

Dealing with Disputes

In bodies corporate it is inevitable that, from time to time, disputes will occur. Fortunately, in Queensland there are numerous cost-effective avenues available to assist in resolving them.

The OCBCCM

The forum within which most disputes go for resolution is the Office of the Commissioner for Body Corporate and Community Management (OCBCCM).

The OCBCCM has exclusive and sole jurisdiction to mediate and (if mediation is unsuccessful) adjudicate upon the vast majority of disputes which arise between bodies corporate, committees, lot owners and occupants.

Pathway to Resolution

The three methods by which a dispute is ordinarily resolved are:

1. Self-resolution
2. Conciliation
3. Adjudication

We discuss the 3 methods below. However it is important to note that some outcomes achieved by self-resolution and private conciliation/mediation processes do not result in binding outcomes and may cost more than using experts appointed by the OCBCCM.

Self-Resolution

Self-resolution is where parties attempt to resolve the matter prior to referring the matter to the OCBCCM. It is important to note that prior to accepting a matter for conciliation or adjudication, the OCBCCM will require evidence that the parties have made genuine attempts at self-resolution.

There is no clear guidance on what constitutes self-resolution, however an aggrieved party should consider:

If the matter is a dispute between lot owners address correspondence to the offending owner outlining the concerns and proposing a solution.

If the offending owner is unreceptive, or it is an issue with the body corporate directly, the aggrieved owner may write to the body corporate committee by way of the secretary and request they resolve the dispute.

If the committee is unable to assist to the aggrieved owner's satisfaction, the owner may propose a motion to the body corporate for resolution in the manner contemplated by the applicable regulation module.

Conciliation

If a body corporate dispute is unable to be resolved via self-resolution, the next step (if appropriate) is referring the matter to conciliation. Conciliation is an intermediary process where parties attend a meeting assisted by a conciliator with the remit of resolving the dispute in a manner agreeable to both parties. Conciliation is a form of mediation or alternate dispute resolution.

A conciliator is an independent person employed by the Department of Justice and Attorney General who understands body corporate law and whose services are provided free of charge.

Conciliation facilitates the parties reaching a mutual agreement as contrasted with later processes where a binding decision is made and imposed on the parties.

Conciliation provides an excellent opportunity for parties to resolve their disputes at a minimum of cost. At the time of writing, the costs of an application for Conciliation were below \$100.00.

However, conciliation can only be effective where both parties are willing to compromise. If the other party to a dispute has demonstrated a refusal to compromise, conciliation may not be effective in which case proceeding to adjudication may be a better option.

Similarly, some matters are simply unsuited to conciliation. For example, disputes about the validity of a general meeting resolution or which require urgent interim orders to maintain the status quo, will ordinarily be unsuited to conciliation.

Adjudication

If the dispute is unable to be resolved via self-resolution or conciliation, the matter can be referred for adjudication.

Adjudication is a quasi-judicial process of the OCBCCM where parties are required to make submissions regarding their positions. Adjudicators are appropriately qualified persons who make decisions and orders with respect to matters brought to them by considering the submissions of parties, applicable legislation and principles established by previous cases.

But for very limited circumstances, parties do not attend an adjudication physically, submissions are made in writing to the OCBCCM for consideration and provided to other parties. Parties can have an order made in their favour or against them on the basis of material provided.

As distinct from conciliation and self-resolution, an adjudication is an enforceable decision at law.

Given the potential outcomes of adjudications, Solicitors are regularly engaged to prepare submissions of behalf of applicants and respondents. However, this is not always necessary.

Again, the only cost for adjudication is the filing fee which as at the time of writing was:

\$176.00 for matters requiring interim orders (and final orders); and

\$83.80 for matters that require only final orders.

The costs of the adjudicator are all covered by that fee.

Maintenance obligations

Maintenance disputes are the single biggest issue that results in adjudication applications and information inquiries to the Commissioner's Office.

The general position is that:

- owners are responsible for maintaining their own lots; and
- the body corporate is responsible for maintaining the common property.

However, there are a number of exceptions to the general position and it is these exceptions that lead to disputes.

Plans of subdivision

Lots in a community title scheme are ordinarily created under a 'standard format plan' or 'building format plan' of subdivision. This is determined by the type of survey plan lodged at the Titles Office for the lot when it was created.

In most (but not all) cases, apartments in a high rise will be created under a building format plan and freestanding houses will be created under a standard format plan. Townhouses can fall into either category and will simply depend on what the plan says.

Standard Format Plan Schemes

If the lots are created in a standard format plan, there is little change to the general position. However, if the lots are created in a building format plan, the maintenance responsibility becomes a little more complicated.

Building Format Plan Schemes

The boundaries of lots and common property in a building format plan are determined by the physical boundaries – such as the floor, wall or ceiling. As an example, two neighbouring lots in a building format plan will have a boundary in the midpoint of the wall.

In a building format plan, the body corporate becomes responsible for a number of items that would otherwise be the lot owner's responsibility. These exceptions include:

- railings, parapets and balustrades on the boundary of a lot and the common property;
- doors, windows and associated fittings in a boundary wall of a lot and the common property;
- roofing membranes providing protection for lots or the common property; and
- foundation structures, roofing structures and essential supporting framework.

These exceptions do not apply to standard format plans.

Exceptions for lot owners

Regardless of whether the scheme was created under a standard format plan or a building format plan, the lot owner will remain responsible for:

- any fixtures or fittings that were installed by the occupier of the lot;
- any improvements that were made by lot owners;
- exclusive use allocations (unless the by-law provides that the body corporate is responsible);
- utility infrastructure that exclusively services their lot; and
- shower trays.

Consequential and incidental damage

If something in the scheme has fallen into disrepair (for example, a tap fitting that the lot owner is responsible for leaks) and causes damage to another part of the scheme (for example, the lot underneath gets flooded) it does not mean that each lot owner is responsible for the repairs to their own lot.

The lot that did not have the tap in good condition would be responsible for the repair to their lot and the repairs to the lot underneath.

If in carrying out those repairs, further work needs to be carried out (for example, removing the ceiling to access utility

infrastructure) the additional repair works (for example, to replace the ceiling) would also be part of the original maintenance responsibility of the lot owner with the tap.

Steps to follow

The following steps will assist in determining who is responsible for maintenance in a community title scheme:

- determine the cause of the damage or the item that is in disrepair;
- review the survey plan to determine whether the relevant lot is created in a building format plan or standard format plan;
- determine the location of the cause of the damage or the item; and
- confirm if any exceptions apply.



Todd Garsden is a leading body corporate lawyer who has practised entirely in body corporate and strata. Todd is an active member of the Strata Community Association of Queensland (SCA), including a member of their Legislation Panel, and acts extensively for bodies corporate, body corporate managers and unit holders.



Brisbane office

L 18, 167 Eagle Street p 07 3007 3777
Brisbane Qld 4000 f 07 3077 3778

Gold Coast office

L 2, 235 Varsity Parade p 07 5562 2959
Varsity Lakes Qld 4230 f 07 5575 7803

Liability limited by a scheme approved under Professional Standards Legislation.



General advice
/ by laws



Dispute
resolution



Assignments



Amalgamation
/ termination



Off plan
(BMS / CMS)

www.mahoneys.com.au