



Lot entitlements

The following deals with lot entitlements 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). It is not an exhaustive guide to lot entitlements and the legislation should be consulted as the primary reference.

What are lot entitlements?

The community management statement (CMS) for each community titles scheme in Queensland contains two schedules of lot entitlements. These schedules are the 'contribution schedule' and the 'interest schedule'. Below is an example of how these schedules of lot entitlements could appear in the CMS for a block of eight units.

Contribution Schedule	
Lot	Entitlements
1 in SP12345	1
2 in SP12345	1
3 in SP12345	1
4 in SP12345	1
5 in SP12345	1
6 in SP12345	1
7 in SP12345	1
8 in SP12345	1
Total Lots: 8	Aggregate: 8

Interest Schedule	
Lot	Entitlements
1 in SP12345	1
2 in SP12345	1
3 in SP12345	1
4 in SP12345	2
5 in SP12345	2
6 in SP12345	3
7 in SP12345	3
8 in SP12345	3
Total Lots: 8	Aggregate: 16

For each of the two schedules, each lot (or unit) in the scheme is identified and allocated with a whole number. The aggregate or total of all of the lot entitlements is also shown.

The original owner (the developer) determines the lot entitlements when preparing the first CMS for the scheme.

These lot entitlements will continue to apply to the scheme, unless an adjustment is made to one or both of the schedules. The mechanisms available for the adjustment of lot entitlements are outlined below.

The registered plans for schemes created before 13 July 1997 contained a single schedule of lot entitlements. The transitional provisions of the BCCM Act provide that the contribution schedule lot entitlements and interest schedule lot entitlements for these schemes existing before 13 July 1997 are identical to the single schedule of lot entitlements endorsed on the original registered plan.

What is the purpose of lot entitlements?

Lot entitlements are used for a number of purposes, but they are mostly used to divide body corporate expenses among lot owners. The following is a more specific outline of the purposes of lot entitlements.

The **contribution schedule lot entitlements** are used to calculate:

- a lot owner's share of most body corporate expenses. However, the BCCM Act or regulations may provide that particular expenses, such as building insurance premiums (see example below), are divided amongst the owners in a different way, and
- the value of a lot owner's vote when voting on an ordinary resolution if a 'poll' is called for (see example below).

The **interest schedule lot entitlements** are used to calculate:

- each lot owner's share of the common property and body corporate assets if the scheme is terminated (a scheme could be terminated if all the owners of lots in a scheme agreed to dispose of the scheme for the purposes of redevelopment)
- each owner's share of the unimproved value of scheme land, for the purpose of calculating local government rates and charges, and other costs that are calculated on the basis of unimproved value.

It is important to note that the costs of utility services supplied to a lot (for example water and electricity) that can be separately measured and charged are not divided amongst the owners on the basis of lot entitlements. In these circumstances the owner will be separately billed by the service provider for the cost of supplying the service to their lot.

Examples of the application of lot entitlements

1. Administrative fund budget

- Q. At the annual general meeting (AGM), the body corporate adopted an administrative fund budget that included expected expenses for maintenance of the common property gardens, payment of the body corporate management fees, and cleaning of the common property driveway. Are these expenses divided equally among the owners?
- A. These expenses must be divided amongst the owners in the same proportion as the contribution schedule lot entitlements. If, for example, a lot has three contribution schedule

lot entitlements and the aggregate contribution schedule lot entitlements for the scheme is 30, the owner of the lot will contribute 3/30 or 10 per cent of these costs. The expenses will only be divided equally amongst the owners if the contribution schedule lot entitlements for the scheme are equal.

2. Insurance

- Q. The body corporate has taken out building insurance in accordance with the insurance requirements of the BCCM Act. However, the secretary has stated that the insurance premium is not divided on the basis of the contribution schedule lot entitlements for the scheme. Is this correct?
- A. Insurance is an expense that is treated differently from most other body corporate expenses. The division of costs of building insurance premiums depends on the type of the plan of subdivision applying to the scheme. In a scheme created under a building format plan, the cost of building insurance is divided amongst the owners on the basis of the interest schedule lot entitlements for the scheme. In a scheme created under a standard format plan, the cost of insurance is not divided amongst the owners on the basis of lot entitlements at all. Rather, it is divided amongst the owners on the basis of the cost of re-instating the buildings on the lot. For more information on insurance, refer to section 176-190 of the Standard Module, and the *Insurance* factsheet available from the BCCM Office.

3. Voting on an ordinary resolution when a poll has been requested

- Q. At the last AGM, an owner requested that a poll be conducted for the counting of votes on a particular motion to be decided by ordinary resolution. How are the votes counted?
- A. Usually in the voting on a motion to be decided by ordinary resolution, each lot in the scheme effectively has one vote. A poll is an alternate way of counting votes for an ordinary resolution and takes into account the lot entitlements for the scheme. Any person entitled to vote at a general meeting of the body corporate may ask for a poll for the counting of votes on a motion to be decided by ordinary resolution. If a poll is requested, the motion is passed only if the total of the contribution schedule lot entitlements of the lots for which votes are counted for the motion is more than the total of the contribution schedule lot entitlements of the lots for which votes are counted against the motion.

At an AGM, a body corporate comprising 8 lots (table below) is considering a motion to be decided by ordinary resolution. The owners of lots 1, 7 and 8 vote for the motion and lots 2, 3, 4, 5 and 6 vote against the motion. The motion is lost, as there are three votes for the motion and five against. However, the owner of lot 8 immediately requests that a poll be conducted.

The votes must now be re-counted in accordance with the contribution schedule of lot entitlements for the scheme (below). The owners of lots 1, 7 and 8 have lot entitlements of one, three and four respectively and the owners of lots 2 to 6 have one each. The tally of the votes based on a poll is eight for and five against. The motion is therefore passed.

Contribution Schedule	
Lot	Entitlements
1 in SP12345	1
2 in SP12345	1
3 in SP12345	1
4 in SP12345	1
5 in SP12345	1
6 in SP12345	1
7 in SP12345	3
8 in SP12345	4
Total Lots: 8	Aggregate: 13

4. Equal contributions

- Q. We are a body corporate of seven units. At the last AGM, a motion to make all the levies equal was passed by a majority of votes. Does this mean owners will now pay equal contributions?
- A. No, the legislation requires that the contribution lot entitlement schedule is the basis for calculating an owner's share of most of the body corporate's costs. If the lots in the scheme have different lot entitlements, then the contributions that owners make to the administrative fund and the sinking fund will be different. Before owners pay equal contributions, the schemes lot entitlements must be adjusted. The three ways this can be done are outlined in the next section.

How do you change lot entitlements?

Some owners believe that the lot entitlements applying to their lots are, for a variety of reasons unfair or unreasonable.

The BCCM Act provides four ways of adjusting the schedules of lot entitlements applying to a community titles scheme. These are the only ways lot entitlements can be adjusted.

1. The body corporate can record a new CMS incorporating a change in lot entitlements by first passing a resolution without dissent consenting to the new statement. If any owner votes against the motion, then the proposal to change the lot entitlements fails.
2. The owners of two or more lots can agree in writing to redistribute amongst themselves the lot entitlements for their lots.
3. An owner of a lot can apply to the Commercial and Consumer Tribunal (the CCT) for an order for the adjustment of a lot entitlement schedule.
4. An owner of a lot can apply, under the dispute resolution provisions of the BCCM Act, for an order of a specialist adjudicator for the adjustment a lot entitlement schedule. Parties to specialist adjudication must agree in writing on a person who is to be the 'specialist adjudicator' and the method of payment for the specialist adjudicator.

If an application is made for an order of the CCT or a specialist adjudicator for the adjustment of a lot entitlement, the Act provides that the CCT or the adjudicator may have regard to:

- how the scheme is structured
- the nature, features and characteristics of the lots in the scheme
- the purposes for which the lots are used.

The BCCM Act also provides that the CCT or the adjudicator may not have regard to the knowledge of the applicant about lot entitlements at the time that person entered into a contract to buy the lot.

In the context of the adjustment of lot entitlements, section 48(6) of the BCCM Act provides that the respective contribution schedule lot entitlements should be equal, except to the extent to which it is just and equitable for them not to be equal.

Similarly, section 48(7) of the BCCM Act says that the interest schedule lot entitlements should reflect the respective market values of the lots when the CCT or specialist adjudicator makes the order, except to the extent to which it is just and equitable in the circumstances for them to be otherwise.

Any change in a lot entitlement schedule takes effect only upon the recording of a new CMS incorporating the change.

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

Information Service telephone (freecall): 1800 060 119

Email: bccm@justice.qld.gov.au

Website: www.justice.qld.gov.au/bccm

Street address: Level 11, 259 Queen St, 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 at: www.legislation.qld.gov.au/Acts_SLs/Acts_SL.htm or purchased from SDS, Ground Floor, Mineral House, 41 George Street, Brisbane. SDS Customer Service can be contacted on: 07 3118 6900 or 1800 679 778 or at: www.publications.qld.gov.au.

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.