

Office of the Commissioner for Body Corporate and Community Management

Practice Direction 23

Internal dispute resolution

This Practice Direction is issued pursuant to *section 233* of the *Body Corporate and Community Management Act 1997*. Its purpose is to provide further information on the procedures and content requirements for dispute resolution applications lodged with the Commissioner's Office. Nothing in this Practice Direction supersedes or overrides the requirements of the legislation. The Commissioner retains the discretion to make decisions about the case management of individual dispute resolution applications as provided under Chapter 6 of the Act.

1. Attempts by an applicant to resolve a dispute directly with the respondent are referred to as *internal dispute resolution* under the Act [refer *Schedule 6* of the Act]. This is sometimes also referred to as 'self-resolution'.
2. Internal dispute resolution is a mandatory step in trying to resolve a dispute. The obligation to attempt internal dispute resolution is consistent with the legislative responsibility for self-management as an essential aspect of living in a community titles scheme.
3. The Commissioner may reject a conciliation application where internal dispute resolution has not been attempted. The Commissioner may reject an adjudication application where internal dispute resolution and department conciliation have not been attempted (unless the Commissioner decides the dispute is not appropriate for department conciliation).
4. Internal dispute resolution includes any reasonable endeavour or step taken to attempt to resolve a dispute, before a conciliation or adjudication application is lodged.

Specific steps

5. Although not an exhaustive list, the following are examples of internal dispute resolution steps that may be required:
 - a. if an issue requires a committee decision, the applicant will normally be required to demonstrate that they have made a written request to the committee and that the committee has either unreasonably refused or failed to consider the request. This request can be in the form of a motion for the committee to vote on at its next meeting;
 - b. if an issue requires a general meeting resolution, the applicant will normally be required to demonstrate they have submitted a motion to the body corporate for inclusion on the agenda of a general meeting specifically addressing the issue and that the motion failed or the body corporate unreasonably failed to consider the motion;
 - c. for a dispute between owners or occupiers, the applicant will normally be required to document the verbal and written attempts to resolve the matter with the other party;
 - d. where an owner is challenging a general meeting decision, the applicant may be required to demonstrate where they have challenged the decision (for example, by submitting an appropriate motion);



- e. if a dispute relates to an alleged breach of the by-laws, the legislation sets out the preliminary procedures the applicant must follow [see *Practice Direction 6: By-law enforcement applications.*];
- f. if an applicant seeks to overturn the decision of a body corporate not to pass a resolution without dissent, the applicant will normally be required to demonstrate that the dissenting voters have been contacted to ascertain their objections to the motion and to explore whether their concerns are able to be accommodated in some way that would support a reversal of their objection;
- g. if an applicant disputes the validity of a by-law, the applicant may be required to demonstrate that they have submitted an appropriate motion to the body corporate for inclusion on the agenda of a general meeting specifically proposing a new community management statement incorporating a change to the by-laws and that the motion failed or the body corporate unreasonably failed to consider the motion; or
- h. if an issue relates to a claim for payment of an amount, the applicant will normally be required to demonstrate that a written request for the amount has been made to the other party and that any relevant quote/s have also been provided to the other party.

Body corporate processes

- 6. Bodies corporate are encouraged to establish internal dispute resolution processes to assist in resolving disputes within the scheme.
- 7. A body corporate's internal dispute resolution process may be approved by an ordinary resolution at a general meeting.
- 8. Without limiting what a body corporate may choose to include, internal dispute resolution processes could encompass steps such as:
 - a. identifying a committee member as a first point of contact for concerns;
 - b. establishing reasonable timeframes for a committee to respond to written and verbal requests and queries, noting that there are prescribed periods under the legislation to call and hold general meeting and committee meetings to make decisions; and
 - c. the use of informal and formal meetings or mediation between the disputing parties.
- 9. Any internal dispute resolution process established by a body corporate should be fair and transparent to all parties.
- 10. Evidence that a party has followed an internal dispute resolution process adopted by a body corporate will be accepted as evidence of attempted internal dispute resolution prior to lodging a dispute resolution application.



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COMMISSIONER

Version 2
Effective 1 June 2016

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