



Body Corporate and Community Management

Two-lot schemes regulation 2011

The *Body Corporate and Community Management (Specified Two-lot Schemes Module) Regulation 2011* (the Two-lot Module) commences on 28 February 2012.

This fact sheet provides information on the application of the Two-lot Module. However, it is not a comprehensive guide. Please consult the legislation for in-depth information about the regulations.

References below are indicated as (TLM, s(number of section)) for the Two-lot Module and as (BCCM Act, s(number of section)) for the *Body Corporate and Community Management Act 1997*.

Simplifying two-lot management

The objective of the module is to make the day-to-day management of two-lot community titles schemes less complex for owners.

Applying the Two-lot Module

The Two-lot Module applies:

- if there are only two lots in the scheme
- if the community management statement (CMS) for the scheme identifies that the Two-lot Module applies
- to a community title scheme (CTS) if the lots are residential lots.

The Two-lot Module will not apply:

- if there is a letting agent for the scheme
- if the scheme is part of a layered arrangement of community titles schemes.

Note:

- The body corporate for a scheme under the Two-lot Module is comprised of the owners of the two lots.
- A residential lot is a lot that is used for residential purposes including short or long term leases for residential accommodation.

Exceptions

Provided the scheme meets the above provisions, the Two-lot Module may still apply even if the lots are not residential. For the Two-lot Module to apply, one of the following conditions must be met:

- the lots were intended to be residential but are not, and the first CMS specified the Two-lot Module as the applicable module; or
- the lots in the scheme were, but no longer are, residential lots. When they stopped being residential lots, the CMS indicated that the Two-lot Module applied, and each subsequent CMS indicated that the Two-lot Module applied.

(BCCM Act, s111C)

Lot owner agreements

Unlike other regulation modules where decisions are made either at committee or general meetings, a Two-lot Module body corporate make decisions by lot owner agreements.

- Lot owner agreements must be in writing, contain evidence of agreement date and detail agreed matters.
- The owners of the lots in the scheme must sign a written agreement.
- If the agreement is an electronic communication, there must be evidence of approval or consent of the owners. An electronic communication must be consistent with the [Electronic Transactions \(Queensland\) Act 2001](#).
- All co-owners of a lot have entered into the lot owner agreement, provided it complies with the provisions of TLM, s5(3). (TLM, s5)

Owner's representative

The owner of a lot may be represented by an authorised person. A person is a representative if:

- the person is a guardian, trustee, receiver or other representative authorised to act on the owner's behalf; or
- the person is acting under a power of attorney given by the lot owner and is not the original owner, except if acting under a power of attorney given under sections 211 and 219 of the BCCM Act.

The person representing the owner must give the owner of the other lot:

- a copy of the instrument that authorises the representative capacity; or satisfies the other owner of the person's representative capacity, and
- their residential or business address, in writing.

(TLM, s7)

Note:

- A person representing the owner of a lot has the functions and powers of the owner, and may do anything the owner may do, or is required to do, under the Act in relation to relevant body corporate matters.
- A relevant body corporate matter means a matter related to the carrying out of the functions given to the body corporate under the Act or the CMS. A person representing an owner of a lot has authority to act under the instrument by which the person is authorised to act as representative.

(TLM, s9)

Engagement of a body corporate manager or service contractor

The body corporate may, by a lot owner agreement, engage, or amend the engagement of a person as a body corporate manager or a service contractor.

An engagement must:

- be in writing
- state when the term begins and ends
- state the term of any right or option of extension or renewal of the engagement
- state the functions the body corporate manager or service contractor is required to carry out; and
- state the basis for calculating payment for the services.

Note:

- The term of engagement of a body corporate manager or a service contractor must not be more than one year.
- The body corporate may, by a lot owner agreement, terminate a person as a body corporate manager or a service contractor.

(TLM, ss11 - 18)

Agreed body corporate expense

An agreed body corporate expense is an item of expenditure that the body corporate has decided to incur, by a lot owner agreement. Certain expenses will automatically be agreed body corporate expenses, such as:

- an item of expenditure that the body corporate is required to incur under the Act, or the regulation
- a statutory order or notice given to the body corporate
- an order of an adjudicator

- judgements or orders of a court or an order of the Queensland Civil and Administrative Tribunal (QCAT).

(TLM, s23)

Contributions

- Each owner of a lot is liable to pay a contribution for an agreed body corporate expense. The contributions must be proportionate to the contribution schedule lot entitlement of the lot, except if the contributions are for insurance or any other matter. In that case, under the Act or the regulation, the liability attaching to each lot is calculated differently to the lot's contribution schedule lot entitlement.
- Contributions for insurance are generally based on the interest schedule lot entitlements; however, there are some exceptions noted under the 'Insurance' section below.
- Contributions must be paid on or before the date fixed by a lot owner agreement, a statutory order, an adjudicator's order, or a judgment/order of a court or QCAT.
- If no date has been fixed, the contribution must be paid on or before the date stated in the contribution notice for an agreed body corporate expense.

(TLM, ss24 and 25)

The notice of contribution

- If the body corporate or a lot owner receives a notice of an agreed body corporate expense (see above), the lot owner may give the other lot owner a contribution notice. The contribution notice must state the total amount of the expense payable by the body corporate and the proportion of the total amount to be paid by each lot owner.
- Additionally, the contribution notice must state the date on which payment is due. The date must be no later than the date stated in the notice of the agreed body corporate expense. However, if the notice does not state a date for payment, the date should be at least 30 days from the day the other lot owner receives the notice.
- If an owner of a lot gives a contribution notice, it must be given as soon as practically possible, after the notice of an agreed body corporate expense is received.

(TLM, s26)

Payment and recovery of contributions and associated amounts

Section 27 of the Two-lot Module introduces two new terms – the defaulting owner and the contributing owner:

- A lot owner is a defaulting owner if they do not pay a contribution by the due payment date.
- A lot owner is a contributing owner if they do pay a contribution by the due payment date.
- A contributing owner may pay a contribution on behalf of the defaulting owner.
- The contributing owner may recover the amount from the defaulting owner, as a debt. This includes any penalty and any reasonable costs incurred by the contributing owner.
- If the contributing owner does not pay the defaulting owner's contribution, the body corporate may recover the amount, including any penalty and any reasonable costs

incurred by the body corporate as a debt. The contributing owner may start proceedings on behalf of the body corporate to recover the contribution and other prescribed amounts.

(TLM, s27)

Body corporate accounts

The body corporate may, by a lot owner agreement, decide to keep body corporate funds in one or more accounts with a financial institution.

(TLM, s29)

Administrative and sinking funds held under previous regulation

- Section 83 of the Two-lot Module provides regulation about a CTS that has changed from another regulation module (e.g. the standard module) to the Two-lot Module and where the body corporate has funds that are held in a financial institution.
- The body corporate may use the administrative funds and the sinking funds towards the payment of agreed body corporate expenses, including the payment of a premium for body corporate insurance.
- The administrative and sinking funds continue until the funds are spent.

(TLM, s82)

Improvements to the common property by the body corporate

The body corporate may, by a lot owner agreement, make improvements to the common property.

(TLM, s35)

Improvements to the common property by a lot owner

The body corporate may, by a lot owner agreement, authorise an owner to make improvements to the common property.

(TLM, s36)

Improvements under an exclusive use by-law

An exclusive-use by-law may authorise an owner to make stated improvements to the exclusive-use area. However, if the by-law does not include such an authorisation, the owner can only make improvements by a lot owner agreement authorised by the body corporate.

(TLM, s45)

Insurance

Common property and assets

- The body corporate must insure the common property (such as pools or fences) and the body corporate assets (such as plants and equipment) to full replacement value.

- The insurance policy must cover damage and the costs associated with the reinstatement or replacement of insured buildings, including the cost of taking away debris and the fees of architects and other professional advisers. The policy must also provide for the reinstatement of property to its condition when new.

(TLM, s48)

Buildings

The body corporate must take out the following building insurance:

- building format plan — insurance for the full replacement value of each building which contains a lot
- standard format plan where a building on one lot has a common wall with a building on an adjoining lot, - insurance should cover the full replacement value of each building
- A policy for building insurance must cover damage and the costs associated with the reinstatement or replacement of insured buildings, including the cost of taking away debris and the fees of architects and other professional advisers.

The policy must also provide for the reinstatement of property to its condition when new.

(TLM, ss49 and 50)

Voluntary insurance (Standard format plan)

If the buildings on both lots in a standard format plan, do not share a common wall, the body corporate may establish a voluntary insurance scheme by a lot owner agreement.

The owner of each lot must notify the owner of the other lot, of the full replacement value of the stand-alone building.

(TLM, s55)

General premiums

The basis for calculating contributions for insurance premiums payable by a lot owner:

- Insurance for common property and body corporate assets: the interest schedule lot entitlement of the lot.
- Insurance of a building that includes a lot under a building format plan: the interest schedule lot entitlement of the lot.
- Building insurance under a standard format plan where a building on one lot has a common wall with a building on an adjoining lot: the cost of reinstating the building on the lot.
- Voluntary insurance of a building that includes a lot under a standard format plan where the building does not have a common wall with a building on another lot: the proportion of the premium that fairly reflects the value of the stand alone buildings on the owner's lot in proportion to the total replacement value of the buildings insured under the voluntary insurance scheme.

Valuations

If the body corporate is required to insure one or more buildings, the body corporate must, **at least every five years** obtain an independent valuation for the full replacement value of the building/s.

(TLM, s51)

Public risk insurance

The body corporate must take out public risk insurance over the common property and for assets for which it is practical to have public risk insurance.

The public risk insurance must cover amounts the body corporate is liable to pay compensation for including: death, illness and bodily injury and damage to property to the value of at least \$10 million for a single event, and at least \$10 million in a single period of insurance.

(TLM, s56)

Body corporate records

The body corporate must, by a lot owner agreement, appoint a person to keep body corporate records. This person may be a lot owner; a representative of a lot owner; a body corporate manager or the owners of both lots.

(TLM, s70)

By-law contraventions

Continuing contravention notice

The owner of a lot in a scheme (the complainant) may give a continuing contravention notice to an owner or occupier if they reasonably believe 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 when an owner parks a vehicle on common property without approval.

The purpose of this notice is to require the person to remedy the contravention.

Section 183C of the BCCM Act specifies the details that must be included in the notice.

BCCM Form 27 may be used as a guide and is available from the Office of the Commissioner for Body Corporate and Community Management (the BCCM Office).

If an owner or an occupier fails to comply with a contravention notice, the complainant may choose to start proceedings in the Magistrates Court or make an application for dispute resolution in the BCCM Office.

Penalties under the BCCM Act may be imposed by the Magistrates Court for failure to comply with the notice.

(BCCM Act, s183C)

Future contravention notice

The owner of a lot in the scheme (the complainant) may give a future contravention notice to an owner or occupier if they reasonably believe 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 for example, when an owner has a noisy party that contravenes the noise by-law.

The notice must state that if the contravention is repeated, proceedings can be commenced in the Magistrates Court or in the BCCM Office without any further notice.

The purpose of the future contravention notice is to require the person not to repeat the contravention. Section 183D of the BCCM Act specifies the details that must be included in the notice. BCCM Form 28 may be used as a guide and is available from the BCCM Office.

If an owner or an occupier fails to comply with a contravention notice, the complainant may choose to start proceedings in the Magistrates Court or make an application for dispute resolution in the BCCM Office.

Penalties under the BCCM Act may be imposed by the Magistrates Court for failure to comply with the notice. (BCCM Act, s183D)

Note: The occupier of a lot may, in the approved form (BCCM Form 25), ask the owner of the lot they occupy, to give the contravention notice identified in sections 183C and 183D. See the section 'If the complainant is an occupier of a lot' below.

Dispute resolution application

A dispute exists between the owner or occupier of a lot (the complainant) and the owner or occupier of another lot (the accused person), if the accused person has contravened a provision of the by-laws.

The complainant may make application for dispute resolution with the BCCM Office only if the following procedures have been complied with:

If the complainant is a lot owner

If the complainant has given the accused person a contravention notice either under section 183C or 183D of the BCCM Act (whichever is applicable).

If the complainant is an occupier of a lot

Before the occupier of a lot can make application for dispute resolution, they must firstly give the owner of the lot they occupy a completed BCCM Form 25, available from the BCCM Office.

The BCCM Form 25 is a notice to the owner of the lot they occupy, that they believe the respondent named in the notice has contravened a by-law.

The notice also asks the owner of the lot they occupy to give the respondent a contravention notice for the contravention of the by-law.

If the contravention notice is given, the owner of the lot must, within 14 days after receiving the request, advise the person who made the request that the contravention notice has been sent.

The occupier of a lot may make application for dispute resolution if they have given the owner of the lot they occupy a BCCM Form 25, but the owner has not advised that the contravention notice has been sent.

**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

Copies can be purchased online by visiting:
www.bookshop.qld.gov.au, or by contacting SDS Customer Service by phoning (07) 3883 8700 or 13 74 68.

Disclaimer

The laws referred to in this guide are complex and various qualifications may apply in different circumstances. The information in this fact sheet 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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