
Enforcing By-Laws & Contravention Notices

Enforcing by-laws

OK we have a problem – maybe its Parking, Pets, Noise, Rubbish, Unapproved Structures or something else!

The Body Corporate Committee is responsible for enforcing its own by-laws to try resolve these problems. However, all parties need to be aware that by-law enforcement can easily take **6 to 12 months**, for example, it may need several Committee Meetings, Notices of Contravention, Applications to Resolve a Dispute, Conciliation Hearings, Adjudication, Enforcement of Adjudicators Orders etc.

We can assist the Committee, but the final decision regarding each step rests completely with the Committee. It is not our role to become “*judge, jury and executioner*”.

Body corporate enforcing by-laws

Before we get all legalistic let's take some simple steps!



- Calmly talk to the person explaining the problem and how it affects you. Be prepared to look for compromises. Remember, just because the by-laws say something (eg no pets allowed) – this does not mean the by-laws are always enforceable. When it is time to get legalistic the Commissioner's Office will always look for compromise by all parties.
- Ask a member of the Committee to talk to the person for you or with you. Talking the matter through is always better and more successful than a “cold” letter.
- Ask us to write a letter to residents that “spells out” the by-laws. Sometimes it just needs to be put in writing. Unfortunately, we also find that letters are often ignored or only followed for a short period of time.
- Consider other possible measures eg would a sign on common property provide a permanent reminder – rather than just a one-off letter.

The Legal Path



If that doesn't work, the first formal step under the *Body Corporate and Community Management Act 1997* is for the Body Corporate Committee to give a by-law contravention notice to the person it believes is breaching the by-laws.

The decision to give a by-law contravention notice can be made by the committee or the body corporate at a general meeting. So yes, that means the Committee needs to meet and decide which can be very time consuming.

The body corporate usually cannot take action to enforce the by-laws until it has sent a by-law contravention notice.

You are part of the solution



OK you don't want to wait for Committee Meetings, General Meetings then it is over to YOU. You are the one complaining so the best person to become involved and lodge the Contravention Notices is YOU.

Toowoomba STRATA does not have the authority to issue Contravention Notices.

Types of contravention notices

Continuing contravention notice

The continuing contravention notice is a Body Corporate and Community Management Form 10.

The body corporate can give a continuing contravention notice to an owner or occupier if it believes that they are breaching a by-law, and it is likely that this will continue.

An example of this type of breach is where an owner has made a change to the outside look of their lot without the approval required in the by-law.

The purpose of the notice is to ask the person to fix the problem within a certain time.

The notice must:

- say that the body corporate believes the person is breaching a by-law
- detail the by-law that the body corporate believes is being breached
- explain how the by-law is being breached
- set a time period for the person to fix the problem
- explain that if the person does not comply the body corporate may
 - start proceedings in the Magistrates Court
 - make a conciliation application.

The continuing contravention notice can be used, or the body corporate can send a letter that says all those things.

Future contravention notice

The future contravention notice is a Body Corporate and Community Management Form 11.

The body corporate can give a future contravention notice to an owner or occupier if it believes the person has breached a by-law and it is likely that the contravention will be repeated.

This notice would apply if, for example, an occupier often had parties which breached a noise by-law. The purpose of the notice is to ask the person not to repeat the breach. The notice must

- say that the body corporate believes the person is breaching a by-law
- detail the by-law that the body corporate believes is being breached
- explain how the by-law is being breached
- set a time period for the person to fix the problem
- explain that if the person does not comply the body corporate may
 - start proceedings in the Magistrates Court
 - make a conciliation application.

The future contravention notice can be used, or the body corporate can send a letter that says all those things.

Enforcing By-Laws Contravention Notices

Who the notice is sent to

The body corporate committee sends the contravention notice to the person they believe has breached the by law.

If the body corporate committee believes an occupier, who is not the owner, has breached the by-laws, the contravention notice must name the occupier and not the owner or property manager.

However, the body corporate committee must also give a copy of the notice to the owner. The body corporate committee must give a copy to the owner as soon as possible after giving the notice to the occupier.

Not complying with a contravention notice

FACT

Can a by-law contravention notice be ignored? YES!

If a person does not comply with a by-law contravention notice, the body corporate committee can decide to either

- start proceedings in the Magistrates Court for the offence of failing to comply with the notice
- apply for conciliation to enforce the by-law.

A fine of more than \$2600 can be imposed by the Magistrates Court for failure to comply with the notice.

Owner or occupier enforcing by-laws

An owner or occupier can take steps to enforce the by-laws if they reasonably believe that:

- another owner or occupier has breached the by-laws; and
- it is likely the breach will continue or be repeated.

The owner or occupier can send an approved notice to their body corporate asking that the body corporate send a contravention notice to the person they believe is breaching the by-laws. (Form 1 attached)

Self-Resolution

OK so the By-Law contravention notice has been ignored. The next step is work through a process of self-resolution in an attempt to find a solution.

Conciliation



OK so the By-Law contravention notice has been ignored and Self-Resolution did not work

The next step is to apply for Conciliation of the matter. This involves the appointment of a conciliator employed by the Department of Justice and Attorney-General.

The Conciliator acts a “middle person” to reach a compromise and solve the matter. The Conciliation process will involve attending a formal Conciliation Session either in person or via telephone.

Adjudication



OK so Conciliation did not work – next step Adjudication.

Adjudication means appointment of an Adjudicator employed by the Department of Justice and Attorney-General.

This will mean taking further written submissions and then the Adjudicator provides his order.

Not complying with a adjudicators order - Enforcement



Can an adjudicator order be ignored? YES!

However, you then risk enforcement proceedings being taken.

OK so the adjudicators order is being ignored the next step is to head off to the Magistrate's Court to determine methods of enforcement eg impose fine etc

Summary

In our experience, the best solutions remain our First Quick Tip:-



- Calmly talk to the person explaining the problem and how it affects you. Be prepared to look for compromises. Remember, just because the by-laws say something (eg no pets allowed) – this does not mean the by-laws are always enforceable. When it is time to get legalistic the Commissioner's Office will always look for compromise by all parties.
- Ask a member of the Committee to talk to the person for you or with you. Talking the matter through is always better and more successful than a "cold" letter.
- Ask us to write a letter to residents that "spells out" the by-laws. Sometimes it just needs to be put in writing. Unfortunately, we also find that letters are often ignored or only followed for a short period of time.
- Consider other possible measures eg would a sign on common property provide a permanent reminder – rather than just a one-off letter.

Some points to remember

- Nothing happens fast when trying to a resolve dispute (so patience is needed) – these matters can easily take 6 to 12 months to resolve
- Compromise is almost always necessary
- Remember not all by-laws are enforceable eg blanket bans on pets
- Everybody is living in close proximity to each other – so that comes with some side-effects – maybe more noise than you like, maybe parking issues etc
- You need to remember everybody is different – some people are super sensitive to any breach and some people are able to take a more relaxed view – neither party is right or wrong (just different).

Finally, if the matter is escalated to the legal stages – you must always be applying the test ...

“What is reasonable in all the circumstances?”

The Law - Body Corporate and Community Management Act 1997

182 Continuing contravention notice

- (1) This section applies if the body corporate for a community titles scheme reasonably believes that—
- (a) a person (the “**person**”) who is the owner or occupier of a lot included in the scheme is contravening a provision of the by-laws for the scheme; and
 - (b) the circumstances of the contravention make it likely that the contravention will continue.
- (2) The body corporate may, by notice (a “**continuing contravention notice**”) given to the person, require the person to remedy the contravention.
- (3) If the continuing contravention notice is given following a request under section 185(2), the body corporate must, within 14 days after receiving the request, advise the person who made the request that the continuing contravention notice has been given.
- (4) The continuing contravention notice must state—
- (a) that the body corporate believes the person is contravening a provision of the by-laws; and
 - (b) the provision the body corporate believes is being contravened; and
 - (c) details sufficient to identify the contravention; and
 - (d) the period (which must be reasonable in the circumstances) within which the person must remedy the contravention; and
 - (e) that if the person does not comply with the notice the body corporate may, without further notice—
 - (i) start proceedings in the Magistrates Court for the failure to comply with the notice; or
 - (ii) make an application under chapter 6 for resolution of the dispute.
- (5) The person must comply with the continuing contravention notice.
- Penalty -
- Maximum penalty—20 penalty units.
- (6) However, the person does not commit an offence under subsection (5) if, when the continuing contravention notice is given to the person, the person is not contravening the provision mentioned in subsection (1)(a) in the way detailed for subsection (4)(c).

183 Future contravention notice

- (1) This section applies if the body corporate for a community titles scheme reasonably believes that—
- (a) a person (the “**person**”) who is the owner or occupier of a lot included in a community titles scheme has contravened a provision of the by-laws for the scheme; and
 - (b) the circumstances of the contravention make it likely that the contravention will be repeated.
- (2) The body corporate may, by notice (a “**future contravention notice**”) given to the person, require the person not to repeat the contravention.
- (3) If the future contravention notice is given following a request under section 185(2), the body corporate must, within 14 days after receiving the request, advise the person who made the request that the future contravention notice has been given.
- (4) The future contravention notice must state—
- (a) that the body corporate believes the person has contravened a provision of the by-laws; and

Enforcing By-Laws Contravention Notices

- (b) the provision the body corporate believes has been contravened; and
- (c) details sufficient to identify the contravention; and
- (d) that the person must not repeat the contravention; and
- (e) that if the person does not comply with the notice the body corporate may, without further notice—
 - (i) start proceedings in the Magistrates Court for the failure to comply with the notice; or
 - (ii) make an application under chapter 6 for resolution of the dispute.

(5) The future contravention notice has effect for—

- (a) 3 months after it is given to the person; or
- (b) a shorter period mentioned in the notice.

(6) The person must comply with the future contravention notice.

Penalty -

Maximum penalty—20 penalty units.

(7) However, the person does not commit an offence under subsection (6) if, when the future contravention notice is given to the person, the person has not contravened the provision mentioned in subsection (1)(a) in the way detailed for subsection (4)(c).

183A Copy of contravention notice to be given to owner

(1) If, under this subdivision, the body corporate for a community titles scheme gives a contravention notice to a person who is not the owner of a lot included in the scheme, the body corporate must give a copy of the notice to the owner of the lot.

(2) The copy of the notice must be given to the owner when, or as soon as practicable after, the notice is given to the person mentioned in subsection (1).

Penalty units and fines

The penalty unit value in Queensland is \$133.45 (current from 1 July 2019)

<https://www.qld.gov.au/law/fines-and-penalties/types-of-fines/sentencing-fines-and-penalties-for-offences>

Notice to body corporate of a contravention of a body corporate by-law

Body Corporate and Community Management Act 1997

This form is effective from 28 February 2012

If you need help completing this form, please visit www.justice.qld.gov.au or contact the BCCM Office on free call 1800 060 119.

NOTES: THIS FORM APPLIES ONLY TO SCHEMES REGULATED UNDER THE FOLLOWING REGULATIONS:

- *Body Corporate and Community Management (Standard Module) Regulation 2008*
- *Body Corporate and Community Management (Accommodation Module) Regulation 2008*
- *Body Corporate and Community Management (Commercial Module) Regulation 2008*
- *Body Corporate and Community Management (Small Schemes Module) Regulation 2008*

For schemes regulated under the *Body Corporate and Community Management (Specified Two-Lot Schemes Module) Regulation 2011*, refer to BCCM Form 25 – Notice to owner of a contravention of a body corporate by-law.

Section 1—Body Corporate details

Name and address of person authorised to receive notices on behalf of the body corporate.	Name
	Postal address
	Suburb State <input type="text"/> <input type="text"/> <input type="text"/> Postcode <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>

Section 2—Complainant

Person making the complaint.	Name
	Postal address
	Suburb State <input type="text"/> <input type="text"/> <input type="text"/> Postcode <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
	Lot number

Section 3—Respondent details

Person/s against whom the complaint is made.	Name
	Postal address
	Suburb State <input type="text"/> <input type="text"/> <input type="text"/> Postcode <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
	Lot number

Section 4—Complaint details

Insert number and text of the body corporate by-law.	<p>TAKE NOTICE that I/we believe that the respondent has contravened a provision of the following by-law and the circumstances of the contravention make it likely that the contravention will continue or be repeated:</p> <p>.....</p> <p>.....</p> <p>.....</p>
Provide details of how the by-law is being contravened.	<p>I/we believe that the respondent has contravened the by-law in the following manner:</p> <p>.....</p> <p>.....</p> <p>.....</p>
Signature of complainant/s	<p>I/we ask that the body corporate give the respondent a contravention notice for the contravention of the by-law.</p> <p>Signature of complainant/s</p> <p>Dated: <input type="text"/><input type="text"/> / <input type="text"/><input type="text"/> / <input type="text"/><input type="text"/><input type="text"/><input type="text"/></p> <p style="text-align: center;">D D / M M / Y Y Y Y</p>

Notice of continuing contravention of a body corporate by-law

Body Corporate and Community Management Act 1997

This form is effective from 28 February 2012

If you need help completing this form, please visit www.justice.qld.gov.au or contact the BCCM Office on free call 1800 060 119.

NOTES: THIS FORM ONLY APPLIES TO SCHEMES REGULATED UNDER THE FOLLOWING REGULATIONS:

- Body Corporate and Community Management (Standard Module) Regulation 2008
- Body Corporate and Community Management (Accommodation Module) Regulation 2008
- Body Corporate and Community Management (Commercial Module) Regulation 2008
- Body Corporate and Community Management (Small Schemes Module) Regulation 2008

For schemes regulated under the Body Corporate and Community Management (Specified Two-Lot Schemes Module) Regulation 2011, refer to BCCM Form 27 – Notice to continuing contravention of a body corporate by-law (Specified Two-Lot Scheme).

Section 1—Respondent

The person/s against whom the complaint is made.

Name

Postal address

Suburb State Postcode

Section 2—Notice

WARNING:

If you repeat the contravention while this notice is in force the complainant may, without any further notice:

- 1. Start proceedings in the Magistrates Court for failure to comply with this notice.**
- 2. Make an application under chapter 6 of the BCCM Act for the resolution of a dispute.**

TAKE NOTICE that the complainant has reasonable grounds to believe that you are contravening the following by-law (*insert number and text of the body corporate by-law*):

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.....

and that you have done so in the following manner (*provide details of how the by-law has been contravened*):

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.....

You are required to cease the contravention within.....days* of receiving this notice. (*7 days or such other shorter or longer period as is reasonable in the circumstances)

Section 3

Signed by the authority of the body corporate under seal.

Name of each authorised signatory.

Name

Signature..... Dated: / /

Name

Signature..... Dated: / /

Name of body corporate secretary.....

Address

Suburb State Postcode

Notice of continuing contravention of a body corporate by-law

Body Corporate and Community Management Act 1997

This form is effective from 28 February 2012

If you need help completing this form, please visit www.justice.qld.gov.au or contact the BCCM Office on free call 1800 060 119.

NOTES: THIS FORM ONLY APPLIES TO SCHEMES REGULATED UNDER THE FOLLOWING REGULATIONS:

- *Body Corporate and Community Management (Standard Module) Regulation 2008*
- *Body Corporate and Community Management (Accommodation Module) Regulation 2008*
- *Body Corporate and Community Management (Commercial Module) Regulation 2008*
- *Body Corporate and Community Management (Small Schemes Module) Regulation 2008*

For schemes regulated under the *Body Corporate and Community Management (Specified Two-Lot Schemes Module) Regulation 2011*, refer to BCCM Form 27 – Notice to continuing contravention of a body corporate by-law (*Specified Two-Lot Scheme*).

Section 1—Respondent

The person/s against whom the complaint is made.

Name

Postal address

Suburb State Postcode

Section 2—Notice

WARNING:

If you repeat the contravention while this notice is in force the complainant may, without any further notice:

- 1. Start proceedings in the Magistrates Court for failure to comply with this notice.**
- 2. Make an application under chapter 6 of the BCCM Act for the resolution of a dispute.**

TAKE NOTICE that the complainant has reasonable grounds to believe that you are contravening the following by-law (*insert number and text of the body corporate by-law*):

.....

.....

.....

.....

and that you have done so in the following manner (*provide details of how the by-law has been contravened*):

.....

.....

.....

.....

You are required to cease the contravention within.....days* of receiving this notice. (*7 days or such other shorter or longer period as is reasonable in the circumstances)

Section 3

Signed by the authority of the body corporate under seal.

Name of each authorised signatory.

Name

Signature..... Dated: / /

Name

Signature..... Dated: / /

Name of body corporate secretary.....

Address

Suburb State Postcode

Notice regarding likely future contravention of a body corporate by-law

Body Corporate and Community Management Act 1997

This form is effective from 28 February 2012

If you need help completing this form, please visit www.justice.qld.gov.au or contact the BCCM Office on free call 1800 060 119.

NOTES: THIS FORM ONLY APPLIES TO SCHEMES REGULATED UNDER THE FOLLOWING REGULATIONS:

- *Body Corporate and Community Management (Standard Module) Regulation 2008*
- *Body Corporate and Community Management (Accommodation Module) Regulation 2008*
- *Body Corporate and Community Management (Commercial Module) Regulation 2008*
- *Body Corporate and Community Management (Small Schemes Module) Regulation 2008*

For schemes regulated under the *Body Corporate and Community Management (Specified Two-Lot Schemes Module) Regulation 2011*, refer to BCCM Form 28 – Notice regarding likely future contravention of a body corporate by-law (*Specified Two-Lot Scheme*).

Section 1—Respondent

The person/s against whom the complaint is made.

Name

Postal address

Suburb State Postcode

Section 2—Notice

WARNING:

If you repeat the contravention while this notice is in force the complainant may, without any further notice:

- 1. Start proceedings in the Magistrates Court for failure to comply with this notice.**
- 2. Make an application under chapter 6 of the BCCM Act for the resolution of a dispute.**

TAKE NOTICE that the body corporate has reasonable grounds to believe that you are contravening the following by-law (*insert number and text of the body corporate by-law*):

.....

.....

.....

.....

and that you have done so in the following manner (*provide details of how the by-law has been contravened*):

.....

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.....

You are required to not repeat the contravention.

Section 3

Signed by the authority of the body corporate under seal.

Name of each authorised signatory.

Name

Signature Dated: / /
D D M M Y Y Y Y

Name

Signature Dated: / /
D D M M Y Y Y Y

Name of body corporate secretary.....

Address

Suburb State Postcode