



HOBANZ

Our Homes Our Future

Guide to:

BODIES CORPORATE

Created: January, 2014

Last Updated: February, 2016

WHAT IS A BODY CORPORATE?

A body corporate, often referred to as a strata title or unit title development, is a unique feature of the unit title scheme and consists of all the owners of the units acting as a group.

A body corporate has two main duties:

- To organise and maintain all buildings and other improvements;
- To keep the common property in a good state of repair

A body corporate has rules, which govern the unit owners' relationships with each other and with third parties.

The body corporate also has duties that apply under its rules. Rules are based on the [Unit Titles Act 2010](#) but can vary with each body corporate.

In large complexes a Manager or Management Committee may be employed to carry out the body corporate's duties.

Within a body corporate, members own their dwelling (which is called a principal unit) and may own accessory units (such as car parks, storage lockers and courtyards). Areas such as grounds, gardens, internal halls and stairs in blocks are common property and are owned by all the owners collectively. The exterior of all buildings, including the roof, may be within the unit or part of the common property.

WHAT IS A UNIT TITLE?

A Unit Title is a type of sub division of a Unit Plan used to allow individual ownership of parts of a single building or separate buildings within a complex. It is similar to other property in that it can be bought and sold, or leased or mortgaged. But unlike other forms of title, a Unit Title is made up of three components:

- Ownership in the particular unit and accessory units.
- An undivided share in the ownership of the common property.
- An undivided share in the ownership of the units if the unit plan is cancelled.

BODY CORPORATE GOVERNANCE

BODY CORPORATE CHAIRPERSON

The Unit Titles Act 2010 introduced the new role of Body Corporate Chairperson, who must be elected by the body corporate at every Annual General Meeting. It is a requirement of the Act that the Chairperson must be an owner.

The role of Chairperson has clearly defined duties in accordance with the Unit Title Regulations:

- Maintain the register of unit owners.
- Prepare the agenda for each general meeting.
- Chair each general meeting (unless it is agreed at the start of the meeting that another person will chair).
- Prepare minutes of each general meeting.
- Record resolutions voted on and whether they were passed.
- Keep financial accounts and records.
- Submit the body corporate's financial statements to an independent auditor.
- Receive reports from the body corporate committee and distribute them to unit owners.
- Sign documents on behalf of the body corporate.
- Prepare and issue notices of resolutions to be passed without a general meeting.
- Notify unit owners of the result of any vote on a resolution to be passed without a general meeting.
- Notify the body corporate committee of any delegation of a duty or power to the body corporate committee.
- Undertake any other duties relating to the administration of the body corporate that the body corporate has decided by ordinary resolution to confer on the Chairperson.

The body corporate can choose to delegate some or all of these tasks either to the body corporate committee or to a body corporate manager under a contractual arrangement. If employing a body corporate manager it is important to set out clearly within the contract exactly what the manager is expected to do.

For the sake of efficiency there seems little point in the Body Corporate Chairperson not being part of the body corporate committee. In many cases the Body Corporate Chairperson will also chair the committee and the meetings.

If the sitting Body Corporate Chairperson sells their unit, they must give notice of their intention to resign from the post of Body Corporate Chairperson. The Body Corporate Chairperson can resign at any time giving notice in writing to the body corporate. As the role of Body Corporate Chairperson is a requirement of the Act, following resignation or removal, the position must be filled as soon as possible.

Any owner, including directors of company owned units and trustees of trust owned units, within the

body corporate are eligible to be elected to the role of Body Corporate Chairperson as long as they are nominated by another unit owner and agree to be nominated.

BUYING INTO A BODY CORPORATE

This section covers information specific to purchasing in a body corporate whether it's an apartment, terrace or standalone house.

FIND OUT ABOUT THE BODY CORPORATE

- Is the property freehold or leasehold?
 - Lease hold property may appear attractive as the property is cheaper to buy because land is not included in the sale. Instead there will be an additional payment to the landlord to use the land. A potential downside is that lease costs need to be renewed and incumbent owners have no control over the cost of renewal. Recent examples have seen lease costs increase significantly.
 - It is very important that you check the terms and conditions of the lease with reference to the ability for the land owner to ratchet up the ground rental charges and in what time frames these increases will occur.
- If the property is leasehold check the remaining lease term.
 - Under the Unit Titles Act 2010, all multi unit complexes with more than 10 units are required to have a body corporate committee unless a resolution of the body corporate to not have a committee is passed. Complexes with nine or fewer units may form a body corporate committee.
- Does this complex have a committee? If it does, how active is it?
- What are the body corporate annual fees?
 - Fees vary; make sure you are aware of the annual cost to live in the body corporate you are interested in.
- Does the property you are looking to buy have any unpaid fees?
- Is there a maintenance plan in place?
 - Under the new Unit Titles Act all bodies corporate must have a long term maintenance plan (LTMP) in place, and this became mandatory as of the 1st October 2012. The LTMP must be for a minimum of 10 years and reviewed every two years. You should be very wary of maintenance plans that are prepared for the minimum of 10 years as there may be some very significant maintenance that falls just outside of the 10 year period that has been assessed. We say that a prudent body corporate ought to have a 30 year maintenance plan and build adequate maintenance reserves in their Long Term Maintenance Fund to fully fund the LTMP over the years. You must apply extreme caution when analysing the financial records and the LTMP to ensure that not only is the LTMP adequate, but that the body corporate has built up adequate reserves otherwise you risk assuming a significant contingent liability if you buy the unit.

ADDITIONAL THINGS TO CONSIDER

Apartment & Complex

- Is the apartment in a good state of repair - make sure you look beyond the unit you are buying and take a critical look at the entire complex?
- Has maintenance been carried out recently? If so, what, why and when and by whom?
- Is any maintenance planned? If so, is it routine maintenance or for another reason?
- Are car parks allocated to the property you are viewing? If so, how many?
- Is there any security, security gates, CCTV, etc? Is it in good condition?
- Is there an on-site building manager?
- Was the property owner-occupied or tenanted? It is generally accepted that owner-occupiers take more care of property than tenants.
- Are pets allowed?
- How easy will it be to get your furniture in and out of the building?

Body Corporate

- Determine the date of the next Annual General Meeting (AGM) or if there is an Extraordinary General Meeting (EGM) pending.
 - This is important because we have seen a lot of units go on the market prior to a general meeting being called because an owner has become aware of matters that will be raised at the next meeting that will result in a significant increase in the annual levy or will negatively impact the value of the complex.
 - If a general meeting is pending you must ensure that you put the question in writing to the agent asking whether the vendor is aware of any matters that will be raised at the next general meeting that will either significantly increase the annual levy or have a material impact on the value of the complex - you should insist that the answer is provided to you in writing.
- Ask for a copy of the:
 - Operational Rules.
 - Minutes for all general meetings (AGM's & EGM's) and committee meetings for the last three years.
 - Financial Statements for the last three years including audit reports.
 - Budget for current year.
 - Long Term Maintenance Plan.
 - Insurance Policy covering the complex and common property.

In addition to finding out the above, ensure you carry out the appropriate due diligence, i.e.: building condition survey, LIM report, pre-contract disclosure statement (highlighting details of body corporate levies, planned maintenance, financial statements and information on any claim or proceedings related to water ingress), etc.

We strongly recommend that you obtain copies of the financial statements, audit reports, current budget and copies of the minutes of all general meetings and committee meetings over the last three years. This will enable you to get an insight into the fiscal fitness and standard of governance of the body corporate and to enable you to get an insight into whether or not there are maintenance issues, legal action on foot or being contemplated. Many bodies corporate are foolishly sanitising their minutes and not properly declaring the issues at hand so some times it is a matter of what is not written in the minutes as opposed to what is - HOBANZ can assist you in vetting this information if you wish.

Once you are satisfied you know as much as you need to know about the property make an offer. Remember offers can be made conditional on one or a number of factors such as finance approval, lawyer's approval, building condition survey or LIM report.

LIVING IN A BODY CORPORATE

THE IMPORTANCE OF BODY CORPORATE RULES

Body corporate rules are essential to ensure the smooth running and management of the body corporate. It is important that owners, and their tenants, as well as prospective purchasers are aware of what is set out in these rules.

The purpose of body corporate rules is to uphold a good standard of living for all owners and a good body corporate will implement these rules fairly. While some body corporate rules may appear trivial, they set out standards for:

- How the upkeep of the property will be carried out so the maximum value of each property is maintained.
- Acceptable use of the buildings.
- Noise levels.
- Rubbish removal.
- Types of pets allowed.

The rules also cover the management and governance of the body corporate including:

- The duties of an owner.
- The powers and duties of the body corporate.
- An outline of powers that can be delegated to an owner's committee.
- Running of general meetings.

OWNER'S OBLIGATIONS

Typically an owner's obligations will be to:

- Grant the body corporate access to your unit at reasonable times for purposes set out in the Act.
- Comply with the body corporate rules.
- Pay all required funds to the body corporate on time.
- Repair and maintain your unit so there is no damage or loss in value to neighbouring units or common property.
- Not carry out any structural changes to the unit without written consent of the body corporate.

WHO PAYS FOR MAINTENANCE?

The introduction of the Unit Titles Act 2010 has complicated the matter of maintenance. Both the body corporate's and the owner's responsibilities are outlined under Sections 138 and 80 respectively.

Sections 138(1) and (2) state a body corporate's duties of repair and maintenance:

1. The body corporate must manage, maintain, and keep in a good state of repair the common property ...
2. The body corporate must maintain, repair, or renew all building elements and infrastructure that relate to or serve more than one unit.

Section 80 states that an owner "must repair and maintain the unit and keep it in good order to ensure that no damage or harm, whether physical, economic, or otherwise, is, or has the potential to be, caused to the common property, any building element, any infrastructure, or any other unit in the building".

Section 5(1) defines common property as:

- a) All the land and associated fixtures that are part of the unit title development but are not contained in a principal unit,

- accessory unit, or future development unit; and
- b) In the case of a subsidiary unit title development, means that part of the principal unit subdivided to create the subsidiary unit title development that is not contained in a principal unit, accessory unit, or future development unit

The Unit Titles Act 2010 has introduced the new terms “building elements” and “infrastructure”. “Building elements” include internal and external components of a building necessary to its structural integrity, aesthetics, or health and safety, and includes the roof, foundations, walls, decks, balconies, and cladding.

“Infrastructure” includes pipes, wires, cables, gutters, and other matters necessary for shelter and services/utilities.

The obligations of both the body corporate and the owners are clearly established. What has not been established is who pays for what. Section 138(4) states:

“Any costs incurred by the body corporate that relate to repairs to building elements and infrastructure contained in a principal unit are recoverable by the body corporate from the owner of that unit as a debt...”

Therefore, the cost of repairing any building elements or infrastructure “situated within a principal unit” is recoverable from that unit owner. So, if the leaking roof from the original question is within common property, then section 138(4) will not apply; meaning that the body corporate must repair it and the cost is shared among all members of the body corporate in proportion to their utility interest. Conversely, if the roof is “contained in a principal unit” then section 138(4) will apply with the costs recoverable the owner of that unit.

There is however another section of the Unit Titles Act 2010 to consider. Section 126 indicates that where the body corporate does any work substantially for the benefit of one or more units, but not all units, or which benefits some owners more than others, then the cost of that work is recoverable from those specific unit owners, and not all owners.

If the complex is a multi-storey development this provides some argument as to who should pay for the roof as it could be argued that while the roof is

within one unit it is fundamental to the integrity of the whole building.

Sections 138 and 126 seem to conflict here and there is no instruction as to which section to adopt given this scenario. This could lead to disagreement between owners which may ultimately need to be decided by either the Tenancy Tribunal or the Courts.

WHO PAYS MATRIX

For simplicity a matrix for responsibility and payment is shown below.

Area	Responsibility	Who Pays?	UTA 2010 Section
Common Property	Body corporate responsibility	Body corporate pays	138(1)
	Work substantially for the benefit of one or more units	Recoverable from unit owners based on benefit, or utility interest, or relative benefit as determined by Court or Tribunal	126(1)-(2)
Unit	Unit owner responsibility	Unit owner pays	80(1)(g)
Building elements / Infrastructure	On common property	Body corporate pays, unless damage caused by owner – potential recovery	138(2)
		Within a unit body corporate pays and recovers from owner	138(4)
		Work substantially for the benefit of one or more units, recoverable from unit owners based on benefit, or utility interest, or relative benefit determined by Court or Tribunal	126(1)-(2)