

FACT SHEET

BY-LAWS

This Fact Sheet has been prepared to provide owners with an explanation on what By-Laws are, where they can be found and how they can be enforced.

What are By-Laws?

Section 168 of the Body Corporate and Community Management Act 1997 (the BCCM Act) states that meaning of by-laws for a community titles scheme, are provisions that appear in the community management statement under the heading "BY-LAWS". The BCCM Act allows bodies corporate to either adopt standard by-laws set out in the BCCM Act, or to make rules that best suit individual circumstances.

The Office of The Commissioner for Body Corporate defines By-laws as a set of rules for a community titles scheme that regulate a variety of matters including the keeping of animals, noise and parking on the common property.

The body corporate committee should ensure that all owners and occupants are provided with a copy and ensure that they are familiar with their rights and responsibilities as set out in the by-laws.

How are By-Laws made?

Provided that they comply with the BCCM Act, a body corporate can make additional by-laws or amend or repeal existing by-laws. Specific by-laws can be made allowing the body corporate to:

- administer, manage and control common property and body corporate assets
- Regulate the use and enjoyment of lots, common property assets, services and amenities supplied by the body corporate.

To formalise a by-law, the body corporate must, in a general meeting, consent to a new CMS. A new CMS identifying changes to the by-laws must be consented to by special resolution.

There are limitations on the types of by-laws which can be adopted by a body corporate. A by-law cannot:

- Be inconsistent with the Act or other legislation (for example, a by-law cannot provide that they body corporate will not hold an annual general meeting each year)
- Prevent or restrict a transmission, transfer, mortgage or other dealing with a lot (for example, a by-law cannot state the type of people who can buy a unit)
- Discriminate between types of occupiers (such as families with children)

The changes to any by-laws after a new CMS has been consented to at an General Meeting will only come into effect when the new CMS is recorded by the Registrar of Titles.

How do I find out what By-Laws apply to a scheme?

Every Body Corporate has a Community Management Statement (CMS) which contains the by-laws that are in place for each scheme. The CMS is a document held in the Land Registry of the Department of Environment and Resource Management (the Titles Office).

A body corporate which was in existence before 13 July 1997 automatically retains the by-laws applying to it immediately before that date. For example, if the by-laws contained in the 'Third Schedule' to the previous legislation (the *Building Units and Group Titles Act 1980*) applied to a body corporate before 13 July 1997, those by-laws continue to apply to the scheme until different by-laws are adopted.

How can By-Laws be enforced?

The body corporate is responsible for enforcing its by-laws. The Committee are usually appointed to act on behalf of all owners in the scheme and are responsible for ensuring all owners and occupants comply with the by laws. However, owners and occupiers can also commence enforcement action if certain conditions are not met.

Continued Over Page

Enforcement action usually commences with the issue of mandatory notices, however there are limited circumstances in which the service of a notice is not required.

Section 182, 183 & 184 of the BCCM Act (when read together) provide that contravention notices must be issued before any formal enforcement action is taken. The decision to serve a contravention notice can be made by the committee or by the body corporate at a general meeting.

The types of contravention notices are:

- Continuing contravention notice (or BCCM Form 10) – this notice may be given to an owner or occupier when there is a reasonable belief that the person is contravening a by-law, and where, given the circumstances, is likely to be a continual contravention. An example of this may be where an owner is parking a vehicle on common property without approval. The purpose of this notice is to require the person to remedy the contravention.
- Future contravention notice (or BCCM Form 11) – this notice may be given to an owner or occupier if there is reasonable belief that the person is contravening a by-law and the circumstances of the contravention make it likely that the contravention will be repeated. An example of this would be where an owner has a noisy party which contravenes the noise by-law. The purpose of the future contravention notice is to require the person not to repeat the contravention

What happens if an owner or occupier fail to comply with a contravention notice?

If an owner or occupier fails to comply with a contravention notice, the committee, or the body corporate in a general meeting, can decide to commence enforcement proceedings in the Magistrates Court or in the BCCM Office. The BCCM Act empowers the Magistrates Court to impose a financial penalty for failure to comply with the notice.

If an owner or occupier reasonably believes that another owner or occupier has contravened, or is likely to continue to contravene, the by-laws, he / she must take a preliminary step before taking action in the BCCM Office. This preliminary step involves asking the body corporate to issue a contravention notice to the person allegedly contravening the by-laws. This is done by completing a BCCM Form 1 – Notice to body corporate of a contravention of a by corporate by-law.

If the body corporate does not, within 14 days after receiving the request, advise the complainant that the contravention notice has been issued, the complainant may take action in the BCCM Office.

Section 186 of the BCCM Act set out special circumstances in which the body corporate or a lot owner or occupier may lodge an application with the BCCM Office without giving a preliminary notice particularly if the contravention could cause serious harm or injury to people or property.

SOURCES

<https://www.legislation.qld.gov.au/view/html/inforce/2017-07-03/act-1997-028>

Body Corporate and Community Management Act 1997 section 168, 182, 183, 184, 186, Reprint current from 3 July 2017 Page 151, 161-170

<https://publications.qld.gov.au/storage/f/2014-06-03T05%3A35%3A35.931Z/bccm-form-10-os-pdf.pdf>

Notice of continuing contravention of a body corporate by-law – Effective from 28 February 2012

<https://publications.qld.gov.au/storage/f/2014-06-03T05%3A36%3A31.704Z/bccm-form-11-os-pdf.pdf>

Notice regarding likely future contravention of a body corporate by-law – Effective from 28 February 2012

<https://publications.qld.gov.au/storage/f/2014-06-03T05%3A34%3A20.479Z/form-1.pdf>

Notice to body corporate of a contravention of a body corporate by-law – Effective from 28 February 2012

<https://www.qld.gov.au/law/housing-and-neighbours/body-corporate/by-laws>

© Hartley's Strata Services PTY LTD (Hartley's Lifestyle Strata Services) 2018



Hartley's
Lifestyle Strata Services

P: (07) 3408 4922 F: (07) 3408 4933
PO Box 747, BRIBIE ISLAND Q 4507

admin@lifestylestrata.com.au
www.hlss.co

