



Professional Standards and Governance

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CTIQ Annual Convention

15-16 June 2006

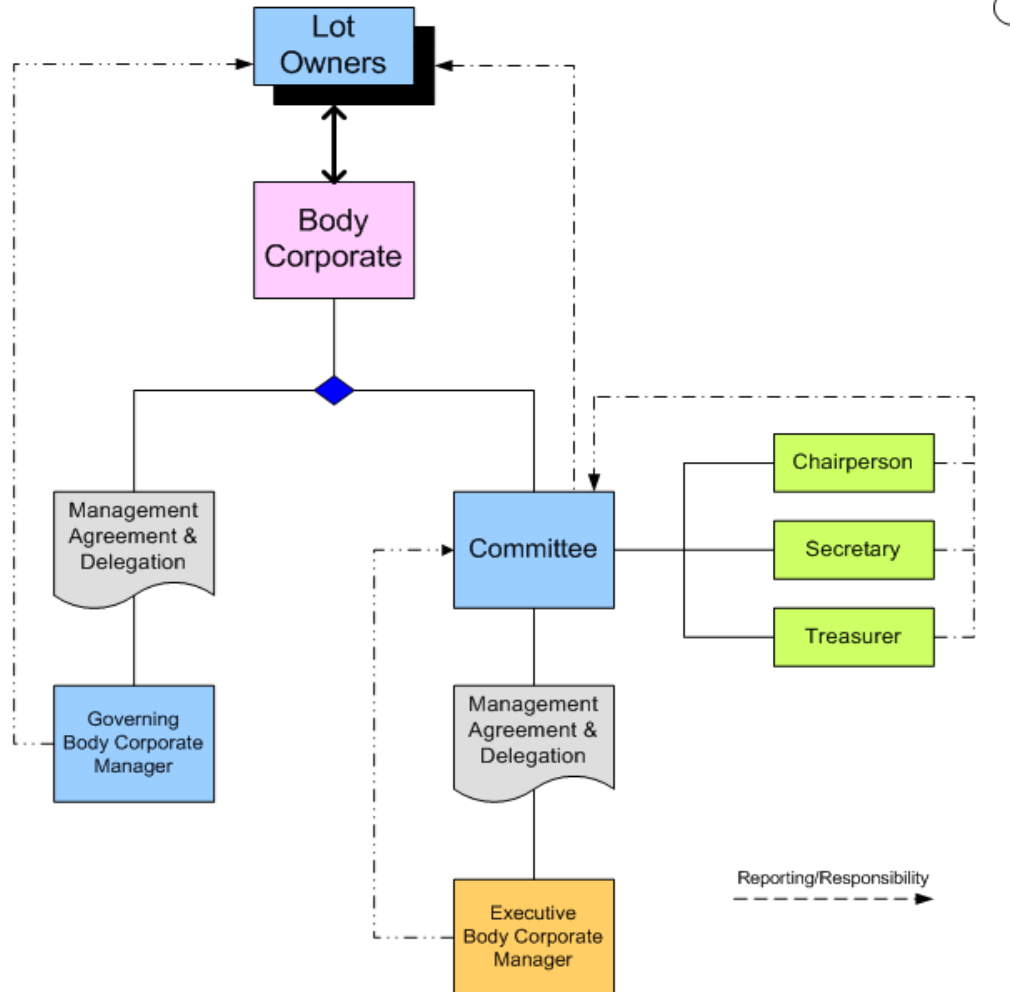


About the topic - Outcomes

- The relationships of governance, management and owners
- The demands of those relationships
- The professional standards (i.e. ethical) issues arising
- Guidance on how to manage the relationships



Relationships Chart



Identifying powers & responsibilities

- Legislation does not set them out logically
- Need to “extract” them from the legislation
- Chairperson, secretary and treasurer have very limited powers
- Caretaker has even less powers
- Powers cannot be delegated but need to flow from duties (express or implied)



The General Meeting

- Selects committee and office bearers
- Appoints body corporate manager
- Sets strategic direction for the Scheme
- Decides more significant matters
- Supervises governance and management



The Committee

- Implements the general meeting decisions/strategy
- Decides less significant matters
- Instructs and supervises office bearers and management
- Answerable (reports) to owners in general meeting



The Chairperson

- Presides at meetings of body corporate and committee
- Answerable to committee
- No casting vote
- No other role
- Additional functions to be authorized (But must not constitute a delegation)



The Secretary

- Implements general meeting and committee decisions
- Meeting documentation (committee + general)
- Minutes
- Correspondence
- Record keeping (other than accounting records)
- Insurances
- Countersigning sealed documents



The Treasurer

- Prepares budgets
- Imposes and processes levies
- Processes and pays accounts
- Keeps books of account
- Provides financial reports
- Prepares annual accounts
- Arranges audit of annual accounts



On-site Caretaker

- Directed by the committee or its nominee
- Garbage and pest control
- Maintenance of the building – actual or supervised
- Security of the building
- Supervising by-law compliance
- Limited ability to make decisions



Executive Body Corporate Manager

- Must be properly authorized to exercise a power
- Authority can only extend to powers of the Chairperson, Secretary and Treasurer
- Can only hold the seal if authorized by ordinary resolution
- Cannot witness the affixing of the seal (arguable but relatively clear)
- Entirely dependant on committee for decision making



Governing Body Corporate Manager

- Must be properly authorized to exercise a power
- Authority can only extend to powers of the Committee, Chairperson, Secretary and Treasurer
- “Restricted issues” still apply
- Can only hold the seal if authorized by ordinary resolution
- Can co-witness the affixing of the seal



Conflicts of Interest – BCCM Act Provisions

- Associate supplying goods or services (s 88 Act)
- Disclosure of associate contract (s 89 Act)
- Disclosure of commission or other benefit (s 90 Act)
- Disclosure of direct or indirect interest to committee (s 34 Std Mod)



Other Conflicts of Interest Provisions

- Code of Conduct
 - Prohibition against accepting conflicting scheme engagement (cl 9)
 - Requirement to ensure employees comply (cl 6)
 - Fraudulent or misleading conduct (cl 7)
- Common Law
 - Fiduciary relationship conflicts
 - Civil law bribe



Criminal Code Provisions

- Secret commissions
 - Queensland Criminal Code – Ch 42A
 - Commonwealth Secret Commissions Act
- Conspiracy – Pt 7 Criminal Code



Other Ethical Issues (Code of Conduct)

- Knowledge of Act
- Honesty, fairness and professionalism
- Skill, care and diligence
- Acting in body corporate's best interests (not ruling party of the day)
- Unconscionable conduct
- Procuring goods and services at competitive prices



Summary

- Relationship between BCM and body corporate is very special
- Requires a clear understanding of the lines of responsibility and boundaries:
 - Powers and authorities
 - Legal obligations
 - Broader professional or ethical obligations
- Consequences of infringement:
 - Termination of engagement
 - Civil and/or criminal liability
- Think and learn more about this





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