

Queensland Law Society has received queries from a number of practitioners about completing the new REIQ disclosure statements, in particular the new requirements in sections 206(2)(b) and 213(2)(a) of the *Body Corporate and Community Management Act 1997* (BCCMA) to describe the extent to which the levies are based on contribution schedule lot entitlements and interest schedule lot entitlements.

Under section 141(5) of the *Standard Regulation Module (SMR)* (and its equivalent in the other Regulation Modules), levies should be proportionate to contribution schedule lot entitlements with the exception of the insurance premium payable for the building reinstatement component of the policy in the following schemes:

Type of scheme	How insurance premium is apportioned
Building format plan or volumetric format plan (SMR, s179)	In proportion to interest schedule lot entitlements
Standard format scheme where one or more lots have buildings with common walls (SMR, s180)	The component of the premium relating to improvements on the lots is apportioned according to the value of those improvements and the component of the premium relating to improvements on the common property and body corporate assets is shared according to interest schedule lot entitlements
Standard format scheme with no common walls (SMR, s185)	The component of the premium relating to improvements on the common property and body corporate assets is shared according to interest schedule lot entitlements.  Where there is a voluntary insurance scheme in place, the component of the premium relating to improvements on the lots is apportioned according to the value of those improvements

There is some debate about whether the requirement to specify “the extent to which” the levies are based on the different lot entitlements permits a general explanation [for example “*The administrative and sinking fund levies are determined in proportion to the respective contribution schedule lot entitlements of the lots with the exception of the building reinstatement component of the insurance premium which is determined in accordance with the respective interest schedule lot entitlements*”] or whether it is necessary to specify an actual amount or proportion. Dictionary definitions and case law offer little guidance in this regard. However, given the consumer protection nature of the disclosure obligations, it is conceivable that a court would view that an actual amount or proportion must be stated.

It is therefore recommended that practitioners who are required to complete the disclosure statement either state the amount or the proportion of the levies for the lot which are calculated using each of the two lot entitlements:

### Example 1

*The administrative and sinking levies are determined in proportion to the respective contribution schedule lot entitlements of the lots with the exception of the building reinstatement component of the insurance premium. That is, 97% of the total administration and sinking fund levies for the current financial year of the body corporate are calculated based on contribution schedule lot entitlements and 3% are calculated based on the interest schedule lot entitlements.*

### Example 2

*Administrative fund levy (excluding building insurance): \$5,000*

*Sinking fund levy: \$2,000*

*Building Insurance levy: \$1,000*

*The administrative and sinking levies are determined in proportion to the respective **contribution schedule** lot entitlements of the lots. The building insurance levies are determined in proportion to the respective **interest schedule** lot entitlements of the lots.*

The Society has made a submission to the Attorney-General that the relevant information needed to comply with the disclosure requirements should be included in the Body Corporate Information Certificate (BCCM Form 13).

In the meantime, practitioners will need to obtain a copy of the current body corporate budget either from the client or by carrying out an inspection of the body corporate’s records. Where the seller/client is unwilling (whether due to time constraints or cost) to have an inspection carried out, he or she should be made aware that there is a risk that the disclosure statement may not be accurately completed (either because the disclosure is not sufficient or the body corporate hasn’t calculated the levies in accordance with the Act) and the buyer may terminate the contract if materially prejudiced by the inaccuracy. That said, it seems only in unusual circumstances that a buyer would be materially prejudiced if the actual levy amounts are accurately stated, but the statements about how they are calculated are incorrect.

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