

Understanding Body Corporates

Overview

Apartments are very different from houses. In fact, they have their very own legislation that sets out rules and regulations on how they are governed - The Unit Titles Act 2010.

The first thing you need to know is the concept of ownership. When buying an apartment you are also buying a share of all public spaces inside it, i.e. the lift, the pool, the corridors, and the grounds. The shared ownership locations are often referred to as the common property for which all the owners are jointly responsible.

The Body Corporate is made up of all the owners.

You may have heard about companies like, Strictly Body Corporate, Elite Management, and Body Corporate Administration to name a few. These are in fact separate companies chosen and employed by the owners (The Body Corporate) to look after and administer the running of the building, and coordinate the building maintenance with the building manager.

Every unit owner automatically becomes a member of the body corporate when they buy an apartment within a complex.

To make sure that your body corporate is doing their job right, you need to first understand what their job entails.

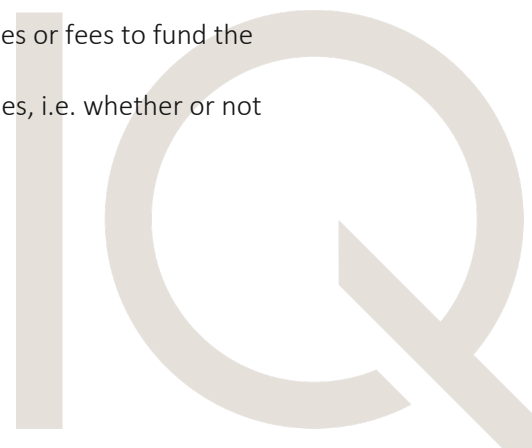
Below are the key responsibilities of the Body Corporate:

- The Body Corporate manages, maintains, and repairs the common property. This includes the building i.e. roof, outside of the building etc.
- The Body Corporate creates and maintains the long-term maintenance plan. This is a plan to make sure, as an owner, there are no big surprise expenses and that money is put away for long term expenses, like lift replacements or repaint of the building.
- The Body Corporate organises the Annual General Meeting (AGM) of the Body Corporate. Generally held approximately every 12 months.
- They keep minutes (records) of these meetings for all owners, and prospective buyers, to read and analyse the state of the building.
- They keep accurate financial statements/records so all owners/purchasers can see the financial position of the Body Corporate. i.e. do they have enough money for maintenance coming up?
- The Body Corporate is in charge of collecting body corporate levies or fees to fund the operation of the building.
- The Body Corporate creates and enforces the body corporate rules, i.e. whether or not owners can keep pets in the complex, smoking, noise etc.
- The Administration of the Body Corporate.

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What is an AGM?

An AGM is an Annual General Meeting and must be held once every calendar year. This is a forum where the following topics may be discussed:

- The financial statements for the year and the budget moving forward
- Planned or needed maintenance of the common property
- Insurance
- Other expenditures.
- Any service contract
- The long term maintenance plan
- Building Manager's review
- The voting in of the Chairman and owners' committee
- Any further issues

What are Body Corporate Minutes?

The body corporate minutes are the written record of the AGM. As a potential buyer you should always read the last two years' minutes, as these will tell you if there are any issues or problems in the building. They are like health checks, as any problems will have been discussed and minuted.

What is a Body Corporate Levy?

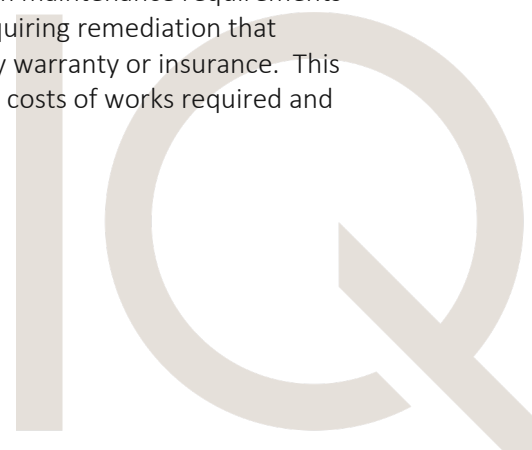
A body corporate levy is the annual financial contribution from each unit owner to cover the day-to-day costs involved in running a building.

The levy includes things like building insurance, common area maintenance, short term & long term maintenance. (painting, fixing breakages, maintenance etc). It also covers a salary for the building manager, who may or may not live onsite and the costs of running the body corporate administration company.

Why are some Body Corporate Fees so Expensive?

Issues with a house these can go unnoticed for years until they become a serious and expensive problem. With apartments you have a group of owners with shared interests in the building and the building must be kept up to an almost perfect standard. Maintenance is done regularly and is not ignored or postponed.

In some instances however, Body Corporate levies have been kept low (often at the request of owners) which has then not built up reserves sufficient to cover long term maintenance requirements or to provide for a contingency fund should there be issues that arise requiring remediation that occur after building warranties have expired or are simply not covered by warranty or insurance. This can then lead to a double whammy for owners as they need to cover the costs of works required and then additional levies to build the required reserves.



What is an Owner's Committee?

The owners' committee is a group of owners that are elected at each AGM to represent all owners and make decisions for the good of the building.

It would be close to impossible for all owners to meet or discuss every issue or situation that occurs in a building. This is why owners' committees of between 5-10 owners are formed to represent their entire collective best interests.

The owners' committee makes decisions including maintaining and repairing common property, and enforcing and introducing new rules.

Every owners' committee must elect a chairperson. The chairperson is the first point of call to deal with issues on behalf of the committee and the rest of the owners. The chairperson cannot make major decisions by themselves but can deal with minor issues.

What is a Long-term Maintenance Plan?

The Long-Term Maintenance Plan (LTMP) is created by the body corporate and covers at least 10 years of maintenance required on the building and must be reviewed every 3 years.

The long-term maintenance plan is funded by the long-term maintenance fund often called the Contingency Fund.

The purpose of the long-term maintenance plan is to:

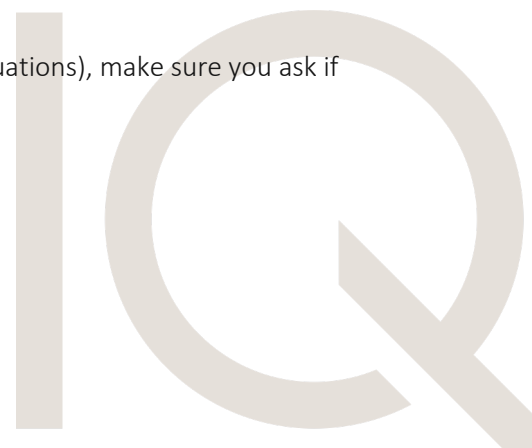
- Identify future maintenance requirements and estimate the cost of future maintenance
- Support the establishment and management of a long-term maintenance fund
- Provide a basis for levying contributions on unit owners
- Provide ongoing guidance to the body corporate to assist it in making annual maintenance decisions

What is an AGM?

An EGM is an Extraordinary General Meeting and occurs when there's an urgent matter that needs a vote from the owners to act on as soon as possible. (This will generally be because the committee doesn't have the authority due to the Unit Titles Act 2010.)

EGMs could be called when there are weather tightness issues, security issues, or even new body corporate rules they'd like to action. EGMs aren't always a bad thing.

IMPORTANT: If you are enquiring on a property (especially in Auction situations), make sure you ask if there have been any EGMs as the minutes often aren't given out.



What is a Special Levy?

A special levy is a payment above the existing normal yearly body corporate costs to cover an unplanned expense. This will happen if an issue occurs in a building and money needs to be urgently raised to fix it.

The amount your unit will have to pay is determined by the “Unit Entitlement” or “Utility Interest”.

What is a Unit Entitlement / Utility Interest?

A Unit Entitlement or Utility Interest is what determines how much your body corporate fee is going to be. When a unit title development is formed, all units are valued in relation to each other (i.e. size, parking spots, which floor of the apartment it's on etc). The total value of all the units will be represented in a share format. Generally a number out of 10,000.

When your unit's allocated share amount is divided by the total share number you will get a percentage which will determine the amount of the budget that your unit is responsible for.

The Unit Entitlement/Utility Interest table of all units is shown on the title in most cases.

What is an Earthquake Rating or IWP Rating?

An Earthquake Rating, or IEP Rating (which stands for Initial Evaluation Procedure) is used to compare an old apartment building's structural strength to the New Building Standard as a percentage (%NBS). The legislation requires that a residential building be no less than 34% or greater than the New Building Standard to pass.

What does this mean?

If the building does not pass it will have to be strengthened and works done in a certain timeframe. This timeframe depends on where you are in New Zealand as the country has been divided into LOW, MEDUIM, and HIGH risk areas.

Auckland is a low risk area so buildings that have failed earthquake ratings have 35 years to strengthen their building.

Heritage buildings (Character A) can still get a 10 year extension, meaning they may not need to be strengthened for up to 45 years. So done correctly, and the body corporate is starting to set aside money now, the issue isn't as serious as it may seem. Yet if the body corporate hasn't already started to put money aside, expect a bill coming your way.



What is a Pre-Contract Disclosure Statement?

The pre-contract disclosure was brought in to stop people unknowingly buying into problematic buildings. This is why, as a purchaser, you are not allowed to enter into a sale and purchase agreement without having been provided first with a pre-contract disclosure.

The idea of the pre-contract disclosure is good but **don't** rely entirely on it. WHY?

- If any major leaks have occurred and the original developer or contractor has gone bankrupt then there is, or was, nobody to lay claim against and this won't appear in the disclosure.
- If the warranty periods have expired, and there was nobody to lay claim against the warranty, it will not appear in the disclosure.
- If there was no mistake made by Council, or financial assistance to be gained, there won't be a claim under the Weather Tightness Act and so again won't appear in the disclosure.
- The building could have leaked, or even worse, be leaking right now but how it's to be dealt with hasn't been decided yet so it won't appear in the disclosure until repair or extra levies are disclosed.

SOLUTION: Don't rely solely on the pre-contractual disclosure. Get a building inspection report and make sure you get your lawyer to read through the last two years' body corporate minutes and ask if there have been any EGMs and request a copy of the minutes.

If you really want to go the extra mile, speak to the Chairman or the committee.

Lastly, be very careful when bidding under auction conditions where all offers are unconditional as all the documentation isn't always provided.

