

Topic 6 - How to enforce by-laws

The body corporate is responsible for enforcing its by-laws. The committee as the administrative arm of the body corporate is usually responsible for ensuring all owners and occupiers comply with the by-laws. However, owners and occupiers can also commence enforcement action if certain conditions are met. 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.

Preliminary procedures by the body corporate

The body corporate may give a contravention notice to an owner or occupier where it reasonably believes that the person is contravening a by-law, and where, given the circumstances, it is likely that the contravention will continue. If an owner or an occupier fails to comply with a contravention notice, the body corporate can commence enforcement action. (A s184)

The decision to serve a contravention notice can be made by the committee or by the body corporate in a general meeting.

Enforcement action by body corporate

The BCCM Act prescribes penalties for failure or breach of certain parts of the legislation. Where a penalty provision is made, such penalties may be imposed by a Magistrates Court, acting under powers given by section 19 of the *Justices Act 1886*.

A person who fails to comply with a contravention notice commits an offence and penalties, up to a maximum of 20 penalty units, may be applied by the court.

The body corporate may commence proceedings in the Magistrates Court against an owner/occupier who fails to comply with a contravention notice.

Alternatively, the body corporate may lodge a BCCM Form 22 Conciliation Application form with the Commissioner's Office.

The decision to commence enforcement action can be made by the committee or by the body corporate in a general meeting.

Preliminary procedures by an owner or occupier

An owner or occupier who 'reasonably believes' that another owner or occupier has contravened the by-laws may also commence enforcement action. However, they must carry out a preliminary step before taking such action.

The owner or occupier ('the complainant') must ask the body corporate to issue a contravention notice to the person who is allegedly contravening the by-laws. The BCCM Act requires that the approved form (BCCM Form 1) be used to request the body corporate to issue the contravention notice. (A s185)

Enforcement action by owner or occupier

If the body corporate does not advise the owner who issued the BCCM form 1, within 14 days after receiving the request, that the contravention notice has been issued,

the complainant may lodge a BCCM Form 22 Conciliation Application form with the Commissioner's office.

Note: there is no provision in the BCCM Act for an owner/occupier to commence proceedings in the Magistrates Court.

Types of contravention notices

1. Continuing contravention notice

The body corporate may give a continuing contravention notice to an owner or occupier where it reasonably believes that the person is contravening a by-law, and where, given the circumstances, it is likely that the contravention will continue. An example of this type of contravention is where an owner or occupier is displaying a sign on the lot in contravention of the by-laws.

The purpose of this notice is to require the person to remedy the contravention. The details that must be included in the notice are contained in the BCCM Act (A s182(4)). While there is no prescribed form, BCCM Form 10 may be used as a guide and is available from the Commissioner's Office or from its website at:

www.justice.qld.gov.au/à&&f

2. Future contravention notice

The body corporate may serve a future contravention notice on an owner or occupier if it reasonably believes that the person has contravened a by-law and the circumstances of the contravention make it likely that the contravention will be repeated. This notice would be appropriate where it is known that an owner has a party on the first Friday of every month which always goes on late and contravenes the noise by-law. The body corporate may give the owner notice that if this contravention is repeated, proceedings can be commenced in the Magistrates Court without any further notice.

The purpose of the future contravention notice is to require the person not to repeat the contravention. The details that must be included in the notice are set out in the BCCM Act (A s183(4)). Again, there is no prescribed form, however BCCM Form 11 may be used as a guide and is available from the BCCM Office or from its website at: www.justice.qld.gov.au/bccm.

The future contravention notice has effect for 3 months after it is given to the person or a shorter period mentioned in the notice (A s183(5)). It is important to include the legislative requirements on the contravention notice otherwise an owner may lodge a dispute application and the contravention notice may be ruled invalid (see **Lillian Court Order 0340-2007**).

Copy of contravention notice to be given to owner

If the body corporate issues a contravention notice to an individual who is not the owner of a lot included in the scheme they must also give a copy of the notice to the owner of the lot. The copy of the notice must be given to the owner when or as soon as practicable after the notice is given to the occupier (A s187).

Dispensing with 'preliminary procedures'

The body corporate or a lot owner or occupier may lodge an application without giving a preliminary notice (as described above) if the requirements set out in the BCCM Act are met (A s186), namely:

1. 'special circumstances' justify the dispute being resolved urgently. Special circumstances include contraventions which:
 - a. are likely to cause injury to people or serious damage to property
 - b. are a risk to people's health or safety
 - c. are causing a serious nuisance to people
 - d. for another reason, give rise to an emergency; or
2. the by-law contravention is incidental to an application for an order under section 281 of the BCCM Act (namely an application for an order to repair damage or reimburse amount paid for carrying out repairs). The application must initially be for an interim order of an adjudicator.

Delegating authority for enforcing by-laws

At times the resident manager's contract may contain a clause requiring them to ensure occupiers comply with the by-laws. The contract may also require the manager to serve contravention notices as necessary. However, the decision to serve a contravention notice must be authorised by a resolution of the committee. (A s.97)

The resident manager's role

The resident manager is usually on-site daily and as a result will often become aware of problems associated with compliance with the by-laws. If this occurs the resident manager should notify the committee about the breach. Acting in the role of a non-voting committee member, the resident manager could simply 'let the committee know'. However, to formally notify the committee, the BCCM Act provides that notice of the breach should be given to the committee in the approved form (BCCM Form 1). The committee may then pass a motion to issue a contravention notice.

Managing relationships

While there is a formal process for dealing with breaches of by-laws, there may be occasions where a less formal approach will be more appropriate. Minor breaches may often be easily dealt with by simply drawing a person's attention to the infringement. A quiet word in a person's ear can at times be more productive than a heavy-handed approach, and quite often nothing more comes of it. A heavy-handed approach may cause resentment at being formally served with a contravention notice and the person then digs in their heels. The heavy-handed approach for minor breaches from the outset can have an adverse effect on ongoing relationships and lead to future disputes.