

Strata & Titles Community



*Produced by the Legal Services Commission
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This information is a general guide to the law. It is not a substitute for legal advice. Contact the Legal Services Commission, a community legal centre or a private lawyer for detailed advice.

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INTRODUCTION

This booklet is about residential strata and community titles. If you are planning to buy a strata or community titled property, there are some important legal matters that you should know.

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IMPORTANT THINGS TO CONSIDER

Community living offers some benefits but it does not suit everyone. Before you buy a unit or lot, think carefully about what is involved. You will be living in close proximity to others, possibly sharing walls and some facilities. Each group, no matter how big or small, has a 'corporation', which is a legal entity like a company. All owners are automatically members of their corporation and are bound by the rules of their corporation. The corporation is responsible for the maintenance and repairs of the common areas. There is no government agency to oversee the management of strata titles and community titles or to resolve disputes. If a dispute cannot be resolved by negotiation or mediation, an application may have to be made to the Magistrates Court to decide the matter.

BUYING A STRATA or COMMUNITY TITLE

Anyone thinking of buying into a scheme should, before signing a contract, make sure they understand the operations and finances of the particular corporation.

On application by an owner or prospective buyer, a corporation must provide information on the following:

1. How much money must be paid for the upkeep, maintenance and management of the common areas, including arrears.
2. Assets and liabilities of the corporation.
3. Details of any expenses incurred or about to be incurred by the corporation, such as painting or gutter replacement.
4. Copies of minutes of general meetings and management committee meetings for the last two years.
5. Statements of accounts and financial records of the corporation.
6. Articles or by-laws of the corporation currently in force.
7. Current insurance policies.

The corporation may charge a fee for providing copies of this information.

Checklist

Before you buy a unit or lot, ask yourself these questions

Have I sought independent advice on the documents relating to the corporation?

What system does the corporation have for resolving disputes?

What are the rules about having other people visiting and parking?

Are there any unpaid contributions owing on my unit or lot?

How do the contributions and other charges compare with other corporations?

Is there a 'sinking fund' or reserve of money held by the corporation for emergency expenses and major maintenance costs such as painting?

Will the unit, building or site be accessible if I am disabled and require a wheelchair or walking aid?

If not, can suitable modifications be made easily?

What maintenance services are provided?

What are the charges for these?

What are the restrictions on the use of my unit/lot and the common property?

Can I store my caravan/boat/bicycle?

Are pets permitted?

Is the corporation planning any major expenditure that I may be asked to contribute to?

Are there any structural problems in the building?

Have I seen a copy of the plan that defines my unit or lot? Do the boundaries of the unit/lot agree with boundaries shown on the plan?

If a community scheme, what level of the scheme am I buying into?

Is it a primary, secondary or tertiary scheme?

Strata Titles

A strata title is created by the division of a structure into separate units. The boundaries of a unit are defined by reference to the structural divisions in a building, not by reference to the land. There must be an area of common property, for which everyone is responsible. The law concerning residential strata titles is contained in the *Strata Titles Act 1988* and the common law, which is made up of the principles which courts have used to decide cases in the past. Please note that since 1 January 2002, it is no longer possible to deposit new strata divisions under the *Strata Titles Act 1988*, unless proceedings were commenced prior to that date. New divisions now use the *Community Titles Act 1996*. Existing strata developments and strata corporations are not affected by this change. They continue to be regulated under the *Strata Titles Act*.

THE STRATA CORPORATION

The role of a strata corporation is to administer and maintain the common property for the benefit of all unit holders and to enforce the articles of the strata corporation. Every strata title property has its own strata corporation. All unit owners are automatically members of the corporation, but tenants are not.

The strata corporation can delegate some, or all of its functions to a management committee and may appoint a strata manager or other such agent to **assist** with the management of the corporation.

The corporation operates like any other business. The corporation can make rules which are binding on the corporation, unit holders and tenants regarding the use of common property and the units, providing

that the rules do not contravene the *Strata Titles Act* or other laws.

The corporation raises funds by levying contributions against all unit holders. The amount that each unit holder contributes to maintenance funds is calculated according to the 'unit entitlement' set out in the strata plan. Put simply, unit entitlement is the portion, or ratio, of the capital value of a unit as against the sum of the capital values of all the units. Contributions are often paid quarterly. Note that unit holders are guarantors of their corporation's liabilities, which means the corporation's debts are enforceable against each of the unit holders directly.

SOME OF THE POWERS AND FUNCTIONS OF THE STRATA CORPORATION

- > Administer and maintain the common property and other property of the corporation.
- > Enforce the articles of the corporation (the rules).
- > Borrow money, maintain bank accounts and invest surplus funds.
- > Enter into contracts.
- > Levy maintenance payments against unit holders.
- > Insure the buildings and take out public risk insurance.
- > Require an owner to carry out necessary work, such as internal plumbing repairs.
- > Do other things that are necessary as required by the Act.

Note: Corporations incorporated under the *Community Titles Act* have similar powers.

Insurance

The strata corporation must insure buildings to replacement value and also provide public liability insurance for an amount specified in the regulations. As from 7 April 2003, this amount increased from \$5M to \$10M (minimum).

Building insurance will not cover the contents of a unit so owner occupiers may need to take out contents insurance. Be sure to check the provisions of both policies to ensure there are no items left unprotected, such as a carport.

Common Property

The question of what is and what is not common property is a difficult issue, and can cause many disputes. Generally speaking, common property is any land or space that is not within a unit. The boundary of a unit is the internal surface of the walls, floors and ceilings (but another boundary may be specified on the strata plan). A unit may also include an area defined on the unit plan as a 'unit subsidiary', which is an area for the exclusive use of a particular unit, for example a carport or garden.

In older strata plans that were deposited before 1 September 1988 the unit boundary was defined as midway between the surfaces of walls, floors, ceilings, etc and this definition continues today, unless has been changed by an amendment to the strata plan. Legal advice may be necessary to determine the correct boundaries of strata plans deposited before 1 September 1988.

Things such as pipes or electrical wiring that service a number of units but are located within a particular unit can complicate any strict definition of 'common'

property. Pipes or electrical wiring which service only one unit are considered part of that unit (*Strata Titles Act s 5*) and not part of the common property. It should be noted that in most strata corporations the roof, guttering, external walls and foundations are common property. Internal walls are the owner's responsibility.

Maintenance and Repairs - Entry to Premises

A unit holder must maintain and repair their unit. If the strata corporation is forced to do this work, the individual unit holder is liable for the cost to the corporation. A representative of the strata corporation can enter the unit to carry out specific work if the unit holder has failed to conduct repairs that have been requested in writing. Reasonable notice must be given to the unit holder in this case. In the event of a genuine emergency (such as a burst water pipe) the corporation has the right to force entry.

Officers of the Strata Corporation

At all times a strata corporation must have a Presiding Officer, a Secretary and a Treasurer who are appointed at a general meeting. One person may hold two or more of these positions but officers must be unit holders. The strata corporation commits an offence if any of these positions is allowed to remain vacant for more than six months.

Records

The strata corporation has a responsibility to maintain proper records, including minutes of meetings (both general meetings and committee meetings), notices and orders served on the corporation and all records relating to financial affairs. It must keep a minute book

containing a record of meetings for 30 years and accounting records and notices of meetings must be kept for 7 years. Complete details relating to record keeping are outlined in the *Strata Titles Act 1988* Regulations.

Management Committee

The strata corporation can choose to run all of its business through general meetings or it can delegate some functions to a management committee. A management committee is appointed by a general meeting of the strata corporation. The number of committee members and the term of their office (usually 1 year) is fixed by the corporation. The members of the management committee must be unit owners. Members may be removed by an ordinary resolution of the strata corporation, (see 'Meetings and Resolutions' on page 7). The powers of the management committee are subject to limitations imposed by the strata corporation. The committee does not have the power to do anything for which a special or unanimous resolution is required. If a management committee is considering a contentious issue, such as raising special levies, it may be prudent to invite all unit owners to the committee meeting.

In general, the management committee's role is to carry out the business of the strata corporation. A management committee must keep minutes of its meetings and ensure accurate and proper accounting records are kept in respect of financial affairs. At least three days notice of a meeting of a management committee must be given. Members of the management committee are personally liable for any offences under the *Strata Titles Act* unless they can show why they were not responsible. Some insurance companies

offer office bearer liability cover against such risk. Committee members can appoint another unit owner as their proxy if they wish.

Strata Managers and Management Firms

The business of properly running a strata corporation, such as keeping records and running meetings, can be complex, particularly when there is a large number of units in a group. Many strata corporations choose to appoint a strata manager to assist in running the affairs of the corporation. Professional strata management firms charge for these services. Strata managers can be appointed or dismissed at a general meeting by a simple majority, although the power to appoint or dismiss may be delegated to a management committee.

A strata corporation which appoints a strata manager should carefully consider the terms of the contract of appointment. Some contracts specify a penalty if the appointment is terminated before the end of the specified term. The legal responsibilities of the strata corporation do not change with the appointment of a manager. It must still have a Presiding Officer, a Secretary and a Treasurer (any two or more of these positions may be held by the same person), and is still legally liable for decisions made on its behalf.

A strata manager can only act in an advisory capacity and does not have any powers independent of the corporation. Strata managers have to act in the best interests of the corporation and in accordance with professional standards but the corporation should continue to maintain an active involvement in its affairs.

Managers, Agents and Financial Records

Strata managers or any agent who is authorised by the strata corporation to receive and hold money on behalf of the corporation are under strict legal obligations. An audit report of the strata manager's trust account must be lodged with each corporation under their management (*Strata Titles Act s 36H*).

All unit owners are entitled to view the report. As well, financial records must be produced to the strata corporation upon request, and must be kept for seven years. Any manager or agent who fails to comply with these requirements is guilty of an offence under the *Strata Titles Act*.

Problems with Strata Corporations

Almost all corporations will have a dispute at some stage. Some common problems include disputes about the maintenance of the common property, how meetings are run, enforcement of the rules, and complying with the requirements of the Act. If a dispute cannot be resolved, the Magistrates Court has wide powers to determine disputes between unit holders and a corporation. See Disputes, page 8, for more information. If substantial problems arise, the corporation, a unit owner, or someone with a legal interest in the corporation (such as a mortgagee) can apply to the Supreme Court to have an administrator appointed to take over the affairs of the corporation. This would only be in extreme circumstances, and the court would be reluctant to appoint an administrator unless incompetence or illegality is clearly shown. An administrator has wide powers and can do anything for which a special or unanimous resolution is

usually required. The costs relating to the appointment of an administrator would be payable from the funds of the strata corporation.

DUTIES OF UNIT OWNERS

Unit owners have certain responsibilities as outlined in the articles of the strata corporation. Generally, the articles will say that unit holders must maintain the unit in good repair and in a clean and tidy condition and they must carry out any work ordered by the local council or other public utility relating to that unit. Unit holders must not use the common property in a way that interferes with the use and enjoyment of that area by other unit holders, and they must not make undue noise so as to interfere with other residents. The articles also require that a unit holder take reasonable steps to make sure that their visitors or tenants do not breach the articles, such as making excess noise or parking in someone else's car space.

Articles can make rules concerning keeping pets (usually only allowed with the consent of the strata corporation), how to dispose of rubbish, and gardening in common areas, amongst other things. Unit holders are not required at law to maintain the common property, such as cleaning gutters, this is the corporation's responsibility under section 25 of the Act.

Financial Responsibilities and Liabilities of Unit holders

Unit holders must keep up their contributions to the corporation. If the funds are not paid, they are recoverable as a debt, which means the corporation can sue the unit holder for the money, possibly with interest added at a rate reasonably decided by the strata corporation. If you

buy a unit and there is a contribution owing, you as the new owner are liable for that contribution. Check carefully before buying any unit as there may be debts outstanding on that unit. If the strata corporation does not or cannot pay its debts, the individual unit holders are personally liable.

Certain unit holders may have to pay for work which substantially benefits their own particular unit or group of units and not the strata corporation as a whole. However, this may be difficult to determine. Consider the example of a leaking pipe causing damage to one particular unit. If the pipe was common property, then the cost of repairs would have to be borne by the corporation. On the other hand, if the pipe was not common property, then the individual unit holder is responsible.

Structural Work

Unit holders must seek permission from the strata corporation before starting any building or structural work, or generally altering the outward appearance of a unit, for example, installing an air conditioner or external awnings. Structural changes that affect the delineation of a unit or what exists on the common property should be recorded by amending the Strata Plan lodged with the Lands Titles Office. Failure to do so may affect ownership of a unit and insurance policies held by unit owners and the corporation.

ARTICLES (RULES)

Articles are the rules of the strata corporation. While legal obligations under the Strata Titles Act cannot be avoided or changed, the articles are determined by the strata corporation itself. The articles

bind the unit holders, tenants and the strata corporation to an agreement regarding the use and upkeep of units and common property.

Schedule 3 of the *Strata Titles Act* sets out the articles for all strata corporations. A full list is included on page 10. If a particular strata corporation wishes to adopt its own articles, or amend any number of its articles it can do so. However, a corporation cannot prevent a unit owner from selling or letting out a unit.

How to Change the Articles of a Strata Corporation

Articles of a strata corporation can be changed by a special resolution (see 'Meetings and Resolutions') of its members, but any change must be lodged with the Registrar-General at the Lands Titles Office to be effective and legal.

MEETINGS AND RESOLUTIONS

A strata corporation may hold a meeting of its members (a general meeting) anytime. This can be called by the secretary or any two members of the management committee or one fifth of the unit holders, or if it is the first meeting, the original registered proprietor. Voting is on the basis of one vote per unit. At least 14 days written notice must be given to all unit holders before the meeting. A meeting must be held at least once every calendar year, and within 15 months of the last Annual General Meeting. A quorum is not less than half the units represented in person or by proxy. Decisions of any meeting are made by three types of resolutions. The *Strata Titles Act* specifies the type of matters that require particular resolutions.

Ordinary Resolutions

These are a 'yes' vote by a majority of those represented. Ordinary resolutions are used for such things as general fund raising and appointment of managers and committees.

Special Resolutions

Special resolutions must be proposed by at least 14 days written notice to all unit holders and must be supported by two thirds of all unit holders, not just those unit holders who attend the meeting.

A special resolution is required to:

- > change or adopt new articles
- > authorise the erection, alteration, demolition or removal of a building or structure
- > authorise changes to the external appearance of a building by a unit owner
- > approve any special insurance.

Unanimous Resolutions

A unanimous resolution is the same as a special resolution but passed without any dissenting vote, that is, nobody must vote against the resolution. Any unit holder who does not attend (or send a proxy to vote), or attends and chooses not to vote, is not counted as a dissenting vote. However, the number of votes must be at least two thirds of the total number of units.

Unanimous resolutions are required for:

- > acquisition/lease/sale of property or goods
- > granting to a unit holder exclusive use of part of the common property for a specified period

- > distribution of surplus funds from the sale of land
- > determining contributions other than on the basis of unit entitlement
- > vary the voting rights in non-residential schemes
- > permission for a unit holder to grant a lease or licence over part of the unit (but no authorisation is required in relation to a lease or licence over the whole of a unit).
- > any amendment to the strata plan
- > any amalgamation with another strata plan.

Please note that, a special resolution is required to make alterations or additions to a unit but a unanimous resolution is required if the alterations affect unit or common property boundaries. Any changes to unit or common property boundaries must be ratified in an amendment to the strata plan, and lodged at the Lands Title Office.

Quorum

It is necessary to have at least one half of all unit holders represented at any meeting, in person or by proxy.

If they are not represented, the meeting must be adjourned for at least 7 days, but no more than 14 days, and written notice given to unit holders of another meeting. If less than half of the unit holders are represented at the second meeting, those present are entitled to work as a 'quorum', which means they can legally make decisions, except where special and unanimous resolutions are required, in which case at least two thirds of unit holders must vote.

Voting

Each unit is entitled to one vote. Unit holders may appoint in writing a 'proxy' or someone to vote for them if they will not be present. The proxy does not have to be another unit owner, and can be a tenant, relative or friend.

Otherwise the unit holder may exercise an absentee vote by giving the secretary of the strata corporation written notice of the proposed vote at least six hours before the meeting. Normally, all voters must be paid up members of the corporation, however non-financial members of the corporation can vote for or against a motion requiring a unanimous resolution.

DISPUTES

Disputes often arise when people live close together. In most cases they can be resolved by communication and often a community mediation service can assist to sort out problems. In a strata corporation, disputes can arise between unit holders or between unit holders and the corporation. The strata corporation can intervene where the dispute between neighbours involves a breach of the articles, for example where a unit holder continues to play loud music late at night. The strata corporation may write to the unit holder and point out that there has been a breach of the articles and that, under the Strata Titles Act, the unit holder is bound by the articles. In other disputes the strata corporation may try to intervene to sort out the problem.

If no resolution can easily be worked out, or if a member of the corporation claims that a decision of the strata corporation or management committee is unreasonable, unjust or oppressive, then an application may be made to the Magistrates Court to

decide the matter or to stop the offensive behaviour. The strata corporation may be represented by the strata manager or a lawyer in any proceedings. A unit holder should also be present.

The court may:

- > order a party do something
- > order that a party refrain from any action, or stop doing something
- > order that the articles of association be altered
- > reverse or vary any decision of the corporation or management committee
- > award money as damages or compensation
- > request further information or records.

Any person who fails to comply with an order of the court is guilty of an offence and heavy fines, even a gaol penalty, can be imposed. If the matter is extremely complicated or large amounts of money are involved, the matter may be transferred to a higher court (the District or Supreme Court) for resolution.

If a tenant of a unit uses the unit for an illegal purpose or causes a nuisance or interferes with the reasonable peace, comfort or privacy of occupiers of the other units, then an affected neighbour can apply to the Residential Tenancies Tribunal to terminate the tenancy. Legal advice should be sought in this situation.

COMMUNITY MEDIATION SERVICES

Community mediation services can assist in the settlement of neighbourhood and other community disputes.

Mediation is a voluntary process where trained mediators work with people in conflict to help them to resolve their differences. The role of the mediator is to listen, ask questions and find out the facts, not to blame anyone or take sides. With all the information, the mediator helps people to put together an agreement which is not legally binding, but is made in good faith.

The advantages of mediation as a way to resolve disputes are:

- > it can save on court and solicitor costs for both parties
- > mediation sessions are conducted in private, unlike court proceedings
- > it can contribute to the early resolution of problems, thereby reducing stress and anxiety
- > both parties take responsibility for their role and are given the opportunity to resolve their own disputes.

Mediation services can intervene in disputes at the request of at least one of the parties. If an approach is made to a service, the service can write to invite the other side to come to a mediation session to discuss the problem. Because attendance is voluntary from both sides, any party may withdraw from the resolution process at any time. For further information on how to contact a mediation service, see 'Contact Points' at the back of this booklet.

CANCELLATION OF A STRATA PLAN

There are several ways in which a Strata Plan may be cancelled:

- > by lodging an instrument of cancellation with the Registrar-General
- > by order of the Court
- > by division under Part 19AB of the Real Property Act 1886

On cancellation:

- > the assets and liabilities attach to the former owners
- > the corporation and the articles are dissolved
- > the land vests in the former registered proprietors of the units in shares fixed by reference to unit entitlements of their respective unit. It is suggested that legal advice be sought before taking this step.

GLOSSARY

Common Property: The land or space not within a unit, including structures, pipes, cables, drains etc., not for the exclusive use of the unit.

Strata Corporation: The legal entity which owns and administers the common property.

Ordinary Resolution: A resolution passed by a simple majority of over 50% of voters represented.

Special Resolution: Passed after 14 days written notice of a general meeting and specific notice of the resolution has been given to all unit holders. Voting by a majority of 2/3 of all unit holders, that is, not only those who attend the meeting.

Unanimous resolution: A special resolution passed without a dissenting vote at a meeting.

Unit Entitlement: Relates to value of unit as a proportion of total value of all units. For those strata plans lodged after 1988 the unit entitlement is based on the certificate from a land valuer when the Strata Plan is created. In respect of Strata Plans lodged prior to 1988, the developer determined the unit entitlement.

Unit Subsidiaries: An area marked on the strata plan as being for the exclusive use of a particular unit and is therefore the responsibility of the unit owner.

ARTICLES under the Strata Titles Act 1988, SCHEDULE 3

These may be changed by a special resolution of the corporation.

Articles of Strata Corporation

- (1) A unit holder must—
 - (a) maintain the unit in good repair;
 - (b) carry out any work ordered by a council or other public authority in respect of the unit.
- (2) The occupier of a unit must keep it in a clean and tidy condition.
2. A person bound by these articles—
 - (a) must not obstruct the lawful use of the common property by any person; and (b) must not use the common property in a manner that unreasonably interferes with the use and enjoyment of the common property by the other members of the strata community, their customers, clients or visitors; and (c) must not make, or allow his or her customers, clients or visitors to make, undue noise in or about any unit or the common property; and (d) must not interfere, or allow his or her customers, clients or visitors to interfere, with others in the enjoyment of their rights in relation to units or common property.

3. A person bound by these articles must not use the unit, or permit the unit to be used, for any unlawful purpose.
4. Subject to the Strata Titles Act 1988, a person bound by these articles must not, without the strata corporation's consent, keep any animal in, or in the vicinity of, a unit.
5. A person bound by these articles—
 - (a) must not park a motor vehicle in a parking space allocated for others or on a part of the common property on which parking is not authorised by the strata corporation; and (b) must take reasonable steps to ensure that his or her customers, clients or visitors do not park in parking spaces allocated for others or on parts of the common property on which parking is not authorised by the strata corporation.
6. A person bound by these articles must not, without the consent of the strata corporation—
 - (a) damage or interfere with any lawn, garden, tree, shrub, plant or flower on the common property; or (b) use any portion of the common property for his or her own purposes as a garden.
7. A person bound by these articles must not—
 - (a) bring objects or materials onto the site of a kind that are likely to cause justified offence to the other members of the strata community; or (b) allow refuse to accumulate so as to cause justified offence to others.
8. A person bound by these articles must not, without the consent of the strata corporation, display any sign, advertisement, placard, banner or any other conspicuous material of a similar nature—
 - (a) on part of his or her unit so as to be visible from outside the building; or (b) on any part of the common property.
9. The occupier of a unit may, without the consent of the strata corporation, paint, cover or in any other way decorate the inside of any building forming part of the unit and may, provided that unreasonable damage is not caused to any common property, fix locks, catches, screens, hooks and other similar items to that building.
10. The occupier of a unit used for residential purposes must not, without the consent of the strata corporation, use or store on the unit or on the common property any explosive or other dangerous substance.
11. A person bound by these articles— (a) must maintain within the unit, or on a part of the common property set apart for the purpose by the strata corporation, a receptacle for garbage adequately covered; and (b) must comply with all council by-laws relating to the disposal of garbage.
12. A unit holder must immediately notify the strata corporation of—
 - (a) any change in the ownership of the unit, or any change in the address of an owner; (b) any change in the occupancy of the unit.

COMMON QUESTIONS AND ANSWERS

Corporation Records

I am worried about the corporation's finances. Can I can look at the books and records of the corporation to put my mind at ease?

Yes. The corporation must keep the minutes of meetings for 30 years and accounting records and correspondence for 7 years. As a unit holder you can apply to the secretary or a committee member or the strata manager, and they should arrange for you to see the information you require. Most information is provided free of charge to unit holders but some copying charges may apply.

Approval for structural work

An owner in our block of units wants to put awnings on the outside of the building to shade her kitchen windows from the afternoon sun. Does she need permission from the corporation to do this?

Yes. The decision to alter the external appearance of the units must be taken by the corporation. A special resolution of

the corporation will be required to grant permission for this work (section 29).

Exclusive Use of Common Property

One of the owners in the block was granted "exclusive use" of a large part of the common property by the corporation some years ago. We feel that this is an unfair situation. How can we regain this common property for use by all owners?

If the exclusive use was granted for a set period then a unanimous resolution at a general meeting would be required for it to continue past the agreed date. If the exclusive use is not limited by time, it was an invalid resolution as the Act requires any unanimous resolution allowing a unit holder exclusive use of a part of common property to be for a specified time.

Improvements to Common Property

Some of the unit owners want the corporation to install hand rails on the common stairs. What would be necessary to have the work approved?

As the common stairs are shared by all unit holders they are considered common property. A simple majority vote at a general meeting can approve this addition to the common property. The corporation is responsible for public risk in the common property area and it may be sensible to install these rails.

What Is Common Property?

I have paid for my blocked sewer pipe to be cleared, but the secretary refuses to reimburse me, claiming it was not common property. Who should pay?

The issue of what is and what is not common property can cause many disputes. Generally speaking, the boundary

of a unit is the internal surface of its walls, floors and ceilings, and a unit can also include an area known as a 'unit subsidiary' marked on the strata plan as being for the exclusive use of a particular unit, e.g. a carport or garden area.

Common property comprises any land or space that is not within a unit, and such things as pipes, drains or electrical wiring that are not for the exclusive use of a unit. Clearly the strata corporation has a responsibility to maintain the common property. However, if the corporation carries out work that wholly or substantially benefits a particular unit, or group of units, then responsibility for payment may be placed on those unit owners. In past court cases, 'benefit' has been interpreted as meaning something more than ongoing maintenance. If the pipe serves only your unit it could be argued that the clearing of the pipes should be at your expense. The cause of the blockage may also be relevant to who pays the bill. If it was clearly your fault, e.g. your child's toy blocked the pipe, then you may well have a responsibility to pay for clearing and possibly even repairs. On the other hand, if the blockage was caused by roots from a tree on common property then the corporation is liable.

Salt (Rising) Damp

I own a unit in a group where two of the other units have plaster falling off from rising damp. Why should I pay for damage inside their units?

The building foundations are common property and the corporation is therefore responsible for maintaining the damp course that protects the walls. The corporation has an obligation to make good damage caused by rising damp that can be shown to come from the soil through the foundations.

Fences

The fence around my unit is old and needs to be replaced. Should the corporation pay for a new fence?

As a general rule, fences are common property and therefore the responsibility of the strata corporation. The corporation must maintain the common property to an acceptable standard which may involve replacing or repairing the fence. However, a strata plan could specify that a fence is part of a unit. As well, a fence erected by a unit owner may not be common property. Legal advice should be sought in these situations.

White Ants

I am the owner/occupier of a unit in a block of 12. Recently the corporation has decided to have each unit treated for white ants. I suffer from asthma and I am concerned about pesticides and their effect on my family and the environment. Can the corporation force me to undertake this work?

The corporation has an obligation to administer and maintain the common property for the benefit of all unit holders. This includes protecting the units from white ants as they come from outside the unit boundaries. Any white ant damage to a unit will need to be made good by the corporation. As the proposed work is for the benefit of the entire block of units the corporation would be allowed to treat your unit and recover the cost. Perhaps you could approach the presiding officer with your special reasons for an exemption or suggest an alternative treatment for your unit. If a suitable resolution cannot be reached, it is suggested you approach a mediation service. Finally, if there is still no satisfaction, the Magistrates Court

can make a decision on the matter. It is advisable to obtain legal advice in this situation.

Auctions and Sales

Can I sell my unit at anytime? Can I hold an auction in my unit when I wish to sell it?

Yes. There are no limitations on the sale of a unit by the unit holder, but you will need the corporation's permission to place an auction or sale sign on common property.

Corporation's Address

What is the strata corporation's official address?

The official address of the corporation is that shown on the certificate of title issued for the common property in the name of the strata corporation. A corporation must keep a letter box with its name clearly shown on it for postal deliveries to the site. A post office box can only be used as the address of a corporation in districts where there is no postal delivery service. A document may be served on a strata corporation, its secretary or treasurer by posting or delivering to any of the above at the address of the corporation.

Management Committee Meetings

Can I attend management committee meetings even though I am not on the committee?

You can only attend those meetings with the committee's permission, or if the articles allow your attendance, or a general meeting decides you can attend.

Management Committee Vacancies and Quorums

Recently some members of our management committee resigned and this left the committee without a secretary. What do we do?

The management committee can appoint a person to fill a casual vacancy until a permanent appointment is made at the next general meeting.

How many members are allowed on the Management Committee?

For the last 5 years, our corporation comprising of 20 units has elected at each annual general meeting a presiding officer, secretary, treasurer and 7 other management committee members. This number of people on one committee seems to me to be too many. How many people are there supposed to be?

There is no maximum number for a management committee. A general meeting of the corporation can fix the numbers for a management committee and must elect the presiding officer, secretary and treasurer. If a unit holder thinks the management committee is too large they could raise this at a general meeting.

Attendance by Proxy at meetings

I am a member of the management committee but find it hard to get to every meeting. Can I appoint a proxy (someone to vote for me) for these meetings or at general meetings?

Yes. If a member of the management committee is unable to attend meetings, they can appoint another unit holder as their proxy. At a general meeting a non-unit holder (e.g. a tenant) can vote as a proxy for a unit holder if the unit holder so wishes.

Notice of Meetings

A general meeting of our group has been called but they have given me a notice posted less than 14 days before the date of the meeting. Are the decisions of the meeting legal?

Written notice of the time and place of a general meeting must be given to all unit holders at least 14 days before the date of a meeting. Contact the secretary if you have not received a notice. You could point out that any decision made at the meeting would be invalid as the meeting was not properly called, and any decisions would need to be ratified at a properly convened meeting.

Annual General Meeting

How often should we have an annual general meeting?

The strata corporation must hold the next annual general meeting no more than 15 months after your last meeting. The Act sets out a maximum \$500 penalty if this is not done. An annual general meeting should be held in every calendar year.

Quorum

I live in a block of 8 units. At our annual general meeting only three people turned up. Is this a quorum?

No business may be transacted at a general meeting unless a quorum of at least half the unit owners is represented. In your particular strata corporation, four persons entitled to vote would constitute a quorum. If a quorum is not present, the meeting must be adjourned for at least one week, but not more than 14 days, and written notice given to unit holders of another meeting. Then if after one half an hour of the relevant time less than half of the unit

holders are represented, those present are entitled to work as a quorum.

Books and records

I have recently been elected secretary and treasurer of our corporation. What sort of books and records do I have to keep?

The strata corporation must keep a minute book containing minutes of its meetings. It must keep proper accounting records of expenditure and receipts. The strata corporation must make sure that a proper statement of accounts is prepared for each financial year. It must keep a record of any notice or order served on it. The minute book containing a record of meetings must be kept for 30 years. The accounting records and notices of meetings must be kept for 7 years. Strata managers or agents who are not unit owners but are authorised to receive or hold money on behalf of the corporation have strict controls imposed upon them relating to the keeping of money and trust accounts.

Auditing

Do we have to make sure the corporation books and records are audited?

This depends on whether your strata corporation has appointed a strata manager or agent to receive and hold money on behalf of the corporation. A manager or agent must keep money in a trust account and has a legal obligation to have the trust account audited at regular intervals. The Strata Titles Act does not require a member of the corporation who is the treasurer or holds corporation money to have accounts audited, however the appointment of an auditor is sensible to make sure that a proper statement of accounts has been prepared. This should be balanced against the cost of auditing the accounts.

Rates and other costs

I have bought a unit in a block of three. Do all three owners individually have to pay the water and sewerage rates and the council rates?

Each of the units in your block will be billed separately for council, water and sewerage rates. However unless there are separate water meters for each unit, there is no way to determine which unit is responsible for the water usage. SA Water offer the options of either sending one lump sum bill for water usage every 6 months that the strata corporation can divide as it sees appropriate e.g. by unit entitlement, or dividing the water usage bill by the number of units. Another option is to install private water meters to each unit to determine how the SA Water account should be divided. There are costs associated with the installation and reading of private meters.

What types of ongoing costs are involved if I wish to own a strata unit?

Apart from the usual expenses associated with owning land, (council rates, water and sewerage, gas, electricity etc.), as a member of the strata scheme you will be required to contribute to the costs associated with the running and maintenance of the scheme. These can be split into two categories, those re-current fees, (those that occur on an annual basis) and those for the long term maintenance of the scheme (often referred to as a sinking fund). Inquiries should be made with the strata corporation that administers the scheme to find out these additional costs.

Investing funds and Bank Accounts borrowing money

Our strata corporation is holding funds put in by the unit owners. Where can we

invest these surplus funds? Similarly, if the corporation wanted to borrow money, are there any restrictions?

The Act states that surplus funds should be in prescribed investments. In general terms this means a bank, building society or similar institution which does not expose the funds to great risk. If a strata manager or agent is authorised by the corporation to receive or hold money on the corporation's behalf, that money must be held in a trust account. Under the Strata Titles Act, the strata corporation can borrow money to carry out its functions. The articles can state who is authorised to borrow the money and from which financial institutions.

Bank Accounts

How do we open a new bank account in the name of the corporation?

The bank will require evidence that the account holder is an incorporated body. This could include a copy of the deposited Strata Plan, a copy of the common property title or a copy of the deposit slip. These can all be requested from the Lands Titles Office.

Calling meetings and initiating action

I have advised the secretary of the strata corporation that repairs are needed to my water pipes due to tree root damage, but she has taken no action. What can I do?

If the damage is the responsibility of the strata corporation, and the secretary is not acting when requested, the unit holder could approach any two members of the committee, or if the corporation does not have a management committee, the unit holders of one fifth or more units, and ask them to convene a general meeting. If the situation becomes an emergency, the

unit holder could have the repairs done and bill the strata corporation. If all else fails, the unit holder could take the strata corporation to court, either to force them to take reasonable action, or to recover costs of repairs.

Car Parking

Visitors to other units often park in my space, or on common property, obstructing my access. What can I do to stop this?

Unit occupiers have an obligation under the articles to make sure that their visitors do not park in other unit holder's spaces, or parts of the common property not authorised for parking. The upset unit occupier can complain to the other unit occupier or to the corporation concerning the breach of the articles. If it continues, it is suggested that a community mediation service be approached to try and resolve the problem. As a last resort an application can be made to the Magistrates Court for an order to prevent future breaches. If a court order is not complied with, fines or even gaol sentences can be imposed.

Renting

I am renting out my unit. Do I have to tell the strata corporation? What rights do the tenants have in relation to the strata corporation? Can they attend and vote at meetings? What happens if my tenants cause problems for other unit occupiers?

The unit holder must immediately notify the strata corporation of any change in the occupancy of the unit. Tenants do not have any voting rights in relation to the unit, however if you wish, tenants may attend general meetings and vote as your proxy. You have an obligation to ensure your tenants abide by the articles of the strata

corporation. It should be noted that it is not possible for a strata corporation to restrict your rights to rent your unit or to specify to whom the unit can be rented. If your tenant causes the unit to be used for an illegal purpose, or interferes with the peace, privacy or comfort of other residents, the affected residents could approach the Residential Tenancies Tribunal for an order that your tenants be evicted.

Negligence and Insurance

A tree on common property overhangs the street and drops berries. I am worried that a member of the public might suffer injury. Are we responsible?

If a member of the public, or a unit holder, suffers injury as a result of the negligence of the strata corporation, then the strata corporation may be liable. This may include the strata corporation's negligence in not pruning or maintaining trees in a safe manner. All strata corporations must hold public liability insurance to the value of 10 million dollars to cover these risks.

Does the corporation's insurance cover a burst hot water service?

An insurance policy does not normally cover wear and tear. Unit owners and the corporation have a duty to maintain their equipment. However the building damage caused by a leaking hot water service may be covered.

Painting and Gutters

Can the corporation oblige unit owners to clean the gutters on their unit?

Gutters and roofs are common property. There is no reason why unit owners could not agree to clean their own gutters to reduce maintenance costs but there is no

legal obligation to do so. If a unit owner does not or cannot clean their gutters the corporation remains liable for repairs. A thorough clean before winter is good preventative maintenance.

Can owners decide to save maintenance costs by painting the outside of their own units?

The corporation could agree to this arrangement but it carries some risks in that the end result could be poor or inconsistent. The corporation is liable for fixing the external paintwork on a poorly painted unit.

Voting

Our strata manager has sent the owners a postal form to vote on which painting quote to accept. Is the result binding on all owners?

No. The Act only provides for decisions to be made by a general or committee meeting.

Community Titles

The *Community Titles Act 1996* regulates the development and administration of community titles. There are two types of community titles available depending on the nature of the scheme:

- > Community Schemes
- > Community Strata Schemes

Regardless of the type of community title, both divide land to create lots and common property in a similar manner to strata titles. Each plan must divide the land to create at least two community lots and common property.

Unlike a strata title, a scheme may include a development lot, retained by the developer, for later division into further lots within the scheme.

Community Schemes

In a community scheme lot boundaries generally do not relate to a structure, but are determined by surveyed land measurements and are unlimited in height and depth, unless otherwise specified on the plan. Unlike a strata scheme the owner is therefore responsible for the maintenance and insurance of any structures on that lot, and has no obligation for maintenance of other lot owner’s buildings.

Community Strata Schemes

In a community strata scheme the lot boundaries must be defined by reference to parts of the building, similar to a strata title. There must be at least one lot that exists above another unless the scheme was previously a strata scheme under the *Strata Titles Act* and has converted by resolution, to adopt the *Community Titles Act*. The structure itself is common property and it is therefore the responsibility of the corporation to maintain and insure it.

Future Development of the Community Parcel

The *Community Titles Act* allows for the future development of a scheme in two ways:

(a) Staging

Staging involves the inclusion of a development lot that is to be divided at a later time to create extra lots within that scheme.

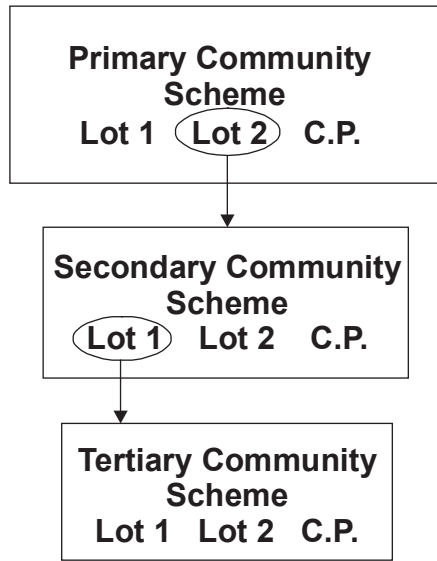
An example of a staged development

lot 1	lot 2	common property	development lot 5 (for future development)
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The completed community scheme

lot 1	lot 2	common property	lot 3	lot 4
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(b) Tiering



Tiering allows a lot in a community or community strata scheme to be further divided to create a subservient scheme and managerial structures. It allows for the management of large or mixed land use developments. For example, a lot in a primary scheme can be divided by a secondary scheme to create lots and common property and a community corporation at a secondary level. A lot in a secondary scheme can further be divided by a tertiary scheme to create lots and common property and a community corporation at a tertiary level.

Documents Associated with a Community Scheme

Prospective purchasers of a lot in a community scheme should be aware of three documents that must or may be associated with these developments:

- > Scheme Description
- > By-laws
- > Development Contract

It is also important to note the level of the scheme you are buying into. The Scheme Description, By-laws and Development Contract of any scheme above, also apply to that scheme.

The Scheme Description

This is an optional document for schemes that contain six lots or less that are used predominantly for residential purposes. It gives the prospective purchaser an overall view of how the scheme is to be developed and the end result.

This document must be lodged for commercial schemes, irrespective of the number of lots, or if the plan contains a development lot, or if the common property or a lot within the scheme is to be developed in a specific way.

The By-laws

This is a compulsory document for all schemes. It sets out the obligations of the corporation in administering the scheme and the rules by which the scheme is to be run. If it is desired that the by-laws be varied, the variation must be lodged with the Land Titles Office within 14 days of passing the resolution to vary the by-laws. Unlike a strata corporation, a community corporation can impose a penalty of up to

\$500 for breaches of a by-law which must be paid to the community corporation. These fines may be imposed on members of the community corporation or any other person, including visitors or outsiders.

The Development Contract

This is a contract entered into by the developer and is a binding obligation on the developer to complete the scheme in accordance with the scheme description.

Community Corporation

The *Community Titles Act* establishes a community corporation to administer the by-laws and manage the common land and any fixtures erected on it. Owners of community lots automatically have membership of the corporation. Primary, secondary or tertiary corporations can be created allowing up to three levels of management. This is referred to in the Act as 'tiered' management. Corporations in the lower tiers will be members of the corporation of the tier above. Most residential schemes, consisting only of a number of residential lots, will be a primary community corporation and have only one level of management. Complex schemes involving residential, commercial and even recreational uses should form secondary or tertiary community corporations. For example, a development with a large retail section and fifteen smaller residential lots would most likely have one primary corporation covering the entire development and two secondary corporations, one for the residential lots and one for the retail lots.

A tiered management structure also may be set up where there is a large number of lots in a community parcel, even if each of the lots is used for the same purpose.

Each level of the scheme has its own common property, which its corporation will manage. Schemes of more than one level can be complex and prospective purchasers should seek independent legal advice before buying into a scheme of this nature.

Common Property

The common property consists of those parts of the community parcel that do not comprise or form part of a lot, and includes the service infrastructure not for the exclusive use of a lot. Common property is managed by the community corporation and unlike strata titles, can be used, subject to planning approval, for commercial ventures such as a public golf course or retail centre. Any profits are returned to the community corporation, and must be paid into the administrative or sinking funds. Surplus profits may even be distributed to owners of the lots in proportion to lot entitlement (subject to a special resolution). As there can be losses as well as profits, any commercial venture should be based on detailed financial and legal advice.

Service Infrastructure

Service infrastructure is the cables, wires and pipes that provide services to lot owners and the common property. The service infrastructure is shown, as far as it is practical to do so, on the plan of community division through the common property and on a lot where it services more than the one lot. Service infrastructure that serves more than one lot is the responsibility of the corporation to maintain. Service infrastructure that only serves one lot is the responsibility of that lot owner to maintain.

Maintenance, Repairs & Finances

Owners of a 'lot' are responsible for the maintenance, repairs and insurance of their own property. However, if they do not fulfill their responsibilities of maintenance and repair, the community corporation may have the work done and the cost of the work will be a debt owed by the owner or owners to the corporation.

Owners in a community scheme also have a duty to insure any part of their property such as a wall, which provides support and shelter to a building or other structure on another lot or on the common property. The community corporation is responsible for the common property and must comply with rules relating to auditing and investments and is required to keep an administrative and a sinking fund. A two lot scheme may be exempt from such requirements through its by-laws.

Building Insurance

As with strata titles, it is the responsibility of the community corporation to insure the common property. In a Community Scheme, buildings within a lot are not common property and are the responsibility of the lot owners. As a general rule, buildings in a Community Strata Scheme are common property (unless otherwise defined on the plan) and should be insured by the Corporation.

By-laws (Rules)

Unlike the Strata Titles Act, the Community Titles Act does not include a standard set of by-laws. The Community Titles Act requires developers of community schemes to draft individual by-laws which reflect the nature of the particular scheme. While the

Act contains some controls that cannot be changed, generally corporations are free to amend their by-laws, to regulate the use and enjoyment of common property, prescribe uses for lots, or set design standards for lots. However, the by-laws must not be inconsistent with the scheme description (if any) of the scheme or, if there are higher levels above the scheme, the by-laws or scheme description of those schemes. A corporation can impose a penalty of up to \$500 for breaches of a by-law, which must be paid to the community corporation. These fines may be imposed on members of the community corporation or any other person, including visitors or outsiders.

Buying into a Community Title

All prospective purchasers of any community scheme should be given a copy of the 'by-laws' (rules) applicable to the scheme. Prospective purchasers should also enquire if a scheme description or development contract exists for the scheme. A scheme description sets out what, if any, future development may be undertaken by the developer or community lot owners. Schemes with no more than six community lots (none of which are used for non-residential purposes) are not required to have a scheme description. The development contract binds the developer to complete the scheme as set out in the contract. They must also define the plans for continuing development of the project so that any prospective purchasers will know what they are entering. The Community Titles Act also provides restrictions on the voting power of developers who are members of a community corporation by also being the owners of community lots. This is designed to prevent developers changing scheme

descriptions and development contracts.

Tiered Management Structures

The Community Titles Act provides that a Community Lot or Community Strata Lot may be divided into further Community or Community Strata Schemes. The first community plan lodged over an allotment is a Primary Plan of Community Division and creates Primary Lots, Primary Common Property and a Primary Community Corporation. A community plan lodged over a Primary Lot is a Secondary Plan of Community Division and creates Secondary Lots, Secondary Common Property and a Secondary Community Corporation. The Secondary Corporation is subservient to the Primary Corporation and has membership in it by virtue of its ownership of the Primary Lot from which it is formed.

A community plan lodged over a Secondary Lot is a Tertiary Plan of Community Division and creates Tertiary Lots, Tertiary Common Property and a Tertiary Community Corporation. The Tertiary Corporation is subservient to the Primary and Secondary Corporations and has membership in the Secondary Corporation by virtue of its ownership of the Secondary Lot from which it is formed.

Meetings and Voting

The provisions relating to meetings and resolutions work in a similar fashion to those relating to strata titles. A community corporation must have a presiding officer, treasurer and secretary and general meetings must be held at least once in a calendar year. Ordinary, special and unanimous resolutions are required for different motions at meetings.

The members of the community corporation are the owners of the community lots. Lot owners generally have one vote however if the scheme is for commercial purposes this may be varied within the by-laws. Owners of development lots are not members of the corporation unless they also own community lots.

The Act limits the voting power of the developer of community schemes. The developer is the person who was the registered proprietor of the land, which now comprises the community parcel, immediately before the lodgment of the plan of community division. The number of votes cast by the developer may not exceed the total of votes cast by other community corporation members.

A community corporation may establish a management committee to carry out the functions and perform the duties of the corporation within the limits of the committee's powers. A community corporation also may delegate some of its functions to a person outside the corporation (such as a strata manager) to assist in the running of the corporation.

COMMON QUESTIONS AND ANSWERS

Restrictive Rules

The rules of my apartment complex are very restrictive. I can't hang washing on my balcony or have a barbeque. What can I do about it?

The by-laws (rules) that govern a scheme can be amended by a special resolution passed at a properly convened meeting of the corporation. A copy of the by-laws as amended must be lodged with the Registrar-General within 14 days of the

passing of the resolution. By-laws that are inconsistent with the scheme description (if any) are invalid. Therefore a consequential amendment to the scheme description (if any) may also need to be made. If the scheme is a secondary or tertiary scheme the by-laws and scheme description of the schemes above may also need to be amended. In some situations, it may be possible to negotiate a resolution and mediation may also be helpful.

Fines

A visitor to my apartment received a letter from the corporation stating she could be fined \$500 for unauthorised parking. Is this legal?

A corporation can impose fines of up to \$500 for breaches of its by-laws. These by-laws apply to owners, residents and visitors. A fine against a visitor could not be enforced without a court order.

Administrative Requirements

We are members of a small group of units. Do we have to comply with all the administrative requirements of a community scheme, such as annual general meetings and an administrative and sinking fund?

The Community Titles Act requires all schemes to comply with administrative requirements, unless, in the case of small schemes, the by-laws of the scheme exempt them from some or all of those requirements.

A small scheme consisting of two lots may exempt themselves from the requirements to: hold annual general meetings (except the first general meeting) prepare accounting records of the corporation's receipts and expenditure and to prepare

an annual statement of accounts have the annual statement of accounts audited establish administrative and sinking funds and maintain a register of the names of the owners of the community lots. A three lot scheme may only exempt themselves from the requirement to maintain a register of names of the owners of the community lots.

Rules

What rules am I bound by owning a Community Title?

By-laws contain the rules by which the scheme is to be run and bind all of the owners/occupiers and visitors to the scheme. By-laws are written exclusively for the particular scheme it relates to. If the community scheme is a secondary or tertiary scheme it is bound by not only the by-laws written for that scheme but also the by-laws of the scheme or schemes above.

Buying a Community Title

What do I need to be aware of if I wish to purchase a lot in a Community Plan?

There are various things that must be considered. They include:

- > The type of scheme - is it a community scheme or a community strata scheme? This will indicate what a lot owner owns.
- > The by-laws, and if applicable, scheme description and development contract(s) for the scheme.
- > The level of the scheme. Is it a primary, secondary or tertiary scheme? If a secondary or tertiary scheme have I seen the plans, development contract(s) (if any), by-laws and scheme description of the scheme or schemes above?
- > What constitutes the common property?
- > What must I contribute to the upkeep, maintenance and management of the common area in the scheme? In the case of a secondary or tertiary scheme this will also include contributions that the scheme is required to make to the scheme(s) above.
- > If the scheme is for two or three lots whether certain requirements of the Act have been exempted such as the requirement to hold annual general meetings.
- > The statement of accounts and financial records of the corporation, and those of any scheme above.
- > Insurance
 - Is the corporation insured for public liability for at least ten million dollars?
 - Is the common property sufficiently insured?
 - In the case of a shared wall, does the adjoining owner have a current policy?
- > What are the assets and liabilities of the corporation?

Disputes

What is the process to resolve a dispute where the Corporation and a lot owner(s) do not agree?

A community mediation service can assist to resolve disputes between the Corporation and a lot owner.

If no resolution can be worked out then the Corporation or the lot owner can make an application to the Magistrates Court to decide the matter.

STRATA OR COMMUNITY TITLE?

A strata scheme and a community strata scheme are similar as the boundaries are defined by reference to structural divisions in a building whereas in a community scheme lot boundaries are determined by surveyed land measurements and generally do not relate to a structure. The Community Titles Act allows for the division of land to be completed in stages and for the creation of subservient plans. Certain requirements in the Act can be exempted for small schemes, such as the holding of annual general meetings (except the first general meeting).

The *Community Titles Act* does not affect existing strata corporations. However, since 1 January 2002 no new strata schemes are allowed under the *Strata Titles Act*. Community titles are created instead.

Existing strata corporations are encouraged to agree, by an ordinary resolution of the strata corporation, to become a 'community strata scheme' which means the corporation will be covered by the *Community Titles Act* and not the *Strata Titles Act*. The resolution does not take effect until a copy of the resolution is lodged with the Registrar-General and filed with the Strata Plan. The resolution will not change the boundaries of the units or the common property. If it is desired that the boundaries be changed, an amendment to the plan and the appropriate application must be lodged at the Land Titles Office. The articles that existed under the Strata Titles Act continue as its by-laws and these may be amended if required.

COMMON QUESTIONS AND ANSWERS

Converting to community title

Our strata manager has suggested that we adopt the Community Titles Act. What is involved in converting and would we be better off?

To convert to a community strata plan the strata corporation must resolve, by ordinary resolution at a properly convened meeting of the corporation, that the Community Titles Act and not the Strata Titles Act will apply to the scheme. The resolution will not take effect until a copy of the resolution is lodged with the Registrar-General and filed with the Strata Plan.

The question of whether a corporation would be better off is a complex one and dependent on factors such as:

- > the number of units involved
- > the expectations of the unit owners
- > the purpose the land is to be used for
- > whether the common property is to be used for commercial gain
- > whether there are units existing above other units
- > whether the units are physically separate.

It is suggested that legal advice should be sought before that step is taken, as the Strata Titles Act will no longer apply.

A full conversion to define the lots by measurements would result in the members owning the entire structure on their lot. This would require:

- > unanimous agreement of unit owners

- > new survey of the site and all building boundaries
- > an amendment to the plan
- > agreement of local and state authorities.

It pays to obtain a quote from a surveyor, a valuer and a conveyancer. It may be worthwhile converting if the value of each unit increases significantly upon conversion to a lot.

Our strata corporation has lodged a Lodgment of Resolution to adopt the Community Titles Act, does this mean we can now insure our unit separately?

No. A full conversion to community title must be done.

I live in a company title, is it the same as a community title?

A company title is where the property is owned by a company and each shareholder is entitled to occupy a particular unit. Strictly speaking, a shareholder does not own the property, but owns shares in the company that owns the property. The shares give an entitlement to occupy a unit. Such schemes can be more expensive and complex to administer and prospective buyers may find it difficult to obtain finance to buy shares in a company title. Depending on the structure of the building, it may be possible to convert to a community title.

GLOSSARY

Common Property: Those parts of a community parcel that do not comprise or form part of a lot including service infrastructure not for the exclusive use of a lot. Refer to Section 28 of the Community Titles Act for the full definition of common property.

Community Corporation: The mechanism by which the owners of the community lots participate in the administration of the community parcel. The owners of the community lots are the members of the Community Corporation.

Ordinary Resolution: A resolution passed by a simple majority of over 50% of voters represented.

Special Resolution: Passed after 14 days written notice of a general meeting and specific notice of the resolution has been given to all lot owners. The number of votes against the resolution must be no more than 25 per cent of the number of all the lot owners. Unit holders in schemes with only three lots should refer to Section 88 of the Community Titles Act.

Unanimous resolution: A special resolution passed without a dissenting vote at a meeting.

Lot Entitlement: Relates to value of a lot as a proportion of total value of all lots. Based on certificate from land valuer on the unimproved value of the lot when the Community Plan is created. Lot entitlements determine the shares in which lot owners make monetary contributions to the Community Corporation.

Development Lot: A lot that is to be divided at a later time to create extra lots within that scheme. The *Community Titles Act* requires a scheme description and a development contract to be lodged where a development lot exists on a community plan.

Primary Scheme: A scheme of community division in which an allotment is divided into common property and at least two community lots.

Secondary Scheme: A scheme of community division in which a primary lot is divided into common property and at least two secondary lots.

Tertiary Scheme: A scheme of community division in which a secondary lot is divided into common property and at least two tertiary lots.

CONTACT POINTS

You can access the *Strata Titles Act 1988* and the *Community Titles Act 1996* through the South Australian Legislation website <http://www.legislation.sa.gov.au>

LEGAL SERVICES COMMISSION

www.lsc.sa.gov.au
Legal Help Line 1300 366 424
(TTY 8463 3691)

Adelaide Office

82-98 Wakefield Street
Adelaide 5000
Telephone 8463 3555

Elizabeth Office

Windsor Building
Elizabeth Shopping Centre
Elizabeth 5112
Telephone 8207 9292

Holden Hill

Tenancy 7, 560 North East Road
Holden Hill 5088
Telephone 8369 1044

Mt Barker Office

18 Walker Street
Mt Barker 5251
Telephone 8226 8722

Noarlunga Office

Noarlunga House
Colonnades Shopping Centre
Noarlunga Centre 5168
Telephone 8207 3877

Port Adelaide

306 St Vincent Street
Port Adelaide 5015
Telephone 8207 6276

Port Augusta Office

13 Flinders Terrace
Port Augusta SA 5700
Telephone 8648 5180

Whyalla Office

1st Floor RAA House
25 Forsyth Street Whyalla 5600
Telephone 8648 8060

COMMUNITY MEDIATION CENTRES

For an appointment telephone 8384 5222
(metropolitan areas)
Western Region 8243 5521
City and Eastern Region 8202 5874
Northern Region 8281 6911

LAND SERVICES GROUP

Lands Titles Office
101 Grenfell Street
Adelaide 5000
Telephone 8226 3983
www.landservices.sa.gov.au
lsg.feedback@saugov.sa.gov.au

COMMUNITY LEGAL CENTRES

Central Community Legal Service

Shop 2, 59 Main North Road
Medindie Gardens 5081
Telephone 8342 1800

Northern CLS

26 John Street
Salisbury 5108
Telephone 8281 6911

Riverland CLS

8 Wilson Street
Berri 5343
Telephone 8582 2255

Southern CLS

40 Beach Road
Christies Beach 5168
Telephone 8384 5222

South East CLS

9 Penola Road
Mount Gambier 5290
Telephone 8723 6236

Westside Community Lawyers Inc.

Parks Community Centre

Trafford Street
Angle Park 5010
Telephone 8243 5521

Port Pirie Office

60 Florence Street
Port Pirie 5540
Telephone 1800 114 442

Women's Legal Service

19 Market Street
Adelaide 5000
Telephone 8221 5553 (Advice)
8231 8929 (Admin)
Rural Women's Outreach Program
Telephone 8641 3356 (Port Augusta)