Home Units

What are they and how do they operate?

by Gary F Bugden*

It is estimated that over 4 million Australians own, live in or work in strata title properties (called "community title" in Queensland) and the number is increasing rapidly each year.

The chances are that most people at some point in their life will be involved with a community title property, probably in the form of a home unit. Because that involvement is likely to be as an owner or tenant, an understanding of how home units operate is very useful knowledge.

The land and building

Most home units are located within a building constructed on a block of land, this land being known as the "scheme land". A plan is registered to vertically subdivide this building and land into lots (i.e. the home units) and common property (i.e. the areas of the building and land that are intended for common use by the people who occupy the units). A separate land title is issued for each of the home units so they can be sold to individual owners. In a practical sense this title is the same as title to an ordinary piece of land (e.g. a normal house). It can be leased, mortgaged and dealt with in the same way as any other land.

Some home units are not actually within a building. These include villa homes and some town houses. Instead of land and a building being subdivided vertically, the land is subdivided horizontally and the individual villa homes or townhouses are situated within the boundaries of the land lots created by the subdivision. Despite this physical difference they operate in much the same way as home units.

Sometimes land is subdivided horizontally into lots and common property with no building being involved at the time of the subdivision. The buildings (usually free standing houses) are constructed after the subdivision occurs. This type of project is commonly referred to as a master planned community. Again, these projects operate in much the same way as other community titles schemes.

The body corporate

When the subdivision plan is registered –

- A document, known as a Community Management Statement (or "**CMS**"), is also registered.
- A body corporate (i.e. a special type of company) is incorporated.

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Initially, the body corporate comprises a sole member, the property developer (called the original owner). As the individual home units are sold the owners of those units all become members of the body corporate. The role of the body corporate is to be responsible for maintenance of the common property and the administration of the scheme. However, the body corporate does not actually own the common property. It is owned jointly by the owners of the units.

The CMS is an important document for the body corporate. It sets out a number of things, including –

- The by-laws that regulate the way in which the home units and common property can be used by the unit owners.
- The "lot entitlements" of the unit owners (which is similar to a shareholding in an ordinary company).
- Any rights unit owners have to exclusively occupy any part of the common property (e.g. a car parking space) or exclusively use an asset of the body corporate (e.g. a berth for a boat on a marina).
- The regulations that govern the administration of the body corporate.

There are 2 types of lot entitlements:

- Contribution schedule lot entitlements – which determine the amount of annual levies that a lot owner pays (as to which, see below)
- Interest schedule lot entitlements – which determine the share of joint ownership of the common property of the unit owner.

The tenets of unit ownership

It is important to understand what is involved in unit ownership. When a person buys a unit they acquire –

- Ownership of the unit
- A share in ownership of the common property (the proportion being based on the interest schedule lot entitlement of the unit purchased)
- Membership of the body corporate (which carries with it responsibility to contribute to its funding).

The last 2 components are not present when a person buys a conventional house or block of land. To some extent this makes the purchase of a home unit a little more complicated than the purchase of a free standing house.

The community titles scheme

The combination of the scheme land, the subdivision plan, the CMS and the body corporate effectively comprise what is called "the community titles scheme". The principal law relating to community titles schemes is mainly comprised in the *Body Corporate and Community Management Act 1997*. However, the detailed rules for the day to day administration of the Scheme are mainly found in the set of regulations that is identified in the CMS.

There are 4 sets of regulations, each of which applies to a particular type of scheme. They are referred to as "modules" and their common names are –

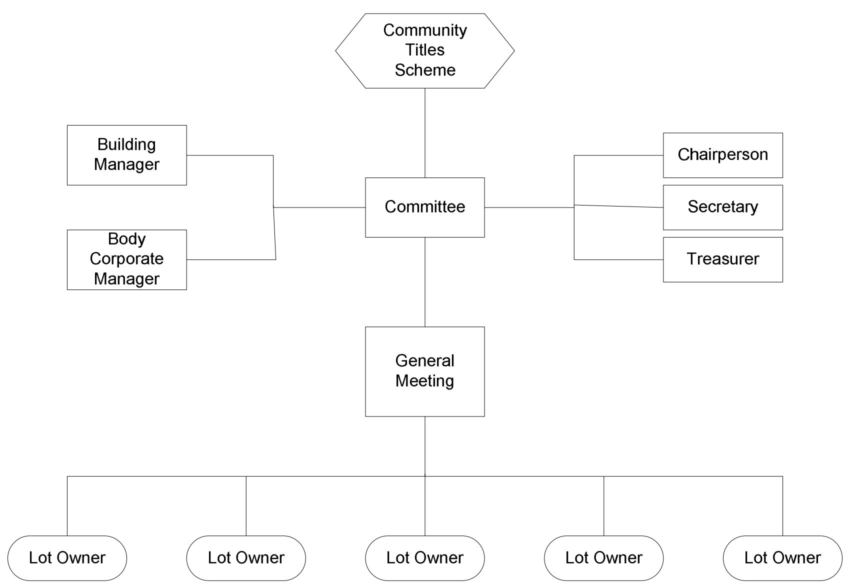
- *Standard Module* – intended for normal residential schemes.[1]
- *Accommodation Module* – intended for schemes with holiday letting or serviced apartments operations (such as the Gold Coast style serviced apartments).[2]
- *Commercial Module* – intended for shops, offices and other non-residential schemes[3]
- *Small Schemes Module* – restricted to schemes with 6 units or less.[4]

Governance and management

The body corporate is governed by a committee, the members of which are elected by the unit owners at an annual general meeting.[5] Committee members are unit owners or their nominated representatives. The committee acts like the board of directors of a company, although its powers are shared with the unit owners collectively. This collective of unit owners is called a general meeting. It is a meeting of the members of the body corporate convened from time to time, but at least once each year.

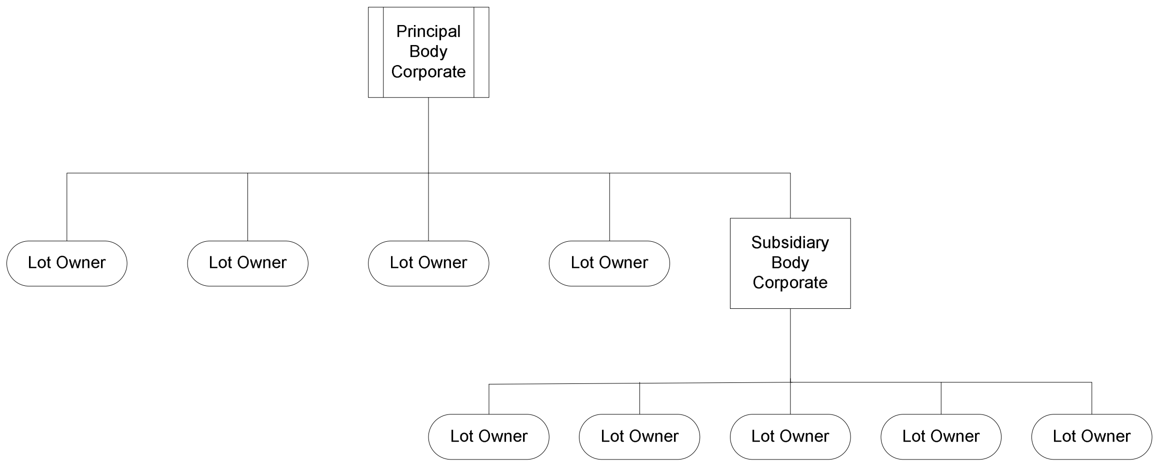
The committee has executive officers – a chairperson, secretary and treasurer. There may also be a body corporate manager who is a professional administrator engaged by the body corporate to assist in the record keeping and management of the scheme. Some schemes have caretakers or on-site building managers (more accurately called "caretaking service contractors"). Where these people are involved in a scheme, they are also members of the committee, although they have no right to vote at meetings of the committee.

The following diagram illustrates the basic governance and management structure of a body corporate:



Layered schemes

Sometimes a lot within a community titles scheme is "owned" by another community titles scheme. This results in a "layered community titles scheme". The body corporate in the lower scheme (called a subsidiary body corporate) is a member of the higher scheme body corporate (called the principal body corporate). Sometimes there are up to 3 layers in a community titles schemes. These structures are used by developers to separate different types of buildings or uses from other types of buildings or uses (e.g. commercial from residential or townhouse from a home unit tower). The following diagram shows a layered structure:



By-laws

As mentioned, the CMS contains by-laws. These are rules regulating the day to day conduct of unit owners and occupiers. They are very important for preserving peace and harmony within the scheme. They cover use of both the units and common property. For example, they may deal with such things as:

- Creating disturbing noise in a unit
- Leaving articles, such as washing, on a balcony
- Using a unit for an illegal or immoral purpose
- Disposal of garbage
- Parking motor vehicles on common property
- Damaging lawns or gardens
- Use of the swimming pool.

If a person fails to observe the by-laws the committee can authorize the service of a *by-law contravention notice* on that person. If their failure continues after service of the notice they can be prosecuted by the body corporate and fined. It is therefore important that everyone living in a home unit building is given a copy of the by-laws. Far too often people, particularly tenants, fail to observe the by-laws because they have never seen a copy of them.

General meetings

Owners meet together in general meeting in any of 3 situations –

- *First Annual General Meeting* – held within a specified time after the scheme is established (being 6 months at the outside).[6]
- *Annual General Meeting* – which must be held each year to undertake a specific range of annual business.
- *Extraordinary General Meeting* – which is held to discuss a particular item of business when requested by the unit owners or required by the committee.

While the committee can undertake many of the day to day business activities of the body corporate, more important activities (e.g. appointment of a body corporate manager, approving large items of expenditure and authorizing commencement of certain legal proceedings) can only be undertaken by a general meeting. Furthermore, the general meeting can restrict the power of the committee and can over-ride its decisions in certain circumstances.

An important role of the general meeting is to supervise the work of the committee. If the general meeting is not happy with the performance of the committee, it can remove one or more of the committee members from office and replace them with someone new.

Maintenance responsibility

As a general rule, in a home unit building a unit owner is responsible for maintenance of their unit and the body corporate is responsible for maintenance of the common property. In practice this division of maintenance responsibility is not that simple. A good example of this is where in a home unit building a wall separating a unit from common property needs to be repaired (i.e. a wall that has a unit on one side of it and common property on the other side, such as an external wall). In the case of such a wall, the line (i.e. the boundary) that separates the unit from the common property is the centre line of the wall. Therefore, if the wall has to be repaired the unit owner is responsible for repairing the inside half of the wall and the body corporate is responsible for repairing the outside half of the wall.

Similar problems can occur between unit owners, because half of the wall will be owned by one unit owner and the other half owned another unit owner. Again, this is because the dividing line or boundary between one unit and another unit (or common property) is generally the centre of the floors, walls and ceilings enclosing the unit.

These types of problems are not as frequent in the case of villa homes and town house developments because most of the buildings are situated within the lots and are the responsibility of the lot owner. The same applies in the case of master planned communities where in most cases the houses are entirely within the boundaries of the lots.

Levies

The body corporate needs funds to pay for maintenance of the common property, insurance of the building, common property services (such as electricity and swimming pool chemicals) and for costs of administering the scheme. These expenses are paid from a special account called an administrative fund. It also needs to put money away to cover the costs of renewal and replacement of the common property (as opposed to its day to day maintenance). For example, if the bearings in the swimming pool pump are noisy their repair is a maintenance expense. If the pump itself burns out and cannot be repaired, the cost of its replacement comes from another account called a sinking fund.

The body corporate obtains money by imposing levies on unit owners. Levies are imposed to both the administrative fund and the sinking fund. The proportion that a unit owner pays depends upon the contribution schedule lot entitlement of their unit. The levies are usually calculated at each annual general meeting when a budget is adopted by the unit owners. The administrative fund budget is for a 12 month period, but the sinking fund budget is for a 10 year period. The approach to the sinking fund budget is to work out what renewals and replacements are likely to occur over the next 10 years and then put money away each year so that when the renewal or replacement has to be attended to there will be sufficient funds to pay the costs. Where an unbudgeted expense occurs in either fund the body corporate has to impose a special levy to cover that expense.

The levies are usually payable by installments, mostly quarterly. Failure to pay levies results in the unit owner loosing their right to vote at general meetings of the body corporate. It can also result in the body corporate taking legal proceeding to recover the levies.

Disputes

Because of the close quarter living usually involved in community titles schemes and the existence of a democratic decision making regime, disputes can occur. They may, for example, be disputes between 2 unit owners, between a unit owner and the body corporate or the body corporate and a tenant.

Where a dispute occurs and it cannot be resolved within the scheme an application may be made to a Government appointed official to resolve the dispute. This official is the Body Corporate and Community Titles Commissioner. The Commissioner will give everyone affected by the dispute the opportunity to comment on it by written submission and will then decide how the dispute is best resolved. The Commissioner will have 3 choices:

- Mediation
- Conciliation
- Adjudication

These processes can result in an agreed or imposed “order” requiring a party to the dispute to do or refrain from doing some particular thing (e.g. to stop playing their stereo so loudly). If the order is not observed an offence is committed and the person who breaches the order can be prosecuted and fined. If the dispute concerns maladministration of the scheme, the Commissioner may appoint a person to take control of the body corporate and act as a compulsory administrator of the scheme. This person is usually a body corporate manager, although not normally one who was previously appointed by the body corporate itself. This type of manager can make decisions on behalf of the body corporate and the general meeting of owners cannot interfere with that decision making process.

Where an order is made by an adjudicator, the applicant for the order or the person against whom the order is made may appeal to the District Court, but only on a question of law arising out of the determination of the application.

Lifestyle

Although community titles schemes sound complex and may involve more opportunity for disputes than exists in conventional housing estates, the fact is that they are becoming increasing popular forms of living. This is because, despite the shortcomings, they offer real advantages. In particular –

- Strong friendships and communal support are often formed
- Residents have access to better recreational facilities (e.g. swimming pool, gym, spa, tennis courts) because they are more affordable when the costs are shared
- Maintenance is attended to by the body corporate so residents have more leisure time
- They can be more secure and safer than ordinary houses
- They often retain or increase their value more than houses in conventional land subdivisions because regular maintenance preserves the appearance and attractiveness of the community
- They are a very convenient and effective form of investment property.

So, when you come to buy or rent your first community title property, be armed with the knowledge of how they operate; be prepared to participate in communal activities, including governance; have a positive attitude to your new environment; be caring for your fellow residents and enjoy the great lifestyle that is on offer.

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[1] *Body Corporate and Community Management (Standard Module) Regulation 1997.*
[2] *Body Corporate and Community Management (Accommodation Module) Regulation 1997.*
[3] *Body Corporate and Community Management (Commercial Module) Regulation 1997.*
[4] *Body Corporate and Community Management (Small Schemes Module) Regulation 1997.*
[5] The number of members on the committee varies according to the size of the scheme, but the maximum number permitted is 7 voting or elected members.
[6] This is effectively the meeting at which the developer hands control of the body corporate to the unit owners.