

Commissioner Foreword



Welcome to the November edition of Common Ground.

This month Common Ground revisits the new regulations that commenced on 1 March 2021. It is hard to believe they have been in force for 9 months already. The article we've prepared for you this month addresses the common themes of the questions our Information and Community Education Unit has received about the regulations over this period.

We are also pleased to share with you our latest webinar, which is about maintenance in a scheme registered under a building format plan. You can access the webinar from the link below to hear about body corporate and owner maintenance responsibilities in these schemes.

Finally, we also wanted to update you that the third meeting of the Community Titles Legislation Working Group was held on 7 October 2021 and was attended by representatives from various stakeholder groups.

At the meeting, the working group continued its discussion about proposed new seller disclosure requirements for community titles schemes, recommended by the property law review conducted for Government by Queensland University of Technology (QUT). The working group's discussion focused on refining the form of the body corporate Information certificate that QUT has recommended be provided to prospective buyers of community title lots.

The meeting also discussed recommendations made by QUT's review of property law about empowering bodies corporate to make a by-law prohibiting pets and to issue fines to owners and occupiers for breaches of particular body corporate by-laws.

The next meeting of the Working Group is currently planned for 9 December 2021.

Michelle Scott
Commissioner for Body Corporate and Community Management



Revisiting the amendments

As you are aware, the new regulation modules have been in effect since 1 March 2021. As with most things new, completely smooth sailing is unlikely in the beginning – there are bound to be a few small waves at first.

For the most part, however, judging from interactions with our clients and stakeholders, these initial months have proven to be relatively straightforward. It is our hope that the community education material from our office prior to the commencement of the new regulations has eased the transition.

In this article, we will attempt to clarify some of the recurring issues we have observed over the last few months.



Giving of documents

The enquiries we have received from owners to date suggest that there is some resistance to the body corporate sending documents by email. Under the current regulations, if a lot owner gives their email address to the body corporate as part of their address for service, that owner is consenting to receive all documents, notices, or other information from the body corporate via email.

Despite benefits such as efficiency and modernising body corporate communication, not all residents are equally comfortable with the transition. Our office has noticed a few concerns arising in relation to this amendment – namely, that emails are being diverted to junk folders or overlooked amidst an influx of spam, or people irregularly checking inboxes.

It is important for owners to recognise that they are not locked into this arrangement. We will endeavour to highlight some possibilities for the owners who wish to opt out of email receipt of their body corporate documents.

Firstly, the regulations simply state that a lot owner may nominate an email address as part of their address for service – it is not mandatory. It follows that an owner can contact their body corporate and request that their email address is no longer included as part of their address for service on the roll.

Alternatively, there is considerable flexibility in the new provision which allows an owner to enter into an agreement with the body corporate about the way they are to receive documents. If an owner's preference is to receive documents from the body corporate in a way other than by email, that owner and the body corporate can agree upon a mutually acceptable means of communication. For instance, if an owner thinks emails are unreliable, they can approach their body corporate about options such as an online file-sharing website from which they can download and access documents instead.

Six or more owner motions to the committee

There are now explicit rules governing owner motions to the committee. Previously, the regulations were silent on this subject. These changes were implemented predominantly to balance owner involvement and protection of the committee from unreasonable requests. Nonetheless, there are still concerns from owners about the part of these changes that seems to be regarded as the 'six-motion cut-off'. When submitting motions to the committee it is incorrect for owners to adopt the view that it is six strikes and you're out. The intent of the legislation here is not to unduly prevent legitimate motions being submitted by owners.

Admittedly, the rationale behind the inclusion of the provision about six or more owner motions is to afford a degree of discretion to committees when they are faced with an excessive number of owner motions. However, the regulations simply provide that the committee is not required to decide a motion if within the last 12 months an owner has submitted a motion about the same issue, or six or more motions.


Importantly, if another motion to the committee tips an owner over six motions within the last 12 months, it can still be submitted. Although the committee is not obliged to decide on an owner's motion in this situation, the legislation always requires the body corporate to act reasonably when making, or not making, a decision.

Consequently, if an owner submits a legitimate motion to the committee and the committee chooses not to make a decision purely because the owner has already submitted six motions in the last 12 months, it may be open to that owner to lodge a dispute resolution application to have the committee consider their motion, after sufficient efforts to resolve the dispute internally.

Voting outside a committee meeting

Notice to owners

Some of the regulation changes were included purely to provide clarity – specifically, changes to structure, not



content. One such example is splitting the process for voting outside a committee meeting into two separate sections. Prior to March 2021, voting outside a committee meeting was contained in a single section. The need to notify lot owners at the same time as committee members of a motion to be decided by a vote outside a committee meeting is, perhaps, one of the most frequently overlooked provisions in the regulations. There is now a section devoted entirely to the necessary notice to be given to owners – while the content is not new, it brings the requirement to give notice to owners to the foreground. Committee members and body corporate managers are sometimes surprised to learn that the need to notify owners at the same time was in the former regulations too.

It is vital for committee members and body corporate managers to remember that a vote outside a committee meeting is no different from a committee meeting when it comes to transparency. Voting outside committee meetings should not be viewed as a means of limiting owner involvement in decisions. It is only in emergencies that more leniency is afforded when voting outside committee meetings, as notice only needs to be given to lot owners as soon as practicable.

Returning votes within 21 days of notice being given

The regulations now provide that the votes of committee members must be given within 21 days after the notice is given for a vote outside a committee meeting. We have observed that this provision is being interpreted incorrectly to mean that the committee must wait 21 days for all members to return their votes before there can be a decision. This is not the case. Specifically, a motion for a vote outside committee meeting is taken to be decided where either the majority of all members that are entitled to vote agree, or do not agree, to the motion. Also, it is deemed decided if one-half indicate that they do not agree with the motion, as there would be a tied vote (at best), and the motion would be lost.

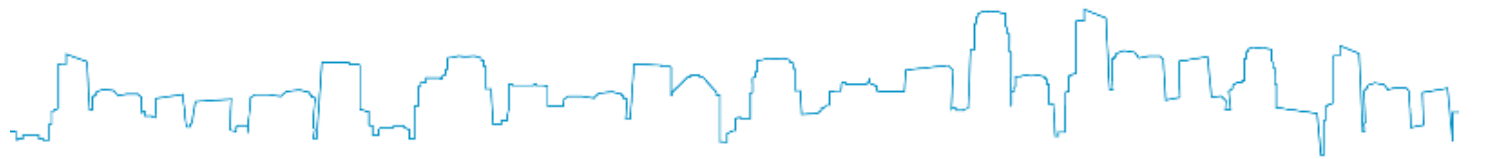
The 21 days (referred to as the ‘relevant period’) was introduced to address concerns raised under the former regulations. Previously, a vote outside a committee meeting had the potential for a decision to be delayed indefinitely, or worse still, not decided at all. There is now certainty that if there has been no decision in the relevant period, the motion is deemed to be declined.

Maximum number

To finish, we will touch briefly on inviting nominations from the floor of the annual general meeting where the maximum number of committee members has not been reached. The main point we wish to stress is that it is not a choice for bodies corporate about whether to invite nominations in this situation – it is a requirement. The new regulations stipulate that when deciding ordinary member positions, the person chairing the meeting must invite nominations at the meeting if the total number of voting committee members is less than the maximum number.

Discussions with our stakeholders indicate that some schemes seem to be ‘picking and choosing’ whether to invite from the floor when there is less than the maximum number because they prefer to have a smaller committee or because they do not want particular individuals on the committee. However, disregarding this requirement undermines the key intention of the amendment to encourage greater owner representation on the committee.

We hope that this article serves to dispel some of the uncertainty and misconceptions that have surfaced since the amendments have been in effect. Confusion is often a key ingredient for most of the disputes lodged here. Striving for a more solid understanding of the regulations is, arguably, one of the best ways to improve communications in your body corporate and avoid unnecessary disputes, as there is less room for contention when the rules are adhered to.





Building format plan maintenance webinar

Our webinar about building format plan maintenance has now been uploaded to our website. The slides, transcript, and Q&A are also available.

Building format plan maintenance



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