

Guide to resolving community titles disputes

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Practical guide to resolving community titles disputes

The State Administrative Tribunal (SAT) is the one-stop-shop for most community titles disputes in Western Australia.

While SAT has the statutory powers to efficiently resolve community titles disputes, parties are encouraged to attempt to resolve disputes between themselves in the first instance.

This guide provides you with a step-by-step process to help you navigate through issues that may arise in community titles schemes, and attempts to reach a resolution before having to progress the matter to SAT. The below process is particularly useful for attempting

to resolve disputes that may arise between different owners or occupiers within a community titles scheme, as well as between owners or occupiers from different community titles schemes within the one community scheme.

This guide is not a substitute for obtaining legal advice.

For an overview of community titles please refer to Landgate's **Guide to Community Titles**.

It is recommended that you read Section 1, 'Understanding Community Schemes' in the **Guide to Community Titles** to familiarise yourself with the key concepts and terminology.



Steps to help you resolve a community titles dispute

STEP 1

UNDERSTAND THE ISSUE

- Compile and check your facts to help you understand the dispute.
- Check the *Community Titles Act 2018* (the Act), your scheme's by-laws, and the scheme by-laws of the community titles schemes that your scheme belongs to. You may also need to refer to the scheme plan for your scheme and other schemes in the community scheme and the schedule of unit entitlements. This will help you to gain a clear understanding on what they might say about the matter in dispute.

STEP 2

TALK TO THE OTHER PARTY

- Talk to the other party/parties involved about the issue.
- Check to see whether your community titles scheme, or the community titles scheme that your scheme belongs to (if applicable) has an internal dispute resolution process set out in the by-laws.

STEP 3

APPROACH THE COMMUNITY CORPORATION

- Raise the issue with the community corporation. You may wish to submit a written request for the matter to be put on the agenda for consideration at the next council meeting or general meeting.
- The community corporation may need to raise the issue with the community corporation(s) of any other community titles schemes that other parties to the dispute belong to.
- Many issues can be considered and decided upon by the council or resolution of the community corporation(s) involved.

STEP 4

ALTERNATIVE DISPUTE RESOLUTION – MEDIATION

- If the dispute remains unresolved, consider alternative dispute resolution methods such as mediation.
- This may involve mediation directly between the council of owners/community corporation for different community titles schemes within the community scheme, or directly between the individual parties involved in the dispute.

STEP 5

THE STATE ADMINISTRATIVE TRIBUNAL

- If the dispute remains unresolved, apply to the State Administrative Tribunal (SAT) for a determination.
- Check the Act to see who can make an application to SAT and that the dispute is one that SAT can resolve.
- Keep in mind that for some matters, only the community corporation for the community titles scheme can bring the application before SAT on behalf of the scheme.

STEP 1

Understand the issue

It is important that you first understand the nature of your dispute before approaching the other party involved or the community corporation.

To help you check your facts and consider exactly how the dispute arose, it is recommended that you ask yourself, “how did the dispute arise?” and “who are the parties to the dispute?”

- Write a list of the events leading up to the dispute and highlight the key points, including details of the issues you would like resolved.
- Check the Act, your scheme’s by-laws, and the by-laws of any community titles scheme that your scheme belongs to. You might also need to refer to other scheme documents such as the scheme plan for your scheme, the scheme plans of other schemes in the community scheme, or the schedule of unit entitlement for your scheme or any scheme you belong to. This will assist you in gaining a clear understanding on what they might say about the matter in dispute.
- See if Landgate’s **Guide to Community Titles** has information that will assist you.

If you do not have a copy of the by-laws or other scheme documents for your community titles scheme, or any scheme you belong to, (you should have received copies from the seller when buying into the scheme) you can obtain up to date copies on application to Landgate. Alternatively, you can make written requests for copies of these documents to your community corporation and the community corporations of schemes to which your scheme belongs, paying any relevant fee.

Landgate’s contact details are set out below:

Tel: +61 (0)8 9273 7373

Regional Australia: 1300 365 288

Email: customerservice@landgate.wa.gov.au

Website: www.landgate.wa.gov.au

STEP 2

Talk to the other party

In most cases it is likely that disputes will arise due to misunderstandings. By talking to the other party involved, it may help to clarify the issue and resolve the dispute before it needs to be progressed further. If you don’t feel comfortable directly approaching the other party, consider bringing a support person with you such as a family member or friend, or expressing your concerns in writing.

Some points to remember when dealing with the other party include:

- Remain calm, polite and professional in your spoken or written communications. Avoid using abusive or emotional language or laying blame.

- Carefully plan out what you are going to say so that you can present your concerns as clearly as possible.
- Try to remain objective and understand the other party’s position.

Community titles schemes may also have their own internal processes for resolving disputes. If you do have internal processes for resolving disputes within your scheme they will most likely be set out in your scheme’s by-laws. Remember, if your community titles scheme belongs to another community titles scheme in the community scheme, you are also required to abide by those by-laws.

STEP 3

Approach the community corporation

Many issues can be considered and decided upon by a decision of the council of the community corporation or a resolution of the community corporation.

If you want the issue to be formally considered and decided upon, you can submit a written request to the council, for the matter to be listed on the agenda for consideration at the next council meeting or general meeting of the community corporation.

If the other party to the dispute is a member of another community titles scheme, within the community scheme that your scheme belongs to, then you can request your scheme's community corporation or council seek to resolve the issue with the community corporation or council for the scheme to which the other party belongs.

In approaching the community corporation for your scheme to help resolve the dispute the community corporation should have regard to its duty to cooperate with other schemes in the community scheme. The Act also requires a community corporation to have the objective of implementing processes and achieving outcomes, having regard to the use and enjoyment of lots and common property in the community scheme that are not unfairly prejudicial to or discriminatory against a person, or oppressive or unreasonable.

If the dispute concerns a breach of scheme by-laws refer to Landgate's **Guide to Community Titles** which sets out information about the enforcement of scheme by-laws.

STEP 4

Consider alternative dispute resolution methods

If you have not been able to resolve the issue by talking to the other party involved, or through raising the issue with your community titles scheme's community corporation/council, you might wish to consider alternative dispute resolution methods.

Mediation is commonly considered to be a useful method to resolve scheme disputes. It is an informal negotiation process whereby an unbiased and

independent third party (the mediator) assists those involved in the dispute to achieve their own settlement.

If you need assistance with accessing a mediation service in WA, the Citizens Advice Bureau of WA may be able to provide information. Their contact details are:

Tel: +61 (0)8 9221 5711 | Website: cabwa.com.au

STEP 5

The State Administrative Tribunal

Where attempts to resolve the dispute informally have been unsuccessful, a formal process for dispute resolution is available via the State Administrative Tribunal (SAT).

You will need to check the Act to determine who is permitted to make an application to SAT for the matter – i.e. whether you can personally apply to SAT, or whether the community corporation for your community

titles scheme will need to make the application.

SAT is an independent body that makes and reviews a range of administrative decisions. SAT's approach is informal, flexible and transparent. It is not a court, and strict rules of evidence do not apply to proceedings.

For information on the resolution of community titles disputes by SAT, refer to Landgate's **Guide to Community Titles**.

Examples of community title disputes

The below table sets out examples of some issues that may occur within community schemes, and practical steps to help you reach a resolution if they do.

Disclaimer: The table below serves as a guide only and does not constitute legal advice.

Example 1

My scheme manager has not responded to any of my requests for information. Dissatisfied with your scheme manager, believing that they are not fulfilling functions they are meant to, you want to escalate the issue to get hold of the records requested and feel the scheme manager should be replaced.



Understand the issue

Check and compile your facts to understand what the scheme manager has or hasn't done and what they are able to do. It is important to have clarity on the following:

- 1) Does the information you are requesting relate to your community titles scheme or another scheme? Keep in mind that even if your scheme manager is also the scheme manager for one of the other community titles schemes, they may not have access, or be authorised, to share the information you request.
- 2) What is written in the scheme management contract? The scheme manager is engaged by the community corporation for your scheme and can only perform functions the community corporation authorises them to perform under a scheme management contract. Is responding to owner requests for information about the scheme a function that the scheme manager is required to perform under the scheme management contract?
- 3) The community corporation is required to keep the scheme management contract. You can make a written request to the community corporation to inspect the scheme management contract and/or obtain a copy of the contract on payment of the relevant fees.
- 4) If providing access to community corporation information and/or providing copies of this information is within the scheme manager's functions, you can make a request in writing to the scheme manager, specifying the information you seek, and pay any relevant fee.



Talk to the other party

If the information you seek is required to be kept by the community corporation, you have made your request in writing and paid the relevant fees and the information is still not forthcoming, speak to the scheme manager to see if the manager is having a problem in locating the requested information. There could be practical difficulties in accessing the information, for example if the community corporation has been lax in complying with its record keeping obligations. The information you seek may not exist or form part of community corporation records.

If the scheme manager continues to fail to respond to your request, you can inform the scheme manager that you're going to raise the matter directly with the council of your community corporation for it to consider taking action against the scheme manager under the scheme management contract.

Example 1 - Cont.



Approach the community corporation

The community corporation/council that engaged the scheme manager is ultimately responsible for deciding if any action is required to be taken in response to the scheme manager's actions or inactions. Under some circumstances it is possible for the community corporation to terminate the scheme management contract - for example, if the scheme manager has been dishonest or has breached the Act or scheme management contract.

As a lot owner in the community titles scheme, raise with the council for your community corporation/council your request for information, the facts you have compiled, and any response or lack of response from the scheme manager. Ask that the request for information and next steps with the scheme manager are considered at the next council meeting.

Note that there are two issues to be resolved: why the information is not forthcoming and the conduct of the scheme manager.



Consider alternative dispute resolution methods

The council of the community corporation may choose to seek mediation to resolve the issue with the scheme manager or propose to terminate the scheme management contract if it does not get a satisfactory response from the scheme manager.

Refer to section 125 of the Act to see the full process for terminating the contract.



The State Administrative Tribunal

If the community corporation chooses to terminate the scheme management contract the scheme manager has the right to apply to SAT for a review of the decision to terminate the contract.

Example 2

You have become aware that the community corporation is planning to spend money which is outside the approved budget. You want to stop this from happening.



Understand the issue

Check the Act to understand what the duties of the community corporation/ council are concerning expenditure. The following questions may help you to compile your facts:

- 1) Has the community corporation passed a special resolution setting the amount it can spend per lot or tier parcel outside the approved budget? If yes, is the amount of the proposed spend within this aggregate limit?
- 2) If there is no special resolution in place for expenditure exceeding the approved budget, the amount of spend outside the authorised budget is set out in the *Community Titles Regulations 2021* (Regulations), currently \$500 per lot and tier parcel. Is the amount of proposed spend within the aggregate limit for your scheme under the Regulations?
- 3) Is the proposed spend the subject of a budget variation proposal for consideration at an extraordinary general meeting (EGM)? If yes, does the expenditure relate to an improvement or alteration to the common property in your scheme (other than sustainability infrastructure)? If yes, have you received the information required to be provided to you under the Act and is the proposed expenditure the subject of a special resolution?
- 4) Is the proposed spend your scheme's contribution to expenditure outside the authorised budget of a scheme to which your scheme belongs?
- 5) If the expenditure goes ahead will your contribution be based on the unit entitlement for your lot or some other method specified in the scheme by-laws? You can check your scheme's by-laws to determine if a method of apportionment has been provided for that is not based on unit entitlement.
- 6) Is the expenditure required by a court or tribunal, or by a notice or order given under a written law?
- 7) Does the community corporation for your scheme have sufficient funds to pay the amount without seeking a further contribution from you?
- 8) What are your concerns with the proposed expenditure?
- 9) Have you canvassed the views of other members in your scheme?



Talk to the other party

Approach the council for your scheme to raise your concerns and outline your understanding of the facts.

Request that the expenditure not go ahead. This may be because:

- 1) Of a personal contribution that you will be called upon to make if the payment proceeds,

Example 2 - Cont.



Talk to the other party Cont.

- 2) The community corporation for your scheme or the scheme to which your scheme belongs has not satisfied requirements under the Act to make the payment,
- 3) The payment is outside of the community corporation's current authority,
- 4) You are seeking that the members approve the expenditure at an EGM convened for the purpose even it is within the community corporation's power to spend the money.

Remember that the council may decline to convene the EGM unless a written request is made by members holding 25% or more of the aggregate unit entitlements in the scheme. If the council does not convene the EGM on the written request of members (including you) holding 25% or more of the aggregate unit entitlements, then you can take steps to convene the EGM within three months after the date of the request.



Approach the community corporation

If successful in convening an EGM you will need to consider what resolution to put to the members, whether a special resolution is required or not and if arrangements can be made in respect of contributions (for example payment by instalments).

If unsuccessful in convening an EGM consider if the matter can be delayed to the next annual general meeting of the community corporation for your scheme.



Consider alternative dispute resolution methods

If the council of the community corporation refuses to convene an EGM and you have insufficient member support to make the written request to the council to convene the EGM; your next course of action may be to seek mediation between yourself and the council.



The State Administrative Tribunal

If the issue remains unresolved the community corporation for your scheme may wish to apply to SAT for an order requiring the tier 1 community corporation to take specified action to repair the tier 1 common property.

Example 3

A pothole developed in the driveway a couple of months ago and it is getting larger. You raised the issue with the scheme manager for your scheme by email but there has been no action to repair the hole. As well as being unsightly, it is a growing safety concern amongst some of the residents. How do you get it repaired?



Understand the issue

The first thing to do is establish if the driveway is the responsibility of a community corporation in the community scheme or a public road maintained by the local government or Main Roads. If the former, the next step is to identify if the driveway is part of your community titles scheme, a scheme to which your scheme belongs, a scheme that belongs to your scheme or a scheme that is not related to your scheme. You can establish this by looking at relevant scheme plans for the community scheme. These are available at Landgate.

For the purposes of this example, it is established that the driveway is a private road and tier 1 common property on the scheme plan of the tier 1 scheme. The tier 1 corporation is responsible for its maintenance and repair.



Talk to the other party

There are a couple of approaches that can be taken to resolve the issue. As a lot owner in a tier 2 scheme in the community scheme you can:

- 1) Raise the issue with your scheme manager again – check that they have authority under the scheme management contract with your scheme to deal with issues on your scheme's behalf that involve other schemes in the community scheme. Ask them to contact the scheme manager for the tier 1 scheme or council of the tier 1 scheme about repairing the hole and follow up for a response.

Your scheme manager promptly chases up the tier 1 scheme manager who confirms that the driveway is on the 10-year plan, set for maintenance in 18 months' time. But there does not seem to be urgency to fix the pothole before this time or to bring the scheduled maintenance forward.

- 2) Raise the issue through the council of your community corporation. Subject to the scheme by-laws of the tier 1 corporation, your community corporation may be a member of the council of the tier 1 corporation and able to raise the matter directly at the next council meeting of the tier 1 corporation, subject to whatever procedures have been adopted by the council of the tier 1 corporation. If the community corporation for your scheme is not a council member, as a member of the tier 1 corporation it can make a request in writing to the tier 1 corporation for the matter to be considered by the council for the tier 1 corporation at its next meeting or by the members at the next general meeting of the tier 1 corporation.

If you persuade your community corporation of the urgency of the issue, it can make a written request to the council of the tier 1 corporation to convene an extraordinary general meeting (EGM) of the tier 1 corporation, if your scheme has an aggregate unit entitlement of 25% or more in the tier 1 scheme.

Example 3 - Cont.



Talk to the other party Cont.

If not, your scheme will need to persuade other schemes of the urgency of the issue in order to have the necessary 25% aggregate unit entitlement in the tier 1 scheme to make the written request for an EGM.

If the tier 1 council does not take steps to convene the EGM within 21 days of the request, your scheme can convene the meeting of the tier 1 corporation within three months after the date of the written request.



Approach the community corporation

The pothole is discussed at the next meeting of the council for the tier 1 community corporation, who is responsible for maintaining the common property. The council decides that the pothole does not require immediate repair and can be dealt with as part of the scheduled maintenance plan (now 17 months away) despite there being funds.

The council further decides not to call an EGM. The community corporation for your scheme is dissatisfied with the outcomes of the tier 1 council meeting and convenes the EGM of the tier 1 corporation. The members of the tier 1 corporation vote against the resolution to repair the pothole in the tier 1 common property.



Consider alternative dispute resolution methods

Having failed to obtain repair of the pothole through normal channels it may be appropriate at this point to consider mediation between your scheme and the tier 1 scheme to reach an agreed outcome.



The State Administrative Tribunal

In this example, depending on the facts gathered in step one and the urgency of the matter, you might consider going directly to SAT at any point for an interim order to stop the community corporation for your scheme from paying the amount.

In addition to an application to SAT for an interim order SAT is empowered to resolve a wide range of disputes under the Act.

There are circumstances where SAT can, and will, choose to not hear a dispute. This includes if SAT is of the view that based upon the nature and gravity of the dispute, it is reasonable to expect that the parties can resolve the dispute without SAT's intervention.

Some types of disputes cannot be heard by SAT and are required to be dealt with through the court system. These include the recovery of unpaid levies and the prosecution of offences under the the Act.

The Act provides a separate process for resolving disputes concerning scheme by-laws. For enforcement of scheme by-laws refer to section 7.6 enforcing scheme by-laws in the Landgate [Guide to Community Titles](#).

Disclaimer of liability

This guide is produced by the Western Australian Land Information Authority (Landgate) to provide the community with a basic understanding of issues that may arise in resolving community scheme disputes. It is a general information source only. It is not legal advice and should not be taken as legal advice on community titles. You should refer to the legislation available on the WA government legislation website.

<https://www.legislation.wa.gov.au/>

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