

## **Body Corporates Rights and Obligations for Dealing with Transfers of Engagements and Authorisations (Assignee Approvals for Caretaking and Letting Agreements)**

Applicable Law – Section 122 Standard Module; and  
120 Accommodation Module of BCCM Act  
94 and 97 of BCCM Act

Relevant points for a body corporate to consider when an approval of a transfer is requested:

1. It is not lawful for a body corporate to include any “conditions” on its approval of a transfer other than for a Deed of Covenant from the transferee to “comply with the terms of the Engagement or Authorisation”.
2. There is an automatic obligation for the reasonable costs of the body corporate i.e. legal and administration expenses, to be met by the assignor. (The body corporate must not require or receive a fee or other consideration for approving the transfer other than reimbursement for expenses reasonably incurred by the body corporate in relation to the application for its approval).
3. There must be a decision to either approve or not approve the transfer.  
The body corporate must not unreasonably withhold approval to the transfer.
4. The decision must be made within 30 days after receipt of “the information reasonably required to decide the application for approval.”

A body corporate will be in breach after 30 days if it has had reasonably sufficient information to make a decision. Requesting more information does not automatically extend the time.

5. Such material must be submitted to the body corporate committee to cover the committees “entitlement” to have regard to the transferees (and persons related to the transferee):-
  - Character;
  - Financial Standing;
  - Competence, Qualifications and Experience and extent of likely training;
  - Any matters specifically covered in the Agreements as to the transferee which the body corporate may rely on for its decision.

“Related Persons” covers business partners (if a partnership) directors / shareholders (if a company) and any principal staff.

6. A body corporate must not delegate its decision making powers to another party (s.97 Act). The decision of the body corporate to approve, or not to approve, of the assignee cannot be delegated and must be considered and made based on the material supplied to it.
7. A body corporate must act reasonably in anything it does (s.94(2) Act). That requirement extends to not requiring further material or activity, if reasonably sufficient material has been supplied.