meeting or vote outside a Committee Meeting (by means of a VOC) if, at the time of the vote:

- they owe a Body Corporate Debt, OR;
- if they are not a Lot Owner, the entity that Nominated them owes a Body Corporate debt.

A proxy cannot be used for a Committee Member who owes a Body Corporate Debt.

Voting outside a Committee Meeting e.g. a VOC

The Committee can make decisions without holding a formal Committee Meeting.

To vote outside a Committee Meeting, the Secretary (or BCM, or another Member of the Committee authorised by the majority of Voting Members) must give, at the same time:

- written notice of the Motion to all Committee Members, AND;
- notice of the Motion to all Lot Owners.

Committee Members must ensure their vote is received by the Secretary or BCM within 21 days of the Notice being given.

There are different requirements for Notice and returning votes in an emergency.

The Motion is decided if:

- most of the Voting Members of the Committee entitled to vote on the Motion (not just a majority of those who return a vote) agree to the motion, OR;
- half or more than half of all the Voting Members of the Committee do not agree to the Motion.

If the Committee Members do not decide within 21 days of receiving notice of the VOC, the Motion is considered to be not agreed to.

A copy of the outcome of the Motion must be given to each Committee Member and Lot Owner. The decision about the Motion must be confirmed at the next formal Committee Meeting.

General Meeting amendments

Group of same-issue motions (formerly motions with alternatives)

If 2 or more Motions proposing different ways to deal with the same issue are submitted for a General Meeting, the Committee must list the 'Original Motions' together on the Agenda as a 'Group of Same-Issue Motions'.

Voters can vote for or against 1 or more of the Motions.

An 'Original Motion' with enough votes to pass then becomes a 'Qualifying Motion'.

If there is only 1 'Qualifying Motion', that Motion is the decision of the Body Corporate.

If there is more than 1 'Qualifying Motion', the Motion that has the highest number of votes in favour of the Motion is the Decision of the Body Corporate.

If there are 2 or more 'Qualifying Motions with an equal number of votes in favour of them, the Motion with the fewest votes against it will be the Body Corporate's decision.

If the Motion still cannot be decided, the decision of the Body Corporate is decided by chance, for example, by tossing a coin or pulling the Motions out of a hat.

Explanatory schedule for group of same-issue motions

For a General Meeting that includes a Group of Same-Issue Motions, an Explanatory Schedule must be sent with the Agenda. The Explanatory Schedule must advise voters how a Group of Same-Issue Motions will be dealt with, and must include the information as specified in the legislation.

Calculating quorums

The Body Corporate can pass a Motion by Special Resolution to change some details about how a Quorum is calculated for a General Meeting.

The Body Corporate can decide to:

- reduce the number of 'Voters' required to be Present in person from 2 to 1,
- change the minimum percentage of Voters required to between 10% and 25%.

Only 1 Voter needs to be 'Present' in person if there are fewer than 3 voters in the Body Corporate.

The Body Corporate can decide by Ordinary Resolution that a 'Voter' is 'Present' personally at a Meeting if they vote by electronic means, such as video conferencing.

Representing by way of Power of Attorney

An individual can only represent 1 Lot under a Power of Attorney, unless for each Lot being represented:

- the Owner of each Lot is the same person, OR;
- you are a family member of the Lot Owner, OR;
- the Power of Attorney is given by a buyer under section 211 or 219 of the Act.

Voting on motions electronically

The Body Corporate can decide by Ordinary Resolution to allow Voters to vote electronically.

The system for receiving the votes must:

- reject votes that are cast by a person who is ineligible to vote, or has already voted on the Motion
- only allow the Secretary (or BCM) to receive the votes.

To vote electronically, Owners must follow the Secretary's instructions and vote before the General Meeting or, if the voting system allows, at or during the General Meeting.

Voters must be able to withdraw an electronic vote at any time before the result is declared. A Proxy cannot withdraw an Owner's electronic vote.

Initial Annual General Meetings

These changes relate to the first 2 Annual General Meetings of a newly created Body Corporate.

Owner motions (for first AGM)

Motions submitted by Members of the Body Corporate before the first Annual General Meeting must be included on the Agenda if possible.

Defect assessment report (for second AGM)

The Agenda of a Body Corporate's second Annual General Meeting must include a Motion proposing they engage an appropriately qualified person to prepare a 'Defect Assessment Report'.

The report must cover the property on Scheme land (other than 'Assets' that the Body Corporate must insure for full replacement value).

For Schemes developed progressively, a Defect Assessment Notice Motion must be put on the Agenda for the first Annual General Meeting after:

- a New CMS is lodged, OR;
- property that the Body Corporate must insure, is included on Scheme land.

The Body Corporate can set up a voluntary defect assessment plan for Schemes registered under a Standard Format Plan of subdivision with standalone buildings. Any Owners who take part in the plan must pay part of the cost of the report.

A Defect Assessment Report must:

- identify any defective building work, AND;
- if reasonable, identify the cause of any defective building work and the work required to rectify it.

Developer obligations

Under these new amendments, the Original Owner must give additional items to the Body Corporate, including a copy of:

- a Development Approval (DA), if one was required for the development,
- the Scheme's CMS,
- documents relating to any claim made against a policy of insurance taken out by the Original Owner for the Body Corporate,
- any fire and evacuation plans required under the Fire and Emergency Services Act 1990,
- any contracts or agreements for the supply of utility services to the Body Corporate;
- any documents relating to warranties for buildings or improvements forming part of Scheme land; Common Property plant and equipment; and any other Body Corporate Asset,
- any Proxy Forms under which the Original Owner is the Proxy for an Owner of a Lot,
- any documents under which the Original Owner derives representative capacity for an Owner of a Lot e.g. a Power of Attorney.

Each of the documents must be provided in hard copy and electronic form.

Using proxies in layered schemes

Lot Owners in a Principal Scheme that is part of a Layered Arrangement of Community Titles Schemes can give a Proxy. (an error in the superseded legislation prohibited this)

A Representative of a Subsidiary Scheme, which is a Lot in a Layered Arrangement, still cannot give a Proxy. If a Subsidiary Scheme Representative cannot attend a General Meeting, the Subsidiary Scheme will need to consider appointing another Representative.

6. Limits & Deadlines

Applies to Schemes under the Standard and Accommodation Regulations

Financial Limits

Committee Spending Limit = **No. of Lots x $200** This is the legislative default, but it can be set to any amount by an Ordinary Resolution. Insurance premium payment is not affected by this Limit, provided it's not a Restricted Issue for the Committee.

Basic 'Improvement' Limit = **No. of Lots x $300** This is a limit on how much a Committee could authorise for an 'Improvement' to Common Property, however the 'Committee Spending Limit' takes precedence over this and is the absolute limit.

Committee Authorised 'Improvements' by a Lot Owner to CP = **$3,000** This is for works paid for by the Lot Owner, but authorised by the Committee.

Major Spending Limit = **Lesser of: $10,000 vs No. of Lots x $1,100** The only purpose of this limit is to determine when more than one quote needs to be obtained for spending on a matter by either the Committee or at General Meeting.

Ordinary Resolution Limit for Spending on an 'Improvement' = **No. of Lots x $2,000** A Special Resolution is required above this limit.

Applies to Schemes under the Standard and Accommodation Regulations

Timing Deadlines

Committee Meeting Notice = at least 7 days before the Meeting

Committee Minutes to Issue = within 21 days of Meeting

Committee's 'Decision Period' on an 'Owner-Submitted' Motion = 6 weeks

Pre-advice of an AGM, Inviting Committee Nominations and Owner- Submitted Motions = 3 to 6 weeks before the Scheme's F/Y end

Receipt of Committee Nominations = before Scheme F/Y end

Receipt of Owner-Submitted AGM Motion = before Scheme F/Y end

AGM Date = within 3 months after Scheme F/Y end