

NSW OFFICE OF

Fair Trading

DEPARTMENT OF COMMERCE

for consumers
& traders

Living in a community scheme

What you should know about
community, precinct and neighbourhood
schemes

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Checklist

How much do you know about your rights and responsibilities?

Do you:

- know how to have a motion included on the AGM Agenda?
- understand how much power the executive committee has?
- know who is eligible for election to the executive committee?
- know what by-laws are and how they are made or changed?
- know that the Chairperson does not have a casting vote?
- know what the management statement is?
- know that meetings can be adjourned?
- know how to enforce the by-laws?
- understand how the managing agent is appointed and dismissed?
- want to know how to resolve disputes in your scheme?
- know that certain conditions apply to a proxy?
- know how to inspect the association's records?
- know what records the association has to have?
- know what is restricted property?
- know what insurances are compulsory?
- know how levies are set and what happens if you don't pay them?
- understand the effect of decisions made by the executive committee?

If you can't say yes to questions like these, you need to read this guide.

Introduction

This community schemes booklet has been prepared as a useful resource for the management of community, precinct and neighbourhood schemes in NSW. It will also provide important information to people with an interest in community, precinct and neighbourhood schemes.

There are approximately 350 community schemes and 900 neighbourhood schemes in New South Wales. The schemes range from rural subdivisions with irrigation channels as association property to large closed communities with private roads, high security and extensive recreational facilities such as marinas and golf courses.

What is the NSW legislation covering community schemes?

The *Community Land Development Act 1989*, facilitates the subdivision and development of land with shared property. It deals with plan requirements, plan registration, changes to the subdivision and dealings with the lots. Land and Property Information within the Department of Lands administers this *Act*.

The *Community Land Management Act (1989)* provides:

- a system for the management of community schemes, precinct schemes and neighbourhood schemes established by the subdivision of land under the *Community Land Development Act 1989*.

This includes:

- the management of funds and books of accounts
 - the holding of meetings of the association and executive
 - the responsibilities of an association to maintain association property and take out insurance
 - the administration of the requirements of the management statement
- a system for settling disputes in community, precinct and neighbourhood schemes, including those in the day-to-day management and compliance with requirements of the management statement.

Relationship with strata schemes legislation

The *Community Land Development Act* and the *Community Land Management Act* is modelled on the *Strata Schemes (Freehold Development) Act 1973* and the *Strata Schemes Management Act 1996*.

Many parallels exist between these pieces of legislation, which is appropriate given that strata legislation has been developed and refined since its introduction in 1961.

The role of the NSW Office of Fair Trading

The NSW Office of Fair Trading provides information and help on management and dispute resolution under the *Community Land Management Act*. Fair Trading also provides a mediation service for disputes before they are referred to a community schemes adjudicator or the Consumer, Trader & Tenancy Tribunal.

Please note

Community schemes adjudicators and the Consumer, Trader & Tenancy Tribunal have powers under the *Community Land Management Act 1989* to consider applications for orders for settlement of a scheme dispute or complaint.

1. How does an association start?

A community, precinct or neighbourhood association starts when a community plan, precinct plan or neighbourhood plan is registered by the Department of Lands, Land and Property Information Division as a deposited plan. In most cases, the builder or developer will be the only member of the association at this initial stage. As lots are sold or again subdivided, membership increases.

Part of the plan is a key document called a management statement. The management statement includes by-laws, plans and other particulars which detail the way in which the scheme will operate. For a detailed list of what must and must not be included in the management statement for community, neighbourhood and precinct schemes, see Appendix (a) of this document, beginning on page 24.

Definitions

Community association

A corporation constituted under s.25 of the *Community Land Development Act* and known as 'Community Association D.P. No. X'.

Precinct association

A corporation constituted under s.25 of the *Community Land Development Act* and known as 'Precinct Association D.P. No. X'.

Neighbourhood association

A corporation constituted under s.25 of the *Community Land Development Act* and known as 'Neighbourhood Association D.P. No. X'.

(Note: A community association, neighbourhood association or precinct association is not a corporation within the meaning of the Corporations Law).

The members of community associations are:

- the proprietors of development lots that are not subsidiary schemes
- the precinct association
- the neighbourhood association
- the strata corporation. [Mgt.s.5(2)]

The members of precinct associations are:

- the proprietors of development lots that are not subsidiary schemes
- the neighbourhood association
- the strata corporation. [Mgt.s.6(2)]

The members of neighbourhood associations are the proprietors of the neighbourhood lots. [Mgt.s.7(2)]

Original proprietor - is the owner of the scheme when the plan is registered and is usually the builder or developer.

The initial period

In all schemes managed under the *Act*, the initial period begins when the plan is registered. The initial period ends at different times for different schemes:

- Neighbourhood and strata schemes - ends when one-third of the total unit entitlements has been sold
- Precinct and community schemes - ends when one-third of the total unit entitlements are changed to neighbourhood or strata schemes, which are out of their initial periods.

Restrictions on associations during the initial period

During the initial period an association must not:

- incur a debt for more than is set aside in its funds to repay it
- borrow money or give securities
- change or cancel the by-laws or make additional by-laws to create restricted property. [Mgt.s.23(1)]

Additional restrictions on neighbourhood associations during the initial period

During the initial period the neighbourhood association must not:

- give a lease of neighbourhood property
- create an easement burdening or restricting use of any land in the scheme
- release an easement, or a restriction on the use of land, that benefits neighbourhood property
- dedicate association property
- sell neighbourhood property, except to a resuming authority
- erect a structure on neighbourhood property
- subdivide or create neighbourhood property. [Mgt.s.23(2)]

Restrictions on a developer in the initial period

During the initial period, a developer may not:

- convert a neighbourhood lot to association property
- subdivide a neighbourhood lot. [Mgt.s.23(3)].

How to have a restriction imposed in the initial period released, changed or cancelled

During the initial period, an association or developer can apply to the Consumer, Trader & Tenancy Tribunal for an order to release, change or cancel a restriction about the initial period. [Mgt.s.23(4)]

What happens if a restriction is not obeyed?

If restrictions are not obeyed, the original proprietor is liable for any debt or loss of an association. Also, the original proprietor is liable for any loss suffered by a member of an association. [Mgt.s.23(5)&(6)]

Appointing managing agents in the initial period (see chapter 4 for general information about agents).

The appointment of a licensed managing agent by a community association or a precinct association during the initial period is limited to 2 years. The appointment may be terminated at the first Annual General Meeting (AGM) if there is reasonable cause for the termination. [Mgt.s.50(4) & (5)]

The appointment of a licensed managing agent for a neighbourhood association during the initial period ends at the first annual general meeting, unless ratified at that meeting. [Mgt.s.50(6)]. The neighbourhood association must inform the managing agent (before making the appointment) that the appointment would end at the first AGM unless ratified at that meeting. [Mgt.s.50(8)]

Service agreements entered in the initial period

An association can make an agreement with a person for services or recreational facilities. If the agreement is made in the initial period it will end at the first Annual General Meeting unless it is disclosed in the management statement before any lots are sold, or the agreement is ratified at the first AGM. (Note: this does not refer to agreements with a public authority or to services of a managing agent). [Mgt.s. 24]

First Annual General Meeting (AGM)

Convening the first AGM

The original proprietor must hold the association's first AGM within two months of the end of the initial period. There can be a penalty of \$1100 if this is not done. [Mgt.s.9]

Distribution of books and documents

At the first AGM, the original proprietor must give the association:

- all plans, specifications, certificates, diagrams, policies of insurance and other documents about the scheme
- any agreements entered into by the original proprietor about the construction, preparation or maintenance of association property
- a copy of any development contract
- a copy of the diagram showing the situation of service lines for such things as supply of water, gas, or electricity; airconditioning ducts; sewerage and drainage services; telephone, radio or telephone lines
- the certificate of title for the association property
- the accounting records and the latest financial statement. [Mgt.s.9(3)]

Voting rights of original proprietor

The following applies to the first AGM of a community or precinct association:

- if you are the original proprietor and still own community development lots or precinct development lots which account for one-half or more of the total unit entitlements for the scheme, and a vote by poll or special resolution is called, the value of your vote is reduced to one-third of your unit entitlements. Fractions are ignored. [Mgt. Schedule 5, clauses 12(6) & 26(6)]
- election of the executive - if you are the original proprietor and still own development lots which equal one-half or more of the total number of community development lots and former community development lots for the scheme; or one-half or more of the total number of precinct development lots and former precinct development lots for the scheme, you are entitled only to one-third of the number of votes you would usually have. Fractions are ignored. [Mgt. Schedule 5, clauses 11(2), 25(2)]

Living in a community scheme

The following applies to the first AGM of a neighbourhood association:

- if you are the original proprietor and still own neighbourhood lots which account for one-half or more of the total unit entitlements for the scheme, and a vote by poll or special resolution is called, the value of your vote is reduced to one-third of your unit entitlements. Fractions are ignored. [Mgt. Schedule 5, clause 40(4)]
- election of the executive - if you are the original proprietor and own one-half or more of the neighbourhood lots, your vote is reduced to one-third of the number of votes you would usually have. Fractions are ignored. [Schedule 5, clause 39(2)]

Failure to hold the first AGM

If the original proprietor does not hold the first AGM, an adjudicator may appoint a person to hold the meeting. If you are an association, a member of an association or a mortgagee or covenant chargee of a development lot, neighbourhood lot or strata lot you may make application to an adjudicator for this order. [Mgt.s.11(1)]

As long as the set agenda is used, the first AGM is valid even if it is called or held after the fixed time. [Mgt.s.10(1)(b)]. The set agenda includes the following:

- insurance cover
- levies and financial statements
- the election of executive members
- ratification of service agreements
- appointment of a community managing agent
- restricted matters
- by-laws
- accounting records
- revised Schedule of unit entitlements (Note: this agenda item only applies to community schemes and neighbourhood schemes that are not part of a community scheme). [Mgt. Schedule 5, clauses 3, 17 & 31]

Failure to form an executive committee

If the first AGM is held but an executive is not appointed, a subsidiary body within a community or precinct scheme, or the proprietor, mortgagee or covenant chargee of a development lot, neighbourhood lot or strata lot can make application to the adjudicator for an order to appoint a person to hold a general meeting to elect the executive. [Mgt.s.11(2)]

Failure to elect executive committee officers

If an executive has been elected at the first AGM but no office bearers have been appointed, a subsidiary body within a community or precinct scheme, or the proprietor, mortgagee or covenant chargee of a development lot, neighbourhood lot or strata lot can make application to the adjudicator for an order to appoint a person to hold an executive meeting to elect the officers. [Mgt.s.11(3)].

2. Meetings of the association

Definitions

General meeting

An Annual General Meeting, other than the first AGM, or a special general meeting of the association.

Special general meeting

A meeting that is not an AGM.

Annual General Meetings (AGMs)

After the first AGM, the next AGM must be held between 11 and 13 months after the date of the first AGM. [Mgt. Schedule 6, clauses 2, 22 & 42]

Special general meetings

Any meeting of an association that is not an AGM is called a special general meeting. [Mgt. Schedule 6, clauses 1, 21 & 41]. These meetings can be held when necessary during the year (eg. to change, cancel or make by-laws, or change the management statement).

There are a number of ways to convene special or general meetings:

- by majority vote of the executive
- the secretary may convene a meeting at any time before the first AGM
- if persons entitled to vote and who together hold at least one-quarter of the total unit entitlements, give a written notice to the Secretary asking for the meeting to be held. If the Secretary is away, the notice can be given to another executive member. Proprietors of community and precinct development lots and former development lots that are now a subsidiary scheme, can sign the notice. The subsidiary scheme needs authority of an ordinary resolution before signing the notice. [Mgt. Schedule 6, clauses 3, 23 & 43]

How to put a motion on the agenda

Any person entitled to vote at a general meeting can ask for a motion to be put on the agenda for a general meeting. Written notice must be given to the secretary. The secretary must put the motion on the agenda for the next general meeting. [Mgt. Schedule 6, clauses 18, 38 & 58]

Notice of general meetings

Notice of a general meeting must:

- have a motion to confirm the minutes of the last general meeting
- include other motions (if any) to be considered at the meeting, plus an explanation of the reason for the motion and an estimate of cost, if it involves spending money
- clearly show which motions need a special or unanimous resolution
- state which motion involves an amendment of the management statement or development contract
- have a copy of the minutes of the last general meeting attached for members who have not been given a copy before
- state the requirements of the *Act* for a quorum
- if the meeting has been called to elect the executive committee, have a motion for the election of the executive
- state that a vote by a mortgagee or covenant chargee of a development lot or neighbourhood lot has priority over a vote by the proprietor of the lot
- state that a member cannot vote if levies and any other money due is in arrears
- state that voting and other rights of a member, who is not a subsidiary body or other corporation, can only be done in person or by proxy
- state that voting and other rights of a member, who is a corporation other than a subsidiary body, can only be done by the company nominee in person or by proxy
- state that voting and other rights by a subsidiary body can only be done by proxy
- where the addressee of the notice is the first mortgagee or a covenant chargee of a lot - state the name of the proprietor of the lot, the address of the lot and the place where the meeting is to be held. [Mgt. Schedule 6, clauses 4, 6, 24, 26, 44 & 46]

Additional items for annual general meetings

In addition to the above items, if the meeting is an AGM, the notice:

- must have a copy of the financial statement of the association for that year
- must have a motion for accepting the financial statements

- must have information about all insurance policies held by the association
- must have, if it is a community association AGM, a motion to consider appointing an auditor and taking out insurance for executive office bearers liability and/or misappropriation of money or property of the association [Mgt. Schedule 6, clauses 5, 25 & 45].
- must have a motion to decide the number of the members of the executive committee [Mgt.s.28]
- must have a motion for the election of the executive [Mgt.s.28]
- may include - in the case of a community association or neighbourhood scheme (not being part of a community scheme) - a motion to consider whether a revised schedule of unit entitlements should be registered under section 30 of the *Community Land Development Act*.

Who is given a notice of the meeting

Notices must be given to each member of the association, as shown on the roll. Notice need only be given to a first mortgagee or covenant chargee if a motion requires a special or unanimous resolution. The time for giving notice of the meeting is different for each scheme. Unless the management statement fixes a shorter period of notice, the notice should allow these times:

- for a community association meeting - notice must be given at least 21 days before the meeting if the scheme includes a precinct scheme, or 14 days if it does not [Mgt. Schedule 6, clause 4(2)]
- for a precinct association meeting - notice must be given at least 14 days before the meeting [Mgt. Schedule 6, clause 24(2)]
- for a neighbourhood association meeting - notice must be given at least seven days before the meeting. [Mgt. Schedule 6, clause 44(2)]

Chairperson to preside

If the chairperson is present he or she must preside at all general meetings. If the chairperson is away, the people who are at the meeting and entitled to vote must elect someone to chair that meeting only. The person elected must be entitled to vote. [Mgt. Schedule 6 Clauses 11, 31 & 51]. The chairperson does not have a casting vote.

Quorum

There must be a quorum at a general meeting before any motion (including the election of an executive) can

be voted on. A quorum is:

- (a) more than one-quarter of the people entitled to vote, or
- (b) people entitled to vote holding more than one-quarter of the total unit entitlements.

If there is more than one member of the association and the quorum calculated under (a) or (b) is less than two persons, the quorum shall be two persons entitled to vote on the motion. [Mgt. Schedule 6, clauses 10, 30 & 50]

If a quorum has not assembled within 30 minutes of a matter rising for consideration, the meeting must be put off for at least seven days. The person presiding sets the date and time for the adjourned meeting. Notice of the time and place for the adjourned meeting must be served on the members of the association at least one day before the meeting. If there is no quorum within 30 minutes of the time fixed for the adjourned meeting, it can go ahead. The quorum is then the people present and proxies who are entitled to vote. [Mgt. Schedule 6, clauses 10A, 30A & 50A]

Amending motions

Only motions on the agenda issued with the notice for a meeting can be voted on, but motions on the agenda may be amended at the meeting. A person who is entitled to vote at the meeting may ask for a motion to be amended. [Mgt. Schedule 6, clauses 6(3), 26(3) & 46(3)]

Motions out of order

At a general meeting the chairperson may rule that a motion is out of order if:

- a person not entitled to vote moves a motion or nominates a candidate for election to the executive committee [Mgt. Schedule 6, clauses 7(1), 27(1) & 47(1)]
- it would conflict with the *Act*, a management statement or the by-laws under a strata scheme, or would be unlawful or not enforceable if passed [Mgt. Schedule 6, clauses 12, 32 & 52]
- proper notice of the meeting was not given. [Mgt. Schedule 6, clauses 6(3), 26(3) & 46(3)]

Persons entitled to vote at general meetings

At a general meeting of a community and precinct association, voting rights can be exercised:

- by each member of the community or precinct association shown on the roll - in person or by proxy
- by a subsidiary body shown on the roll - only by proxy
- by joint first mortgagees or joint covenant chargees shown on the roll - only by proxy (who may be one of them) appointed by all of them jointly
- by a proprietor, first mortgagee or covenant chargee of a development lot shown on the roll and that is not a corporation - in person or by proxy
- by a proprietor, mortgagee or covenant chargee of a development lot that is a corporation - by the company nominee shown on the roll in person or by proxy. [Mgt. Schedule 6, clauses 8 & 28]

At a general meeting of a neighbourhood association, voting rights can be exercised:

- by a proprietor, first mortgagee or covenant chargee of a neighbourhood lot shown on the roll and that is not a corporation - in person or by proxy
- by a proprietor, mortgagee or covenant chargee of a development lot that is a corporation - by the company nominee shown on the roll in person or by proxy. [Mgt. Schedule 6, clause 48]

A member of an association cannot vote if levies and any other money owed to an association is in arrears, except on motions requiring a unanimous resolution. [Mgt. Schedule 6, clauses 8(8), 28(8) & 48(8)]

Proxies

A valid proxy must be on the form approved under the *Act*. Proxies must be dated and be given to the secretary before or at the meeting. A proxy form can be sent by facsimile. These conditions apply to a proxy:

- if the proxy is limited to how he/she should vote, a vote by the proxy that does not observe the limitation is invalid
- it has effect for the period specified in the proxy (being not more than 12 months or for two consecutive AGMs, whichever is the greater)
- it has no effect if the person who gave the proxy attends the meeting and votes in person
- the most recent proxy is valid. [Mgt. Schedule 6, clauses 9, 29 & 49]

Counting votes on motions

The number of votes cast for or against the motion decides a motion at a general meeting.

Most decisions can be made by a simple majority vote, but sometimes a special or unanimous resolution is needed.

Even when a simple majority vote only is needed, a poll can be called for. If a poll is demanded, it must be conducted even if the matter has been decided by a simple majority. Under a poll, members' votes have a different value and are worked out by counting the unit entitlements. [Mgt. Schedule 6, clauses 15, 35 & 55]

Some motions need a special resolution, which is one against which not more than one-quarter in value of the votes is cast. The value of the vote is the unit entitlement. [Mgt.s.3]

Some motions need a unanimous resolution. This is where no one at the meeting votes against the motion. [Mgt.s.3]

Voting rights of original proprietor

If you are the original proprietor and still own community development lots or precinct development lots or neighbourhood lots, which account for one-half or more of the total unit entitlements for the scheme, and a vote by poll or special resolution is called, the value of your vote is reduced to one-third of your unit entitlements. Fractions are ignored. [Mgt. Schedule 6 clauses 15(6), 35(6) & 55(4)]

If you are the original proprietor and the motion is for electing the executive and you still own development lots which equal one-half or more of the total number of community development lots and former community development lots for the scheme; or one-half or more of the total number of precinct development lots and former precinct development lots for the scheme; or one-half or more of the neighbourhood lots, you are entitled only to one-third of the number of votes you would usually have. Fractions are ignored. [Mgt. Schedule 6, clauses 14(2), 34(2) & 54(2)]

Adjournment of meetings

A general meeting can be adjourned for any reason if a motion is passed at the meeting for the adjournment. A general meeting must be adjourned if there is no quorum. The person presiding must set the time and place for the adjourned meeting.

A written notice must be sent to each member of the association at least one day before the meeting. [Mgt. Schedule 6, clauses 10A, 30A & 50A]

3. Executive committee of an association

Executive of association with three members or fewer

The executive committee consists of the nominee of each member of the association that is a subsidiary association or other corporation and each other member of the association. Each member has only one nominee and the nominee cannot be a corporation. Also, the nominee must be eligible for election to the committee.

The committee takes office at the first annual general meeting or at an earlier time if the persons who would form the committee decide.

The committee ceases to hold office when another committee is elected because there has been an increase in the membership of the association. [Mgt.s.27]

Executive of association with four members or more

If membership of an association increases to four or more before the first annual general meeting, the association may elect its executive committee at the first annual general meeting or at an earlier special general meeting called for the purpose.

If membership of an association increases to four or more after the first annual general meeting, the association must call a special general meeting to elect its executive committee.

The executive committee is elected at each annual general meeting and the association decides its size. The number of members cannot be more than the number of members of the association or more than nine. [Mgt.s.28]

Who is eligible for election to the community or precinct executive?

The following persons are eligible:

- a member of the association (other than a subsidiary body or other corporation)
- the only company nominee of a corporation that is a member of the association
- a person who is nominated by a member who is not standing for election

- one person nominated by ordinary resolution of a subsidiary body. The person must be a member of the subsidiary body or its executive. [Mgt.s.29(1)]

Joint proprietors of development lots can only be nominated by:

- a member of the association who is not a joint proprietor of that development lot, or
- a joint proprietor of the development lot who is not a candidate. [Mgt.s.29(2)]

Limitations

The following limitations apply:

- a member can nominate themselves if they are NOT a joint proprietor of a development lot and NOT a corporation
- a corporation may not be nominated
- a member can nominate one person only
- no more than one joint proprietor can be nominated. [Mgt.s.29(4)]

Who is eligible for election to the neighbourhood executive?

The following persons are eligible:

- a member of the association (other than a corporation)
- the only company nominee of a corporation that is a member of the association
- a person who is nominated by a member who is not standing for election. [Mgt.s.30(1)]

Joint proprietors can only be nominated by:

- a member of the association who is not a joint proprietor of that lot, or
- a joint proprietor of the lot who is not a candidate for the election. [Mgt.s.30(2)]

Limitations

The following limitations apply:

- A member can nominate themselves if they are NOT a joint proprietor and NOT a corporation. [Mgt.s.30(3)]
- A corporation may not be nominated.
- A member can nominate one person only.
- No more than one joint-proprietor of a lot can be nominated. [Mgt.s.30(4)]

Meetings of the executive

Holding an executive meeting

The *Act* does not say how often executive meetings should be held. The management statement must provide for:

- the executive committee, the office-bearers and their functions
- meetings of the executive
- voting in writing
- records of proceedings of the executive. [Dev. Schedule 3, clause 2 and Schedule 4, clause 2]

Officers of the executive

At its first meeting, the executive must appoint a chairperson, secretary and treasurer. The same member may be appointed to more than one office.

An office bearer vacates the office if he or she:

- ceases to be a member of the executive
- resigns in writing as an office bearer
- is replaced by the executive. [Mgt.s.34]

Chairperson to preside

If the chairperson is present, he or she must preside at all meetings of the executive. If the chairperson is away, the executive must appoint another executive member to chair that meeting only. [Mgt.s.35]

Quorum

The quorum for an executive meeting is:

- if there is only one member of the committee - the member
- if there are only two members of the committee - both of them
- if there are more than two members of the committee - at least half of them. [Mgt.s.38]

If two executive meetings are held at the same time, both are invalid. [Mgt.s.38(1A)]

Voting

Each executive member has one vote. The chairperson does not have a casting vote under any circumstances. A decision on any motion at an executive meeting is made by a majority vote. If the quorum is two members the decision must be made by both. [Mgt.s.38(2)]

Non-attendance at meetings

An executive member can appoint another proprietor or company nominee, whether or not he or she is a member of the executive already, to vote for him or her at an executive meeting. This must be approved by the executive. [Mgt.s.31]

Objection to motions on agenda

Members of the association holding a majority of the total unit entitlements for the scheme can oppose any motion appearing on the agenda for the executive meeting. Written notice of the objection must be given to the secretary of the executive before a decision on the motion is made. However, a subsidiary body may not join in a notice objecting to a motion to the secretary of a community association or a precinct association unless it has been authorised by an ordinary resolution. [Mgt.s.38(3) & (4)]

Records

The executive must keep:

- minutes of its meetings
- records of its decisions
- records of notices objecting to motions. [Mgt.s.38(7)]

Effect of executive decisions

A decision made by the executive is treated as a decision of the association. [Mgt.s.38(5)] No individual executive member can make a decision for the association outside a properly convened meeting. Note: The executive cannot make decisions on a restricted matter (ie. a matter that may be decided only by a unanimous or special resolution or at a general meeting, or that the association has decided must go to a general meeting).

An *Act* or proceeding of the executive done in good faith is valid even if at the time it was done there was:

- a vacancy in the members of the executive
- a defect in the appointment or disqualification of a member of the executive. [Mgt.s.38(6)]

Executive members can be paid

Office bearers or an executive member can be paid in recognition of services performed. The amount is determined at an annual general meeting and covers the period since the last annual general meeting. [Mgt.s.38A]

4. Community managing agents

A community managing agent may carry out some or all of the functions, duties or powers of an association. Managing agents are licensed under the *Property Stock and Business Agents Act 1941*.

Appointment

The appointment and giving of powers to a managing agent can only be decided by a majority vote at a general meeting. [Mgt.s.50(1)]. Only a person who holds a community managing agents license under the *Property Stock and Business Agents Act 1941* can be appointed. [Mgt.s.50(3)]

A managing agent cannot be given the power to:

- delegate its functions to others
- make a decision on a restricted matter (ie. a matter that may be decided only by a unanimous or special resolution or at a general meeting, or that the association has decided must go to a general meeting)
- set levies. [Mgt.s.50(2)]

Appointments during the initial period

The appointment of a licensed managing agent by a community association or a precinct association during the initial period is limited to 2 years. The appointment may be terminated at the first annual general meeting if there is reasonable cause for the termination. [Mgt.s.50(4) & (5)]

The appointment of a licensed managing agent for a neighbourhood association during the initial period ends at the first annual general meeting, unless ratified at that meeting. [Mgt.s.50(6)] The neighbourhood association must inform the managing agent (before making the appointment) that the appointment would end at the first AGM, unless ratified at that meeting. [Mgt.s.50(8)]

Managing agent to keep association informed

An association can ask the managing agent in writing to give details of trust accounts, other accounts and financial transactions made on behalf of an association. The information is to be supplied in writing to a member of the executive. [Mgt.s.51]

Appointment of an agent by the Tribunal

The Consumer, Trader & Tenancy Tribunal (Tribunal) may appoint a managing agent to:

- carry out all the functions of an association
- carry out all the functions of the executive and/or the chairperson, secretary or treasurer
- carry out only some of those powers.

The functions include performing a duty, for example, work to association property, which has been ordered under the *Act* and has not been done by the association. It can also include payment of a debt owed by the association.

In some circumstances an adjudicator may refer a matter to the Tribunal recommending the appointment of a managing agent because the association is not doing its work satisfactorily. [Mgt.s.85]

5. The responsibilities of an association

Books and records the association must keep

Notices, meetings and correspondence

1. The association must record, by mechanical, electronic or other means, all details of notices or orders served on it. [Mgt. Schedule 1, clause 7] These records must be kept for at least 5 years. [Mgt. Schedule 1, clause 9 and Regulation 6]

The following information must be recorded for each notice:

- the date and manner of service
 - the part of the scheme it is about
 - the date for obeying the order
 - the date the order was obeyed. [Mgt. Schedule 1, clause 7]
2. The association must keep minutes of its meetings, including details of motions passed, for at least 5 years. [Mgt. Schedule 1, clauses 7 & 9 Regulation 6]
 3. The association must keep:
 - copies of all correspondence received and sent for at least 5 years
 - notices of association and executive meetings for at least 5 years
 - proxies given to the association for at least 5 years after the proxy expires
 - voting papers for resolutions at association meetings for at least 5 years
 - voting papers for election of the executive committee and officers of the committee for at least 5 years
 - records served on the association by the managing agent for at least 5 years
 - notices specifying an address for service for at least 5 years. [Mgt. Schedule 1, clause 9 and Regulation 6]

Financial records and statements

1. The association must keep accounting records and financial statements for at least 5 years. [Mgt. Schedule 1, clause 9 and Regulation 6] These include:
 - a receipt book

- a passbook, a deposit book or a statement of deposits and withdrawals in order of date
- a cash record
- a levy register.

2. The association must prepare financial statements for:

- the period beginning on the date the scheme was registered and ending no earlier than two months before the first AGM; and - for each period beginning on the date the last statement was prepared and ending no earlier than two months before the next AGM. [Mgt. Schedule 1, clause 11]

Community roll

The community association must prepare and keep a community roll. [Mgt.s.25]. The roll must have separate entries for:

- each community development lot
- each subsidiary scheme
- the association's community property and the community scheme in general [Mgt. Schedule 3, clause 1].

The roll may be maintained in any medium.

1. Entries in the roll for each community development lot must include:

- the proprietor's name and an Australian address for service of notices
- information given under sections 45 to 49 or obtained from the Land Titles Register. [Mgt. Schedule 3, clause 2]. The Register is kept by the Department of Lands, Land and Property Information Division, and records the names of proprietors and the date they became proprietors. Section 45(1) allows for notices to be given to a community association or precinct association by the proprietor of a development lot advising the lot is now a subsidiary scheme.

Similarly, the new subsidiary scheme is required by section 45(2) to give written notice to the association notifying it of the address for service of notices on the scheme.

Section 46 requires notices to the community association when a development lot or neighbourhood lot is leased.

Section 46A requires a mortgagee who takes possession of a lot to advise the association within 14 days.

Section 47 allows people who have the right to vote to give notice to the association telling it why (eg. a purchaser or executor of an estate).

2. Entries in the roll for the community property and the community scheme in general, must include:
 - the community plan number
 - the name of the original proprietor and an Australian address for notices
 - the name of the managing agent (if there is one) and an Australian address for notices
 - the number of the precinct plan, neighbourhood plan or strata plan for subsidiary bodies
 - the total unit entitlement for the scheme
 - the unit entitlement for each development lot and former development lot
 - insurance details
 - information given under sections 45 to 49 or obtained from the Land Titles Register. [Mgt. Schedule3, clause 3]

Precinct roll

The precinct association must prepare and keep a precinct roll. [Mgt.s.25]. The roll must have separate entries for:

- each precinct development lot
- each subsidiary scheme within the precinct scheme
- the precinct property and the precinct scheme in general. [Mgt. Schedule 3, clause 4]

The roll may be maintained in any medium.

1. Entries in the roll for each precinct development lot must include:
 - the proprietor's name and an Australian address for service of notices.
 - information given under sections 45 to 49 or obtained from the Land Titles Register. [Mgt. Schedule 3, clause 5]. The Register is kept by the Department of Lands, Land and Property Information Division, and records the names of proprietors and the date they became proprietors. Section 45(1) allows for notices to be given to a community association or precinct association by the proprietor of a development lot advising the lot is now a subsidiary scheme.

Similarly, the new subsidiary scheme is required by section 45(2) to give written notice to the association notifying it of the address for service of notices on the scheme.

Section 46 requires notice to the precinct association when a development lot or neighbourhood lot is leased.

Section 46A requires notice to the precinct association mortgagee who takes possession of a lot to advise the association within 14 days.

Section 47 allows people who have the right to vote to give notice to the association telling it why (eg. a purchaser or executor of an estate).

2. Entries in the roll for the precinct property and the precinct scheme in general, must include:
 - the precinct plan number
 - the name of the original proprietor and an Australian address for notices
 - the name of the managing agent (if there is one) and an Australian address for notices
 - the number of the neighbourhood plan or strata plan for subsidiary bodies
 - the total unit entitlement for the scheme
 - the unit entitlement for each precinct development lot and former precinct development lot
 - insurance details
 - information given under sections 45 to 49 or obtained from the Land Titles Register [Mgt. Schedule3, clause 6].

Neighbourhood roll

The neighbourhood association must prepare and keep a neighbourhood roll [Mgt.s.25]. The roll must have separate entries for:

- each neighbourhood lot
- the neighbourhood property and the neighbourhood scheme in general [Mgt. Schedule 3, clause 7].

The roll may be maintained in any medium.

1. Entries in the roll for each neighbourhood lot must include:
 - the proprietor's name and an Australian address for service of notices
 - information given under sections 45 to 49 or obtained from the Land Titles Register. [Mgt. Schedule 3, clause 8]. The Register is kept by the Department of Lands, Land and Property Information

Division, and records the names of proprietors and the date they became proprietors. Sections 45(1) allows for notices to be given to a community association or precinct association by the proprietor of a development lot advising the lot is now a subsidiary scheme.

Similarly, the new subsidiary scheme is required by section 45(2) to give written notice to the association notifying it of the address for service of notices on the scheme.

Section 46 requires notice to the neighbourhood association when a development lot or neighbourhood lot is leased.

Section 46A requires a mortgagee who takes possession of a lot to advise the association within 14 days.

Section 47 allows people who have the right to vote to give notice to the association telling it why (eg. a purchaser or executor of an estate).

2. Entries in the roll for the neighbourhood property and the neighbourhood scheme in general, must include:

- the neighbourhood plan number
- the name of the original proprietor and an Australian address for notices
- the name of the managing agent (if there is one) and an Australian address for notices
- the total unit entitlement for the scheme
- the unit entitlement for each precinct development lot and former precinct development lot
- insurance details
- information given under sections 45 to 49 or obtained from the Land Titles Register [Mgt. Schedule3, clause 9].

Insurance the association must have

Building insurance

An association must insure buildings or structures on its association property under a damage policy with an approved insurer. [Mgt.s.39(1)]

A damage policy must cover the building/structure if damaged or destroyed by fire, lightning, explosion or any other thing in the policy:

- for the costs of rebuilding (where destroyed) or the replacement (where damaged but not destroyed) of the building/structure back to the same condition it was in when new, and

- for the payment of removal of debris and the payment of architects and others whose services are needed for the replacement or reinstatement, and
- for estimated increases in the above costs during the period of 18 months from the date of the policy. [Regulation 15]

The building/structures must be valued at least every 5 years and insured for at least that value. [Mgt.s.39A]

Public liability insurance

The association must insure against damage to property, death or injury (including events on open or private access ways) for which the association could become responsible. [Mgt.s.40(2)(b)]. The minimum amount of cover is \$10 million. [Regulation 16]

Workers compensation insurance

The association must have workers compensation insurance where it is required under the *Workers Compensation Act 1987*. [Mgt.s.40(2)(a)]

You may get further information on the *Workers Compensation Act* from the WorkCover Authority, 92-100 Donnison Street, Gosford NSW 2250, Tel. 13 10 50.

Voluntary workers insurance

The association must insure against any damage that it may become responsible for because of work done by a voluntary worker for the association and for the accidental injury or accidental death of a voluntary worker. [Mgt.s.40(2) (c)&(d)]

Levies and the administrative and sinking fund

An association must levy its members in the scheme to raise enough funds to carry out its duties. [Mgt. Schedule 1, clause 13(4)]. All levies must be worked out in proportion to the unit entitlements of the lots. [Mgt.s.20]

Administrative fund

The administrative fund is for day-to-day recurrent expenses. The amount in it must be enough for the association to pay its expenses:

- for the cost of maintaining the association property, including personal property

Living in a community scheme

- for the payment of insurance premiums
- for levies imposed by a community or precinct association
- for any other recurrent expenses. [Mgt. Schedule 1, clause 13(1)]

Sinking fund

The sinking fund is to cover future capital needs. The amount in the fund must be enough to cover all the association's expenses:

- for painting/re-painting structures that are part of its association property
- for obtaining personal property (eg. mowers or washing machines)
- for replacing personal property
- for renewing or replacing any fixtures or fittings that are part of its association property
- for other capital expenses. [Mgt. Schedule 1, clause 13(2)]

Transfer of money between funds

An association can transfer money from one fund to the other or make a payment from one fund that should have been paid from the other. But the association must make a levy to repay that fund within three months after the transfer or payment of monies. [Mgt. Schedule 1, clause 13(7)]

Financial statements

An association must prepare financial statements and present them at the annual general meeting. The first statement is for the period from the date the plan is registered up to a date no more than two months before the first annual general meeting. Succeeding statements are for the period from the last statement to a date no more than two months before the date of the meeting it is presented at. The statements include income and expenditure for the administrative, sinking and any other fund the association has. [Schedule 1, clause 11]

Budget estimates and deciding levies

When a levy is to be decided at a meeting a budget must be given showing the existing financial situation and an estimate of receipts and payments. [Mgt. Schedule 1, clause 13(3) & (4)]. You can give the budget with the notice of the meeting or at the meeting before voting on the motion.

The association may decide to allow payments by instalments. [Mgt. Schedule 1, clause 13(8)]

After the decision is made, the association must write to the members and tell them the amount to pay and the date to pay. [Mgt.s.20(1)]. This notice only has to be given once.

Extra levy

If the association has to pay other expenses that were not budgeted for in the administrative or sinking fund estimates, a levy must be set and the amount collected paid to a fund to meet those extra expenses. [Mgt. Schedule 1, clause 13(6)]

Interest and discounts on levies

An unpaid levy gains interest at the rate of 10% simple interest a year if not paid within one month after it is due. The association cannot increase or decrease the interest, but it can make a special resolution to charge no interest. [Mgt.s.20A(1)&(2)]

Unpaid levies, including interest, can be recovered by the association as a debt in court. [Mgt.s.20(13)]

An association may make a special resolution to give a 10% discount where a levy is paid before the day it is due. Payment made on the day it is due does not attract the discount. [Mgt.s.20A(3)]

6. Getting information from the community or precinct

Before you buy into a community, neighbourhood or precinct scheme, you should get a section 26 certificate. You should also read carefully the management statement to know about the by-laws and controls governing the scheme. (See Appendix (a) on page 24 for important information about the management statement).

What is a section 26 certificate?

A section 26 certificate gives information about a lot or scheme including:

- the name and addresses of the executive members and the managing agent (if there is one)
- the levies to be paid by subsidiary schemes and proprietors
- the rate and amount of interest payable on unpaid levies
- any outstanding levies, including special levies
- any outstanding amount for the use of restricted property. [Mgt.s.26 & Schedule 4, clause 2]

If a levy is outstanding before the certificate is given and it is not shown on the certificate, the purchaser is not responsible for the payment. [Mgt.s.26(5)]

If the information is not supplied the association could be fined up to \$550. [Mgt.s.26(1)]

How to get a section 26 certificate

If you need information from a community or precinct association about a development lot and you are the proprietor of a development lot, or have a proprietor's or mortgagee's written permission, you can write to the community or precinct association and ask for a section 26 certificate about that development lot. [Mgt.s.26(2)(a)]

If you need information from a community or precinct association about a subsidiary scheme and you are the proprietor of a neighbourhood lot or strata lot within the scheme, or have that proprietor's or mortgagee's written permission, you can write to the community or precinct association and ask for a section 26 certificate. [Mgt.s.26(2)(b)]

If information is needed from a community or precinct association about a subsidiary scheme in a community or precinct scheme, an application to the community or precinct association for a section 26 certificate can be made by the subsidiary association or strata corporation, or a person having the association's or corporation's written permission. [Mgt.s.26(2)(c)]

If you need information from a neighbourhood association about a neighbourhood lot and you are the proprietor of a neighbourhood lot, or you have the proprietor's or mortgagee's written permission, you may write to the neighbourhood association and ask for a section 26 certificate. [Mgt.s.26(3)]

The certificate should be issued under the seal of the association and be on the set form. [Mgt. Schedule 4, clause 2]. There is a fee. [Mgt. Regulations clause 19]

How to inspect the records of an association

It is important that you inspect the books and records of an association before buying. Sometimes your solicitor will arrange this for you but not always. There are search companies, which specialise in inspecting the books and they know what to look for.

An inspection will show the history of maintenance on association property and provide a valuable insight into any complaints lodged by other proprietors. It may also show plans for future spending.

In the same circumstances as applying for a section 26 certificate, you may write to the Secretary of the community, precinct or neighbourhood association and ask the Secretary to let you look at the records.

The association must let you look at all the records and should make arrangements with you to do this.

When you are looking at the records you may make copies (eg. a copy of the strata roll). Unless you have the association's permission you must not take any of the records away. [Mgt.s.26 and Schedule 4, clause 1]. There is a fee to look at the records. [Mgt. Regulations clause 20]

7. A guide to solving disputes in a community, precinct or neighbourhood scheme

Community living often brings people of diverse interests and backgrounds close together. While it is to be hoped that every community scheme will operate in a harmonious fashion, from time to time disputes arise and action must be taken to resolve them. While most disputes can be resolved by talking through the issues at hand, outside assistance is sometimes needed.

Step 1

Talk about it

Sometimes people in dispute have not even spoken to each other about the problem. This makes it very hard for people to continue living together happily.

Have you made every attempt to resolve the dispute with the other party? Would it help to have the association discuss the problem at a meeting?

If the matter remains unresolved, the *Community Land Management Act 1989* provides a process where disputes may be taken through an independent mediation and adjudication mechanism.

Step 2

Mediation

Mediation is a structured negotiation process in which a neutral and independent mediator assists parties in dispute to achieve their own resolution.

The Office of Fair Trading provides a mediation service through the Mediation Services Unit (see page 20 for contact details). Other mediation services, which are approved by the Commissioner for Fair Trading, can be used. Many disputes can be resolved through mediation.

The mediator's role is to:

- help the parties to identify the issues in dispute
- assist the parties, where necessary, to understand their rights and responsibilities under the *Act*
- suggest options and strategies by which the issues may be addressed.

Mediation is the preferred way to resolve a dispute. Only if mediation is not successful can an application to the community schemes adjudicator or the Tribunal be made.

Step 3

Notice to comply with a by-law

Where an association is satisfied a proprietor/occupier has breached a by-law it can decide to issue a notice to that person requiring future compliance with the by-law. If it is not complied with, the association may, within 12 months of serving the notice, ask the Tribunal to impose a penalty of up to \$550.

Step 4

Orders by an adjudicator

The Office of Fair Trading will give you information about the type of disputes an adjudicator can rule on.

The adjudicator can make an order against an association or strata corporation; a managing agent; or the proprietor or occupier of a development lot, neighbourhood lot or strata lot.

The types of disputes the adjudicator can rule on depends on the management statement and functions required by the *Act*. Generally the adjudicator can order compliance with a function required by the *Act* or the management statement.

Here are some examples of disputes the adjudicator may rule on if other attempts at resolution fail:

- repairs to association buildings
- enforcing restrictions on use of association property
- parking on association property without approval
- keeping pets without approval
- alterations to association property
- repairs to roadways
- noisy residents
- internal fencing
- storage and collection of garbage.

How does the adjudication process work?

A letter will be sent to interested parties asking for submissions (the views of anyone involved).

How long does the whole process take?

An adjudicator's order can take between six to ten weeks from the time the application is lodged.

How is an adjudicator's decision made?

Applications to an adjudicator are dealt with in the office and the people in dispute do not have to appear before anyone. The adjudicator looks at the application and all submissions, as well as decisions made in similar cases. The decision, and the reasons for that decision, is made in writing.

Notice of the order is sent out to the people involved (the person who applied, the person it is against, anyone who sent in a submission and the association).

What do you do if you're unhappy about an adjudicator's decision?

You can appeal to the Tribunal but you must do this quickly (within 21 days of the order coming into effect). It may be possible to extend the time to make an appeal to 90 days but you must have good reasons.

However, if the adjudicator dismissed your application, the 21 days cannot be extended and you must appeal within that time.

Step 5

A hearing before the Tribunal

The Office of Fair Trading will give you information about the type of disputes the Tribunal can rule on. Here are some examples:

- appeals against decisions of the adjudicator
- change in unit entitlements
- ending the initial period of a community scheme with no subsidiary scheme
- authorisation of certain acts in the initial period to preserve the facilities of the scheme in the early stages of a development
- change the management statement
- invalidate resolutions made at meetings or elections
- change levies
- change amount of insurance
- appointment of a managing agent.

How is a Tribunal case different from an adjudicator's case?

The preliminary process is the same (ie. filling in the application, paying the fee, and sending in of submissions) but this time there is an open hearing before the Tribunal. The hearing is similar to a local court although it is not quite as formal. There is one Tribunal for NSW, which has regular hearings in Sydney, and in other metropolitan and country locations.

Is a legal practitioner necessary?

A legal practitioner is not necessary. You may present your application yourself.

When will the Tribunal make its decision?

Usually the Tribunal makes a decision after everyone has finished giving his or her evidence. Sometimes the Tribunal might want more time to think about it, and will give a reserved decision later. A notice of the order is sent out after the Tribunal makes its decision.

How to contact the Office of Fair Trading?

The Office of Fair Trading is open between the hours of 8.30am and 5.00pm Monday to Friday. Fair Trading can be contacted on 13 32 20 or by facsimile on 9338 7999. Face-to-face interviews can only be made by appointment.

How do you apply for assistance in the event of a dispute?

An application form for mediation, an order from an adjudicator, or a hearing before the Tribunal can be obtained from the Office of Fair Trading, the Registry of the Tribunal or a Fair Trading Centre.

After carefully reading the guide notes, complete the form and return it. There is a fee for each application.

Can you appeal a decision by the Tribunal?

In certain circumstances you may appeal to the Supreme Court. You should get legal advice about this.

8. Where to get more information

Office of Fair Trading

The Office of Fair Trading administers the *Property, Stock and Business Agents Act*. Community managing agents employed by an association must be licensed under this Act. We can assist with complaints against managing agents.

Customer Services Division

Specialist Support Unit
Level 6, 1 Fitzwilliam Street
Parramatta NSW 2150

Tel: 9895 0297 or toll free 1800 625 963

Mediation Services Unit

Tel: 9338 7900 or toll free 1800 451 431
Fax: 9338 7999
Hours of opening: 8:30am - 5:00pm Monday - Friday
(Face to face interviews by appointment)

Postal address:
Mediation Services Unit
PO Box A805
Sydney South NSW 1235

Home Building Service

All builders and contractors must be licensed by the Office of Fair Trading. We can also assist with complaints against builders and contractors.

Tel: 13 32 20

Other Agencies

NSW Government Bookshop

You can buy copies of the *Community Land Development Act* 1989 and the *Community Land Development Act* 1989 the Regulations and any amendments from the Government Bookshop.

Tel: 1300 656 986

Consumer, Trader & Tenancy Tribunal

GPO Box 4005, Sydney NSW 2001

Tel: 1300 135 399
Fax: 1300 135 247

Department of Lands

You can buy copies of registered plans and the management statement, certificates of title for association property and individual lots and by-laws that have been made and registered by an association.

Land and Property Information Division

1 Prince Albert Road, Queen Square Sydney NSW 2000

Tel: 9228 6798

Community Justice Centres

Community Justice Centres can help people to work out an agreement that suits everyone concerned in a dispute. Look in the New South Wales Government section of the telephone book for the centre nearest to you or visit www.cjc.nsw.gov.au

Translation and interpreting services

For people who cannot speak English, telephone interpreters are available through the Translation and Interpreting Service.

Tel: 13 14 50

Institute of Strata Title Management

The Institute is the professional body representing member strata and community managing agents.

Suite 311, 3rd Floor
71-73 Archer Street Chatswood NSW 2067

P O Box 129, Chatswood NSW 2057

Tel: 9904 8499
Fax: 9904 8409
website: www.istm.org.au

Dictionary

Part 1

Definitions

adjudicator	a community schemes adjudicator appointed under the <i>Community Land Management Act 1989</i>
association	a community association, precinct association or a neighbourhood association
association property	the lot shown in a community, precinct or neighbourhood plan as community, precinct or neighbourhood property
covenant chargee	a public authority holding security over a property to secure payment of a judgment debt obtained by it where the owner of the property failed to observe a positive obligation owed to that authority
development lot	a community development lot or a precinct development lot that has not been severed under section 15 of the <i>Community Land Development Act 1989</i> from the applicable scheme
former development lot	a precinct parcel, neighbourhood parcel or strata parcel that was a development lot
levy	an amount of money, set by an association according to unit entitlements, which has to be paid by the proprietors and subsidiary schemes to an association. It is for the general running of the scheme and includes payments for such things as maintenance and upkeep of association property and services.
management statement	a statement that is registered with a community plan, neighbourhood plan or precinct plan as a statement of the by-laws and other particulars governing participation in the scheme
mortgagee	a person who lent money to a person to buy a property. The property is mortgaged to the mortgagee in case the person who borrowed the money does not repay it.
occupier/resident	people who live in the property. They may be tenants, children, relatives, husband, wife, defacto, licensee or any other person who lawfully lives in the property.
original proprietor	the registered owner of the land when a community plan, precinct plan or neighbourhood plan subdividing the land is registered.
proprietor	a person(s) or company that buys a lot and whose name is shown on the Register at the Office of Land and Property Information NSW
restricted matter	a matter that may be decided only by a unanimous or special resolution or at a general meeting, or that the association has decided must go to a general meeting
restricted property	association property which has restricted use under the terms of a management statement, or common property in a strata scheme which has restricted use under the by-laws for the strata scheme
simple interest	interest payable only on the principal amount of the debt
subsidiary body	the precinct association, neighbourhood association or strata corporation that is part of the community scheme, or the neighbourhood association or strata corporation that is part of the precinct scheme
subsidiary scheme	a precinct scheme, neighbourhood scheme or strata scheme that is part of the community scheme, or a neighbourhood scheme or strata scheme that is part of the precinct scheme
tribunal	Consumer, Trader & Tenancy Tribunal

unit entitlement

set out in the Schedule of Unit Entitlements on the registered plan and based on the comparative value of each lot at the time the plan is registered. It is used to calculate each proprietor's contributions for levies and value of votes when a poll is called or special resolution is required

Part 2

Other expressions

A reference in this booklet to *Act* or *Mgt.* is a reference to the *Community Land Management Act 1989*.

A reference in this booklet to *Dev.* is a reference to the *Community Land Development Act 1989*.

Appendix (a)

The management statement

The management statement is a key part of the plan for a community, precinct or neighbourhood scheme. The management statement is registered with the Office of Land and Property Information NSW.

What must be included in the management statement for community, neighbourhood and precinct schemes?

The management statement must include by-laws, plans and other particulars about:

- (a) the location, control, management, use and maintenance of any part of the association property that is an open access way or a private access way
- (b) the control, management, use and maintenance of any other part of the association property, including any special facilities provided on that property
- (c) matters affecting providing and paying for internal fencing
- (d) the storage and collection of garbage
- (e) the maintenance of water, sewerage, drainage, gas, electricity, telephone and other services
- (f) insurance of the association property
- (g) the executive committee, the office bearers of the committee and their functions
- (h) executive committee meetings
- (i) voting on motions by the executive committee otherwise than at a meeting of the committee
- (j) keeping records of executive committee proceedings. [Dev. Schedules 3 & 4]

Optional matters in the management statement for community, neighbourhood and precinct schemes?

The management statement may include by-laws, plans and other particulars about:

- (a) the hanging of washing
- (b) safety and security measures
- (c) details of any restricted property
- (d) keeping pets

- (e) the obligation of proprietors not to interfere with the quiet enjoyment of another lot or the association property
- (f) the control of noise levels
- (g) the details of any business or trading by the association and how profits or losses are shared
- (h) the control or preservation of the essence or theme of the development
- (i) architectural and landscaping guidelines
- (j) a diagram to explain statutory easements
- (k) any agreements entered into for providing services or recreational facilities
- (l) a plan about access ways
- (m) by-laws made at the request of public authorities. [Dev. Schedules 3 & 4]

By-laws fixing details of development

By-laws identified as controls and preservations of the essence or theme of the scheme may impose restrictions and can only be changed by a unanimous resolution.

Restrictions may:

- (a) limit occupancy to particular persons, for example, horticulturists
- (b) fix architectural, building or landscaping styles, for example, federation style houses
- (c) limit materials to be used in buildings, for example: all dwellings to be brick
- (d) restrict the use of some association property, for example: horses and not motor cars can only use the trotting track. [Mgt. s. 17]

Matters excluded from management statement for community, neighbourhood and precinct schemes

The management statement must not include any prohibition or restriction that:

- (a) prevents guide dogs being in the scheme
- (b) is based on race or creed, or on ethnic or socio-economic groupings
- (c) excludes public housing from a scheme. [Dev. Schedule 3, clause 5 and Schedule 4, clause 5]

Restricted property

The management statement can restrict the use of association property, or the by-laws under a strata scheme can restrict the use of common property. A management statement that restricts the use of any association property must include:

- (a) a description of the property
- (b) details of persons who can use the property and the terms and conditions imposed on them
- (c) particulars about access to the property, providing keys, hours of use and maintenance of the property
- (d) setting levies for payment by persons who use the property. [Dev. Schedules 3, clause 6 and Schedule 4, clause 6]

How can the management statement be changed?

An association may change its management statement about the control, management, administration, use and enjoyment of the lots or the association property.

But the statement cannot be changed in a manner inconsistent with a restriction imposed by the *Community Land Management Act* for making the change, or in a manner that would make the management statement inconsistent with the *Community Land Management Act* or the *Community Land Development Act*. [Mgt.s.14(1),(2)]

Resolutions needed to change the statement

Unanimous resolution:

- if the change affects by-laws that control or preserve the essence or theme of the scheme.
- if the change affects a by-law created by the terms of an order made by the Community Schemes Board or the Tribunal.

Special resolution:

any other case. [Mgt.s.14(3)]

Power of the Tribunal to change the management statement

The Tribunal may cancel or change a part of the management statement. This can happen if it is shown a part is not in the best interests of the members of the association, or the proprietors of neighbourhood or strata lots. [Mgt.s.80]. The Tribunal can also cancel a part of the statement it considers to be invalid. [Mgt.s.81]

Changes to the management statement must be registered

A decision by an association, or order of the Tribunal to change the management statement has no effect until the Office of Land and Property Information NSW registers it. Documents must be lodged within two months of the association's resolution to make the change. [Mgt. s. 14]. The *Act* does not impose a time to register an order made by the Tribunal, but the Tribunal's order is ineffective until it is registered. [Mgt. s. 99]

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