

BUILDING MANAGEMENT STATEMENTS WHAT ARE THEY?

Does your building have retail or commercial lots below or mixed with the residential lots? Chances are your Body Corporate is part of a Building Management Statement (BMS).

What is a BMS I hear you ask?

Firstly, we will provide the non-technical answer to give you an overview of when they apply and the general purpose of a BMS. We will then look at technical aspects for those who would like to delve deeper into establishment and operation including the applicable legislative references to assist with gaining a better understanding of rights and responsibilities.

A BMS is in general terms an agreement between 2 or more entities to share and maintain particular areas or services within a building or buildings such as car parks, fire services, lifts, etc. The parties to a BMS usually include a Body Corporate and Commercial/Retail lots.

The most common misconceptions we come across is that a BMS is governed by the *Body Corporate and Community Management Act* and the legislative provisions of this act are often applied when there is no legal basis to do so. This is of particular concern when the shared costs are not correctly allocated or recovered leaving a nasty surprise once discovered by both the party that has not been reimbursed its share (usually the Body Corporate) and for the party left with a large bill for unpaid back charges they often don't know about (usually the Retail/Commercial lot owner/s).

Now for the technical aspects and then we will get to practical application. A BMS is registered under the *Land Titles Act 1994* and identifies the lots to which the terms apply.

The BMS **must** contain provisions about the following:

- (a) the supply of services to lots;
- (b) rights of access to lots;
- (c) rights of support and shelter; and
- (d) insurance arrangements.

And **may** contain provisions about:

- (a) establishment and operation of a management group;
- (b) imposition and recovery of levies, how levy amounts are to be kept and how levy amounts are to be spent;
- (c) property maintenance;
- (d) architectural and landscaping standards;
- (d) dispute resolution;

- (e) rules for common services and facilities;
- (f) administrative arrangements;
- (h) arrangements for accomplishing the extinguishment of the statement; and
- (i) proposed future development.

The 3 key areas that require particular attention to enable fair, transparent and equitable management are:

1. Financial Management
2. Decision making under the BMS terms and by the Body Corporate
3. Dispute resolution options

Financial Management

If there are provisions about how finances are to be managed, they should be followed from registration and in accordance with the shared costs schedule, if it exists. There are generally 2 different methods for cost recovery. The most common method is that 1 entity pays for a service upfront (usually the Body Corporate) and recovers the appropriate portion as outlined in the shared costs schedule from the other party/s by way of direct invoice.

The 2nd method is that a BMS budget is set and contributions made by the responsible parties proportionate to the shared costs schedule and payments received in advance then costs paid as received. For the second method it is important to remember that the funds received need to be reconciled to ensure that funds contributed are made towards only the actual costs paid and any under or over collected funds are adjusted when seeking future contributions in advance. In either case, it is imperative that an accurate and transparent method is established to avoid disputes.

Decision Making

The BMS terms and not the *Land Titles Act* specifies how meetings are convened, owner representation and voting rights so these terms are unique to your BMS and need to be fully understood when considering decisions. For Bodies Corporate, contributions towards BMS decisions are made via the representative who is often the Chairperson. Body Corporate Committees should direct their representative on how to vote on BMS matters to be decided or ratify decisions made when prior direction was impractical in the circumstances. If a decision is a restricted matter for the Body Corporate Committee, a general meeting should be called for the appropriate approval to be sought. This type of approval will usually apply to decisions that will affect the right and obligations of all owners within the Body Corporate bound by BMS terms and decisions.

Disputes

A BMS is required to have dispute resolution provisions however the dispute provisions cannot include debt disputes. The dispute provisions usually refer to the appointment of an independent

party to mediate however the resolution process will not make a determination of whether or not the terms in place are fair and or reasonable. Depending on the complexity and stakes involved, a legal opinion should be sought on the commercial viability of pursuing a dispute, particularly involving debts. And if you thought its best to just change terms or terminate the BMS altogether, this is possible with the consent of all registered owners and all owner mortgagees for complete termination.

Summary

Do not assume that the BMS is being managed appropriate, particularly if there is not a specific agreement in place appointing a manager or no instructions have been issued to perform the duties under the Body Corporate Management agreement. If you do have a manager appointed either by the BMS or by instruction to administer the BMS under your Body Corporate Management agreement, check that the manager is not only competent in administering Bodies Corporate but also proficient in the specialised area of BMS administration.

Please call our office on 07 3186 6666 to discuss further.



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