

Body Corporate and Community Management

Lot entitlements – the basics

The following deals with lot entitlements under the *Body Corporate and Community Management Act 1997* (the BCCM Act) and the *Body Corporate and Community Management (Standard Module) Regulation 2008* (the Standard Module). It is not an exhaustive guide to lot entitlements and the legislation should be consulted as the primary reference.

What are lot entitlements?

The community management statement (CMS) for each community titles scheme in Queensland contains two schedules of lot entitlements. These schedules are the 'contribution schedule' and the 'interest schedule'. Below is an example of how these schedules of lot entitlements could appear in the CMS for a block of eight units.

Contribution Schedule	
Lot	Entitlements
1 in SP12345	1
2 in SP12345	1
3 in SP12345	1
4 in SP12345	1
5 in SP12345	1
6 in SP12345	1
7 in SP12345	1
8 in SP12345	1
Total Lots: 8	Aggregate: 8

For each of the two schedules, each lot (or unit) in the scheme is identified and allocated with a whole number. The aggregate or total of all of the lot entitlements is also shown.

Interest Schedule	
Lot	Entitlements
1 in SP12345	1
2 in SP12345	1
3 in SP12345	1
4 in SP12345	2
5 in SP12345	2
6 in SP12345	3
7 in SP12345	3
8 in SP12345	3
Total Lots: 8	Aggregate: 16

The registered plans for schemes created before 13 July 1997, contained a single schedule of lot entitlements. The transitional provisions of the BCCM Act provide that the contribution schedule lot entitlements and interest schedule lot entitlements for these schemes existing before 13 July 1997 are identical to the single schedule of lot entitlements endorsed on the original registered plan.

What is the purpose of lot entitlements?

Lot entitlements are used for a number of purposes, but they are mostly used to divide body corporate expenses among lot owners. The following is a more specific outline of the purposes of lot entitlements.

The **contribution schedule lot entitlements** are used to calculate:

- a lot owner's share of most body corporate expenses. However, the BCCM Act or regulations may provide that particular expenses, such as building insurance premiums, are divided amongst the owners in a different way, and
- the value of a lot owner's vote when voting on an ordinary resolution if a 'poll' is called for.

The **interest schedule lot entitlements** are used to calculate:

- each lot owner's share of the common property and body corporate assets if the scheme is terminated (a scheme could be terminated if all the owners of lots in a scheme agreed to dispose of the scheme for the purposes of redevelopment)
- the value of the lot for the purpose of calculating local government rates and charges, and other costs that are calculated on the basis of the value.

Examples of how entitlements are used can be found on pages 3 and 4 of this fact sheet.

It is important to note that the costs of utility services supplied to a lot (for example water and electricity) that can be separately measured and charged are not divided amongst the owners on the basis of lot entitlements. In these circumstances the owner will be separately billed by the service provider for the cost of supplying the service to their lot.

How are lot entitlements set?

Lot entitlements are set by the original owner (the developer) when the community titles scheme (CTS) is established. Effective from 2011 the original owner is required to set lot entitlements in accordance with a contribution schedule principle and an interest schedule principle. The CMS must state the deciding principle for the contribution schedule and either:

- if the equality principle is used but the entitlements are not equal, explain why they are not equal, or
- if the relativity principle is used, explain how the principle was applied.

For the interest schedule, the CMS must state whether the market value principle applies and if not, explain why the interest schedule lot entitlements do not reflect the market value of the lots.

Prior to 2011 the respective contribution schedule lot entitlements were set on the basis that entitlements must be equal, except to the extent to which it is just and equitable in the circumstances for them not to be equal.

These lot entitlements will continue to apply to the scheme, unless an adjustment is made to one or both of the schedules. The mechanisms available for the adjustment of lot entitlements are outlined below.

The contribution schedule principle

The principles for deciding contribution schedule lot entitlements are:

- the **equality principle**; or
- the **relativity principle**

The equality principle

The equality principle provides that the lot entitlements must be equal, except to the extent that it is just and equitable for them not to be equal. For example, a commercial CTS in which the owner of 1 lot uses a larger volume of water or conducts a more dangerous or higher risk industry than the owners of the other lots.

The relativity principle

The relativity principle provides that the lot entitlements must reflect the relationship between the lots by reference to one or more particular relevant factors. The relevant factors for the **relativity principle** are -

- how the scheme is structured;
- the nature, features and characteristics of the lots;
- the purposes for which the lots are used;
- the impact the lots may have on costs of maintaining the common property;
- the market values of the lots.

The interest schedule principle

The principle for deciding interest schedule lot entitlements is the **market value principle**.

As the name suggests it must reflect the market value of the lots except to the extent that it is just and equitable not to reflect the market value.

The community management statement

For any new scheme established on or after 14 April 2011, or an **adjusted scheme**, the CMS must state the deciding principle for the contribution schedule and either:

- if the equality principle is used but the entitlements are not equal, explain why they are not equal, or
- if the relativity principle is used, explain how the principle was applied.

For the interest schedule, the CMS must state whether the market value principle applies and if not, explain why the interest schedule lot entitlements do not reflect the market value of the lots.

Note: an **adjusted scheme** is a scheme that was established before 14 April 2011 and where the scheme has since adjusted the contribution schedule or interest schedule.

Examples of the application of lot entitlements

1. Administrative fund budget

- Q. At the annual general meeting (AGM), the body corporate adopted an administrative fund budget that included expected expenses for maintenance of the common property gardens, payment of the body corporate management fees, and cleaning of the common property driveway.
- A. These expenses must be divided amongst the owners in the same proportion as the contribution schedule lot entitlements. If, for example, a lot has three contribution schedule lot entitlements and the aggregate contribution schedule lot entitlements for the scheme is 30, the owner of the lot will contribute 3/30 or 10 per cent of these costs. The expenses will only be divided equally amongst the owners if the contribution schedule lot entitlements for the scheme are equal.

2. Insurance

- Q. The body corporate has taken out building insurance in accordance with the insurance requirements of the BCCM Act. However, the secretary has stated that the insurance premium is not divided on the basis of the contribution schedule lot entitlements for the scheme.
- A. Insurance is an expense that is treated differently from most other body corporate expenses. The division of costs of building insurance premiums depends on the type of the plan of subdivision applying to the scheme. In a scheme created under a building format plan, the cost of building insurance is divided amongst the owners on the basis of the interest schedule lot entitlements for the scheme. In a scheme created under a standard format plan, the cost of insurance is not divided amongst the owners on the basis of lot entitlements at all. Rather, it is divided amongst the owners on the basis of the cost of re-instating the buildings on the lot.

For more information on insurance, refer to sections 176 - 190 of the Standard Module, and the *Insurance* factsheet available from the BCCM Office.

Adjusting the contribution schedule

The BCCM Act provides three means by which the contribution schedule lot entitlements may be adjusted.

1. At general meeting

A body corporate may, by resolution without dissent, change its contribution schedule lot entitlements. The notice of the general meeting at which the resolution is proposed must state, or be accompanied by a written notice stating the proposed changes to the contribution schedule and the reason for the changes. The changes must be consistent with either the principle on which the existing contribution schedule was decided or another contribution schedule principle.

The body corporate must, as quickly as practicable, lodge a request to record a new CMS incorporating the changed contribution schedule lot entitlements.

(Act section 47A)

2. Agreement of two or more lot owners

The owners of two or more lots can agree in writing to redistribute amongst themselves the lot entitlements for their lots.

(Act section 50)

3. Adjustment by specialist adjudicator or QCAT

Under limited circumstances, a lot owner may apply for an adjustment of the contribution schedule lot entitlements. Specifically:

- If the body corporate passes a motion under section 47A and a lot owner believes that the contribution schedule as changed by the resolution are not consistent with the relevant principle used as a basis for the change, or
- if the CTS is affected by a material change (e.g. addition or removal of 1 or more lots. See Schedule 6 Dictionary, BCCM Act) and a lot owner believes that an adjustment of the contribution schedule is necessary, or
- if the CTS is established after the commencement of the amendments and a lot owner believes that the contribution schedule is not consistent with the deciding principle used to set the lot entitlements.

If any of the above circumstances apply, a lot owner may either:

- apply under the dispute resolution provisions of the BCCM Act for an order of a specialist adjudicator for the adjustment of the contribution schedule, or
- apply to the Queensland Civil and Administrative Tribunal (QCAT) for an order for the adjustment of the contribution schedule.

(Act section 47AA and 47B)

Criteria for deciding contribution schedule

If an application is made for an order of a specialist adjudicator or QCAT to determine whether the contribution schedule is consistent with the deciding principle, the BCCM Act provides that QCAT or the specialist adjudicator may only have regard to:

- the principle on which the contribution schedule was decided, and
- the information in the CMS about the application of the deciding principle, and
- if the contribution schedule lot entitlements were decided on the equality principle -- the basis of the applicant's belief that the lot entitlements do not reflect the equality principle with respect to section 49 of the BCCM Act, and
- the applicant's grounds for seeking an adjustment, and
- any matters raised by each respondent to the application to support the assertion that the entitlements are consistent with the deciding principle.

(Act section 48A)

Adjusting the interest schedule

A lot owner may either apply to a specialist adjudicator or to QCAT for an order to adjust the interest schedule lot entitlements. The order of the specialist adjudicator or QCAT must be consistent with the market value principle (see above).

(Act sections 46B and 48)

Examples of the application of lot entitlements

1. Administrative fund budget

- Q. At the annual general meeting (AGM), the body corporate adopted an administrative fund budget that included expected expenses for maintenance of the common property gardens, payment of the body corporate management fees, and cleaning of the common property driveway. Are these expenses divided equally among the owners?
- A. These expenses must be divided amongst the owners in the same proportion as the contribution schedule lot entitlements. If, for example, a lot has three contribution schedule lot entitlements and the aggregate contribution schedule lot entitlements for the scheme is 30, the owner of the lot will contribute 3/30 or 10 per cent of these costs. The expenses will only be divided equally amongst the owners if the

contribution schedule lot entitlements for the scheme are equal.

2. Insurance

- Q. The body corporate has taken out building insurance in accordance with the insurance requirements of the BCCM Act. However, the secretary has stated that the insurance premium is not divided on the basis of the contribution schedule lot entitlements for the scheme. Is this correct?
- A. Insurance is an expense that is treated differently from most other body corporate expenses. The division of costs of building insurance premiums depends on the type of the plan of subdivision applying to the scheme. In a scheme created under a building format plan, the cost of building insurance is divided amongst the owners on the basis of the interest schedule lot entitlements for the scheme. In a scheme created under a standard format plan, the cost of insurance is not divided amongst the owners on the basis of lot entitlements at all. Rather, it is divided amongst the owners on the basis of the cost of re-instating the buildings on the lot.

For more information on insurance, refer to sections 176 - 190 of the Standard Module, and the *Insurance* factsheet available from the BCCM Office.

3. Voting on an ordinary resolution when a poll has been requested

- Q. At the last AGM, an owner requested that a poll be conducted for the counting of votes on a particular motion to be decided by ordinary resolution. How are the votes counted?
- A. A body corporate comprising of 8 lots (see table below) is considering a motion to be decided by ordinary resolution.

Contribution Schedule	
Lot	Entitlements
1 in SP12345	1
2 in SP12345	1
3 in SP12345	1
4 in SP12345	1
5 in SP12345	1
6 in SP12345	1
7 in SP12345	3
8 in SP12345	4
Total Lots: 8	Aggregate: 13

Usually in the voting on a motion to be decided by ordinary resolution each lot in the scheme effectively has one vote. A poll is an alternate way of counting votes for an ordinary resolution and takes into account the lot entitlements for the scheme. Any person entitled to vote at a general meeting of the body corporate may ask for a poll for the counting of votes on a motion to be decided by ordinary resolution. If a poll is requested, the motion is passed only if the total of the contribution schedule lot entitlements of the lots for which votes are counted for the motion is more than the total of the contribution schedule lot entitlements of the lots for which votes are counted against the motion.

In this example the owners of lots 1, 7 and 8 vote for the motion and lots 2, 3, 4, 5 and 6 vote against the motion. The motion is lost, as there are three votes for the motion and five against. However, the owner of lot 8 immediately requests that a poll be conducted.

The votes must now be re-counted in accordance with the contribution schedule of lot entitlements for the scheme. The owners of lots 1, 7 and 8 have lot entitlements of one, three and four respectively and the owners of lots 2 to 6 have one each. The tally of the votes based on a poll is eight for and five against. The motion is therefore passed.

4. Equal contributions

- Q. We are a body corporate of seven units. At the last AGM, a motion to make all the levies equal was passed by a majority of votes. Does this mean owners will now pay equal contributions?
- A. No, the legislation requires that the contribution lot entitlement schedule is the basis for calculating an owner's share of most of the body corporate's costs. If the lots in the scheme have different lot entitlements, then the contributions that owners make to the administrative fund and the sinking fund will be different. Before owners pay equal contributions, the schemes' lot entitlements must be adjusted. Please refer to Part 5 of the BCCM Act for information on adjusting lot entitlements.

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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

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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