



STRATA MANAGEMENT GUIDE : 2

**Role and
Responsibility of
Stakeholders**



Preamble

This series of Strata Management Guides published by the Building and Construction Authority (BCA) is intended to help councils of the management corporations (MCs), subsidiary proprietors (SPs), council members and managing agents (MAs) better manage their estates.

The guide will include recommended procedures and good practices to address common issues (e.g. how to conduct a general meeting and how to requisition a motion).

The guide is aimed at providing a consistent approach and standard for the strata community to facilitate better self-regulation.

Disclaimer

This guide has been prepared to provide practical information on the BMSMA and Regulations made under the BMSMA (Regulations).

This guide :

- Does not provide a legal interpretation of provisions in the Act or Regulations; and
- Is not a substitute for independent legal advice.

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Important Notice: Readers must not rely on this guide for legal advice.

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Abbreviations

AGM	Annual General Meeting
BMSMA	Building Maintenance and Strata Management Act
BM(SM) REGULATIONS	Building Maintenance (Strata Management) Regulations 2005
MA	Managing Agent
MCST	Management Corporation Strata Title
MC	Management Corporation
SP	Subsidiary Proprietor

Content

Preamble

- (1) Introduction 4
- (2) Management Corporation..... 5
- (3) Council Members 6
- (4) SPs and Occupiers 11
- (5) Managing Agent 13

Icon in this guide



01 Introduction



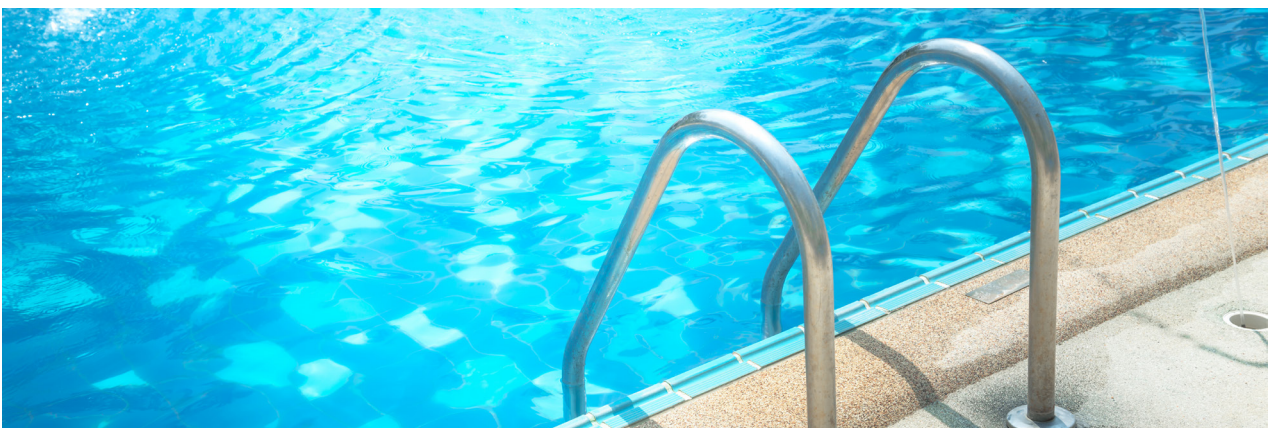
- 1.1 The BMSMA is intended to provide a legal framework for **management corporations (MCs)** to self-govern and manage domestic affairs within their estates.
- 1.2 The **Building Maintenance and Strata Management Act (BMSMA)** empowers MCs to make decisions concerning their development for the benefit of all SPs. Decisions are made by resolution (there are six types) at general meetings, or otherwise by the **council of the MC**. The council is responsible for the day-to-day operational matters of the MC.



02 Management Corporations

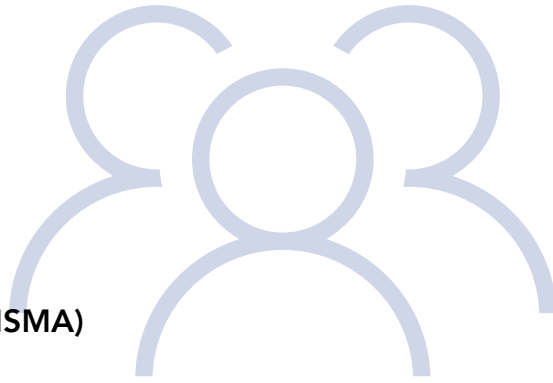
(Section 24 and 29 of the BMSMA)

- 2.1 The MC should hold regular meetings for **subsidiary proprietors (SPs)** to decide on issues affecting the estate. The MC is responsible for the overall management of the estate, including the following:
- a) Managing the management and sinking funds;
 - b) Obtaining insurance for the estate's buildings and against the liability and expenses for errors and omissions made by any council member;
 - c) Making by-laws and issuing reminders to comply;
 - d) Keeping of records;
 - e) Carrying out repairs and maintenance of common property;
 - f) Appointing a **managing agent (MA)** to assist in the day-to-day running of the estate;
 - g) Keeping up-to-date with and following all relevant laws;
 - h) Appointing an auditor to audit the books and accounts of the MC; and
 - i) Managing contracts with service providers.



03 Council Members

(Section 53 to 58 of the BMSMA)



- 3.1 The MC is required to have a council which can make decisions on behalf of the MC except for restricted matters.
- 3.2 The MC is required to elect council members to enable quicker decision-making on day-to-day operational matters. The role of the council is to:
 - a) Act as the managing body for the MC,
 - b) Make daily decisions that enable the MC to operate smoothly, and
 - c) Run and preside over the general meeting.
- 3.3 Nonetheless, the council is still subject to restrictions placed upon it by the SPs in a general meeting. For instance, the SPs in a general meeting can decide that for certain matters, only they (and not the council) can determine such matters.
- 3.4 The council members are generally elected at **Annual General Meetings (AGMs)** and up to 14 council members can be elected. Voting in the election is on a one-vote-per-lot basis.
- 3.5 All council members will retire from office at the conclusion of the next AGM, but a retiring council member will be eligible for re-election based on the eligibility criteria.



Eligibility Criteria for Election as Council Members (Section 53 of the BMSMA)

- 3.6 A person is eligible for election as a council member as long as he is an individual of at least 21 years of age and is:
- a) An SP of a lot;
 - b) A non-SP nominated by a Company that is the SP of a lot; or
 - c) A non-SP, but is a member of the immediate family of an SP and is nominated for election by that SP.

Eligibility Requirements	Contribution Arrears
At least 21 years old and an SP of a lot	The SP's lot must not be in arrears of any contributions or any moneys levied 3 days before the election
At least 21 years old and a non-SP nominated by a Company that is the SP of a lot	The Company's lot must not be in arrears of any contributions or any moneys levied 3 days before the election
At least 21 years old and an SP nominated by a Company that is the SP of a lot	The Company's lot must not be in arrears of any contributions or any moneys levied 3 days before the election. There is no requirement that this nominated SP's lot must not be in arrears of any contributions or any moneys levied three days before the election
At least 21 years old and a non-SP, but is a member of the immediate family of an SP of a lot and is nominated for election by that SP	The nominating SP's lot must not be in arrears of any contributions or any moneys levied 3 days before the election
At least 21 years old and an SP, and is nominated for election by an immediate family member who is also an SP of a lot	The nominating SP's lot must not be in arrears of any contributions or any moneys levied 3 days before the election

Duties of Chairperson, Secretary and Treasurer of Council (Section 47, 53, 56 and 57 of the BMSMA)

- 3.7 The office bearers (Chairperson, Secretary and Treasurer) can also be elected at general meetings or appointed at the 1st council meeting. **An individual council member cannot take up more than one position¹.**
- 3.8 Office bearers usually perform the following duties:



Chairperson: runs all the meetings of the MC and rules whether a particular motion is in order. The Chairperson also oversees both the council and general meetings.



Secretary: arranges meetings by providing advanced notice, prepares and distributes meeting agendas and minutes, and maintains the strata roll. In addition, the Secretary enables the inspection of documents in accordance to Section 47 of the BMSMA, answers communications addressed to the MC, convenes meetings of the council and of the MC and attends to matters of an administrative or secretarial nature.



Treasurer: notifies owners of contributions levied, receives, acknowledges, banks and accounts for any money paid to the MC, and keeps accounting records and prepares the financial statements of the MC. In addition, the Treasurer prepares any certificate applied for under Section 47(1)(c) of the BMSMA.

No individual is to be elected or appointed to hold office as the treasurer for more than two consecutive terms².

^{1,2} MCs with 10 or fewer lots are exempt from this restriction.

Early Removal of a Council Member from Term (Section 54 and 55 of the BMSMA)

- 3.9 A person appointed to the office of Chairperson, Secretary or Treasurer of the MC must **hold office until**:
- a) He ceases to be an SP;
 - b) The SP who nominated him (if any) ceases to be an SP, or notifies the MC in writing that the person's office as a council member is vacated;
 - c) He fails to attend three consecutive meetings of the council without permission;
 - d) A written notice of his resignation is received by the MC;
 - e) Another person is appointed by the council or by the MC in a general meeting to hold that office, whichever first happens;
 - f) He dies;
 - g) He becomes mentally disordered and incapable of managing himself or herself or his affairs; or
 - h) He is convicted of an offence involving fraud or dishonesty.
- 3.10 A council member can also be removed:
- a) By the MC through a majority vote at a general meeting;
 - b) Without a general meeting if he owes any sums to the MC for more than 3 months; or
 - c) If he fails to attend three consecutive meetings of the council without the council's permission or reasonable grounds to do so.
- 3.11 An office bearer must not resign his office until:
- a) A council meeting is first convened for the purpose of appointing another person to fill his vacancy; or
 - b) A general meeting is first convened for the purpose of electing another person to fill his vacancy.

- 3.12 If an MC carries on business without any Chairperson, Secretary and Treasurer for more than 6 months, every SP who knows that the MC is carrying on business in that manner must be jointly and severally liable for the payment of all the debts of the MC contracted during the period after those 6 months or, as the case may be, the part of the debt that was accrued during that period.



Good Practice: Replacement of vacant seats in the council (in a single use development)

If a council member resigns, the council can appoint any person eligible for election to fill the vacancy. Whilst it is not a requirement under the BMSMA, as a matter of good governance, the council could put a notice on the notice board to invite interested persons to notify the council secretary or the MA of their interest to join the council. Ultimately, the council decides on the person to fill the vacant post.

What can the MC do?



If there is more than one eligible person who is keen to fill up the vacant post, the council can decide on the office holder by majority council vote.

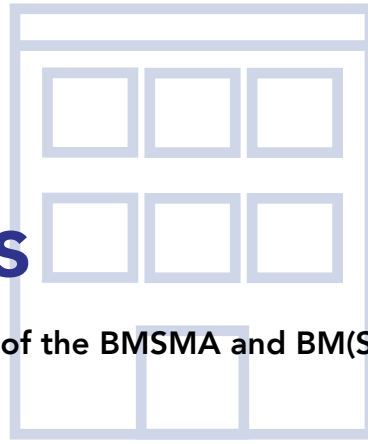


If no eligible person expresses interest in filling the vacancy, a council meeting may still be convened by the remaining council members and they can decide who fills the vacancies by a majority vote.



The council should update the Commissioner of Buildings of the status of the composition of council members, regardless of whether a replacement is found to fill the vacancy. This should also be recorded in the minutes of the council meeting.

04 SPs and Occupiers



(Section 30, 32, 37 and 63 of the BMSMA and BM(SM) Regulations)

4.1 Under the BMSMA, the SP, mortgagee in possession, lessee and occupier have various duties. This section lists out the salient duties.

SP, Mortgagee in Possession, Lessee or Occupier

- a) Understand and observe the by-laws of the MC;
- b) Ensure the use of the lot in a manner does not interfere with any support or shelter provided in that lot for other areas in the development, the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air and other services (including telephone, radio and television services) through or by means of any pipe, wire, cable or duct; and
- c) Use or enjoy the lot or common property in such a manner that does not cause a nuisance or hazard to occupiers of other lots.

SP

- d) Requisition a motion in a general meeting to obtain a 90% resolution from the MC if he intends to carry out improvements or additions to his lot which may result in an increase in the total gross floor area of the entire development;
- e) Apply to the MC if he intends to carry out improvements or additions to his lot which may affect the appearance of any building in the development;
- f) Jointly carry out an investigation to establish the cause of any inter-floor leak and proceed with the repair works. Both parties should resolve the cost and methods of repair privately. It will be presumed that the leak originates from the upper floor unit unless the upper floor unit owner or occupier can prove otherwise; and
- g) Comply with any notice served by a public authority in relation to the maintenance of his lot. If he fails to respond to such a notice, the MC may arrange to have the required works carried out and recover the costs incurred from the SP, mortgagee in possession, lessee or occupier as a debt owed to the MC.



Good Practice: Ways of Resolving Disputes with Neighbours in Your Estate

Over and above the prescribed by-laws, all MCs should have guidelines or by-laws that deal with issues that affect the SPs e.g. the parking of bicycles or the placement of personal objects on common areas. The MC can also install bicycle racks for residents to park their bicycles. For example, your neighbour may have placed his children's new bicycles or his gardening tools along the common corridor. This has caused some inconvenience to you and created some tension between you and your neighbour.

What can you do?

- ✓ You can approach your neighbour and let him know of your concerns regarding the matter.
- ✓ You can write in to the secretary of MC or the MA to request their help to look into the matter.
- ✓ You can also write to the secretary of the MC to table this matter at any upcoming general meeting of the MC for residents to discuss and decide how this issue should be best managed.
- ✓ You may also seek resolution through dispute resolution channels such as mediation, and can contact the Community Mediation Centre (www.mlaw.gov.sg/content/cmc) or the Community Disputes Resolution Tribunal (<https://www.statecourts.gov.sg/CDRT/Pages/Filing-a-Claim-in-the-CDRT.aspx>) for assistance.

Attend Meetings

- 4.2 All SPs have a right to take part in the decision-making process at general meetings. Therefore, SPs are encouraged to attend general meetings³ to participate in important discussions and vote on matters that affect their interests.
- 4.3 An SP may also attend council meetings⁴. However, if he wishes to raise any issues at the council meeting, he must seek the permission of the council to do so. These meetings may also provide SPs a platform to facilitate the resolution of disputes on neighbourly or estate matters through discussion or mediation. Occupiers who wish to witness council meetings may attend if the Chairperson gives them permission to be present.

³ See "Calling for the General Meeting" in Guide 3 on "Preparation for a General meeting".

⁴ See Guide 5 on "Proceedings of council meeting".

05 Managing Agent

(66 to 68 of the BMSMA)



- 5.1 The MC may appoint a **managing agent (MA)** to help manage the estate. The MA can be engaged by the SPs at a general meeting, or by the council to perform the daily operational and administrative works for a term of up to three years. Residents who need assistance for matters relating to the estate can also approach the MA.
- 5.2 The MC is encouraged to appoint MAs that are accredited by industry associations. MAs who are accredited under such accreditation schemes are likely to possess the knowledge and competency to provide advices on strata management to the MCs.
- 5.3 The engagement or termination of a MA is a private contractual arrangement between the MC and the MA.

Duties and Liabilities of MA

- 5.4 The MC should ensure that the scope of the responsibilities and service performance levels are clearly spelt out in the service agreement with the appointed MA. Importantly, the MC should implement some form of guideline or internal procedure so that they are kept aware of the performance of the MA. The MC may, in writing, delegate to the appointed MA part or all of its powers, duties and functions. This can be done by an ordinary resolution passed at a general meeting. These duties may include performing the functions of the Chairperson, Secretary and Treasurer or of the whole council.
- 5.5 However, the MC cannot allow the appointed MA to further delegate these duties to others or make a decision on a restricted matter that can be determined only by the MC in a general meeting.
- 5.6 The appointed MA, in exercising the delegated duty of the MC, can be held liable for any contravention of the BMSMA as if it had been committed by the MC. The appointed MA also cannot canvass for votes relating to any election of the council members.



Good Practice: Reviewing the MA's services

The MA's expected service level and performance standards should be spelt out in the service agreement. Any non-conformance or shortfall in the performance of the MA should be addressed in accordance with the specific terms and conditions of the service agreement. For example, some SPs are unhappy with the performance of the MA staff in dealing with queries by the council and SPs.

What can SPs do?



SPs can try communicating with the MA by precisely identifying what the issues are. The MA may be acting on the instructions of the council or there may be a misunderstanding which could be further clarified.



SPs can provide their input and feedback to the MA's supervisor if there are grounds for concern.



SPs can raise their concerns to the council, and the council may decide to act in response to address such concerns.



SPs can requisition a motion⁵ to raise their concerns on the performance of the MA during the annual review of the AGM when the appointment of MA is discussed.



References:

BMSMA - Sections 47, 48, 53 to 58, 66 to 68
BM(SM) Regulations

⁵ All SPs are allowed to requisition a motion to raise their concerns.

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