

Queensland body corporate

A guide for new lot owners

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This book is relevant for schemes governed by the BCCM legislation. Most, but not all bodies corporate in Queensland, are governed by the BCCM legislation.

Learn more information at:

www.tracsafe.com.au

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Introduction

Congratulations! If you are reading this booklet then you may have recently purchased a lot in a body corporate within the state of Queensland. If not, it's still interesting information.

Living in a body corporate implies a commitment to participating in a community that is associated through shared property and communal ownership.

This book is focused on giving a lot owner, particularly a lot owner new to bodies corporate, a basic understanding of lot ownership in a residential body corporate.

If today is your settlement day, the body corporate may not be a high priority on your list. You will be able to connect up a phone, internet and electricity to your lot without reference to this book. However, we do recommend you have a peek at the insurance pages before you contact your broker.

What does it all mean?

How do I know I am in a body corporate?

Hopefully, it does not come as a surprise to learn that you own a lot that forms part of a body corporate. When you signed a contract of sale for your lot, it would have included a disclosure statement that described important information about the body corporate.

The monolithic structure of apartment complexes are a bit of a giveaway that you are part of a common community. Townhouse environments are less obvious. Rural allotments with a shared access road are even more subtle. There are many variations on the form and structure of a body corporate. In really complex cases, your lot may be part of a body corporate that is in turn a part of a wider body corporate.

If you want to know for sure, have a look at the title document that your conveyancing lawyer will have given you. If your lot is part of a body corporate, the title document will state the applicable Community Management Statement number (more on this later - page 8).

Who do I need to contact?

One of the finalisation tasks that your conveyancing lawyer does is to send a form (known as a form-8) to the secretary of the body corporate advising the names of the new lot owners, your residential address, a service address (where different to the residential address) and the date of settlement. Sometimes, the form will also enclose a cheque in favour of the body

corporate. The proceeds of the cheque are applied to your body corporate account that is maintained to track all levies and payments associated with your lot. The amount will have been agreed between the buying and selling conveyancer and will be listed in the breakdown of the disbursements in the settlement documentation.

Upon receipt of the form-8, the secretary of the body corporate will update the register of rolls to record the new owners of the lot. Future levies and notices issued by the body corporate will be sent to the service address that was listed in the form-8. In this technological age, most bodies corporate and most lot owners want to make and receive communications by email and mobile. It is very likely that you will be contacted by the body corporate to provide additional details.

Many bodies corporate outsource the administration of their body corporate to specialist companies and individuals (known as body corporate managers). So, although I mentioned the secretary in the previous paragraph, it is more likely that the body corporate manager will be the contact person.

If you are keen to make contact with the body corporate, then the disclosure statement that was attached to the contract of sale will list their contact details.

Who runs the body corporate?

Usually, a body corporate has a committee. Each year, the body corporate holds an annual general meeting (AGM). At that meeting, budgets and levies for the financial year of the body corporate are decided. Additionally, a new committee is

elected from nominees who are usually members of the scheme.

The number and functions of committee members can vary depending upon the exact nature of your scheme. There will be one or more persons with the responsibility of being the treasurer and secretary. If the scheme has a body corporate manager (BCM) then some of the associated powers for these office bearers are usually delegated to the BCM.

What does the committee do?

The committee is responsible for service contractor selection, scheduling maintenance work, supervising and paying the contractors. In a simple scheme this typically includes: insurance, cleaning services, grounds services, community power, community water, administration services, minor repairs, termite inspections etc. The committee is responsible for issuing levy notices to lot owners and receipting payments.

The committee is responsible for preparing meeting notices, conducting meetings, recording and distributing minutes. Each year, the committee must formulate a budget for consideration at the AGM and include planning and saving for major expenditure for the decade ahead.

The committee is responsible for administering the by-laws of the scheme.

First steps – check in with your body corporate

Make contact with your body corporate and provide updated contact information or any information that they may lack. Additionally, if you do not already have a copy, ask for a copy of the by-laws to be sent to you. Read the by-laws and make sure that you take care to abide by the requirements.

Next, ask for an extract of your lot ledger to be sent to you. This is important because if accounts have not been settled correctly and your lot ledger is in arrears, penalties may start to accrue against your lot without your awareness.

After settlement, you should expect that the current state of your lot ledger is a zero balance or possibly prepaid in advance until the next levy falls due. If this is not the case, the settlement cheque may not have been banked by the body corporate or some other anomaly has occurred. Make sure the issue is resolved, the responsibility is for you to sort out (not the committee). You could reasonably expect that the conveyancing solicitor has the responsibility to chase it down.

Each lot has a lot ledger which can be thought of as an internal bank account that exists between the body corporate and the lot. The lot ledger is not impacted by lot ownership. Lot ownership enables the body corporate to know who is financially responsible for the lot and therefore where to send levies and from whom to expect payment. Transfer of lot ownership does not change the transaction entries or the outstanding balance of the lot ledger. It simply changes the financial responsibility for the lot ledger.

The lot ledger records the contribution instalments (levies) as they fall due for each lot and records any payments received that offset those levies. However, other transaction entries may also appear in the lot ledger. These include: penalties for late payment, discounts for early payments, debt recovery expenses, interest remission, lot expense, are all possibilities.

What are my obligations?

As a lot owner and body corporate member you have obligations: Maintain your lot in good condition. Do not cause a nuisance or hazard for other lot occupiers. Read the by-laws of the body corporate and respect the by-laws. Pay levies on time. Advise the secretary when contact details change. If there are tenants leasing your lot, a lot owner also has an obligation to inform the body corporate and to provide the tenants with a copy of the by-laws. Participate in any fire drill if you are an owner occupier. Attend the AGM and any extraordinary general meetings (EGMs). Consider being on the committee.

Next steps

Now that your first tasks are done, we can take a slightly deeper dive into your body corporate and the mysterious inner workings of body corporate legislation.

Legislation

Body Corporate Act

The Body Corporate and Community Management Act 1997 provides the legislative framework for the creation, ongoing regulation and termination of a body corporate. The Act references a number of subordinate regulations that are used to regulate bodies corporate of different types. Your body corporate will most likely be regulated by one of these types -

Regulation	Normally used for..
Specified Two-lot Schemes	Residential duplexes (two lots)
Small Schemes	Residential with 6 lots or fewer
Standard	Residential more than 6 lots

Each body corporate is a separate legal entity with specified powers, authorities, duties and functions as defined by the Act and the regulations.

The regulation that your scheme is governed by is stated on the community management statement (CMS) that is registered with the Queensland Titles Registry. Ask the secretary (or BCM) for a copy of the CMS. The next chapter describes what else the CMS contains. Sometimes, the CMS is lost or there is some contention as to whether the CMS is the most recent. A copy of the registered CMS can be recovered from the Queensland Titles Registry (for a fee). We sometimes see a body corporate acting as if they are governed by the small schemes regulation when they are actually governed by the standard regulation.

Community management statement (CMS)

The Community management statement (CMS) is a document registered at the Queensland Titles Registry that identifies the following –

- Regulation module that is applicable
- Name of the body corporate
- By-laws of the body corporate
- Table of contribution schedules
- Table of interest schedules
- Exclusive use allocations

Regulations

The differences in the regulations reflect the extent of the compliance requirements that must be respected. Throughout this book, the regulation requirements are described when they diverge.

Regulation	Compliance
Specified Two-lot Schemes	Low
Small Schemes	Medium
Standard	High

Changing to a regulation module that has lower compliance is recommended for schemes that meet the criteria.

By-laws

Every body corporate has by-laws that govern behaviour within the body corporate buildings and grounds. Historical

changes to body corporate legislation has meant that the by-laws that govern a body corporate are recorded in a few different ways.

New schemes generally list the by-laws in the CMS (Have you got your copy from the secretary yet?). However, if they are not listed, then they should be similar to the by-laws listed in the appendix to this booklet.

What is common property?

By now, you may have heard of this term, but what does it actually mean? Basically, if you look at the scheme land and buildings and subtract out the lots, then what remains is common property. In an apartment complex, the lot boundary is the centre of each boundary wall, floor and ceiling that separates the lot from another lot or separates the lot and common property.

Exclusive use – what's that?

Your lot may be associated with one or more exclusive use allocations (EUAs). If so, there will be an exclusive use by-law and possibly a sketch at the end of the CMS that identifies the EUAs. Typical EUA are courtyards and car parks. Although EUAs are part of the common property and not your lot, an exclusive use to the specified common property has been associated with the lot. Exclusive use can also be assigned to any asset of the body corporate.

Contribution and interest schedule tables

The contribution and interest schedule tables listed in the CMS convey important information that directly affects the levies that each lot will be charged. In a body corporate, with a similar design and market value for all lots, both the contribution and interest schedules record the same value for all lots. In this case, levies paid by each lot will be the same.

Below is an example where this is not the case. This arrangement could represent a small body corporate where all the lots are dimensionally similar and the contribution entitlements have been judged to be equal. However, the market value of lot 3 (perhaps it has an elevated position with a sea view) is expected to be approximately twice the market value of either lot 1 or lot 2. This is reflected in the interest entitlement schedule.

Lot number	Contribution entitlement	Interest entitlement
1	1	1
2	1	1
3	1	2
Entitlement total	3	4

Sinking fund levies (more about this later) are allocated in proportion to the contribution schedule so in this case all lots would pay the same levy for the sinking fund.

For many bodies corporate, administrative fund levies are allocated in proportion to the contribution schedule for levies not related to insurance premiums and in proportion to the

interest schedule for the levies that are related to insurance premiums. So in this example, lot 3 will contribute a greater amount than either lot 1 or lot 2 for the administrative levy. In fact, lot 3 will contribute 50% of the insurance premium whilst lots 1 and lot 2 will only contribute 25%. All lots will contribute the same amount for the other components of the administrative fund levy.

BCCM Commissioner

The role of the Body Corporate and Community Management (BCCM) Commissioner's office is to assist people who live, work or invest in community titles schemes in accordance with the powers conferred on it by the Act.

The BCCM website home page is currently -

www.qld.gov.au/law/housing-and-neighbours/body-corporate

From this website, there is a lot of support information for lot owners including free online training and assessment. There is a regular email communication (called Common Ground) that is available as a free subscription.

Administration Tribunal

The State Government provides a dispute resolution service. A three step process is encouraged –

1. Resolve disputes directly between parties
2. Conciliation
3. Adjudication

The process and costs are well set out on the BCCM website. A lot owner can be an initiator of a dispute (usually against their body corporate).

Insurance

A body corporate is required by the Act to insure for full replacement value of the common property and the body corporate assets. The body corporate must also maintain at least \$10 million coverage in regard to the common property and related assets for public risk.

Take a close look at the survey plan that defines the scheme land of your body corporate. It should be somewhere in all the documentation that you got from your conveyancing solicitor. Note what type of survey plan has been used. It is usually stated at the bottom right hand side of the plan.

Insurance in building format survey plans

Read this section if the annotation on your survey plan states that it is a building format plan or building units plan. In these cases, the body corporate is required to insure all buildings on the scheme land for replacement value.

Remember those interest schedule entitlements from the previous chapter. If the interest entitlements are different between lots, or different in proportion to the lot entitlements, then not all lot owners will pay the same amount for the insurance component of the administrative levy.

If your levy notice separates out the insurance component, it is usually because not all lot owners pay the same amount and separating out this component gives good transparency to lot owners. There is no regulatory requirement that this separation must be done.

Insurance in standard format survey plans

Read this section if the annotation on your survey plan states that it is a standard format plan or group titles plan. In these cases, the body corporate is required to insure all buildings that share a common wall between lots. Conversely, if your lot is a standalone building then it is your responsibility to insure the building. However, the body corporate can choose to establish a voluntary insurance scheme and you (the lot owner) can choose to be part of that scheme (or not).

If your lot is being insured by the body corporate, then the insurance component of the administrative levy will be a fraction of the insurance premium for the whole scheme. The fraction will be in proportion to an insurance replacement valuation of the building on your lot compared to the insurance replacement valuation of all the lot specific buildings covered by the policy. Your levy notice may separate out the insurance component of the administrative levy, however there is no regulatory requirement that this must be done.

If you are unclear as to whether your lot is covered by the body corporate building insurance, ask the Secretary (in writing).

Voluntary insurance schemes

Read this section if your survey plan states that it is a standard format plan or group titles plan and your dwelling has no common walls with adjacent lots. You will need to confirm with the body corporate whether there is a voluntary

insurance scheme in place and whether your lot is part of that scheme.

In a voluntary insurance scheme, the body corporate insures the common property and all buildings of lot owners who partake in the scheme. Where lot owners choose to be part of the scheme, they must advise the body corporate of the replacement value of the stand-alone building(s) to be insured and any contribution levied by the body corporate upon the lot owner, in relation to the premium, must reflect the proportion of the total replacement value that their buildings comprise. Lot owners who do not partake in the scheme will only pay a contribution, in relation to the insurance premium, that is related to the common property component of the premium.

The usage of voluntary insurance schemes by bodies corporate is relatively low. One reason is that it can be hard to organise. Another factor is that insurers often refuse to insure when only some (and not all) of the lot owners have opted-in.

Insurance policy options

You might find an insurance certificate of currency (for the body corporate policy) in the documentation prepared by your conveyancer. If not, you can ask the secretary for a copy of the insurance policy attributes. Use these documents to understand what insurance options the body corporate has included in their cover.

A significant issue bodies corporate face when insuring is determining whether flood cover is required. Other options of interest include: voluntary workers accident, fidelity guarantee, machinery breakdown, office bearer's legal liability,

electronic equipment, etc. The policy is unlikely to be changed until the next annual general meeting.

Building policy coverage

Queensland strata insurance policies are generally aligned with the requirement of the body corporate Act and the definition of building as stated in the Act. Coverage will normally include all building and underground services erected upon the common property, including fences, gates, paths and roadways, retaining walls, awnings, external blinds and signs.

Internally, coverage usually includes items such as baths, hand basins, shower screens, toilets, sinks, stoves, benchtops, built in cupboards, doors, windows, glass, fixed tiling and hot water systems but not carpets, light fittings, curtains etc. There can also be exclusions such as floating floors and air conditioners servicing only one lot, so check the policy. Also be aware that, just as in any normal household policy, insurance does not cover wear and tear.

Externally, other items that are considered plumbed-in are usually part of the covered policy items. This would include roof-fixed solar panels with associated systems and rainwater tanks when plumbed-in. Ducted air conditioners that service more than one lot would also be part of a normal policy.

Lot owner responsibility

An insurance contents policy is a responsibility of the lot owner or lot occupier. A body corporate buildings policy does NOT usually cover: carpets, floating floors, light fittings,

curtains, blinds, personal equipment and valuables, furniture and house hold appliances, such as dishwashers, refrigerators, washing machines, dryers within the unit area. Mobile or fixed air conditioners servicing only your lot will also not be covered by the body corporate policy.

Don't get confused by this. The body corporate may also have insurance contents coverage. However, that cover is for assets of the body corporate such as communal pool decking furniture.

WorkCover

The body corporate may have a WorkCover policy. This would cover workers (sole traders) who come to the scheme land to undertake work on behalf of the body corporate.

It would not cover workers who come to the scheme land to undertake work on behalf of you as the lot owner. A very traditional example is the ironing lady. For peace of mind, take out a WorkCover policy from the WorkCover Queensland.

Their current website is www.worksafe.qld.gov.au.

Insurance coverage for landlords

If you do not intend to live in the property, you may need other insurance coverage. Talk to your insurance broker and give them a copy of the insurance policy that the body corporate has in place.

Insurance excess

For an event affecting only one lot, the owner of the lot is liable to pay the insurance excess unless the body corporate decides it is unreasonable in all the circumstances for the owner to bear the liability. Current excesses are around \$300, although some bodies corporate request higher excesses (\$500, \$1,000) in order to get a reduced premium. Check the body corporate policy and avoid surprises.

Does insurance cover all events?

Most, if not all, insurance policies do not cover wear, tear and corrosion. So if an internal pipe in a wall rusts over time and leakage occurs, the body corporate building insurance is unlikely to cover the cost of rectification of rusty pipes. (The rectification cost will be for either the body corporate or the lot owner to pay – depends on the specific case). You can expect that the insurance policy would probably cover the consequential water damage caused by the leakage.

Damage caused by vermin, termites, animals and mildew are usually also policy exclusions.

Common wear and tear items are hot water systems and air-conditioning units. Failure of these systems will not generally be claimable on insurance. (If the failure was due to motor fusion, check the policy – there may be coverage)

What if I get it wrong?

Under the law, there is a cooling-off period for many types of insurance. This means that if you change your mind about the

insurance policy within 14 days of signing it, you can cancel it and get your money back.

Insurance disclaimer

This information has not been prepared by an insurance practitioner. It should be used as a guide only. You should not rely on it as legal or insurance advice. We recommend you contact an insurance broker.

Annual General Meetings

You can expect that an AGM will be called within three months after the end of the financial year of the body corporate. You should be notified at least three weeks in advance of the AGM. The notice of AGM will state the date and location of the AGM.

Voting and attendance

It is important to stay aware of what is happening in your body corporate by reading the AGM documentation. A voting paper will be included with the documentation. If you do not attend the AGM in person, you will be able to send in your voting paper. Another alternative is to give a proxy to another person who will attend the meeting. However, not all motions allow the use of a proxy for bodies corporate governed by the standard regulation.

Budgets and levies

Both an administrative fund budget and a sinking fund budget must be presented at every AGM. Budgets have a direct impact on your levies. The administrative budget addresses expenditure that is regularly incurred every year. The sinking fund budget addresses expenditure that is estimated to be incurred over at least the next ten years.

Normally, you would expect that the budgeted administrative levies will approximately equal the administrative expenses incurred during the financial year of the body corporate.

The sinking fund budget is very dependent upon a sinking fund forecast and any planned capital expenditure in the proposed budget year. Over a ten year period, it should be expected that the sinking fund contributions will match the sinking fund expenditure. However, because of the lumped nature of the activities, the income and expenditure in any one year is unlikely to be balanced.

A budget can be varied at an AGM but only by a total variance of +/-10%. No new spending items can be introduced at this time unless the item is a consequence of a separate motion that is passed at the AGM.

So, if you care about your budget and levies, the best way to have input is to be part of the committee decision process.

Committee election

The last item on the AGM agenda is the committee election. Under the small schemes module – only a treasurer and secretary is elected and there is only one or two persons on the committee. There is no requirement to nominate before the AGM.

Under the standard module, there is a chairperson, treasurer and secretary (they can all be the same person) and ordinary committee members. A minimum of three people must be on the committee and a maximum of seven (for larger schemes). Nominations are only taken from the floor if insufficient written nominations were received prior to the end of the financial year. You should receive a written invitation to nominate approximately 3~6 weeks before the end of the financial year of the body corporate.

What does being one of these members involve? For an ordinary member, they usually participate and vote at committee meetings. The treasurer is responsible for the making payments to contractors and preparing budgets. The secretary is the administrative manager, whose duties include sending out nomination forms for committee, receiving and sending correspondence, calling committee meetings and preparing voting papers for the AGM. The chairperson leads and controls committee and general meetings.

Levies

A levy notice is a partial extract of a lot ledger (which we discussed in an earlier chapter). There are many different versions of a levy notice. The best levy notices give you a recent history of any outstanding levies or debts but your scheme may not do this.

Normally, a standard levy notice will state the administrative fund levy and the sinking fund levy amounts and the period that the levy covers. As already mentioned, some bodies corporate separate out an insurance levy component for clarity.

Many bodies corporate issue levies by email. Make sure you request the secretary to send the levy in the way that you want to receive it (email or post). Some will want to send it by both mechanisms so that there is little chance of it being missed. If using email, be very careful to make sure the first levy notice you get does not go to some junk or spam folder that you never see. Add the sender of the levy notice to the safe sender list of your email program.

Timing of levies

The timing, frequency, and the amount of levies are fixed at the AGM. Four quarterly levies per year is common. It is typical for levies, within the same financial year, to be spaced over equal time periods and levied for equal amounts. The financial year for a body corporate starts on the 1st day of a month – it could be any month. The exact month depends on when the body corporate was first formed.

A levy is required to be issued thirty days prior to the levy falling due (known as the due date). Timing of your payment is important as discounts and penalties may impact your levy.

It is common for the due date for a levy period to correspond to the first day of the levy period to which it relates. However, occasionally the due date is the last day of the levy period and sometimes it is somewhere in between.

Penalties for late payment

The body corporate is entitled to charge a simple interest penalty for levy late payment. It can be between 0 - 2.5% per month (equivalent to 0-30% per year). Most bodies corporate charge the maximum possible as a mechanism to ensure timely payment. We discuss disputes about levy payments on page 29. You will only be charged penalty interest if your payment is one month after the due date as stated on the levy notice.

Discount for early payment

The body corporate can choose to offer a discount for early payment that is between 0% - 20%. To receive the discount, the payment needs to get into the body corporate bank account before the due date. Make sure you allow for the time it takes to get from your bank to their bank. To be safe, pay at least a week early! Also, any other debts must be paid off before you will get the discount. You must have nothing owing after you make this payment.

Special levies

A special levy is a levy to pay for some unexpected shortfall. Unlike the standard levies described above, it does not cover a specific period of time. The levy could be for either an administrative fund deficiency or a sinking fund deficiency. The most common reason is a major spending activity where there are insufficient sinking funds available. Painting the external building would be a common reason. A special levy would be decided at an AGM or EGM. An impending special levy should have already been discovered and highlighted by the conveyancing solicitor.

Taxation consequences

Administrative levies are generally tax deductible. Sinking fund levies are not always tax deductible particularly if the body corporate is making improvements. Talk to your accountant, read ATO tax ruling TR97/23, or do both.

GST

Your body corporate may be registered for GST. If it is registered for GST, your levy notice should state it is a tax invoice and additionally the ABN should be stated on the levy notice. You can check on the GST status of the body corporate from the government website - <http://abr.business.gov.au/>.

Maintenance

The Act states '*The body corporate must maintain common property in **good** condition, including, to the extent that common property is structural in nature, in a structurally sound condition*'. I have added the emphasis on good because inevitably different lot owners will have different views on **good**.

But wait, there may be more! If your scheme is a building format plan, then the body corporate is also responsible for the maintenance of the openings between the lot and the common property. This includes – railings, balustrades, doors, windows, garage door etc. In a building format plan, the body corporate also maintains all foundation structures and roofing membranes.

And a further twist – if the lot abuts exclusive use areas such as a courtyard, then the responsibility for the maintenance of openings between the lot and the exclusive use area falls back to the lot owner by default (unless the exclusive use by-law states otherwise).

The regulations also require that '*the owner of a lot included in the scheme must maintain the lot in **good** condition*' and '*an occupier of a lot included in the community titles scheme must keep the parts of the lot readily observable from another lot or common property in a **clean and tidy** condition*'.

Who maintains lot specific items?

Items that are used solely for the benefit of an individual lot owner are the responsibility of the lot owner even if the

equipment is situated on common property. An example would be the outdoor component of an air-conditioning unit dedicated to a lot or a hot water system dedicated to a single lot. This is often on common property however the maintenance of the device and the associated wiring and piping will normally be a lot owner responsibility. Another example is an external light that illuminates the front door of the lot.

Who maintains exclusive use areas?

Unless the by-laws identify a different arrangement, the lot owner is largely responsible for the replacement and refurbishment of any allocated exclusive use area and any associated structures but not their roofing membranes. The lot owner responsibility also extends to the surface maintenance of walls and fences that delineate and face the exclusive use area but only for those structures that were solely created for the delineation of the exclusive use area.

Who is responsible for maintaining fencing?

The body corporate is jointly responsible with owners of neighbouring properties for the maintenance and refurbishment of perimeter boundary fencing. If part of the boundary fence delineates exclusive use area then the lot owner might be responsible if that responsibility is explicitly stated in a by-law.

In cases where an internal fence delineates two lots (including any applicable exclusive use areas), the owners of the adjoining lots are jointly responsible. The responsibilities are set out in the Neighbourhood Disputes Resolution Act 2011.

In cases where an internal fence delineates one lot (including any applicable exclusive use area) from common property, then the owner of the lot and the body corporate are jointly responsible.

Maintenance vs insurance responsibilities

The important distinction to understand is that the body corporate building insurance coverage does not usually align with the maintenance responsibility of the body corporate.

A good example would be a glass splashback in the kitchen of a scheme defined by a building format plan. This is a maintenance responsibility for the lot owner. However, if the splashback spontaneously shattered, you could make an insurance claim through the body corporate building policy. In this case, you will have to pay the excess if the claim is accepted.

Is it a building defect?

If your lot was built within the last seven years, then any building defect may need to be addressed by the developer of the scheme. This is discussed on page 39.

Even if the issue is outside the period of responsibility of the developer, you may be able to take action based on an applicable warranty for the defective item. Hopefully, the previous owner has left you the applicable warranties when they vacated the lot.

Common lot owner issues

Lot ledger (levy) disagreements

There are many cases of disputes about the correct amounts that a lot owner owes a body corporate. If you always pay on time, this should generally never become your issue.

It gets very messy once penalties, discounts, arrears notice fees, and debt recovery amounts start to appear on a lot ledger. If you intend to start a dispute, you need to pay all amounts that the body corporate is demanding. In a BCCM adjudication (QBCCMCmr 326 (19 August 2013)), the adjudicator advised -

If Ms Naismith does now pay all amounts claimed by the body corporate then Ms Naismith would regain her voting rights, stop losing 20% discounts, stop accruing 30% interest, and stop accruing recovery costs. Also, with no ongoing debt dispute, an adjudicator would then appear to have jurisdiction to consider Ms Naismith's substantive claim. That is, the adjudicator could consider whether the decision by the committee on 20 May 2013 to refuse to waive the penalties and costs accrued against Ms Naismith was unreasonable and should be overturned. However, there is no jurisdiction to consider this claim while any of the claimed amounts remain unpaid.

After paying all amounts owing, your next step is to write to the committee requesting remission, with reasons, for whatever amount is in dispute. The committee will need to be very consistent and fair in the consideration of your request. If you are unhappy with the answer, you can think about raising a dispute through the BCCM dispute process.

Pet by-law

Schedule 4 by-law 11 permits an animal to be on a lot subject to body corporate consent. Sometimes, bodies corporate modify this by-law to exclude pets or sometimes a blanket ban pet by-law has always been in place since the commencement of a scheme. For the majority of bodies corporate, such a by-law is now recognized by the BCCM tribunal as unreasonable.

If you want to keep a pet on your lot, you must first write to the committee and make that request. Include the name and description of the pet in your request. Some body corporate managers have a form that you can download from their website. They may also charge for the effort to process the form and arrange for committee approvals (or not) to be given.

The committee must decide on a case by case basis whether or not to approve a particular animal being brought onto the scheme. The committee is required to act reasonably in anything it does including making, or not making a decision. In considering a pet application, the committee may impose reasonable conditions on the approval to alleviate any risk of nuisance or unreasonable interference with the peace and enjoyment of other residents.

Importantly, circumstances can and do change. The committee are entitled to reconsider their consent at any time and impose new restrictions or even revoke the original permission.

Car parking on common property

The occupier of a lot cannot park in visitor bays at any time (by-law 1a). So don't start! A lot occupier could potentially

park in other common property parking bays that are not designated visitor parking. However, this requires that approval be sought and granted by the committee. A reasoned request will need to be written. Most bodies corporate are quick to act on car parking issues. You can expect early notification of your misbehaviour.

By-law violations

If you have a complaint about a by-law that is being infringed by someone on scheme land, you can raise your complaint with the committee. The BCCM website has a template (Form 1) which can be copied and used as a notice to body corporate of a contravention of a body corporate by-law.

The committee are then required to act on the received notice. If they agree with the complaint, they may choose to issue a continuing or future contravention notice to the offender. The contravention notice must contain –

- Wording of the by-law infringed
- Specific behaviour observed
- Days to fix and applicable lot number
- Method by which the notice was given

Proceedings in the magistrates court can be started for failure to comply with a contravention notice. The BCCM Act empowers the magistrates court to impose a financial penalty for failure to comply with the notice. (Maximum ~\$2,000)

Frequently asked questions

Can I avoid being in the body corporate?

No. The body corporate exists as a legal consequence of the community title scheme that was created when the scheme land was developed. All lot owners, and only the lot owners, are the members of the body corporate. You cannot avoid that fact. The obligations of the body corporate must be met otherwise lot owners can face legal sanctions.

Who can access my body corporate records?

Adjudications have noted that the Privacy Act 1988 does not affect the body corporate's obligation to disclose records to interested persons. The Privacy Act does not override state legislation that specifically authorises the collection and disclosure of personal information. Consequently, your name and any contact details that you give to the body corporate must be disclosed by the committee if requested by an interested person. An interested person would include another lot owner.

Can I attend committee meetings?

Under the standard regulation, lot owners are entitled to attend committee meetings even if they are not on the committee. Under the small schemes regulation, this entitlement would be at the discretion of the committee.

How can I get on the committee?

For bodies corporate governed by the standard module, committee nomination forms must be issued to lot owners three to six weeks prior to the end of financial year of the body corporate.

Completed nomination forms must be received by the committee on or before the end of financial year. A nomination submitted by an owner in debt would not be valid. The secretary is required to acknowledge receipt of a valid nomination to the nominee.

The committee membership is determined at the AGM. For the standard module, it consists of a minimum of three voting members and a maximum of seven voting members. For schemes with fewer than seven lots, the maximum number of members is equal to the number of lots. For the small schemes module, it is a minimum of one and a maximum of two.

In the small schemes, a committee member can be a lot owner or any person nominated by a lot owner. Under the standard regulation, a committee member can be a lot owner or a member of the lot owner's family (spouse, adult child, parent, sibling). There are other constraints such as not being in debt to the body corporate at the time of election to the committee; and only one co-owner is allowed unless the minimum committee membership cannot be met.

Can the committee modify levies or by-laws?

No. The committee can neither set nor modify any levy. The committee may not change the rights, privileges or obligations of the owners. These are restricted issues.

Can a by-law be bypassed or ignored?

No. Any motion at either a committee or general meeting must be ruled out of order if it would conflict with a by-law.

What are house rules?

Some bodies corporate maintain a set of house rules. House rules are rules, similar to by-laws, and are set by the committee. House rules are not by-laws and do not appear in the CMS. Consequently, house rules are not enforceable and have no legal standing.

Can I make access to the body corporate records?

The committee may have unfettered access to the records. For lot owners not on the committee there is a fixed fee plus a variable charge for copies of pages supplied. Interested persons also have right of access for a fee. Typically, this is a potential buyer or their solicitor.

Can lot owner communication be by email?

The regulations require that the body corporate roll records an address for service for each lot. This must be an Australian address. The regulations state that committee minutes may be sent to lot owners electronically. Notices for general meetings

must be given personally or sent to the owner's address for service. Levy notices may be served in any way directed by the owner. The regulation is silent as to how general meeting minutes are distributed. The Electronic Transactions (Queensland) Act 2001 states in section 11 that if a person is required to give information in writing, the requirement is taken to have been met if the person gives the information by an electronic communication and the receiver consents to the communication in that format.

Can I modify my lot?

Yes, provided that the modifications are solely contained within your lot and additionally, in the case of a building format plan, are not structural in nature. In a scheme with a building format plan and with no associated exclusive use area, this would not include doors, windows and fittings that are situated in a boundary wall between a lot and the common property. Also not included would be garage doors, balcony railings and balustrades.

For modifications that are permitted, lot owners have an obligation to inform the body corporate where the lot improvements may impact the premium for reinstatement insurance.

How can I get Foxtel installed?

If the body corporate is not serviced by Foxtel, a quotation from Foxtel (Telstra) will be required. The quotation from Telstra is freely supplied but can take some weeks to be prepared and does require the committee to agree to the quotation being given. Quotes can be very expensive ('000s of

dollars). The body corporate through a special resolution would then need to agree to install Foxtel based on the quotation and raise a special levy to pay for it. A further committee resolution will be required to approve the cabling and installation of the Foxtel service from the building entry point to your lot. You might be better off waiting for the NBN!

Can I modify common property?

A committee resolution is required to authorise a minor common property improvement (less than \$3,000) requested by a lot owner. Typical examples would be a lot owner in the top floor of a unit block wanting to install insulation in the ceiling cavity, solar panels on their townhouse roof, or a shade sail in their exclusive use area. There may also be by-laws that restrict aspects of the improvements. If the proposed improvement is a major improvement or if it might detract from the appearance of any lot, then the authorisation must be conferred by consideration of an ordinary resolution at a general meeting.

Can I modify my exclusive use area?

This will depend on what your exclusive use by-law states. If not explicitly authorised in the by-law, you must follow the process for modifying common property that we just described in the previous question.

Should I arrange termite inspections?

Annual termite inspections are strongly recommended as any damage to a building by termites is not covered by insurance. Termites are a very common problem in Queensland. Barriers

installed during building construction are a deterrent only and have a limited useful life.

For schemes with building format plans, the body corporate will often arrange a termite inspection for all lots. This is because damage is often within walls and cavities that are the body corporate's responsibility. Even when damage is limited to within a lot, the body corporate may be liable due to a perceived (or real) lack of vigilance with regard the common property that surrounds the impacted lot.

Pest control would be a lot owner responsibility. Some bodies corporate allow lot owners to take-up a pest control option (at the lot owner expense) at the time a termite inspection is completed.

Why is my levy showing water charges?

Lot owners in bodies corporate that have utility sub metered water on a per lot basis can expect to receive a water bill directly from the water utility provider. Where this is not the case, the body corporate pays the water bill for the water consumption in the entire scheme. The committee must then determine whether to charge back this expense to the lot owners and the method that they will use to apportion the charges on a per lot basis.

New schemes

There are special circumstances for when the lot you have just purchased is part of a new development.

First AGM

The developer (also known as the original owner), will normally have arranged for the preparation of draft budgets and associated levies. They may have also appointed a body corporate manager.

A first AGM must be held within six months of the creation of the body corporate. An earlier time frame is required if more than 50% of the lots are sold. In this case, it must be within two months of that milestone.

The purpose of this first AGM includes the review of all the draft budgets and levies and the original CMS. The first AGM is also the time when the first committee election is held.

Original owner control period

Sometimes, a developer retains a control period over the body corporate through clauses in the contracts of sale issued to buyers. The buyer effectively gives the developer a power of attorney to act for the buyer (maximum of one year). In plain language, the developer has the voting power at any general meeting. This permits them to control the engagement of a body corporate manager or other service contractor. You might want to check your contract of sale at this time!

Defects

Your developer will have given you a handover pack when you took possession of your lot. This will have included installation and maintenance manuals that are applicable to the lot. Additionally, any applicable warranties should be enclosed.

The Queensland Building and Construction Commission (QBCC) manage and advise on the processes relating to defects. Their website is <http://www.qbcc.qld.gov.au/>

Most developers are keen to rectify defects as soon as possible. Inspect your lot carefully and record all defects. Send the list to the developer for their attention.

There are two classes of defects – structural and non-structural. The QBCC can help but there are time limits and steps that must be followed. We suggest if you have an issue that you read the QBCC website directly.

Waste (Council bins)

In a new development, your local council does not usually deliver lot specific waste bins until occupiers move into the lots. Each lot owner, after taking residence, will need to contact the council and request a bin. A body corporate does not pay rates and is often not a client of the council. This is why the lot owner must make the request.

Duplexes (two lot bodies corporate)

Specified two-lot regulation

The specified two-lot regulation was enacted in early 2012. If you are now a lot owner in a duplex that was built prior to 2012, it is very likely that you are regulated by either the standard or small schemes regulation.

I firmly recommend that any residential two lot body corporate that is currently operating under the small schemes or standard regulation should migrate to this new regulation. Most of the procedural sections in this book have no application to the two-lot regulation.

Changing to the two-lot regulation

Use a professional body corporate manager to implement a change of regulation to the specified two-lot regulation. This is because the community management statement must be updated and registered with the Queensland Titles Registry for the regulation module to be given effect. Incomplete, incorrect or wrongly formatted documentation will be rejected by the Queensland Titles Registry. Currently the Queensland Titles Registry cost to submit is ~ \$100 and ~ \$50 for each subsequent attempt to get it right (if rejected).

Is your duplex body corporate inactive?

It is very common for lot owners in a body corporate duplex to totally ignore their body corporate obligations even to the extent of not knowing that they are part of a body corporate. This can be fine for a while but problems may arise when there

is a dispute between lot owners, an insurance event occurs, or when a lot owner is selling their property. At that time, the conveyancing lawyers start to ask questions about the body corporate and that can lead to delays, complication and expense.

Features of the two-lot regulation

Good news! AGMs or EGMs are not required. There is no committee, administrative fund or sinking fund. No budgets or financial statements are required (unless specifically agreed). Decisions are made through lot owner agreements (LOA). An LOA can be made by email as long as there is evidence of a date the agreement was made and acceptance by both parties.

Records and rolls are required to be kept and this is performed by the Record Keeper. The Record Keeper can be either owner or both owners or alternatively it can be a body corporate manager.

The regulation does not change the requirement for body corporate insurance or valuations. The by-laws of the body corporate remain applicable. Bank accounts are not mandated.

Contribution instalments for agreed expenses can be raised ad hoc by either lot owner or through an agreed instalment plan. Existing administrative and sinking funds can be run down until new contributions are required.

Two-lot regulation record keeping

Body corporate activities under the two-lot regulation are quite low, but the activities are not zero. Five yearly building valuations must be completed. Insurance premiums must be renewed. Agreed expenses must be paid. Disclosure statements and information certificates will need to be issued upon a lot owner selling, records will need to be updated as owners change addresses or tenant come and go.

If a lot owner fails to pay their share of an agreed lot expense, having a system that tracks penalty payments and debt recovery expenses is invaluable.

Standard or small schemes regulation

A duplex body corporate, that remains regulated by the standard or small schemes module, is required to follow the majority of processes described in this book. One variation is that there is no committee election at the AGM. The committee will comprise two voting members. The allocation of executive roles is to be determined through agreement by the two committee members.

A1 – Abbreviations

AGM	Annual General Meeting
ATO	Australian Tax Office
BCCM	Body Corporate and Community Management
BCM	Body Corporate Manager
BFP	Building Format Plan
BUP	Building Unit Plan
CMS	Community Management Scheme
CTS	Community Title Scheme
EFT	Electronic Fund Transaction
EGM	Extraordinary General Meeting
EOFY	End of financial year
EUA	Exclusive use area
GST	Goods and Services Tax
GTP	Group Title Plan
LOA	Lot Owner Agreement
SFP	Standard Format Plan

A2 – Schedule 4 by-laws

The by-laws listed below are a direct transcript from Schedule 4 of the Act and are replicated here for quick reference. These by-laws may not be your by-laws (see discussion on page 8).

1 Noise

The occupier of a lot must not create noise likely to interfere with the peaceful enjoyment of a person lawfully on another lot or the common property.

2 Vehicles

(1) The occupier of a lot must not—

(a) park a vehicle, or allow a vehicle to stand, in a regulated parking area; or

(b) without the approval of the body corporate, park a vehicle, or allow a vehicle to stand, on any other part of the common property; or

(c) permit an invitee to park a vehicle, or allow a vehicle to stand, on the common property, other than in a regulated parking area.

(2) An approval under subsection (1)(b) must state the period for which it is given.

(3) The body corporate may cancel the approval by giving 7 days written notice to the occupier.

(4) In this section—

regulated parking area means an area of scheme land designated as being available for use, by invitees of occupiers of lots included in the scheme, for parking vehicles.

3 Obstruction

The occupier of a lot must not obstruct the lawful use of the common property by someone else.

4 Damage to lawns etc

(1) The occupier of a lot must not, without the body corporate's written approval—

- (a) damage a lawn, garden, tree, shrub, plant or flower on the common property; or
- (b) use a part of the common property as a garden.

(2) An approval under subsection (1) must state the period for which it is given.

(3) However, the body corporate may cancel the approval by giving 7 days written notice to the occupier.

5 Damage to common property

(1) An occupier of a lot must not, without the body corporate's written approval, mark, paint, drive nails, screws or other objects into, or otherwise damage or deface a structure that forms part of the common property.

(2) However, an occupier may install a locking or safety device to protect the lot against intruders, or a screen to prevent entry of animals or insects, if the device or screen is soundly built and is consistent with the colour, style and materials of the building.

(3) The owner of a lot must keep a device installed under subsection (2) in good order and repair.

6 Behaviour of Invitees

An occupier of a lot must take reasonable steps to ensure that the occupier's invitees do not behave in a way likely to interfere with the peaceful enjoyment of another lot or someone else's peaceful enjoyment of the common property.

7 Leaving of rubbish etc on the common property

The occupier of a lot must not leave rubbish or other materials on the common property in a way or place likely to interfere with the enjoyment of the common property by someone else.

8 Appearance of lot

(1) The occupier of a lot must not, without the body corporate's written approval, make a change to the external appearance of the lot unless the change is minor and does not detract from the amenity of the lot and its surrounds.

(2) The occupier of a lot must not, without the body corporate's written approval—

(a) hang washing, bedding, or another cloth article if the article is visible from another lot or the common property, or from outside the scheme land; or

(b) display a sign, advertisement, placard, banner, pamphlet or similar article if the article is visible from another lot or the common property, or from outside the scheme land.

(3) Subsection (2)(b) does not apply to a real estate advertising sign for the sale or letting of the lot if the sign is of a reasonable size.

(4) This section does not apply to a lot created under a standard format plan of subdivision.

9 Storage of flammable materials

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

(2) The occupier of a lot must not, without the body corporate's written approval, store a flammable substance on the lot unless the substance is used or intended for use for domestic purposes.

(3) However, this section does not apply to the storage of fuel in—

(a) the fuel tank of a vehicle, boat, or internal combustion engine; or

(b) a tank kept on a vehicle or boat in which the fuel is stored under the requirements of the law regulating the storage of flammable liquid.

10 Garbage disposal

(1) Unless the body corporate provides some other way of garbage disposal, the occupier of a lot must keep a receptacle for garbage in a clean and dry condition and adequately covered on the lot, or on a part of the common property designated by the body corporate for the purpose.

(2) The occupier of a lot must -

(a) comply with all of the following laws about the disposal of garbage -

(i) if the lot is in an urban development area—UDA by-laws, and any local laws that apply;

(ii) if the lot is not in an urban development area—local laws; and

(b) ensure that the occupier does not, in disposing of garbage, adversely affect the health, hygiene or comfort of the occupiers of other lots.

11 Keeping of animals

(1) The occupier of a lot must not, without the body corporate's written approval—

(a) bring or keep an animal on the lot or the common property; or

(b) permit an invitee to bring or keep an animal on the lot or the common property.

(2) The occupier must obtain the body corporate's written approval before bringing, or permitting an invitee to bring, an animal onto the lot or the common property.

About the author

Ross Utting is a Director of Tracsafe Pty Ltd, a Brisbane based company that specialises in self-managed software and systems for bodies corporate in Queensland. Tracsafe also provides a completely outsourced administration service for body corporate entities using in-house body corporate managers. (www.tracsafe.com.au)

Ross has been participating and interacting with not for profit organisations for over thirty years and in more recent years with bodies corporate in Queensland. In his adjunct career, he has worked for some of the largest telecommunication operators and vendors in Australasia. His qualifications include - B.E., M.E.M., and a Certificate IV in Property Services (Operations).

Feedback from many body corporate stakeholders encouraged him to write this book to assist lot owners who are new to being part of a body corporate.

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