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Institute of Strata Title  
Management



# All about Strata and Building Management Statements and Building Management Committees

*A Complete Guide to Working With  
Building Management Committees*

**Gary Bugden**

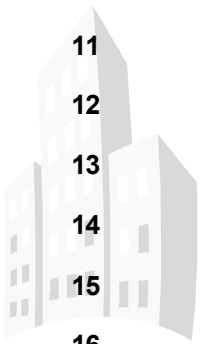
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# All about Strata and Building Management Statements and Building Management Committees

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## **1 About the Topic**

In this paper we are concerned with subdivisions of land into layers above and/or below the surface of the earth. These types of subdivisions are also known as ‘airspace’ subdivisions or ‘stratum’ subdivisions in New South Wales. In Queensland they are known as ‘volumetric’ subdivisions.

These subdivisions are based on the English common law principle that ownership of land extends from the surface of the earth down to the centre of the earth and up into the sky to infinity. It is reassuring for land owners to know that they have a huge area of outer space as their ‘back yard’. Of course, in practice, the theory is restricted by a wide range of laws (such as those relating to planning, aviation, national security etc). The theory is also restricted by the impracticality of use and aspects of common law which recognise that.

In this paper the term “**body corporate**” is used in preference to the more common term “**owners corporation**” because the New South Wales strata development legislation uses the term body corporate and when speaking about development issues that term is technically more appropriate.

## **2 Historical Background**

### **Overseas Experience**

Under English common law, conveyances (i.e. transfers) of air space probably first occurred in Scotland some 400 years ago. They typically related to such things as viaducts and maisonettes. The first modern day examples of air space subdivisions occurred in North America during the first half of the twentieth century. They were driven by the rapid urbanisation of major US

cities which necessitated the redevelopment of downtown areas of land that were grossly underutilised.

Chicago is a good example. Large areas of central Chicago had been developed into huge railway and goods yards that eventually came to occupy the prime areas of the city. The land became very valuable, but so too were the railway facilities and the cost of relocating those facilities was prohibitive. The solution was to sell and develop the air space above the facilities. This quickly led to the development of layers of air space by a range of component uses.

A good example is the *John Hancock Centre* in Chicago. This is a 100 story, class A multi-use building, recognised around the world for its distinctive architecture, prestigious location and its presence on Chicago's skyline. The building is subdivided horizontally with parking at the lowest level, above which are retail areas, commercial offices, condominiums, an observatory, a restaurant and bar near the top of the building and broadcast facilities (including large antennae) on top of the building. The condominium scheme commences on the 42<sup>nd</sup> floor and includes all floors up to the 96<sup>th</sup> floor. The various components within the building are separately titled.

### **Australian Experience**

The first Australian project was the *Paradise Centre* development at Surfers Paradise. This comprised a basement car park, ground floor shopping centre with two large residential towers and an international hotel situated above the shopping centre. This type of development had never before been attempted in Australia where the individual component use areas were to be separately titled. The developer therefore procured project specific legislation from the Queensland Government at the time. This came in the form of two Acts:

- The *Registration of Plans (HSP (Nominees) Pty Ltd) Enabling Act 1980*; and
- The *Registration of Plans (Stage 2) (HSP (Nominees) Pty Ltd) Enabling Act 1984*.

The next significant Australian project was *The Conaught* development in Liverpool Street, Sydney, at the southern end of Hyde Park. The uses within this building comprised car parking, retail shops, residential apartment and the YWCA headquarters and accommodation facilities. The building had been completed and was ready for strata subdivision when it was discovered that, for technical reasons, the residential component could not be strata subdivided. The problem was resolved by subdividing the entire building (including the YWCA component) in a way that the YWCA component was designated as common property. The common property was then subdivided to isolate the YWCA component 'in stratum' and the body corporate then

transferred that new YWCA lot out of the strata scheme. This project necessitated very complex easements and an umbrella management agreement. Out of necessity, the retail shops were included as part of the residential strata scheme.

*The Conaught* development was followed by a development at Bondi Junction known as *Eastgate Gardens*. This comprised a shopping centre, public car park, private car parking and two residential home unit towers above a landscaped podium. The next was the *Eastpoint* development at Edgecliff. This was constructed over the Edgecliff railway station and the railway station was separately titled and returned to State Rail ownership.

These projects were followed by a string of other projects within the Sydney metropolitan area, at a time when there was no legislation to facilitate such projects. As a consequence, the common law, combined with contractual arrangements, were relied upon to give effect to the complex arrangements among the owners of the various component use areas in the projects. The principal contractual arrangements included easements, restrictions as to use, covenants and umbrella management agreements.

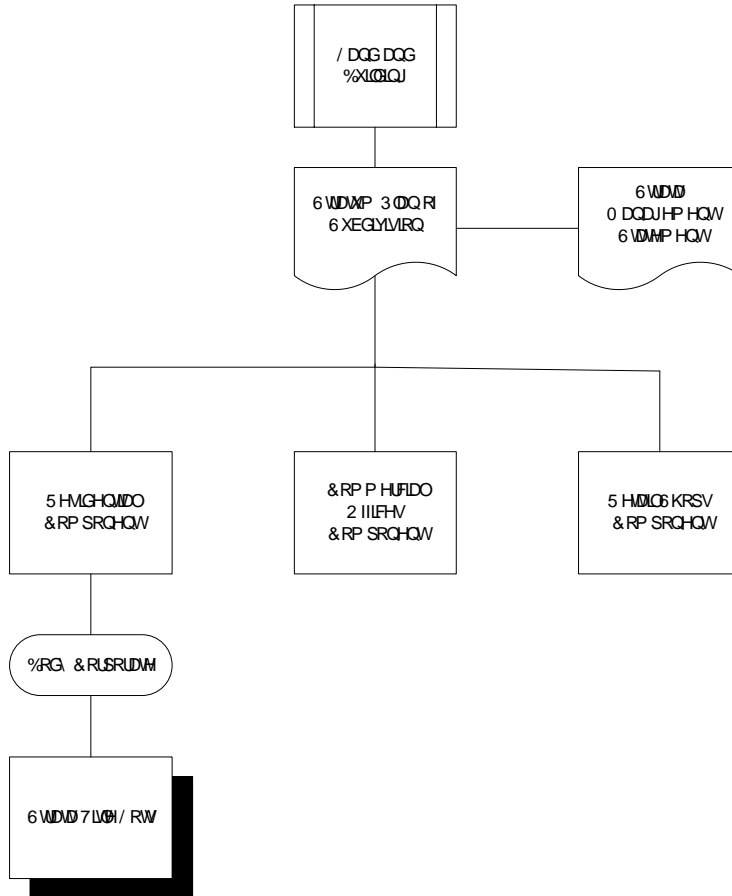
The problem with these types of contractual arrangements is that the umbrella management agreements are personal agreements between the original owners of the land who enter into the agreements. In the event that a parcel of land is transferred, then it is essential for the outgoing owner to obtain a deed of covenant to join the incoming owner to the arrangements. Although mechanisms are put in place to try to ensure that this occurs, there is always a high degree of uncertainty as to whether new owners will adopt the established management arrangements.

The latest and probably the most complex of this type of development in Australia was the *King Street Wharf* development in Sydney. This involved nine tower buildings on the foreshore of Darling Harbour with a diverse mixture of uses and common basement area. It also involved a mixture of private and public uses and public roads being located above the basements. This particular project had the benefit of the strata management statement mechanisms that were introduced to the strata titles legislation in 1992. However, it was so complex that a contractually based umbrella management agreement also had to be put in place to regulate the common components and equipment for the future stages of the project.

### **3 Stratum Subdivisions**

Stratum subdivisions are similar to conventional land subdivisions in the sense that they do not result in the creation of a body corporate. The main difference is that they define the boundaries of lots with reference to different levels above and below standard height datum. They are used to create lots that separately define different component use areas within a building. This

allows the various areas to be separately owned without the owner being involved in a body corporate structure. However, a particular component use area (e.g. residential apartments) can be further subdivided by means of a strata plan. For all practical purposes, the body corporate in the strata scheme then becomes the owner of the subdivided lot. The following diagram illustrates a stratum subdivision with a strata management statement –



In New South Wales this type of subdivision is effected using the normal subdivision mechanisms. This is because, under New South Wales law, stratum subdivisions have always been recognised. This is in contrast with the position, say in Queensland, where stratum subdivisions were not legally recognised for freehold land. This changed in 1990 when special mechanisms were introduced to redevelop the old *Expo 88* site in Brisbane. Further changes occurred in Queensland in 1997 when volumetric subdivisions were introduced for general use across the state. In Victoria, stratum subdivisions have long been recognised and sanctioned by statute.

In New South Wales when a stratum lot is subdivided by a strata plan the lot is then known as a “stratum parcel”.

Stratum subdivisions can potentially result in day to day operational complexities for the subdivided buildings. This is because there is inevitably

a range of facilities and equipment within the building that are shared by two or more of the component use areas and these need to be managed in a just and equitable way.

Well structured stratum developments usually focus heavily on design solutions to minimise shared facilities and equipment and to deal appropriately with them where they cannot be minimised. Where this has not occurred, for good reason or because of poor structuring, then legal mechanisms have to be used to resolve potential difficulties. Design solutions are always preferable to legal solution in these types of projects.

***Practice Pointer***

*The secret to mixed use stratum subdivisions operating smoothly for everyone involved is a well designed building with quality legal documents and carefully structured management arrangements.*

Where a subdivision involves a strata plan creating a stratum parcel then a strata management statement for the building and its site is usually lodged and registered at the same time as the subdivision plan. In very limited circumstances the Registrar General, or the relevant Minister, can dispense with the requirement for a strata management statement. After registration, the strata management statement can be amended, subject to certain approvals.

## **4 Shared Facilities**

Shared facilities are areas, services and equipment within the building and its site that are shared by two or more of the component use areas. They include such things as access ways, stairs, elevators, water supplies, fire safety equipment, pumps, fans, etc.

Inevitably, these shared facilities are located within one of the component use areas. However, because they are used by two or more areas, there is a need to ensure that they are properly maintained and that the cost of that maintenance is shared fairly by those who use them.

In practice, when these types of mixed use projects are structured, an effort is made to ensure that shared facilities are appropriately located to take account of ownership and maintenance responsibility. This also applies to other facilities within the building that are not shared. Wherever possible, they are placed within the boundaries of the component use area that uses them exclusively. In this way, management complexities can be substantially limited.

**Practice Pointer**

*When planning mixed use stratum projects always ensure –*

- *Equipment used by only one component use area is located within that area*
- *Equipment used by 2 or more component use areas is, where practicable, located within one of those areas.*

The shared facilities are usually set out in a schedule to the strata management statement or building management statement. Those statements usually contain provisions allowing adjustment of the list of shared facilities or adjustment of the basis for cost sharing. This means that records, particularly accounting records, must be kept in a way that facilitates these types of changes. The reason for the flexibility is the difficulty in identifying all of the shared facilities in advance of the operation of the building and uncertainties as to actual costs of operation and usage.

The following illustrates a facilities schedule to a strata management statement or building management statement –

**SCHEDULE 1**

**List of Shared Facilities and Division of Costs of Shared Facilities.**

The permitted uses described in column 5 represents the Member permitted to use each Shared Facility. The percentages in columns 6, 7 and 8 represent the total cost for each Shared Facility that each member must pay.

	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
No	Shared Facility	Description	Location	Permitted Users	Residential	Retail	Commercial
1	Lifts	Lifts in the foyer and extending to levels 4 and 5 of the car park	Area A on plan annexed	Residential, Retail and Commercial	45%	15%	50%
2	Service area and goods lift	Service area and goods lift, comprising loading dock, turning area and lift	Area B on the annexed plan	Retail and Commercial	0%	35%	65%
3	Garbage area	Garbage and recycle receptacle areas, including bins and compactor	Beside the loading dock; area C on the annexed plan	Residential, Retail and Commercial	38%	49%	13%
4	Stair pressure units	Stair pressurization units to for smoke control in the fire escape stairs	At the top of each of the fire escape stairs	Residential, Retail and Commercial	48%	8%	44%
5	Fire sprinkler system	Pipes, heads, pumps and control equipment relating to the fire sprinklers	Throughout the entire building and car parks	Residential, Retail and Commercial	42%	17%	41%

There can be a huge range of shared facilities which may include commonly used areas, plant and equipment and facilities. Perhaps the most comprehensive range of shared facilities can be found in the strata management statement for the *Kings Street Wharf* project at Darling Harbour.



## 5 Principal Legal Mechanisms

The principal legal mechanisms to deal with shared facilities within a mixed-use complex are:

- Strata management statement
- Building management statement
- Easements and covenants
- Umbrella management agreements.

It is not uncommon to come across a strata management statement and an umbrella management agreement. This is because of the inability (or difficulty) of using a building management statement that sits over one or more strata management statements.

## 6 Strata Management Statements

As indicated previously, strata management statements are used where a plan being registered as a strata plan creates a stratum parcel. These statements are regulated by the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*, depending upon whether the subject land is freehold or leasehold.

A strata management statement has effect as an agreement under seal containing mutual covenants on the part of the following:

- a body corporate for a strata scheme for part of the building;
- a proprietor, mortgagee in possession or lessee for the time being of any of the lots in such a strata scheme; and
- any other person in whom the fee simple of any part of the building or its site (being a part affected by the statement) is vested for the time being, or the mortgagee in possession or lessee of any such part.

The covenants are to ensure that each such person jointly and severally agrees to carry out their obligations under the strata management statement as are from time to time in force and to jointly and severally agree to permit the carrying out of those obligations.

A strata management statement over freehold land must provide for:

- the establishment and composition of a building management committee and its office bearers;

- the functions of those office bearers in managing the building and its site;
- the manner in which a statement be may amended;
- the settlement of disputes, or the rectification of complaints, concerning the management of the building or it site, whether by requiring reference of disputes or complaints to the Strata Titles Commissioner, or the Tribunal, or (with the consent of the person) to any other person for a recommendation or decision or otherwise; and
- the manner in which notices and other documents may be served on the committee.

Every body corporate and other land owner within the stratum subdivided complex must be members of the building management committee, unless they agree in writing not to be a member. For a body corporate to be excluded it must agree by special resolution.

The body corporate is represented on a building management committee by a nominee. That person is appointed by, or selected in accordance with, a special resolution or by-law made by the body corporate. Similarly, the representative of any other corporation is chosen in accordance with the resolution of that corporation. Owners who are individuals are members of the committee in their own right.

Normally a body corporate that is a member of a building management committee will have a by-law in place providing for the executive committee of the body corporate to appoint a representative to the building management committee. Alternatively, this process can be set up using a special resolution. It would normally be too complex to provide for the representative to be elected from time to time by the general meeting process.

***Practice Pointer***

*Always ensure that the body corporate has a by-law in place authorizing the executive committee to appoint the body corporate representative on the building management committee and to replace that representative from time to time.*

There are also a number of optional matters that can be included in a strata management statement. These include:

- the location, control, management, use and maintenance of any part of the building or its site that is a means of access;
- the storage and collection of garbage on and from the various parts of the building;

- meetings of the building management committee;
- the keeping of records of proceedings of the committee;
- safety and security measures;
- the appointment of a managing agent;
- the control of unacceptable noise levels;
- prohibiting or regulating trading activities;
- service contracts; and
- an architectural code to preserve the appearance of the building.

The above list is not exhaustive and other matters may also be included in the strata management statement. Those other matters must not be in conflict with the terms of the various Acts regulating the strata scheme.

A strata management statement is taken to include a number of provisions, except to the extent that those provisions may be excluded by the statement itself. These are:

- the building management committee must meet at least once each year;
- at least seven days notice of the meeting must be give to each person who is a member of the committee;
- notice may be given personally or by post or in any way any other notice may be given to the person under the relevant Act; and
- the decision of a majority of the members present and voting at a meeting of the committee is the decision of the committee.

In practice, most of the above implied provisions are excluded by express provisions in the strata management statement.

## **7 Building Management Statements**

Registration of a building management statement is entirely optional. The Registrar General may register with a plan of subdivision of a building and its site, or subsequently, a building management statement for the building and its site. Registration is regulated by the provisions of the *Conveyancing Act 1919* (sections 196B ff). A building management statement is used when a building and its site is subdivided by means of a stratum plan, where none of the

stratum lots are being further subdivided by a strata plan. Once registered, a building management statement can be amended. Each owner of a part of the building or site is normally required to consent to amendments. An amendment does not have effect until it has been recorded by the Registrar General.

A registered building management statement, as in force from time to time, has effect as an agreement under seal containing covenants on the part of:

- each owner for the time being of any part of the building or its site affected by the statement; and
- any mortgagee in possession or lessee of any part of the building or its site affected by the statement.

The covenants referred to are:

- a covenant by which those persons jointly and severally agree to carry out their obligations under the building management statement as from time to time in force; and
- a covenant by which those persons jointly and severally agree to permit the carrying out of those obligations.

A building management statement must be consistent with conditions imposed, before registration of the statement, by the development consent relating to the building, or any Act or law.

A building management statement must provide for:

- the establishment and composition of a building management committee and its office bearers;
- the functions of that committee and those office bearers in managing the building and its site;
- the settlement of disputes, or the rectification of complaints, concerning the management of the building or its site, whether by requiring reference of disputes or complaints to any person (with the consent of the person) for a recommendation or decision or otherwise;
- the obtaining of a damage policy for the building in accordance with certain requirements; and
- the manner in which notices and other documents may be served on the committee.

Each owner of a part of the building or its site must be a member of the building management committee. A corporation that is a member of a building management committee may be represented for the purposes of the committee by a person appointed by, or selected in accordance with, a resolution made by the corporation. No special provision is made for the participation of a strata title body corporate in a building management committee. This is because the legislation does not envisage a building management statement being used where a stratum parcel is one of the lots in the building or its site. However, it is interesting to note that, arguably, it may be possible to use a building management statement in those circumstances despite the intention of the legislation and the lack of body corporate specific mechanisms. This assumes that the Registrar General would be prepared to register the statement.

A building management statement may contain a number of optional provisions which substantially mirror the optional provisions that can be included in a strata management statement. Furthermore, the same implied provisions are implied in a building management statement as are applied in a strata management statement. Again, those implied provisions can be excluded or varied by the express terms of a building management statement. In practice, most of the above implied provisions are excluded by express provisions in the building management statement.

***Practice Pointer***

*A strata management statement always means that a body corporate is associated with one of the stratum lots in the building and the strata titles legislation must be referred to whereas in the case of a building management statement there is no body corporate associated with any of the stratum lots and the strata titles legislation has no application.*

## **8 Committees**

It will have been seen from the previous commentary that wherever there is a strata management statement or a building management statement, there must be a management committee. This committee is called a “**building management committee**” no matter which statement constitutes it. A building management committee is comprised of all owners, or their representatives, of component use parts of the building and site the subject of a stratum subdivision. It is effectively the body that makes decisions in relation to the shared facilities.

***Practice Pointer***

*A building management committee is associated with both a strata management statement and a building management statement.*

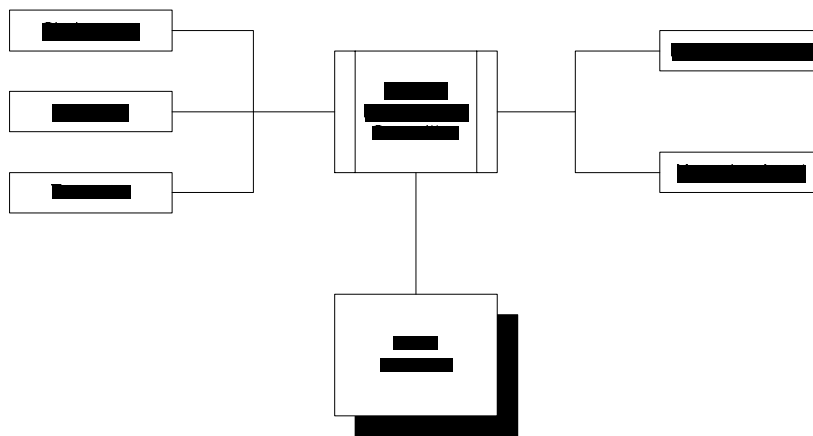
The committee is not a separate legal entity and any contracts entered into by the committee are effectively contracts entered into by the owners of the respective component use areas within the building. The committee is effectively the 'agent' or attorney of the owners for decision making and contracting purposes and for the purpose of implementing the terms of the relevant statement.

This arrangement can also be compared with an unincorporated association – the land owners being the members of the association and the committee being the governing body. The important thing to note is that the members will be jointly liable in contract and tort. This means that quality management and comprehensive insurance covers are most important where a building management committee is involved.

**Practice Pointer**

*Pay careful attention to the range and terms of insurances affected by the building management committee and also ensure that your own professional indemnity insurance cover is adequate, both as to amount and the type of work covered.*

The function of the building management committee is to administer the common facilities within the building and ensure that sufficient funds are raised from its members to keep those facilities in proper repair and maintenance. It is not uncommon for a building management committee to be structured very similar to a body corporate executive committee. The following illustrates a formally structured building management committee –



**9 Strata Managing Agent**

From the earlier commentary, it will have been noted that a building management committee may be empowered to appoint a managing agent to administer aspects of the strata management statement or building management statement. The managing agent is appointed in the same way as other appointments are made by the building management committee. This

starts with the passing of a resolution by the committee authorising the appointment of the managing agent and entering into an appropriate management agreement.

The role of the managing agent is determined by the provisions of the agreement under which they are appointed. To some degree, their role is also determined by the extent to which the building management committee can, under the terms of the relevant statement, delegate particular functions to the managing agent. In most cases, the agent's role is restricted to a secretarial and record keeping role.

***Practice Pointer***

*Always be very familiar with the terms of the strata management statement or building management statement because its provisions determine the role and authorities of the managing agent.*

Not surprisingly, the preferred professional for appointment as managing agent is a strata managing agent, even where there is no strata scheme involved. This represents an exciting new opportunity for strata managing agents, appropriately experienced, to rise to a new level of skills and professionalism, with an appropriate level of remuneration.

The basis on which a managing agent charges is determined by the agreement reached between the agent and the relevant building management committee. Given the difficulty anticipating the extent of work required to manage a strata management statement or building management statement, it is logical that charges should be based on an hourly rate. A fixed fee arrangement is likely to be more favourable to the client than to the agent.

ISTM provides a *Building Management Committee Agency Agreement* for use by its members. This agreement appears to be well constructed and appropriate for use with a building management committee, irrespective of whether the committee is constituted under a strata management statement or a building management statement. This agreement adopts the traditional strata management fee model of a fixed fee per annum for scoped services, with an hourly rate charge for un-scoped services. Arguably, this misses an ideal opportunity for strata managing agents to earn significant extra revenue by charging for all services on an hourly rate basis. This type of management is very tedious and requires different skills to normal strata management and this goes a long way to justifying a full fee for service charging model. That model will, in most cases, be more rewarding than the intended fixed fee approach.

***Practice Pointer***

*If you have a time costing computer program, consider using an hourly rate charge rather than a fee per lot per annum.*

Points to be noted about the ISTM form of agreement:

- The agreement is between the strata managing agent and every owner of a lot in the stratum plan (including any body corporate for a stratum parcel). If there is a change of ownership, the new owner must sign a Deed of Novation to preserve the principal/agency relationship with the whole committee.
- It assumes that the strata manager is acting as strata managing agent within the meaning of the *Property Stock and Business Agents Act 2002*. This may not always be the case (e.g. in the case of a person appointed as a managing agent under a building management statement).
- It assumes that there has to be a principal/agency relationship between the strata managing agent and the owners of the lots. This does not have to be the case. An agreement could be framed as a pure contracting agreement where no such relationship exists.
- The services in Schedules A and B should be carefully checked against what is required under the relevant strata management statement or building management statement, because the terms of the statement may not be in strict conformity with the standard form agreement. Potentially, every building may be regulated slightly differently.
- There is no restriction on the term of the agreement (e.g. it could be for 10 years).
- There is no restriction on when the agreement may be entered into (e.g. the initial period restrictions do not apply).

***Practice Pointer***

*As managing agent of a building management committee under a building management statement you do not have to be acting as a strata managing agent.*

## **10 The Building Manager or Caretaker**

Because of the size and likely complexity of mixed use schemes involving stratum subdivisions, there is often a building manager or caretaker. Sometimes the building manager is a fully qualified and experienced facilities manager. These managers are appointed in the same way as the managing agent is appointed – using the standard contractual provisions and an appropriate agreement. However, the term of appointment of a building



manager or caretaker is likely to be substantially longer than that for a managing agent. Typically, managing agents are appointed for up to three years, while building managers or caretakers can be appointed for as long as ten years. Again, the restrictions in the Strata Schemes legislation regarding the appointment of building managers or caretakers only apply to bodies corporate and do not apply to appointments by building management committees.

The building manager or caretaker usually attends to repairs and maintenance and the day to day operational issues for the building. For example, most complex mixed use buildings will have a common basement with different sections housing shared and unshared equipment, services and facilities (including separate car parking areas for the various component use areas). The building manager or caretaker will manage the operations of the basement, including things such as access, visitor parking, rubbish removal, loading docks, deliveries and workplace health and safety.

The building manager or caretaker will also be involved in the budgeting process, because they are the one who are directly concerned with the maintenance of the shared equipment, services and facilities. They will work with the managing agent and committee to draft and finalize the budgets. They will also arrange and supervise maintenance and service contracts (such as fire safety, cooling tower cleaning, electrical and gas installations). Invoices will usually be checked and approved by them before authorization by the committee and payment by the managing agent. The managing agent will be ultimately responsible for the paper trail recording those authorizations and payments.

***Practice Pointer***

*Always involve your building manager or caretaker in your budgeting process because, apart from their experience, they are effectively responsible for the facilities management budget.*

## **11 Meetings of the Committee**

Meetings of a building management committee are regulated by the relevant strata management statement or building management statement. These documents are effectively the constitution of the committee and all processes and procedures are regulated by the terms of these documents. Because there is no separate legal entity involved in a building management committee, there is no general meeting or annual meeting of property owners. All meetings are meetings of the committee.

To determine questions such as the period of notice for meetings, the number of persons who constitute a quorum, the right to appoint alternates and the rules relating to voting, reference must be made to the relevant strata management statement or building management statement. However, in the

absence of specific provision in those statements, there are a number of implied provisions in the relevant legislation that would need to be taken into account. In particular:

- The building management committee must meet at least once each year.
- At least seven days notice of a meeting must be given to each person who is a member of the committee.
- Notice may be given personally or by post or, in the case of a body corporate, in the way notice is normally given to a body corporate.
- The quorum for a meeting of the committee is a majority of the members.
- The decision of the majority of the members present and voting at a meeting of the committee is the decision of the committee.

Statements frequently provide for different types of majorities to decide different types of questions. For example, routine questions might be decided by simple majority while more significant issues might require a special resolution or unanimous decision. Again, it is necessary to refer to the particular statement in order to determine the rules that apply.

### ***Practice Pointer***

*Be careful to follow committee meeting procedures as set out in the relevant strata management statement or building management statement rather than assume that the procedures are similar for different buildings.*

In all cases, a minute book should be kept in which is recorded the minutes of all meetings of a building management committee. These minutes can be kept in much the same way as minutes of a body corporate meeting are kept.

## **12 Insurance**

A strata management statement will not normally contain provisions relating to building insurance. This is because building insurance is regulated by section 84 of the *Strata Schemes Management Act 1996*. As those provisions cannot be varied, there would be little point in including provisions in a strata management statement relating to building insurance. In some cases the strata management statement may include provisions relating to insurance other than building insurance.

In the case of a building management statement, clauses 3 and 4 of Schedule 8A of the *Conveyancing Act 1919* set out the arrangements that will apply in

relation to building and other insurances. Clause 3, dealing with building insurance, puts in place arrangements for a 'damage policy' similar to the arrangements that would apply to a building the subject of a strata management statement. Clause 4, dealing with 'other insurance' requires the following additional insurances to be taken out:

- Workers compensation
- Public liability insurance
- Insurance against liability in respect of another occurrence against which the committee decides to insure
- Voluntary workers insurance.

***Practice Pointer***

*Follow the Strata Schemes Management Act for insurances where a strata management is involved or the actual statement where a building management statement is involved.*

### **13 Record Keeping (excluding accounting)**

The first and obvious set of records that should be kept by a building management committee is a record (in the form of a copy) of its constituent documents. These include the various subdivision plans, the strata management statement or building management statement and easements and covenants applying to the land.

In addition, it is suggested that, subject to the terms of the relevant statement, the following records should also be kept:

- Owners register (recording the names, addresses and other contact details of the owners of the component use areas)
- Committee register (recording the names, addresses and other contact details of the representatives of the various owners)
- Contracts register (recording the key provisions of the documentation relating to the building manager, managing agent and various longer term service contractors)
- Shared facilities register (which starts with the list of shared facilities and equipment taken from the schedule of the relevant statement, these items being subject to change, in making provision for any required updating)
- Asset register (recording equipment or materials, such as spare parts, jointly owned)

- Minute book.

***Practice Pointer***

*Be guided by the strata management statement or building management statement when deciding what records to keep, but consider whether additional records may also be useful.*

## **14 Accounting Records**

A building management committee, or a managing agent on behalf of the committee, should keep the normal accounting records, such as cheque book, receipt book, bank deposit book, bank statements, cash books and journal (if necessary). If a computerized accounting system is used, then that list should be modified accordingly.

Special attention needs to be paid to the chart of accounts for the income and expenditure cash books. This chart of accounts needs to mirror the shared facilities register so that each item of shared facilities or equipment is independently tracked from a budgeting, income and expenditure point of view. The cash book should be overlaid with a cost sharing allocation ledger. This is simply a ledger account for each item in the chart of accounts showing how that item is allocated among the two or more component use areas within the building that share that item, as well as recording income and expenditure in respect of that item. This is effectively the recording of the basis on which each of those component use areas contributes to the cost of the particular item. While this is complex, it is the only fair and satisfactory way in which to allocate maintenance responsibility and collect funds to cover the cost of such maintenance. If this is not done fairly, then discontent or outright dispute will occur among the various owners.

***Practice Pointer***

*The chart of accounts must reflect the various cost sharing items on an item by item basis and both income and expenditure must be tracked on an item by item basis.*

The way in which budgets are prepared will be determined by the terms of the relevant statement. There will always be need for a maintenance fund and in some cases there may be a reserve or sinking fund. Reserve funds will often be controversial where there are commercial or retail facilities within the building. This is because values of non-residential components are usually determined with reference to a capitalisation rate. The capitalisation rate will be adversely affected if the outgoings are increased because of contributions to a reserve fund. This is inconsistent with normal practice for commercial buildings. In the case of most commercial building owners, reserve funds are not drawn from the building's income stream to fund future renewals and replacements. Instead, those costs are met on an 'as required' basis and

sometimes taken up in a corporate owner's balance sheet. This limits any adverse impact on the capitalisation rate for the building.

The timing of the budget of the building management committee needs to be set having regard to the fact that the total amount payable by a body corporate member has to flow through to the body corporate budget. It is preferable for the building management committee budget to be finalised shortly before the time for finalising the body corporate budget. In this way, the body corporate budget can reflect the actual amount required to contribute to the building management committee.

The final record that needs to be kept is an owners' levy register. This is the record of contribution levies imposed on the various owners and payments received in respect of those levies. It enables easy determination of an owner's current financial status vis a vis the building management committee.

## **15 Financial Reporting**

The financial reporting for a building management committee will be determined by the way in which it conducts its accounting. If accounting is on a cash basis, then reporting will normally be by way of profit and loss (with comparison to budget) and possibly with the addition of a debtors and creditors statement at the relevant reporting date.

If accounting is done on an accruals basis, then a balance sheet might also be completed.

For management accounting purposes the income and expenditure for each shared expenditure item in the chart of accounts will need to be separately recorded and reported. For example; if an emergency generator is shared by 3 component use areas on a one-third each basis, the income raised by way of contributions for that item should be recorded against that item, as should be the expenditure relating to that item. Any surplus or deficiency for that item for the relevant period should be carried over to the next period and taken into account when further contributions are raised in respect of that item.

### ***Practice Pointer***

*Always be in a position to report on the income, expenditure and current balance for each cost sharing item in the chart of accounts.*

## **16 Dispute Resolution**

In the case of the strata management statement, the options for dispute resolution are:

- reference to the Strata Titles Commissioner
- reference to the Consumer, Trader and Tenancy Tribunal
- reference to another third party by way of arbitration or expert determination
- conciliation, mediation or other form of alternate dispute resolution.

In relation to a building management statement, the options comprise all of the above, with the exception of reference to the Strata Titles Commissioner and the Consumer, Trader and Tenancy Tribunal.

It is no accident that the dispute resolution processes set up by the strata titles legislation have not been imposed on building management committees. This is because commercial property owners, particularly institutional investors, will not want disputes involving them to be determined in what is essentially a residential dispute resolution environment. Instead, such owners prefer to have their disputes dealt with by the normal processes of commercial dispute resolution. The relevant legislative provisions for both strata management statements and building management statements ensure that commercial dispute resolution processes are available for these types of situations.

***Practice Pointer***

*Never make an application to the Commissioner to resolve a dispute involving a strata management statement without first checking the strata management statement to ensure that the Commissioner has jurisdiction to deal with the dispute.*

No provision is made in relation to appeals from any dispute resolution process. Clearly, if the Commissioner or Tribunal is involved in a particular dispute, then it is likely that the normal appeal processes from the decision of the Commissioner or a Tribunal will apply. This may depend upon the provisions of the relevant statement. However, in the case of other commercial dispute resolution processes, appeals to courts will only be permitted in very restricted circumstances. This is considered one of the attractions of commercial dispute resolution.

## **17 The Future**

Building management committees are not popular with strata managing agents. Indeed, some are very critical of their use under any circumstances. The fact is that strata management statements and building management statements are a critical mechanism to accommodate mixed use projects and, particularly, to preserve the value of the commercial components of those projects.

This dislike of building management committees by strata managing agents is probably because they are relatively unusual arrangements and special attention is required to manage them. They do not readily fit into the normal strata title 'mould' or the computer systems and processes commonly used for strata title.

Despite their unpopularity with strata management agents, they are here to stay and are likely to become more rather than less complex. Management of building management committees is or will become more specialised. Many strata managing agents will elect not to become involved with them; others will elect to specialise in them. Some will see them as a nuisance; others will see them as an opportunity.

***Practice Pointer***

*Meet the challenge – gear up to manage building management committees and enjoy the satisfaction and rewards of knowing that you are top of the tree in your profession.*

For those managers prepared to develop the necessary skills and systems to manage the building management committee and put in place appropriate documentation and processes, there will be real opportunities ahead. In particular, there will be the opportunity to charge a premium fee for what is clearly a premium and specialised service.

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