



## Visitor parking in strata - Who is a visitor?

You might wonder why the question of who is a visitor, matters and if you do, you are in the strata minority. The ostensible abuse of visitor car parking privileges is the trigger for an enormous amount of body corporate angst.

Interestingly enough, the [Body Corporate and Community Management Act 1997 \(BCCM Act\)](#) does not define who a visitor is, so we are left with dictionary definitions and adjudications (and perhaps even a dose of common sense, as scary as that may seem to be).

Let's start with the basics.

### The by-laws

You need to have a lawful visitor parking by-law. A simple example is set out in [Schedule 4](#) of the BCCM Act. If you don't have that, you have nowhere to go, and that means you should send us your CMS for a [free by-law review proposal](#), where we will tell you some of the other by-laws you are missing too.

### Dictionary definition

A [visitor](#) is someone who (obviously enough) [visits](#) which includes:

1. to pay a call on as an act of friendship or courtesy;
2. to reside with temporarily as a guest;
3. to go to see or stay at a place for a particular purpose;
4. to go or come officially to inspect or oversee.

### Adjudications

As you would expect, there have been quite a few adjudications over the years. Some of the passages we have found illuminating (and our takeaway from each) include:

[Picture Point \[2004\] QBCCMCmr 384](#)

This was a dispute about short and long-stay occupants using the visitor car parks.

*'There does seem to be some uncertainty about who constitutes a genuine visitor to the scheme and will be entitled to use the visitor car parks.*

*There seems to be a general understanding that occupiers of the scheme are not entitled to use the visitor car parks.*

*However, the distinction between an occupier and a visitor may not always be completely clear. As a general rule:-*

- *persons letting a unit for a week (including family or friends accompanying those persons for the majority of the period let) would be classed as occupiers.*
- *persons just visiting for one or two nights of that period would normally be classed as visitors.*
- *similarly, if the relative of an owner/occupier regularly visits for one or two nights every month then that relative would normally be classed as a visitor.*

*The more difficult questions arise when a person stays with someone for a number of nights or on a very regular basis. In those cases, it will be necessary to look at all the circumstances to determine if they are an occupier or a visitor.'*

**Our takeaway:** This was an early decision indicating the difficulties in actually deciding who a visitor was and confirmed that it was not as simple as whose name is on the lease.

[Summer Waters \[2004\] QBCCMCmr 244](#)

This was one where an occupier's son stayed overnight at his parent's unit for seven nights over a 26-day period.

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*'It is not disputed that the ... son periodically visits the scheme land, and on occasion, stays overnight. It is also not disputed that during these periods, the ... son parks his vehicle in an area of common property allocated for visitor car parking.*

*While it is arguable that this shows that the ... son is a regular visitor to the scheme, in my view, regularly visiting the scheme does not make a person an 'occupier' of a lot in the scheme, even if on occasion those visits are on an overnight basis. As a result, I am not satisfied that the Respondent's son is an 'occupier' for the purposes of the parking by-law.'*

**Our takeaway:** Regular visitors who occasionally stay overnight are just that – visitors not occupiers.

[Gresham Gardens \[2006\] QBCCMCmr 355](#)

This was one where an occupier's son stayed overnight in his parent's unit two to three nights a week, every week.

*'The question is whether [the son] falls within the category of "someone else who lives on the lot" or is in the nature of a visitor or invitee.*

*Terms such as 'visitor' or 'invitee' are not defined in the body corporate legislation or the by-laws. However, it seems to me that a visitor or invitee in this context refers to a person associated with an owner or occupier who is temporarily present on a lot or common property, with or without invitation...*

*I am of the view that the factors to be considered in this issue are:-*

- *how long the person in question is present at the scheme;*
- *how regularly; and*
- *for what purpose.*

*I do not consider it is necessary that a person stay overnight every night of the week to be an occupant.*

*A person who stays overnight in a residential lot 2 or 3 nights on a regular basis could still be considered an*

*occupier.*

*I do not consider that the lot must be the person's principal place of residence for them to be an occupier of the lot. It is conceivable that a person may occupy more than one residential abode.*

*If someone were to visit regularly but not usually stay overnight, or were to stay overnight for a few nights occasionally, I would not normally consider they were occupying the lot. The key here, I believe, is the combination of two factors. Firstly, the respondent stays overnight for 2 or 3 nights (rather than just visiting during the day or evening) and in addition, the respondent is present on a very regular basis (every week, or at least most weeks). Moreover, with the respondent's place of work is nearby, it does not appear to be a temporary arrangement."*

**Our takeaway:** If the person's presence is not temporary or occasional in nature, they may well be an occupier (even when their principal place of residence is elsewhere).

[127 Charlotte Street \[2015\] QBCCMCmr 19](#)

This was one where employees of the resident manager were using the visitor car parks.

*"I consider a 'visitor' would include anyone who is not an occupier of a lot, but who is genuinely visiting a lot or the scheme. I do not consider this is limited to residential or non-commercial visits. While a visitor may be a friend or family member visiting a tenant, they may also be a contractor such as an electrician visiting the scheme to do work.*

*I would consider the employees of the resident manager to be occupiers to the extent that they predominantly or regularly work at the building (as distinct from, for example, an employee who is based elsewhere but visits for an ad hoc meeting). However, a cleaning contractor attending to clean one or more lots would arguably fall within the designation of a visitor."*

**Our takeaway:** a visitor could be a family member, friend or the electrician appearing as a one-off, but permanent or

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regular attendees may well not be visitors.

### **What does all this mean?**

It depends on the circumstances.

Occupiers are definitely not visitors. We think a person is an occupier if they have a right to use a lot exclusively. In a permanent letting sense, this would come from the lease, and in a short-term letting sense, this would come from the licence they have to use the lot from the owner.

And before anyone asks, we don't think that an occupier needs to be named on the lease or licence to be that. It is a matter of fact.

Regular attendees to the scheme who use the visitor car parks:

- who definitely reside and work elsewhere are probably still visitors;
- who visit so regularly that they ought to be considered an occupier would not be visitors;
- who have a link with the scheme through work (as employees of someone on site or even locally to the scheme) may not be visitors.

### **Other articles you may be interested in**

[Can a body corporate tow a car?](#)

[The BCCM review paper on towing](#)

[QUT's recommendations on towing](#)

[By-law enforcement process as published by the Commissioner's Office](#)

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