

New Body Corporate Regulations

by John Mahoney

As some of you may have heard, a raft of new body corporate laws will commence 1 March 2021. Whilst most of the changes are administrative in nature, and will not directly impact you as a resident manager, it would be useful to know about some of the changes in case they come up in body corporate discussions. Some changes will depend on the regulation module the scheme is regulated by. If you are unsure which changes apply, please contact us. To help you get across the new laws we have summarised the key changes below:

Electronic voting

- Electronic voting can now be used for:
 1. committee elections (including those by secret ballot); and
 2. general meeting motions (including those by secret ballot).

Committee changes

- Co-owners who own multiple lots are now eligible to nominate for multiple committee positions. For example if Mr and Mrs Smith own two lots together, they can both nominate and fill two committee positions.
- For complexes with more than 3 lots but no more than 3 owners, the owners can decide amongst themselves which committee positions they will hold. If agreement cannot be reached, the owners will jointly hold the executive positions.
- Lot owners now have a statutory right to submit motions for the committee to consider up to a maximum of 6 motions in a 12 month period. The committee must consider such a motion within 6 weeks (unless extended for good reason).

- Committee meeting attendance can now be electronic.
- Lot owner representatives are now entitled to attend committee meetings if they provide 24 hours' notice to the secretary.
- Committee members are now ineligible to vote if they, or their nominating entity, owe a body corporate debt.
- Committee members cannot receive benefits from service contractors unless:
 1. the benefit is a permitted benefit (which includes the services the service contractor has been engaged for by the body corporate or a committee member at market price); or
 2. the body corporate has approved the benefit by ordinary resolution.

General meetings

- There are no longer motions with alternatives for general meetings. These are now called "same issue motions" whereby:
 1. motions dealing with the same issue are firstly identified and grouped together in the agenda—irrespective of the resolution type;
 2. the motions are all voted on separately;
 3. those that have not passed on their own resolution type are then excluded; and
 4. of the remaining motions, the motion with the most votes in favour is then the motion decided upon by the body corporate. If there is a tie, you flip a coin or draw straws.
- If the body corporate passes a special resolution to do so, the body corporate can now reduce the required quorum for a general meeting to:
 1. 10% of voters (as opposed to the default 25%); and

2. 1 personally present (as opposed to the default of 2),
- The use of a power of attorney at general meeting has been restricted so that the same attorney cannot be appointed for different owners (other than family members).
 - The developer has additional obligations to hand over additional material at the first annual general meeting.
 - The body corporate is required, at its second annual general meeting (and after each stage of development for schemes subject to staged development) to consider a motion to authorise a defect assessment being undertaken.

Information

- When the body corporate is obliged to give certain information to a person, if agreed to with that person, the body corporate can provide that information in a particular way (for example, sending a link to a file shared document).
- Owners are obliged to give certain information to the body corporate within 1 month (for example, the sale of a lot or a long term lease being entered into).
- The body corporate must now update the body corporate roll within 14 days of receiving relevant information.
- The body corporate manager can be provided with documents on behalf of the secretary.
- The commission disclosure requirements for body corporate contractors now specifically require disclosure of the monetary amount.

Options, top-ups, variations, extensions – what's the difference?

by Amy O'Donnell

We have all heard these terms, and we all know that we need to be aware of the key dates in our management rights agreements, but what does it all mean?

1. All management rights agreements are for a certain length of time. Unfortunately there is no set term within the industry. Some agreements have an initial term of 25 years, some 10 years, some 5 years, and some 3 years.
2. When you get to the end of the initial term, there may be an option (or options) in your agreements that needs to be exercised. An option is an existing clause in your management rights agreements and gives you the right to extend the term. This is called exercising your option, but it can also sometimes be called extending your agreements. A management rights agreement will commonly include more than one option clause.
3. To ensure that you never run out of option clauses (refer to point 2), you need to constantly add new options to your agreement. This is called topping up, and, confusingly, can also be called extending your agreements.

As the owner of a valuable management rights business you need to be reviewing points 2 and 3 regularly – both of them. They are different tasks and both need to be attended to in the lifecycle of your management rights agreements.

Exercising your options (that already exist in your agreements)

The consequences of failing to understand your options (point 2) are dire. Many options need to be exercised by giving written notice before the end of the then current term but many others give a window of opportunity within which to exercise the option – typically between 6 and 3 months from the end of the term.

If you miss these dates, then you are out of time, the option cannot be exercised and your agreements will come to an end. There is no sugar coating the message.

Once you know by **when** your option needs to be exercised, it is just as important to know **how**. Most agreements will require written notice to actually be sent by post or hand delivered to the body corporate manager or secretary. Email may not be enough.

Finally, whilst not strictly necessary, it is important that the exercise of your option be documented. It will be needed down the track, to prove that the option was validly exercised and is of effect. We often do this by way of a deed of extension.

Top-Ups (adding more options)

Failing to add more options to your agreements does not have the same dire consequences of failing to exercise your option, however as time goes on, failure to do so is likely to have an impact on the saleability (and potentially the value) of your business should you decide to (or need to) sell.

If your scheme is governed by the standard module we suggest that you should be looking at doing this every 2 or 3 years. If your scheme is governed by the accommodation module, then

every 5 years is common practice. However some managers may choose to do this more often so that it becomes a standard practice for a body corporate to top up the agreements.

A top-up involves varying your management rights agreements to include a new option clause. This needs to be done at a general meeting and approved by ordinary resolution by secret ballot – which is simply more votes for than against (from those owners who choose to vote). Often our clients submit their top-up motion at the AGM (any lot owner is entitled to submit a motion for consideration at the AGM and provided it is submitted by the end of body corporate's financial year, then it must be included on the AGM agenda).

What dates/information do you need to know?

You need to become familiar with your management rights agreements - go and have a look at them now and identify:

- the initial term;
- the options (including how many and for what period of time each);
- how do your option clauses work – how can they be exercised and what are those dates;
- what is the total term (the initial term plus all available options); and
- when is the body corporate's end of financial year.

To protect the value of your management rights business you need to take the extra step of collecting this information, keeping it handy and diarising the dates in a way that is readily accessible to you and cannot be forgotten.

Again, if you do not know, then please ask us. We are more than happy to assist.



Brisbane office

L 18, 167 Eagle Street
Brisbane Qld 4000

p 07 3007 3777

f 07 3077 3778

Gold Coast office

L 2, 235 Varsity Parade
Varsity Lakes Qld 4230

p 07 5562 2959

f 07 5575 7803

Liability limited by a scheme approved under Professional Standards Legislation.

For latest CPI figures go to

[Click here for Brisbane All Groups CPI figures](#)

For example, if your remuneration started at \$100,000 in September 2016, the correct calculation for the September 2020 increase based on Brisbane All Groups CPI would be $\$100,000 \times 116.2$ (i.e. the last index figure before the review date) / 109.75 (i.e. the last index figure before the commencement date) = \$105,925.25. Mahoneys has assisted many managers in having their remuneration increased to market level.



Buying/selling
assistance



Off the plan
implementation



Renewal
strategy



Dispute
resolution

www.mahoneys.com.au