



Owning a duplex

This factsheet provides information to lot owners of a duplex within a community titles scheme of their rights and obligations 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).

A 'duplex' is the colloquial term given to units or townhouses that have two lots. The two lots are usually, but not always, separated by a common dividing wall and may have adjacent courtyards or may have been allocated exclusive use of an area of common property.

Duplexes, like any other community titles scheme, must comply with the provisions of the BCCM Act and the applicable regulation module.

Often, the two lot owners in a duplex (or even a single owner of both the lots) do not realise that they are part of a body corporate in a community titles scheme. Disputes may arise when one owner seeks to have the other owner comply with legislation and the other owner denies the existence of the scheme, or their obligations as a member of the body corporate. Frequently, new owners may be told (incorrectly) 'there is no body corporate'.

What is a community titles scheme?

Section 10 of the BCCM Act provides a full definition of a 'community titles scheme', but for this factsheet it can simply be described as land that consists of at least two lots and common property, with a community management statement (CMS).

It is very rare for a duplex not to be part of a community titles scheme. To verify the status of your lots, the current owners, or any prospective purchasers, will need to check their survey plans at the Department of Environment and Resource Management and see whether a CMS for the scheme has been recorded. If a CMS has been recorded with the plan then it is a community titles scheme and a body corporate will exist.

The CMS is a very important document for owners and the body corporate as it provides information about the scheme. It will identify, among other things, the regulation module applying to the scheme, the lot entitlements and the by-laws.

If a building or buildings are registered as a community titles scheme, the owners of the lots are automatically members of the body corporate (BCCM Act section 31). A lot owner cannot refuse to be a part of the body corporate and has certain obligations as a member of the body corporate.

What are the body corporate's obligations?

As we have already seen, the lot owners in a duplex are the body corporate. The body corporate makes decisions on matters with shared responsibility, such as:

- maintenance of the common property
- establishing and enforcing by-laws
- adopting budgets to cover the cost of maintenance
- compulsory building insurance.

Most issues, including those listed above, must be considered by the body corporate in a general meeting.

How are meetings conducted?

There are two kinds of meetings relevant to the business of running a body corporate: committee meetings and general meetings.

The committee for the body corporate

The committee is tasked with the administrative and day to day requirements of the body corporate. The committee in larger schemes is elected at the annual general meeting (AGM). However, in a duplex where the two lots are in different ownership an election is not necessary.

Instead, the committee consists of the two individuals who are the owners, or the nominees of the owners, and they must decide between themselves who is to hold the positions of chairperson, secretary and treasurer (the executive positions) (Standard Module, section 13(1)). If they cannot agree, the positions of the executive members are jointly held by both of them (Standard Module section 13(4) and (5)). For more detailed information on the role of the committee for a body corporate, and its functions, refer to *Forming a body corporate committee* factsheet.

General meetings

The body corporate must hold an AGM and must consider all motions included on the agenda of the AGM (Standard Module section 76).

However, if matters arise that can't wait until the next AGM, the body corporate may hold an extraordinary general meeting to consider the issue. For more detailed information on the requirements for general meetings of a body corporate, refer to the *General meetings* factsheet.

How can the body corporate break a deadlock?

In a scheme of only two lots, where the voting entitlement is equal, there might be a deadlock in voting which simply cannot be resolved without third party assistance. The BCCM offers a dispute resolution service for lot owners who cannot agree. This office can facilitate mediations to disputes and offers informative conciliation to parties who have lodged dispute applications. Contact details are located at the end of this fact sheet.

How is the common property maintained?

The body corporate is obliged to:

- maintain common property in good condition, and to the extent that common property is structural in nature, in a structurally sound condition (Standard Module section 159)
- administer the common property and body corporate assets, and enforce the by-laws for the scheme (BCCM Act section 94), and
- administer, manage and control the common property and body corporate assets (BCCM Act section 152).

For more detailed information on the obligation of a body corporate to maintain common property, refer to the *Maintenance* factsheet.

How does the body corporate manage finances?

At the AGM the body corporate must:

- adopt an administrative fund budget and a sinking fund budget each financial year (Standard Module section 139)
- fix contributions to be levied on the owner of each lot, based on such budgets, for the financial year (Standard Module section 141)
- give each owner notice of the contributions due (Standard Module section 142)
- open an account with a financial institution in the name of the body corporate (BCCM Act section 151) and keep there the 'administrative fund' and the 'sinking fund' (Standard Module section 146).

For more detailed information on the financial obligations of the body corporate, refer to the BCCM Financial management factsheet.

Who is responsible for insuring duplex buildings?

The body corporate is responsible for insuring the buildings of the duplex if there is a common wall between the two lots of the building.

This means that both lots must be insured with the same insurance company on the one policy in the name of the body corporate, e.g. 'Summerlands Community Title Scheme 12345'. If the two individual lot owners manage to insure their lots with two different insurers, the policies of both of the lot owners may be invalid.

The policy must be for full replacement value of the buildings, the common property and any body corporate assets. (Standard Module section 178). Additionally, the body corporate must maintain public risk insurance.

For more detailed information on the insurance obligations of a body corporate, refer to the *Insurance* factsheet.

How are expenses calculated?

The CMS will include two lot entitlement schedules, the contribution schedule and the interest schedule. The contribution schedule is used to calculate how much a lot owner pays towards the maintenance of the scheme. The interest schedule is used to calculate the lot owner's share of the insurance premium and also the total share in the land value of the community titles scheme.

For more detailed information on lot entitlements for a community titles scheme, refer to the *Lot entitlements* factsheet.

What are by-laws?

By-laws are a set of rules for a community titles scheme that regulate various matters including the keeping of animals, noise and parking. The by-laws are shown on the CMS and are binding on all occupiers, including owners and tenants.

The by-laws must be enforced by the body corporate. Enforcement of the by-laws may include the issue of a contravention notice by the body corporate to an occupier/owner.

For more detailed information on by-laws, including contravention and enforcement, refer to the *By-laws* factsheet.

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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