

Community Land Management Regulation 2007

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New South Wales

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
Community Land Management Amendment (Fees) Regulation 2011 (243) (LW 27.5.2011) (not commenced — to commence on 1.7.2011)

Authorisation

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Community Land Management Regulation 2007



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Community Land Management Regulation 2007*.

2 Commencement

This Regulation commences on 1 September 2007.

Note—

This Regulation replaces the *Community Land Management Regulation 2000* which is repealed on 1 September 2007 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definition

(1) In this Regulation:

the Act means the *Community Land Management Act 1989*.

(2) Notes included in this Regulation do not form part of this Regulation.

Part 2 Records of an association

4 Periods for retention of records: Schedule 1, clause 9

For the purposes of clause 9 of Schedule 1 to the Act, the prescribed period for each class of record set out in Schedule 1 to this Regulation that must be retained by the association is the prescribed period set out in that Schedule opposite that class of record.

5 Accounting records: Schedule 1, clause 10

(1) For the purposes of clause 10 of Schedule 1 to the Act, the prescribed accounting records to be kept by an association are as follows:

(a) a receipt book,

(b) a passbook, a deposit book, or statement of deposits and withdrawals that are in chronological order, for the account of the association,

(c) a cash record,

(d) a levy register.

(2) The accounting records of an association (other than a receipt book) may be recorded or stored by mechanical, electronic or other means.

(3) Separate accounting records must be kept for the administrative fund, the sinking fund and any other fund in which money is held by the association.

(4) An association is guilty of an offence if it does not keep such records in accordance with the requirements of this Part.

Maximum penalty (subclause (4)): 5 penalty units.

6 Receipt book

(1) A receipt must be issued for each amount of money received by the treasurer for the credit of a fund.

(2) The following particulars must be included on each receipt:

(a) the date of the receipt,

(b) the amount of money received,

(c) the form (cash, cheque, postal order or other) in which the money was received,

(d) the name and address of the person on whose behalf the amount was received,

(e) if the payment was for a contribution to the administrative or sinking fund:

(i) a statement that the payment was made in respect of that contribution, and

(ii) the lot number in respect of which the contribution was made, and

(iii) if the contribution was a regular periodic contribution—details of the period in respect of which it was made, and

(iv) details of any discount given for early payment,

(f) if the payment was not a payment referred to in paragraph (e)—particulars of the transaction in respect of which the payment was received.

(3) If a payment is received in respect of more than one transaction, the manner in which the payment is apportioned between the transactions must be entered on the receipt.

(4) The association must:

(a) in the case of a receipt issued from a receipt book—keep the duplicate receipt in the receipt book created by a carbon impression, or

- (b) in the case of any other type of receipt—cause a record to be kept of all the details of the receipt.

7 Cash record

- (1) As soon as practicable after a transaction is effected, the following must be entered:
 - (a) in the receipts section of the cash record—particulars of all money received,
 - (b) in the payments section of the cash record—particulars of all money disbursed.
- (2) At the end of each month, the cash record must be balanced and the balance carried forward to the commencement of the next month and to a ledger account provided for that purpose.
- (3) At the end of each month:
 - (a) the entries in the cash record must be compared with the bank records, and
 - (b) amounts credited to the bank account and appearing in the bank records for which no receipt had been written and amounts debited to the bank account and appearing in the bank records for which no cheque had been drawn must be entered in the cash record.
- (4) Any necessary reconciliation (showing the balance in the bank account as indicated in the bank records, and adding any money received but not banked and deducting any cheques drawn but not presented for payment) must be entered in the cash record at the end of the entries for the month.

8 Levy register

- (1) The levy register for a fund must include a separate section:
 - (a) for each development lot and former development lot (if any) in the community scheme, in the case of a register kept by a community association, or
 - (b) for each development lot and former development lot (if any) in the precinct scheme, in the case of a register kept by a precinct association, or
 - (c) for each neighbourhood lot in the neighbourhood scheme, in the case of a register kept by a neighbourhood association.
- (2) Each of the sections referred to in subclause (1) must specify, by appropriate entries, the following matters in relation to each contribution levied by the association and must indicate whether those entries are debits or credits and the balances for those entries:
 - (a) the date on which the contribution is due and payable,
 - (b) the type of contribution and the period in respect of which it is to be made,

- (c) the amount of the contribution levied shown as a debit,
- (d) the amount of each payment shown as a credit,
- (e) the date on which each payment is made,
- (f) whether a payment was made in cash or by cheque or in some other specified manner,
- (g) whether an amount paid comprised full payment or part payment,
- (h) the balance of the account.

9 Inspection of records of managing agent: Schedule 4, clause 1

For the purposes of clause 1 (1) (j) of Schedule 4 to the Act, the additional record to be kept in relation to a scheme in respect of which the association's duties have been delegated to a managing agent is the trust account ledger for the association referred to in clause 23 (1) of the *Property, Stock and Business Agents Regulation 2003*.

Part 3 Mediation

10 Directions of Director-General

The Director-General may give directions for regulating and prescribing the practice and procedure to be followed in connection with a mediation session, including the preparation and service of documents.

11 Attendance and representation

- (1) A mediation session must be attended by each party or by a legal representative, or other representative, having authority to settle the matter.
- (2) Other persons may attend a mediation session with the leave of the mediator.

12 Termination

- (1) A mediator may terminate a mediation.
- (2) A party may terminate a mediation at any time by giving notice of the termination to the Director-General, the mediator and each other party.

Part 4 Election of executive committee

13 Application of Part

This Part applies to the procedure for nomination and election of an executive committee for an association with a membership of 4 or more.

14 Election of executive committee

- (1) At a meeting of an association at which its executive committee is to be elected, the chairperson:
 - (a) is to announce the names of the candidates already nominated in writing for election to the executive committee, and
 - (b) is to call for any oral nominations of candidates eligible for election to the executive committee.
- (2) A written or oral nomination made for the purposes of such an election is ineffective if it is made by a person other than the nominee unless it is supported by the consent of the nominee given:
 - (a) in writing, if the nominee is not present at the meeting, or
 - (b) orally, if the nominee is present at the meeting.
- (3) After the chairperson declares that nominations have closed, the association is to decide, in accordance with section 28 of the Act, the size of the executive committee.
- (4) If the number of candidates:
 - (a) is the same as, or fewer than, the number decided on as the size of the executive committee, those candidates are to be declared by the chairperson to be, and are to be taken to have been, elected as the executive committee, or
 - (b) is greater than the number so decided on, a ballot is to be held.

15 Ballot for executive committee

- (1) If a ballot for membership of the executive committee of an association is required, the chairperson:
 - (a) is to announce to the meeting the name of each candidate and the nominator of the candidate, and
 - (b) is to provide each person present and entitled to vote at the meeting with a blank ballot-paper for each vote the person is entitled to cast.
- (2) For a vote to be valid, a ballot-paper must be completed by the voter writing on it:
 - (a) the names of each of the candidates for whom the voter desires to vote, the number of names written being no more than the number determined by the association as the size of the executive committee, and
 - (b) the capacity in which the voter is exercising a right to vote, whether:
 - (i) as proprietor, first mortgagee or covenant chargee of a lot (identifying the lot),

or

(ii) as a company nominee, or

(iii) by proxy (identifying the name and capacity of the person who gave the proxy).

- (3) The chairperson is to successively declare elected each candidate who has a greater number of votes than another candidate who has not been elected until all the places for membership of the executive committee have been filled.
- (4) If a place remains to be filled but there are 2 or more eligible candidates with an equal number of votes, the candidate to fill the place is to be decided by a show of hands of those present and entitled to vote.

Part 5 Insurance

16 Property insurance: section 39

For the purposes of section 39 of the Act, the amount for which insurance is to be effected against damage to association property or a building on association property is the sum of the following amounts:

- (a) the estimated cost (as at the date of the contract of insurance) of rebuilding the building, or replacing it with a similar building, so that every part of the rebuilt building or replacement building is in a condition no worse than that in which it was when new,
- (b) the estimated cost (as at the date of the contract of insurance) of removing debris in the event of the building being destroyed by an occurrence specified in the policy,
- (c) the estimated fee (as at the date of the contract of insurance) payable to architects and other professional persons employed in the course of the rebuilding or replacing referred to in paragraph (a),
- (d) the estimated amount by which expenditure referred to in paragraphs (a), (b) and (c) may increase during the period of 18 months following the date of the contract of insurance.

17 Other insurance: section 40

For the purposes of section 40 (3) (b) of the Act:

- (a) the prescribed amount of cover for insurance referred to in section 40 (2) (b) of the Act is \$10,000,000, and
- (b) the prescribed amount of cover for other insurance referred to in, or prescribed under, section 40 (2) of the Act is the amount determined by resolution of the association.

18 Valuations to be obtained for insurance purposes

A person is qualified to carry out a valuation for the purposes of section 39A of the Act if the person:

- (a) is a registered valuer, or
- (b) has successfully completed a course conducted by a tertiary institution that qualifies the person to be a quantity surveyor.

Part 6 Miscellaneous

19 Conduct of proceedings before Tribunal

- (1) An application to the Tribunal may be heard in the following manner if all of the parties indicate that they do not intend to call witnesses and the Tribunal and all of the parties agree that the application should be heard in that manner:
 - (a) each party may, in turn, present its case orally and unsworn and may be questioned by any other party,
 - (b) each party may produce and tender evidence in support of its case, unless the Tribunal directs that any such evidence may not be tendered,
 - (c) each party may comment on any other party's case after all of the parties have presented their cases,
 - (d) each party may make a final submission.
- (2) The order in which each party presents its case is to be as determined by the Tribunal.
- (3) This clause is a modification of the provisions of the *Consumer, Trader and Tenancy Tribunal Act 2001*, and of the regulations under that Act, in accordance with section 91A (1) of the *Community Land Management Act 1989*.

20 Further modification of applied provisions of Consumer, Trader and Tenancy Tribunal Act 2001 and regulations: section 91A (1)

- (1) For the purposes of section 91A (1) of the Act, the application of the provisions of the *Consumer, Trader and Tenancy Tribunal Act 2001* in relation to proceedings before the Tribunal under the *Community Land Management Act 1989* is further modified in accordance with this clause.
- (2) Section 24 (4) of the *Consumer, Trader and Tenancy Tribunal Act 2001* applies in relation to notices of application for an order in addition to section 70B of the *Community Land Management Act 1989*, and for that purpose:
 - (a) the words "subsection (3)" where firstly occurring in that subsection are taken to refer to section 70B (1) of the *Community Land Management Act 1989*, and

(b) section 24 (4) (b) of the *Consumer, Trader and Tenancy Tribunal Act 2001* is taken to be amended by omitting the words “in accordance with the Chairperson’s directions referred to in subsection (3)” and by inserting instead the words “within such time and manner as the Chairperson directs”.

(3) Section 68 of the *Consumer, Trader and Tenancy Tribunal Act 2001* is to be read as not permitting an application to be made for a rehearing under that section in relation to proceedings under the *Community Land Management Act 1989*.

Note—

Section 91A (1) of the Act provides that the provisions of the *Consumer, Trader and Tenancy Tribunal Act 2001*, and of the regulations made under that Act, apply in relation to proceedings under the *Community Land Management Act 1989* before the Consumer, Trader and Tenancy Tribunal, subject to any modifications prescribed by the regulations.

Sections 28 (5) (g), (h) and (i), 36 and 53 of the *Consumer, Trader and Tenancy Tribunal Act 2001* do not apply to proceedings under the *Community Land Management Act 1989*: see sections 28 (7), 36 (9) and 53 (5) of the *Consumer, Trader and Tenancy Tribunal Act 2001*. As a consequence, Part 4 (being clauses 13–18) and clause 20 of the *Consumer, Trader and Tenancy Tribunal Regulation 2009* also do not apply to proceedings under the *Community Land Management Act 1989* before the Consumer, Trader and Tenancy Tribunal.

21 Fees

The fees payable under the Act are set out in Schedule 2.

22 Waiver and remission of fees

- (1) The Director-General may waive payment of the fee under the Act for an application for mediation, or may remit any such fee paid to the Director-General, if the Director-General considers it appropriate to do so in the circumstances.
- (2) The Registrar may waive payment of any other fee under the Act, or may remit any such fee paid to the Registrar, if the Registrar considers it appropriate to do so in the circumstances.

23 Savings

Any act, matter or thing that had effect under the *Community Land Management Regulation 2000* immediately before the repeal of that Regulation is taken to have effect under this Regulation.

Schedule 1 Periods for retention of records

(Clause 4)

Class of record	Prescribed period
Record of the proceedings of a meeting (clause 9 (a) of Schedule 1 to the Act)	5 years from the date of the meeting

Accounting record (clause 9 (b) of Schedule 1 to the Act)	5 years from the date of the latest entry in the record
Summary and other particulars required to be recorded in relation to a notice or order served on it (clause 9 (c) of Schedule 1 to the Act)	5 years from the date of the notice or order
Financial statement (clause 9 (d) of Schedule 1 to the Act)	5 years from the date up to which the relevant financial statement is made
Correspondence received or sent (clause 9 (e) of Schedule 1 to the Act)	5 years from the date of the correspondence
Copy of notice of meeting (clause 9 (f) of Schedule 1 to the Act)	5 years from the date of the meeting to which the notice relates
Proxy (clause 9 (g) of Schedule 1 to the Act)	5 years from the expiration of the proxy
Voting paper for resolutions (clause 9 (h) of Schedule 1 to the Act)	5 years from the date of the meeting at which the voting took place
Voting paper for election of executive committee and officers (clause 9 (i) of Schedule 1 to the Act)	5 years from the date of the meeting at which the voting took place
Record served on an association by its managing agent (clause 9 (j) of Schedule 1 to the Act)	5 years from the date of the record
Notice specifying an address for service (clause 9 (k) of Schedule 1 to the Act)	5 years from the date of the notice

Schedule 2 Fees

(Clause 21)

Item	Type of fee	Fee
Fees payable to an association		
1	Inspection of association records under section 26 of the Act:	
	(a) for up to 1 hour	\$26
	(b) for each additional half-hour or part of a half-hour	\$13
2	Issue by an association of a certificate under section 26 of the Act	\$90
Fees payable to Registrar		
3	Lodging an application under Division 3 or Division 4 of Part 4 of the Act for an order for settlement of a dispute or complaint:	
	(a) if the application includes an application for an interim order under section 72 of the Act	\$144

	(b) if the application does not include an application referred to in paragraph (a)	\$72
4	Lodging an application under section 87 of the Act for the amendment or revocation of an order made by the Tribunal	\$72
5	Lodging a notice of appeal under section 88 of the Act against an order made by an Adjudicator	\$72
6	Issuing a summons under section 94 of the Act to appear before the Tribunal	\$39
7	Lodging an application under section 100 of the Act for an order authorising a motion for submission to a general meeting	\$72
8	Lodging an application for a copy of an order made by an Adjudicator or the Tribunal, or other document not being a transcript	\$2 per page or \$27 (whichever is greater)
9	Copy of written transcript of evidence or proceedings, per page	"at cost"
10	Copy of sound or audio-visual recording of evidence or proceedings, per cassette, disc or other medium	"at cost"
	Fee payable to Director-General	
11	Application for mediation	\$72