



Body Corporate and Community Management

Self resolution

The *Body Corporate and Community Management Act 1997* (the BCCM Act) in most circumstances, requires an applicant to have attempted internal dispute resolution (self resolution) prior to making a conciliation or adjudication application. This factsheet provides some guidance on self resolution.

What is self resolution or internal dispute resolution?

The BCCM Act defines self resolution as the resolution of a dispute by the parties to the dispute, using informal processes or the community titles scheme's own processes.

Internal dispute resolution includes any reasonable endeavour or step taken to attempt to resolve an issue in dispute short of making a conciliation or adjudication application.

Why is self resolution important?

- The BCCM Act requires it in most circumstances.
- The BCCM Act promotes responsibility for self management as an inherent aspect of community title living.
- It can prevent the escalation of the dispute.
- It encourages positive communication which can preserve relationships within community titles schemes.
- It can prevent future disputes from occurring, or if they do occur they may be resolved more quickly.
- It can be the quickest and most cost effective means of resolving a dispute.

What are some examples of internal dispute resolution?

The BCCM Act provides three examples of internal dispute resolution processes. They are:

- communication between the parties
- writing to the committee
- presenting a motion for consideration at a general meeting.

If the issue is between one owner and another, the first step to resolving the issue might be to talk to the other owner or occupier to communicate the issue of concern and attempt to resolve the issue together.

If the issue requires a committee or body corporate decision, the first step might be to write a letter to the committee outlining the circumstances of the issue and your request. The committee can then advise of the next step to take, which might simply be committee approval or a more formal step such as submitting a motion for the next general meeting.

If the issue requires the determination by the body corporate in a general meeting (such as an owner seeking permission for an improvement to common property for the benefit of their lot), it will be necessary to submit the motion to the body corporate for consideration at the next general meeting.

Individuals and bodies corporate are encouraged to investigate any other reasonable methods of self resolution.

Tips for communicating your concerns

You may consider using some of the following:

- try to approach the people with whom you feel there is an issue as soon as possible and in a place where everyone will feel relaxed and comfortable
- explain to them clearly and calmly what your concerns are and how the issue impacts on you
- before offering suggestions as to how to solve the issue, ask what their views are and suggest that they work with you to find a solution
- listen to the other person's feedback calmly and try to understand their point of view if that view differs from yours
- once you have listened to each other's point of view, try to come up with several options to resolve the matter that meets everyone's needs
- remember that in most negotiations, some give and take on both sides is required, especially when people disagree about the problem and how it should be resolved. Try to include all acceptable options and not just those options that you think would be best for you.

What processes can a body corporate adopt for internal dispute resolution?

Many disputes that reach the BCCM Office may be avoided if the parties in dispute knew who to take their concerns to or how to have their concerns considered by the body corporate.

To assist in this a body corporate may like to consider establishing an internal dispute resolution process for its scheme. The body corporate would simply need to pass a motion by ordinary resolution adopting the process. The details of this process would be up to the individual scheme to develop, but may include:

- a communication process where one of the members of the committee is the first contact person for concerns
- timeframes indicating how long a committee will take to respond to requests
- the use of informal or formal mediators (at the parties' expense) to attempt to resolve the dispute.

Example

A lot owner (J) continually allowed water to run off her balcony after watering her plants with a timing device. The lot owner below (M) complained of water pouring into his courtyard from rainwater spouts onto his BBQ and furniture. The body corporate objected to water stains on the exterior of the building, and asked J to stop watering or to remove the plants.

J refused, saying that it was her right to maintain plants in her own home and that the spouts were there to drain water from her balcony. The row escalated to shouting matches between J and M whenever they were outside.

The chairperson invited them both to discuss the problem at his unit.

It became clear that J was proud of her impressive array of plants and sensitive about their removal, as they provided screening and ambience. M had recently purchased the BBQ and furniture, and enjoyed entertaining. The watering was more evident when he had guests.

The chairperson helped clarify the two issues of timing, and the amount of water. M agreed to move his furniture to a less exposed position. J agreed to buy trays for under each plant and to put in water-retentive soil. The timing device was changed to times when M was not likely to be entertaining.

What if my attempts at self resolution are unsuccessful?

If your attempts at self resolution are unsuccessful you may make a conciliation application with the BCCM Office. Evidence that you have made a reasonable attempt to resolve the dispute yourself is generally required when making your application (BCCM Act sections 238(1)(b), 239A(f) and 239B(f)).

Before you make a conciliation application please refer to the *Conciliation* factsheet for further information on the process and how to complete the conciliation application form.

Practice Directions

Section 233 of the BCCM Act provides for the Commissioner to make practice directions about the dispute resolution service. The 21 practice directions may assist parties in conciliation and adjudication applications to understand and prepare for the dispute resolution process. The practice directions are available from the BCCM web pages at:

www.justice.qld.gov.au/bccm

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 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.

© The State of Queensland
(Department of Justice and Attorney-General) 2008

Copyright protects this publication. The state of Queensland acting through the Department of Justice and Attorney-General has no objection to this material being reproduced, but asserts its right to be recognised as the author of this original material and the right to have its material remain unaltered.