

Body Corporate Managers

Changes to community and strata titles legislation

To take effect from 28 October 2013

Introduction

The Statutes Amendment (*Community and Strata Titles*) Act 2012 will change the laws (the *Community Titles Act 1996* and the *Strata Titles Act 1988*) governing community and strata titles in South Australia, to take effect from **28 October 2013**.

This fact sheet is designed to explain the impending changes to community and strata titles laws directly impacting on body corporate managers. In so far as managers are seeking information on the impact of the changes on the community or strata corporations (corporations) that they manage, see the separate [Fact Sheet for Owners and Community & Strata Corporations](#).

Body corporate management contracts

The new requirements taking effect from 28 October include:

- All body corporate management contracts (with a paid professional manager) entered into or renewed after the changes must be in writing;

All such contracts must specify:

- the term of the contract;
- the functions or powers to be delegated by the corporation to the manager (eg the services to be provided by the manager);
- the fees payable to the manager, or the basis on which such fees are to be calculated;
- the corporation's termination rights (see also '**Termination of long term contracts**'); and
- that the manager is insured as required by the legislation (see '**Compulsory insurance**') and undertakes to maintain that insurance throughout the life of the contract;

- that each member of the corporation has the right at any time during business hours to inspect the records of the corporation in the possession or control of the manager and how inspection can be arranged.

A copy of the manager's current schedule of professional indemnity insurance (see '**Compulsory insurance**') must be attached to the proposed contract.

Managers must ensure that a copy of the proposed contract and a required explanatory pamphlet are available for inspection by any owner at least five clear days before the date a vote is to be taken to appoint a body corporate manager.

The agenda for an AGM at which it is proposed to vote to appoint or renew a manager must include the text of the resolution to enter into, renew or extend the contract and set out where and when the contract and pamphlet can be viewed or obtained by owners.

The required explanatory pamphlet must set out:

- the role of the manager; and
- set out the rights of the corporation and its members, including the rights to:
 - > inspect records held by the manager;
 - > revoke the delegation of a particular function;
 - > appoint the manager as a proxy and to revoke that appointment;
 - > be told of any payment or benefit that the manager receives from another trader for placing the corporation's business;
 - > terminate the contract in certain circumstances; and
 - > apply to the Magistrates Court for resolution of a dispute.



Termination of long term contracts

A corporation will be able to terminate a body corporate management agreement that is for a period of over 12 months (taken to include any renewal period at the option of the manager) after the contract has run for 12 months. The corporation must give at least 28 days' notice of termination, although the notice period can be less if agreed in the contract. This will provide protection for corporations that inherit long-term management contracts entered into by developers during the period whilst they retain control of a new development.

Compulsory insurance

Paid professional body corporate managers will be required to maintain a policy of professional indemnity insurance providing cover of at least \$1.5 million per claim per 12 month period.

Meetings, proxies and conflict disclosure

Length and revocation of proxies

The law changes make it clear that the appointment of a proxy (for example, the manager) can be revoked at any time and that any agreement to the contrary is ineffectual. Also, even if an owner has appointed a manager as their proxy, this does not prevent an owner from attending a meeting and voting in person.

The owner must still receive notices of meetings, although copies can go to their proxy in addition if the corporation agrees. Proxies will be limited to no more than 12 months under both Acts. Further, a proxy appointing the body corporate manager will lapse automatically if the appointment of the body corporate manager ends.

Disclosure of conflicts of interest

The amendments confirm that all members of the corporation and any proxies or attorneys who attend the meeting on their behalf have to disclose any interest that they or their principals have in matters being considered by the corporation (other than interests held in common with the other members of the corporation).

Managers are required to disclose to the corporation any monetary interest, or monetary benefit they stand to gain, from acting for the corporation. For example, if the manager would receive a commission from a person for placing business of the corporation with that person, it would be an offence to fail to disclose that fact before placing business with the person. Similarly, if the manager were to profit by placing business of the community corporation with a related company, it would be an offence to fail to disclose that.

Note: if an employee or agent of a manager has a direct or indirect monetary interest in a matter, then the manager is taken to have a monetary interest in that matter.

It is not an offence to fail to disclose an interest shared with all owners, nor an interest that the manager did not know, and could not reasonably be expected to know, about.

Chairing of meeting by body corporate manager

Under the changes, a body corporate manager may only chair a corporation meeting if a majority of those present votes for this. The manager may only vote on this question if the manager holds specific proxies to this effect and only after telling the meeting at the outset:

- that he or she may only chair the meeting if a majority of those present vote for this and that he or she has no right to vote, except when exercising a specific proxy for a member;
- whether he or she holds any proxies for the meeting, and for whom, and that they are available for inspection; and
- that he or she has no right to prevent any member from moving or voting on any motion.

Access to and return of records

The corporation already has a statutory right to require anyone holding its property, including records, to return the property in response to a notice. The changes introduce further rights:

- managers must make corporation records available to an owner to inspect within 10 business days of a request, and managers are required to provide the member with a copy of a record on payment of a fee (max. \$1.20 per page);
- managers must send a quarterly financial statement to an owner who requests this; and managers will have 10 business days after their contract with a corporation ends to return the records and trust money of the corporation. This is in addition to any notice period for termination or non-renewal of the contract.

Audit

In the case of audits of the body corporate manager's trust account, the manager will be required to send a copy of the audit report to the secretary of the corporation. It will not be sufficient to simply file the report in the manager's office.

Email communications

Currently, both Acts provide for documents to be served by post. Under the changes, service can be by email if the recipient agrees.