



ABMA EDPS Mediator & Consultant

Code of Practice

ABMA Early Dispute Prevention Services



This ABMA Code of Practice for auditing and reporting standards relating to ABMA Early Dispute Prevention Services was developed by ABMA Building Compliance Accreditation Agency (“**ABMA**”) and is effective until 31 December 2020.

This ABMA Code of Practice is based on the ABMA Building Management Code© and forms part of the ABMA Gold Seal™ quality management system for the “Facilities Management Plan”. This Code of Practice has been reviewed and endorsed by the ABMA Independent Review Panel.



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Foreword

This ABMA Code of Practice for Quality Management of the ABMA Early Dispute Prevention Service program has been endorsed by the Independent Review Panel for the ABMA Building Management Code© and provides the set of rules imposed upon ABMA Accredited Industry Practitioners for how professional compliance and performance assessors and/or Early Dispute Prevention Services consultants should conduct themselves during any assessment and/or mediation process through the incorporation of safe, ethical and fully justifiable standards.

ABMA auditing tools have been developed to assist signatories and/or building owners to measure their compliance against the ABMA Building Management Code© and ABMA Assessment of Building Management Standards program. Participation in the ABMA Early Dispute Prevention Services program is voluntary and undertakings arising are unenforceable.

This ABMA Code of Practice for Early Dispute Prevention Services intends to support building owners and their contract managers in being clear on the standards and responsibilities encumbered upon them, either via statute or prescribed within the caretaking agreement.

Aimed primarily at those that provide performance auditing and/or dispute resolution services to parties to caretaking agreements in Australia, the purpose and primary function of this ABMA Code of Practice is to set an industry “best practice” standard to support a consistent, reliable and quality assured methodology for supporting sustainable compliance along with a positive working relationship.

A draft of this ABMA Code of Practice was released for consultation with the Independent Review Panel on 10 April 2018 and endorsed by the Independent Review Panel 18 September 2018. Each ABMA Code of Practice is reviewed annually and all comments and suggestions received by the ABMA are considered by the Independent Review Panel prior to the endorsement of the new version.

ABMA Independent Review Panel Consultation Group: -

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ARAMA – Trevor Rawnsley	Australian Property Managers Alliance – Carl Wu
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Public comment is invited from interested parties via completion of the Public Comment Form on www.abma.org.au or emailing help@abma.org.au or Freecall 1800 124 262.

ABMA Building Compliance Accreditation Agency Limited is a not-for-profit community organisation incorporated to provide impartial support to those that have duties and responsibilities over the maintenance, care and regulatory compliance obligations for the common property of residential strata, aged care facilities and mixed-use commercial property in Australia.

Introduction

The term “Management Rights” refers to a binding legal agreement providing the business owner with the right to provide a letting business onsite to the Lot Owners, as well as earn an income from the building owner (e.g. Body Corporate) for delivery of caretaking services on the common property.

The parties to the Management Rights are: -

- The owner of the Management Rights; and
- The Body Corporate for the community titles scheme to which the Management Rights relate.

Commonly, the Management Rights include the following assets: -

- Ownership of a unit onsite, which typically forms the onsite manager’s office and residence;
- A Caretaking Agreement; and
- A Letting Agreement.

Historically, the owner of the Management Rights was not only the Director/s of the trading entity, but also the onsite manager, however, increasingly, Management Rights are being purchased by corporations who employ workers to act on their behalf, including residing onsite and delivering the duties prescribed within the Agreements.

Significant corporate owners of Management Rights in Australia include familiar brands such as the Mantra Group, the Oaks Group and Accor who have employees to deliver the day-to-day outcomes required of the Caretaking and Letting Agreements, however the vast majority of Management Rights are owned by husband-and-wife or family teams that reside onsite and enjoy the lifestyle that comes along with a home-based business.

There are many terms used in the industry to describe the owners of Management Rights. Here are a few of the most common terms: -

- Caretaker
- Building Manager
- Resident Manager
- Onsite Manager

Definitions

The following acronyms and terms of reference are used within this ABMA Code of Practice: -

ABMA – Acronym for Australian Building Management Accreditation

ABMA Accredited Industry Practitioner – A specialist services provider having achieved recognition for specific skills by the ABMA

CoP – Acronym for Code of Practice

CPD – Acronym for Continuing Professional Development

Desk Top Audit – The process of reviewing a suite of documents for compliance and providing a gap survey report of any non-conformances

EDPS – Acronym for Early Dispute Prevention Services

Gap Survey – The report issued following an assessment review highlighting non-conformances observed during the assessment process

Improvement Notice – The notice issued upon the building owner in circumstances where either the Desk Top Audit or the Site Inspection has revealed non-conformances requiring remedy

Infrastructure - The basic physical structure and facilities required for the function of the building. The combination of structural and non-structural systems included in the built environment.

IPAP – Acronym for ABMA Industry Practitioner Accreditation Program

IRP – Acronym for the ABMA Independent Review Panel

Non-Conformance – Where an assessable situation does not conform to the measurable or objective standard

Signatory – The entity and/or individual signing the report, improvement notice, establishment statement or compliance certificate

SPAI – Acronym for ABMA Strata Professionals Annual Induction training

Scope & Application

This ABMA Code of Practice provides practical guidance for persons who have duties under the ABMA Building Management Code© with respect to the ABMA Early Dispute Prevention Services program.

The Code of Practice has two (2) classes of signatory: -

- **Class 1** –ABMA Accredited Industry Practitioners (EDPS Consultants, Compliance & Performance Assessors and/or EDPS Mediators) who assume full responsibility under this ABMA Code of Practice

- **Class 2** – The ABMA Independent Review Panel, who has the task of reviewing the ABMA Building Management Code© and its associated ABMA Codes of Practice, contributes to its evolution and endorses its principles and utilisation without assuming any direct obligation and/or responsibility.

ABMA Building Compliance Accreditation Agency is responsible for administering this ABMA Code of Practice.

ABMA Accredited Industry Practitioners will be required to ensure that their actions, inaction and/or demands do not result in breaches of legislative requirements around the maintenance of essential services infrastructure and safety provisions within the subject building and/or the industry in general.

In providing guidance to the end-user, this ABMA Code of Practice will use the term 'should' in the context of recommending a course of action, while use of the term 'may' is used to indicate an optional course of action.

This ABMA Code of Practice may include references to sections of relevant Acts, Regulations and Australian Standards which set out legal requirements. These references are not exhaustive. Use of the words 'must', 'mandatory' and 'statutory' indicate that a legal requirement exists which must be complied with.

Status of this Code of Practice

The ABMA consulted with multiple individuals, peak bodies, membership associations and service provider organisations across Australia and New Zealand in the development of the ABMA Building Management Code© and its associated guidebooks, fact sheets and codes of practice.

Formal written submissions were received from six [6] individuals with detailed comments while several others thanked the ABMA for the opportunity and encouraged the process while declining to provide formal feedback.

Adherence to this ABMA Code of Practice is voluntary and intended to support a quality and consistent approach to the assessment and clarification of building management standards in Australia.

The next review of this ABMA Code of Practice is due 31.12.2020

Administration of this Code of Practice

The ABMA is the custodian of the ABMA Building Management Code©, its associated guidebooks, fact sheets and codes of practice.

Development of the ABMA Early Dispute Prevention Services program and its associated auditing tools is also managed by the ABMA along with skills development and assessment of ABMA EDPS consultants, mediators and compliance and performance assessors.

The key role of the ABMA in the administration of this Code of Practice includes (but is not limited to) the following: -

- Review the Code of Practice annually to ensure relevance and effectiveness

- Coordinate consultation with the Independent Review Panel, seek and manage feedback submissions
- Remain abreast of relevant changes to legislation and “best practice” standards
- Promote wider acceptance of the ABMA Building Management Code© and its associated ABMA Early Dispute Prevention Services program across the Management Rights sector
- Maintain a register of ABMA Accredited Industry Practitioners, “job-ready” and assessed as competent to deliver the auditing and/or mediation processes required of the ABMA Early Dispute Prevention Services program
- Receive and process all ABMA Early Dispute Prevention Services program applications, including Clarification of a Standard, issuance of an Objection Notice and Mediation
- Issue Clarification of a Standard reports (following the Desk Top Audit phase); Objection Notices (when instructed) and Resolution Plans (following mediation)

The key ABMA contact for this ABMA Code of Practice is: -

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Responsibility, Control & Influence

The chain of responsibility means those that have the ability to control and influence the delivery of caretaking duties prescribed under the Agreement, with respect to the maintenance of common property, essential services infrastructure and safety provisions contained within the structure of the building complex.

Below is a list of the individuals and entities that may form part of the chain of responsibility (not limited to): -

- The **building owner** (individual or entity which owns the property, enters into caretaking services provider arrangements and ultimately controls access to the property)
- The **building manager**, caretaker or facilities manager (individual or entity employed by the building owner, which discharges the duties prescribed under the caretaking agreement)
- The **strata manager** or body corporate manager (individual or entity engaged by the building owner, which administers the CMS)
- The **maintenance services provider** (individual or entity engaged by the building owner, which delivers prescribed maintenance services provider arrangements)
- The **compliance assessor** (individual or entity engaged by the building owner and/or regulator, which assesses the delivery of caretaking and/or maintenance services for compliance)
- The **end-user** (individual or entity which makes decisions on how to use or interact with infrastructure)

- The **regulator** and/or local authority (governing body legislating compliance standards)

It is the performance of functions relating to the planning, design implementation, administration, control, influence, delivery and review of compliance management systems and/or maintenance and compliance activities, whether exclusively or occasionally, that determines whether the individual or entity falls within any of these definitions, as opposed to their specific "title" or contractual position description.

This ABMA Code of Practice does not attempt to apportion liability or comment on contributors to adverse events or legislative breach. The fundamental principle of this ABMA Code of Practice is promotion of a positive compliance and safety culture across the greater building management sector. Adoption of this principle is encouraged for all who live, work, manage, administer and invest in commercial property or strata titles schemes across Australia, including the parties to Management Rights arrangements and caretaking agreements.

Roles & Skills

The ABMA Early Dispute Prevention Services program approaches resolution of difficulties across three (3) distinct phases: -

- Phase 1.** Clarification of a Standard
- Phase 2.** Objection Notification
- Phase 3.** Mediation & Resolution Planning

Accordingly, corresponding skills are required across three (3) levels of capability: -

- Level 1.** **Administrator** – Ability to administer the process, manage enquiry and coordinate Desk Top Auditor plus Mediator activities.
- Level 2.** **Desk Top Auditor** – Ability to assess documentation to draw a conclusion.
- Level 3.** **Mediator** – Ability to guide the parties to reach a mutually agreeable resolution of the dispute.

ABMA Accredited Industry Practitioners (Compliance & Performance Assessors and/or EDPS Mediators) are required to undergo a process of competency assessment and "job-ready" training in order to become accredited and added to the ABMA National Register of Accredited Industry Practitioners.

Pre-requisite skills and evidence of capability for ABMA Accredited Industry Practitioners (Compliance & Performance Assessors and/or EDPS Mediators) include: -

- Relevant Trade Qualification in assessment area (e.g. builders license for assessing construction defects, occupational license for assessing fire defects)
- Relevant academic qualification (e.g. auditing, facilities management, construction, mediation, bachelor degree in law, etc.)
- Prior work experience as a specialist assessor, auditor or mediator
- Proven reporting skills (via provision of prior examples of work)

- Subscriber to the ABMA Building Management Code© for the relevant state or territory where assessment services are provided
- Completion of the relevant ABMA “Job-Ready” skills development/assessment workshop
- Completion of the ABMA Strata Professionals Annual Induction (including WHS General Induction)
- Evidence of relevant annual continuing professional development

Specific pre-requisite experience and qualifications for gaining ABMA Industry Practitioner Accreditation for relevant positions are as follows: -

Administrator: - [ABMA Accredited Industry Practitioner – General Practitioner] Competent General Administration skills

Completion of ABMA SPAI (annual CPD)

Completion of ABMA EDPS Level 1 Training

Desk-Top Auditor: - [ABMA Accredited Industry Practitioner - Compliance & Performance Assessor] Prior experience in a compliance or records auditing role, preferably construction or building related, or legal assistant, search agent etc.

Completion of ABMA SPAI (annual CPD)

Completion of ABMA EDPS Level 1 Training

Completion of ABMA EDPS Level 2 Training

Completion of ABMA Diploma of Accreditation Auditing

Mediator: - [ABMA Accredited Industry Practitioner – EDPS Consultant] Prior experience as an auditor and/or mediator, with mediation qualifications and/or owner of Management Rights for more than 10 years with firsthand experience in disputes, RAN's, QCAT proceedings, the Office of the Commissioner for BCCM, etc.

Completion of ABMA SPAI (annual CPD)

Completion of ABMA EDPS Level 1 Training

Completion of ABMA EDPS Level 2 Training

Completion of ABMA EDPS Level 3 Training

Completion of ABMA Diploma of Accreditation Auditing

Administration of the EDPS Program

ABMA EDPS Administrator Role: -

The role of the ABMA EDPS Administrator is fundamental to the smooth and effective flow of the Early Dispute Prevention Services program. Key Performance Indicators for the role are:

-

- Responding to first impression enquiry effectively
- Providing adequate information to support early enquiry
- Directing contact to the correct Team Member for management wherever necessary (at the enquiry stage)
- Issuing accurate and relevant fee proposals
- Processing Tax Invoices and Receipts for payments (in collaboration with the Company Accountant)
- Establishing client UIN and project files
- Issuing Work Orders to Desk Top Auditors and Mediators
- Setting up the reporting documentation in the file (site-specific fields pre-populated)
- Filing received documentation to the correct standard
- Providing secretarial services to DTA's and Mediators
- Issuing Clarification of Standard Reports, Objection Notices and Dispute Resolution Plans as directed
- Being the central point of contact for cases
- Acting as Case Manager or Coordinator

Work Flow Chart: -

Application Rec'd	EDPS CM Allocation	Set up UIN & File	Tax Invoice & Receipt	App Receipt Letter	Schedule DTA	DTA Process	DTA Req for Information	DTA Complete	Clarification Report
EDPS01 (X)	Internal	Internal	MYOB	ABMA EDPS01 (W)	DTA01 (X)	Internal	ABMA EDPS02 (W)	Internal	ABMA EDPS03 (W)
11	12	13	14	15	16	17	18		
Authority to Act	Notice of Objection	App for Mediation	Tax Invoice & Receipt	EDPS Consultant WO	Mediation Session	Mediation Plan	EDPS CM F/Up		
EDPS02 (X)	ABMA EDPS04 (W)	EDPS04 (X)	MYOB	WO EDPS (W)	Internal	EDPS06 (W)	Internal		

Colour Code Legend: -

	Administrator Level 1			Desk-Top Auditor Level 2			Mediator Level 3
				Accounts Manager			

Administration Tools

The ABMA EDPS Administration tools include: -

- EDPS01(X) Application for Clarification of a Standard FORM
- CM Client Management tool (internal)
- UIN Unique Identification Number (internal)
- EDPS01(W) Application Receipt Advice [COS] LETTER
- DTA01(X) Desk Top Auditor & Mediator Consultants Schedule (internal)
- DTA02(X) Gap Survey Report FORM (internal)
- DTA03(X) Document Register FORM (internal)
- EDPS02(W) Request for Further Information LETTER
- EDPS03(W) Clarification of a Standard REPORT
- EDPS02(X) Authority to Act FORM
- EDPS04(W) Notice of Objection LETTER
- WO Consultants Work Order (internal)
- EDPS04(X) Application for Mediation FORM
- EDPS05A(W) Application Receipt Advice [Mediation] LETTER
- EDPS05B(W) Respondent Invitation to Mediation LETTER
- EDPS06(W) Mediation Plan

Clarification of Standards via the EDPS Program

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ABMA EDPS Desk-Top Auditor's Role: -

The role of the ABMA EDPS Desk-Top Auditor is to apply 100% objectivity to the assessment of caretaking delivery standards via review of supplied documentation. There is no room for subjectivity or the exercising of any form of individual/personal discretion in the assessment of building management standards.

Step by Step Process: -

Step 1- Start the process by attempting to complete the **Clarification of a Standard** report, as follows: -

- Determine the parties to the agreement in question
- Establish correct trading entity/s
- Establish correct scheme entity/s
- Ensure fundamental documents are on file: -
 - Caretaking Agreement including all schedules
 - Letting Agreement
 - Any Deeds of Variation
 - Any Deeds of Settlement
 - Community Management Statement
 - Building Management Statement, if applicable
 - By-Laws
 - Survey Plans
 - Certificate of Classification
- Establish the **Register of Documents** and enter into the **Clarification of a Standard** report

Step 2 – Begin the assessment of the Application against the supplied documentation, including: -

- Review the query/s supplied by the Applicant
- Develop a **Gap Survey Report** (i.e. list of any relevant documents pertaining to the query/s that were not supplied or are not on file)
- Issue to the Administrator for management

Step 3 – Once all relevant material is available, complete the assessment process: -

- Simplify the details of the Application down to a clear statement/s that summarises the core issue/s or question/s seeking to be clarified
- Document the relevant clause of the caretaking agreement that relates to the question or issue (do this for each separate question or issue)
- Document the relevant section of the ABMA Building Management Code© that clarifies the question or issue (do this for each separate question or issue)
- Record the findings in the **Clarification of a Standard** report
- Provide completed **Clarification of a Standard** report to the Administrator for distribution to the Applicant.

- Prepare the **Notice of Objection** notice and provide to the Administrator for future use (if applicable).

Compliance Assessment Tools & Resources: -

Primary resources utilised by ABMA Accredited Industry Practitioners during the ABMA EDPS Desk Top Audit process include: -

- The ABMA Building Management Code© [current, state specific] Edition
- ABMA Guidebooks: -
 - Guide to Assessment of Building Management Standards
 - Building Management & Management Rights Guide
 - WHS Safe System of Work for Common Property Guide
 - Committee Guide to Maintenance of Common Property
- ABMA Frequently Asked Questions ("FAQ's") and Fact Sheet publications: -
 - Harvesting "As Built" documentation for building owners
 - WHS for building owners and their managers
- Building Compliance Checklist

Evidence of Compliance: -

Evidence of compliance is assessed across three (3) levels: -

1. Documentary
2. Elemental
3. Functional

Documentary evidence is "black and white" and difficult to dispute. Where records are available, compliance is guaranteed by the issuing signatory, so documentary evidence is therefore superior and highly sought after. Harvested in the form of records of maintenance, certificates of compliance, test reports, inspection sheets and the like, each document/record is verified for completeness and correctness in accordance with the relevant reporting standard.

Elemental evidence may be observed during a site inspection or via photos, google images, etc., such as signage, tags, plans and labels. Photographic registration of elemental evidence is required to support the assessment process.

Functional evidence may be observed during the site inspection that confirms a compliance element is functional (e.g. signage is clear, legible and visible). Photographic (and/or video) registration, and/or other supporting record is required where functional evidence is being relied upon during the assessment process.

Gap Survey: -

In circumstances where the Desk Top Audit processes reveals missing or absent information precluding the DTA from reaching a sound and justifiable conclusion, a Gap Survey Report will be prepared by the DTA for internal ABMA use. A Request for Further Information will be prepared by the Administrator based on the Gap Survey Report and issued to the Applicant.

Clarification of a Standard: -

Once the Clarification of a Standard Report is complete, the Administrator issues it to the Applicant and follows up for the next phase of the ABMA EDPS program.

Notice of Objection: -

Once the Clarification of a Standard Report is issued to the Applicant, the Applicant may choose to notify its Counterpart as to the findings of the clarification process. There are two (2) ways the Applicant can choose from in terms of notifying its Counterpart (or the "Respondent"):

1. **Informal** – Where the Applicant makes the findings of the Clarification of a Standard process known to the Respondent directly; or
2. **Formal** – Where the Applicant requests that the ABMA issues a Notice of Objection upon the Respondent with respect to the Clarification of a Standard Report

In order for the ABMA to issue a Notice of Objection upon a Respondent, the Applicant must first complete the Authority to Act [on behalf of the entity] form and pay the prescribed fee.

Mediation & Resolution Planning via the EDPS Program

ABMA EDPS Mediators Role: -

The role of the ABMA EDPS Mediator is bring the parties to the difficulty together in the spirit of resolution and provide a positive platform for the parties to work toward their own agreed resolution.

The EDPS Mediator is there to facilitate an agreed outcome and remain neutral and impartial at all times. Impartiality is fundamental to the success of the EDPS Program and the EDPS Mediator is the "face" and ambassador of the ABMA when facilitating mediation sessions.

Impartiality: -

The perception of bias is difficult to shake once it sticks, so impartiality must be upper most in the mind and actions of the ABMA Mediator. Evidence [or the impression or perception] of impartiality comes in many forms, including: -

- Speaking to the "full story" – not leaving elements out to suit a preconceived outcome or scenario
- Not stereotyping or appearing discriminatory in any way
- Acting with professionalism, including: -
 - Remaining clear
 - Not being emotional
 - Not blaming
 - Not manipulating
 - Sticking to the facts

Objective of the Mediation: -

1. The objective of the mediation is to enable the parties to reach a mutually acceptable settlement of the Matters identified within the Clarification of a Standard Report, on terms they have agreed, recorded in a written signed agreement (the Resolution Plan).
2. The role of the Mediator is purely to facilitate settlement of the Matters by negotiation between the Parties to be recorded by a written, signed agreement (the Resolution Plan). The Mediator is independent and neutral.
3. The Mediator's role is not to adjudicate the Matters.
4. The parties expressly agree that any settlement reached in the mediation is without prejudice, is strictly "subject to agreement", and will not be legally binding and nor will its terms become enforceable.
5. The mediation is a voluntary process and the Mediator will not, and cannot, compel the parties to settle, or even to continue the mediation. The Parties or the Mediator may end the mediation at any time without giving a reason.
6. The mediation, and all things said or disclosed in the course of the mediation, are and will remain without prejudice.
7. The Parties agree and acknowledge that the mediation relates only to the Matters detailed in the Clarification of a Standard Report and limit discussions to the facts around these Matters only.
8. Any new Matters emerging during the mediation will need to be processed through the Clarification of a Standard program via a separate Application and cannot be explored during mediation set down for existing Matters.
9. All documents, statements, information and other material produced for, to or during the course of the mediation, whether in writing or orally, are without prejudice, will be inadmissible in any subsequent litigation or arbitration of the Matters, shall further be held in confidence by the Parties, and shall be used solely for the purposes of the mediation.

How the Mediation will be Conducted: -

The ABMA will issue to the Mediator, the Applicant and the Respondent, not less than 5 clear working days before the date of the mediation: -

- a. The Clarification of a Standard Report, providing the Mediator with a succinct summary of the Matters in issue;
- b. The pertinent evidence, together with the key documents to enable the Mediator (and each other) to understand the Matters in issue;
- c. A list of the names of all representatives who will attend the mediation;
- d. Written confirmation that their representatives will have such authority as may be necessary to settle the Matters at the mediation

The Mediator will:-

- a. Before the mediation starts, read the material provided;
- b. After consultation with the Parties, determine the procedure to be followed at the mediation;
- c. Not act for either party in relation to any aspect of the Matters;
- d. Respect the confidentiality agreed by the Parties

Principled Mediation: -

Principled negotiations have as their goal an honest and fair resolution of an issue regardless of interpersonal relations between the parties. They also have as their goals: -

- a. clarifying the real issues instead of the testimony or stance of the parties;
- b. working from some objective criteria (or standard); and
- c. developing a solution that benefits all and objective criteria for reaching the conclusion of negotiations.

NOTE – An “objective standard” is one that cannot be controlled by either party to the negotiation – e.g. the ABMA Building Management Code©

The Mediator will: -

1. Separate “People” from the Problems: - Ensure that discussions focus on the facts of the Matters as opposed to the “he said, she said” and “drama” of the background.
2. Figure out Agendas: - Determine what the underlying interests are for each party. The Agendas are usually driving the behaviour.
3. Options for “Win-Win” Solution: - Utilise the objective standard to provide resolution options for mutual gain.
4. Explore Objections to Principled Negotiation & Objective Standard: - Using Steps 1-3, explore any objections raised in the context of: -
 - (i) Removing “people” from the facts;
 - (ii) Understand the underlying agenda and what the party really wants;
 - (iii) Put forward “win-win” options and emphasise the mutual gain
5. Convert Agenda’s to Positive Intentions – Expose the Agenda in the spirit of reframing the negotiation.

NOTE – Even the most negative and destructive of intentions (e.g. revenge and anger) can be converted to a positive intention (i.e. desire for acknowledgement and respect).

MEDIATION SESSION ACCEPTABLE BEHAVIOURS: -

- (i) There shall be no sound recording or transcript of the mediation, save for the Resolution Plan document prepared by the Mediator following mediation.
- (ii) Any notes of the Mediator are confidential to the Mediator and may be destroyed by the Mediator at the conclusion of the mediation.
- (iii) The Parties agree with one another and the Mediator not to seek to compel by any means the production of any notes of the Mediator or to seek to compel the Mediator to give any evidence whatsoever in relation to the Matters or what took place upon, at or after the mediation.
- (iv) Each party must make it clear to the Mediator what information the Mediator is free to impart to the other party at a time he considers appropriate, and what information must not be disclosed.
- (v) No person shall attend the mediation without the consent of the Parties and the Mediator.
- (vi) At the termination of the mediation, all material provided to the Mediator shall be returned to the originating party on request or will be destroyed by the Mediator.

Opening comments for the Mediator to address the Attendees: -

In conducting this mediation, it is of the utmost importance to understand that: -

- a) The starting point must be that as the common property is owned by the Body Corporate the maintenance and upkeep of that property is the responsibility of the Body Corporate;
- b) The Body Corporate is permitted to enter into a written contract for the provision of caretaking services by a Caretaker (Building Manager) in which case the Caretaker must assume responsibility for all those duties laid down in the Caretaking agreement;
- c) There are however, certain matters that the Body Corporate cannot delegate to a Caretaker, in particular the enforcement of the Scheme By-laws (S.97, BCCM Act 1997) and administrative services (S.15, BCCM Act 1997);
- d) Parties to an agreement such as the Body Corporate and the Caretaker are at any time able to change the terms and conditions of that agreement if both parties can agree. Any such changes must be in writing;
- e) When considering any matter that is disputed both parties should use their best endeavours to resolve the matter on the basis of what is in the best interests of the building;
- f) Comments and statements made by either party in the course of the mediation will not be binding but should be regarded as steps towards reaching a point whereby both parties can agree a position;
- g) Where the standard of service delivery by the Caretaker is an issue then the acceptable standard will be that laid down in the ABMA Building Management Code;
- h) The BCCM Act 1997, requires a Caretaking Agreement to be in writing.

In his notes for a law lecture dated 1 July 1850, Abraham Lincoln wrote: - Discourage litigation. Persuade your neighbours to compromise whenever you can. Point out to them how the nominal winner is often a real loser - in fees, expenses, and waste of time.

The ABMA Mediator will always point out that it may be a great deal easier to live with an agreement that required some compromise rather than a binding enforceable decision of a court of law.

Limitation of Liability & Explanation of Roles: -

1. The Mediator has, and assumes, no duty to the Parties to give legal advice of any nature. The Mediator owes no duty in contract or tort to either party in the conduct of the mediation, or in the drawing up, content, or effect of the Resolution Plan and/or any settlement agreement reached between the parties at the mediation and will not be a party to such agreement.
2. The Parties agree and acknowledge that neither the ABMA nor the Mediator (jointly or severally) shall be liable (either in contract or tort) for any alleged or actual loss or damage arising out of the appointment or nomination of the Mediator, the conduct of the mediation or any Resolution Plan and/or agreement reached consequent upon the mediation, and agree that they will not bring any claim (contractual or tortious), or make any demand against the ABMA or the Mediator. The Mediator is not an agent or employee of the ABMA.
3. The Parties and the Mediator acknowledge that the role of the ABMA is limited to proposing a mediator taken from its register of ABMA Accredited Industry Practitioners – EDPS Consultants, suitable for the mediation proposed and administering the mechanics of mediation (if requested). For these purposes only, the ABMA is an agent of the Mediator.

The Resolution Plan: -

The outcome of the mediation process is to develop a Resolution Plan for consideration and implementation under agreement by the Parties. The Resolution Plan will focus on remedying the core origins of the Matters giving rise to difficulty between the Parties and may include the following: -

1. **Review of the Schedule of Duties** – In certain circumstances the schedule of duties may be the underlying cause or origin of difficulties, such as: -
 - (i) The schedule was prepared prior to 2012, which will mean that legislative change since this date either: -
 - a. now imposes extra or intensified duties upon the caretaker; or
 - b. new statutory duties are not being done because they are not prescribed within the outdated schedule;
 - (ii) The schedule does not prescribe a clear scope of works;
 - (iii) The schedule does not prescribe a clear frequency for the works; and/or
 - (iv) The schedule does not prescribe a clear standard of delivery for the works.
2. **Skills & Capability** – In circumstances where either or both of the Parties are not aware of the standards and compliance requirements detailed in the ABMA Building

Management Code© there may be scope for remedying difficulties via training and skills development, such as: -

- (i) ABMA Strata Professionals Annual Induction program (for caretakers & committees)
- (ii) ABMA New Entrants Program (for caretakers)
- (iii) ARAMA Management Rights Induction Training Program (for caretakers)
- (iv) Strata Mastery Code Utilisation & "Best Practice" Training (for Committees)
- (v) ABMA Certificate of Building Management (for caretakers)
- (vi) PRO-BMT Advanced Certificate of Building Management (for caretakers)
- (vii) University of New England Diploma of Facilities Management (for caretakers)

3. **Document Management System** – In circumstances where coordination and arrangement of compliance duties on site is problematic, it may be a worthwhile investment to consider a Document Management System for the scheme or caretakers' business, such as: -

- (i) A Building Management Plan
- (ii) A software management system

4. **Independent Third-Party Site Audit** – In circumstances where the Desk Top Audit does not consider the condition of common property, it may be worthwhile recommending the Parties jointly engage an independent third party to undertake a site inspection and prepare either a: -

- (i) A one-off Caretaking Performance Audit report; or
- (ii) Enter the scheme into the ABMA Building Compliance Accreditation Program for an annual independent audit of body corporate compliance relating to the maintenance of common property and its infrastructure

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