The QLD STRATA MAGAZINE

SEPTEMBER 2024

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LookUpStrata

About Us

LookUpStrata is Australia's Top Property Blog Dedicated to Strata Living. The site has been providing reliable strata information to lot owners, strata managers and other strata professionals since 2013.

As well as publishing legislative articles to keep their audience up to date with changes to strata, this family owned business is known for their national Q&A service that provides useful responses to lot owners and members of the strata industry. They have created a national network of leading strata specialists across Australia who assist with 100s of the LookUpStrata audiences' queries every month.

Strata information is distributed freely to their dedicated audience of readers via regular Webinars, Magazines and Newsletters. The LookUpStrata audience also has free access to The LookUpStrata Directory, showcasing 100s of strata service professionals from across Australia. To take a look at the LookUpStrata Directory, flip to the end of this magazine.

Meet the team

Nikki began building LookUpStrata back in 2012 and officially launched the company early 2013. With a background in Information Management, LookUpStrata has helped Nikki realise her mission of providing detailed, practical, and easy to understand strata information to all Australians.

Nikki shares her time between three companies, including Tower Body Corporate, a body corporate company in SEQ.

Nikki is also known for presenting regular strata webinars, where LookUpStrata hosts a strata expert to cover a specific topic and respond to audience questions.

Nikki Jovicic
Owner / Director

Liza came on board in early 2020 to bring structure to LookUpStrata. She has a passion for processes, growth and education. This quickly resulted in the creation of The Strata Magazine released monthly in New South Wales and Queensland, and bi-monthly in Western Australia and Victoria. As of 2021, LookUpStrata now produce 33 state based online magazines a year.

Among other daily tasks, Liza is involved in scheduling and liaising with upcoming webinar presenters, sourcing responses to audience questions and assisting strata service professionals who are interested in growing their business.

Liza Jovicic
Sales and Content Manager

LookUpStrata

Learn more here → https://www.lookupstrata.com.au/about-us/

You can contact us here → administration@lookupstrata.com.au

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Are levy recovery letter charges reasonable?

Q Are the costs involved in issuing levy recovery letters reasonable?

I don't believe the recovery costs for my overdue levies are reasonable.

Under the body corporate manager's (BCM) "internal debt recovery" procedures, I was charged a debt recovery fee of $50 for being 15 days overdue with my levy payments. The BCM sent a "reminder contribution notice". I paid my levies and included the 2.5% penalty for my late payment, but not the debt recovery costs, as I did not believe it should have been charged according to the debt management item in our AGM.

The item states that recovery proceedings can be commenced via a mercantile agency after 54 days.

My latest contributions notice included an additional $85 for arrears. I did not receive a first reminder letter regarding this additional fee.

When I questioned these amounts, the BCM stated: "These costs are directly related to the issuance of the letters and are added to the outstanding levies of the lot owner".

Are the costs involved in issuing these two letters (one of which I never received) considered reasonable?

A The fee could have been avoided if you paid on time or contacted your manager about your situation.

Yes, the costs of issuing letters would be considered reasonable. They are a fee applied to remind you your levy is due, and they could have been avoided had you paid on time or contacted your manager if you were experiencing difficulty paying.

It is also not necessarily the body corporate's fault if you didn't receive one of the letters. Letters can only be sent to your registered addresses. If they have made a mistake inputting your address, the body corporate may be at fault, but otherwise, they can't guarantee the post goes through or how you set up your email.

In addition, it sounds like debt management procedures have been agreed by owners at the AGM. This is a good thing. It makes the collection process clear for all owners. To check that the costs applied against your lot are correct, obtain a copy of your statement, which should list each cost applied. You can cross reference the costs against the items in the motion to ensure they correspond. If they don't, ask your body corporate company why.

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The cost of not acting

A decision to not act is still a decision, and one which has its own costs.

When discussing how to finance strata work, owners often ask how the Body Corporate can find alignment. An inability to find alignment can lead to the delay of critical work.

A decision by the Body Corporate to *not act* is still a decision, and it has costs of its own. If remediation projects are delayed – the inevitable further deterioration of the strata property will lead to extra costs. If a quote expires, you can bet the new quote will be greater.

Strata managers and the Body Corporate often need to consider new urgent work requiring attention *at the same time* as existing works. Is urgent work going to be unnecessarily delayed because lack of immediate funds delays decision making?

Obtaining additional funding to that raised by levies can help owners find alignment. This is where Lannock Strata Finance can help. We provide funding that can be used across several projects, not just for a solo project, and can fund invoices for separate projects under the umbrella of a single loan.

It's important to remember that the committee can also consider a funding mix to include money that may be in the maintenance fund. If an item needing repair is included in the maintenance fund, then it is best to use it. If the item is not in the sinking fund, then the committee may need to think more critically about whether they are setting the Body Corporate up for a bigger problem down the track by taking money out of the sinking fund to pay for this project. (*It is important to note that states and territories operate under slightly different legislation*).

Lannock recommends the Body Corporate should consider the following for *every* funding decision:

- What are the options? (Sinking Fund, Special Levy, Strata Funding)
- Should they use one method, two methods, or all three?
- Will the special levies be hard to recoup from owners? If they are hard to recoup, should they just focus on the finance option? Or money in the bank? Will this delay the project?
- Will the price increase while trying to collect levies?
- Is there an opportunity cost to striking a special levy? Will an owner sacrifice a wedding, holiday, or retirement fund?
- Will some owners carry debt beyond ownership of their lot? (because they may have put their share on a credit card, personal loan or other forms of personal funding)
- Will some owners sell and need to reduce the sale price at settlement to account for outstanding special levies?
- What is the quickest way to show proof of funds to the contractor?

The three options that should always be considered are the Sinking Fund, Special Levy and Strata Funding. Strata Funding can be tabled as a "contingency" at every general meeting – so the Body Corporate has prompt access to funding should it be required.

Every option should be put to the committee at the same time, prompting the crucial questions, and inviting suppliers (funding provider, contractor, lawyers) to attend committee meetings. Placing all options on the table at the beginning of your decision-making will increase the likelihood of the Body Corporate finding alignment.

In the best interest of passing the special resolution, it is crucial that the Body Corporate then decides on the right funding mix and which funding provider will best support that mix.

As the pioneers of strata funding, Lannock Strata Funding supports Strata Companies making informed funding decisions and will always provide someone to speak to your Body Corporate.

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With Lannock Strata Finance, you will have a dedicated relationship manager through all stages of this decision-making process and through the project.

Lannock
Simplifying strata funding

Who is responsible for insurance within the area under an occupation authority?

Q **Our caretaker has an occupation authority that grants exclusive use of a structure on common property. Who is responsible for the insurance of this area?**

Our caretaker has an occupation authority that grants exclusive use of a structure on common property. The contract clearly states the wording of exclusive use of the occupation authority areas.

The dictionary in the contract states that common property is defined in the Act and is located on the common property but excludes any part of the common property in respect to which any person has a lease or exclusive use.

Is the caretaker or the body corporate responsible for the insurance within this occupation authority?

A **The key issue in determining responsibility for insurance within the area under an occupation authority depends on the specific terms of the occupation authority and the contract.**

From an insurance perspective, the body corporate is required to maintain **public liability insurance** for the ownership and management of common property, including any property owned by the body corporate but used under an occupation authority. This is mandated by the *Body Corporate & Community Management Act 1997*.

The key issue in determining responsibility for insurance within the area under an occupation authority depends on the specific terms of the occupation authority and the contract. Since the contract grants the caretaker exclusive use of the structure on common property, the caretaker may be considered to have a degree of control over that area. As a result, the caretaker should also carry public liability insurance to cover any incidents or claims arising from their use of the area.

In the event of a claim, legal liability is determined by solicitors and judges based on the circumstances of the incident. Both the body corporate and the caretaker could potentially be drawn into a claim, similar to how both a property owner and tenant might be involved in claims related to leased property.

Therefore, it is advisable that both the body corporate and the caretaker hold their own public liability insurance. This way, either party can refer any claims to their respective insurers, minimising the risk of financial exposure.

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Strata Insurance SOLUTIONS

Can the committee recommend owners vote no to a motion?

Q **Can the committee email owners recommending they vote no to an owner motion?**

I have submitted a motion for our upcoming AGM. I received an email from the chair stating they will "send out a recommendation to all owners to vote no for this one motion" before the AGM.

Is the chair or any committee member entitled to tell owners how to vote on motions at the upcoming AGM?

A **The chair is not telling owners how to vote but lobbying for a particular outcome, which they are entitled to do.**

Todd Garsden, Mahoneys:

The chairperson is not telling owners how to vote but **lobbying for a particular outcome**, which they are entitled to do. You are equally entitled to lobby in favour of the motion.

William Marquand, Tower Body Corporate:

The committee are allowed to send this kind of message, and many owners may want or expect some direction from them as they are probably the best placed to provide an overview. However, the committee should be judicious in its response, providing reasonable information to owners so that owners can understand the situation and vote accordingly.

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Is the committee authorised to submit a DA without owner consent?

Q Is the committee required to obtain owners' consent for an improvement to a common area before submitting a DA to Council?

Our committee recently submitted a DA to Brisbane City Council for a material change to a common area rooftop. The DA was submitted without owners' knowledge or written consent. The chair and secretary signed the form that certified they'd lodged the DA with *"body corporate consent for making a development application under the Planning Act 20l6"*.

I've viewed Frank Higginson's **maintenance vs improvements webinar**, and I believe the rooftop refurbishment is an improvement.

Is the committee required to obtain owners' written consent when submitting a DA to Council, and, if so, what resolution is required?

The Brisbane City Council website states:

If the application is required to be accompanied by owner's consent, an application cannot be accepted as 'properly made' without it.

A I would very much suggest seeking legal advice before the Council approves anything.

Committees can make decisions for bodies corporate unless they are 'restricted issues'. Those issues are then reserved for a decision at a general meeting and include things like proceeding (other than one for a levy recovery or a BCCM application). The catch-all is also a decision that changes the 'rights, privileges or obligations of owners'.

I tend to think that the decision to make an application to change the use of common property is exactly that, but there is always more that goes into these, so I would very much suggest seeking legal advice before Council approves anything.

Frank Higginson | Hynes Legal
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New committee, new goals - what about the 10 year plan?

Q **If the committee adopts a 10-year plan and programmed maintenance, what happens if, in the future, a new committee decides on a different set of goals? Do we start over again?**

A **There is always going to be change.**

Craig Welsh:

I split the terminology. I call a 10-year plan a forecast, and annual committee decisions are the budgets. If you have expenditures like renovations planned for the next few years, and then the plumbing blocks and other unexpected maintenance items pop up, there go the upgrades. Things change and the forecast changes.

When you sit down to look at your forecast every year, you set your budget. If the two don't align, it's probably time to update your forecast. While they align, life is good. Your levies are still going to work, your general plans are still going to work, and you can agree and set that budget. If they don't align, it's time to consider your costs. You need to be able to look into the future and say, "Yes, we're going to have the money when we need it."

Marcus Munstermann:

There is always going to be change. Let's look at the decision for something like retrofitting EV chargers. If the decision has been made to allocate funds, it's budgeted in the first instance and then the next committee comes along and says they don't want to do that, those things are in flux anyway.

While the budget says that we're putting aside twenty thousand dollars to spend on EV charging, you still have to have a discussion, motions, quotes, all of those things come into play. That will end up driving the outcome.

QIA Group
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Owner challenges body corporate's authority in privacy dispute

Q An owner was accused of breaching by-laws by unauthorised photography/ filming within their strata property. Is the BC required to provide evidence, and is a warning without evidence justified?

An owner was accused of photographing/ filming others without their permission. The body corporate (BC) recently introduced a new by-law prohibiting this practice.

The chairperson has written to the owner threatening action if the behaviour continues.

The accused owner has had no opportunity to defend himself and has asked for evidence.

- Can the BC act on complaints without sufficient evidence?
- Can the BC issue a warning without sufficient evidence?
- Is the BC obliged to produce any evidence, including the names of the accuser/s?
- Do complaints/accusations have to be in writing?

A In some circumstances, the body corporate may reasonably act on complaints without sufficient evidence.

Yes. In some circumstances, the body corporate may reasonably act on complaints without sufficient evidence. Relevantly, **Section 182** of the BCCMA provides that the body corporate may give the owner a continuing contravention notice if the body corporate reasonably believes that the owner:

a. is contravening the by-laws; and

b. the circumstances of the contravention make it likely that the contravention will continue.

Subject to the by-law, if a number of owners have made complaints about the owner's conduct, there is an argument that the body corporate "reasonably believes" the **contravention by the owner** will continue.

Yes. The body corporate can issue a warning without sufficient evidence. **Section 94**(1)(b) of the BCCMA relevantly provides that the body corporate has a duty to enforce the by-laws. Similar to the above, if a number of owners have made complaints about the owner's conduct, providing these complaints are reasonable (i.e., not vexatious), the body corporate may issue a warning to the owner requesting it to comply with the by-laws (such as by ceasing the taking of photos and films of other occupiers).

Yes. In some circumstances, the body corporate is obliged to produce evidence, including to the accuser/s. Relevantly, **Section 205**(2) of the BCCMA provides that the body corporate must, within 7 days of receipt of payment of a 'prescribed fee', provide an 'interested person' with **access to or a copy of its records**. A lot owner is an 'interested person' (see Section 205(6) of the BCCMA).

Accordingly, if the owner makes a valid request to the body corporate for its records (including payment of the prescribed fee), the body corporate has a statutory obligation to provide access to or give a copy of the records. This would include copies of complaints made by owners to the body corporate about the conduct of the accused lot owner (see **Section 220**(1)(h) of the Accommodation Module). An exemption to this obligation is where the **material is defamatory** (section 205(3) of the BCCMA).

While there is no requirement that any complaints or accusations be in writing, there is a risk that if a dispute ultimately proceeds to adjudication, the applicant may find it difficult to produce any evidence or rely on any substantive material to advance its legal position. This is more of an issue after the contravention notice is sent, but it is also preferable to have details of the complaints triggering the contravention notice. In this regard, it is generally best practice to record everything in writing, including any complaints against an occupier.

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"Is the Multiplier just based on the management fees"?

We received a phone call from the Director of a medium-sized body corporate management business who wanted a second opinion:

- She has already appointed a broker to help sell her business. Now, after some time, the broker returned to her with one offer and one offer only – and there some pressure being applied on her to take the offer.
- The offer in broad terms was for *"3 times"*.

What the Director and business owner wanted to know:

1. *Why was there a lack of interest in her strata business?*
2. *What is the value of her business that she and her husband spent over a decade building?*
3. *Is the offer a good and fair offer?*
4. *Is the multiplier reasonable and does it only apply to the management fees?*
5. *What does she do from here?*

Our answers to her questions:

1. It's quite astonishing - there should not be a lack of interest based on the business she described to us. We have a surplus of ready buyers with funds to invest and our network of purchasers fits into 3 broad categories:

   - Purchasers wanting to buy strata businesses **~1,000 LUMs**;
   - Purchasers wanting to buy strata businesses **8,000 to 10,000 LUMs**; and
   - Purchasers wanting to buy strata businesses **greater than 20,000 LUMs**.

   We know Strata, and our contacts have run across industry parallels and across the Eastern States. Some of whom are serious operators looking for market entry and/or growth.

   The other possible problem - the broker she hired was charging a pretty low commission percentage. We told her that if we had to speculate:

   - It was probably a fast *"in and out, get the deal done"* for the broker as they probably feel lucky to get a listing (even if it's an industry outside of the core area of competency).
   - At the outset, they probably threw around a number or range around that would seem acceptable to the vendor at the time.
   - They haven't taken the time to gather the facts and information needed to understand the business.
   - The end result / predicament was the byproduct of subpar marketing effort and focus.
   - There are still risk factors to consider from here – i.e. we know of another vendor that spent $20k+ on legal costs only for a failed settlement.
   - The prospective purchaser backed out due being was a strata novice and inability to obtain funding.

2. We would need a fair amount of more detailed information from her – both quantitative and qualitative.

3. On the face of it – it's pretty average deal because the process more likely than not was not properly conducted.

4. *Please see the article on the next page.*

5. We couldn't advise on that as ultimately it was a decision for her, her husband, and their circumstances (and whether they were in a rush to sell).

Selling your business is one of the most important and largest financial decisions you'll make. Don't risk it or chance it. The selling journey isn't a process that takes weeks and there's always quite a few matters along the way that needs to be worked through.

STRATA
BUSINESS BROKERS

Hey Strata Industry – STOP talking about *'multiples'* and *'multipliers'*

If your business broker can't give you a **valuation** on your strata business, then they have no business brokering strata.

If your business broker is talking only in terms of a simple number with a 3 in front of it, then chances are they have no clue. Put another way, they've stumbled into strata brokering and are going to learn on your time and potentially at your cost.

What is a *'multiple'* or *'multiplier'* in the strata industry?

- A rule of thumb that - might have worked perfectly fine 10 or 20 years ago but no longer works because pricing, revenue streams, and cost bases have shifted.
- The strata industry has an array of management companies of varying sizes, scale, operational set-ups, and revenue models. In this context, how can you value a strata business in such a basic way?
- So, in summary a multiple is probably a lazy or ill-informed way that a broker is trying to apply to the fruits of your labour so they appear like they know what they're talking about.

At the end of the day, purchasers and investors buy value based on valuation and transactions go through on valuation.

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If residents lose their keys, are they responsible for rekeying the building?

Q

The resident's apartment keys also open the fire doors in our building. If a resident creates a security risk by losing the key, are they responsible for rekeying all the doors in the building?

Our apartment key was stolen from our car in the resident's car park the week we moved in. The police have now returned the key to us. What would have happened if we did not get the key back? The key to each apartment in our large building also opens the fire doors, so a lost key is a security risk. Do apartment keys usually open the fire doors?

Would owners be liable to pay the cost of rekeying the whole building? The building manager and committee have implied this would be the case.

Our by-laws do not mention that the keys also open the fire doors or instructions to follow when a key is stolen or whether the owner is responsible for rekeying the building.

A

A by-law cannot impose a financial penalty on you for rekeying.

Welcome to the weird and wonderful world of strata, where things are often complex or ambiguous, and it is challenging to get black-and-white answers.

As your starting point for your strata experience, you have chosen a particularly ambiguous issue. There are no explicit references to keys, locks and fobs in Queensland's strata legislation, much to the frustration of many, I have to say.

My former Office, **the Commissioner's Office**, has produced this rather excellent overview of some of the more common key, locks and fobs issues in strata, and you may find some assistance to your query in it: **Queensland Government: Article – Keys, fobs and swipe cards (frequently asked questions)**.

By way of general information, a by-law cannot impose a monetary liability on an owner (or tenant, known as an 'occupier'). So, a **by-law cannot impose** a financial penalty on you for rekeying. There are legislative provisions about how an owner or occupier can be liable for damage caused to common property – I am not sure how this situation would qualify under those provisions. Finally, the body corporate must be 'reasonable' in everything that it does, and while there is no specific definition of 'reasonableness', you may well have an argument to say that being responsible for the costs of entire rekeying is 'unreasonable'.

As an owner, you have the right to **submit motions** to general and committee meetings, so there may now be an opportunity for you to start thinking about **motions you could submit** that might address some of these issues, including the fire door/security risk you outline below.

You ask if that is usual. I'm not sure, except to say that I live in a high-rise apartment block, and I certainly have separate keys for my apartment and the fire doors.

This is general information only and not legal advice.

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STRATA SOLVE UNTANGLING STRATA PROBLEMS

Strata Solve helps people untangle and resolve their strata issues. Sounds simple when you put it like that, doesn't it?

Director Chris Irons (pictured, with his strata-approved greyhound Ernest) has an unrivalled strata perspective. As Queensland's former Body Corporate Commissioner, Chris has seen and heard virtually every strata situation and nuance. He knows that while legislation provides a framework, there are many ambiguities to navigate through and in which pragmatism, common-sense and effective communication are vital.

As an independent strata consultant, Chris provides services which are all about empowering owners, committees, managers, caretakers, and others, to protect their strata interests. With a high-profile media and online presence, and as an accredited mediator, Chris is also able to carefully 'read the room' and craft the right narratives in even the most complex strata situation.

Strata Solve is not a law firm. Chris instead thinks of steps you can take before you embark on lengthy, costly, and stressful legal proceedings. Regardless of the client, all people in strata have one thing in common: their substantial investment in the strata scheme. Strata Solve prioritises that investment in each tailored solution we provide.

Get in touch to find out more.

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web: stratasolve.com.au

Denied entry and meeting recording banned: Options for owner redress

Q **Owners were denied entry to the budget meeting, Zoom attendance was not provided, and the meeting was not recorded. What options are open to me to redress these civil law breaches?**

The committee only gave seven day's notice of our **budget meeting**. Attending owners were refused entry as the committee claimed they failed to confirm attendance 24 hours before the meeting.

I attempted to attend via Zoom, but my request was ignored. The secretary declared that no recordings of the meeting were permitted.

A recent webinar webinar: **Recording strata committee meetings** stated it is unlawful to ban recordings (ref 6 minutes).

I have forwarded the video link to the committee and the body corporate manager, requesting they rescind the ban on audio recordings. I've been ignored.

Can you please advise if meetings require 21 days' notice, zoom-in is permitted, and a ban on audio recordings is unlawful?

What options are now available to redress the above civil law breaches?

I would wait to see the AGM papers and whether the issues you worried about were addressed.

I think the first thing with something like this is to determine whether you are up for what could be a long, drawn-out legal bun fight. If you aren't up for that, I would avoid the legal demands.

Your issues seem to relate to the budget meeting. The budget needs to be approved by owners at the AGM. Yes, the proposed budget will be set by the committee at that budget meeting, but all you could do from the floor of the meeting would be to observe discussions – not add to them or change them.

I would wait to see the AGM papers and whether the issues you worried about were addressed. If they weren't, you are entitled to vote against the budget and **ask others to do so**. If the budget is not passed, the committee will have to do something else. If it is passed, you either accept the will of the people or look to challenge the approval because of your concerns, should those concerns be founded on some lawful, challengeable basis.

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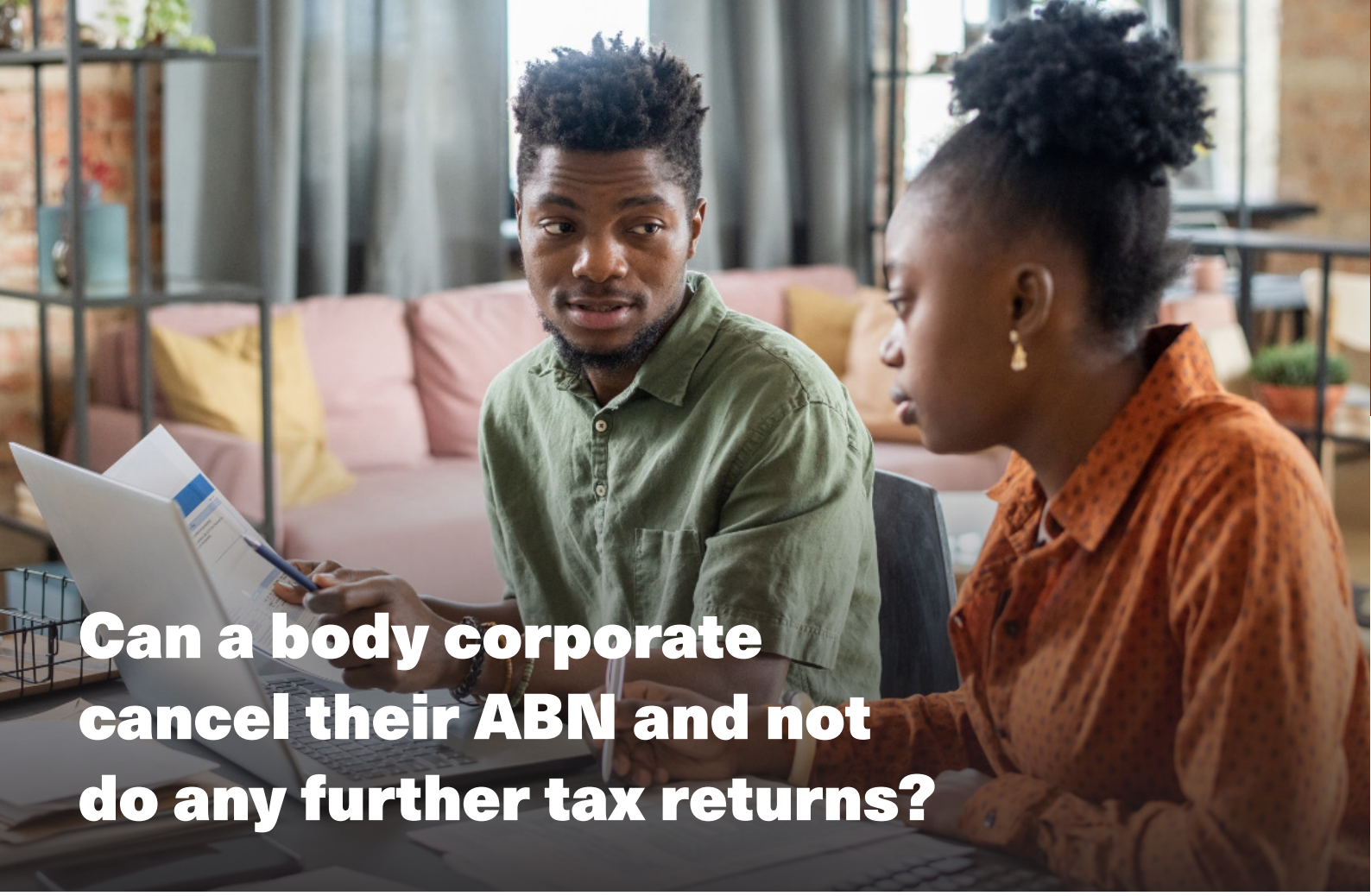

Can a body corporate cancel their ABN and not do any further tax returns?

Q **Can the body corporate cancel our ABN and not do any further tax returns?**

A **It is a requirement that a CTS has an ABN.**

A body corporate or CTS is taxed as a public company using the common law principle of mutuality. Companies do not get a tax free threshold. If a CTS derives $1.00 of non-mutual income, an income tax return has to be prepared and lodged.

If a CTS has no non-mutual income, it is still prudent to advise the ATO that an income tax return is not required. If this is not done, often a couple of years later, the ATO will demand a return is lodged. If this is not done within 30 days, the ATO imposes a fine of $900 for failing to lodge. It is impossible to determine if a CTS will derive assessable non-mutual income in future years. Once issued, it is not possible to cancel a Tax File Number.

To avoid failure to lodge penalties in the future, we recommend the body corporate lodge a client update over the ATO's Business Portal, advising that a return is not required for a particular year.

If an entity is carrying on an enterprise, as defined in the *A New Tax System (GST) Act 1999*, it is required to have an ABN. If you invoice another business and cannot quote an ABN, the other business is required by law to withhold 46% and remit this to the ATO. It is a requirement that a CTS has an ABN.

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Who is liable for fire safety?

Body corporates or the body corporate manager?

There is a common misconception that if your building has a body corporate manager who schedules routine maintenance and maintains your documentation, they take on the liability associated with fire safety. However, this is not the case. If something is missed, the ultimate responsibility remains with the body corporate.

For this reason, some oversight of the body corporate manager is advisable. This requires body corporates to be aware of the fire responsibilities applicable to their building. This includes documentation, licensing and annual evacuation exercise compliance, among others, all of which should be reviewed annually.

Alternatively, body corporates can engage a fire safety compliance auditor qualified to review and confirm whether or not compliance can be demonstrated.

This should be verified before signing the annual occupier statement, as in signing this document, the body corporate assumes legal liability.

It is also important to note that Queensland legislation requires a retrospective investigation when fires occur.

Body corporates must be able to demonstrate compliance with all regulatory requirements, both for fire authority inspections and for insurance purposes.

In Queensland, all documentation must be kept for a minimum of two years. This includes maintenance, repairs, testing, evacuation drills and emergency plans.

Stefan Bauer
Fire Matters

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What can you do about a neighbour's light causing a nuisance?

Q **Our neighbour's lights shine into our bedroom and disturb our sleep. We've tried talking to them respectfully, but this hasn't been successful. Is there anything we can do?**

We are long-term owner-occupiers in a small townhouse complex established under the **building format plan**. New tenant neighbours have installed external lightbulbs that shine into our bedrooms and disturb our sleep. We've tried talking to them respectfully, but this hasn't been successful. Is there anything we can do?

A **Report the issue to your body corporate and see what they say.**

You have done the right thing in approaching the occupants to try and resolve the situation, but as they are unwilling to assist, you need to escalate to the next level of complaint.

As a starting point, you can report the issue to your body corporate and see what they say.

Generally, any changes to the **exterior of the lot** should be authorised by the body corporate, so there should be a record approval for the new lights. If they weren't approved, the body corporate could request that the lights be removed.

In making any submission to the body corporate, you should gather clear evidence to show how you are being disturbed – photos of the light entering your room, details of when this started and the times it occurs, etc.

You should also **check your scheme's by-laws** to see if the lights **breach any of the by-laws**. If so, you could send the body corporate a **Form 1 contravention notice** formally identifying the problem.

It could be classified as a nuisance if it does not appear to be a by-law breach. **Section 167** of the *Body Corporate and Community Management Act 1997* may apply. This states:

1. The **occupier** of a lot **included in** a **community titles scheme** must not use, or permit the use of, the lot or the **common property** in a way that:

   a. causes a nuisance or hazard; or

   b. interferes unreasonably with the use or enjoyment of another lot **included in** the **scheme**; or

   c. interferes unreasonably with the use or enjoyment of the common property by a person who is lawfully on the **common property**.

There are other alternatives. Perhaps you could contact the lot owner or property agent directly to state your issue. You could obtain these details by asking the body corporate for a **copy of the roll**.

Or, if necessary, you could file a complaint against the occupant via the Commissioner's office. The government website has a good review of your options and how to manage them: **Queensland Government: Self resolution for disputes**

It can be a pain going through these steps, but if you want to resolve the issue, the best method is escalation through the formal channels.

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Can the committee accept two nominations from the same lot?

Q Can a single lot nominate two individuals? Can the committee accept two nominations from the same lot? What if one of the nominations is not an owner?

Our current committee has accepted two nominations from the same lot. One nomination is an owner who self-nominated, and the second is the owner nominating his wife, who is not an owner. Can a single lot nominate two individuals? Can the committee accept two nominations from the same lot?

There are currently six other eligible nominations. However, if the minimum number to form a committee is not met, can an owner and an owner's representative make up 2 of the 3 minimum required or do committee members need to be co-owners?

A This point is sometimes far from clear.

Section 17(1) of the Standard Module (equivalent provisions of others) provides that 'the owner of a lot may nominate 1 person for election as a voting member of the committee'. You could interpret that to read that with the self-nomination counting as 1 nomination, there is no capacity for a second nomination by that owner.

In the situation you describe where there is a call from the floor for committee nomination (i.e., the minimum number is not achieved), **Section 38** of the Standard Module applies, and you might like to consider subsection (5), namely:

'A member of the body corporate may nominate, under subsection (4)(b), not more than 1 person for all ordinary member positions for which nominations are invited.'

So, it is possible that, in this instance, an owner may nominate someone else. In your question, you said the person's wife was not an owner. The legislation makes specific reference to 'co-owner'.

By this point, you might have gathered this is sometimes far from clear, so the above should not be taken as gospel. There may be other complicating factors (e.g., if someone owes a debt, how many lots are in the scheme, and whether corporate nominees are involved).

This is general information only and not legal advice.

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A patio pandora's box of issues

Q **The selling agent approved two patios in our new building when they were the only committee member. The patios are now causing a nuisance to other lots. Was the decision legal, and who is responsible for any rectification?**

In our one-year-old building, two apartments had patios added to their outdoor living areas. When I asked about the approval of the patios, the plans, etc., I was informed the selling agent had given approval. The decision was made without consent from other owners, as the agent was the only committee member at that time. Can the agent do this?

The roof of one of the patios is causing light to reflect into the apartment above. Is this now our committee's issue to solve?

A **Get legal advice from a strata lawyer as soon as practicable and well within the 3 months allowed to challenge body corporate decisions.**

This question is a Patio Pandora's Box! There is a raft of potential issues here. At the outset, I strongly recommend you get legal advice from a strata lawyer as soon as practicable and within the 3 months allowed to challenge body corporate decisions.

If we assume that the sort of patio we are talking about is a roofed structure, and the owner of the adjacent lot/s already has the right to use the land on which the patios have been put, the range of 'approvals' required could be, at the least, a committee approval under a by-law about '**external appearance**' changes to the lot/s, and at the worst, the requirement of a resolution without dissent to be passed at a general meeting to approve encroachment of part of the roof structure into the adjoining common property airspace.

A BCCM form 12, requesting **copies of body corporate records**, or even better, an inspection of the body corporate records for you by an experienced search agent, should elicit the relevant documents (or as sometimes happens, show that the relevant documents don't exist!). Once you have the documents, you will be well armed to talk to your strata lawyer including about:

a. whether the patios are in the lot/s, the common property, **exclusive use** or a mixture of these

b. what approvals would be required under the Act, the Regulation Module or **the by-laws** for what has been built

c. what 'approvals' have been given, as reflected in the body corporate records,

d. if there is a shortfall in the approvals, whether that is actionable, and if so, how and

e. the process, costs and risks of taking action.

Over and above that, you could also discuss both the likely ongoing **nuisance issue** and the potential for a breach of the development approval for the scheme, which often comes from either (fully or partly) enclosing a balcony outdoor space or adding to the total area of land 'under roof'. You can do this all yourself at your cost, or you can seek to enlist the assistance of your committee.

There are (very) good reasons the committee should dig into the issue, including (for example):

a. to answer questions about who is liable to maintain the new structures

b. whether the body corporate is now in breach of the development approval for the scheme and

c. if there are unapproved or deficiently approved structures, will notice have to be given to the **body corporate's insurer**?

From personal experience, I might add that structures like these installed after establishment of the community titles scheme are almost always constructed in a way that breaches waterproofing measures, such as membranes. Early identification of such a breach and addressing it before the damage is done downstairs, is something any sensible committee should do.

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Would a body corporate be liable if they allow smoking on common property?

Q **With the new smoking laws from 01 May 2024, would a body corporate be liable if they continued to allow smoking on common property?**

A **Bodies corporate that do not have a valid by-law prohibiting smoking will expose themselves to a lot of criticism, complaints and disputes from owners and occupiers concerned about smoke.**

From 1 May, the **BCCMA will be amended** to provide that a by-law prohibiting smoking on common property will not be **oppressive or unreasonable**. Flipping that around, that means from 1 May, the body corporate can have a valid by-law prohibiting smoking. The mechanics of achieving that will, for some (many?) bodies corporate, mean they will need to **amend their by-laws**.

So, then, for bodies corporate that do not proceed down that path and instead opt to do nothing to regulate or prohibit smoking or do nothing to address owner or occupier concerns about smoking, where does that leave them? I think that is where your query about 'liability' kicks in. I am not a lawyer, and I do not have insurance-related expertise, so I cannot comment on 'liability' in either of those very specific contexts. If we talk about risks and practical impacts for bodies corporate though, I certainly have the expertise to speak on those points. The risk is that from 1 May, bodies corporate that do not have by-laws reflecting the above will expose themselves to a lot of criticism, complaints and disputes from owners and occupiers concerned about smoke. All of which will involve time, money and stress. There may be implications for property values: a body corporate that does not act on smoking concerns may not be an attractive prospect for someone wanting to buy a lot.

And then, of course, the biggest risk of all – the health impacts of second-hand smoke. Let us not forget that one of the main instigators of these new strata smoking laws is **this adjudicator's decision**, in which second-hand smoke was found to be a hazard. Does the body corporate want to be 'liable' for a potentially life-threatening hazard on common property?

I think we all know the answer to that.

This is general information only and not legal advice.

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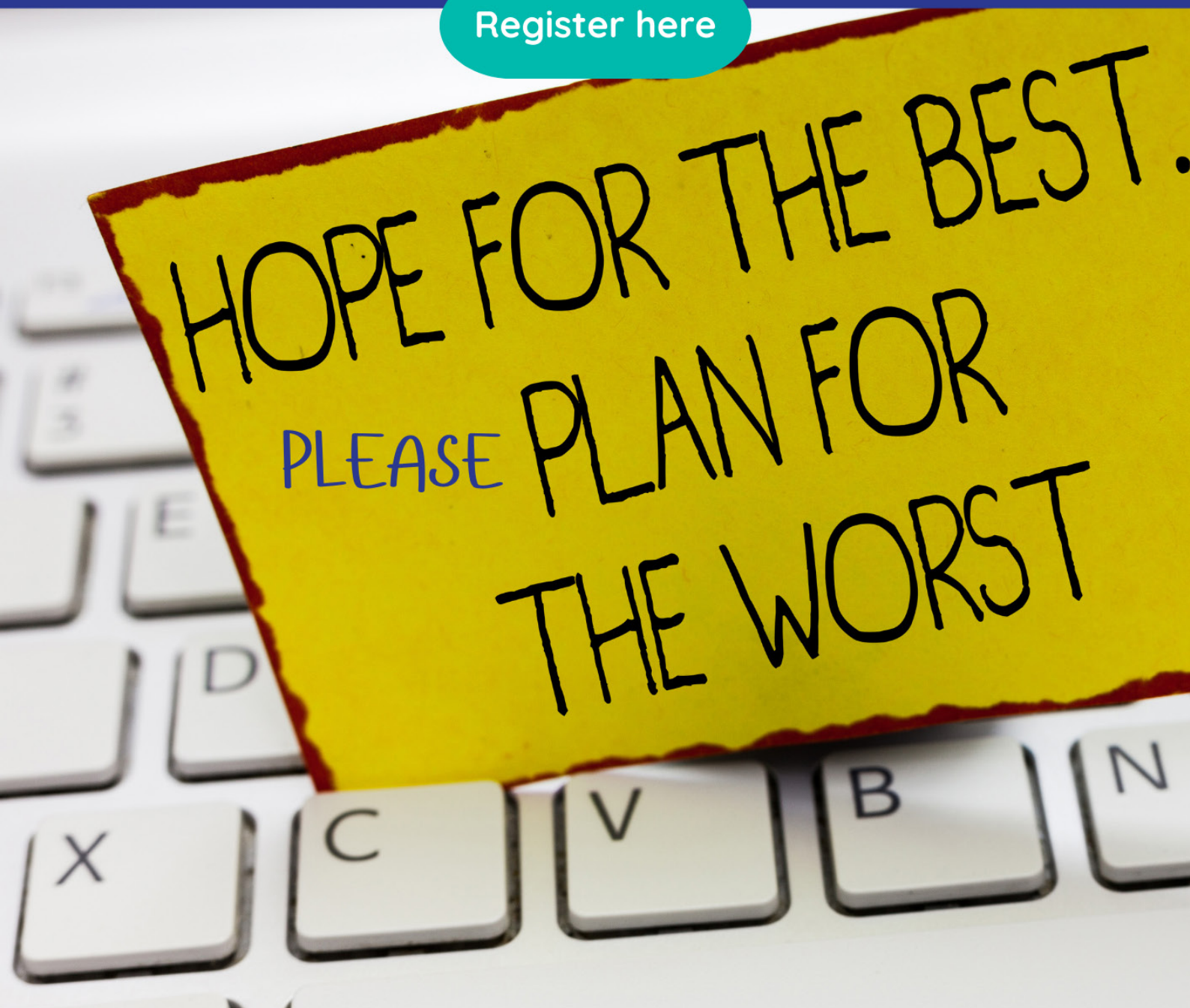

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E: chris@stratasolve.com.au

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Delphi Consultants & Valuers
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