

Body Corporate and Community Management

Lot entitlements - 2013 Amendments

On 19 March 2013 the Queensland Parliament passed amendments to the lot entitlement provisions of the *Body Corporate and Community Management Act 1997* (the BCCM Act).

This factsheet provides an overview of the amendments. It is not an exhaustive guide to the lot entitlement amendments and the legislation should be consulted as the primary reference. This factsheet should be read in conjunction with our factsheet *Lot entitlements - the basics*.

Background to the 2013 Amendments

Previously the BCCM Act provided the capacity for lot owners to apply for an order to adjust their lot entitlements ('adjustment orders').

In 2011 the BCCM Act was amended to require community titles schemes to revert their contribution schedule lot entitlements to the lot entitlements in place prior to any adjustment orders if a lot owner submitted a motion to the body corporate or committee requesting such a change. This is known as the '2011 reversion process'.

The 2011 amendments also affected the resolution of disputes about contribution schedule lot entitlements.

Objectives of the 2013 Amendments

The objectives of the 2013 amendments relating to lot entitlements are to:

- remove the requirement for bodies corporate to undertake the 2011 reversion process and stop any current reversion process;

- provide a process for bodies corporate to reinstate the contribution schedule lot entitlements that were adjusted under a 2011 reversion process;
- enable bodies corporate to give effect to adjustment orders that were unable to be registered due to the 2011 amendments; and clarify the jurisdiction for the resolution of disputes regarding lot entitlements.

Commencement of the Amendments

The amendments requiring any incomplete matters or proceedings relating to a 2011 reversion process to cease are taken to have commenced from 14 September 2012.

The remaining amendments to the lot entitlements provisions commenced on 27 March 2013.

New and amended provisions

The following summarises the effect of the key changes.

Dispute resolution provisions

If a body corporate passes a resolution without dissent to change the contribution schedule lot entitlements, a lot owner who believes that the changed entitlements are not consistent with the relevant principle used may apply to a specialist adjudicator or the Queensland Civil and Administrative Tribunal (QCAT) for an order that the changed entitlements are not consistent with the relevant principle (section 47AA)

A lot owner may no longer apply under the Chapter 6 dispute resolution provisions or to QCAT about whether or not the body corporate acted reasonably in passing or not passing the motion to change lot entitlements.

Departmental adjudicators cannot determine an application to give effect to a motion to change lot entitlements. However, disputes about procedural irregularities in calling and holding a general meeting held to consider a motion to adjust the contribution schedule lot entitlements may continue to be resolved by the Chapter 6 provisions, including by departmental adjudication.

Additional requirements have been included in relation to applications about a resolution to change to the contribution schedule lot entitlements, and regarding the implementation of any order arising from the application (sections 47AB, 47AC and 47B).

Transitional provisions

The requirement for a body corporate to undertake a 2011 reversion process has been removed. (section 398)

Any incomplete matters or proceedings relating to a 2011 reversion process will cease to have effect. (sections 397, 399, 400 and Schedule 5A.)

A process is provided for bodies corporate to proceed to register a new community management statement in accordance with an adjustment order (referred to as a relevant decision) which was not able to be previously registered due to the 2011 amendments. (sections 402 and 403)

A process is provided for bodies corporate and committees to reinstate the contribution schedule lot entitlements to the last adjustment order entitlements. (sections 409 and 410).

Flow charts of these processes, including timeframes, are set out on the last page of this fact sheet. However, the processes applying in a specified two lot scheme are slightly different, reflecting the different decision-making processes in such schemes.

If a lot owner believes the changed lot entitlements determined by the committee or body corporate under these processes do not accurately reflect the decided entitlements or last adjustment order entitlements, the owner may apply for an order of a specialist adjudicator or QCAT (sections 405 and 412).

Subsequent provisions set out the consequences of any order made under these sections to adjust the contribution schedule lot entitlements. (sections 406 and 413)

Further provisions set out the requirements if the contribution schedule lot entitlements for lots which have been subject to a subdivision, amalgamation, boundary change or material change are to be changed under the transitional provisions. (sections 416 through 419)

Note: the amendments introduce offence provisions which apply if a body corporate fails to lodge a request to record a new community management statement to implement a decision of the body corporate committee, body corporate, specialist adjudicator or QCAT that the contribution schedule lot entitlements be adjusted.

Further information

The Office of the Commissioner for Body Corporate and Community Management (the BCCM Office) provides a free information service for those who live, work or invest in community titles schemes. The role of the information service is to provide information on the Act and the associated regulation modules; however, the information service cannot interpret the legislation, provide legal advice or provide directions or rulings.

Our Office also provides a dispute resolution service to resolve disagreements which may arise within the body corporate and which cannot be resolved internally. The dispute resolution service resolves matters in dispute either through conciliation or a formal adjudication process.

Note: The jurisdiction of the BCCM Office to resolve disputes relating to lot entitlements is limited to applications for specialist adjudication on certain matters, or for department adjudication of a dispute about procedural irregularities in calling and holding a general meeting.

Enquires regarding applications to the Queensland Civil and Administrative Tribunal (QCAT) regarding lot entitlements must be made directly to QCAT.

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

Phone (freecall): 1800 060 119

Email: bccm@justice.qld.gov.au

Website: www.justice.qld.gov.au/bccm

Street address: Brisbane Magistrate's Court
Level 4, 363 George Street,
Brisbane

Postal address: GPO Box 1049,
Brisbane Qld 4001

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

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.

© **The State of Queensland
(Department of Justice and Attorney-General)
2013**

Copyright protects this publication. The state of Queensland acting through the Department of Justice and Attorney-General has no objection to this material being reproduced, but asserts its right to be recognised as the author of this original material and the right to have its material remain unaltered.

Body Corporate and Community Management

 www.justice.qld.gov.au

 **1800 060 119**

The material presented in this publication is distributed by the Queensland Government for information only and is subject to change without notice. The Queensland Government disclaims all responsibility and liability (including liability in negligence) for all expenses, losses, damages and costs incurred as a result of the information being inaccurate or incomplete in any way and for any reason. © State of Queensland (Department of Justice and Attorney-General) 2012

STEPS IN THE REINSTATEMENT PROCESS

* For all schemes, except specified two-lot schemes

New Section 409

Lot owner submits request for adjustment to the contribution schedule lot entitlements

A lot owner may submit a request to their body corporate committee proposing an adjustment of the contribution schedule lot entitlements to reflect the last adjustment order entitlements for the scheme.

Committee must take particular action within 60 days of the lot owner's request

Within 60 days of receiving the lot owner's request, the committee must:

- identify the last adjustment order entitlements; and
- give a written, dated notice to each owner of a lot in the scheme.

The committee's written notice must:

- state that a request has been submitted to the committee;
- be accompanied by written evidence of the last adjustment order entitlements for the scheme;
- state the committee's proposed adjustment of the lot entitlements for the scheme;
- Invite the lot owners to make written submissions, within 28 days (the *submission period*) after the date of the notice, as to what modification, if any, is required to be made to the last adjustment order entitlements to take account of a subdivision, amalgamation, boundary change or material change that occurred after the last adjustment order was made for the scheme.

Lot owners are given 28 days to make submissions about whether they think any modifications are required to be made to the last adjustment order lot entitlements

New Section 410

Committee must make a decision within 90 days of the end of the submission period about whether any modifications must be made to the last adjustment order entitlements

Within 90 days after the submission period ends, the committee must, after considering any submissions made during the submission period, decide what modification, if any, is required to be made to the last adjustment order entitlements for the scheme to take account of a subdivision, amalgamation, boundary change or material change that occurred after the last adjustment order was made for the scheme.

Committee and body corporate must take particular actions after committee's decision about whether any modifications are required to the last adjustment order entitlements

- **Within 7 days** after making its decision, the committee must give the owner of each lot written notice of the committee's decision; and
- **Within 30 days** after the committee makes the decision, the body corporate must lodge a request to record a new community management statement for the scheme incorporating the last adjustment order entitlements for the scheme, as modified, if applicable, to take account of a subdivision, amalgamation, boundary change or material change that occurred after the last adjustment order was made for the scheme.

STEPS IN THE PROCESS GIVING EFFECT TO RELEVANT DECISION

* For all schemes, except specified two-lot schemes

New Section 402

Lot owner submits request for adjustment to the contribution schedule lot entitlements

A lot owner may submit a request to their body corporate committee proposing an adjustment of the contribution schedule lot entitlements to reflect the decided entitlements for the scheme.

Committee must take particular action within 60 days of the lot owner's request

Within 60 days of receiving the lot owner's request, the committee must:

- identify the decided entitlements; and
- give a written, dated notice to each owner of a lot in the scheme.

The committee's written notice must:

- state that a request has been submitted to the committee;
- be accompanied by written evidence of the relevant decision;
- state the committee's proposed adjustment of the lot entitlements for the scheme;
- Invite the lot owners to make written submissions, within 28 days (the *submission period*) after the date of the notice, as to what modification, if any, is required to be made to the decided entitlements to take account of a subdivision, amalgamation, boundary change or material change that occurred after the relevant decision was made for the scheme.

Lot owners are given 28 days to make submissions about whether they think any modifications are required to be made to the last adjustment order lot entitlements

New Section 403

Committee must make a decision within 90 days of the end of the submission period about whether any modifications must be made to the decided entitlements

Within 90 days after the submission period ends, the committee must, after considering any submissions made during the submission period, decide what modification, if any, is required to be made to the decided entitlements for the scheme to take account of a subdivision, amalgamation, boundary change or material change that occurred after the last adjustment order was made for the scheme.

Committee and body corporate must take particular actions after committee's decision about whether any modifications are required to the decided entitlements

- **Within 7 days** after making its decision, the committee must give the owner of each lot written notice of the committee's decision; and
- **Within 30 days** after the committee makes the decision, the body corporate must lodge a request to record a new community management statement for the scheme incorporating the decided entitlements for the scheme, as modified, if applicable, to take account of a subdivision, amalgamation, boundary change or material change that occurred after the relevant decision was made for the scheme.