

Common ground

Body Corporate and Community Management Newsletter



Issue 3

October 2009

The Commissioner's update

It has been some time since our last edition of *Common Ground* and there have been some changes in the Office of the Commissioner for Body Corporate and Community Management (the BCCM Office) during that period.

Firstly, there have been changes in the role of Commissioner. Nicola Doumany has been seconded for 12 months to manage the Government's important new support scheme for victims of crime, Victim Assist Queensland. I have now stepped into the role until Nicola's return. I've been in the BCCM Office in various roles since 2002, including some 12 months acting as Commissioner previously, and am looking forward to this challenge again.

Secondly, as part of the Premier's ministerial portfolio arrangements, the Honourable Cameron Dick MP, Attorney-General and Minister for Industrial Relations now has responsibility for the legislative dispute resolution provisions and the BCCM Office. The Honourable Peter Lawlor MP, Minister for Tourism and Fair Trading has responsibility for all other aspects of body corporate legislation. This change means that policy responsibility for body corporate legislation has transferred to the Department of Employment, Economic Development and Innovation.

Lastly, in April the BCCM relocated to Level 17 of 288 Edward Street Brisbane. Excellent planning by key staff ensured a seamless transition for client services.

Ingrid Rosemann
Acting Commissioner

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Did you know?

As of 30 June 2009 there were 37,880 registered community titles schemes in Queensland, with 351,739 individual lots! (Source: Registrar of Titles, Department of Environment and Resource Management)

Contact us

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Information Service update

The BCCM Office is not just about resolving disputes. The BCCM Office provides information and tools to assist body corporate members, their committees and industry groups to achieve a greater understanding of body corporate legislation.

Earlier in the year we released *Unit five: By-laws* of the online training course. The course has been designed for committee members, however any person with an interest in community titles schemes established in Queensland can participate.

Unit five covers the topic of by-laws and the rights and responsibilities of body corporate, residents, owners and managers in their application. At the end of the training unit participants may like to complete the online assessment tool to obtain a statement of completion. Visit www.justice.qld.gov.au/bccm to learn more about BCCM's online training activities.

In May and June we held our annual seminar series. Seven seminars were held around the state, focusing on owners' rights and responsibilities. The seminars attracted around 500 attendees statewide and received positive feedback. Subscribe to Common Ground if you would like to be notified of future seminars and events. To join the subscriber list, email us at bccm@justice.qld.gov.au and state 'subscribe to Common Ground' in the subject line.

Phone the Information Service on freecall 1800 060 119 to learn more about Body Corporate and Community Management services.

2008-09 service statistics

During the 2008-09 financial year the BCCM Office received 1,324 dispute resolution applications and resolved 1,274 disputes. This represents an 18 per cent increase in applications from the previous year and a clearance rate of 96 per cent.

The Conciliation Service continues to be a very timely and effective means of resolving disputes.

The BCCM Office was able to facilitate an agreement between the parties in 69 per cent of conciliation agreements.

The average time to resolve a conciliation application from the date of lodgement was four weeks. More than 80 per cent of people who responded to post-conciliation surveys indicated that they would recommend conciliation as a means of resolving future disputes. More than 91 per cent of people agreed their application was dealt with in a timely manner.

Only 18 per cent of conciliation applications during 2008-09 proceeded to adjudication. The BCCM Office aims to resolve 80 per cent of adjudication applications within 60 days of referral to an adjudicator. In 2008-09, 89 per cent of applications were resolved within this timeframe. The average time to resolve an adjudication application from the date of lodgement was around nine weeks. Almost 20 per cent of adjudication applications lodged sought interim orders. Adjudicators' orders may be appealed on a point of law in the Commercial and Consumer Tribunal. Less than two per cent of adjudicators' orders were overturned or altered on appeal during the year.

The BCCM Office Information Service responds to community queries by telephone, in writing (i.e. by email, fax or post) and face-to-face over the counter. In the last financial year our Office responded to nearly 24,300 client contacts.

Increase in fees

As of 1 September 2009 the fees for BCCM Office services increased in accordance with the consumer price index (CPI).

New fees include:

- | | |
|------------------------------------|----------|
| • application for conciliation | \$61.00 |
| • application for adjudication | |
| - final orders only | \$61.00 |
| - interim and final orders | \$125.00 |
| • inspection of submissions | |
| - for each hour or part of an hour | \$13.00 |
| - maximum fee payable for a day | \$52.00 |
| • copies of submissions per page | |
| - for less than 20 pages | \$1.50 |
| - for 20 to 50 pages | \$1.30 |
| - for more than 50 pages | \$1.00 |

- search of adjudicator's orders
 - collected in person \$13.50
 - posted \$16.00
 - faxed \$20.50

CPI increases to fees able to be charged by bodies corporate under their regulation module for the provision of information have also increased.

New fees include:

- inspection of body corporate records
 - by a lot owner \$12.50
 - other \$24.50
- copies of body corporate records
 - per page \$0.50
- body corporate information
 - certificate \$48.00
 - 24 hour priority fee \$18.00
 - fax fee \$12.00

Visit www.justice.qld.gov.au/bccm to view a full list of new fees.

Fire safety maintenance code

As of 1 January 2009 the maintenance requirements for fire safety installations in Queensland buildings will need to comply with a new fire safety maintenance code available at www.dip.qld.gov.au.

If you are a committee member or the resident manager of a building, it is important you understand how to identify whether or not your building has prescribed fire safety installations and what your obligations are to maintain them.

The maintenance requirements have been transferred from the *Building Fire Safety Regulation 2008* to the Queensland Development Code. The new code, Mandatory Part 6.1 'Maintenance of fire safety installations' applies to all buildings, including existing buildings, other than class 1a (e.g. detached houses and townhouses) and class 10 (e.g. domestic sheds and garages).

The code has been designed to set clear performance criteria for the maintenance of fire safety installations and allows use of a broad range of compliance methods. If you have a prescribed fire safety installation in your building, you must comply with the code.

The new maintenance code requires the building occupant to provide a yearly statement to the Commissioner of the Queensland Fire and Rescue Service (QFRS) which confirms that the building's fire safety installations have been maintained in accordance with a relevant standard or recommendation. In some cases the occupier will be the building manager. Once the statement is completed, send it to your local QFRS office. Visit www.fire.qld.gov.au to find contact details for your local QFRS office. Alternatively, you can email the occupier statement to occupierstatement@emergency.qld.gov.au

QFRS officers have powers to audit and issue on-the-spot fines to occupiers who do not comply with the maintenance requirements of the code.

Contact the Department of Infrastructure and Planning on 3227 8548 or the QFRS on 3247 8100 to learn more about preparing and submitting your occupier statement.

Access to records

The BCCM Office has developed a new factsheet on what body corporate records need to be maintained and how people can access them. The factsheet answers common questions surrounding access rights to body corporate records by interested persons.

Some example questions and answers from the factsheet are listed below. They contain general information only and should not be relied on as legal advice. The responses refer to sections of the Body Corporate and Community Management Act 1997 (the Act) and the Body Corporate and Community Management (Standard Module) Regulation 2008.

Question

I am a lot owner and accommodation manager who wants a copy of the Roll of Owners. I want to contact other lot owners to see if they are interested in calling a requested extraordinary general meeting which requires written consent of 25 per cent of owners.

The body corporate and its manager have refused to provide it, saying that privacy legislation applies. Can I see the Roll?

Answer

All interested persons have a right to inspect the body corporate records without reason being given and to obtain a copy of records (including the Roll of Owners) in the scheme. An interested person includes a lot owner, an agent (e.g. a solicitor) a mortgagee, a prospective buyer and any other person who satisfies the body corporate of a proper interest in the information sought (Section 205(6), the Act). The holder of the records must allow inspection and/or copies to be taken and bodies corporate should be aware that penalty provisions can apply for not releasing the information under the Act. An aggrieved person could also make an application to the BCCM Office for the records to be made available.

Section 205 of the Standard Module provides for a small fee to be paid by the interested person for inspecting and obtaining copies of the records. Section 204 of the Standard Module also provides that the body corporate must allow all members of the body corporate committee access to records without payment of a fee.

The relevant privacy legislation requires that personal information is not disclosed unless the use or disclosure is required or authorised by law (Principle 2.1(g) of the National Privacy Principles as incorporated into the *Privacy Amendment (Private Sector) Act 2000*).

Since the BCCM legislation requires such disclosure, the *Privacy Act 1988* does not prevent the body corporate from releasing the information. The secretary of the scheme must also have a copy of the Roll available for inspection at any general meeting (Section 92 Standard Module).

Question

I am a lot owner. I have noted on the financial statements that there are debts of over \$60,000 owed to the body corporate. I have asked the committee what these debts are and have been told that it is

none of my business. Can I see more financial records and find out how these debts accrued?

Answer

Any interested person has access to any body corporate record, including financial records and information about a lot owner who may be in debt to the body corporate for non-payment of contributions.

In addition, the secretary for the scheme must have available for inspection at any general meeting a list of the persons who have the right to vote, which will not necessarily include those disenfranchised from voting because they owe a debt (Section 92 Standard Module).

Body Corporate address

The address for service of notices to a body corporate is the address recorded by the Registrar of Titles on the indefeasible title for the common property of a community titles scheme. While there is no legislative requirement for a body corporate to update its registered address for service, it is advisable to do so.

For example, if the body corporate has never updated its address then the only address noted for the body corporate will be the original owner's address recorded on the first community management statement (CMS) for the community titles scheme. It is likely that once a scheme has been established for some time, the original owner will no longer be associated with the scheme and so any correspondence sent to the original owner's address may not be passed on to the body corporate.

In order to update the address for service of notices, the body corporate must lodge a General Request Form (Form 14) under the *Land Title Act 1994* with the office of the Queensland Resource Registry (QRR). The form can be purchased from the Brisbane District Office, Level 11, 53 Albert Street Brisbane. Contact the QRR on 3405 6900 to learn more about lodging a General Request Form.

Going green

In June 2008 the Department of Infrastructure and Planning released a discussion paper titled *Improving sustainable housing in Queensland*. A three-month statewide consultation period followed. The discussion paper proposed a range of measures to improve water and energy efficiency of Queensland homes. The adopted measures will promote smarter design and encourage the implementation of water and energy efficiencies in new and existing houses and units.

Energy efficient air conditioning

From 1 July 2009, new and replacement air-conditioners that are permanently connected to fixed wiring (i.e. hardwired) in houses and townhouses (class 1 buildings) and units (class 2 buildings) will be required to have a minimum Energy Efficiency Ratio (EER) of 2.9. This is equivalent to four stars on a current energy rating label.

Water efficiency and energy efficient lighting

From 1 March 2009, the Queensland Development Code requires that all new houses and units will need to install minimum four star Water Efficiency Labelling Standards (WELS) scheme-rated toilets and three star WELS-rated tapware to kitchen sinks, basins and laundry taps. In addition, outdoor irrigation systems installed or replaced on lots which have a house or townhouse (class 1 building) or a unit (class 2 building) must meet certain water efficiency requirements.

Energy efficient lighting is required in new houses, townhouses and units to 80 per cent of the dwelling's fixed internal lights.

Five star housing

From 1 March 2009, new houses and townhouses (class 1 buildings), and their enclosed garages and carports (class 10a buildings) are required to achieve a minimum energy equivalence rating of five stars (out of 10). This requirement also applies to new work on existing buildings and units such as additions, major renovations or relocations.

From 1 March 2010, the minimum five star energy equivalence rating will also apply to new units (class 2 buildings).

Queensland building standards now also recognise the energy efficiency benefits of indoor-outdoor areas for new houses, townhouses and major renovations. For houses located in tropical and subtropical areas, a credit of between 0.5 and one star towards an energy equivalence rating is available for the inclusion of an outdoor living area that meets certain requirements.

For example:

- minimum floor area of 12m²
- is fully covered
- has installed a ceiling fan
- is directly connected to an indoor living area.

Phase out of electric hot water systems

The phase out of electric hot water systems was announced by the State Government in June 2007. The Queensland Plumbing and Waste Code has been amended to prevent the installation of electric hot water systems in existing houses (class 1 buildings only, not units) located within a gas reticulated area from 1 January 2010. This measure will apply only when the electric system requires replacement. A greenhouse efficient system (i.e. gas, solar or heat pump) will need to be installed as the replacement.

Contact Building Codes Queensland on (07) 3239 6369 to learn more about the new sustainable housing measures. Visit the Department of Infrastructure and Planning's website www.dip.qld.gov.au to download information factsheets. You can also join the building and plumbing newflash subscriber lists. Email buildingcodes@dip.qld.gov.au to join.

Display, don't delay

Amendments to the *Building Act 1975* now require building owners to ensure that a certificate of classification is displayed as near as practicable to the main entrance of a building, where a certificate of classification was given on or after 1 July 1997.

The new laws apply in all buildings other than class 1a (e.g. single houses, town houses and duplexes) and class 10 (e.g. domestic garages or carports).

A certificate of classification explains what a building can be used for, any restrictions imposed on the building and whether an alternative solution was used to meet the Building Code of Australia (BCA). An alternative solution is a design that differs to the provisions that are deemed to satisfy the legislative requirements but still achieves the equivalence in the general health and safety of a building.

A one-year transition period has been in place since 23 April 2008 to allow building owners time to comply with the new legislation. It applies where a certificate of classification was given after 1 July 1997 but before 23 April 2008. The transition period expired on 23 April 2009. If a certificate of classification was given after 23 April 2008, no transitional period applies and owners are required to display the certificate of classification immediately.

Certificates of classification should be:

- securely placed in locations where they can be easily read by authorised officers and other occupants of the building
- made of suitably durable materials (weatherproof materials if they are located outside)
- connected to a power source (if displayed electronically) that will not be interrupted if there is a power failure or malfunction. This may require a backup power source.

All certificates must be concurrently displayed at all times (24 hours a day, every day of the year). It is not acceptable for users to be required to scroll through certificates or to search for a certificate.

In many cases, building designs and building approvals include restrictions or limitations on how a building can be used. Owners, occupiers and enforcement agencies may have been unaware of alternative solutions, limitations or restrictions applying to a building because

previously, this information did not require display.

A factsheet and guidelines available at www.dip.qld.gov.au have been developed by the Department of Infrastructure and Planning to provide building owners with information about displaying their certificates of classification. The factsheet and guidelines also include other important information for building owners about their general obligations relating to certificates of classification.

Tips to avoid a dispute

Owners in a community titles scheme have a unique relationship which often involves physical proximity and shared finances or decision making responsibilities. Disputes are part of life in schemes. They can range from minor disagreements to serious long-term disputes concerning complex and expensive issues. They can take an enormous financial and emotional toll on the parties involved and the scheme as a whole. If disputes are improperly managed they can damage relationships and lead to further disputes arising in the future.

Self management is a key element in schemes and the BCCM Office should be the last port of call rather than the first in terms of resolving a dispute. In this regard, everyone involved in a scheme has a role to play to avoid disputes arising in the first place and preventing them from escalating. Of course this is not always possible, but it is certainly something to aspire to.

Anyone involved in a scheme should consider:

1. Many disputes arise because participants misunderstand the legislative provisions and their rights and responsibilities. A key first step is to make sure you understand the law before you approach the opposing party. Our office has a range of brochures available on our website to help you understand your roles and responsibilities. You can view the brochures at www.justice.qld.gov.au/bccm or phone 1800 060 119 and request to have copies posted to you.

Body Corporate managers caught in the middle of disputes should educate both parties as to their rights and responsibilities. Informing others can save you work in the long run. Encourage people to phone the BCCM information service on 1800 060 119 to verify advice. Learning basic mediation skills can help too. Listen to what each party has to say, remain impartial and facilitate objective communication.

2. Other disputes may arise because participants misunderstand the role of others in a scheme. For example, they believe that the body corporate manager or caretaker has responsibilities for duties which are not actually part of their contract. Many owners buy into a scheme with certain expectations (particularly if they have only lived in freestanding houses before) which may not accord with the community titles environment. It's important for everyone to have a clear understanding of roles and expectations.
3. Disputes are hampered by poor communication. If you have an issue, set your concerns out in a clear and objective manner. Avoid personal remarks and criticisms. Focus on the issue and not the other person involved. Try not to be emotive. Genuinely listen to the other side's point of view. Actively try and find mutually acceptable solutions rather than refusing to compromise.

For those times when a disagreement cannot be resolved independently and you seek intervention from the BCCM Office, understanding our process will assist your application to proceed as painlessly as possible for all concerned.

Dispute resolution centres

Whether living within a strata title complex, owning a lot and subletting, acting as an agent or forming a body corporate there will be occasions when your opinion, wants and needs differ from others. Conflict is not necessarily a bad thing and at times positive change can result from such a situation.

Some disputes may not fall within the BCCM Office's jurisdiction. The Queensland Government has established Dispute Resolution Centres (DRC) throughout the state to provide assistance where the BCCM Office cannot.

If you are in dispute with another body corporate member you can contact your nearest DRC to discuss your concerns with the staff. They will be able to assist you by suggesting an approach to resolve the matter. The Dispute Resolution Centres provide a mediation service and have trained and experienced mediators available to assist you and the person with whom you are in conflict. DRC can help you to conduct a safe and confidential meeting at a time convenient for everyone (outside of business hours is ok).

Mediation is internationally recognised as a valuable process used to assist people in small numbers or larger groups explore the issues contributing to their conflict, find common ground and work together to reach a solution. Mediation is not a legal process and in many cases there is no fee applicable to the service provided by the DRC.

Visit www.justice.qld.gov.au/mediation to learn more about mediation services.

Always try to resolve a conflict by working cooperatively with the other person involved. If you are not in physical danger, talking it out can be the best solution. Face-to-face discussions are more effective than letters and messages. If together you cannot reach a solution, call your nearest DRC.

DRC South Queensland

Phone 3329 6269 or freecall 1800 017 288

DRC Wide Bay

Phone 4125 9225 or freecall 1800 681 109

DRC Central Queensland

Phone 4938 4249 or freecall 1800 817 927

DRC Mackay Whitsundays

Phone 4967 4404 or freecall 1800 501 576

DRC North Queensland

Phone 4799 7870 or freecall 1800 809 605

DRC Far North Queensland

Phone 4039 8742 or freecall 1800 671 680