

FACTSHEET

We write to you as an owner living within a Body Corporate. The following information will better assist you in the management of your Body Corporate and understand of who is responsible for what. We have prepared the following summary for your information.

OBLIGATIONS OF A BODY CORPORATE & COMMITTEE

To further assist owners living within a Body Corporate the following information will better assist you in the management of your Body Corporate and understand of who is responsible for what. We have prepared the following summary for your information.

WHAT IS A COMMITTEE

The Body Corporate must elect a Committee at each annual general meeting. The Committee consists of Executive Members (a Chairperson, Secretary and Treasurer) and any ordinary members. Depending on the size of the scheme, Committees vary in size from three to seven people. If not enough Body

Corporate members are interested in forming a Committee or at least one of the executive positions is not filled, regulations allow a Body Corporate to employ a Body Corporate Manager to carry out the functions of a Committee.

WHAT IS THE ROLE OF A BODY CORPORATE MANAGER

The Body Corporate Manager is engaged by the Body Corporate to supply administrative services to the extent required by the building.

Generally, this means that the Body Corporate Manager is authorised to exercise the *duties* of the Secretary and Treasurer, though the Body Corporate Manager does not fill these positions on the Committee and does not have a vote on Committee matters.

For most Bodies Corporate, this means that the Body Corporate Manager will be responsible for duties such as:

- Dealing with incoming and outgoing correspondence in consultation with the Committee
- Handling phone calls and questions from Lot Owners
- Liaising with and advising the Committee on matters of legislation and best practice
- Issuing notices for Committee Meetings on the instruction of the Committee
- Issuing notices for General Meetings when approved by the Committee
- Sending levies in accordance with General Meeting resolutions
- Drafting Contravention Notices on behalf of the Committee
- Drafting and distributing minutes of Committee and General Meetings
- Overseeing the Body Corporate bank account
- Making payment on accounts authorised by the Committee
- Monitoring and reviewing all Body Corporate accounts in accordance with required tax auditing standards

The written engagement contract between the Body Corporate Manager and the Body Corporate should outline the extent of the duties the Manager is required to undertake. Like most contracts however, occasionally issues will arise that were not included or anticipated in the scope of the contract. In these cases, some Bodies Corporate may request the Body Corporate Manager carry out duties that are outside of the fixed contract. These duties can incur an additional fee.

WHAT IS THE ROLE OF A COMMITTEE CHAIRPERSON

The Chairperson's main responsibility is to chair and conduct meetings. The Chairperson's role is not particularly outlined in the legislation, nor does it come with any executive authority to act on behalf of the Committee. However, The Chairperson is normally appointed the liaison person between the Committee and the Body Corporate Manager. In matters of voting, the Chairperson does not have a casting vote.

At a meeting the Chairperson is responsible for:

- Calling a meeting in the absence of the Secretary
- Opening the meeting
- Declaring whether or not a quorum is present
- Ensuring the agenda is followed and order is kept at all times
- Inviting discussion for and against each item of business
- Dealing and identifying any conflicts of interest between parties present on matters requiring discussion or voting
- Ensuring that restricted matters are not decided by the Committee and that expenditure limits are not exceeded
- Closing the meeting.

At a General Meeting the Chairperson is also required to:

- Know who is eligible to vote
- Rule a motion out of order if required and give reasons why
- Accept written voting papers at the meeting
- Conduct ballots if required
- Declare the results of voting

WHAT IS THE ROLE OF A COMMITTEE SECRETARY

In most cases the Body Corporate will have a Body Corporate Manager who is authorised to carry out some of the duties and responsibilities of the Secretary, in accordance with their Agreement.

Some of the Secretary's duties include:

- Keeping the roll of the Body Corporate and other statutory records
- Accepting notices on behalf of the Body Corporate
- Making arrangements for inspections of Body Corporate records
- Issuing certificates on behalf of the Body Corporate

- Calling all General and Committee meetings
- Preparing the meeting agenda and minutes and circulating to all lot owners
- Attending to incoming and outgoing correspondence
- Attending to the renewal of insurance policies

WHAT IS THE ROLE OF A COMMITTEE'S TREASURER

Like the role of the Secretary, the Body Corporate will normally have a Body Corporate Manager who is authorised to carry out some of the duties and responsibilities of the Treasurer.

The Treasurer is generally responsible for all the financial matters of the Body Corporate such as:

- Maintaining the Body Corporate bank account
- Preparing budgets and financial statements
- Authorising invoices for payment
- Calculating and collecting levies on behalf of lot owners

WHAT IS THE ROLE OF AN ORDINARY COMMITTEE MEMBER

Ordinary Committee Members are appointed by lot owners to help the Executive Committee and are required to attend Committee Meetings.

An Ordinary Committee Member may become ineligible to hold their position under the following scenarios:

- Death of the Member
- Conviction of an indictable offence
- Non-attendance in person or by proxy at two (2) consecutive Committee meetings without the approval of the Committee
- Resignation via written notice to Chairperson or Secretary
- Removal from office by ordinary resolution of the Body Corporate

HOW DOES A PERSON NOMINATE FOR COMMITTEE POSITIONS

Nominations are called for each position between three and six weeks prior to the financial year end of the Body Corporate scheme. If nominations are received after the financial year end of the scheme, they are invalid.

However if a vacancy exists at the Annual General Meeting, nominations will be called for from the floor of the meeting. Each Committee position must be called for and lot owners may choose to nominate one person - either themselves, another lot owner (with that owner accepting the nomination), or a family member as defined in the Act. The regulation modules stipulate that the person making a nomination must be financial or must not owe the Body Corporate a debt at the time of the nomination or it becomes invalid. Regulations state that the person and the nominated person must both be financial at the time of nomination and also at the time of the election.

Regulations also state that if an owner owns more than two lots in the same name, they may only nominate a maximum of three people to the Committee if there are more than seven lots in a scheme. If there are less than six lots in a scheme, regardless of the number of lots they own, they may only nominate two people to the Committee.

If during the AGM there is only one nomination received for the positions of Chairperson, Secretary and Treasurer, the nominee will be automatically elected. If more than one nomination is received, the Body Corporate is required to conduct either an open or secret ballot depending on the Module and on what motions (if any) have previously been resolved by the Body Corporate. If nominations are not received for these positions, nominations will be called from the floor.

BY-LAW ENFORCEMENT

This factsheet is designed to assist lot owners, rental agents and tenants with the issue of by-law compliance and the enforcement of a Body Corporate by-laws.

WHAT ARE BY-LAWS

By laws are a set of rules that govern the behaviour of any owner or occupier of a lot. Every Body Corporate has a set of registered by-laws specific to their Body Corporate contained within the Body Corporates CMS, Community Management Statement. In 1997 new legislation determined all Body Corporates must register their unique By-Laws specific to their Body Corporate prior to July 2000, in some cases Body Corporates did not do this and therefore standard module By-Laws taken from the *Body Corporate and Community Management Act 1997* were adopted.

A tenant must be provided with a copy of the Body Corporate By-Laws specific to the Body Corporate when they enter into a lease agreement. Lot owners can obtain a copy of their Body Corporate By-Laws from Australasian Body Corporate Management upon request. Tenants are obliged to comply with the By-Laws in the same way that they apply to a lot owner. This also places an obligation on invitees to comply.

RESPONSIBILITY OF THE BODY CORPORATE TO ENFORCE THE BY-LAWS

More often than not the Body Corporate Manager is asked to intervene and help mediate or enforce a By-Law. However, it should be stressed that lot owners and lot occupants have the same rights in seeking to enforce a by-law as the Body Corporate. The Body Corporate should only respond to an alleged breach of By-Law if the complainant outlines the issue in writing. Preferably a complaint is addressed to the Secretary and sent care of Australasian Body Corporate Management. The letter should be dated, signed and should not appear to be vexatious or defamatory in nature. In response the Body Corporate Committee should be assessing the situation by asking the following questions:

1. Does the alleged breach of By-Law represent damage to Common Property;
2. Does the alleged breach of By-Law represent a risk or interference to residents rights to utilise Common Property; and
3. Does the alleged breach of By-Law affect a reasonable number of occupants within the scheme to justify the Body Corporate participation in enforcing the By-Law.

If the Common Property is not being damaged as a result of the By-Law breach and the only person affected is the complainant then Australasian Body Corporate Management will generally take the following steps to help resolve the dispute.

1. We will write to the person who has been accused of breaching a By-Law. Our letter will identify the alleged breach and request compliance with the by-law at all future times. Our letter will confirm steps that could be taken to enforce the By-Law should it become necessary. If this fails to bring about a satisfactory conclusion and the complainant believes there is a continuing By-Law breach then we will take no further action unless we receive a specific instruction from the Body Corporate Committee.

The complainant has a number of options. Petition the Body Corporate to take further action or take the matter into their own hands and utilise the services of the Mediation Unit of QCAT.

We hope you found this information useful, should you have any questions relating to the above information, please contact our office directly.

Management Team
Australasian Body Corporate Management