

Commissioner Foreword



Dear Subscribers,

Welcome to our February edition of Common Ground.

Our main focus in the past few months has been on providing you with information on the new regulations, which are due to commence on Monday 1 March.

We are conscious that our subscribers who are members of two-lot schemes may not have had as much interest in the changes to the regulations because their impact may be minimal. So, to balance the scales, this month we are focussing on our subscribers who live in two-lot schemes.

You can read below to find out the answers to our most frequently asked questions about two-lot schemes.

For those of you who are counting down the days until the new regulations commence you may wish to review our article on the summary of changes below.

The [webinars](#) we have conducted into the lead up to commencement will also provide you with a good overview of what the changes are and how they may affect you and your body corporate. These can be found on our website if you were unable to attend or want to revisit the information.

I also wanted to let you know that many of our information products are being updated to reflect the changes made in the new regulations including our:

- [website](#)
- [practice directions](#) (18, 19, 28, 29 and 35)
- [online training content](#) and
- [forms](#) (history of forms).

The changes to the practice directions and forms are minor in nature but have resulted in new versions being created.

You will be able to access up to date versions from these links from 1 March.

If you have any questions about two-lot schemes or the new regulations you may wish to contact the Information and Community Education team at www.qld.gov.au/bodycorporatequestion.

Michelle Scott
Commissioner
Office of the Commissioner for Body Corporate and Community Management





Summary – New regulations

29 September 2020 was a momentous day for the community titles sector, as it saw the making of new regulation modules for the *Body Corporate and Community Management Act 1997* that will modernise body corporate procedures, reduce body corporate costs and enhance protections for unit owners.

The new regulations represent the culmination of work by the Queensland University of Technology (QUT) to review current laws, and an extensive Queensland Government led consultation process in relation to QUT's recommendations and the new regulations. The new regulations will apply to all community titles schemes under the *Body Corporate and Community Management Act 1997* and will commence on 1 March 2021. This five-month timeframe will provide those living, working and investing in community titles schemes with the time needed to understand how the new regulations will apply in their scheme and to prepare for any changes.

Electronic voting and attendance

During the COVID-19 pandemic, individuals and organisations across all sectors have embraced the benefits of electronic technologies to help them communicate and conduct business and other activities. One of the key objectives of the new regulations is to help modernise body corporate procedures by allowing for greater use of electronic technologies to attend and vote at meetings, and to give and receive documents.

Voting and non-voting body corporate committee members, and in some cases owners and certain owner representatives, will be able to attend a committee meeting electronically if authorised by the committee.

Committees will be able to authorise electronic attendance:

- for a particular committee meeting or any committee meetings;
- using a particular electronic means, or any electronic means.

A body corporate will also be able to decide, by ordinary resolution, that owners can:

- attend a general meeting by electronic means such as videoconferencing;
- vote electronically.

Documents or other information that may be given under the Act or regulations, such as documents given by owners to a committee or notices of general meetings, or copies of committee meeting minutes given to owners, may be given by email, or by other agreed electronic means such as by posting to file-sharing sites.

A system for receiving electronic votes, and notices and instructions to owners about electronic voting, must meet certain requirements to ensure the integrity of electronic voting processes.

Committees

There are several other changes for body corporate committees to be aware of.

Membership of new committees may look different. This is because eligibility of any two committee members cannot derive from ownership of the same lot. Except in certain circumstances, an owner cannot be a voting member of a committee at the same time as a family member, co-owner, or a person who holds a power of attorney from the owner unless they own a separate lot.

An owner who submits a motion to be considered by the committee can expect an outcome within specified timeframes. The new provisions set a timeframe of six weeks, which may be extended to 12 weeks if required.

Committees members have up to 21 days to respond to a vote outside a committee meeting, otherwise the motion is deemed not passed if not enough votes are received within this timeframe.

Committees will be able to approve insurance policies for their schemes, in most circumstances, to avoid



unnecessary delays and risks.

A committee member who owes a body corporate debt, or who was nominated by an entity that owes a body corporate debt, is a debtor member and ineligible to vote at a committee meeting, or by a vote outside a committee meeting.

More information about changes to committee meetings can be found [here](#). More information about committee membership can be found [here](#)

General meetings

There have also been a number of changes which affect the running of general meetings.

To prevent what has become known as “proxy farming”, except in certain circumstances, a person will only be able to vote on motions at a general meeting, under the authority of a power of attorney for one lot owner.

New “group of same-issue motions” procedures will also apply, to facilitate fair and appropriate consideration of multiple motions about the same issues at general meetings.

There are more flexible quorum requirements for general meetings. A body corporate can reduce the number of voters required to be present at a meeting to achieve a quorum, within certain limits, and reduce the number of voters who must be personally present to one. Bodies corporate are also able to decide that a person is personally present if they can cast a vote electronically at the meeting (for example, by teleconference).

More information about changes to general meetings can be found [here](#).


Improved lot owner protection

To improve protections for owners, under the new regulations: body corporate managers and caretakers will be required to disclose the amount of monetary benefit they are entitled to receive if a body corporate enters into an insurance policy or other contract; and new schemes will be subject to defect assessment requirements.

The new Standard Module restricts committee members from receiving direct or indirect benefits from caretaking service contractors and service contractors unless the body corporate has authorised the receipt of the benefit by ordinary resolution. The measure is intended to prevent inducements or rewards being given to committee members for preferential consideration of a contractor.

Additional items have been added to the list of documents developers must hand over to the body corporate at the first annual general meeting, including a copy of the development approval if one was required and the schemes community management statement. More information about these changes can be found [here](#).

The new regulations will be welcome news for many across the community titles sector, who have been seeking more flexible and contemporary body corporate procedures to support self-management of schemes and harmonious community living. In today’s busy world, the convenience of electronic body corporate processes is expected to assist in encouraging greater participation in body corporate decision-making. The new limitations on committee memberships, voting and use of powers of attorney are designed to ensure fair representation in these decision-making processes, and the new disclosure requirements to assist in ensuring owners have the information they need to make informed decisions. For further information about these and other changes in the new regulations and how they apply, contact our Information and Community Education Unit on 1800 060 119 or visit our [website](#).





FAQ – Owning in a duplex or two-lot scheme

Some people buy a duplex or other property in a two-lot community titles scheme without realising that in doing so, they become a member of a body corporate. Clients regularly ask the Commissioner's Office if they must have a body corporate. The answer is not a matter of whether they must have body corporate, the answer is - they *are* a body corporate.

If two lots are registered with Titles Queensland as a community titles scheme (CTS) and they have a CTS number, then there is a body corporate and owners of the lots are members.

If your property is registered as a CTS, then the *Body Corporate and Community Management Act 1997* (the Act) applies. The scheme will also be registered under one of the five associated regulation modules – the Standard Module, Accommodation Module, Commercial Module, Small Schemes Module or Specified Two-lot Schemes Module. The Act and relevant regulation module that applies to your scheme determine how your scheme should operate.

You can contact [Titles Queensland](#) on 07 3497 3479 to confirm if your property is registered as a CTS and to obtain a copy of the community management statement to check which regulation module applies.

Our office has compiled a list of frequently asked questions about duplexes.

1. If I am in a duplex, does this mean we are automatically under the *Body Corporate and Community Management (Specified Two-lot Schemes Module) Regulation 2011*?

No. The regulation module that applies to a community titles scheme is initially decided by the developer when the scheme is established and the community management statement for the scheme is registered with Titles Queensland. It is not compulsory for a two-lot scheme to be regulated by the Specified Two-lot Schemes Module – the developer may have decided to register the scheme under a different module, or the body corporate may have changed the regulation module for the scheme. As the Specified Two-lot Schemes Module only commenced in 2011, schemes established before 2011 will not fall under this module unless the body corporate has decided to make and register this change. The best way to be sure about which regulation module applies to your scheme is to obtain a copy of the current community management statement for the scheme from Titles Queensland.

2. Can we change the regulation module?

Yes, you may be able to change the regulation module. A body corporate can change its regulation module at any time. However, the motion can only be considered by the body corporate once in the body corporate's financial year.

The first step is to pass a motion to change the regulation module and community management statement by special resolution at a general meeting. The scheme must meet the criteria set out in the module.

If your scheme is registered under the Standard Module, Commercial Module or Accommodation Module, an explanatory note in the approved form must be included with the agenda for a general meeting that includes a motion proposing to change the regulation module. The approved form, [BCCM Form 19](#), outlines the effects a change in the regulation module will have on the management of the scheme.

If the scheme is changing from the Small Schemes Module or the Specified Two-lot Schemes Module to another module, you do not have to include the BCCM Form 19.

You can read more about the criteria and process for [changing regulation modules](#) on our website.

The second step is to record the change in a new community management statement for the scheme and register the new statement with Titles Queensland.



3. I was told when I bought the property that there was no body corporate, now I am being told this is not the case. Is there a body corporate or not?

If the property is registered as a CTS, there is a body corporate. It may be that the owners have not been running the body corporate according to the legislation and regulations, or they were not aware themselves because there are no body corporate levies or no body corporate manager.

For a scheme registered under the Specified Two-lot Schemes Module, body corporate levies are not required, rather the body corporate has agreed expenses. It is also not compulsory to have a body corporate manager.

As above, contact Titles Queensland to confirm that you are a community titles scheme and which regulation module applies.

4. My scheme only consists of two lots and we don't share any common walls. Can we each just look after the maintenance of our own property?

The body corporate (both owners) must maintain common property and [utility infrastructure](#) that is common property.

What will be classified as common property for your scheme is determined by the plan of subdivision (or "survey plan") that your scheme is registered under, not the regulation module that applies to your scheme.

For example, even though a roof might appear to be your roof, under a building format plan of subdivision, a roof is common property and both owners are jointly responsible for the maintenance even if the roof is not shared.

You can obtain a copy of the survey plan for your scheme from Titles Queensland to find out whether your scheme is registered under a standard format plan (previously group titles plan) or a building format plan (previously building units plan) of subdivision.

Refer to the [building format plan maintenance](#) page or [standard format plan maintenance](#) page of our website for more information about what is common property under the different types of survey plans.

5. I want to make some changes to my lot. Do I need to ask the other owner?

The body corporate legislation does not restrict you from making improvements inside the boundaries of your lot. However, you should consider if there are any by-laws which state you must seek approval of the other owner first, or if any of your changes include common property. You will need to seek approval of the body corporate if you are making a change to common property.

The by-laws for your scheme are contained in the community management statement recorded at Titles Queensland.

Under the Specified Two-lot Schemes Module, approval for improvements is granted when both owners agree and sign a lot owner agreement. Under the other regulation modules, approval will be given by the committee at a committee meeting or by a vote outside committee meeting, or at a general meeting, depending on the cost of the improvement.

You can read more about [improvements to common property and lots](#) on our website.

6. Can we insure our own lots?

This depends on the plan of subdivision under which the scheme is registered.

A body corporate must have building insurance, public risk insurance and insurance of common property and body corporate assets.



If the body corporate scheme is registered under a building format plan of subdivision then the body corporate must take out insurance in the name of the body corporate.

If the scheme is registered under a standard format plan of subdivision and the lots do not share a common wall, then you can take out your own policy of insurance, or the body corporate can set up a voluntary insurance scheme. It is optional for an owner to be included in a voluntary insurance scheme. However, if there is a common wall, then the body corporate must insure the buildings in the name of the body corporate.

You can read more about [insurances in a body corporate](#) on our website.

7. The other owner is not paying their share of the body corporate insurance, what can I do?

You should first attempt to resolve the issue by writing to the other owner asking them to pay for their share of the insurance as they have a legal obligation to. You may wish to give them a time frame to respond to your correspondence, pay their share of the premium or repay you, if you have paid on their behalf.

If the owner will not pay their share of the body corporate insurance and you are unable to resolve the matter with them through self-resolution, you may be able to lodge a [dispute resolution application](#) with our office.

You can read more about [owner contributions](#), [disputes in a body corporate](#) and [self-resolution](#) on our website.

8. Do we need to have a body corporate bank account and pay levies?

This also depends on which regulation module applies to your scheme.

If the scheme is registered under the Specified Two-lot Schemes Module, the body corporate does not have to open a bank account in the name of the body corporate or collect levies.

Under the Specified Two-lot Schemes Module, each owner must pay a share of body corporate expenses (called owner contributions) as they arise. You can read more about [owners contributions in a two-lot scheme](#) on our website.

Under the other regulation modules, a body corporate must have one or more bank accounts kept in its name. The account must be at a financial institution such as a bank, building society or credit union. These bodies corporate budget for expenses and then levy each owner in the scheme their share of the money to meet those expenses. You can read more about [body corporate bank accounts](#) and [owner contributions](#) on our website.

9. I am in a duplex and we are registered under the Standard Module. I have lived here for many years and we have never had an annual general meeting (AGM). What can I do?

Under the Standard Module, the body corporate is required to have an AGM within three months of the end of the body corporate's financial year and elect a committee. If this has not occurred, no one may have the authority to make decisions on behalf of the body corporate, for example, to call a meeting or pay an invoice.

It may be suitable in this instance for you to seek an appointment of an administrator by order of an adjudicator. An order can be made to appoint an administrator to perform the obligations of the body corporate, the committee or a member of a committee.

The application can be made by an owner or with the consent of the other owner in the scheme. If the administrator is given the powers of a committee, they will have the authority to call a general meeting of the body corporate and can assist the body corporate to get back on track.

Before lodging an application for an administrator please refer to [Practice Direction 17](#) for more information about administrator appointments.



10. The other owner in my scheme is breaching the by-laws, what can I do?

The body corporate has responsibility for enforcing the by-laws for the scheme. The process depends on the regulation module that applies to the scheme.

If you believe that an owner or occupier is in breach of a by-law you should first speak to them informally to try and resolve the issue.

If that doesn't work, the first formal step under the BCCM Act is to give a by-law contravention notice to the person you believe is breaching the by-laws.

There are two types of contravention notices, a continuing contravention notice and a future contravention notice.

Specified Two-lot Schemes

If your scheme is under the Specified Two-lot Schemes Module, then an owner can give either a [Notice of continuing contravention of a body corporate by law \(Specified Two-lot Scheme\)](#) (BCCM Form 27) or a [Notice regarding likely future contravention of a body corporate by-law \(Specified Two-lot Scheme\)](#) (BCCM Form 28) to the person that is in breach of the by-law.

If you are an occupier in a scheme registered under the Specified Two-lot Schemes Module, you can give a [Notice to owner of a contravention of a body corporate by-law \(Specified Two-lot Scheme\)](#) (BCCM Form 25) to the owner of your lot, asking them to give a contravention notice to the person breaching the by-law.

If, after giving a contravention notice, the dispute is not resolved, you may consider lodging a conciliation application with our office.

Read more about [enforcing by-laws in a two-lot scheme](#) on our website.

Other regulation modules

If your scheme is registered under one of the other regulation modules, you will need to give a [Notice to the body corporate of a contravention of a body corporate by-law](#) (BCCM Form 1) to the body corporate committee asking for a contravention notice to be given to the person breaching the by-law. The body corporate committee must vote to issue either a [Notice of a continuing contravention of a body corporate by-law](#) (BCCM Form 10) or a [Notice regarding likely future contravention of a body corporate by-law](#) (BCCM Form 11).

The committee must respond within 14 days to advise whether they have issued a contravention notice. If the committee decides not to give a contravention notice, you can then lodge a [conciliation application](#) against the body corporate or the owner or occupier who is in breach of the by-law.

Read more about [enforcing by-laws](#) on our website.



Body Corporate and Community Management

www.qld.gov.au/bodycorporate

1800 060 119

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