

Body Corporate & Community  
Management & Other  
Legislation Amendment Bill 2012  
Submission 236

**From:** [Norm Locke](#)  
**To:** [Legal Affairs and Community Safety Committee](#)  
**Subject:** FW: Emailing: Submission re Lot Ent to Justice Department Version 2  
**Date:** Thursday, 18 October 2012 4:35:10 PM  
**Attachments:** [Submission re Lot Ent to Justice Department Version 2.docx](#)

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Dear Mr Bleijie,

Re Your letter of 9October 2012.

Thank you for the opportunity to make a submission regarding the Body Corporate and Community Management Legislation.

My comments are contained in the attached word file.

Yours faithfully.

Norm Locke

[REDACTED]

[REDACTED]

## **The Attorney General and Minister for Justice**

Re Your Letter of 9<sup>th</sup> October

**Dear Mr Bleijie**

Thank you for the opportunity to make a submission to your deliberations regarding lot entitlements for the contribution schedule in community title schemes.

The provisions provided for in the Act prior to the changes made by the previous government changes in April 2011, were in my opinion fair and sound.

The underlying principle is that each lot owner's fees are in direct proportion to the burden they are on the funds needed to meet the schemes annual expenses plus a provision for the sinking fund. E.g. If a complex has a pool, and each lot has equal access to the pool, then the costs associated with the upkeep of the pool should be shared equally and not on any arbitrary allocation of lot entitlements, nor the market value of the lot.

In some complexes some lots may have a market value of twice the value of other lots based on size and the most common determinant of the value, it's views. The owners of the most valuable lots paid for those characteristics of the lot, which determines its market price, when they purchased the lot. They should not be expected to pay a penalty, forever more because of an inequitable distribution of lot entitlements.

### **ie User pays**

By way of example, suppose.

Person (a) purchases a luxury car for the sum of \$300,000  
Person (b) Purchases a standard car for the sum of \$30,000

No one in their right mind would expect that the luxury car owner should pay ten times the amount for the same fuel.

Prior to the legislation and regulations contained in the Body Corporate and Community Management Scheme adopted in 1997, some developers allocated lot entitlements so that it gave them the best chance of selling as early as possible the smaller less valuable lots, where there is naturally a larger potential market.

This allowed them to break even early in the marketing programme, and thus hold the asking price of the remaining units so as to maximise their profits.

While I don't take issue with the developer maximising his profits, but it should not done in a manner that disadvantages any lot owner.

This may be a good outcome for the developer but it's not fair or equitable and with time sets a ticking time bomb, as the difference in the Body Corp fees paid by the most valuable lots and the remaining lots grows exponentially, as costs are indexed for inflation each year.

The Body Corporate and Community Management Act 1997, is based upon a sound guiding principle.

***“ For the contribution schedule, the respective lot entitlements should be equal, except to the extent to which it is just and equitable in the circumstances for them not to be equal ”***

**Re** Supreme Courts statement in the appeal decision for Fisher & Others v Body Corporate for Centrepoint Community Title Scheme 7779 (2004) QCA 214.

In summary I guess you can say “If it ain't broke don't fix it”. This is the mistake that the previous Labor government made and one can only imagine where the motivation was to change what was an established and equitably fair system, it could only be vested interests.

### **Insurance and the Interest Schedule**

The Body Corporate and Community Management (Standard Module) regulations 1997, specifies different payment mechanisms for the various forms of insurance policy taken out by the Body Corporate for a particular complex.

- (a) Section 127(4) requires that the cost of building replacement for common property (which excludes all the lots) be shared by all the lot owners based on the **Interest Schedule** entitlements of their lots.
- (b) Section 130 (1) (a) requires that the cost of building replacement insurance for the BUP lots be shared by the owners based on the **interest schedule** entitlements for their lots, and;
- (c) The premiums for all other forms of insurance (e.g. public liability, office bearers liability and personal accidents) are to be shared based on the contribution schedule entitlements.

*For the interest schedule (s48 /7) the respective lot entitlements should reflect the respective market values of the lots included in the scheme, except to the extent to which it is just and equitable in the circumstances for the individual lot entitlements to reflect other than the respective market value of the lots.*

In my opinion the calculation for each lot owners share of the Insurance Premium as specified in section 127 (4) and 130 (1) is neither just or equitable and I will try to set out a clear scenario to demonstrate my reasoning as follows.

- 1 A unit complex is built on a beach front, with stunning sea and island views.
- 2 The complex comprises four units on the first floor with car parking for each unit on the ground floor.

- 3 Two of the units face the sea while the other two face in the opposite direction overlooking a hotel car park and have no sea views.
- 4 All four units have the same floor area and finishes and cost the same amount to build as they all have equal floor areas.
- 5 The market value of the each of units with sea views is \$1,000,000 and the market value of each of the rear units is \$500,000.

OK, in this scenario it's a no brainer, the lot entitlements for the contribution schedule should be equal.

However, if the interest schedule lot entitlements determine the proportion each lot owner pays of the insurance premium, the front units with sea views would pay twice as much as the rear units. However if the units were to be destroyed by fire each of four units would cost the same to build as they each have the same floor area.

This would suggest that a more equitable way to distribute the insurance premium costs would be in proportion to the respective floor areas.

Basically I guess what I am saying is, that the views etc. of a particular lot, are paid for in the initial capital purchase, they cannot be destroyed, and are not insurable.

Further to be consistent the provision under Section 127(4), Insurance for common property, should be shared in proportion to the contribution schedule, as all lot owners have equal access to common property, just as they have access to the facility's pool etc.

### **Suggested Solution**

- (1) The insurance component of a lot's costs be placed in the contribution schedule but be determined by the lots respective floor areas.  
  
Thus a unit with twice the floor area of another would pay twice the insurance than does a smaller lot.
- (2) The component defined under 127(4) insurance for common property be moved to the contribution schedule and shared in accordance with the contribution schedule's lot entitlements.
- (3) The interest schedule lot entitlements which are based on the market value of the lot would only determine the lot owner's share of the complex should the scheme be wound up

### **Insurance Premiums**

As you are probably well aware, insurance premiums for strata title unit complexes in North Queensland have increased in some cases by 200 to 400%. Some owners now find themselves with their Body Corporate fees for the insurance component are north of \$7,000 and in some cases are unable to pay them.

In fact the problem is so great it is very doubtful if any developer would be prepared to take the risk of building a set of units north of Rockhampton.

When a home owner decides that they cannot afford the insurance premium, they can opt not to insure their property, and inevitably, as has happened in the South of Queensland, governments and the general public have to bail them out. This is not an option a Body Corporate has, as it has to take out insurance as required by the Act.

The insurance companies know this and in Townsville where our complex is, it seems more than just a coincidence that we are struggling to get more than one quote. Believe me, this strata title insurance matter in North Queensland is a ticking time bomb.