



Queensland

*Body Corporate and Community Management Act 1997*

# **Body Corporate and Community Management (Specified Two-lot Schemes Module) Regulation 2011**

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Queensland

# Body Corporate and Community Management (Specified Two-lot Schemes Module) Regulation 2011

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# Body Corporate and Community Management (Specified Two-lot Schemes Module) Regulation 2011

## Chapter 1 Preliminary

### 1 Short title

This regulation may be cited as the *Body Corporate and Community Management (Specified Two-lot Schemes Module) Regulation 2011*.

### 2 Commencement

This regulation commences on 28 February 2012.

### 3 Application of this regulation—Act, s 21

- (1) This regulation is a regulation module for the Act.
- (2) For this regulation to apply to a community titles scheme, the scheme must be a specified two-lot scheme.

*Notes—*

- 1 Under section 21 (Meaning of *regulation module*) of the Act, this regulation will be the regulation module for a specified two-lot scheme only if the community management statement for the scheme states that this regulation applies to the scheme.
- 2 See section 111C (Meaning of *specified two-lot scheme*) of the Act.

### 4 Dictionary

The dictionary in the schedule defines particular words used in this regulation.

## Chapter 2 Lot owner agreements

### 5 Lot owner agreement—Act, s 111F

- (1) A lot owner agreement for a specified two-lot scheme must—
  - (a) be in writing; and
  - (b) be dated or contain evidence of the date the agreement is entered into; and
  - (c) state details of the body corporate matters the owners of the lots included in the scheme are in agreement about; and
  - (d) either—
    - (i) if the lot owner agreement is entered into by way of electronic communication—contain evidence of the approval or consent of the owners of the lots included in the scheme; or
    - (ii) otherwise—be signed by the owners of the lots included in the scheme.

#### *Examples of lot owner agreement being entered into—*

An owner of a lot included in a specified two-lot scheme is given a request to enter into a lot owner agreement that complies with the requirements of section 6. The owner could—

- sign and date the document in which the request is contained; or
  - give the owner who made the request a document in response to the request that is dated and signed or, if the document is made by way of electronic communication, that is dated, or contains evidence of a date, and contains evidence of the owner's approval or consent to the request.
- (2) Subsection (3) applies if—
    - (a) there are 2 or more co-owners of a lot included in a specified two-lot scheme; and
    - (b) 1 or more of the co-owners enters into a lot owner agreement; and
    - (c) the lot owner agreement complies with subsection (1).



- (3) All of the co-owners of the lot are taken to have entered into the lot owner agreement as the owner of the lot.
- (4) An electronic communication made under this section must be consistent with any requirement under the *Electronic Transactions (Queensland) Act 2001*.
- (5) In this section—  
**body corporate matter** means a matter—
  - (a) related to the carrying out of the functions given to the body corporate under the Act or the community management statement; and
  - (b) for which the body corporate is required or permitted to make a decision under the Act or the community management statement.

## **6 Request to enter into lot owner agreement—Act, s 111H**

- (1) A request to enter into a lot owner agreement must—
  - (a) be in writing; and
  - (b) be dated or contain evidence of the date the request is made; and
  - (c) state details of the proposed decision for which the request is made; and
  - (d) state a reasonable period for entering into the lot owner agreement taking into consideration the matter about which the request is made; and
  - (e) unless the request is made by way of electronic communication—be signed by the owner of the lot included in the scheme who is making the request.
- (2) Subsection (3) applies if—
  - (a) there are 2 or more co-owners of a lot included in a specified two-lot scheme; and
  - (b) 1 or more of the co-owners makes a request to enter into a lot owner agreement; and

- (c) the request complies with subsection (1).
- (3) All of the co-owners of the lot are taken to have made the request to enter into a lot owner agreement.
- (4) An electronic communication made under this section must be consistent with any requirement under the *Electronic Transactions (Queensland) Act 2001*.

## Chapter 3      Representatives of owners of lots

### 7      Representative of owner of lot—Act, s 111J

- (1) A person is a representative of an owner of a lot included in a specified two-lot scheme if—
  - (a) the person is a guardian, trustee, receiver or other representative of the owner of the lot, and is authorised to act on the owner’s behalf; or
  - (b) the person—
    - (i) is acting under the authority of a power of attorney given to the person by the owner of the lot; and
    - (ii) is not the original owner, other than if the power of attorney is given under section 211 or 219 of the Act.
- (2) However, a person can not be a representative of an owner of a lot included in a specified two-lot scheme if the person is the scheme’s body corporate manager or a service contractor for the scheme.
- (3) Also, a person may be taken to be the owner’s representative only if the person—
  - (a) gives the owner of the other lot included in the scheme a copy of the instrument under which the person is authorised to act as representative or otherwise satisfies

- the owner of the other lot of the person's authorisation;  
and
- (b) gives the owner of the other lot, in writing, the person's residential or business address, and address for service (if different from the residential or business address);  
and
  - (c) does not act outside the terms of the instrument.
- (4) The owner of a lot may amend the authorisation of a person acting as the owner's representative by written notice given to the owner of the other lot included in the scheme, together with, if relevant—
- (a) a copy of the instrument under which the person is authorised to act as representative that has been amended; or
  - (b) a copy of any other instrument by which the person's authorisation has been amended.
- (5) The owner of a lot may revoke the authorisation of a person acting as the owner's representative by written notice given to the owner of the other lot included in the scheme.
- (6) An electronic communication made under this section must be consistent with any requirement under the *Electronic Transactions (Queensland) Act 2001*.

## **8 Representative of corporation**

- (1) This section applies to a corporation that is—
- (a) an owner of a lot included in a specified two-lot scheme;  
or
  - (b) a representative of an owner of a lot included in the scheme.
- (2) A person may be taken to be the nominee of the corporation only if the corporation gives the owner of the other lot included in the scheme a written notice of nomination.
- (3) A notice of nomination must—

- (a) state—
    - (i) the name of the nominee; or
    - (ii) the names of 2 nominees, 1 of whom is to act in the absence of the other; and
  - (b) state the residential or business address, and address for service (if different from the residential or business address), of each nominee; and
  - (c) be given—
    - (i) under the seal of the corporation or in another way permitted under the Corporations Act, section 127; or
    - (ii) by a person acting under the authority of a power of attorney from the corporation.
- (4) If a corporation gives a nomination in the way mentioned in subsection (3)(c)(ii), a person may be taken to be the nominee only if a copy of the power of attorney is given to the owner of the other lot.
- (5) A corporation may change a nomination mentioned in subsection (2), by giving the owner of the other lot written notice of a new nomination, in a way mentioned in subsection (3).

## 9 Functions and powers of representatives

- (1) A representative of an owner of a lot under this chapter has the functions and powers of the owner, and may do anything the owner may do, or is required to do, under the Act in relation to relevant body corporate matters.
- (2) The authorisation of a person to act as the representative of an owner of a lot under this chapter does not limit the obligation of the owner to the body corporate.
- (3) In this section—

*relevant body corporate matter* means a matter—

- (a) related to the carrying out of the functions given to the body corporate under the Act or the community management statement; and
- (b) for which the representative of an owner of a lot has authority to act under the instrument by which the person is authorised to act as representative.

## **Chapter 4      Body corporate managers and service contractors— Act, section 122**

### **Part 1              Preliminary**

#### **10      Purpose of ch 4**

The purpose of this chapter is to prescribe matters about the engagement of a person as a body corporate manager or service contractor for a specified two-lot scheme, including matters about rights and obligations of the body corporate.

### **Part 2              Authority and requirements for engagements**

#### **11      Authority to engage or amend engagement**

The body corporate may engage, or amend the engagement of, a person as a body corporate manager or service contractor, only if the body corporate approves the engagement or amendment by a lot owner agreement.

## **12 Form of engagement**

- (1) The engagement of a person as a body corporate manager or service contractor is void if the engagement does not comply with the requirements stated in subsection (2).
- (2) The engagement must—
  - (a) be in writing; and
  - (b) state the terms of the engagement, including—
    - (i) when the term starts and ends; and
    - (ii) the term of any right or option of extension or renewal of the engagement; and
  - (c) state the functions the body corporate manager or service contractor is required or authorised to carry out; and
  - (d) state the basis for working out payment for the body corporate manager's or service contractor's services.

*Example—*

A body corporate manager's payment could be calculated on the basis of an amount for each lot.

- (3) The engagement must not be in the form of—
  - (a) a by-law; or
  - (b) an instrument by which a person is authorised to act as the representative of an owner of a lot included in the scheme.

## **13 Term of engagement of body corporate manager or service contractor**

- (1) The term of the engagement of a person as a body corporate manager or a service contractor must not be longer than 1 year after allowing for any rights or options of extension or renewal, whether provided for in the engagement or subsequently agreed to.

*Example—*

The engagement of a body corporate manager starts on 1 January 2012 and is for a term of 1 year. The engagement can not end later than 31 December 2012.

- (2) If the term purports to be longer than 1 year, it is taken to be 1 year.
- (3) To remove any doubt, it is declared that at the end of the term—
  - (a) the engagement expires; and
  - (b) the person can not act again as the body corporate manager or as a service contractor without a new engagement.

## **14 Start of term of engagement**

- (1) This section applies if the body corporate approves the engagement of a person as a body corporate manager or service contractor by a lot owner agreement.
- (2) The body corporate's approval is of no effect if the term of the engagement does not start within 1 year after the date of the lot owner agreement.

## **Part 3 Termination of engagements**

### **15 Purpose of pt 3**

This part provides for—

- (a) the grounds on which the body corporate may terminate a person's engagement as a body corporate manager or service contractor; and
- (b) the steps the body corporate must follow to terminate the engagement.

## **16 Termination under the Act, by agreement etc.**

- (1) The body corporate may terminate a person’s engagement as a body corporate manager or service contractor—
  - (a) under the Act; or
  - (b) under the terms of the engagement; or
  - (c) by agreement between the body corporate and the person to terminate the engagement.
- (2) The body corporate may act under subsection (1) only if the termination is approved by a lot owner agreement.

## **17 Termination for conviction of particular offences etc.**

- (1) The body corporate may terminate a person’s engagement as a body corporate manager or service contractor if the person (including, if the person is a corporation, a director of the corporation)—
  - (a) is convicted (whether or not a conviction is recorded) of an indictable offence involving fraud or dishonesty; or
  - (b) is convicted (whether or not a conviction is recorded) on indictment of an assault or an offence involving an assault; or
  - (c) carries on a business involving the supply of services to the body corporate, or to owners or occupiers of lots, and the carrying on of the business is contrary to law; or
  - (d) transfers an interest in the engagement without the body corporate’s approval.
- (2) The body corporate may act under subsection (1) only if the termination is approved by a lot owner agreement.
- (3) In this section—

*indictable offence* includes an indictable offence dealt with summarily, whether or not the Criminal Code, section 659, applies to the indictable offence.



## **18 Termination for failure to comply with remedial action notice**

- (1) The body corporate may terminate a person’s engagement as a body corporate manager or service contractor if the person (including, if the person is a corporation, a director of the corporation)—
  - (a) engages in misconduct, or is grossly negligent, in carrying out functions required under the engagement; or
  - (b) fails to carry out duties under the engagement; or
  - (c) for a body corporate manager—
    - (i) fails to comply with section 19(2), 20(2) or 21(2); or
    - (ii) contravenes the code of conduct for body corporate managers and caretaking service contractors.
- (2) The body corporate may act under subsection (1) only if—
  - (a) the body corporate gives the person a remedial action notice in accordance with subsection (3); and
  - (b) the person fails to comply with the remedial action notice within the period stated in the notice; and
  - (c) the termination is approved by a lot owner agreement.
- (3) For subsection (2), a remedial action notice is a written notice stating each of the following—
  - (a) that the body corporate believes the person has acted in a way mentioned in subsection (1)(a) to (c);
  - (b) details of the action sufficient to identify—
    - (i) the misconduct or gross negligence the body corporate believes has happened; or
    - (ii) the duties the body corporate believes have not been carried out; or
    - (iii) the section of this regulation the body corporate believes has not been complied with; or



## 20 Disclosure of associate contract

- (1) This section applies if—
  - (a) the body corporate is a party to a contract; and
  - (b) the contract is for the supply of goods or services from a person (the *provider*); and
  - (c) the provider is an associate of the body corporate manager; and
  - (d) the body corporate manager is aware of the matters mentioned in paragraphs (a) to (c); and
  - (e) to the knowledge of the body corporate manager, the body corporate has never been informed, or otherwise become aware, that the provider is an associate of the body corporate manager.
- (2) The body corporate manager must, as soon as practicable after this section commences to apply, give written notice to the body corporate—
  - (a) identifying the contract; and
  - (b) disclosing the relationship between the body corporate manager and the provider.

Maximum penalty—20 penalty units.

## 21 Disclosure of commission or other benefit

- (1) This section applies if—
  - (a) the body corporate is considering entering into, or proposes to enter into, a contract (the *main contract*); and
  - (b) the main contract is for the supply of goods or services from a person (the *provider*); and
  - (c) under the main contract, or under another contract or arrangement, the body corporate manager is entitled to receive, other than from the body corporate, a commission, payment or other benefit that is associated

with the main contract, including with entering into the main contract.

*Example of commission—*

a commission received by a body corporate manager from an insurance company

- (2) Before the body corporate makes its decision to enter into the main contract, the body corporate manager must give written notice to the body corporate disclosing the commission, payment or other benefit.

Maximum penalty—20 penalty units.

## **Chapter 5      Financial management— Act, section 150**

### **Part 1              Purpose of chapter**

#### **22      Purpose of ch 5**

The purpose of this chapter is to prescribe the financial management arrangements that apply to the body corporate for a specified two-lot scheme.

### **Part 2              Agreed body corporate expense**

#### **23      Meaning of *agreed body corporate expense***

- (1) An *agreed body corporate expense* is an item of expenditure that the body corporate has decided, by a lot owner agreement, to incur.

- (2) Also, an item of expenditure is taken to be an agreed body corporate expense if the expenditure is necessary to comply with—
- (a) an item of expenditure that the body corporate is required to incur under the Act, or this regulation; or
  - (b) a statutory order or notice given to the body corporate; or
  - (c) an order of an adjudicator, including an order for expenditure that an adjudicator is satisfied is required to meet an emergency; or
  - (d) a judgment or order of a court; or
  - (e) an order of QCAT.

## 24 Contributions by owners to agreed body corporate expense

- (1) The owner of each lot is liable to pay a contribution to an agreed body corporate expense.
- (2) The contributions payable by the owner of each lot must be proportionate to the contribution schedule lot entitlement of the lot.
- (3) In this section—

*contributions* does not include contributions payable for insurance and any other matter for which, under the Act or this regulation, the liability attaching to each lot is calculated other than on the basis of the lot's contribution schedule lot entitlement.

*Note—*

For examples of other matters for subsection (3), see—

- section 48 (Insurance of common property and body corporate assets)
- section 52 (Premium)
- section 53 (Improvements affecting premium).

## 25 When contribution to agreed body corporate expense becomes payable

- (1) A contribution to an agreed body corporate expense is payable on or before the date for payment fixed by—
  - (a) the body corporate by a lot owner agreement; or
  - (b) a statutory order or notice given to the body corporate; or
  - (c) an order of an adjudicator, including an order for expenditure that an adjudicator is satisfied is required to meet an emergency; or
  - (d) a judgment or order of a court; or
  - (e) an order of QCAT.
- (2) However, if a date for payment is not fixed, the contribution is payable on or before the date for payment stated in a contribution notice given under section 26(2).

## 26 Notice of contribution payable for agreed body corporate expense

- (1) This section applies if the body corporate or an owner of a lot included in a specified two-lot scheme receives written notice of an agreed body corporate expense.

*Examples of written notice of an agreed body corporate expense—*

- a tax invoice from a plumber for a maintenance service that is an agreed body corporate expense
  - a notice of a premium or other charge payable for insurance required to be taken out by the body corporate under this regulation
- (2) The owner of a lot may give the owner of the other lot included in the scheme a written notice (a **contribution notice**) stating—
    - (a) the total amount of the agreed body corporate expense payable by the body corporate; and
    - (b) the proportion of the total amount that is the contribution to be paid by the owner of each lot; and



- (b) the owner of the other lot included in the scheme (the *contributing owner*) pays the contributing owner's contribution by the date for payment.
- (2) The contributing owner may—
- (a) pay, on behalf of the defaulting owner, the defaulting owner's contribution or any penalty for not paying the contribution by the date for payment; and
  - (b) recover each of the following amounts as a debt from the defaulting owner—
    - (i) the amount of the defaulting owner's contribution;
    - (ii) any penalty for not paying the contribution by the date for payment;
    - (iii) any costs reasonably incurred by the contributing owner in recovering an amount mentioned in subparagraph (i) or (ii).
- (3) If the contributing owner does not pay the defaulting owner's contribution or any penalty under subsection (2)(a), the body corporate may recover each of the following amounts as a debt from the defaulting owner—
- (a) the amount of the defaulting owner's contribution;
  - (b) any penalty for not paying the contribution by the date for payment;
  - (c) any costs reasonably incurred by the body corporate in recovering an amount mentioned in paragraph (a) or (b).
- (4) The contributing owner may start proceedings, on behalf of the body corporate, to recover an amount mentioned in subsection (3).
- (5) A liability to pay an amount mentioned in subsection (2)(b) or (3) in relation to a lot is enforceable jointly and severally against each of the following persons—
- (a) a person who was the owner of the lot when the debt became payable;



- (b) a person (including a mortgagee in possession) who becomes an owner of the lot before the debt is paid.
- (6) If there are 2 or more co-owners of a lot, the co-owners are jointly and severally liable to pay an amount mentioned in subsection (2)(b) or (3) in relation to the lot.
- (7) In this section—
- penalty* means a penalty imposed by an entity under a contract between the entity and the body corporate for the supply of goods or services, including, for example, a late payment fee.

## Part 4                      Borrowing

### 28      Power to borrow

The body corporate may, under a lot owner agreement, borrow amounts on security agreed between the body corporate and the person from whom the amounts are borrowed.

## Part 5                      Accounts

### 29      Accounts—Act, s 151

The body corporate may decide by a lot owner agreement to keep amounts received by the body corporate in 1 or more accounts with a financial institution.

*Example—*

a bank account in the name of the body corporate into which the owners of the lots included in the scheme contribute funds for the payment of agreed body corporate expenses

## **Chapter 6      Property management**

### **Part 1              Purpose of chapter**

#### **30      Purpose of ch 6**

This chapter prescribes matters about property management for a specified two-lot scheme, including matters about the rights and obligations of the body corporate.

### **Part 2              Common property**

#### **31      Duties of body corporate about common property—Act, s 152**

- (1) The body corporate must maintain common property in good condition, including, to the extent that common property is structural in nature, in a structurally sound condition.

*Note—*

For utility infrastructure included in the common property, see section 20 of the Act (Utility infrastructure as common property).

- (2) To the extent that lots included in a specified two-lot scheme are created under a building format plan of subdivision, the body corporate must—
- (a) maintain in good condition—
- (i) railings, parapets and balustrades on (whether precisely, or for all practical purposes) the boundary of a lot and common property; and
- (ii) doors, windows and associated fittings situated in a boundary wall separating a lot from common property; and

- (iii) roofing membranes that are not common property but that provide protection for lots or common property; and
- (b) maintain the following elements of scheme land that are not common property in a structurally sound condition—
  - (i) foundation structures;
  - (ii) roofing structures providing protection;
  - (iii) essential supporting framework, including load-bearing walls.
- (3) Despite anything in subsections (1) and (2)—
  - (a) the body corporate is not responsible for maintaining fixtures or fittings installed by the occupier of a lot if they were installed for the occupier’s own benefit; and
  - (b) the owner of the lot is responsible for maintaining utility infrastructure, including utility infrastructure situated on common property, in good order and condition, to the extent that the utility infrastructure—
    - (i) relates only to supplying utility services to the owner’s lot; and
    - (ii) is 1 of the following types—
      - hot-water systems
      - washing machines
      - clothes dryers
      - another device providing a utility service to a lot; and

*Examples for paragraph (b)—*

- 1 An air conditioning plant is installed on the common property, but relates only to supplying utility services to a particular lot. The owner of the lot would be responsible for maintaining the air conditioning equipment.
- 2 A hot-water system is installed on the common property, but supplies water only to a particular lot. The owner of the lot

would be responsible for maintaining the hot-water system and the associated pipes and wiring.

- (c) the owner of the lot is responsible for maintaining the tray of a shower that services the lot, whether or not the tray forms part of the lot.
- (4) To avoid any doubt, it is declared that, despite an obligation the body corporate may have under subsection (2) to maintain a part of a lot in good condition or in a structurally sound condition, the body corporate may recover the prescribed costs, as a debt, from a person (whether or not the owner of the lot) whose actions cause or contribute to damage to or deterioration of the part of the lot.
- (5) In this section—

*prescribed costs* means the proportion of the reasonable cost to the body corporate of carrying out the maintenance that can, in the body corporate's reasonable opinion, be fairly attributed to the person's actions.

*utility infrastructure* does not include utility infrastructure that—

- (a) is a device for measuring the reticulation or supply of water for a community titles scheme established after 1 January 2008; and
- (b) is installed after 1 January 2008—
  - (i) under a permit issued under the *Plumbing and Drainage Act 2018*; or
  - (ii) in relation to a compliance request made after 31 December 2007 under the repealed *Plumbing and Drainage Act 2002*.

## **32 Mailbox—Act, s 153**

The body corporate must—

- (a) maintain a mailbox clearly showing the body corporate's name in a suitable position at or near the street alignment of the scheme land; or

- (b) make suitable alternative arrangements for the receipt of mail.

### **33 Disposal of interest in and leasing or licensing of common property—Act, s 154**

- (1) This section sets out the way and the extent that the body corporate is authorised—
  - (a) to sell or otherwise dispose of common property; and
  - (b) to grant or amend a lease or licence over common property.
- (2) The body corporate may, if authorised by a lot owner agreement—
  - (a) sell or otherwise dispose of part of the common property; or
  - (b) grant or amend a lease or licence over part or the whole of the common property.
- (3) The body corporate must not lease or license common property if the lease or licence would interfere with access to a lot, or to a part of the common property over which exclusive rights have been given under a by-law.
- (4) An instrument lodged for registration under the *Land Title Act 1994* to give effect to a transaction under this section must be accompanied by—
  - (a) a certificate under the body corporate’s seal certifying the transaction has been authorised as required by this section; and
  - (b) a certificate of the relevant planning body certifying the transaction has been approved or noted as required under the relevant Planning Act; and
  - (c) if the transaction is associated with a reduction in the common property—a request to record a new community management statement for the specified two-lot scheme in the place of the existing statement for the scheme.

(5) The body corporate may not grant a lease or licence over utility infrastructure that is common property.

(6) In this section—

**relevant Planning Act** means—

- (a) if the relevant planning body for the specified two-lot scheme is MEDQ—the *Economic Development Act 2012*; or
- (b) if the relevant planning body for the specified two-lot scheme is the local government—the *Sustainable Planning Act 2009*.

**relevant planning body**, for a specified two-lot scheme, means—

- (a) to the extent the common property for the scheme the subject of the transaction is located in a priority development area—MEDQ; and
- (b) to the extent the common property for the scheme the subject of the transaction is located in a local government area but not in a priority development area—the local government for the local government area.

### **34 Easements over common property—Act, s 155**

- (1) This section sets out the way and the extent that the body corporate is authorised to grant, accept the grant of, and surrender, and accept the surrender of, easements relating to common property.
- (2) The body corporate may, if authorised by a lot owner agreement—
  - (a) grant an easement over the common property, or accept the grant of an easement for the benefit of the common property; or
  - (b) surrender an easement for the benefit of the common property, or accept the surrender of an easement over the common property.

- (3) An instrument lodged for registration under the *Land Title Act 1994* to give effect to the grant or surrender of an easement over or affecting the common property must be accompanied by—
- (a) a copy of the lot owner agreement certified under the body corporate's seal; and
  - (b) other documents required by the registrar (including, if considered appropriate, a request to record a new community management statement in place of the existing statement for the community titles scheme).

**35 Improvements to common property by body corporate—  
Act, s 159**

The body corporate may make improvements to the common property if—

- (a) the improvements are authorised by a lot owner agreement; or
- (b) an adjudicator, under an order made under the dispute resolution provisions—
  - (i) decides the improvements are reasonably necessary for the health, safety or security of persons who use the common property; and
  - (ii) authorises the improvements.

**36 Improvements to common property by an owner of a lot—  
Act, s 159**

- (1) The body corporate may, by a lot owner agreement, authorise an owner to make an improvement to the common property for the benefit of the owner's lot.
- (2) An authorisation may be given under this section on conditions the body corporate considers appropriate.
- (3) An owner who is given an authorisation under this section—
  - (a) must comply with conditions of the authorisation; and





*Example—*

The body corporate may under subsection (2)(c) acquire rights to establish or use moorings for vessels.

- (3) The body corporate may exercise its powers under this section only if authorised by a lot owner agreement.

### **39 Dealing with (including disposal of) body corporate assets—Act, s 157**

- (1) The body corporate may—
  - (a) sell or otherwise dispose of a body corporate asset that is freehold land, or a leasehold interest in freehold land; or
  - (b) grant or amend a lease over a body corporate asset that is freehold land or another body corporate asset capable of being leased; or
  - (c) sell or otherwise dispose of a body corporate asset that is personal property (not including personal property mentioned in paragraph (a) or (b), but including a licence or concession related to freehold land).
- (2) The body corporate may exercise its powers under this section only if authorised by a lot owner agreement.

## **Part 4 Agreement with another body corporate**

### **40 Sharing facilities—Act, s 95**

- (1) This section has effect despite anything else in this chapter.
- (2) The body corporate may, in the name of the body corporate, enter into an agreement with the body corporate of another community titles scheme under which the owners or occupiers

of lots included in the scheme and lots included in the other scheme may share the use and enjoyment of—

- (a) facilities forming part of the common property of either scheme; or
- (b) body corporate assets for either scheme.

*Example—*

The body corporate may enter into an agreement under subsection (2) with the body corporate for another community titles scheme under which the owners or occupiers of lots included in the scheme may use a tennis court forming part of the common property for the other scheme.

- (3) The body corporate may exercise its powers under this section only if authorised by a lot owner agreement.

## **Part 5 Services for and obligations of owners and occupiers of lots**

### **41 Supply of services by body corporate—Act, s 158**

- (1) The body corporate may supply, or engage another person to supply, utility services and other services for the benefit of owners and occupiers of lots, if the services consist of 1 or more of the following—
  - (a) maintenance services including, for example, cleaning, repairing, painting, pest prevention or extermination or mowing;
  - (b) communication services including, for example, the installation and supply of telephone, intercom, computer data or television;
  - (c) domestic services including, for example, electricity, gas, water, garbage removal, air conditioning or heating.
- (2) The body corporate may, by agreement with a person for whom services are supplied, charge for the services (including for the installation of, and the maintenance and other

operating costs associated with, utility infrastructure for the services), but only to the extent necessary for reimbursing the body corporate for supplying the services.

*Note—*

See also section 96 (Body corporate must not carry on business) of the Act.

- (3) In acting under subsections (1) and (2), the body corporate must, as far as practicable, ensure the total cost to the body corporate (other than body corporate administrative costs) for supplying a service, including the cost of a commercial service, and the cost of purchasing, operating, maintaining and replacing any equipment, is recovered from the users of the service.
- (4) The body corporate may exercise its powers under this section only if authorised by a lot owner agreement.

## Part 6 Condition of lot

### 42 Obligations of owners and occupiers of lots—Act, s 160

- (1) An occupier of a lot included in the specified two-lot scheme must keep the parts of the lot readily observable from another lot or common property in a clean and tidy condition.
- (2) The owner of a lot included in the scheme must maintain the lot in good condition.
- (3) The owner’s obligation under subsection (2) to maintain the lot in good condition does not apply to a part of the lot the body corporate is required under this regulation to maintain in good condition.
- (4) The owner of a lot included in the scheme must maintain the utility infrastructure within the boundaries of the lot, and not part of common property, in good condition and, if the utility infrastructure is in need of replacement, must replace it.

## **Part 7**                      **Power to take action to remedy defective building work**

### **43**      **Body corporate’s power to take action to remedy defective building work—Act, s 162**

- (1) If building work carried out for the owner of a lot included in a specified two-lot scheme is defective, the body corporate may bring a proceeding under the *Queensland Building Services Authority Act 1991* or another law to have the defect remedied.
- (2) If a body corporate brings a proceeding under this section, the body corporate is subrogated to the contractual and other rights of the person for whom the building work was carried out.

## **Part 8**                      **Exclusive use by-laws—Act, section 173**

### **44**      **Conditions and obligations under exclusive use by-law**

- (1) If the owner of a lot included in a specified two-lot scheme to whom rights are in the first instance given under an exclusive use by-law agrees in writing, the by-law may impose conditions (that may include conditions requiring the owner to make a payment or periodic payments to the scheme’s body corporate or the owner of the other lot included in the scheme, or both).
- (2) An exclusive use by-law is taken, in the absence of other specific provision in the by-law for maintenance and operating costs, to make the owner of the lot to whom exclusive use or other rights are given responsible for the maintenance of and operating costs for the part of the common property to which the exclusive use by-law applies.

*Example of operating cost for part of common property—*

cost of providing lighting to the part of common property

- (3) However, if the lot was created under a building format plan of subdivision, in the absence of other specific provision in the by-law, the owner of the lot is not responsible for—
  - (a) maintaining in good condition roofing membranes that—
    - (i) are on the part of the common property to which the by-law applies; and
    - (ii) provide protection for lots or common property; or
  - (b) maintaining in a structurally sound condition any of the following elements of scheme land that are part of a structure that is on the part of the common property to which the by-law applies and is not constructed by or for the owner—
    - (i) foundation structures;
    - (ii) roofing structures providing protection;
    - (iii) essential supporting framework, including load-bearing walls.

## **45 Improvements**

- (1) An exclusive use by-law may authorise the owner of a lot who has the benefit of the by-law to make stated improvements to the part of the common property to which the by-law applies.
- (2) Without limiting subsection (1), improvements stated in the by-law may include the installation of fixtures on the common property and the making of changes to the common property.
- (3) If the exclusive use by-law does not authorise the owner of a lot to make an improvement, the owner may make the improvement only if the body corporate, by a lot owner agreement, authorises it to be made.

#### **46 Recovery of amount owed**

- (1) A monetary liability imposed under an exclusive use by-law on the owner of a lot included in a specified two-lot scheme may be recovered as a debt.
- (2) The liability is enforceable jointly and severally against—
  - (a) the person who was the owner of the lot when the liability arose; and
  - (b) a successor in title for the lot.

## **Part 9 Insurance—Act, section 189**

#### **47 Definitions for pt 9**

In this part—

**building** includes improvements and fixtures, other than carpet, forming part of the building, but does not include—

- (a) temporary wall, floor and ceiling coverings; or
- (b) fixtures removable by a lessee or tenant at the end of a lease or tenancy; or
- (c) mobile or fixed air conditioning units servicing a particular lot; or
- (d) curtains, blinds or other internal window coverings; or
- (e) mobile dishwashers, clothes dryers or other electrical or gas appliances not wired or plumbed in.

**damage**, for coverage under insurance required to be put in place under this part, means—

- (a) earthquake, explosion, fire, lightning, storm, tempest and water damage; and
- (b) glass breakage; and
- (c) damage from impact, malicious act and riot.

#### **48 Insurance of common property and body corporate assets**

- (1) The body corporate must insure, for full replacement value—
  - (a) the common property; and
  - (b) the body corporate assets.
- (2) Subsection (1)(a) has effect only to the extent that the common property is not required to be insured under another provision of this part.
- (3) A policy of insurance taken out under this section—
  - (a) must cover, as far as practicable—
    - (i) damage; and
    - (ii) costs incidental to the reinstatement or replacement of insured buildings, including the cost of taking away debris and the fees of architects and other professional advisers; and
  - (b) must provide for the reinstatement of property to its condition when new.
- (4) The owner of each lot that is included in a specified two-lot scheme is liable to pay a contribution that is a proportionate amount of the premium for a policy of insurance taken out under this section that reflects the interest schedule lot entitlement of the lot.

#### **49 Insurance of building including lots**

- (1) This section applies if 1 or both of the lots included in a specified two-lot scheme are created under a building format plan of subdivision or a volumetric format plan of subdivision.
- (2) The body corporate must insure, for full replacement value, each building in which is located a lot included in the scheme, to the extent that the building is scheme land.
- (3) A policy of insurance taken out under this section—
  - (a) must cover—

- (i) damage; and
  - (ii) costs incidental to the reinstatement or replacement of insured buildings, including the cost of taking away debris and the fees of architects and other professional advisers; and
- (b) must provide for the reinstatement of property to its condition when new.
- (4) If the body corporate can not comply with subsection (3), the commissioner, on application in writing by the body corporate, may authorise the body corporate to put in place an alternative insurance in a form approved by the commissioner if the commissioner is satisfied that the insurance approved gives cover that is as close as practicable to the cover given by insurance under subsection (3).

*Example of alternative insurance that might be approved by the commissioner—*

insurance giving cover up to an agreed value

- (5) The body corporate is liable to pay any contribution that has to be made to the cost of reinstatement or repair because the reinstatement insurance is not for the full replacement value of the insured property.
- (6) The body corporate need not insure a building or a part of a building under subsection (2) if—
  - (a) the building or the part of the building is scheme land; and
  - (b) the whole of the building is the subject of a building management statement registered under the *Land Title Act 1994*; and
  - (c) the building management statement provides for insurance for the building to a level comparable with insurance otherwise required under this part; and
  - (d) the insurance is in place.
- (7) This section applies subject to provisions of this part about insurance of buildings mutually dependent for support on a common wall.



## **50 Insurance for buildings with common walls**

- (1) This section applies if—
  - (a) 1 or both of the lots included in a specified two-lot scheme are created under a standard format plan of subdivision; and
  - (b) a building on 1 lot has a common wall with a building on the other lot.
- (2) The body corporate must arrange a single policy of insurance with the same insurer to cover each building mentioned in subsection (1)(b) for its full replacement value.
- (3) A policy of insurance taken out under this section—
  - (a) must cover—
    - (i) damage; and
    - (ii) costs incidental to the reinstatement or replacement of the buildings, including the cost of taking away debris and the fees of architects and other professional advisers; and
  - (b) must provide for the reinstatement of the buildings to their condition when new; and
  - (c) may give effect, in whole or part, to a voluntary insurance scheme; and
  - (d) must be taken out in the name of the body corporate.
- (4) The body corporate is liable to pay any contribution that has to be made to the cost of reinstatement or repair because the reinstatement insurance is not for the full replacement value of the insured property.

## **51 Valuation for insurance purposes**

- (1) This section applies if, under this part, a body corporate must insure 1 or more buildings for full replacement value.
- (2) The body corporate must, at least every 5 years, obtain an independent valuation stating the full replacement value of the building or buildings.

- (3) The owner of each lot included in the specified two-lot scheme is liable to pay a contribution for the cost of the valuation of the building or buildings that is proportionate to the amount of the premium for reinstatement insurance for the building or buildings for which the owner is liable under this part.

## 52 Premium

- (1) The owner of each lot that is included in a specified two-lot scheme and is covered by reinstatement insurance required to be taken out by the body corporate is liable to pay a contribution that is a proportionate amount of the premium for reinstatement insurance that reflects—
  - (a) for a lot created under a building or volumetric format plan of subdivision—the interest schedule lot entitlement of the lot; and
  - (b) for a lot created under a standard format plan of subdivision—the cost of reinstating the buildings on the lot.
- (2) The body corporate may, by a lot owner agreement, adjust the contribution payable by an owner of a lot under subsection (1) in a way that fairly reflects—
  - (a) the extent to which the premium relates to fixtures and fittings that—
    - (i) form part of the lot; and
    - (ii) are generally of a higher standard than the fixtures and fittings of the other lot included in the scheme; or
  - (b) the extent to which the premium relates to improvements made to the common property that benefit the lot; or
  - (c) the proportion of the total risks covered by the policy attributable to activities carried on, or proposed to be carried on, on the owner’s lot.

### **53 Improvements affecting premium**

- (1) This section applies if—
  - (a) improvements are made to a lot included in a specified two-lot scheme and, because of the improvements—
    - (i) the fixtures and fittings forming part of the lot are generally of a higher standard than the fixtures and fittings of the other lot in the scheme; and
    - (ii) the premium for reinstatement insurance required to be taken out by the body corporate is likely to increase; or
  - (b) improvements are made to the common property, including improvements made under a right of exclusive use or licence, and—
    - (i) the improvements are made for the benefit of a lot included in the scheme; and
    - (ii) because of the improvements, the premium for reinstatement insurance required to be taken out by the body corporate is likely to increase.
- (2) The owner of the lot must give details of the nature and value of the improvements to—
  - (a) the owner of the other lot included in the scheme; and
  - (b) the body corporate; and
  - (c) the insurer with whom the body corporate has taken out a policy of reinstatement insurance.
- (3) The notification must be given as soon as practicable after the improvements are substantially completed.
- (4) If the owner of the lot does not comply with subsections (2) and (3), the owner must reimburse the owner of the other lot for any payment that has to be made for the cost of reinstatement or repair of the lot or common property, but only to the extent that the necessity to make the payment can reasonably be attributed to the owner's failure to comply with subsections (2) and (3).

## 54 Excess

- (1) Despite a requirement under this part to insure for full replacement value, the body corporate is not prevented from insuring on the basis that an excess is payable on the happening of an event for which the insurance gives cover.
- (2) However, in putting the insurance in place, the body corporate must ensure the arrangements for the liability for an excess under the insurance would not impose an unreasonable burden on the owners of each lot, having regard to subsections (3) and (4).
- (3) For an event affecting only 1 lot, the owner of the lot is liable to pay the excess unless the body corporate decides, by a lot owner agreement, that it is unreasonable in all the circumstances for the owner to bear the liability.

*Example—*

If a shower screen in a lot is damaged and an insurance claim is made under the body corporate's reinstatement insurance, the owner of the lot would be liable under subsection (3) to pay the excess unless the body corporate decides it is unreasonable for the owner to be required to pay it. However, if there is a fire within a lot caused by a short circuit in electrical wiring located in an internal partition, the body corporate might decide it would be unreasonable for the owner to be required to pay the excess.

- (4) For an event affecting both lots, or 1 lot and common property, the body corporate is liable to pay the excess unless the body corporate decides, by a lot owner agreement, it is reasonable in all the circumstances for the excess to be paid for by the owner of a particular lot.

## 55 Insurance for buildings with no common walls

- (1) This section applies if—
  - (a) the lots included in a specified two-lot scheme were created under a standard format plan of subdivision; and
  - (b) on both of the lots mentioned in paragraph (a), there is a building (a *stand-alone building*) having no common wall with a building on the other lot.

- (2) The body corporate may, by a lot owner agreement, establish an insurance scheme (a *voluntary insurance scheme*) under which it puts in place insurance over the stand-alone buildings for the owners of the lots on which they are located.
- (3) If a voluntary insurance scheme is established, the owner of each lot must—
  - (a) notify the owner of the other lot of the replacement value of the stand-alone building to be insured; and
  - (b) comply with other requirements under—
    - (i) the lot owner agreement establishing the voluntary insurance scheme; or
    - (ii) the policy of insurance.
- (4) The owner of a lot who takes part in the voluntary insurance scheme is liable to pay a contribution that is a proportionate amount of the premium fairly reflecting—
  - (a) the proportion of the total replacement value of the building insured under the voluntary insurance scheme represented by the stand-alone building on the owner's lot; and
  - (b) the proportion of the total risks covered by the policy attributable to activities carried on, or proposed to be carried on, on the owner's lot.
- (5) If the body corporate does not establish a voluntary insurance scheme and an owner of a lot on which there is a stand-alone building makes an improvement to the common property, the owner must—
  - (a) insure the improvement for full replacement value; and
  - (b) give the owner of the other lot included in the scheme and the body corporate the following details—
    - (i) the nature and value of the improvement;
    - (ii) the name of the insurer of the improvement;
    - (iii) the amount of cover under the insurance policy;
    - (iv) a summary of the type of cover under the policy;

*Examples of type of cover—*

public risk insurance, building insurance, common property insurance

- (v) the amount of the premium;
  - (vi) the amount of any excess payable on the happening of an event for which the insurance gives cover;
  - (vii) the date the cover expires.
- (6) A policy of insurance taken out under subsection (5)—
- (a) must cover, as far as practicable—
    - (i) damage; and
    - (ii) costs incidental to the reinstatement or replacement of the improvement, including the cost of taking away debris and the fees of architects and other professional advisers; and
  - (b) must provide for the reinstatement of the improvement to its condition when new.

## **56 Public risk insurance**

- (1) The body corporate must maintain public risk insurance of the common property and relevant assets.
- (2) The body corporate is not required to maintain public risk insurance of any other property.

*Example of other property—*

a lot in the scheme

- (3) The insurance must provide coverage—
  - (a) for amounts the body corporate becomes liable to pay for—
    - (i) compensation for death, illness and bodily injury; and
    - (ii) damage to property; and
  - (b) to the extent of—

- (i) at least \$10m for a single event; and
  - (ii) at least \$10m in a single period of insurance.
- (4) In this section—

*relevant assets* means body corporate assets for which it is practicable to maintain public risk insurance.

### **57 Use affecting premium**

- (1) This section applies if, because of the way a lot is used, the premium for reinstatement insurance or the premium for public risk insurance required to be taken out by the body corporate is likely to increase.
- (2) The owner of the lot must give the owner of the other lot included in the scheme and the body corporate details of the use.

### **58 Use of insurance money not paid under voluntary insurance scheme**

- (1) This section applies if the body corporate receives an amount of insurance money for damage to property, other than an amount paid under a voluntary insurance scheme.
- (2) The body corporate may, if authorised by a lot owner agreement, apply the amount to the repair, reinstatement or replacement of the damaged property or for another purpose.
- (3) However, the amount must not be applied to the repair, reinstatement or replacement of the property if the work would, apart from this section, be unlawful.
- (4) If, because of the damage, a specified two-lot scheme is to be terminated, and an order of a court under the Act, or a lot owner agreement, requires the application of the amount for a purpose other than the repair, reinstatement or replacement of the damaged property, the amount must be applied as follows—
  - (a) first, the amount must be applied towards the discharge of registered mortgages (but the amount applied towards

a mortgage over a particular lot can not be more than the proportion of the total insurance money attributable to the lot);

- (b) the balance of the amount must be applied as required by the order or lot owner agreement.

## **59 Use of insurance money paid under voluntary insurance scheme**

If the body corporate receives an amount of insurance money for damage to property under a voluntary insurance scheme, the amount must be paid, subject to the prior claim of a registered mortgagee, to the owner of the damaged property to which the payment relates.

# **Chapter 7 Administrative matters**

## **Part 1 Purpose of chapter**

### **60 Purpose of ch 7**

The purpose of this chapter is to prescribe matters about the rights and obligations of the body corporate for a specified two-lot scheme for administrative arrangements and other general matters relating to the scheme.



## **Part 2**

# **Body corporate's seal—Act, section 34**

### **61 Body corporate's seal**

- (1) The body corporate's seal—
  - (a) must be kept in the custody directed by a lot owner agreement; and
  - (b) may be used only as directed or authorised by a lot owner agreement.
- (2) However, if a lot owner agreement does not direct or authorise how the seal is to be used, the seal may be attached to a document—
  - (a) in the presence of—
    - (i) the owner of each lot; or
    - (ii) an owner of a lot and the representative of the owner of the other lot; or
    - (iii) the representative of the owner of each lot; or
  - (b) if 1 person owns both lots, by—
    - (i) the owner of the lots; or
    - (ii) the representative of the owner.
- (3) If the seal is attached under subsection (2)(a), the owners or the representatives present must sign the document as witnesses to the sealing of the document.
- (4) If the seal is attached under subsection (2)(b), the owner or the representative must sign the document as witness to the sealing of the document.
- (5) If there are 2 or more co-owners of a lot, the presence and signature of only 1 co-owner is required.

## **Part 3    Notices—Act, section 201**

### **62            Body corporate to give written notice about receipt of documents**

- (1) This section applies if the body corporate receives a document in relation to the specified two-lot scheme (a *relevant document*).
- (2) The body corporate must, as soon as practicable after receiving a relevant document, give written notice of the receipt to the owner of each lot included in the scheme.
- (3) If the owner of a lot asks for a copy of the relevant document, the body corporate must provide the copy as soon as practicable after receiving the request.
- (4) A written notice mentioned in subsection (2) may be given to an owner—
  - (a) at the owner’s address for service; or
  - (b) in the way directed by the owner.

### **63            Owner of lot or representative to give copy of documents to body corporate**

- (1) This section applies if an owner of a lot or the representative of an owner receives a relevant document.
- (2) The owner or the representative must, as soon as practicable after receiving the document, give a copy of the document to the body corporate.

### **64            Notices to be given to the body corporate**

- (1) This section applies if 1 or more of the following events happens in relation to a lot included in a specified two-lot scheme—
  - (a) a person becomes the owner of the lot by transfer, transmission or in another way;

- (b) a leasehold interest in the lot is created by lease or sublease for a term of 6 months or more, or a leasehold interest in the lot with 6 months or more to run is transferred or terminated;
  - (c) the owner of the lot engages a person to act for the owner in the leasing of the lot;
  - (d) the engagement of a person to act for the owner of the lot in the leasing of the lot is terminated;
  - (e) the lot is the subject of a registered mortgage, and the mortgagee enters into possession of the lot;
  - (f) an interest in the lot is the subject of a registered mortgage, and the mortgagee enters into possession of the lot.
- (2) The person identified in subsection (3) as the person who must give a notice must give a written notice, containing the information mentioned in the subsection, to the body corporate and the owner of the other lot included in the scheme within 2 months after the event happens or the person becomes aware of the happening of the event.

Maximum penalty—20 penalty units.

- (3) The notice must—
- (a) for an event mentioned in subsection (1)(a)—
    - (i) be given by the person who becomes the owner of the lot; and
    - (ii) state the person's name and residential or business address; and
    - (iii) if the person's address for service is different from the residential or business address given under subparagraph (ii)—state the person's address for service; and
    - (iv) give brief details about the way the person became the owner of the lot; and
  - (b) for an event mentioned in subsection (1)(b)—

- (i) be given by the owner of the lot; and
  - (ii) for a lease or sublease—state the name, residential or business address, and address for service (if different from the residential or business address given) of the lessee or sublessee, and the term of the lease or sublease; and
  - (iii) for the transfer of a leasehold interest—state the name, residential or business address, and address for service (if different from the residential or business address given) of the transferee; and
  - (iv) for the termination of a leasehold interest—state the date the interest was terminated; and
- (c) for an event mentioned in subsection (1)(c)—
- (i) be given by the owner of the lot; and
  - (ii) state the name, residential or business address, and address for service (if different from the residential or business address given) of the person appointed; and
- (d) for an event mentioned in subsection (1)(d)—
- (i) be given by the owner of the lot; and
  - (ii) state the date the engagement of the person was terminated; and
- (e) for an event mentioned in subsection (1)(e) or (f)—
- (i) be given by the registered mortgagee; and
  - (ii) state the name, residential or business address, and address for service (if different from the residential or business address given) of the registered mortgagee.

## 65 Address for service

- (1) This section applies if no address for service is given to the body corporate for an owner of a lot or another person (each a *relevant person*) whose address for service is required to be

given to the body corporate and the owner of the other lot included in the scheme.

- (2) The address for service, for the relevant person, is the residential or business address, whether inside or outside Australia, last given to the body corporate for the relevant person.
- (3) Even if there are 2 or more co-owners for 1 lot, there must be only 1 address for service for the owners.

## **66 Change of address**

A person may change the person's residential or business address or address for service by written notice given to—

- (a) the body corporate; and
- (b) either—
  - (i) if the person is an owner of a lot included in the scheme—the owner of the other lot included in the scheme; or
  - (ii) otherwise—the owners of each of the lots included in the scheme.

## **Part 4 Documents, materials and information**

### **67 Documents and materials to be given to body corporate by original owner**

- (1) This section applies if the original owner stops being the owner of one or both of the lots included in a specified two-lot scheme (the *relevant event*).
- (2) Within two months after the relevant event, the original owner must give the following to the body corporate—

- (a) all plans, specifications, diagrams and drawings of buildings and improvements forming part of scheme land (as built) showing water pipes, electrical wiring, drainage, ventilation ducts, air conditioning systems and other utility infrastructure;
- (b) all policies of insurance taken out by the original owner for the body corporate;
- (c) an independent valuation for each building the body corporate must insure under chapter 6, part 9;
- (d) documents in the original owner's possession or control relevant to the scheme, including, for example, registers, written agreements of the body corporate, any documents relating to the engagement or termination of a body corporate manager or service contractor, correspondence and tender documentation;
- (e) the body corporate's seal;
- (f) documents in the original owner's possession or control relevant to the buildings or improvements on scheme land, not including certificates of title for individual lots, or documents evidencing rights or obligations of the original owner that are not capable of being used for the benefit of the body corporate or an owner (other than an owner who is the original owner) of a lot, but including—
  - (i) contracts for building work, or other work of a developmental nature, carried out on scheme land; and
  - (ii) certificates of classification for buildings and fire safety certificates;
- (g) a detailed and comprehensive list of the body corporate assets.

Maximum penalty—150 penalty units.

- (3) If documents of the types mentioned in subsection (2) come into the original owner's possession after the relevant event,

the original owner must give them to the body corporate at the earliest practicable opportunity.

Maximum penalty—20 penalty units.

## **68 Keeping of records—Act, s 204**

- (1) The body corporate must keep the following—
  - (a) notices given in relation to the specified two-lot scheme by a public authority, local government or other authority;
  - (b) orders made by a judicial or administrative authority—
    - (i) against the body corporate; or
    - (ii) against an owner, or an occupier, of a lot included in the scheme in relation to the scheme; or
    - (iii) otherwise—in relation to the scheme;
  - (c) each policy of insurance the body corporate puts in place;
  - (d) documents evidencing each engagement of a body corporate manager or service contractor or the termination of the engagement of a body corporate manager or service contractor;
  - (e) each agreement between the body corporate and the owner of a lot included in the scheme about the giving of rights, or the imposing of conditions, under an exclusive use by-law;
  - (f) correspondence received by the body corporate, and correspondence sent by the body corporate;
  - (g) all lot owner agreements by which decisions of the body corporate have been made for the scheme;
  - (h) any written requests to enter into a lot owner agreement that do not result in a lot owner agreement;
  - (i) copies of instruments authorising a person to act for an owner of a lot;

- (j) copies of instruments amending the authorisation of a person to act for an owner of a lot;
- (k) written notices revoking the authorisation of a person to act for an owner of a lot;
- (l) the body corporate's financial institution account statements, accounting records and statements of account, if any, for each financial year;

*Note—*

For the body corporate of a community titles scheme that has changed from being a scheme to which a different regulation under the Act applied to being a specified two-lot scheme to which this regulation applies, see also section 83 (Rolls, registers and other documents or information kept under previous regulation).

- (m) contribution notices given by the body corporate or the owner of a lot;
  - (n) documents evidencing work undertaken for the body corporate, including, for example, tax invoices and receipts;
  - (o) any written notice from a person appointed as the record keeper for the body corporate resigning from that position;
  - (p) independent valuations for a building the body corporate must insure under chapter 6, part 9;
  - (q) details of the nature and value of improvements mentioned in section 53;
  - (r) details mentioned in section 55(5)(b);
  - (s) details of the use of a lot mentioned in section 57.
- (2) However, particular records may be disposed of under section 69.
- (3) The following documents may be kept by the body corporate in paper form or in photographic or electronic form—
- (a) notices given to the body corporate under section 64;
  - (b) lot owner agreements mentioned in subsection (1)(g);



- (c) written requests mentioned in subsection (1)(h).

## **69 Disposal of records—Act, s 204**

- (1) The following documents may be disposed of 6 years after their creation or receipt—
  - (a) statements of account;
  - (b) documents evidencing or detailing major repairs or installations carried out on the common property;
  - (c) orders made by a judicial or administrative authority—
    - (i) against the body corporate; or
    - (ii) against an owner, or an occupier, of a lot included in the scheme in relation to the scheme; or
    - (iii) otherwise—in relation to the scheme;
  - (d) notices given in relation to the scheme by a public authority, local government or other authority;
  - (e) written agreements to which the body corporate is a party.
- (2) The following documents may be disposed of 2 years after their creation or receipt—
  - (a) correspondence of no significant or continuing interest;
  - (b) reconciliation statements and associated financial institution statements and invoices;
  - (c) copies of instruments authorising a person to act for an owner of a lot;
  - (d) copies of instruments amending the authorisation of a person to act for an owner of a lot;
  - (e) written notices revoking the authorisation of a person to act for an owner of a lot.
- (3) Despite subsections (1) and (2), a document may not be disposed of if it is a document having current relevance to the scheme, including, for example, a notice required to be given

to the body corporate, if the information included in the notice is still current information.

## **70 Appointment of person to keep body corporate's records**

- (1) The body corporate must, by a lot owner agreement, appoint 1 of the following persons to keep the body corporate's records on behalf of the body corporate—
  - (a) an owner of a lot included in the scheme;
  - (b) a representative of an owner of a lot;
  - (c) a body corporate manager for the scheme.
- (2) For an appointment under subsection (1)(a), the body corporate may appoint the owners of both lots included in the scheme to keep the body corporate's records.

## **71 Resignation of person who keeps body corporate's records**

- (1) A person who has been appointed to keep the body corporate's records under section 70 (the *relevant record keeper*) may resign from the position by giving a written notice of resignation to—
  - (a) the body corporate; and
  - (b) either—
    - (i) if the person is an owner of a lot included in the scheme—the owner of the other lot included in the scheme; or
    - (ii) otherwise—the owners of each of the lots included in the scheme.
- (2) Until the body corporate makes another appointment under section 70, the owners of the lots included in a specified two-lot scheme must each keep a copy of a record that is received by the body corporate from the date the relevant record keeper resigns.

**72 Access to records—Act, s 204**

- (1) The following persons must allow a relevant person reasonable access to the body corporate's records—
  - (a) the body corporate;
  - (b) a person who is appointed to keep body corporate records under section 70.
- (2) However, the body corporate, or a person mentioned in subsection (1)(b), is not required to allow a relevant person access to records under this section if a legal proceeding between the body corporate and the person has started or is threatened and the records are privileged from disclosure.
- (3) Also, the body corporate, or a person mentioned in subsection (1)(b), is not required to allow a relevant person access to a part of a record under this section if the body corporate reasonably believes the part contains defamatory material.
- (4) In this section—

*relevant person* means—

  - (a) an owner of a lot included in a specified two-lot scheme;  
or
  - (b) a representative of an owner of a lot who is authorised to have access to the body corporate's records.

**73 Fee for information given to interested persons—Act, s 205**

- (1) For section 205(2) of the Act—
  - (a) the fee for inspection of the body corporate's records is—
    - (i) if the person inspecting the records is an owner of a lot—
      - (A) if the owner's request to inspect a document is the owner's first request to inspect that document—nil; or

- (B) otherwise—\$17.65; or
- (ii) if the person inspecting the records is not an owner of a lot—\$33.90; and
- (b) the fee for obtaining a copy of a record kept by the body corporate is 65c for each page supplied.
- (2) For section 205(4) of the Act, the prescribed fee to accompany a request for a body corporate information certificate under the subsection is \$65.35, plus a priority fee of \$24.55 if the certificate is required within 24 hours, plus a fee of \$16.90 if the certificate is to be faxed.
- (3) The priority fee mentioned in subsection (2) must be refunded if the certificate is not supplied within 24 hours.

#### **74 Information to be given by seller to buyer—Act, s 206**

For section 206(2)(f) of the Act, the other information that a disclosure statement must include is—

- (a) any contributions owing by the seller under chapter 5 for which the buyer will become liable if the buyer becomes the owner of the lot; and
- (b) any lot owner agreement, regardless of when the agreement was entered into, that will be binding on the buyer if the buyer becomes the owner of the lot; and
- (c) whether an account with a financial institution is kept by the body corporate under section 29 and, if so—
  - (i) the amount standing in credit in the account; and
  - (ii) the name of each person authorised to operate the account; and
- (d) details about each insurance policy held by the body corporate including—
  - (i) the amount of coverage provided by the policy; and
  - (ii) the premium paid or payable by the owner of the lot for the insurance policy; and
  - (iii) if the policy is current—when the policy expires.

## Chapter 8 Miscellaneous

### 75 Return of body corporate property

- (1) This section applies if—
  - (a) a person has possession or control of any of the following property (the *specified property*)—
    - (i) a body corporate asset for a specified two-lot scheme;
    - (ii) a record or other document of a body corporate;
    - (iii) a body corporate seal; and
  - (b) the person took possession or control of the specified property in the person's capacity, or purportedly in the person's capacity, as—
    - (i) an owner of a lot included in a scheme or a representative of an owner; or
    - (ii) a body corporate manager or service contractor, or an associate of a body corporate manager or service contractor; and
  - (c) the person is served with a written request from—
    - (i) the owners of both lots in the scheme; or
    - (ii) if the person is an owner of 1 of the lots—the owner of the other lot;requiring the person to give, within 14 days after the person is served with the request, the specified property to the person named in the request.
- (2) The person must comply with the request.  
Maximum penalty—20 penalty units.
- (3) The person may not claim a lien on specified property mentioned in subsection (1)(a)(ii) or (iii).

## **76 Documents in custody of body corporate manager**

- (1) This section applies if—
  - (a) a person engaged as a body corporate manager for a specified two-lot scheme has custody of a document of the body corporate; and
  - (b) the person holds the document in photographic or electronic form; and
  - (c) the person's engagement as body corporate manager expires and is not renewed, or is otherwise brought to an end.
- (2) The body corporate may require the person—
  - (a) to give the body corporate the document in the form—
    - (i) of a disc, tape or other article or any material from which writings or messages are capable of being produced or reproduced (with or without the aid of another article or device); and
    - (ii) that is immediately accessible by the body corporate; or
  - (b) to reproduce, and give to the body corporate, the document in paper form.
- (3) The person must, at the person's own expense, comply with a requirement of the body corporate under subsection (2).  
Maximum penalty for subsection (3)—20 penalty units.

# **Chapter 9 Transitional provisions**

## **77 Main purposes of ch 9**

The main purposes of this chapter are—

- (a) to provide for a community titles scheme that changes from being a scheme to which a previous regulation

applied to being a specified two-lot scheme to which this regulation applies (a *changed scheme*); and

- (b) to provide for the continued application of particular provisions under a previous regulation to the changed scheme.

## 78 Definitions for ch 9

In this chapter—

*authorised action or document* means an action done or a document made or kept under a previous provision.

*changeover day*, for a community titles scheme, means the day an existing regulation stops applying to the scheme and this regulation starts applying to the scheme.

*previous provision* means a provision of a previous regulation as in force immediately before the changeover day.

*previous regulation*, for a community titles scheme, means a regulation under the Act applying to the scheme immediately before the changeover day.

## 79 Authorised actions and documents etc. under previous provision

- (1) This section applies to the following—
  - (a) an authorised action or document that continued to have effect or was in force immediately before the changeover day;
  - (b) an entity's obligation under a previous provision that applied to the entity immediately before the changeover day;
  - (c) a protection under a previous provision that applied to an entity immediately before the changeover day.
- (2) Subject to a specific provision of this regulation in relation to an authorised action or document, obligation or protection under a previous provision, if there is a corresponding

provision to the previous provision, the authorised action or document, obligation or protection continues in force or to have effect according to its terms.

(3) In this section—

*corresponding provision*, to a previous provision, means a provision of this regulation that is substantially the same as the previous provision.

## **80 Existing obligation to pay contributions and penalties**

(1) This section applies if—

(a) a community titles scheme changes from being a scheme to which a previous regulation applied to being a specified two-lot scheme to which this regulation applies; and

(b) immediately before the changeover day, an owner of a lot included in the scheme had, under the previous regulation, an obligation to pay—

(i) a contribution levied by the body corporate for the scheme on the owner of each lot in the scheme for a financial year; or

(ii) a special contribution levied by the body corporate for the scheme on the owner of each lot in the scheme for a financial year; or

(iii) a penalty for late payment imposed on the owner by the body corporate.

(2) The owner continues to be liable to pay the contribution or the penalty to the body corporate for the scheme under this regulation.

## **81 Recovery by body corporate of debts under previous regulation**

(1) This section applies if—



- (a) a community titles scheme changes from being a scheme to which a previous regulation applied to being a specified two-lot scheme to which this regulation applies; and
  - (b) immediately before the changeover day, an owner of a lot included in the scheme had not paid a contribution or contribution instalment to the body corporate for the scheme by the date for payment under the previous regulation.
- (2) The body corporate may continue to recover from the owner any contribution or contribution instalment the owner is liable to pay under section 80 and may recover the following as a debt—
- (a) the amount of the contribution or contribution instalment;
  - (b) any penalty imposed under the previous regulation for not paying the contribution or contribution instalment;
  - (c) any costs reasonably incurred by the body corporate in recovering the amount.

## **82 Administrative and sinking funds under previous regulation**

- (1) This section applies if—
- (a) a community titles scheme changes from being a scheme to which a previous regulation applied to being a specified two-lot scheme to which this regulation applies; and
  - (b) before the changeover day, the body corporate for the scheme kept an administrative fund or a sinking fund under the previous regulation; and
  - (c) immediately before the changeover day, there was an amount in the administrative fund or the sinking fund.
- (2) The body corporate may use the amount in the administrative fund and the sinking fund only for the payment of agreed

body corporate expenses or the payment of a premium or other charge for insurance required to be taken out by the body corporate.

- (3) The administrative and sinking funds continue until the funds are expended.

### **83     Rolls, registers and other documents or information kept under previous regulation**

- (1) This section applies if—
  - (a) a community titles scheme changes from being a scheme to which a previous regulation applied to being a specified two-lot scheme to which this regulation applies; and
  - (b) immediately before the changeover day, the body corporate for the scheme kept a roll, register or other documents or information (the *existing records*) under the previous regulation that the body corporate is not required to keep under this regulation.
- (2) The body corporate must continue to keep the existing records for the period that applied under the previous regulation immediately before the changeover day.
- (3) However, the body corporate is not required to maintain the existing records.
- (4) The body corporate must ensure that the existing records are clearly marked to show that the records have not been maintained since the date this regulation started applying to the scheme.

### **84     Existing policies of insurance**

- (1) This section applies if—
  - (a) a community titles scheme changes from being a scheme to which a previous regulation applied to being a specified two-lot scheme to which this regulation applies; and

- (b) immediately before the changeover day, the body corporate for the scheme held a policy of insurance that was in force.
- (2) To the extent the policy of insurance complied with the requirements under a previous regulation, the policy is taken to comply with chapter 6, part 9.
- (3) Subsection (2) applies only until the policy is first renewed after the changeover day.

## Schedule Dictionary

### section 4

***address for service***, for a relevant person mentioned in section 65(1), means the address for service for the person under section 65(2).

***agreed body corporate expense*** see section 23.

***authorised action or document***, for chapter 9, see section 78.

***building***, for chapter 6, part 9, see section 47.

***changeover day***, for chapter 9, see section 78.

***contribution notice*** see section 26(2).

***damage***, for chapter 6, part 9, see section 47.

***date for payment*** see section 26(2)(c).

***electronic communication*** see *Electronic Transactions (Queensland) Act 2001*, schedule 2.

***non-freehold land*** see the *Land Act 1994*, schedule 6.

***previous provision***, for chapter 9, see section 78.

***previous regulation***, for chapter 9, see section 78.

***reinstatement insurance*** means insurance taken out under section 49 or 50.

***representative***, of an owner, means a person who is a representative of the owner under section 7.

***residential or business address***, of a person in relation to a specified two-lot scheme, means the following address most recently given to the body corporate under this regulation—

- (a) for an individual—the person’s residential address;
- (b) for a corporation—the person’s business address.

***voluntary insurance scheme*** see section 55.