



Body Corporate and Community Management

Body corporate manager

This fact sheet provides information relating to the role and engagement of a body corporate manager under the *Body Corporate and Community Management Act 1997* (the BCCM Act) and the *Body Corporate and Community Management (Standard Module) Regulation 2008* (the Standard Module).

What is a body corporate manager?

A body corporate manager (manager) is defined by the BCCM Act as a person who:

'is engaged by the body corporate (other than as an employee of the body corporate) to supply administrative services to the body corporate, whether or not the person is also engaged to carry out the functions of a committee, and the executive members of a committee, for a body corporate'.

Do you need a manager?

No. There is no legislative requirement for a body corporate to engage a manager. However, a manager may be engaged by a body corporate either to:

- exercise some or all of the powers of an executive member (chairperson, secretary or treasurer) of the committee. This authorisation is given where the body corporate has chosen a committee, or
- carry out the functions of the committee and each of the executive members of a committee. Under this engagement there will not be a committee (refer to the factsheets *Forming the body corporate committee* and *Body corporate elections*).

What is the process of engaging a manager when a committee still exists?

The body corporate may engage a person as a manager only if:

- the engagement is approved by ordinary resolution of the body corporate in a general meeting, either the annual general meeting (AGM) or an extraordinary general meeting (EGM)
- the terms of the engagement are included in the material forwarded to body corporate members to consider the motion to approve the engagement at the next general meeting.

Note: the committee does not have authority to engage a manager.

The engagement of a manager must:

- be in writing
- state the term of the engagement
- state the functions authorised to be carried out
- state the basis on which payment is determined.

A body corporate manager cannot be appointed for a term of more than three years.

Duties of the manager

The body corporate may authorise the manager to exercise some or all of the powers of the committee.

Usually, the manager is authorised to exercise the powers of the secretary and treasurer. This means the manager will be responsible for matters such as calling committee and general meetings, sending out levy notices and by-law contravention notices, forwarding the minutes of meetings, and managing the body corporate funds.

The written engagement (the contract) must list the functions the manager is authorised to carry out. The committee and lot owners should be very clear about what the manager's duties are and may need to negotiate any extra duties it wishes the manager to perform.

The manager is not responsible for maintenance of the scheme, but may coordinate work on the specific direction of the committee.

The manager and the committee

Regardless of any authorisation given to the manager, the committee's powers are not diminished. The regulations specifically state that authorisation of a manager cannot prevent the executive members of the committee from exercising any or all of the authorised powers. For example, the secretary still has the power to call a committee meeting if requested to do so.

The authorisation must not prevent the executive members from directing the manager on how to exercise their authorised powers.

A manager cannot be elected as a voting member of the committee, however the manager is automatically a non-voting member.

The voting members of the committee can request the manager not to be present at a committee meeting when an issue such as a dispute between the body corporate and the manager, or the manager's engagement, is being considered.

The body corporate account

For any body corporate account opened after 4 March 2004, if the manager is authorised to operate the account, it may also be operated by the authorised members (e.g. at least two committee members).

Who manages the administrative and sinking funds?

Where a manager is authorised to administer the body corporate's administrative or sinking fund, the manager must:

- comply with section 146 of the Standard Module
- prepare a reconciliation statement, within 21 days after the last day of each month, for all accounts showing:
 - the financial institution statement showing amounts paid into and from the account
 - invoices and other documents showing payments into and from the account during the month
- within 30 days of the end of the contract or withdrawal of the authorisation, give the body corporate:
 - an income and expenditure statement for the financial year
 - a list of all amounts owing to, and payable from, the funds to date, and
 - a reconciliation statement for all accounts kept for the last month.

What is the process of engaging a manager when a full committee is not elected?

This engagement can only be made if the body corporate has been unable to fill all executive member positions on the committee or the total number of voting members of the committee is fewer than three.

Before considering such an engagement, the body corporate must attempt to elect or appoint a full committee. The following examples apply:

1. If, at the AGM, the body corporate is unable to fill all executive member positions on the committee or the total number of voting members of the committee is fewer than three, the legislation provides that an EGM must be held within two months to appoint an eligible person to the vacant position (refer Chapter 3 Division 2 Subdivision 2 of the Standard Module), or
2. If a casual vacancy arises on the committee which cannot be filled by the committee, an EGM must be held to elect an eligible person (refer Chapter 3 Division

2 Subdivision 4 of the Standard Module).

In both of these examples, the agenda for the general meeting must include a motion to engage a body corporate manager under Chapter 3 Part 5 of the Standard Module.

The motion may only be considered if at least one executive member position is not filled or the total number of voting members is fewer than three. The motion must be considered as the last item of business for the EGM.

How to pass the motion

The notice of the EGM must include the terms of the contract of engagement and an explanatory note (refer BCCM Form 18).

The approved form provides guidelines for engaging a manager including:

- the circumstances when a manager can be engaged
- the committee functions that will be carried out by the manager
- the restrictions applying to the manager who has the powers of the committee
- how a contract is terminated.

Note: the information included on BCCM Form 18 should be considered before voting to engage a body manager under Chapter 3 Part 5.

At least two quotations must be given to lot owners if the cost of the proposed engagement is above the *relevant limit for major spending* (Standard Module Chapter 12 Dictionary). If more than one quotation is given, the motion must be stated as a motion with alternatives in the agenda and on a voting paper for the meeting.

Unlike the engagement of a manager where the maximum term is three years, this type of engagement as a body corporate manager (as defined in Standard Module section 60) ends:

- at the end of the body corporate's next AGM held after the general meeting at which the engagement was approved, or
- 12 months after the day the engagement began, whichever is earlier.

Code of conduct

A manager must comply with the 'Code of Conduct for Body Corporate Managers and Caretaking Service Contractors' (BCCM Act Schedule 2) when performing obligations under the contract of engagement.

The code is automatically included in the terms of the contract and prevails if there is an inconsistency between a provision of the code and another term of the contract.

Some of the standards included in the code provide that a

manager must:

- have a good knowledge and understanding of the Act and the code relevant to his or her functions
- act honestly, fairly and professionally in performing the contract
- act in the best interests of the body corporate unless it is unlawful to do so
- not engage in fraudulent or misleading conduct in performing the contract
- not attempt to unfairly influence the outcome of an election for the body corporate committee
- if requested by the committee, show that records have been kept in accordance with the BCCM Act.

Termination

The body corporate may, by ordinary resolution at a general meeting, terminate the manager's engagement. Reasons for termination could be due to the manager:

- being convicted of an indictable offence involving fraud or dishonesty, assault or an offence involving an assault
- transferring an interest in the engagement without the body corporate's approval
- failing to carry out duties under the engagement
- contravening the code, or
- failing to comply with section 146 of the Standard Module in administering the administrative or sinking fund.

To start termination procedures the body corporate must give the manager a written 'remedial action notice'. The notice must include:

- details of the duties not carried out; or the provision of the code which has been contravened
- a period of notice (not less than 14 days after the notice is given) to remedy the infringement, and
- notification that if the manager does not comply within the period stated, the body corporate may terminate the engagement.

If the manager fails to comply with the 'remedial action notice' within the stated period, the body corporate may, by ordinary resolution at a general meeting, approve the termination.

The Office of the Commissioner for Body Corporate and Community Management (BCCM Office)

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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 1800 801 123.

Disclaimer

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