

# A Guide for Body Corporate Committees





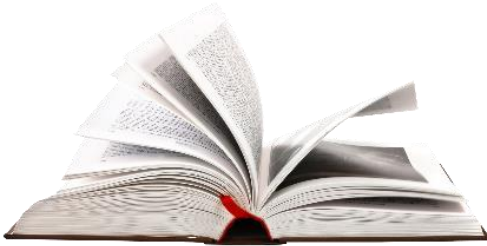
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## INTRODUCTION

**G**ood governance is essential to the effective running of any Body Corporate irrespective of the size of the development.

Following proper process under the *Unit Titles Act 2010* (“Act”) and the *Unit Title Regulations 2011* (“Regulations”) and keeping accurate records are key to ensuring robust decision making and minimizing disputes.



The Act and Regulations provide the backbone for good governance, but it is the Body Corporate Chairperson, Committee and Body Corporate Manager that can enhance good governance.

The Unit Titles Act 2010 (UTA) was enacted in 2010 and came into force in June 2011. The UTA and its corresponding set of Regulations are the dominant legislation for New Zealand bodies corporate. Their introduction has significantly changed the rights and obligations of unit owners and bodies corporate.

As your Body Corporate Manager (BCM), Strata is here to help guide you through them as a New Zealand body corporate committee.

The UTA established a higher level of responsibility and obligations on chairpersons, committee members and owners. Since the Act came into force, areas of uncertainty regarding certain sections of the Act have become evident, particularly with respect to repairs and maintenance.

Being aware of the relevant law will assist in ensuring that your body corporate and committee run smoothly and help prevent any possible claims of personal liability against your committee members. It will also help identify areas where specialist advice should be obtained.

## Body Corporate Committees

### What is the role of a body corporate committee?

The role of a body corporate committee is to 'oversee' the day to day operations of their body corporate and to address body corporate matters in between annual general meetings.

They are the 'decision makers' for the body corporate. This is because a committee will almost always have powers delegated to it by the body corporate by special resolution and written notice at the AGM. The powers and duties are usually extensive. They will be recorded in the AGM minutes.



Body corporate committees ideally hold regular meetings to make decisions, and should follow commonly accepted meeting practices. Decisions made at committee meetings should be recorded as resolutions, similarly as recorded in AGM minutes.

In some smaller bodies corporate the committee may not meet during the year, but will communicate and make decisions by email. All decisions made by email need to include a record of the quorum being achieved, the resolution vote and the resolution itself.

Owners who are not members of the committee are not entitled to attend the meetings but may request a copy of the minutes of the meetings. Non-member owners may also request committee approval to attend a meeting and be heard on a particular subject. It will be up to you as a committee, by majority vote, whether you approve these requests.

As your BCM, Strata understands the procedures, roles and duties of body corporate committees and can assist with any queries as to your particular role, and powers and duties.

Where matters are 'unusually' complex or a decision may result in a significant level of risk, you may wish to go further and seek legal advice, as making a decision outside the powers held by the committee can result in personal liability.

Strata regularly works with specialist body corporate solicitors and can provide your committee with recommendations on which solicitor to use.

## **Body Corporate Chairperson**

### **Is the role of a body corporate chairperson the same as a committee chairperson?**

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The body corporate chairperson and the body corporate committee chairperson positions are in fact different roles, although they are often held by the same person.

### **Body Corporate Chairperson**

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A body corporate chairperson is elected at the annual general meeting of a body corporate, and the duties of a body corporate chairperson include calling and running general meetings, maintaining records and notifying owners of decisions (Regulation 11 of Unit Titles Regulations 2011).

These duties are often delegated to the body corporate committee.

Strata's service contract takes care of all these day to day tasks leaving the committee free to concentrate on more strategic decision making and decisions that 'influence life' on the ground at your building.

If the body corporate chairperson is not a body corporate committee member, he/she may still attend and speak at a body corporate meeting, but cannot vote at the meeting.

### **Body Corporate Committee Chairperson**

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A body corporate committee chairperson is elected by the committee at its first committee meeting of the year and is responsible for chairing committee meetings.



The committee chairperson is the “leader” of the committee, is responsible for ensuring the committee operates effectively in a business like way, that matters are discussed and resolved and that guidance is obtained if required.

The committee chairperson does not have an extra casting vote.

The committee chairperson can resign or be replaced during the year, and another chairperson elected.

## Committee Meetings

Best practice is that an agenda is sent to all members (approximately a week) prior to the date of the committee meeting. Agenda items generally included:

- Welcome
- Apologies
- Approval of last minutes
- Matters arising from the last minutes
- Financial reports (Strata)
- Building manager's report/ maintenance
- Health & Safety
- General business

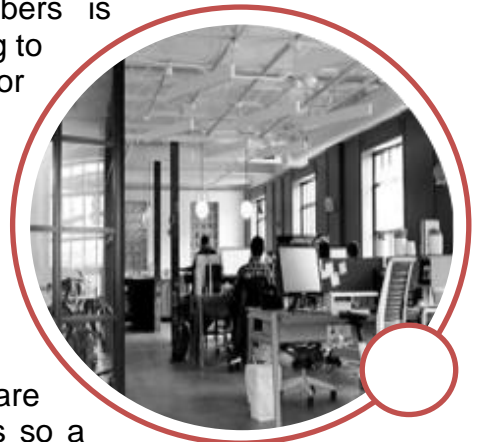
Please liaise with your Strata manager over the preparation of the agenda. We are here to assist. In particular we can provide you with professional interim financial reports for the body corporate.

## Quorum, Proxies, Frequency, Minutes, Venue

**Quorum:** A quorum of members is required for a committee meeting to be valid. The number required for a quorum is set at the AGM.

**Proxies:** The legislation is silent as to whether a committee member can appoint a proxy to stand in their place at a committee meeting.

Legal opinions say that proxies are not valid at committee meetings so a committee cannot make decisions unless a quorum of members is present.





**Frequency:** Most committees meet quarterly. Sometimes additional meetings are needed if issues arise. Uncomplicated bodies corporate may meet less frequently.

**Minutes:** Minutes must be recorded in writing. These are then saved by Strata on the web portal for the body corporate's records, and where all owners can access them. Owners can request to be sent a copy of committee meeting minutes. Strata's Body Corporate Manager can attend the meetings and take the minutes. This is charged at Strata's standard hourly rate.

**Venue:** Strata's boardrooms are available to you for meetings at no charge. This works well as your body corporate manager will have easy access to body corporate documents and there are phone-in and large screen Skype facilities.

## Request for Documents/Records

### **What documents is the body corporate obliged to give to unit owners upon request?**

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Section 206(a)-(f) of the UTA lists the specific documents that a body corporate must provide to a unit owner upon request. This includes the body corporate operational rules, maintenance plans, financial statements, meeting agendas and minutes and any disclosure statements required for the sale of a unit.

In addition, upon request by a unit owner, a body corporate must provide any records or documents if it is reasonable in the circumstances to provide them. While a body corporate usually via its committee determines whether it is reasonable to provide any particular document, the decision about what is reasonable must be made in good faith.

In making a decision whether to release documents, a body corporate should have regard to concerns such as privacy, confidentiality, and whether information is sought for an improper purpose.

A body corporate must make the documents available within a reasonable timeframe, and can pass on the reasonable costs of providing the documents to the owner who has requested them.

Again, document provision is an area Strata will take care of for you. In addition to direct requests for documents from owners, we have a 24/7 owner portal for owners to access their body corporate documents. If you do not have your access code and password to log into the web portal, please contact our office.

## **Conflicts of Interest**

### **I have a personal interest in a matter which is to be decided by the body corporate committee. What should I do?**

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Body corporate committee members must act in the best interests of their body corporate and therefore should ensure that, where a conflict of interest arises, they do not use their status as a committee member to advance their personal interests (where these are different from the interests of owners in general).

A good rule of thumb is that if it could be perceived that a conflict of interest exists, the committee member should declare the conflict, have it recorded in the relevant minutes, and ask to be excused from the meeting while the matter is being discussed and voted on.

By following this rule of thumb, you will be unlikely to find yourself in a position where you have breached your obligations to your body corporate and fellow owners.

## Maintenance/Repairs

### What obligations of maintenance and repairs does the body corporate have?

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Under section 138 of the UTA, a body corporate has the obligation to repair and maintain:

- common property;
- any assets designed for use in connection with the common property;
- any other assets owned by the body corporate;
- any building elements and infrastructure that relate to or serve more than 1 unit.



A body corporate, represented by a designated representative, may access any unit at a reasonable hour to enable it to carry out repairs and maintenance required under section 138 of the UTA. Reasonable prior notice must be given to owners for access. This is set out in section 80(1)(a) of the UTA. Reasons for access may include:

- to view the condition of the unit;
- to maintain, repair or renew any infrastructure for services and utilities that serve more than 1 unit and any building elements that affect more than 1 unit or the common property, or both;
- to maintain, repair or renew any common property; or
- to ensure the body corporate operation rules are being complied with.

## **If an owner is not providing access, let us know and we can contact them and explain their owner obligations.**

As the 'decision maker' of the body corporate, decisions in relation to maintenance/repair work will often sit with the committee. Decisions must be made in accordance with the Act and the body corporate operational rules. If your building has a building manager, they should take care of day to day maintenance and seek your committee's approval when something non-standard arises.

If the decision involves significant unexpected expenditure, or will be controversial, it may be prudent to decide the matter at a body corporate general meeting - even if the committee has the necessary delegation.

## **Who is responsible for paying the costs of repairs and maintenance?**

Funding of general maintenance/repairs to common property will be from levies paid by owners based on the utility interest of their unit. The UTA does give Committees the ability to make individual owners pay for work to their individual units as follows:

- when a body corporate carries out repairs or maintenance of building elements and Infrastructure contained in a principal unit. This is (UTA s138), and
- where a body corporate has carried out repairs or work which substantially benefits one or some of the units only, or benefits one or more units substantially more than it benefits the other unit(s), the body corporate may recover any expense incurred in doing the repair, work or act from the owner(s) of the unit(s) that received those benefits (UTA s126).

As this area is prone to different interpretations it might be wise to get legal advice first. Again Strata is here to arrange this for you.

## **What if a particular unit owner or tenant has caused the need for the work?**

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The expense incurred by a body corporate together with any reasonable costs incurred in collecting the expense is recoverable from the unit owner, where a body corporate does any repair, work or act that was necessary because of any:

- willful or negligent act or omission by the unit owner;
- breach of the Act by the unit owner;
- breach of the body corporate operational rules by the unit owner;
- or;
- breach of the Unit title Regulations 2011 by the unit owner.

A unit owner is responsible for acts/omissions and breaches by his/her tenant, lessee, licensee or invitee.

## **What if work is required to unit property that does not serve more than one unit?**

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Section 80 of the Act puts an obligation on all unit owners to repair and maintain their respective unit and keep it in good order to ensure that no damage, or harm, whether physical, economic or otherwise is caused to the common property, any building element, any infrastructure or any other unit in the building.

If a unit owner refuses to maintain their unit property, an application may be made to the Tenancy Tribunal for an order requiring the unit owner to carry out the repairs/maintenance to their unit property.

## Breaches of Rules or Obligations

### What can be done if a unit owner is breaching the body corporate operational rules?

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It is key to remember that the unit owner and 'not' their tenant is the member of the body corporate. So, if a tenant is breaching the rules or obligations onsite, it is the owner who is ultimately responsible to the body corporate for ensuring the breach is rectified.



If a resident (or their visitor) is in breach, firstly try and resolve the problem onsite with the person, be they an owner or tenant.

If the committee has no luck with this, you may instruct Strata to provide a formal written notice to the unit owner and from there it can be escalated to solicitors for

enforcement.

All costs involved should then be on-charged to the unit owner. These matters will ultimately go to the Tenancy Tribunal if a legal judgement is needed.

### Can body corporate committee members be held personally liable for the actions of a body corporate committee?

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The High Court has confirmed that body corporate chairpersons and members of body corporate committees have personal obligations to act in accordance with the relevant statutory powers and the body corporate operational rules.

They may be held personally liable for their wrongful acts that cause loss to others, including the body corporate and/or other unit owners. This may be the case even if the mistake was innocent or the original decision was made with the best intentions.

There are several key steps that committee members can take to minimise the risk of facing personal liability:

- where matters arise that are beyond the expertise/knowledge/experience of a body corporate committee, the committee should seek appropriate specialist advice and act upon that advice;
- declare all conflicts of interests and record these declarations in the relevant minutes; and
- understand the powers of the committee conferred by the UTA, the relevant delegation, and the body corporate operational rules

Strata recommends taking out Office Bearers Liability Insurance (OBL) to protect the committee and its members against claims that may be made against it. It is only fair that owners who volunteer to take on these extra responsibilities for the benefit of everyone are provided with this cover. We routinely obtain OBL quotes for the chair people and committee members for our client bodies corporate.

We look forward to working with your committee – and please do not hesitate to contact your Strata manager!



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