

# Office of the Commissioner for Body Corporate and Community Management

Information Seminar 2018



# Topics

1. Access to body corporate records
2. Enforcing body corporate by-laws
3. Body corporate decision making

# Topic 1

# Accessing body corporate records



# What is a body corporate record?

Any document (hard copy or electronic) held in the body corporate records. Can include:

- Financial records
- Meeting material and minutes
- Correspondence
- Email addresses and phone numbers
- Contracts
- Reports from body corporate managers
- Video footage recorded from body corporate owned CCTV security systems.

# What is a not body corporate record?

Personal business records of:

- The body corporate manager
- The letting agent

# Who can access body corporate records

Interested person means:

- the owner, or a mortgagee, of a lot included in the scheme; or
- the buyer of a lot included in the scheme; or
- another person who satisfies the body corporate of a proper interest in the information sought; or
- the agent of a person mentioned above.

**Tenants (occupiers) can access applicable body corporate records**

# Access

- The body corporate must give access within 7 days if they have
  - received a written request and
  - received the prescribed fee or an undertaking to pay it.
- Access includes:
  - Inspection of the records and/or
  - a copy of a record
- The interested person does not have to search the records to obtain a copy.

# Privacy issues

- The privacy restrictions do not apply to information that must be given by law. This means the body corporate cannot refuse to make documents available because of privacy legislation.
- See Section 6.2(b) of the Australian Privacy Principles, Schedule 1 of the *Privacy Act 1988* (Cwth)



# Privacy Commissioner

- QLD Office of the Information Commissioner  
phone: 1800 642 753.  
website: [www.oic.qld.gov.au](http://www.oic.qld.gov.au)  
email: enquiries@oic.qld.gov.au
- Australian Information Commissioner:  
phone: 1300 363 992  
website: [www.oaic.gov.au](http://www.oaic.gov.au)  
email: enquiries@oaic.gov.au

# How to access the body corporate records

If you are an interested person, you must

- Request in writing to search the records and pay the prescribed search fee

AND/OR

- Request that copies of the specific named documents to be provided and pay the prescribed copying fee

# How to access cont..

- BCCM Form 12
- In “writing” can include making a request via email
- You do not have to search the records to obtain copies of documents unless you cannot name the document you want.

# What are prescribed fees?

- Prescribed fees are amounts set in the regulation modules
- The prescribed fees usually increase on 1 July each year.
- Prescribed fees are GST free.
- The body corporate manager cannot charge more than the prescribed fee to the interested person.

# Who do you pay prescribed fees to?

- The prescribed fees are a body corporate fee paid to the body corporate not the body corporate manager nor anyone else who holds the records on behalf of the body corporate.

# When can body corporate refuse access

The body corporate can refuse access when:

- It reasonably believes the document has defamatory material in it.
- A body corporate may be able to keep records confidential because of 'legal professional privilege'.

# Legal Privilege

Adjudicators have stated, to be 'privileged from disclosure', the document would need to be related to a legal proceeding that is started or threatened and:

- a communication between a lawyer and their client
- created for a lawyer as part of legal advice to their client, or to take current or planned legal action
- kept confidential by the client.

# What to do if refused access

- Lodge an application.
- Evidence of self resolution
  - copies of your written request and
  - evidence of payment of the fee.
- Attach copy of committee minutes of decision or any other responses.
- Must write a statement explaining how the decision or action is breaching the legislation



# Dispute resolution / communication

- Access to records disputes are usually expeditable adjudication applications
- Commissioners discretion - may be conciliation
- Adjudicator's order is enforceable at Magistrate's Court.
- Practice Directions available on website as guides to the dispute resolution processes

## Topic 2

Enforcing  
body  
corporate  
by-laws



# Validity of bylaws

To be valid a by-law must not:

- be inconsistent with the BCCM Act or any other Act.
- discriminate between types of occupiers
- impose a monetary liability
- be oppressive or unreasonable

# Enforceable

- To be enforceable a by-law must be registered on the community management statement for the community titles scheme.
- If a by-law is suspected of being invalid it does not prevent the body corporate from carrying out initial steps to enforce them.

# Enforcement - Owners

- BCCM Form 1 - Notice to body corporate of a contravention of a body corporate by-law
  - Body corporate details
  - Complainant details – you
  - Respondent details – person breaching
  - Number and text of bylaw/s being breached
  - How it is being breached
  - Your signature

# Body Corporate

It is a Committee decision to enforce the by-laws

- Verbal reminder
- Written reminder
- BCCM Form 10 Notice of continuing contravention of a body corporate by-law
- BCCM Form 11 Notice regarding likely future contravention of a body corporate by-law

# When to use the BCCM Form 10

BCCM Form 10 is used in situations where the contravention is continuing such as

- Pergola built without approval
- Pet without approval
- Lot painted purple

# When to use the BCCM Form 11

BCCM Form 11 is used in situations where a breach has occurred and is likely to occur again in the future

- Parties
- Parking
- Approved pet causing a nuisance - barking



# What if offending owner does not comply with notice?

The body corporate may consider two options:

- File action in the Magistrates Court for the court to impose a monetary penalty
- Apply for Conciliation

# What if body corporate does not respond to BCCM Form 1?

Owner/Occupier can lodge a conciliation application against:

- The body corporate for not enforcing the by-laws
- The owner/occupier believed to be breaching the by-law. The applicant must have been taken to resolve the issues directly with offending owner/occupier

## Topic 3

# Body Corporate decision making



# Body Corporate decisions

## **Committee**

- Committee meeting
- Vote outside committee meeting (VOC)

## **Body Corporate**

- Annual general meeting (AGM)
- Extraordinary general meeting (EGM)

# Committee decisions (meeting)

- Committee meetings
  - 7 days notice
  - 21 days for minutes to be sent
  - Quorum of at least half of voting committee members required
  - Decision made by majority of voting members agreeing to the motion who are entitled to vote on the motion, who are voting

# Committee decisions (VOC)

- Vote outside a committee meeting
  - Decision made in writing
  - No timeframe in legislation
  - 21 days for record of decision to be sent
  - Decision made by majority of voting members of the committee

# What can committees decide

- By-law issues
- Maintenance
- Improvements
- Start certain legal proceedings

# Limitations

- Restricted issues
- Reserved issues
- Spending limit
- Budget



# General meetings

- **Annual general meeting**
  - Must be held every year
  - Within 3 months of end of BC financial year
  - 21 days notice given
  - Statutory motions to be included on agenda
  - Committee elected

# General meetings

- **Extraordinary general meeting**
  - 21 days notice
  - Committee to decide to call
  - 25% of lot owner request to call

# Limits

- Major spending limit
- Motion with alternatives
- Improvement limit

# Resolution types

- Ordinary resolution
- Special resolution
- Resolution without dissent

# Body Corporate Managers

Do not have any decision making capacity for the body corporate and should act upon instructions from the body corporate.

# Questions



# Contact us

## Contact us

**Phone:** 1800 060 119 (free call back service)

## **Online enquiry:**

[www.qld.gov.au/bodycorporatequestion](http://www.qld.gov.au/bodycorporatequestion)

## **Website:**

[www.qld.gov.au/bodycorporate](http://www.qld.gov.au/bodycorporate)

# Survey

We will be emailing you a link to complete a survey regarding today's seminar based on the email that was used to register. If you do not think we have your email address please feel free to email us at [bccm@justice.qld.gov.au](mailto:bccm@justice.qld.gov.au) requesting the link to our survey.