

Code of Conduct: Body Corporate Committee Members

What is the code of conduct?

The code of conduct was introduced on 9 May 2023 by the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Act 2022.

It inserted a new Section 114A into the Unit Titles Act 2010 stating:

'The members of a body corporate committee must comply with the code of conduct for committee members prescribed in the regulations'.

Correspondingly, a new Schedule 1A was added to Schedule 2 of the Unit Titles Regulations 2011 and that is the code of conduct. The code of conduct sets out 5 requirements that committee members must adhere to in all their dealings as a body corporate committee member.

1. Commitment to acquiring understanding of Act, including this code

Schedule 1A states the following requirement:

'A member must have a commitment to acquiring an understanding of anything in this Act and the regulations, including this code of conduct, that is relevant to the member's role on the committee.'

Whilst most committee members will have been doing this the code creates a focus on documenting the process. Body corporate managers may be looked to by committees for guidance on how to comply with this requirement.

Having members attend training courses offered by industry associations such as SCA (NZ) is an excellent option as they provide clear proof of completion.

Committee meetings are another practical forum to cover this. Committees may liaise with their body corporate manager or a suitable solicitor to have relevant training provided in the meeting and documented in the minutes of the meeting.

2. Honesty, fairness and confidentiality

Schedule 1A states the following requirement:

'(1) A member must act honestly and fairly in performing the member's duties as a committee member.'

'(2) A member must not unfairly or unreasonably disclose information held by the body corporate, including information about an owner of a unit, unless authorized or required to do so by law.'

There is a personal responsibility component to this requirement. Reiterating and recording this requirement at the commencement of committee meetings will keep it top of mind for attendees. Throughout meetings the chairperson and body corporate manager should note concern around actions or proposed actions that they view as breaching this.

Committee meeting documents and all correspondence issued on behalf of the committee, or by individual committee members, may be subject to scrutiny for compliance with this requirement. A document review process prior to issuance is recommended to include vetting for this.



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3. Acting in body corporate's best interests

Schedule 1A states the following requirement:

'A member must act in the best interests of the body corporate in performing the member's duties as a committee member, unless it is unlawful to do so.'

When considering and voting on any item of business that impacts any interest of the body corporate it is paramount for a member to table any concern they may have.

In the first instance this requires a member to be active and engaged. Being repeatedly absent from committee meetings or failing to properly prepare by reading the materials for the meeting ahead of time may be considered to fall short of this requirement.

Salient comments of concern, or the like, made by members at meetings should be documented in the minutes of meetings. These provide an historic record of sincere engagement by members.

The reference to *'unlawful'* is also a reminder that members and the body corporate manager may need to advocate obtaining legal advice from time to time. There is a reasonable expectation for both roles that they would identify if an issue has become sufficiently technical or contentious in nature to warrant this step being taken.

4. Complying with Act and this code

Schedule 1A states the following requirement:

'A member must comply with the Act, these regulations, including this code, and any other applicable legislation relating to matters for which the committee has responsibility in performing the member's duties as a committee member.'

Committees may reasonably look to their body corporate manager for advice on how to comply with the Act and its regulations. This will include correct process around calling, convening, and documenting all general meetings of their body corporate as well as all committee meetings. It is recommended the committee continue to work closely with its body corporate manager so that all business of the meetings, and that which arises outside meetings, is also handled in accordance with the requirements of the Act and regulations.

The body corporate manager will be able to quickly demonstrate to the committee that they have set processes for the fundamental tasks a body corporate must regularly undertake. This will give surety to the committee around the majority of, if not all, compliance matters.

An experienced committee will acquire a level of knowledge to confidently attend to day-to-day matters while new committees will require closer guidance from their body corporate manager. Again, it will also be incumbent on the body corporate manager to advise if a matter requires the expertise of a solicitor at any time.

5. Conflict of interest

Schedule 1A states the following requirement:

'A committee member who is eligible to vote must disclose to the committee any conflict of interest the member may have in a matter before the committee.'

Section 114C of the Unit Titles Act 2010 sets out the duty of committee members to disclose a conflict of interest. Please refer to SCA (NZ) guide available for downloading at www.stratatitle.co.nz.