**Body Corporate Management**

A Guide

Introduction: 4

Background: 4

Body Corporate Manager’s Role: 5

Setting the Scene: 5

Unit Owner’s Rights and Responsibilities: 5

Duties of a Body Corporate: 7

Delegation of Duties and Powers: 7

Body Corporate Management – The Right Tools: 8

Annual General Meetings: 9

Annual General Meeting – The basics: 9

Notice of Intention to Hold an Annual General Meeting: 9

Nominations: 10

Chairperson: 11

Duties of the Chairperson: 11

Committee: 13

Duties of a Committee: 14

Annual General Meeting Agenda and Preparation: 15

Quorum: 16

Meeting Formalities: 16

Resolutions: 17

Poll Vote: 18

Unjust resolutions: 19

Minutes: 19

Financials: 19

Operating Fund: 20

Long Term Maintenance Fund: 20

Contingency Fund: 21

Capital Improvement Fund: 21

Financial Statements: 21

Budgets: 22

Audit: 22

Ownership and Utility Interests: 23

Insurance: 24

Valuation: 26

Repairing and Maintaining Body Corporate Buildings: 26

Access: 27

Repairs and who pays for what? 27

Long term maintenance planning: 28

Operational Rules: 29

Disclosures – Selling of Units: 30

Pre-contract disclosure statement: 30

Pre-settlement disclosure statement: 31

Certificate: 31

Additional Disclosure Statement: 32

Disputes: 32

Health and Safety: 34

Key management for contractors: 35

Where applicable - Independent Qualified Persons (IQPs) issue a Building Warrant of Fitness (BWOF) for buildings: 35

Issuing work orders and invoice payments: 35

Abseiling anchors: 36

Requesting quotes for routine maintenance: 36

Graffiti: 36

Owner’s statements recording income and outgoings and owner payments: 36

Letters and important information: 37

Plans of premises: 37

Earthquakes and other disasters: 37

Details of the earthquake strengthening of the building: 38

Dealing with people: 42

Education: 42

Final note on being good Body Corporate Manager: 42

**Body Corporate Management**

# Introduction:

A Body Corporate consists of unit owners, within a unit title development. Unit titles are a common form of legal ownership of buildings such as apartments, townhouses, flats, commercial units, industrial units, mixed residential and commercial units. Unit title owners own a defined part of the building and share ownership in common areas such as common area gardens, lifts or driveways.

A unit owner is a member of a Body Corporate and there are certain legal obligations for the Body Corporate to comply with. The governing legislation setting out the obligations for building developments where multiple owners hold a property ownership called a unit title is the Unit Titles Act 2010 and the Unit Titles Regulations 2011.

In general, a Body Corporate is responsible for a number of financial, administrative and maintenance tasks of common areas of the building. These are typically discussed once a year at a meeting called an Annual General Meeting where owners have an opportunity to have their say and cast their vote on the running of their complex.

To ensure the success of the operational running of the Body Corporate, there are certain governance structures that must be in place including the election of a Chairperson for each Body Corporate and where required, the election of a Committee. The role of the Body Corporate Manager is to provide a service to the Body Corporate Chairperson and the Committee as many of the tasks required of these appointments can become overwhelming without the support of a good Body Corporate Manager.

# Background:

This manual provides a guideline to Body Corporate Management along with suggested templates. It is very important to understand the governing legislation being the Unit Titles Act 2010 and its Regulations as these are changing and evolving. The templates provided with this manual should also change as they are required to for the purposes of managing your Body Corporate clients.

Further, it is important to familiarise oneself with the dispute resolution process that governs unit titles. The dispute process now falls under the Tenancy Tribunal.

The Body Corporate Manager is appointed under a service agreement. It is important to be familiar with that service agreement and to understand the tasks that are to be carried out for the Body Corporate. There are certain business as usual tasks and there are additional tasks that may attract additional fees.

# Body Corporate Manager’s Role:

A Body Corporate Manager has an important role in the running of the Body Corporate. In general, the Body Corporate Manager is an independent and neutral party. The Body Corporate Manager will be the main point of contact for communication between owners. The Body Corporate Manager will also provide financial services, advise and enforce the operational rules of the Body Corporate, assist the Chairperson and the Committee with setting the budget of the Body Corporate, assist the Body Corporate in the placement of their insurance, assist the Chairperson of the Body Corporate with the calling of meetings in particular the Annual General Meeting and provide general guidance to the Body Corporate. The Role of the Body Corporate Manager effectively takes away some of the administrative and financial tasks that the Body Corporate has responsibilities for but the Body Corporate remains ultimately responsible.

# Setting the Scene:

## Unit Owner’s Rights and Responsibilities:

Each owner has certain rights and responsibilities in their Body Corporate. An owner’s rights are detailed in **s79** of the Unit Titles Act 2010 and generally consist of the following:

* They hold a share in the common property;
* They can vote;
* They are entitled to quiet enjoyment of their property
* They can make alterations and improvements to their property but only within their boundary and as long as no other unit or common property is affected.
* They can enforce the operational rules.
* They can attend general meetings of the body corporate such as Annual General Meetings or Extra Ordinary General Meetings.
* Have access to dispute resolution by way of the Tenancy Tribunal.

An owner’s responsibilities are detailed in **s80** of the Unit Titles Act 2010 and generally consist of the following:

* An owner must allow a Body Corporate to enter their unit in times of emergency and when reasonable notice has been given. This is to ensure compliance and for repairs and maintenance.
* An owner must give effect to the decisions of the Body Corporate.
* An owner must consult with their mortgagee if they are required to do so and before exercising their voting right. This is captured on the Annual General Meeting template and the Chairperson will assume that an owner has done this rather than requiring any kind of evidence or proof.
* An owner must comply with all laws and legal requirements relating to use, occupation and enjoyment of the unit.
* An owner must carry out without delay any work request that they have received from a territorial authority or any public body.
* An owner must pay all taxes, charges and body corporate levies and any other outgoings of the unit.
* An owner must repair and maintain the unit and it keep it in good order. An owner must ensure that there is no harm (either physical, economic or otherwise) caused to the common property, any building element or infrastructure of the building.
* An owner must notify the Body Corporate of any structural alterations to their unit that may materially affect any other unit or the common areas of the body corporate. They should also receive written request from the Body Corporate if any alterations may affect the common property or another unit owner.
* An owner must comply with the operational rules of the Body Corporate.
* An owner must not do anything that undermines the insurance of the Body Corporate.

## Duties of a Body Corporate:

The Body Corporate is responsible for financial and administrative management of common property and the unit title development as a whole. These functions generally relate to matters where all unit owners have a shared interest. For example, the unit owners have a shared interest in the land and the building and their upkeep.

The Body Corporate has a number of powers and duties, which are outlined in section 84 of the Act.

Generally, these include:

* Managing, maintaining and repairing the common property, including common building elements and infrastructure that might not be common property;
* Establishing and maintaining a long-term maintenance plan – a plan must be 10 years or more;
* Keeping and maintaining a register of all unit owners;
* Calling general meetings of the Body Corporate;
* Keeping accurate financial statements;
* Taking out insurance that covers the development;
* Levying contributions on owners to fund the operation of the Body Corporate.
* Providing documents to unit owners, such as financial statements, meeting minutes and insurance details;
* Making and enforcing the Body Corporate operational rules.

## Delegation of Duties and Powers:

A Body Corporate may delegate its duties and powers to the Body Corporate Committee by special resolution and by written notice. This typically occurs at the Annual General Meeting of the Body Corporate.

The Committee cannot further delegate these duties. There are some things that cannot be delegated and these include:

* Re-assessment of ownership and utility interest.
* The obligation to comply with the Body Corporate operational rules.
* The application of insurance monies in or towards reinstatement of the development.

# Body Corporate Management – The Right Tools:

Now that we have set the scene of what the Body Corporate’s responsibilities are and as many of these are financial and administrative, it is important to have the right software to support the Body Corporate to manage these responsibilities.

Dedicated Body Corporate Software such as Rockend’s Strata Master (<http://www.rockend.co.nz>) is has been tailored for New Zealand Body Corporate Management. Having dedicated software is essential to the success of any Body Corporate Manager.

The software will help manage many aspects of the Body Corporate including financials to ensure accurate and timely reporting in accordance with the requirements of the Act. The software also acts as the register of owners and enables this to be maintained fairly simply. It is essential to record ownership interest and utility interests as these form the basis of levy distribution from budgeting processes and approvals at AGMs. It is also important to capture each owner’s details and their relevant levy amounts (both operational and long term maintenance levies) to ensure effective levy management. Arrears are also highlighted from bank reconciliations (the software allows for downloading of bank statement data).

The software system will also allow for the issuing of work orders for maintenance, budget monitoring and reporting on any variances, storage of information such as insurance and valuation details. The software will also allow for the storage of templated documents that will make mail mergers easier for the preparing and distribution of meeting agendas, minutes etc.

A good Body Corporate Manager needs excellent tools and it is essential to familiarise oneself with the capabilities of any dedicated Body Corporate software system.

# Annual General Meetings:

The main meeting of any Body Corporate is the Annual General Meeting. A Body Corporate Manager’s role centres around this annual event as most of the decisions are made at this meeting and follow up is required throughout the year. The issuing of the documentation for the Annual General Meeting is governed by the legislation and this section will describe how to use the attached templates.

# Annual General Meeting – The basics:

## Notice of Intention to Hold an Annual General Meeting:

Refer to Template 1.

A Body Corporate must hold an Annual General Meeting every calendar year. The Annual General Meeting must not be held more than 15 months after the previously held Annual General Meeting.

To hold an Annual General Meeting, a Notice of Intention must be sent by the Chairperson. This manual contains the template for a Notice of Intention and this is sent by the Body Corporate Manager on behalf of the Chairperson as the Body Corporate Manager will hold a list of owners and their preferred method of being contacted (either post or email).

The Notice of Intention to hold the Annual General Meeting must be issued at a very minimum of 3 weeks before the Annual General Meeting is to be held. For good process, a Body Corporate Manager should give plenty of time and not send out the papers with more time for the Body Corporate members to make arrangements in their diaries for this important event. Typically, 5 weeks is good process of sending out the Notice of Intention to hold the Annual General Meeting.

The Notice of Intention contains a general outline of the topics to be discussed which cover the Bodies Corporate legislative obligations. These are a mixture of administrative, financial and governance aspects. Typically, this will include.

* Apologies
* Proxies
* Confirmation of minutes of previous Annual General Meeting
* Matters arising from any previous Annual General Meeting
* Election of a Chairperson
* Election of Committee
* Financial statements
* Budget
	+ - Operational
		- Long-term maintenance fund
* Bank account
* Audit of accounts
* Fixed levy date
* Debt collection
* Insurance
* Long-term maintenance planning
* Common area maintenance issues
* General business

The Body Corporate membership is also invited for any further items that they may have to discuss at this point so that these may be captured in the Annual General Meeting Agenda that will follow.

See Template 2 – Additional Agenda Items

## Nominations:

The Notice of Intention should also contain nomination papers for the election of the Chairperson and the election of a Committee. The voting papers are essential as the names of the Chairperson and the Committee Members should be secured prior to the issuing of the Annual General Meeting Agenda.

See Template 3 – Nomination forms for Chairperson.

See Template 4 – Nomination forms for Committee.

## Chairperson:

At each Annual General Meeting of a Body Corporate, a Chairperson must be elected. It doesn’t matter how big or small the Body Corporate is, a Chairperson is required. This is governed by Regulation 10 of the Unit Titles Regulations 2011.

The Chairperson must be an owner of a principal unit.

The Chairperson is not able to nominate themselves, they must be nominated by another principal unit owner.

Unless the Chairperson resigns or is removed from office (for example, if a Chairperson sells their unit during the term of their office, they are no longer a principal unit owner and not eligible to hold office i.e they must resign), then the Chairperson that is elected will hold office until the close of the next Annual General Meeting.

A Chairperson can be re-elected multiple times except where they have been removed or have previously resigned.

## Duties of the Chairperson:

The role of the Chairperson is typically a voluntary one and at times, there are very few takers for this important and key role. A principal unit owner considering standing for the position of Chairperson should consider the amount of time they have to devote to this important role.

While the Body Corporate Manager assists with the day to day administrative and financial tasks, the Chairperson ultimately assumes responsibility for the running of their Body Corporate.

An important value for the position of Chairperson is one of fairness. The Chairperson must observe their role in accordance with the Act and not for their self-interest. Good meeting management and communication skills are also essential. Allowing members to have their say will engage members to participate and attend their Annual General Meeting.

The Chairperson also has particular duties. Many of these duties are completed with the assistance of the Body Corporate Manager:

* Maintaining a register of unit owners;
* Preparing meeting invitations and documentation for each of those meetings.
* Preparing budgets.
* Preparing meeting agendas for each meeting.
* Chairing meetings.
* Preparing minutes for the annual general meeting.
* Distributing minutes of the annual general meeting.
* Keeping an accurate record of the resolutions and whether they were passed at the Annual General Meeting.
* Keeping accurate financial records of the Body Corporate.
* Apportioning levies in proportion to ownership and utility interests.
* Collecting levies and monitoring any arrears.
* Submitting on behalf of the Body Corporate copies of the financial statements to an appointed auditor.
* Preparing the long-term maintenance plan of the Body Corporate.
* Receiving various reports from the Body Corporate Committee and distributing the reports.
* Insuring the Body Corporate property.
* Signing documents on behalf of the Body Corporate.
* Preparing and issuing notices of resolutions that have been passed without a general meeting.
* Notifying any unit owners of the result of any vote on a resolution to be passed without a genera meeting.
* Maintaining the files and records of the Body Corporate.
* Notifying the committee of any delegation of a duty or power by the Body Corporate to the Body Corporate Committee.
* Any other duties required for the administration of the Body Corporate that the Body Corporate has decided on, by ordinary resolution, to confer to the Chairperson.

## Committee:

A committee of the Body Corporate is appointed under s112 of the Unit Titles Act 2010.

A Body Corporate of 9 or fewer units **may** establish a Body Corporate Committee.

A Body Corporate of 10 or more units **must** establish a Body Corporate Committee.

At every Annual General Meeting, the Body Corporate will decide how many members it wishes to have and how many Committee Members will form a quorum.

A principal unit owner may nominate themselves for Committee membership.

The election is by majority vote being more than 50%.

A Committee Member is also eligible for re-election.

A Committee Member holds office until the close of the next held Annual General Meeting unless they resign or are removed.

##

## Duties of a Committee:

Being a Committee Member in a Body Corporate is a good way to maintain involvement in the running of the Body Corporate. Like any Committee a diverse set of skills sets is important. Committee Members may have legal or accounting skills and some may have building skills. It is essential that the Committee works collaboratively throughout the year to benefit its wider membership and ensure that their assets are being maintained to a good standard. It is also essential that both the Chairperson and the Committee have a good understanding of their operational rules and the Unit Titles Act 2010 and its Regulations to ensure compliance and observance of their legislative undertakings.

A Committee will meet as often as is necessary throughout their term to ensure the smooth running of the Body Corporate and to undertake any delegated tasks. For example, there may be a special project that needs completing such as a painting project which may require the Committee to obtain the necessary quotes.

Decisions made by a Committee are by simple vote.

Observance of the Committee quorum numbers from the Annual General Meeting is important to ensure valid meetings are held.

An agenda should form part of the Committee meeting and minutes of the meeting should be kept. A Body Corporate Manager may or may need to attend these meetings. Some service agreements allow for a certain number of meetings before extra charges take effect.

See Template 5 – Committee Meeting Agenda.

Committees are obliged to produce a report of their activities to the Annual General Meeting. Such a report must include the powers and duties that were delegated to them and an update of whether those powers and duties have been fulfilled. Good record keeping is essential, as the Committee must provide copies of the minutes of its meetings to any unit owner who requests these.

## Annual General Meeting Agenda and Preparation:

The Annual General Meeting Agenda is an important document that sets the scene for decision making for the Body Corporate. The Annual General Meeting Agenda must be sent out at least **14 days** before the Annual General Meeting is held. There are some formalities that are required for this. The Notice of an Annual General Meeting must contain:

* An agenda for the meeting.
* The text of the motions to be decided by resolution.
* The names of the candidates for election (obtained from the Intention to Hold the Annual General Meeting process and voting papers that were distributed). These should have been sent back to the Body Corporate Manager for inclusion in the Annual General Meeting Agenda.
* It must set out the voting procedures to be followed and what happens if there is not a quorum present.
* Information that the Chairperson thinks relevant to the Body Corporate.
* The notice must also have attached:
	+ A proxy form.
	+ A postal voting form.
	+ A copy of the financial statements for the most recent financial year.
	+ Any other documentation that the Chairperson thinks necessary. This may include the Committee Report and the Chairperson’s Report and other documentation important for decision making of the Body Corporate.

A template Annual General Meeting Agenda is provided that covers the basic legislative requirements for its format. See Template 6a – AGM Agenda.

##

## Quorum:

The term quorum has been mentioned throughout this manual. It is very important to understand what a quorum is for each of your meetings. The quorum for an Annual General Meeting of a Body Corporate is 25% of the principal unit owners (including their proxies). However, there must be 2 members of the Body Corporate for the meeting to proceed. This makes sense given that motions are moved and seconded. It requires at least two people to be present for that occur.

If a quorum is not present, then the meeting will need to be adjourned until the same day, same time and place one week later unless the Chairperson changes the time or venue with 3 days’ notice. If there is no quorum at the reconvened meeting, then the meeting must proceed. This is to ensure that decisions can be made for the running of the Body Corporate and is not stalled because not enough people turn up or provide their proxies.

## Meeting Formalities:

The role of the Body Corporate Manager is to ensure that they:

1. Liaise with the Chairperson to set the date of the Annual General Meeting well in advance.
2. Arrange a suitable venue that is big enough for the Body Corporate. Refreshments may be requested.
3. Send out the Notice of Intention to Hold an Annual General Meeting and the voting papers. Ensure that there is an up to date register of owners so that each person receives a copy of the information by their preferred method of contact.
4. Assist the Chairperson to prepare the Annual General Meeting information packs. Agenda, motions, financial accounts, budgets, various reports, proxy forms, postal voting forms etc.
5. At the Annual General Meeting arrive early at the venue and set up.
6. At the Annual General Meeting register everyone’s attendance by taking an owner list. Ensure the list advises who is paid up and who isn’t as this will become important in voting. You may have to issue voting cards if the meeting is a sizable one.
7. Take spare copies of the Annual General Meeting Agenda and information packs.
8. Take notebook/laptop to take careful minutes and to record resolutions appropriately.
9. Be prepared to Chair the meeting if invited by the membership.
10. Ensure a quorum is present for the meeting to begin. If there is not a quorum, the meeting must be adjourned.
11. Owners may only vote if their levies are paid up. This can become an uncomfortable situation at the meeting but ensure that their vote is not counted. One vote only per paid up principal unit owner.
12. Proxies must be collected and appropriately presented on the forms that were issued with the AGM packs.
13. A person who is holding a proxy is effectively representing the principal unit owner and is entitled to have a say.
14. Postal votes must be counted as well. If the wording of a motion is changed at the Annual General Meeting and departs materially from what is contained in the Postal Voting form, then the Chairperson should not count that item in the Postal Voting form. If a meeting has been adjourned, the Postal Voting form remains valid until the reconvened meeting is held.

See Template 7 – Proxy Form.

See Template 8– Postal Vote.

See Template 9 – Preferred Method of Contact.

## Extra Ordinary General Meetings (EGMs):

EGMs are meetings called for a special reason. They are not a replacement for Annual General Meetings where most matters that a Body Corporate will need to deal with for the coming year will be discussed and voted on. EGMs are called when there is a particular reason to have a meeting outside of an AGM.

An EGM may be called by the Chairperson. Owners can also call an EGM but to do so, there must be 25% of the owners calling for a meeting and the request for the meeting must be in writing.

A notice to hold the EGM is to be issued one week before the meeting. If the matter is an emergency, then the one week advanced notice does not need to be given. However, all reasonable efforts must have been made to notify all owners of the meeting.

See Template 14 – EGM Agenda.

Note that a postal vote and also the proxy form should be distributed along with the EGM agenda. See Template 15 – EGM Postal Voting Form.

As well as a Proxy form.

See Template 16 – EGM Proxy Form.

## Resolutions:

Resolutions can either be ordinary or special resolutions. The Act specifies whether a motion carries special resolution status. These may include matters that the Body Corporate has not previously agreed to be delegated, re-assessment of ownership interest, compliance with operational rules and application for insurance monies for something other than what the monies were for being reinstatement. If a special resolution is not passed and carried 65% and not 75%, then relief can be sought from the Court to have the resolution confirmed on the grounds of inequity on the majority.

Otherwise it is generally an ordinary resolution.

For ordinary resolutions, this requires a majority of votes being 51% or more.

For special resolutions, this requires 75% or more.

## Poll Vote:

Ref s100 of the Unit Titles Act 2010 for poll votes:

Where a resolution has been voted for at an Annual General Meeting, a person who is in attendance can request a poll to be taken. If a poll vote is requested, then the ownership interest is how the vote will be recounted.

One vote only may be exercised for each principal unit and only those who voted on the motion under [section 97](http://www.legislation.govt.nz/act/public/2010/0022/latest/link.aspx?search=sw_096be8ed80ddea60_poll_25_se&p=1&id=DLM1160676#DLM1160676) or [98](http://www.legislation.govt.nz/act/public/2010/0022/latest/link.aspx?search=sw_096be8ed80ddea60_poll_25_se&p=1&id=DLM1160677#DLM1160677) are entitled to vote.

For the motion to pass by ordinary resolution where a poll is requested, a majority of the ownership interest represented by those voting must vote in favour of the motion.

For the motion to pass by special resolution where a poll is requested, 75% of the ownership interest represented by those voting must vote in favour of the motion.

The result of any poll is the resolution of the general meeting.

Take caution with Poll Votes. If you are unsure of the percentage of ownership interest because it is a sizable meeting, then advise the membership that the owners who have voted have been recorded and that the mathematics of whether or not the motion passes will be worked out following the meeting and the meeting advised of the outcome.

## Unjust resolutions:

Any person who has voted against a resolution may apply for relief on the grounds that the resolution would be unjust or inequitable for the minority. The application for relief must be made within 28 days of the passing of the resolution and there is a procedure to following under the Unit Titles Act Regulations 2011.

## Minutes:

Minutes are an important part of a Body Corporate Manager’s role and there is an art to taking them. The minutes should capture the overall discussion with enough detail that can be relied upon should the minutes be called as evidence. A peer review of the minutes is essential by the Chairperson prior to the minutes being sent out to the wider membership.

The minutes will remain as draft until the next held general meeting where they will be confirmed as a true and correct copy. The minutes should also be signed by the Chairperson once any amendments have been made.

See Template 6b – AGM Minutes.

# Financials:

An important aspect of Body Corporate Management and compliance with the Unit Titles Act 2010 and its Regulations is accurate financial record keeping.

A Body Corporate is required to have two funds and a further two funds are optional.

The required funds are:

* An Operating Account.
* A Long Term Maintenance Fund.

Optional funds:

* A Capital Improvement Fund.
* A Contingency Fund.

## Operating Fund:

The Body Corporate must maintain an operating account to pay the following:

* Management and governance;
* Services and amenities;
* Statutory compliance;
* Ground renal or license fees relating to land;
* Expenses incurred at least once a year relating to the maintenance of the development.

The Body Corporate may have already set up its bank accounts. As a real estate firm, you may consider developing a relationship with a bank that can provide a service to all your customers. Best practice is to keep everyone’s funds separate, that is, that the Body Corporate has its own bank accounts that is not ever pooled with any other funds. You may consider that senior members of your real estate firm (i.e its directors of senior managers) have signing rights on that account but that must only be with the permission of the Body Corporate and is a special resolution (i.e who has the power to operate the account). If a Body Corporate wishes to pay its own invoices from its existing and pre-arranged bank accounts, this will cause additional administration for the Body Corporate Manager and it is important to have at least viewing rights for financial account reconciliations.

## Long Term Maintenance Fund:

A Body Corporate can, by special resolution elect not to have a Long Term Maintenance Fund but levies must be collected for the Long Term Maintenance Plan (which is required) and that those levies are clearly identified on the books of the Body Corporate. Only items that form part of the Long Term Maintenance Plan can be funded by the Long Term Maintenance funds.

Long term maintenance spending must be approved by special resolution if any item is more than 10% of the specified amount for that item.

## Contingency Fund:

The Body Corporate may have one or more contingency funds. This is also known as a “rainy day” fund for any unexpected items that may come up from time to time. The fund is essentially set up to cover any unbudgeted items.

If there is no contingency fund, then the Unit Titles Regulations 2011 allow for unbudgeted items to be paid from the operating account as long as they do not exceed 10% of the total annual levies.

## Capital Improvement Fund:

The Body Corporate may have a capital improvement fund for any additional upgrades to the complex that fall outside of the Long Term Maintenance Plan. This may include things like new landscaping, reticulation, the installation of a pool or tennis court etc.

## Financial Statements:

Financial statements must be presented at the Annual General Meeting. The Body Corporate has an obligation to keep accounting records and that these account for the following as stated in s132 of the Unit Titles Act 2010.

The accounts record and explain Body Corporate transactions clearly and transparently.

That the financial position of the Body Corporate can be determined accurately at any time.

That the financial statements are able to be properly audited.

There is a prescribed form that is required under the Unit Titles Act 2010 and its Regulations. This is why it is imperative that a good Body Corporate software package forms part of a Body Corporate Manager’s toolkit. Refer to Regulation 32 for the prescribed format being:

* A statement of financial position of the Body Corporate.
* A statement of the Bodies Corporate income and expenditure during the financial year to which the financial statement applies.
* Any other matters that the Body Corporate considers necessary for the purposes of its members understanding the financial statements.

Form 17 in the Unit Titles Regulations 2011 prescribes the format of the financial statements.

It is helpful and transparent that the Body Corporate Manager provides a list of all the transactions that make up the line items for the financial statements.

## Budgets:

The Body Corporate will set an operating budget and a budget for its Long Term Maintenance Plan. The budget must be realistic and take into account all the operating expenses and any increases in service fees for the year ahead. Many Body Corporates try to run too leanly and it is important to have a realistic budget to ensure that further meetings are not called as the Body Corporate is at danger of running out of money. There should also be a contingency sum for any overruns.

The role of the Body Corporate Manager is to work with the Chairperson and the Committee to set the budget which would include all the outgoings of the Body Corporate. For example, it will include cleaning, gardening, general maintenance, insurance, valuation, Body Corporate Management fees, IQP requirements, any ground lease expenses or air space expenses, rubbish collection etc. Each Body Corporate will differ but each year will set the platform for the next budget. Sometimes insurance increases, sometimes it decreases. It is important to anticipate these variances and set the budget accordingly. A good software package will help monitor the variances and enable the Body Corporate Manager to highlight any issues quickly to the Chairperson and the Committee.

## Audit:

The Body Corporate is obliged to keep accurate financial records. At each Annual General Meeting, the Body Corporate must, within 2 months of each financial year, submit these financial statements and supporting documentation to either of the following (see s132 of the Unit Titles Act 2010):

* To an account for a review;
* To an independent auditor;
* Engaging an accountant for a specific verification of procedures – the procedures would be identified by the Body Corporate to be verified by the accountant as having been carried out correctly.

Each one of these carries a cost. However, they have been prescribed by the Unit Titles Act 2010 to give Body Corporate owners a choice and reassurance of process for financial record keeping.

The Body Corporate owners, can, by special resolution elect not to have an audit in any one year. The Annual General Meeting template has been drafted to account for all options.

The role of the Body Corporate Manager is to assist the Body Corporate to effect its decisions and provide the necessary records to an accountant or auditor as has been resolved.

## Ownership and Utility Interests:

Each unit is allocated an ownership interest and a utility interest and such interests are relevant to the determination of many of the unit owner’s rights and responsibilities under the Unit Titles Act 2010.

Ownership interest is a number that reflects the relative value of each unit to the other units in the development, and is used to determine a range of matters including the unit owners’ beneficial share in the common property, and share in the underlying land if the unit plan is cancelled. Every principal, proposed principal, accessory and proposed accessory unit must be assigned an ownership interest by a registered valuer on the basis of the relative value of the unit in relation to the other units – e.g. the market value. For example a 2 bedroom north facing apartment with an ocean view may have a higher ownership interest than a 2 bedroom south facing apartment with a court yard outlook.

The utility interest of a unit is the same as the ownership interest (unless it is otherwise specified on the deposit of the unit plan or subsequently changed). The utility interest is used to calculate how much each owner contributes to the operational costs of the Body Corporate.

The ownership interest is recorded on the unit plan for the development and typically is out of a value of 10,000 or 100,000. It is expressed as a percentage of ownership and takes into consideration a share of any common areas. It is upon this basis that operational and long term maintenance levies are typically struck unless there is a change in the utility interest amount.

Disputes can sometimes arise with either ownership interest or utility interest. If a Body Corporate were to review its ownership interest allocations, they must engage a registered valuer to undertake that task.

If the Body Corporate wished to review the utility interest (i.e. the proportion of outgoings for each unit), they can do this themselves but the key to doing so is that it be done equitably and fairly having regard to the relevant benefits and costs to the units (see s41 of the Unit Titles Act 2010).

Any re-assessment would need to be passed by a special resolution. The Body Corporate must notify the Registrar of any re-assessment.

It is always best to refer a Body Corporate to a valuer for either the ownership interest reassessment or for the utility interest reassessment. Valuers are independent and can make a valued judgment of whether the allocations are indeed fair and equitable amongst the membership.

# Insurance:

**Insurance is a very important topic.**

A Body Corporate must keep all buildings and other improvements insured to their full insurable value.

Indemnity cover is only permitted if full replacement cover is not available.

A Body Corporate Manager’s biggest mistake will be to omit to place the insurance on behalf of the Body Corporate as they have requested. It would be a very dangerous mistake and an incredibly costly one. Insurance therefore requires careful and vigilant monitoring and it is helpful to work with a broker to assist your clients.

In this regard, insurance policy expiry dates should be carefully and accurately recorded and alarms set up many weeks in advance so that quotes can be sought and provided to the Body Corporate Chairperson and Committee for their consideration. The Body Corporate must be presented with some choices for insurance placement and working with a good broker that can make recommendations to the Body Corporate is essential. The Body Corporate through its Chairperson and the Committee is to decide which policy. The Body Corporate Manager must have permission from either the Chairperson and one other member of the Committee or Body Corporate. If matters got desperate and no one was responding, then the Body Corporate Manager would take prudent steps to place the insurance and make sure that the Body Corporate premises were insured. This is, of course, is all subject to the Body Corporate having collected enough levies to pay for the insurance and they would be in breach of the Act if they had not.

Place the insurance in good time, rather than in a rush. Ensure that the invoice has been paid.

Always check your database to ensure that no dates are missed.

If structural alterations are occurring at the Body Corporate – e.g. but not limited to the example of a roof replacement, then the Body Corporate Manager should inform the insurer.

The Body Corporate must also inform the name and address of each unit owner and mortgagee. This should be fairly simple if good records are kept in the register.

Each Body Corporate Member should be provided with a copy of their insurance policy in case of a claim.

## Valuation:

Obtaining a valuation every year before the insurance placement is prudent. The valuation will detail full replacement cover and form the basis of the insured amount. Some Body Corporates do not think they should get a valuation every year. Be sure to advise them that if they do not, then they could be underinsured in the event of a total loss as building costs move and in two years they can be different to the first year. Implement what the Body Corporate decides and that this is covered in the Annual General Meeting minutes. A Body Corporate Manager can be exposed if this is not recorded correctly.

# Repairing and Maintaining Body Corporate Buildings:

The Body Corporate has an obligation under the Unit Titles Act 2010 pursuant to s138 to manage and maintain common property and other assets owned by the Body Corporate in a state of good repair.

The following applies:

The body corporate must repair and maintain:

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

The body corporate may access at all reasonable hours any unit to carry out repairs and maintenance.

Any costs that are incurred by the Body Corporate that relate to repairs to or maintenance of building elements and infrastructure contained in a principal unit are recoverable by the Body Corporate from the owner of that unit as a debt due to the Body Corporate (less any amount already paid) by the person who was the unit owner at the time the expense was incurred or by the person who is the unit owner at the time the proceedings are instituted.

For the purposes of this section:

(a) a subsidiary Body Corporate is to be treated as the unit owner of the principal unit that was subdivided to create the subsidiary unit title development; and

* 1. (b) a reference to a **principal unit** includes the common property and units of that subsidiary unit title development; and

 (c) the duty to repair and maintain includes (without limitation) a duty to manage (for the purpose of repair and maintenance), to keep in a good state of repair, and to renew where necessary.

Disputes can arise fairly quickly when it comes to repairs and maintenance. It is key to understand the Body Corporate’s obligations. To do so, the Body Corporate Manager should as part of their toolkit have a copy of the title of the unit plan. The title will identify what areas are common areas and what areas are not.

## Access:

All Body Corporate members are required to provide the Body Corporate with access following reasonable notice with the exception being for emergencies, where the Body Corporate can gain access. Access is necessary to ensure that the Body Corporate is complying with its obligations – e.g. fire monitoring may need to occur inside a unit as well as checking of exhausts. The Body Corporate may also need to repair/remedy common areas with access from a particular unit to do so. Also the Body Corporate may enter a unit following reasonable notice where repairs need to be made to more than one unit.

## Repairs and who pays for what?

Some repairs will need to be made by the Body Corporate and such costs recovered from a unit owner. It is best to work with the unit owner to avoid any disputes if at all possible. The Body Corporate may also do repair work that also benefits one owner, then such repairs should be recoverable from the owner. Again, discussion and dialogue is key where possible and further legal advice may be necessary depending on the facts of the situation.

## Long term maintenance planning:

The Body Corporate must have a Long Term Maintenance Plan. These should be professionally prepared by building experts for the Body Corporate. There is a service fee associated with producing such a plan as it does provide good detail and estimates for what maintenance is coming up and how much it might cost.

Some owners will want to do this themselves. Caution should be taken as some owners do not know much about buildings and can get it wrong. They could be leaving themselves exposed to risk if a buyer purchases a unit and the Long Term Maintenance Plan is not realistic or has missed something important.

The Long Term Maintenance Plan has a purpose to identify future maintenance and to estimate their cost, to support the establishment of funds, to provide a basis for owners to be levied, and to assist the Body Corporate at their Annual General Meeting to make decisions about maintenance.

There are certain requirements for the Long Term Maintenance Plan (see s116 of the Unit Titles Act 2010 and Regulation 30 of the Unit Titles Regulations 2011). These requirements include but are not limited to:

* The Body Corporate must have a plan and must regularly review it.
* The Long Term Maintenance Plan must be for a period of at least 10 years.
* It must be reviewed at least every three years (can be done yearly for budgeting purposes).

The Long Term Maintenance Plan must cover the common property, building elements and infrastructure plus any additional items that the Body Corporate has decided it should cover.

A seller should disclose The Long Term Maintenance Plan to any purchaser of their unit to ensure that they are informed and that there are no surprises.

# Operational Rules:

The Body Corporate may have registered its own operational rules on the use of the development and on governance aspects. Any registered operational rules are subject to the Unit Titles Act 2010 and its Regulations. It is important as a Body Corporate Manager to familiarise yourself with these rules for each of the Bodies Corporate in your care as all unit owners, occupiers, tenants and the Body Corporate must follow the operational rules that apply to their unit title development. The role of the Body Corporate Manager is to enforce observance of these rules which may require conversations or letters notifying of any breach to be issued on behalf of the Body Corporate. Typically, rules that tend to be breached relate to car parking or simple things like hanging out washing over balconies when registered rules specify that this is not allowed.

The default rules can be found in **Schedule 1** of the Unit Titles Act Regulations 2011. These are very simple rules. In particular, the rules state:

* Damage or deface common property;
* Leave rubbish or recycling material on the common property;
* Create noise likely to interfere with the use or quiet enjoyment of the unit titled development by other owners or occupiers;
* Park on the common property unless the body corporate has designated it for car parking; or the Body Corporate consents;
* Interfere with the reasonable use or enjoyment of the common property by other owners or occupiers.

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# Disclosures – Selling of Units:

There are three steps when selling a unit where disclosure statements are either required to be issued and one that is only required to issued at the request of the purchaser. The following section covers this important area of a Body Corporate Manager’s work and it is essential the a real estate company set up an easy order system via its website for owners to pay for this additional service. The service fee is kept by the real estate company and not passed to the Body Corporate. The Body Corporate Manager sends the information on behalf of the seller. It is the seller’s responsibility to check that the information contained in the disclosure statements are correct.

The seller is responsible for making sure the information is correct and should sign the form. In this regard, the Body Corporate Manager will issue the disclosure statements to the seller and the seller to the buyer. In the case of a Pre-Settlement Statement, typically these will be issued to the solicitor acting for the seller and they will have the seller sign the certificate.

The prescribed disclosure statements that an owner must provide at the time of selling their unit. These are:

Pre-contract Disclosure Statement (see s146 of the Unit Titles Act 2010 and Regulation 33).

Additional Disclosure Statement (s148 of the Unit Titles Act 2010 and Regulation 35).

Pre-Settlement Disclosure Statement (s147 of the Unit Titles Act 2010 and Regulation 34).

Certificate from the Body Corporate.

A statement correcting any errors in the certificate where they have been noted.

## Pre-contract disclosure statement:

See Template 10 - Pre-Contract Disclosure

This statement must be in the prescribed form and must be provided to the buyer by the seller before entering into an agreement for sale and purchase. The form contains basic information about what a body corporate is and relevant information about the Body Corporate itself.

## Pre-settlement disclosure statement:

See Template 11 – Pre-Settlement Disclosure.

The seller of the unit must provide Pre-Settlement Disclosure statement in the prescribed form no later than 5 working days before settlement. It is critically important as a Body Corporate Manager to never miss these deadlines as they can lead to cancellation of a sale.

Sometimes solicitors can request these in a big hurry. Be sure to provide these statements and charge an extra fee if you have to drop everything to service this requirement.

If the Pre-Settlement Statement is provided late, the buyer has the option of delaying the settlement date until the 5th working day after the date the pre-settlement disclosure statement is issued. If the buyer doesn’t postpone the settlement date, then they can cancel the sale if the disclosure statement has not been produced in a timely way. This is why it is incredibly important to issue these statements as soon as the request has been received.

If the seller becomes aware of any inaccuracies, they are to rectify these by issuing a correction.

## Certificate:

The Body Corporate may also issue a Certificate if the certificate is correct and there are no outstanding matters e.g levies owed by the unit owner.

See Template 12 – Certificate of Body Corporate.

## Additional Disclosure Statement:

A buyer may request an additional disclosure statement that provides additional information to the required two certificates. The buyer can request the Additional Disclosure Certificate either before the 5th working day after a signed sale and purchase agreement or before the 10th working day before the settlement date.

The Additional Disclosure Statement must contain the prescribed information pursuant to s 148 of the Unit Titles Act 2010. These certificates typically take a long time to prepare but are generally rarely requested. The real estate firm should charge an appropriate fee for their issue. Again, there are serious consequences for not issuing these certificates in a timely way. The buyer can cancel the sale and purchase agreement by giving 10 days’ notice to the seller. Always act efficiently when these are received to avoid missing the deadline for the seller to issue these to the buyer.

See Template 13 – Additional Disclosure Statement.

A final note is that all certificates must be accurate as the buyers will be relying on these. Be sure to check these and have someone else in your office, if at all possible, double check the statement before it is sent to the seller. Inaccuracies must be corrected as soon as they are noted.

# Disputes:

It is important to try and negotiate if at all possible and avoid things escalating. However, at times, levies will be in arrears and despite best efforts of trying to negotiate with the owner, the Body Corporate may have to think about taking things further. The Annual General Meeting Agenda and Motion relating to Debt Recovery allows for the authority of the Body Corporate Manager to manage this process.

The forum for disputes is most typically the Tenancy Tribunal.

The Unit Titles (Unit Title Disputes – Fees) Regulations 2011 set the scene for how disputes may be resolved.

The Tenancy Tribunal is a forum for disputes for matters under $50,000.

There are different filing fees for the types of disputes. These are cateogrised as either Category 1 or Category 2 disputes.

For Category 1 disputes, being those deemed to be a complex nature for example:

The repair or maintenance of common property;

The governance of a body corporate;

The decisions and procedures of a body corporate;

A filing fee of $3,300 will apply.

For Category 2 disputes deemed less complicated in nature being for example:

* The day to day management of a unit titled development.
* The effect of the behaviour of an owner or occupier of a principal unit on others in the development;
* Non compliance with the operational rules;
* Non payment of body corporate levies.

A filing fee of $850 will apply.

For matters over $50,000 and below $200,000, the District Court is the correct forum.

For maters relating to title or over $200,000, the High Court is the correct forum.

It is important to seek the guidance of the Tenancy Services in preparing for a case in the Tenancy Tribunal. For District Court or High Court proceedings, a solicitor should be engaged by the Body Corporate.

Mediation may also be an option. At times the Tenancy Tribunal (for matters under $50,000) may suggest mediation. External mediation may also be helpful if both the Body Corporate and the owner in question agree. The cost of external mediation would be shared.

## Health and Safety:

The new health and safety Act “Health and Safety at Work Act 2015” came into force on 1 April 2016 together with many accompanying regulations. The regulations were only released mid February 2016 and therefore many businesses are now in the process of working towards their own compliance regimes. The fundamental and underlying aspect of the legislation is that safety is paramount.

In this regard, body corporate management just like residential and commercial property management has a duty under the Health and Safety at Work Act 2015. WorkSafe New Zealand (see <http://www.business.govt.nz/worksafe/>) has advised that Bodies Corporate have a duty of care, so far as is reasonably practicable, to ensure the health and safety of everyone involved with or affected by work on or at the property. WorkSafe New Zealand has advised that this includes the work that is organised by a body corporate.

Under the new Health and Safety at Work Act 2015, a body corporate is a PCBU and has duty of care, as far as reasonably practicable, to ensure the health and safety of everybody with or affected by work on the property that they are responsible for. As a Body Corporate manager, there is also the responsibility for the management and control of the property with the duty that the property that is a work place is without risks to health and safety.

As a Body Corporate Manager you will need to make sure that your real estate firm has identified the requirements under the Act for any work that is undertaken by contractors that attend any repairs and maintenance at any of the buildings in your care. Whether this work be large or small the same principles will apply and that being to ensure safety of the occupants and visitors to the building. Only registered and pre-qualified contractors who have complied with your real estate firm’s documentation and pre-qualification procedures should be used to avoid risk of harm.

When conducting inspections, it is important to act swiftly for any hazards that are identified. As soon as someone notifies you of a hazard, then it is prudent to take care of that hazard in consultation with the Chairperson an the Committee.

# Key management for contractors:

It is important to have all keys for a property and ideally a master key if at all possible. It is also important to manage a key register for security reasons. No keys should leave a Body Corporate Manager’s care without a record of the key and who has it. Check your key register regularly.

# Where applicable - Independent Qualified Persons (IQPs) issue a Building Warrant of Fitness (BWOF) for buildings:

These are important for the safety of the building. Ensure that you engage good contractors who can take care of this on your behalf but your role as a Body Corporate Manager is to check that the contractor has done their role. These records are critically important as the local authorities can issue large fines if a building does not have a current warrant of fitness and it compromises the insurance policy e.g. an insurer may refuse to pay out if the building did not have a current warrant of fitness.

# Issuing work orders and invoice payments:

Always ensure that you engage the right contractors to do a job. This has become even more important under the new work place safety legislation.

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# Abseiling anchors:

Ensure that if a building that you manage has abseiling anchors that these are checked regularly and certified by a specialist service provider. These are critical to the safety of window cleaners and painters. Their life depends on these.

# Requesting quotes for routine maintenance:

It is important to have a good list of contractors that all comply with the new legislative requirements. Keep this list up to date, as good tradespeople are important in the management of the Body Corporate buildings. Some Bodies Corporate will require several quotes for larger jobs. A good network of tradespeople will help you to manage your role and comply with your client’s requests.

# Graffiti:

Engage a contractor to do a sweep of the buildings in your care on a rotation and to remove graffiti quickly. Some local authorities provide this service, however, they can mismatch the paint on the buildings. It is better to manage this process yourself if possible.

# Owner’s statements recording income and outgoings and owner payments:

A good professional Body Corporate Software System will make this easy. Care must be taken to reconcile levy payments every week to ensure the financial status of the Body Corporate is kept up to date at all times. Discuss with your real estate firm owner how this will be managed in house.

# Letters and important information:

A good software system will allow for templates to be stored that can then be mail merged to the relevant owner. Develop your own templates as you become familiar with your role. Some templates have been provided with this manual as a starting point.

# Plans of premises:

It is very important to have the plans for the building and also the title of the building. This can be particularly important when a plumbing issue occurs – having the detailed drawings for the building will save on time with maintenance.

Titles are critical to a Body Corporate Manager’s role and have them stored in the software.

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# Earthquakes and other disasters:

All occupants should understand to Drop, Cover and Hold in the event of an earthquake and the safety procedures for safe evacuation of the building including not using any lifts.

All earthquake events should be taken seriously.

In the event of a sizeable earthquake (and this will all depend on its magnitude and depth), a building owner through their commercial property manager should immediately arrange a building structural engineer to check the building to ensure safety of the building and its occupants.

Earthquakes can cause superficial as well as structural damage. No chances should be taken in an event that has caused concern and the appropriate and skilled people such as building engineers should check the building thoroughly for any structural damage. Insurance claims may also be triggered.

Communication by Body Corporate Manager with the Chairperson and the Committee will be critical during this type of event.

# Details of the earthquake strengthening of the building:

Occupants will typically wish to know before they take out a lease, what the earthquake resilience is of a building that they will occupy. It is important to have this information to hand by way of a report arranged by the Body Corporate.

Some buildings will be deemed earthquake prone by the relevant authority. A notice from the relevant authority must be displayed clearly in accordance with the authority’s requirements. For example in Wellington, Wellington City Council has three different types of notices and a number of commercial and residential buildings have been issued with these notices. The notices may be yellow, orange or red. These notices indicate that the building has been assessed as being an earthquake prone building under the Council’s policies and part of an effort to upgrade buildings for a more resilient city prone to earthquakes. Sometimes Council’s will issue these letters and may be received by the Body Corporate Manager. It is important to assist in responding to any letter issued by the relevant authority.

The letter may request that a structural engineer be consulted to obtain advice on the details outlined in the letter and whether the owner agrees with that advice or not. Calling an expert to assist is critical as at times Councils do assess buildings on a desktop basis and the difference between a 33% assessment and a 34% assessment can make all the difference including a financial one.

If a building in Wellington is deemed earthquake prone, then the owner of that building has 15 years to strengthen the building. The Body Corporate may request the Body Corporate to assist in going out to tender for the work that is required to meet Council’s requirements.

Until such time as those repairs are undertaken and completed, the Body Corporate to display the notice in a visible location. This is to ensure that people who occupy or visit the building that the building has been assessed to be earthquake prone and that damage may be incurred to either the building and its occupiers in the event of an earthquake.

Here is an example of the types of signs from Wellington City Council. This manual does not look at each authority that has different numbers of years to comply with earthquake strengthening. All notices are issued under the Building Act 2004. It is important as a Body Corporate Manager to familiarise yourself with your local authority and its requirements.



**Yellow notice:**

The notice is a standard earthquake-prone building notice for general buildings. It is for commercial and residential buildings. The issuing of this notice means the building has been assessed to be earthquake-prone and the owner has 15 years to strengthen or demolish the building.



**Orange notice:**

An orange earthquake-prone building notice is issued where an owner has failed to comply with the original yellow notice. The owner has, however, contacted the Council to evidence progress towards resolution.

The orange notice does have a final and fixed timeframe. Progress reports are typically required. If the owner fails to meet the progress requirements, then they will be issued with the final notice being a red one.



Red notice:

This notice is based on section 124(2)(b) and S128 and prohibits anyone from using or occupying the building (in accordance with section 128 of the Building Act 2004).

It advises the final date by when the owner must have either strengthened or demolished the building. The reason for issuing this notice is because the building could be unsafe or unusable. If an owner fails to comply with this notice, the Council will consider further action including legal or enforcing strengthening or demolishing the building. This issue becomes fraught when the building is a historic building and the cost of structural strengthening may be out of reach for some owners.



Part two of a red notice.

# Dealing with people:

Diplomacy is always the key in Body Corporate Management. Relationships are important and your clients have engaged you to be a good steward of their building and to guide the Body Corporate through their obligations. There is nothing worse than a bad or fractious relationship. This should be avoided if at all possible.

The key to a good relationship is listening. Often things can be resolved fairly, simply and easily without escalation.

# Education:

It is important as a Body Corporate Manager to continue to up-skill. This guide only provides the basics of Body Corporate Management.

A good Body Corporate Manager will familiarise themselves the Unit Titles Act 2010, Unit Titles Act Regulations 2011, the Unit Titles (Unit Title Disputes – Fees) Regulations 2011, any amendments to the legislation, Health and Safety in the Workplace Act 2015 and its Regulations, local council and authority by-laws and regulations. A good Body Corporate Manager will read widely.

# Final note on being good Body Corporate Manager:

Good communication and administrative skills, good systems and sound judgement with a deep understanding of Unit Titles legislation and a passion for property is key to being a successful body corporate manager.