



Body corporate elections

This factsheet outlines the requirements for holding an election to form a body corporate committee. References to the *Body Corporate and Community Management Act 1997* (the BCCM Act) and/or the *Body Corporate and Community Management (Standard Module) Regulation 2008* (the Standard Module) are included.

How are elections conducted?

The committee elections must be conducted in a way to ensure all people entitled to vote have the opportunity to do so and the security of their vote is maintained.

The elections must be held in accordance with sections 16 to 27 of the Standard Module however the body corporate may by special resolution decide that elections be held in another way. The method chosen must be fair and reasonable.

The election of the committee members must be the last item of business on the agenda of the annual general meeting and the election of members takes effect immediately after the close of the meeting.

How are ballot-papers prepared?

Nominations close and must be returned to the secretary by the end of the body corporate's financial year to enable preparation of ballot-papers.

The secretary must prepare ballot-papers for any positions for which a ballot is required e.g. a ballot will not be required if there is only one nomination received for the position of chairperson, secretary or treasurer (as the person will be declared elected unopposed).

Separate ballots must be held for the chairperson, secretary, treasurer and ordinary members. However, it is not necessary to have separate ballot-papers for each position.

Note: the ballot must be by secret ballot unless the body corporate has passed an ordinary resolution to hold open ballots (see Standard Module sections 21 and 22 for information on conducting secret ballots and open ballots).

The secretary must forward the ballot material required under Standard Module sections 21 and 22 with the notice of the annual general meeting and completed ballot

material must be given or forwarded to the secretary before or at the annual general meeting.

Depending on whether there will be a secret or open ballot, the secretary must pass any ballot-papers, particulars envelopes and ballot-paper envelopes to the person chairing the meeting. The person chairing the meeting must confirm, by checking the details on each ballot that the persons casting the votes are eligible to vote in the election.

Are there any special circumstances?

Executive positions

If there is only one nomination received for any of the positions of chairperson, secretary or treasurer, a ballot will not need to be held. The person chairing the meeting will simply declare the person elected unopposed (Standard Module section 26).

However, if for any of the executive positions there have been no nominations, the person chairing the meeting must invite nominations for the positions and must accept nominations either:

- from the body corporate members present at the meeting
- in writing from members of the body corporate not present.

Note: the people nominated must be eligible.

If more than one person has been nominated for a position, a ballot will be necessary and the person who receives the highest number of votes is declared elected.

Once the voting has been completed, if two or more nominees receive the same number of votes, the deadlock may be decided by chance in a way the meeting decides (e.g. a toss of a coin).

Ordinary positions

The ballot for ordinary positions can only be counted after the executive positions are filled.

If a person who has nominated for both an executive and ordinary position, and is elected as an executive member, their nomination as an ordinary member is no longer considered.

If the number of candidates nominated for ordinary member positions plus the number of elected executive positions is not

more than the required number of members for the committee, the person chairing the meeting must declare the candidates elected as ordinary members.

Also, if the number of candidates nominated for ordinary member positions plus the number of elected executive positions is less than the required number of members for the committee, the person chairing the meeting must invite nominations at the meeting for ordinary positions to bring the total number of all committee members to not more than the required number.

This means nominations must be invited:

- in a scheme of seven or more lots — where the number of nominations is fewer than seven, or
- in a scheme of fewer than seven lots — where the number of nominations received is fewer than the number of lots in the scheme.

Usually co-owners of a lot are restricted from having more than one co-owner on the committee. However, where the number of candidates is less than the required number, if one co-owner of a lot has been elected to the committee, one other co-owner of the lot may be nominated as an ordinary member to bring the total number of voting members of the committee to three. The person chairing the meeting must invite nominations from the floor of the meeting and must accept nominations in writing from members of the body corporate not present.

Depending on how many candidates there are and the number of ordinary positions to be filled, the persons who receive the most number of votes, in descending order, must be declared elected as ordinary members.

Once the voting has been completed, if two or more nominees receive the same number of votes, the deadlock may be decided by chance in a way the meeting decides (e.g. a toss of a coin).

For both executive and ordinary positions, the person chairing the meeting must declare the result of the election and state the number of votes cast for each candidate. The number of votes cast for each candidate must be recorded in the minutes of the general meeting.

Refer to Standard Module sections 21, 22 and 24.

What happens if a committee fails to be elected at the annual general meeting?

If at least one executive position is not filled, or the total number of voting members is less than three, an extraordinary general meeting must be called.

At the extraordinary general meeting, the body corporate may appoint a person who is eligible to be a member of the committee to fill any vacancy. It is not necessary to conduct an election.

If one co-owner of a lot has been elected to the committee,

one other co-owner of the lot may be nominated as an ordinary member of the committee, but only to bring the number of voting members of the committee to three.

The agenda of the extraordinary general meeting must also include a motion to approve the engagement of a body corporate manager under Chapter 3 Part 5 of the Standard Module.

The motion will only be considered if:

- at least one executive member position is not filled or
- the total number of voting members is less than three.

If the body corporate engages a body corporate manager under Chapter 3 Part 5 engagement all committee member positions are vacated and there will not be a committee.

Refer to Standard Module sections 29 to 32.

What is the standard term of office?

A committee member's position becomes vacant if the member:

- resigns by written notice to the chairperson or secretary
- is not present personally or by proxy at two consecutive meetings of the committee without the committee's leave
- is convicted of an indictable offence (whether or not a conviction is recorded)
- is removed from office by an ordinary resolution of the body corporate
- becomes ineligible to hold the position dies.

A member becomes ineligible if:

- at the time the member was elected he or she was a member of the body corporate, but has since sold his or her lot and is therefore no longer a member of the body corporate, or
- he or she was not a member of the body corporate but was nominated by a member of the body corporate who has since sold their lot and is therefore no longer a member of the body corporate.

Another example of when a member is no longer eligible is when the member is engaged as a body corporate manager or service contractor or is authorised as a letting agent.

Refer to Standard Module section 33.

How does the committee fill vacancies?

If the member is removed from office by an ordinary resolution of the body corporate at a general meeting, the body corporate may at the same general meeting appoint a person who is eligible to fill the vacancy.

It is not necessary to conduct an election, as would normally be the case for the annual general meeting. For example, invitations to nominate do not need to be sent to lot owners.

Filling vacancies at committee meetings

The committee has the authority to fill vacancies. If a member's position becomes vacant, as long as there are sufficient numbers to form a quorum, the committee may either:

- call a committee meeting and appoint a person to fill the vacancy
- call a general meeting to choose a person to fill the vacancy.

If there are not sufficient numbers to form a quorum, the committee must call a general meeting to choose a person to fill the vacancy.

Note: if a member is removed from office by an ordinary resolution of the body corporate at a general meeting, and the body corporate has filled the vacancy at the same general meeting, the above options for the committee do not apply.

Refer to Standard Module sections 33 to 38.

The Office of the Commissioner for Body Corporate and Community Management (BCCM Office)

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Copies of the *Body Corporate and Community Management Act 1997*, the regulation modules, and any amendments can be accessed for free via the Office of the Parliamentary Council by visiting:

www.legislation.qld.gov.au/Acts_SLs/Acts_SL.htm

Copies can be purchased online by visiting

www.bookshop.qld.gov.au, or by contacting SDS Customer Service by phoning (07) 3883 8700 or 1800 801 123.

Disclaimer

The laws referred to in this guide are complex and various qualifications may apply in different circumstances. The information in this factsheet does not constitute legal advice. You are encouraged to obtain independent legal or financial advice if you are unsure of how these laws apply to your situation.

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