

COMMUNITY TITLE LIVING

Community Title Living is an increasingly popular lifestyle option for a diverse range of people. Owners of a lot in a Community Title Scheme automatically become part of the Body Corporate, which must elect a committee to make decisions about financial management of the scheme and management of the common property. Most significant decisions must be made by owners at a general meeting. Because owners must make shared financial and lifestyle decisions, their relationship with others, and third parties, are governed by legislation designed to provide clear guidelines on their rights and obligations.

All disputes arising from people who live, work or invest in Community Title Schemes are governed by the Body Corporate and Community Management Act 1997 (The BCCM Act). The BCCM Act provides a dispute resolution procedure. The dispute resolution procedure in the BCCM Act aims to resolve disputes through mediation or adjudication by the Office of the Commissioner for Body Corporate and Community Management.

The concept of the BCCM Act is self-management, which it promotes by providing the necessary tools for Bodies Corporate to enable them to manage their own affairs in a way that also balances the rights of individuals.

COMMON DISPUTES

As a result of the involvement of a number of parties within a Community Titles Scheme a range of issues commonly arise which may give rise to disputes. Also disputes may arise in a variety of combinations for example:

- Between an Owner and another Owner
- Between the Body Corporate and an Owner
- Between the Body Corporate and a Manager
- Between the Body Corporate and a Committee Member
- Between the Body Corporate and a Letting Agent

These types of disputes in these close-knit communities are diverse but may include disputes arising from issues such as:

- Noise
- Pets
- Parking
- Body Corporate levies
- Rubbish

DISPUTE RESOLUTION

The BCCM Act provides that the Commissioner's Office has exclusive jurisdiction to resolve Body Corporate and Committee Management disputes. The Commissioner must make one of the following dispute resolution recommendations in order to resolve a dispute:

- Departmental adjudication
- Specialist adjudication
- Mediation
- Specialist Mediation
- Specialist Conciliation

DISPUTE RESOLUTION APPLICATION

The parties wishing to make a dispute resolution application to the Commissioner's Office are required to complete a prescribed form and pay the relevant fee. Upon making the application the Commissioner may seek the views of the parties to the dispute and seek the views of other affected persons, interview persons, and enter or inspect the premises.

DISPUTE RESOLUTION APPEALS

It is essential that the BCCM Act is complied with and all care taken to ensure a party's rights are protected when making a dispute resolution application. A Dispute Resolution Order can only be appealed to the District Court on a question of law. This means that the Court cannot re-examine or decide upon the merits of the case but only on legal issues arising from the adjudicative process.

BODY CORPORATE DISPUTE?

It is important that expert legal advice be obtained when making an application to the Commissioner's Office. Often the parties to the dispute have an ongoing relationship after the dispute is resolved, for example many owners still choose to live within the same body corporate even after a dispute.

At Ferguson Cannon Lawyers we have extensive experience representing all parties in Body Corporate and Community Management disputes. We will provide you with the right advice to resolve the dispute in the most timely and cost effective manner while ensuring your interests and rights are protected.

For any further enquiries, please contact Byron Cannon, Director.