

When does the BMC need to review its Shared Facilities?

Strata Management Statements are bespoke documents that vary significantly to match the needs of different buildings.

In every instance, however, a large part of this document relates to the management of “Shared facilities” – the items located within the area belonging to one of the BMC members that are used by one or more other members – such as lifts, or the external shell of the building itself.

The SMS contains a shared facility schedule, which lists the items that are shared facilities as well as the proportion that each member is required to contribute to that particular item.

The maintenance of shared facilities, and more particularly how much is to be contributed by each member is a common source of dispute between different members of the BMC, often due to the suggestion that the original apportionment was incorrect, or that circumstances have changed such that the previous apportionment is no longer fair.

A prudent BMC should be regularly monitoring its apportionments in order to ensure equitable allocation of costs, and thereby avoiding the unnecessary expenses incurred in escalating disputes regarding shared facility costs.

Since 30 November 2016, clause 2(1)(f) of Schedule 4 of the *Strata Schemes Development Act 2015* has required Strata Management Statements to include:

(f) a review process to ensure that the allocation of those costs remains fair with any such review taking place as soon as practicable after any change in the shared facilities or services (including any change in the use of those shared facilities or services), with at least one such review occurring every 5 years even if no such change has occurred, and

If the SMS was registered after 30 November 2016 and does not contain a provision for the regular review of the SMS shared facilities, with a mandatory review at least every 5 years it will be in breach of the above requirement. This should be remedied with the members resolving an appropriate amendment to the SMS to reflect this requirement.

If the SMS was registered before 30 November 2016, it is not, strictly, a requirement to include a review every 5 years however it would be a reasonable amendment to the SMS for a member to propose, particularly as such a clause increases the likelihood of reducing formal disputes brought by dissatisfied members.

In either of the above circumstances, if an amendment cannot be agreed between the members, it will be necessary to utilise the dispute resolution mechanism under the SMS, which usually includes expert determination in order to seek the necessary amendment.

For assistance with your BMC Shared Facilities and details on appropriate next steps, email enquiries@bannermans.com.au to help your BMC today!

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