



# WA Strata Living Guide

Information for those who own or live in a strata property or are looking to buy or sell.



Visit [landgate.wa.gov.au](http://landgate.wa.gov.au)  
Strata Enquiry Line (08) 9273 7047

## Using this guide



This guide is produced by Landgate. You may find it helpful to have a copy available when contacting us with your strata enquiry. Visit [landgate.wa.gov.au](http://landgate.wa.gov.au) for our contact us options.

To easily move throughout this guide, please use these interactive buttons at the bottom of each page:

## Welcome to the WA Strata Living Guide

### Message from the Minister for Lands

On behalf of Landgate, I present the WA Strata Living Guide, now available through [landgate.wa.gov.au](http://landgate.wa.gov.au), in the new-look strata titles section.

The State Government has developed the WA Strata Living Guide to further support the many Western Australians who own or live in a strata property or are looking to buy or sell one.

The guide offers a new, go-to strata resource that explains important strata topics Western Australians care most about, including by-laws, dispute resolution, renovations and repairs, scheme operations and finances, and much more. It reflects the latest in WA strata law, following the major legislative reforms that took effect on 1 May 2020 to make strata clearer and fairer for all involved.

As a State Government, we are using every policy lever we can to facilitate new apartment and strata developments: providing more Western Australians with choice in where they live and critically boosting housing supply. Apartment and strata developments help create more vibrant, dynamic and active communities, as demonstrated around the world.

The popularity of strata living also continues to grow in Western Australia, given the strong affordability, lifestyle and location benefits that are a feature of so many strata properties. Clearly understanding your responsibilities and legal protections is paramount to making the most out of your strata property and lifestyle.

I am confident these resources will go a long way to providing people in Western Australia with more direct access to the information they need on what it means to be part of a strata community and the support that is available to you.



**Hon John Carey BA MLA**  
**Minister for Planning;**  
**Lands; Housing; Homelessness**





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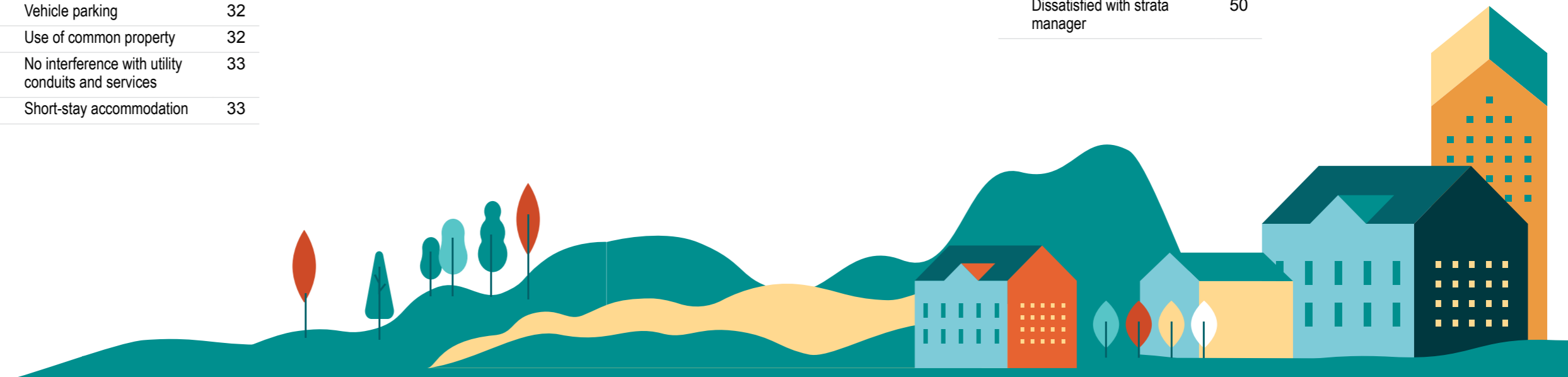
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# 1

## How strata works in WA

- Understanding the basics
- How a strata scheme operates
- The role of strata managers
- Strata company responsibilities
- Managing finances and insurance



### Understanding the basics

#### ► WA strata law

All registered strata properties in Western Australia are subject to the *Strata Titles Act 1985* (STA), which Landgate administers on behalf of the State Government.

The STA covers:

- the subdivision of land by strata titles schemes
- the creation of strata titles
- the governance and operation of strata titles schemes in WA, including the rights, authority and obligations of lot owners and occupiers, strata companies, strata councils and strata managers.

The *Strata Titles Act 1985* and the Strata Titles (General) Regulations 2019 are available to view at the [Western Australian Legislation website](#).

#### Commonly used terms

WA strata law is frequently referred to as **'the STA'** throughout this guide, as an abbreviation of the *Strata Titles Act 1985* and **the Regulations** refer to the Strata Titles (General) Regulations 2019.

#### ► Strata living

Strata is a type of property ownership that includes individual ownership of parts of a parcel of land (lots) and shared ownership of other parts of the parcel (common property).

To manage these parcels of land, strata titles schemes are established as small, self-governing communities, operating as a democracy.

The owners decide collectively how best to manage the parcel. For instance, each strata titles scheme can decide on and enforce its own rules, called by-laws, to suit the way owners want residents to live together and restrict unwanted behaviour.

In Western Australia, each lot owner has the right to vote on decisions affecting the strata titles scheme. Equally, owners have responsibilities, like sharing the costs for the upkeep of the common property.

The owners of lots in a strata titles scheme, through the strata company, may engage a strata manager to perform certain duties. If so, they should be aware of what the strata manager's legal obligations are and make sure their strata manager delivers a professional service in line with the written contract they are required to have with the strata company.

#### ► Types of strata



##### Strata scheme

A strata scheme is a building, or a collection of buildings, where:

- the property that each person owns is called a 'lot' (for example, an apartment, villa, or townhouse)
- all the owners share ownership of and responsibility for the 'common property', such as external walls, foyers, and driveways.

Strata is sometimes referred to as 'built strata,' where the boundaries of the lots, including the height of the lots are defined by reference to the building or buildings shown on the strata plan.



##### Survey-strata scheme

A survey-strata scheme is comprised of lots where the boundaries of the lots are marked out by a licensed surveyor and shown on the survey-strata plan. The survey-strata plan does not show any buildings and is very similar to a freehold parcel of land.

As with built strata, all the owners share ownership and responsibility for the common property, such as driveways and garden areas. Common property is specifically shown on a survey-strata plan.



##### Single tier strata scheme

A single-tier strata scheme is a strata scheme where no lot exists above another lot. This means, the floor of one lot cannot form part of or all of the ceiling of another lot.

Multi-storey blocks of units are not single tier strata schemes, but a two-storey unit such as a townhouse or villa can be part of a single tier strata scheme.



##### Leasehold scheme

A leasehold scheme is a strata or survey-strata scheme which is set up for a fixed term lease of 20 to 99 years. The owner of a lot in a leasehold scheme is referred to as the 'lessee' and the owner of the leasehold scheme is referred to as the 'lessor.'

For the duration of the lease, the lessee has the right to deal with the land as they choose. For example, they may sell the lot without requiring permission from the lessor.



## ► Key strata concepts

### Strata titles scheme

A strata titles scheme is a type of subdivision where a freehold parcel of land is subdivided into:

- two or more lots, or
- two or more lots and common property.

Strata titles schemes allow lots to be owned separately and for common property to be owned collectively by the lot owners and managed through a strata company.

### Strata company

On registration of a strata titles scheme, a strata company is automatically established. The name of the strata company is “The Owners of (the name of the scheme and the strata/survey-strata scheme number)”. The name of the strata company is recorded on the scheme notice for the strata titles scheme.

A strata company is bound by the STA which imposes duties and functions that must be adhered to. The strata company is the governing body of the strata titles scheme and is responsible for:

- managing the common property
- the financial management of the scheme
- enforcing scheme by-laws
- obtaining insurance for the scheme (if required).

### Strata plan

A strata plan will show the boundaries of the strata lots, including the height of the lots, which are defined by reference to a building or buildings shown on the plan.

A strata plan has four parts:

- floor plan, which shows the lot boundaries
- location plan, which locates the building in relation to the parcel boundary
- record of interests and encumbrances
- schedule of unit entitlements.

Common property is not separately identified on the plan.

The term ‘strata company’ refers to all the owners of lots within a strata titles scheme. When purchasing a lot in a strata titles scheme you become a member of the strata company.

### Strata council

A council comprising lot owners in the strata company, exercises the duties and powers of the strata company for the benefit of all proprietors. The number of members of council, election of council members and council procedures and decision-making are set out in a scheme’s by-laws. The strata council is sometimes referred to as the Council of Owners or COO.

### Strata manager

A person or a company engaged to carry out some of the duties of the strata company. They are instructed and controlled by the strata company. In the new legislation a strata manager is engaged to take on the duties and powers of the strata company for a fee.

### Strata or survey-strata plan

A strata or survey-strata plan shows how the freehold parcel of land has been subdivided to create the strata or survey-strata scheme.

### Survey-strata plan

A survey-strata plan will show the boundaries of survey-strata lots as surveyed by a licensed land surveyor.

A survey-strata plan has three parts:

- lots and common property
- record of interests and encumbrances
- schedule of unit entitlements.

If there is any common property, it will be shown on the survey-strata plan by reference to its own unique number.

### Common property

The strata company, which is automatically made up of all lot owners in the scheme, is responsible for managing the common property.

Common property is property that is owned by all owners in the scheme, as tenants in common, and is not contained within any lot. The common property in a strata scheme is the part or parts of the parcel of the scheme that do not form part of a lot in the scheme.

The areas of the scheme which constitute common property will vary from scheme to scheme, however the general rule in built strata is that everything shown as a lot inside a building is the owner’s private property, that is internal walls, fixtures, carpet, and paint on the walls.

Common property boundaries of each lot are generally formed by:

- the upper surface of the floor (but not including carpet)
- the under surface of the ceiling, and
- all external or boundary walls (including doors and windows).

Common property can include things such as:

- pipes in the common property or servicing more than one lot
- electrical wiring in the common property or servicing more than one lot
- most balcony walls and doors
- gardens
- external walls doors and windows
- roofs
- driveways.

Determining where the common property’s boundaries are located is important, as lot owners cannot make structural alterations to common property in their scheme without first getting approval from the strata company.

Refer to the ‘Getting things done’ section of this guide for more information on renovations.

### Being sure of the common property boundaries

To know exactly what is common property and what is a person’s lot, you will need to look at the strata plan for your scheme.

A copy of the plan for your scheme can be obtained for a fee from Landgate’s website at our survey or strata plans page.

To understand what you own, you can seek guidance from a licensed land surveyor (consider contacting the surveyor whose contact details are shown on the plan) or you can contact Landgate on the Strata Enquiry Line (08) 9273 7047.

Be sure to obtain a copy of your plan before contacting a surveyor or Landgate.

### Unit entitlement

The schedule of unit entitlement, which is registered with Landgate, shows the unit entitlement for each lot in the strata titles scheme. The unit entitlement determines the lot owner’s share of ownership of common property in the strata or survey-strata scheme, and the lot owner’s voting rights in respect of their lot. Unit entitlement also determines the contributions (levies) each lot owner pays, although this is subject to the scheme by-laws.

### Contributions

Contributions are the fees paid by all lot owners in a scheme to cover the projected costs and expenses of the strata titles scheme. Contributions can be referred to as levies and are paid into funds administered by the strata company, which include the administrative fund and reserve fund.

Refer to [page 19](#) for further information on the administrative fund and the reserve fund.

## By-laws

By-laws are the set of rules all strata titles schemes have that the owners, occupiers and, where relevant, visitors must follow. Refer to the 'Living in a scheme' section of this guide for more information on by-laws.

## Scheme documents

The scheme documents are the critical documents related to a scheme. Scheme documents must be registered in accordance with the *Strata Titles Act 1985* to establish a strata titles scheme. Registering a scheme document means that it is registered on and incorporated in the Register maintained by the

Registrar of Titles under the *Transfer of Land Act 1893*.

The scheme documents for a freehold scheme are:

- a scheme notice,
- a scheme plan,
- a schedule of unit entitlements, and
- scheme by-laws.

The scheme documents for a leasehold scheme are:

- a scheme notice (which must include the expiry day for the scheme),
- a scheme plan,
- a schedule of unit entitlements,
- scheme by-laws, and
- a strata lease for each lot.

## ► The strata company

All lot owners in a strata titles scheme automatically become part of the strata company and have a right to take part in the decision-making process.

The strata company should hold regular meetings for the owners to decide on issues affecting the scheme.

A strata company can have an Australian Business Number (ABN) but is not a company for the purposes of the *Corporations Act 2001 (Commonwealth)*. It is the legal entity responsible for the overall management of the scheme, including:

- repair and maintenance of common property,
- financial management,
- recording keeping,
- keeping a roll of members and other information,
- providing information to members and others,
- scheme by-laws,
- engaging a strata manager (if they choose to do so), and
- keeping up-to-date and following all relevant laws. Apart from strata laws, this may include planning, building, fire and safety inspections, and work, health, and safety laws.

Among the specific responsibilities of the strata company are:

- Issuing a written notice to comply with a scheme by-law to a person alleged to have breached a scheme by-law. The next step after providing the required notice, is a strata company can apply to the State Administrative Tribunal (SAT) for an order to enforce a scheme by-law.
- Arranging for inspections of records held by the strata company (section 109 of the STA).

- Responding to written requests for a section 110 certificate from a person with a proper interest in information about the scheme (see section 107(2) of the STA for the meaning of a person with a proper interest in information about the scheme). The certificate provides certain scheme information or information about a lot specified in the written request and must be provided within 14 days.

If a strata company has registered their own by-laws with Landgate, they need to be aware of the following requirement for consolidating their by-laws:

- Each time that a strata company lodges a new by-law, or an amendment or repeal of a by-law for registration on the public register at Landgate, a consolidated set of scheme by-laws is required to accompany the change in the by-laws. This requirement has been in effect since 1 May 2020 when the reforms to the STA took effect.

The strata company may choose to delegate a number of responsibilities to a strata manager. However, there are several responsibilities and powers of the strata company that cannot be delegated, including:

- Determining contributions certain decisions that can only be made by resolution of the strata company under WA strata law, such as leasing temporary common property in accordance with section 92 of the STA.
- A scheme function declared by the Regulations to be a scheme function that cannot be performed by a strata manager.

## How a strata scheme operates



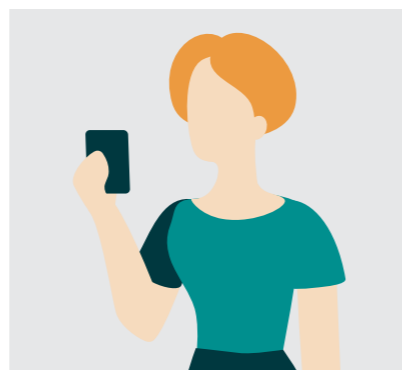
### Strata company

Automatically made up of all lot owners.



### Strata council

Elected representatives of strata company who will make many of the day-to-day decisions about the scheme's management.



### Strata manager

Authorised by the strata company to perform scheme functions. Must have written strata management contract with the strata company.

## ► The strata council

A strata council, sometimes referred to as the council of owners, is a select number of owners who manage the running of the strata titles scheme.

Scheme by-laws set out the rules for membership of the council, election of office bearers, council meetings, procedures and decision making. The following information is based on the governance by-laws in Schedule 1 of the STA. It is important to check your scheme's by-laws for the rules on the council for your scheme.

Scheme by-laws specify the number of council members. If the governance by-laws in Schedule 1 of the STA apply:

- In schemes of three lots or less, all owners comprise the council.
- In schemes of more than three lots, between three and seven of the owners comprise the council, as determined by the strata company.

However, schemes can amend their by-laws to specify a different number of council members to that set out in Schedule 1.

The Schedule 1 by-laws also provide that, for schemes with three lots or more, council members are nominated and voted in at the Annual General Meeting. If there are more nominations to be on the council than there are council positions, an election is required.

The strata council enables quicker decision making on many of the day-to-day decisions about the management and running of the scheme. The strata company, being all lot owners, can vote to overrule its strata council's decisions or put limits on what the strata council can make decisions about.

**Members of the strata council do not receive any special privileges due to the nature of their position. They are required to carry out their duties for the benefit of all lot owners in the scheme.**

WA's strata law imposes several statutory duties on strata council members, including the duty to:

- act honestly, with loyalty and in good faith in the performance of their functions,
- exercise a reasonable degree of care and diligence in the performance of their functions,
- ensure they do not make improper use of their position to gain an advantage for themselves or others, or to cause detriment to the strata company, and
- inform the council in writing of any conflict of interest as soon as practicable after they become aware of the conflict.

Council members who breach one of these statutory duties, may be removed from the strata council.

### Eligibility for the strata council

A lot owner may nominate to be on the strata council and the governance by-laws in Schedule 1 of the STA set out the rules for eligibility of the strata council. However, it is important to check your scheme's by-laws for the rules on strata council eligibility for your scheme.

If a lot owner is dissatisfied with their strata council's performance, it is a good idea to consider nominating to be on the council. This will allow them to have more of an active role in the day-to-day decision making of the scheme.

People eligible to be appointed to the strata council include:

- The owner of a lot in the scheme.
- If there is more than one owner of the same lot in the scheme, unless the scheme's by-laws provide otherwise, only one of the lot owners is eligible for nomination. The co-owners must decide on which of them is going to be the nominee. If the co-owners are unable to reach an agreement, then the co-owner who owns the largest share of the lot is the nominee, and in the situation where the co-owners own an equal share of the lot, then the co-owner whose name appears first in the certificate of title for the lot is the nominee.
- Where a corporation (company) is the owner of a lot in a scheme, the company may nominate a person to be nominated and voted onto the strata council.

The strata council members are responsible for electing the office bearers of the council. This takes place at the first meeting of the council following council members taking office as members. A council member may take on more than one position.

Office bearers usually perform the following duties:

- Chairperson: runs all general meetings and oversees all procedural matters.
- Secretary: prepares and distributes the minutes of strata company meetings, sends out confirmation of the meeting minutes, gives notices to lot owners on behalf of the strata company and council as required, sends out information on behalf of the strata company, and answers any communications.
- Treasurer: notifies lot owners of contributions levied, handles the receipt, acknowledgement, accounting, and banking of money paid to the strata company, prepares certificates (section 110 of the STA), keeps records of accounts and prepares the statement of accounts (section 101 of the STA).

The chairperson, secretary and treasurer of the strata council are also the chairperson, secretary, and treasurer of the strata company.

### Strata council meetings and decision-making

The council members determine when to meet and procedures for meetings. However, a strata council must meet when a council member gives to the other members of the council at least 7 days' notice of a proposed meeting and the reason for it.

At meetings of the strata council, all matters are required to be determined by a simple majority vote.

A strata council can vote on a motion in writing, without a meeting, if they follow the correct procedure set out in their by-laws and the requirements of the STA. The strata council may also resolve to adopt voting by electronic means.

Decisions by the strata council are treated as the decision of the strata company. However, if the strata company makes a different decision, that decision would take precedence. The strata company can choose to limit the powers of the strata council by imposing restrictions or giving directions by ordinary resolution.



## The role of strata managers

### ► What is a strata manager?

A strata manager is an individual, partnership or company engaged by a strata company, or the strata council on behalf of the strata company, to perform specified scheme functions under a written strata management contract to help manage the strata titles scheme.

Strata managers can bring valuable expertise and knowledge to support strata companies in managing their day-to-day operations and meeting their compliance obligations. Their responsibilities include handling administrative tasks, managing insurance matters, facilitating meetings and effective communication, resolving conflicts, and coordinating maintenance and repairs.

Strata managers are not required to be licensed in WA, however, there are requirements strata managers need to meet under WA's strata laws. These include meeting minimum educational qualifications, obtaining criminal record checks, and maintaining a minimum level of professional indemnity insurance. Strata managers must also have a written strata management contract authorising them to perform the scheme functions they are assigned by the strata company.

#### Volunteer strata managers

A strata manager can be a volunteer. To be a volunteer strata manager, the person must be an owner of a lot in the scheme and personally perform the strata manager functions at either no charge or a small honorary fee.

If they do charge, the honorary fee for their duties must not exceed \$250 per calendar year for each lot in the scheme.

When choosing a strata manager for their scheme, a strata company should compare potential candidates based on key factors like costs of providing their services, experience in managing similar schemes and the range of

services they provide. Engaging an experienced strata manager can offer strata companies expertise and benefits by leveraging this experience. During the selection process contract fees and services are often open to negotiation and strata companies should choose a strata manager that is the best fit for their scheme.

### ► Strata manager responsibilities

Strata manager responsibilities can vary, as some are required by strata laws, while others are agreed upon by the strata company and the strata manager during contract negotiations (apart from where the strata company's powers cannot be delegated). For instance, a strata company may wish to handle their maintenance matters, but have meetings arranged by the strata manager.

The strata manager should keep the strata company informed of what they are doing and how they are performing their duties.

The strata manager must provide details of any trust accounts and they must also provide a periodic return to Landgate containing aggregated information about the schemes they managed in the preceding 12 months.

A decision by a strata company or strata council about a duty delegated to the strata manager will take precedence, but the strata manager must be notified of the decision. A strata manager cannot be authorised to do certain things including:

- setting the contributions to be paid by the owners, or
- making decisions on a matter that requires a resolution of the strata company.

### ► Strata manager duties and obligations

WA's strata law imposes several statutory duties on strata managers, including the duty to:

- act honestly and in good faith in the performance of their functions,
- exercise a reasonable degree of care and diligence in the performance of their functions,
- have a good working knowledge of WA strata law,

- ensure they do not make improper use of their position to gain an advantage for themselves or others, or to cause detriment to the strata company,
- take reasonable steps to ensure that their agents, employees and contractors also comply with the STA when performing their functions,
- inform the strata company in writing of any conflict of interest as soon as practicable after they become aware of the conflict, and
- disclose to the strata company any gift or benefit they receive through their role in the strata titles scheme which is valued at \$100 or more in the calendar year and any gifts or benefits where the total amount of gifts and benefits from a person is \$100 or more.

### ► Strata manager appointments and terminations

#### Strata manager appointments

The strata council has a broad power to appoint a strata manager and enter into a strata management contract. However, this power can be limited by the scheme's by-laws or the strata company may pass a resolution that restricts the decision to appoint a strata manager to the strata company or otherwise directs the strata council on the appointment of a strata manager.

**Like any contract, the strata management contract between the strata manager and strata company can include terms and conditions that can be negotiated between the parties. There are also minimum requirements for strata management contracts in WA. Refer to section 145 of the STA for more information.**

It is important that the strata company or strata council carefully considers the duration of a strata management contract prior to entering the agreement. Shorter-term contracts provide schemes with flexibility to change strata managers more easily. However, longer-term contracts can maintain stability and continuity of strata managers to help ensure reliability and consistency in service. Striking a balance between these elements is key to ensuring strata companies can effectively manage their strata schemes and meet the needs of their community.

In addition, establishing a mutually agreed communication framework between the strata council and the strata manager at the beginning of their appointment can be a good approach for ensuring effective management by all parties involved.

#### Terminating a strata management contract

When a strata management contract is due to end, the strata company and the strata manager may resolve to extend or terminate the agreement. If the strata company and the strata manager agree to extend the contract, the extension must be in writing. Strata companies also need to be aware of any automatic rollover provisions and give appropriate notice to terminate if they do not wish the contract to be renewed.

The strata company may also choose to terminate the strata management contract while it is still in effect if there are proper grounds for termination by the strata company (section 151 of the STA). Proper grounds include, for example, where the strata manager has breached the contract, or one of their statutory duties imposed by the STA.

Before deciding to terminate a strata management contract, the strata company may wish to communicate its concerns to the appointed strata manager. This may allow for a resolution without the need to terminate the contract, which may disrupt the scheme management and result in unnecessary costs to the strata company.





## Steps required by a strata company to terminate a strata management contract.

1

Serve a written show cause notice on the strata manager to notify them of the proposed termination and the specific grounds for the termination, as well as the facts relied upon as evidence.

The strata manager will then have a period specified in the show cause notice (being at least 14 days after the date of the notice) to make written submissions to the strata company to outline why the contract should not be terminated.

2

Following this notice period and considering any submissions received from the strata manager, if the strata company is satisfied there are proper grounds for termination, they may notify the strata manager in writing stating the contract will terminate on a date at least 28 days from the date of the notice.

The strata company must inform the strata manager of the manager's right to apply to the State Administrative Tribunal (SAT) for review of the decision.

3

The strata manager can apply to SAT to review the strata company's decision to terminate the contract.

If the strata manager makes such an application, SAT may make an interim order to postpone the termination of the contract. This order can be in place for up to three months and can be renewed by SAT.

4

Where a strata manager's contract has been terminated, the strata manager must deliver to the strata company any of the strata company's records, keys, and property the strata manager has under their control within 28 days of the date of termination (even if the strata manager has made an application to SAT for review of the decision to terminate the contract).



## Strata company responsibilities

### ► Management responsibilities

#### Strata roll

A strata company must prepare and keep a strata roll. There is no requirement for how the strata roll is to be kept, that is it could be in written or electronic form.

To serve notices, the roll must include:

- the name of the strata company
- each lot owner's name and address
- each council member's or officer of the strata company's name and address
- each tenant's name and address (where the landowner has notified the strata company)
- each mortgagee of a lot (where notified to the strata company)
- the strata manager of the strata company's name and address.

#### Record keeping

A strata company has a responsibility to keep a copy of various types of records. For example, it must keep a copy of the current scheme documents in force for its scheme, and any proposed amendments to the scheme documents that it is aware of.

A strata company is also required to make and retain specific records, such as minutes of its general meetings and records of its resolutions and decisions of its council.

There are certain records that a strata company is required to keep in a manner that facilitates access to the information, particularly for use by members of the strata council and officers of the strata company.

These requirements are outlined in the STA and include the following types of records:

- The terms of any current resolution about the use of the common seal of the strata company or authorising persons to execute documents on its behalf.
- The current balance of the administrative fund and if applicable, the reserve fund of the strata company.

- The current budget (showing estimated income and expenditure) of the strata company.
- The terms of the most recent resolution determining contributions including the period for which they are determined, the basis on which the contributions are apportioned amongst the members of the strata company, and the date on which they fall due.
- The most recent 10-year plan, if applicable.
- Any current termination proposal submitted to the strata company.

#### Financial records

A strata company must keep accounting records and prepare a statement of accounts for each financial year which shows:

- the assets and liabilities of the strata company at the end of the financial year
- the income and expenditure of the strata company for the financial year.

A financial year for a scheme depends on its by-laws:

- If the scheme does not have a by-law on the matter, the period of 12 months ending 30 June.
- If the scheme does have a by-law, the period of 12 months ending on the date set out in the by-law.

Strata schemes may decide to maintain electronic records rather than keeping paper-based ones.

#### How long records must be kept

In most instances, a strata company must keep their records for a period of seven years, including records such as:

- minutes of general meetings and strata council meetings
- resolutions and decisions of the strata council
- financial statements and accounting records
- notices of general meetings and strata council meetings
- notices of proposed resolutions and materials submitted to lot owners in connection with the proposed resolutions.

A longer period applies for specific types of records as set out in the Regulations. Refer to Regulation 83 for further information.

## Arranging for records to be inspected

An owner or mortgagee of a lot in the scheme (or their authorised person) or a buyer of a lot in the scheme or a person specified in the Regulations can write to the strata company to ask to inspect the records. They must pay the relevant fee prescribed in the Regulations for this.

Both parties can agree on a time for the inspection. If there is no agreement within three days after the strata company receives the application, the strata company can respond in writing with the time and date of when the inspection can take place. The inspection date cannot be later than 10 days from the date of the strata company receiving the initial request.

Documents can be inspected in person, through electronic access to the documents or by another agreed means. The person inspecting the documents can make copies but must not remove any documents from the premises without permission.

## Exemptions for small schemes

Strata companies of small schemes, comprised of between two to five lots, may be exempt from some of the management requirements under the STA.

### Two lot schemes

Two lot schemes are automatically exempt from the requirements to:

- hold annual general meetings (AGMs), after the first one has been called by the original scheme developer
- keep accounting records and statement of accounts

- keep minutes of general meetings, meetings and decisions of council and records of resolutions
- have a separate letter box displaying the name of the strata company
- keep a roll of lot owners, but each lot owner must notify the other owner of his or her address for the service of notices
- establish an administrative fund for administrative expenses that is sufficient in the opinion of the strata company for the control and management of the common property, payment of any premiums of insurance, and discharge of any other obligation of the strata company.

Owners of two lot schemes may decide to comply with any of these requirements by making scheme by-laws to that effect.

### Three, four or five lot schemes

Except for the requirement to hold AGMs, the exemptions that apply to two lot schemes can be applied to three, four or five lot schemes.

For these exemptions to apply, the strata company must pass and register a governance by-law to that effect. By-laws made to adopt the exemptions can be set aside by a new governance by-law.

In addition, an owner of a lot in a two to five lot scheme can apply to the State Administrative Tribunal for the strata company to perform any of the exempted functions.

## Managing finances and insurance

### Contributions

Contributions, commonly referred to as 'levies' are the fees paid by all lot owners to the strata company to cover the expenses associated with the running and maintenance of the strata or survey-strata scheme.

The strata company is required to prepare an annual budget to be approved at the AGM by ordinary resolution. To set the contributions to be levied on the lot owners, the budget is required to show the existing financial situation of the scheme and an estimate of payments to be made and received.

### The administrative fund and the reserve fund

Unless exempt, strata companies must establish an administrative fund and a reserve fund to administer the finances of their scheme.

The administrative fund is used to manage the day-to-day expenses of running the scheme, such as maintaining the common property and personal property owned by the strata company, ongoing maintenance (such as garden care) and insurance.

The reserve fund enables major work that is likely to be required in the future to be undertaken to common property.

All strata companies with 10 lots or more, or which have a replacement value of \$5 million or over are required to have a reserve fund and prepare a 10-year plan. This sets out the common property and personal property of the strata company that is expected to require maintenance, repair, renewal, or replacement outside a routine nature. The plan helps determine the contributions that the owners need to pay and is required to be reviewed by the strata company at least every 5 years to ensure it remains valid.

## Examples of expenditure from the funds

### Administrative fund

Covers the routine expenses of running the scheme including:

- cleaning
- insurance
- gardening
- small maintenance jobs
- building insurance
- utility bills for common property
- administrative costs
- strata management contract fees.

### Reserve fund

Covers the expenses for larger works expected to be required in the future, such as:

- roof repairs
- replacement of lifts
- repainting of walls
- changes to building structure
- unexpected expenses not covered by building insurance.

## ▶ Outstanding contributions

The strata company can apply an interest rate of 11% simple interest per year to an unpaid contribution. Unpaid contributions, including interest accrued may be recovered by the strata company in a court of competent jurisdiction and the strata company may agree to a compromise of such a debt.

## ▶ Statements of accounts

A strata company must keep proper accounting records of its income and expenditure. It must also prepare a statement of accounts for each financial year, showing its assets, liabilities, income, and expenditure.

### Exemption for small schemes (two to five lots)

The requirement to prepare a statement of account for each financial year does not apply to a two-lot scheme. It also may not apply in three to five lot schemes, if a scheme by-law has been passed to this effect.



## ▶ Budget

A strata company must prepare a budget for each financial year and submit it for approval at its AGM. The budget must be prepared taking into account, if applicable, the 10 year plan for the reserve fund. The strata company may, by ordinary resolution at its AGM or at a subsequent general meeting, approve a budget with or without modification.

If the budget provides for expenditure on improvements to common property (other than sustainability infrastructure) that exceeds an amount totalling the number of lots multiplied by \$500 then information must be provided to the lot owners as part of the budget and the budget or budget variation must be approved by special resolution.

## ▶ Audited accounts

A strata company may choose to arrange for the auditing of any accounting records. Only an auditor may perform the audit. If a strata manager is delegated the function of operating accounts and the strata company has engaged an auditor, the strata manager must, if required by the auditor, give the auditor access to the statement of accounts or documents relating to financial matters and provide any document or information of the strata company that the auditor reasonably requires.

## ▶ Insurance

A strata company is responsible for ensuring that all insurable assets of the scheme are insured against fire, storm, and tempest (excluding damage by sea, flood, or erosion), lightning, explosion, and earthquake to:

- Replacement value, or
- Replacement value up to, for an event of a specified kind, a maximum amount specified in the contract of insurance.

The owner of a lot in a survey-strata scheme is responsible for insuring the infrastructure on their lot.

## Insurable assets of a strata titles scheme

The information below sets out what is and what is not considered an insurable asset:

### Includes

- ✓ The common property of the scheme (including the fixtures and improvements on common property).
- ✓ For a strata scheme, the parts of scheme buildings that comprise lots in the scheme (including the paint and wallpaper).
- ✓ Carpet and floor coverings on common property that are permanent.
- ✓ For a strata scheme, buildings on the parcel (including those buildings not shown on the scheme plan).

### Does not include

- ✗ Fixtures or improvements on the common property that are not themselves common property.
- ✗ Carpet and temporary wall, floor, and ceiling coverings in a scheme building.
- ✗ Fixtures removable by a lessee at the expiration of a tenancy.
- ✗ Temporary wall, floor, and ceiling coverings on common property.

### Other insurance

The strata company must also take out any other insurance required by law, for example, workers' compensation, if applicable, and it may insure against other risks which the strata company decides to insure against. For example, office bearers' liability insurance.

## What happens if the strata company does not take out insurance?

If the strata company fails to take out any required insurance, a member of the strata company may take out the insurance in the name of the strata company. The State Administrative Tribunal has power to make orders for the member to be compensated for any payment made.

### **i** Special rules apply to single tier strata schemes

For single tier strata schemes, the owners have discretion whether they insure the insurable assets in their lots and take out public liability insurance in respect of their lots. However, the strata company may decide, by ordinary resolution (majority decision), to take out this insurance for the scheme. The strata company may also at any time resolve by ordinary resolution to revoke such a decision.

The strata company must keep insurance of insurable assets (to their replacement value) that are within common property and insure for public liability (for at least \$10,000,000) in respect of common property unless:

- the only common property is the air above the lots and the soil below them, or fences;
- or
- the strata company decides by resolution without dissent not to take out insurance.

Any owner can insist, by serving written notice on the strata company, on insurance of common property at any time.

# 2

## Living in a scheme

- By-laws
- Other responsibilities



### By-laws

#### ► What are by-laws?

All strata and survey-strata schemes have a set of by-laws, or 'rules' that owners, occupiers and in some cases, visitors must follow. By-laws cover issues such as parking, noise restrictions and the conduct of residents and visitors.

The strata company can enforce these rules through the State Administrative Tribunal (SAT), which may penalise a person who breaches a by-law.

#### Types of by-laws

There are two types of by-laws in a strata titles scheme, governance by-laws and conduct by-laws.

#### Governance by-laws

Governance by-laws deal with the:

- governance of the scheme
- subdivision or development of the land subdivided by the scheme (other than landscaping)
- exclusive use of common property in the scheme (exclusive use by-laws).

Examples include by-laws concerning the constitution or procedures of the strata council and officers of the strata company and, by-laws concerning contributions, levies, or money payable by an owner to a strata company.

Governance by-laws may only be made, amended, or repealed by a resolution without dissent.

#### Conduct by-laws

Conduct by-laws deal with the conduct of an owner or occupier in the scheme, or the management, control, and enjoyment of a lot or common property in the scheme.

Examples include by-laws concerning pets, parking, behaviour of owners and occupiers on common property and use of common property.

Conduct by-laws may only be made, amended, or repealed by a special resolution.

### ► Learn which by-laws apply to your scheme

If you're not sure what the by-laws are for your strata titles scheme, the best place to start is by asking your strata company or strata manager.

They should be able to resolve your enquiry without you having to look any further.

One of the three scenarios described below will apply to your strata titles scheme and its by-laws.

What you'll see through these scenarios is that

some schemes follow the by-laws set out in the *Strata Titles Act 1985* (STA), with a variation depending on when your scheme was registered, and others register their own by-laws with Landgate. Each is legally valid.

It's important to note that STA was amended on 1 May 2020. These amendments included changes to the 'default by-laws' that were in Schedule 1 and 2 of the STA immediately before it was amended on 1 May 2020. These changes clarified the language used, classified by-laws as governance or conduct, and deleted by-laws that were no longer required.

#### Scenario

### 1

#### Applies to:

- Schemes registered on or after 1 May 2020** for which no by-laws were lodged for registration as a scheme document.

#### Your scheme's by-laws are:

- The governance by-laws in Schedule 1 and conduct by-laws in Schedule 2 of the STA that have been in effect since 1 May 2020. A copy of these by-laws can also be found on [page 25](#) of this guide for ease-of-reference.

#### Scenario

### 2

#### Applies to:

- Schemes registered before 1 May 2020** that use the by-laws in the STA and whose strata company has not registered its own by-laws with Landgate.

#### Your scheme's by-laws are:

- The by-laws as amended by Schedule 5 clause 4 of the STA. A copy of these by-laws can be requested from your strata company or by sourcing a historical version of the STA via the [Western Australian Legislation website](#) and consolidating them with Schedule 5 clause 4 of the STA.

#### Scenario

### 3

#### Applies to:

- Schemes who have registered their own by-laws with Landgate.** A strata company has broad powers to make, amend and repeal by-laws and may create and register their own by-laws that are different to the by-laws in Schedule 1 and 2 of the STA. These by-laws cannot be inconsistent with the STA, the Regulations or any other written law.

#### Your scheme's by-laws are:

- Available through your strata company or strata manager (on behalf of the strata company) or you can order a copy online via [Landgate's website](#) at the Certificate of Title/associated documents page. To order, you will need the scheme by-law document number that is endorsed on the last page of your strata/survey-strata plan.

## ► Tenants and by-laws

All residents, including tenants, must follow a scheme's by-laws. If someone is breaching a by-law, tenants can inform the secretary of the strata council or strata manager of the strata titles scheme. A 'notice to comply' may be served on the person responsible for the breach.

## ► Breaching the by-laws

If an owner or tenant has been breaching a by-law and the strata company wants to take enforcement action, it must first provide a written notice to the person who is alleged to be acting in breach of the by-law.

This notice provides fairness and must set out:

- the by-law that it is claimed that the person has breached,
- the facts relied on as evidence of the breach,
- the action that the person must take to avoid breaching the by-law, or
- an explanation of the powers of SAT if an application is made to SAT to enforce a by-law.

The strata company can apply to SAT to enforce a by-law. A strata company can make an application to SAT if the:

- person breaching the by-law has been given the written notice referred to above and has contravened the notice
- contravention has had serious adverse consequences for another person
- person has contravened the by-law on at least three separate occasions.

SAT has power to make any order it considers appropriate to resolve the by-law enforcement proceeding. If SAT is satisfied the by-laws have been contravened, SAT has power to make an order that requires one or more of the following:

- pay a specified amount to the strata company by way of penalty,
- take specified action within a period stated in the order to remedy the contravention or prevent further contraventions, or
- refrain from taking specified action to prevent further contraventions.

The maximum amount SAT can impose by way of penalty is \$2000. Penalties of this nature can only be imposed by SAT and cannot be applied directly by a strata company.

## ► Invalid by-laws

New by-laws, amendments of by-laws and repeals of by-laws are only valid and effective if they are registered at Landgate. This registration needs to occur within three months of the by-law being made, amended or repealed by a relevant resolution.

It is also important to note that there is no presumption that a by-law is valid just because it is registered and the STA sets out where a by-law is invalid. Reasons under the STA that a by-law will be invalid includes, but is not limited to, where a by-law is:

- unfairly prejudicial to, or unfairly discriminatory against a lot owner or multiple lot owners,
- oppressive or unreasonable, or
- inconsistent with the STA or any other written law.

## Reference copy of WA's default by-laws

**Schedules 1 and 2 of the STA contain the default by-laws for strata titles schemes in Western Australia.**

**They will only apply to your scheme if it was registered on or after 1 May 2020 and your strata company hasn't registered its own by-laws.**

**If you are unsure if these by-laws apply to your scheme, please:**

- **Check with your strata company or strata manager.**
- **Review the information found on [page 23](#) of this guide.**

### Schedule 1 - Governance by-laws

Any reference within these by-laws to 'the Act' or to 'The *Strata Titles Act 1985*' refers to the *Strata Titles Act 1985* as amended by the *Strata Titles Amendment Act 2018*.

#### 1. Duties of owner

(1) The owner of a lot must —

- (a) immediately carry out all work that may be ordered under a written law in respect of the lot other than such work as may be for the benefit of the building generally and pay all rates, taxes, charges, outgoings and assessments that may be payable in respect of the lot;
- (b) maintain and repair the lot, and keep it in a state of good condition, reasonable wear and tear, and damage by fire, storm, tempest or act of God excepted.

(1A) The owner of a lot must —

- (a) notify in writing the strata company immediately on becoming the owner of the lot, including in the notice the owner's address for service for the purposes of this Act; and
- (b) if required in writing by the strata company, notify the strata company of any mortgage or other dealing in connection with the lot, including in the case of a lease of a lot, the name of the lessee and the term of the lease.

#### 2. Deleted by *Strata Titles Amendment Act 2018*

#### 3. Power of strata company regarding submeters

- (1) If the supply of gas or electricity to a lot is regulated by means of a submeter, the strata company may require the owner or occupier of the lot to pay the strata company by way of security for the payment of charges arising through the submeter an amount not exceeding \$200 and, if any amount so paid is applied by the strata company under sub-by-law (3), to pay such further amount or amounts by way of such security as may be necessary to maintain the amount of the security as, subject to this sub-by-law, the strata company may require.
- (2) The strata company must lodge every sum received under this by-law to the credit of an interest-bearing ADI account and all interest accruing in respect of amounts so received must, subject to this by-law, be held on trust for the owner or occupier who made the payment.
- (3) If the owner or occupier of a lot in respect of which a submeter is used for the supply of gas or electricity refuses or fails to pay any charges due for the supply of gas or electricity to that lot, the strata company may apply in payment of those charges all, or such part as is necessary, of any amount paid to the strata company by that owner or occupier under this by-law, including any interest that may have accrued in respect of that amount.
- (4) If a person who has paid an amount under this by-law to a strata company satisfies the strata company that the person is no longer the owner or occupier of a lot and that the strata company no longer has any liability or contingent liability for the supply of gas or electricity to that lot during the period when that person was an owner or occupier of the lot, the strata company must refund to that person the amount then held on the person's behalf under this by-law.

#### 4. Constitution of council

- (1) The powers and duties of the strata company must, subject to any restriction imposed or direction given at a general meeting, be exercised and performed by the council of the strata company and a meeting of the council at which a quorum is present is competent to exercise all or any of the authorities, functions or powers of the council.
  - (2) Until the first annual general meeting of the strata company, the owners of all the lots constitute the council.
  - (3) If there are not more than 3 lots in the scheme, the council consists of all of the owners of the lots and, if there are more than 3 lots in the scheme, the council consists of not less than 3 nor more than 7 of the owners of the lots, as is determined by the strata company.
  - (4) If there are more than 3 lots in the scheme, the members of the council must be elected at each annual general meeting of the strata company or, if the number of lots in the scheme increases to more than 3, at an extraordinary general meeting convened for the purpose.
  - (5) If there are co-owners of a lot, 1 only of the co-owners is eligible to be, or to be elected to be, a member of the council and the co-owner who is so eligible must be nominated by the co-owners, but, if the co-owners fail to agree on a nominee, the co-owner who owns the largest share of the lot is the nominee or, if there is no co-owner who owns the largest share of the lot, the co-owner whose name appears first in the certificate of title for the lot is the nominee.
  - (6) Except if the council consists of all the owners of lots in the scheme, the strata company may by special resolution remove any member of the council before the expiration of the member's term of office.
  - (7) A member of the council vacates office as a member of the council —
    - (a) if the member dies or ceases to be an owner or co-owner of a lot; or
    - (b) on receipt by the strata company of a written notice of the member's resignation from the office of member; or
  - (c) at the conclusion of an annual general meeting of the strata company at which an election of members of the council takes place and at which the member is not elected or re-elected; or
  - (d) in a case where the member is a member of the council by reason of there being not more than 3 owners of lots in the scheme, on an election of members of the council (as a result of there being an increase in the number of owners to more than 3) at which the member is not elected; or
  - (e) if the member is removed from office under sub-by-law (8); or
  - (f) if the Tribunal orders that the member's appointment is revoked and the member is removed from office.
- (8) The remaining members of the council may appoint a person eligible for election to the council to fill a vacancy in the office of a member of the council, other than a vacancy arising under sub-by-law (9) (c) or (d), and any person so appointed holds office, subject to this by-law, for the balance of the predecessor's term of office.
  - (9) Except if 1 person is the owner of all of the lots in the scheme, a quorum of the council is 2 if the council consists of 3 or 4 members; 3, if it consists of 5 or 6 members; and 4, if it consists of 7 members.
  - (10) The continuing members of the council may act even if there is a vacancy in the council, but so long as the number of members is reduced below the number fixed by these by-laws as the quorum of the council, the continuing members or member of the council may act for the purpose of increasing the number of members of the council or convening a general meeting of the strata company, but for no other purpose.
  - (11) All acts done in good faith by the council, even if it is afterwards discovered that there was some defect in the appointment or continuance in office of any member of the council, are as valid as if that member had been duly appointed or had duly continued in office.

#### 5. Election of council at general meeting

The procedure for nomination and election of members of a council must be in accordance with the following rules —

- (1) The meeting must determine, in accordance with the requirements of by-law 4(3) the number of persons of whom the council is to consist.
- (2) The chairperson must call on those persons who are present at the meeting in person or by proxy and entitled to nominate candidates to nominate candidates for election to the council.
- (3) A nomination is ineffective unless supported by the consent of the nominee to the nomination, given —
  - (a) in writing, and furnished to the chairperson at the meeting; or
  - (b) orally by a nominee who is present at the meeting in person or by proxy.
- (4) When no further nominations are forthcoming, the chairperson —
  - (a) if the number of candidates equals the number of members of the council determined in accordance with the requirements of by-law 4(3), must declare those candidates to be elected as members of the council;
  - (b) if the number of candidates exceeds the number of members of the council as so determined, must direct that a ballot be held.
- (5) If a ballot is to be held, the chairperson must —
  - (a) announce the names of the candidates; and
  - (b) cause to be furnished to each person entitled to vote and present in person or by proxy, a blank form in respect of each lot in respect of which the person is entitled to vote for use as a ballot form.
- (6) A person who is entitled to vote must complete a valid ballot form by —
  - (a) writing on the form the names of candidates, equal in number to the number of members of the council so that no name is repeated; and
  - (b) indicating on the form the number of

each lot in respect of which the person's vote is cast and whether the person so votes as owner or first mortgagee of each such lot or as proxy of the owner or first mortgagee; and

- (c) signing the ballot form; and
- (d) returning it to the chairperson.
- (7) The chairperson, or a person appointed by the chairperson, must count the votes recorded on valid ballot forms in favour of each candidate.
- (8) Subject to sub-by-law (9), candidates, being equal in number to the number of members of the council determined in accordance with by-law 4(3), who receive the highest numbers (in terms of lots or unit entitlements as required under the *Strata Titles Act 1985* section 122) of votes are to be declared elected to the council.
- (9) If the number (in terms of lots or unit entitlements as required under the *Strata Titles Act 1985* section 122) of votes recorded in favour of any candidate is the lowest of the numbers of votes referred to in sub-by-law (8) and —
  - (a) that number equals the number of votes recorded in favour of any other candidate; and
  - (b) if each of those candidates were to be declared elected the number of persons elected would exceed the number of persons required to be elected, as between those candidates, the election must be decided by a show of hands of those entitled to vote and present in person or by proxy.

#### 6. Chairperson, secretary and treasurer of council

- (1) The members of a council must, at the first meeting of the council after they assume office as such members, appoint a chairperson, a secretary and a treasurer of the council.
- (2) A person —
  - (a) must not be appointed to an office referred to in sub-by-law (1) unless the person is a member of the council; and
  - (b) may be appointed to 1 or more of those offices.

(3) A person appointed to an office referred to in sub-by-law (1) holds office until the first of the following events happens —

- (a) the person ceases to be a member of the council under by-law 4(9);
- (b) receipt by the strata company of a written notice of the person's resignation from that office;
- (c) another person is appointed by the council to hold that office.

(3A) The remaining members of the council must appoint a member of the council to fill a vacancy in an office referred to in sub-by-law (1), other than a vacancy arising under by-law 4(9)(c) or (d), and any person so appointed holds office, subject to this by-law, for the balance of the predecessor's term of office.

(4) The chairperson is to preside at all meetings of the council but, if the chairperson is absent from, or is unwilling or unable to preside at, a meeting, the members of the council present at that meeting can appoint 1 of their number to preside at that meeting during the absence of the chairperson.

#### 7. Chairperson, secretary and treasurer of strata company

(1) Subject to sub-by-law (2), the chairperson, secretary and treasurer of the council are also respectively the chairperson, secretary and treasurer of the strata company.

(2) A strata company may at a general meeting authorise a person who is not an owner of a lot to act as the chairperson of the strata company for the purposes of that meeting.

(3) A person appointed under sub-by-law (2) may act until the end of the meeting for which the person was appointed to act.

#### 8. Meetings of council

(1) At meetings of the council, all matters must be determined by a simple majority vote.

(2) The council may —

- (a) meet together for the conduct of business and adjourn and otherwise regulate its meetings as it thinks fit, but the council must meet when any member of the council gives to the other

members not less than 7 days' notice of a meeting proposed by the member specifying in the notice the reason for calling the meeting; or

(b) employ or engage, on behalf of the strata company, any person as it thinks is necessary to provide any goods, amenity or service to the strata company; or

(c) subject to any restriction imposed or direction given at a general meeting of the strata company, delegate to 1 or more of its members such of its powers and duties as it thinks fit, and at any time revoke the delegation.

(3) A member of a council may appoint an owner of a lot, or an individual authorised under the *Strata Titles Act 1985* section 136 by a corporation which is an owner of a lot, to act in the member's place as a member of the council at any meeting of the council.

(4) An owner of a lot or individual may be appointed under sub-by-law (3) whether or not that person is a member of the council.

(5) If a person appointed under sub-by-law (3) is a member of the council the person may, at any meeting of the council, separately vote in the person's capacity as a member and on behalf of the member in whose place the person has been appointed to act.

#### 9. Powers and duties of secretary of strata company

The powers and duties of the secretary of a strata company include —

(a) the preparation and distribution of minutes of meetings of the strata company and the submission of a motion for confirmation of the minutes of any meeting of the strata company at the next such meeting; and

(b) the giving on behalf of the strata company and of the council of the notices required to be given under the Act; and

(c) the supply of information on behalf of the strata company in accordance with the *Strata Titles Act 1985* sections 108 and 109; and

(d) the answering of communications addressed to the strata company; and

(e) the calling of nominations of candidates for election as members of the council; and

(f) subject to the *Strata Titles Act 1985* sections 127, 128, 129, 200(2)(f) and

(g) the convening of meetings of the strata company and of the council.

#### 10. Powers and duties of treasurer of strata company

The powers and duties of the treasurer of a strata company include —

(a) the notifying of owners of lots of any contributions levied under the *Strata Titles Act 1985*; and

(b) the receipt, acknowledgment and banking of and the accounting for any money paid to the strata company; and

(c) the preparation of any certificate applied for under the *Strata Titles Act 1985* section 110; and

(d) the keeping of the records of account referred to in the *Strata Titles Act 1985* section 101 and the preparation of the statement of accounts referred to in the *Strata Titles Act 1985* section 101.

### Schedule 2 - Conduct by-laws

#### 1. Vehicles and parking

(1) An owner or occupier of a lot must take all reasonable steps to ensure that the owner's or occupier's visitors comply with the scheme by-laws relating to the parking of motor vehicles.

(2) An owner or occupier of a lot must not park or stand any motor or other vehicle on common property except with the written approval of the strata company.

#### 2. Use of common property

An owner or occupier of a lot must —

(a) use and enjoy the common property in such a manner as not unreasonably to interfere with the use and enjoyment of the common property by other owners or occupiers of lots or of their visitors; and

(b) not use the lot or permit it to be used in such manner or for such purpose as causes a nuisance to an occupier of another lot (whether an owner or not) or the family of such an occupier; and

(c) take all reasonable steps to ensure that the owner's or occupier's visitors do not behave in a manner likely to interfere with the peaceful enjoyment of an owner or occupier of another lot or of a person lawfully using common property; and

(d) not obstruct lawful use of common property by any person.

#### 3. Damage to lawns etc. on common property

Except with the approval of the strata company, an owner or occupier of a lot must not —

(a) damage any lawn, garden, tree, shrub, plant or flower on common property; or

(b) use any portion of the common property for the owner's or occupier's own purposes as a garden.

#### 4. Behaviour of owners and occupiers

An owner or occupier of a lot must be adequately clothed when on common property and must not use language or behave in a manner likely to cause offence or embarrassment to an owner or occupier of another lot or to any person lawfully using common property.

#### 5. Deleted by *Strata Titles Amendment Act 2018*

#### 6. Depositing rubbish etc. on common property

An owner or occupier of a lot must not deposit or throw on that lot or any other lot or the common property any rubbish, dirt, dust or other material likely to interfere with the peaceful enjoyment of an owner or occupier of another lot or of any person lawfully using the common property.

## 7. Drying of laundry items and signage

An owner or occupier of a lot must not, except with the consent in writing of the strata company —

- (a) hang any washing, towel, bedding, clothing or other article on any part of the parcel in such a way as to be visible from outside the building, other than for a reasonable period on any lines provided by the strata company for the purpose; or
- (b) display any sign, advertisement, placard, banner, pamphlet or like matter on any part of their lot in such a way as to be visible from outside the building.

## 8. Storage of inflammable liquids etc.

An owner or occupier of a lot must not, except with the written approval of the strata company, use or store on the lot or on the common property any inflammable chemical, liquid or gas or other inflammable material, other than chemicals, liquids, gases or other materials used or intended to be used for domestic purposes, or any such chemical, liquid, gas or other material in a fuel tank of a motor vehicle or internal combustion engine.

## 9. Moving furniture etc. on or through common property

An owner or occupier of a lot must not transport any furniture or large object through or on common property within the building unless that person has first given to the council sufficient notice of their intention to do so to enable the council to arrange for its nominee to be present at the time when that person does so.

## 10. Floor coverings

An owner of a lot must ensure that all floor space within the lot (other than that comprising kitchen, laundry, lavatory or bathroom) is covered or otherwise treated to an extent sufficient to prevent the transmission therefrom of noise likely to disturb the peaceful enjoyment of an owner or occupier of another lot.

## 11. Garbage disposal

An owner or occupier of a lot must —

- (a) maintain within their lot, or on such part of the common property as may be

authorised by the strata company, in clean and dry condition and adequately covered, a receptacle for garbage;

- (b) comply with all local laws relating to the disposal of garbage;
- (c) ensure that the health, hygiene and comfort of an owner or occupier of any other lot is not adversely affected by their disposal of garbage.

## 12. Additional duties of owners and occupiers

An owner or occupier of a lot must not —

- (a) use the lot for a purpose that may be illegal or injurious to the reputation of the building; or
- (b) make undue noise in or about the lot or common property; or
- (c) keep animals on the lot or the common property after notice in that behalf given to that person by the council.

## 13. Notice of alteration to lot

An owner of a lot must not alter or permit the alteration of the structure of the lot except as may be permitted and provided for under the Act and the by-laws and in any event must not alter the structure of the lot without giving to the strata company, not later than 14 days before commencement of the alteration, a written notice describing the proposed alteration.

## 14. Appearance of lot

An owner or occupier of a lot must not, without the written consent of the strata company, maintain within the lot anything visible from outside the lot that, viewed from outside the lot, is not in keeping with the rest of the building.

## 15. Decoration of, and affixing items to, inner surface of lot

An owner or occupier of a lot must not, without the written consent of the strata company, paint, wallpaper or otherwise decorate a structure which forms the inner surface of the boundary of the lot or affix locking devices, flyscreens, furnishings, furniture, carpets and other similar things to that surface, if that action will unreasonably damage the common property.

## Other responsibilities

### ► Rates and other amounts payable

If the default governance by-laws apply to the scheme, then it is the lot owner's responsibility to pay all rates, taxes, charges, outgoings, and assessments that may be payable in respect of the lot.

### ► Property maintenance and works

If the default governance by-laws apply to the scheme, then it is the lot owner's responsibility to maintain and repair the lot and keep it in good condition. Exceptions are made to this requirement for reasonable wear and tear, and where damage occurs because of fire, storm, or other natural disaster.

Under these by-laws, a lot owner must also carry out all work that may be ordered under a written law in respect of their lot. Lot owners are exempt from this requirement to the extent that the works required benefit the building generally.

### ► Pets

Whether pets are permitted in a strata or survey-strata scheme will depend on the by-laws registered for that scheme. If the default conduct by-laws apply to the scheme, then occupiers may keep animals in a strata titles scheme until the council issues a notice not to.

It is open to a strata company to make different by-laws regarding the keeping of pets, however it is important to note that it may be challenged, if it is argued that the by-law is unfair or discriminates against one or more lot owners, especially if it is found to be oppressive or unreasonable in nature.

### ► Assistance animals

The STA provides that a by-law is invalid if it prohibits or restricts the keeping on the lot of an animal that is used as an assistance animal by a person with a disability who is an owner or occupier of a lot.

The STA provides that an assistance animal has the meaning given in section 9(2) of the *Disability Discrimination Act 1992* (Commonwealth). The STA further provides that a by-law is invalid if it prohibits or restricts the use on the land in the scheme of an assistance animal by a person with a disability.

### ► Nuisance smoking

The STA does not include any specific provisions for banning smoking. However, owners and occupiers of a lot in a scheme must not use, or permit the use of, the lot or common property in a way that interferes unreasonably with the use or enjoyment of another lot or the common property by another person. In the alternative, it is open to a strata company to pass a by-law that prevents smoking on common property.

### ► Garbage disposal

The STA includes a default conduct by-law that controls how an owner or occupier of a lot must dispose of their garbage.

This by-law requires a lot owner or occupier to:

- maintain a clean, dry, and covered receptacle for their garbage
- keep the receptacle for their garbage within their lot or on the part of the common property authorised by the strata company for this purpose
- comply with all local laws regarding garbage disposal
- ensure the health, hygiene, and comfort of other lot owners and occupiers is not adversely impacted by the disposal of their garbage.

In addition, an owner or occupier of a lot must not deposit or throw on their lot, any other lot, or on common property any rubbish, dirt, dust, or other material that may interfere with the peaceful enjoyment of another owner or occupier's lot, or the common property.



## ► Vehicle parking

The STA includes default conduct by-laws that relate to vehicle parking.

These by-laws are:

- an owner or occupier must take all reasonable steps to ensure that their visitors comply with a scheme's vehicle parking by-laws, and
- owners and occupiers must not park or stand any vehicle on common property without the written approval of the strata company.

A strata company is free to amend these by-laws or make new vehicle and parking by-laws that are different to these. A strata company may also enter into a contract or arrangement with a local government allowing them to enforce parking, and other local laws relating to roads within the scheme.

Vehicle parking by-laws and the *Perth Parking Management Act 1999*.

Strata titles schemes within the Perth parking management area (management area) are subject to the *Perth Parking Management Act 1999* (PPMA). The PPMA regulates and licenses parking in the management area as part of a government policy to provide a balanced transport network, manage congestion and provide an efficient transport system to, from and within the city centre.

Under the PPMA owners of land or buildings within the management area must not permit parking of a vehicle on the land or in the building unless:

- the land or building is used solely for private residential purposes, or
- the owner has a parking bay licence that permits the vehicle to be parked there, or
- the vehicle is a prescribed vehicle or is parked in prescribed circumstances.

Under the PPMA the strata company is taken to be the owner of the land and buildings in the strata titles scheme regardless of whether the land or building is common property, privately owned or subject to exclusive use by-laws.

The strata company of a strata titles scheme within the management area where the land or buildings in the scheme are not used solely for private residential purposes (for example a mixed-use scheme) may apply for a parking bay

licence to permit vehicles to be parked there. An individual owner of property within a strata titles scheme may not apply to license their bay separately from others in the scheme and licence variations will not be accepted from individual owners in relation to a parking bay they own.

The STA specifies that by-laws are invalid to the extent that they are inconsistent with the any other written law, and this includes the PPMA.

Schemes in the management area should seek advice on the application of the PPMA to their scheme and what by-laws may be appropriate to manage those obligations.

The Department of Transport can provide advice regarding the PPMA, and more information can be found on the Department of Transport website.

## ► Use of common property

Owners and occupiers of lots in a scheme must use common property in accordance with the STA and conduct by-laws of the scheme.

Under the STA, an owner or occupier of a lot must not:

- use, or allow someone else to use, common property in a way that unreasonably interferes with another person's use or enjoyment of another lot or the common property in the scheme, or
- use an area or space within the scheme in a manner that contravenes a restricted use condition set out on the scheme plan.

The default conduct by-laws within the STA require an owner or occupier of a lot to:

- use and enjoy common property in a way that does not unreasonably interfere with the use and enjoyment of the common property by other owners or occupiers of lots and their visitors,
- not use common property in a way that will cause nuisance to other lot occupiers (whether owners or not),
- take all reasonable steps to ensure that their visitors do not behave in a way that interferes with the peaceful enjoyment of another occupier's lot or the common property, and
- not obstruct the lawful use of the common property.

## ► No interference with utility conduits and utility services

The STA specifies that owners and occupiers of lots are not to interfere with utility conduits or utility services in a way that might impact the use and enjoyment of another lot or common property in the scheme. This includes not doing anything to affect water, sewage, drainage, gas, electricity, air conditioning, heating, communications and data services to other lots or common property.

## ► Short-stay accommodation

There is nothing in the STA that prohibits a strata company from allowing short-stay accommodation within their scheme. Lot owners generally have the right to use their property as a short-term rental, unless there are existing

by-laws or local planning laws that prevent them from doing so.

The default by-laws included in the STA don't include any by-laws relating to short-term rentals. Where a strata company wishes to prohibit or specifically allow short term accommodation within their scheme, they will need to make a by-law to facilitate this.

It is important to note that by-laws are subject to any other legislation. As a result, by-laws that allow short term accommodation will always have to conform with local planning legislation. That is to say that if the local planning scheme doesn't allow short-stay accommodation in the area a scheme is in, then a scheme cannot make a by-law to allow it.

The Department of Planning, Lands and Heritage or your local government can provide advice regarding the most recent legislative requirements around short term accommodation.



# 3

## Meetings, voting and decision-making

- Meetings
- Voting and minutes



### Meetings

#### ► General meetings

An annual general meeting (AGM) is the meeting of the general membership of a strata company that is held to conduct business on behalf of the strata company. A strata company (except a two lot scheme) must hold an AGM once every 12 months and no later than 15 months after its previous AGM.

The first statutory meeting of a strata company is an AGM and must be held within three months of the registration of the scheme. This meeting is typically convened by the scheme developer (that is, the person registered under the *Transfer of Land Act 1893* as the proprietor of an estate in fee simple in the parcel immediately before it is subdivided by a strata titles scheme) but can also be convened by any other member of the strata company.

The STA sets out certain business items that must be included on the agenda of a strata company's AGM. These agenda items are the:

- election of council members,
- consideration of accounts, and
- presentation of copies of certificates and schedules for the required insurance for the scheme.

The strata company can of course conduct business at an AGM other than what is required by law. Any additional business items are taken to be special business.

General meetings of a strata company other than an AGM are called extraordinary general

meetings (EGMs). Strata councils may hold an EGM if they think it is appropriate. An EGM may also be requested in writing by lot owners holding 25% or more of the scheme's unit entitlement. If the Council fails to hold an EGM within 21 days of this request, the owners making the request, or any one of them holding more than 50% of the unit entitlement, can take steps to convene the meeting. There are no statutory requirements for what business must be conducted at an EGM. All business items for an EGM are taken to be special business.

#### ► Notice for meetings

All lot owners of a strata titles scheme and the first mortgagees of these lots, who have notified the strata company in writing of the mortgage, must be given at least 14 days' notice of every general meeting. This notice must include the agenda items to be discussed at the meeting, specifically:

- the date, time, and venue of the meeting,
- for an AGM, the following items of business as required by the STA:
  - election of council members,
  - consideration of accounts,
  - presentation of copies of certificates and schedules for the required insurance for the scheme,
- for special business, a notice of the general nature of that business, and
- notice of each voting method that is acceptable to the strata company (that is, through electronic communications or otherwise).

#### ► Raising a matter at a meeting

Strata titles schemes are self-governing and there are provisions for owners or occupants who want to raise an issue at a meeting. Whether it is a maintenance issue, the intention to seek permission for renovations, or raising concerns regarding potential breaches of by-laws, the process to follow is generally the same.

The STA sets out notification requirements that must be followed for an item to be considered as special business at a general meeting. Lot owners can't raise a matter as special business at a general meeting.

For an item to be included on the agenda for a general meeting, a lot owner must provide a written notice to a member of the strata council to add the item to the meeting agenda. This notice must include the general nature of the item and be received more than 14 days prior to the general meeting. Any items of special business that do not meet these notification requirements will need to wait until the next meeting.

A member of the strata council that receives this notice must ensure that the item is included on the agenda and in the notice for the general meeting (as special business). This notification must include the general nature of the item to be discussed.

#### What is a quorum and how does it apply to general meetings

A quorum is the minimum number of people who need to attend a meeting to achieve a legitimate vote. A quorum is required for a strata company to officially engage in business and make decisions at a general meeting.

The quorum requirements for a general meeting are set out as follows:

- Two lot scheme
 

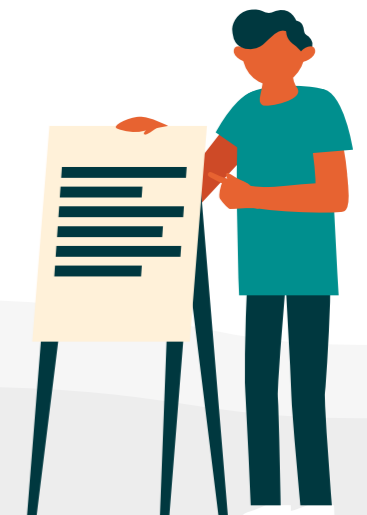
For each lot in the scheme, a person is present that is entitled to cast the vote attached to the lot. That is, there is a person present for each lot (two people total), who is entitled to cast a vote for that lot (either the owner of the lot or their proxy).
- Other than a two lot scheme
 

The people present entitled to cast votes represent 50% of the lots in the scheme. That is, there must be present a person that is entitled to cast the vote attached to the lot for 50% of the lots in the scheme.

For schemes that are larger than two lots, if a quorum is not present at the meeting 30 minutes after the scheduled start time of the meeting, then all those present form the quorum for that meeting.

#### ► Attending a meeting remotely

Subject to any requirements of the scheme by-laws, a person may attend a meeting of a strata company remotely and be taken to be present at the meeting. A person may attend and vote at a meeting remotely via telephone, video link, internet connection or a similar form of remote communication if this does not place an unreasonable imposition on the strata company.



## Voting and minutes

### ► Voting

The voting system used by a strata company, whether it is electronic or by other means, must enable votes to be cast in a way that protects the integrity of the voting system. The owner of each lot in a strata titles scheme is entitled to one vote on a proposed resolution of the strata company. Where a lot has more than one owner, the co-owners may only cast one vote though jointly appointing a single proxy (who maybe one of the co-owners).

Typically, the only circumstance where a lot owner will not be entitled to vote is if they have an outstanding amount owed to the strata company (that is, they are unfinancial). However, unfinancial lot owners are still able to vote on:

- unanimous resolutions or resolutions without dissent
- a resolution postponing the expiry day for a leasehold scheme
- a termination resolution for a scheme.

Resolutions can be put to members of a strata company either at a general meeting or outside of a general meeting. However, only a member of the strata company who is entitled to vote on the resolution can put forward a resolution.

Resolutions passed at a general meeting may be ordinary resolutions unless the STA requires otherwise.

The resolutions of a strata company that are allowed for under the STA are:

- A unanimous resolution - where 100% of the votes attached to lots are in favour of the proposed resolution.
- A resolution without dissent - where there are no votes against the proposed resolution. For a two lot scheme the resolution without dissent is passed if the vote attached to each lot is in favour of the resolution.
- An ordinary resolution – where a simple majority vote in favour of the resolution either by the number of votes or by sum of the unit entitlements in the scheme.
- A special resolution – these resolutions have slightly different provisions for voting depending on the scheme's size. In schemes of more than five lots, a special resolution

is where the votes in favour, when counted by number, equal not less than 50% of the lots in the scheme and when counted by unit entitlement, equal not less than 50% of the unit entitlement of lots in the scheme. The votes against the resolution, when counted by number, equal less than 25% of the lots in the scheme and when counted by unit entitlement, equal less than 25% of the unit entitlements of lots in the scheme.

For two lot schemes a special resolution is passed if it is a unanimous resolution. Special rules apply for three to five lot schemes.

14 days' notice of the terms of a resolution must be given to lot owners before voting opens on the resolution. This requirement applies for special resolutions, unanimous resolutions, resolutions without dissent, or ordinary resolutions passed other than at a general meeting,

### Voting outside a meeting

Voting does not have to take place at a meeting and a strata company can arrange for a vote to occur at another time. Where a vote is taken outside of a general meeting, the notice of the proposed resolution must specify:

- how the vote will be conducted
- how a vote may be submitted
- the closing date for submitting a vote
- how the owner of a lot will know their vote has been cast
- how the results of the vote will be published.

### Voting by proxy

Proxy voting, where someone nominates another person to vote on their behalf, is allowed for all general meetings of a strata company and for all purposes.

A proxy can be a member of the strata company, a strata manager, or another person.

For a proxy to be able to vote on behalf of a lot owner or a first mortgagee, they must be appointed through an instrument of appointment, that:

- is in writing
- is executed by the person appointing the proxy or their attorney
- sets out any limitations the proxy is subject to.

There are circumstances that will disqualify a person from voting as a proxy or impose additional requirements on proxy or resolution being voted on.

These disqualifications and additional requirements are set out below:

Proxy	Disqualification and/or additional requirements
A member of a strata company who is: <ul style="list-style-type: none"> <li>• an individual, and</li> <li>• a sole owner of a lot, and</li> <li>• is present at a general meeting.</li> </ul>	This person must cast the vote for the lot in person rather than by proxy.
A person with any financial or other interest in the provision of goods, amenities, or services to the strata company.	This person must not vote as a proxy on a resolution relating to the provision of the goods, amenities, or services to the strata company that the proxy has an interest in.  There is an exception to this disqualification if the instrument of appointment expressly authorises the proxy to vote on the resolution and specifies how the proxy will vote.
A strata manager who has a strata management contract with the strata company.	This person must not vote as a proxy on a resolution relating to the making, varying or extending a strata management contract.  There is an exception to this disqualification if the instrument of appointment expressly authorises the proxy to vote on the resolution and specifies how the proxy will vote.  In addition, the notice of the resolution must specify: <ul style="list-style-type: none"> <li>• the name of the strata manager,</li> <li>• when the proposed contract, or the contract variation or extension is to start and end,</li> <li>• each proposed contract variation, if applicable, and</li> <li>• the remuneration payable under the contract or the way the remuneration is to be calculated.</li> </ul>

### ► Minutes

Under the STA, strata companies must keep minutes of their general meetings and minutes of the meetings of their council. The exception to this requirement is two lot schemes that exempt from keeping meeting minutes and three to five lot schemes that may pass a by-law opting out of this requirement.

Records must also be kept of the strata company's resolutions, and the decisions of its council.

It is the duty of the secretary of the strata company to take and distribute the minutes of any meeting of the strata company and to ensure that the minutes are confirmed at the next meeting.

A member of a strata company can request to inspect previous minutes of general meetings and meetings of its council, as well as records of the strata company's resolutions, and the decisions of its council.

# 4

## Getting things done

- Renovations in a strata titles scheme
- Repairs
- Building defects



### Renovations in a strata titles scheme

#### ► Renovations and structural alterations

Undertaking renovations within or to a lot in a strata titles scheme can be a complicated process. Approvals are typically required from the strata company and, depending on the nature of the renovation, approvals may also be needed from other authorities. A renovation in one lot can have an impact on another lot or the common property in a strata titles scheme. These approvals are aimed at ensuring that lot renovations do not negatively impact the scheme more broadly.

The STA doesn't use the term renovations. The requirements to undertake a renovation to or in a lot in a strata titles scheme are set out throughout the STA using different terminology. These requirements fall within the provisions dealing with structural alterations to lots, by-laws, voting, and changes to common property. The following information aims to pull these requirements together in a single place to give lot owners an overview of the approval process.

#### ► Renovations to lots

Typically, lot owners cannot make renovations to their lot without first seeking permission from or informing the strata company. The approval of the strata company is in addition to any development and building approvals, which might also be required under other legislation (for example, the *Planning and Development Act 2005* and *Building Act 2011*).

Lot owners may also be limited to what renovations they can make to their lot based on the by-laws for their scheme. Default conduct by-laws prohibit lot owners from:

- altering the structure of their lot (as allowed for under the STA or by-laws) without giving the strata company 14 days written notice describing the proposed alteration,
- decorating or affixing items to the inner surface of their lot without the written consent of the strata company, and
- maintaining in the lot anything that is visible from outside the lot that is not in keeping with the rest of the building without written consent of the strata company.

The approval process to renovate a lot varies depending on the type of scheme involved and whether the renovation impacts common property. Before undertaking renovations, lot owners must understand what kind of scheme their lot is in and where the lot boundaries are. This will allow them to determine which approvals are needed.

#### ► Renovations to a lot in a strata scheme

In addition to the requirements and limitations set out above, renovations that structurally alter a lot in a strata scheme need the prior approval of the strata company. This approval must be obtained before work commences and can be gained through:

- approval of the strata company in the form of a resolution without dissent, or
- written approval by the owner of each lot in the scheme.

If approval is gained through each lot owner providing a written approval, all approvals must be unconditional or subject to the same conditions. A copy of each approval must also be served on the strata company.

An application to a strata company or other lot owners to make a structural alteration to a lot must include the following information:

- plans and specifications for the structural alteration,
- the area of the structure, including the area of all existing and proposed structures to be considered for the purposes of calculating the plot ratio restrictions and open space requirements,
- the open space or plot ratio requirements in relation to the parcel of land in the strata titles scheme,
- if carrying out the alterations will exceed the open space and plot ratio requirements, the percentage and area by which these will be exceeded,
- if carrying out the alterations will not exceed open space and plot ratio requirements, a statement to that effect,
- the location and dimensions of the structure when it is completed in relation to any existing structure on the lot or to the boundary of the lot,
- any contravention of any by-law, which is likely to occur as a result of carrying out the alterations,
- the materials to be used in the alterations
- the colours of the structure, which will be visible from outside the lot,

- the method of construction of the alterations and the work plan or schedule for carrying out the alterations, and
- any likely interruption or interference with any statutory easements, short form easements and restrictive covenants and other easements or restrictive covenants granted under the STA affecting the parcel, whether of a permanent or temporary nature whether the structural alteration to the lot changes the boundaries of the lot and if the applicant has sought advice from a licensed surveyor about the effect of the structural alteration.

If an application is received by the strata company, voting on it must open within 35 days after receipt of the application.

An owner of a lot approves the structural alteration of a lot if:

- they provide written consent to the alteration, or
- they have not made a written objection to the alteration within 42 days of being given the application, or
- they have made an objection which does not specify the grounds of the objection, or the grounds specified are not allowed for under the STA.

A strata company approves the structural alteration of a lot if:

- it provides the applicant written consent to the alteration expressed by resolution without dissent, or
- it has not made a written objection to the alteration within 77 days of being given the application, or
- it has made an objection which does not specify the grounds of the objection, or the grounds specified are not allowed for under the STA.

Whilst the process to gain approval for a renovation that makes a structural alteration to a lot is complicated, there are only limited grounds on which another lot owner can refuse or vote against an application.

The grounds on which an application can be refused or voted against are that the carrying out of the renovation:

- will breach the open space or plot ratio requirements for the lot
- will contravene a specified by-law of the strata company
- may interfere with a short form easement, restrictive covenant, or any other easement or covenant, affecting the parcel as shown on the scheme plan or registered against the parcel
- will result in a structure that is visible from outside the lot, which is not in keeping with the rest of the development
- may affect the structural soundness of a building
- may interfere with any statutory easement automatically granted under the STA.

A lot owner must disclose the grounds for refusing or voting against the application. If the grounds are not disclosed, the refusal or vote is ineffective.

## ► Renovations to a lot in a survey-strata scheme

Renovations within a survey-strata scheme are less complicated than renovating in a strata scheme. This is because, subject to what the by-laws say, the approval of the strata company or written approval of the other owner (in the case of a two lot scheme) is only required if on completion of the structural alteration the plot ratio or open space requirement for the lot is breached.

If the strata company's approval is required, it must be provided by way of resolution without dissent

An application for the approval of the structural alteration of a lot must include the following information:

- The plot ratio restrictions and open space requirements in relation to the parcel of land the survey-strata scheme is on.
- The pro rata entitlements of the lot as they relate to open space and plot ratio.

- If the application was to be approved, the area of the structure, including the area of all existing and proposed structures to be taken into account for the purposes of calculating the plot ratio restrictions and open space requirements.
- Whether or not the carrying out of the proposal will breach the pro rata entitlements of the lot and, if it does, the percentage and area by which the pro rata entitlements of the lot is exceeded.
- The dimensions of the proposed structure upon its completion.
- Any likely interruption to or interference with any statutory easement, short form easement or restrictive covenant or any other easement or restrictive covenant affecting the parcel that is shown on the scheme plan or registered against the parcel, whether of a permanent or temporary nature.

Open space requirements and plot ratio restrictions are laid down by the local authority in relation to the parcel of land the survey-strata scheme is on. These requirements set out the total area of all structures which may be constructed on the parcel. The balance must be kept as open space.

If an application is received by the strata company, voting on it must open within 35 days after receipt of the application.

An owner of a lot approves the structural alteration of a lot if:

- they provide written consent to the alteration, or
- they have not made a written objection to the alteration within 42 days of being given the application.

A strata company approves the structural alteration of a lot if:

- it provides the applicant written consent to the alteration expressed by resolution without dissent, or
- it has not made a written objection to the alteration within 77 days of being given the application.

## ► Renovations to lots that impact common property

Individual lots within a strata titles scheme can have areas within them that incorporate common property. These areas can be structural components for walls and floors, pipes, electrical infrastructure and the associated conduits.

The strata company has a general duty to control and manage this common property for the benefit of all lot owners and to keep this common property properly maintained and in good and serviceable repair. As such, lot owners wanting to undertake renovations that impact these parts of the common property may require approval from the strata company.

### SAT exemptions for structural alterations

A lot owner may apply to the State Administrative Tribunal (SAT) for an exemption from the requirements of the part of the STA relating to structural alteration of a lot.

This exemption would allow a lot owner to undertake a renovation that structurally alters their lot:

- without the approval of the strata company or written consents of owners, and
- despite a valid refusal to the renovation.

SAT can only make an order exempting the renovation from the approvals required under this part of the STA if:

- the structural alterations to the lot are reasonable, having regard to the merits of the alteration and the interests of all the owners of the lots in the use and enjoyment of their lots and the common property, and
- to the extent that the structural alteration has already been carried out, it will not cause any significant inconvenience or detriment to the owners of other lots.

## Repairs

### ► Responsibility for repairs to common property

The strata company has a duty to control and manage the common property of the scheme for the benefit of all lot owners.

The strata company is responsible for keeping the common property of the scheme in good and serviceable condition. This includes undertaking repairs and renewing and replacing common property when necessary. Strata companies are also able to make improvements to and alter common property.

The only exception to this duty is where a scheme has exclusive use by-laws in place. An exclusive use by-law confers on the occupier of a lot exclusive use of and special privileges over certain common property in the scheme. Unless these by-laws specify otherwise, it is the responsibility of the lot occupier to maintain, repair, renew, or replace the common property that they have exclusive use of.

A lot owner can clarify if they have responsibility for the repair and maintenance of common property by reviewing the by-laws for their scheme.

### ► Paying for repairs to common property

Strata companies are required to budget for the maintenance and upkeep of common property. If expenditure on common property is required in addition to that allowed for in the budget, a strata company may spend up to \$500 per lot in the scheme without the approval of its members. If expenditure greater than this allowance is required, it can be approved through a special resolution of the strata company.

## Building defects

### ► What if there is a problem with my building?

In Western Australia, builders are required to rectify defective works within six years of practical completion of those works under the *Building Services (Complaint Resolution and Administration) Act 2011*. This six-year period is referred to as the statutory defect liability period. Complaints about building defects must be made to the Building Commissioner and more information can be found on the Department of Mines, Industry Regulation and Safety website.

Once a strata company is established for a strata titles scheme, the strata company is entitled to all the rights and remedies of the scheme developer in respect of building defects in a:

- strata scheme - each scheme building, or
- strata scheme or survey-strata scheme - infrastructure comprising common property of the scheme.

This means that after a strata titles scheme has finished being developed and the lots sold off to new owners, the strata company can pursue a builder for defective work as if they were the developer.

The STA also includes provisions that restrict a scheme developer who is a member of the strata company from voting on defect in a scheme building or infrastructure. If, within 10 years after completion of a scheme, a proposed resolution is put to a strata company about a building defect, the following members of the strata company must be excluded from voting on the resolution:

- the scheme developer of the subdivision in which the building was constructed or modified, and
- an associate of such a person.

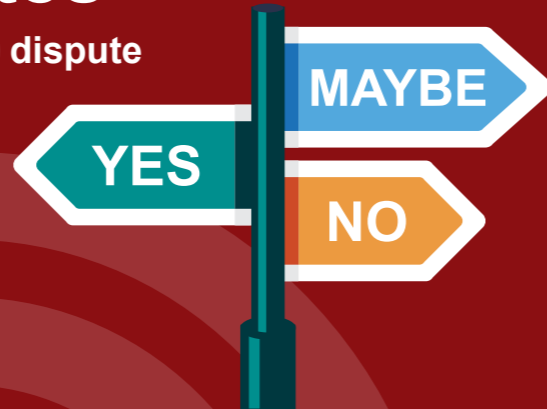
If someone is excluded under these provisions, the unit entitlement of the lot of the member must be disregarded in determining whether the proposed resolution is passed by the strata company.



# 5

## Resolving disputes

- Five step approach to resolving a dispute
- Common strata disputes



### Five step approach to resolving a dispute

#### Step 1 | Understand the dispute

It is important that you first understand the nature of your dispute before approaching the other party involved or the strata company. 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?”

- Write a list of the events leading up to the dispute and highlight the key points, including details of the issues you would like to be resolved.
- Check the STA and your scheme’s by-laws to clearly understand what they say about the matter in dispute.

If you do not have a copy of the by-laws for your strata titles scheme, you should request a copy from your strata company in the first instance.

If you are unable to ascertain the by-laws for your scheme, by-laws that have been registered at Landgate can be ordered online on our website through our Certificate of Title/associated documents page.

To help you locate the by-laws for your scheme, the scheme by-law document number is endorsed on the last page of the strata/survey-strata plan.

#### Step 2 | Talk to the other party involved

Many strata disputes 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.

Many strata titles schemes will also have their own internal processes for resolving disputes that occur between lot owners and residents, the strata company/strata council, the strata manager and/or third parties. Internal processes for resolving disputes within your scheme may be set out in your scheme’s by-laws or other rules the strata company has made.

#### Step 3 | Approach the strata company/strata council

Many issues can be considered and decided upon by a resolution of the strata company.

You can raise your issue with the strata company/strata council. You can submit a written request to any member of the council, for the matter to be listed on the agenda for consideration at the next council meeting or general meeting of the strata company.

The strata company and strata council have a duty to act in the best interests of the lot owners. Additionally, the STA requires a strata company to have the objective of achieving outcomes that are not:

- unfairly prejudicial to or discriminatory against an owner or occupier; or
- oppressive or unreasonable.



## 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 the strata company/strata council, mediation is commonly considered to be a useful method to resolve strata disputes.

Mediation 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

Web: [cabwa.com.au](http://cabwa.com.au)

## Step 5 | Apply to 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).

SAT is the one-stop-shop for strata disputes in Western Australia, with an exception being the recovery of unpaid levies which are dealt with through the court system.

It 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.

### Statutory powers of SAT

The SAT has the statutory powers to efficiently resolve strata disputes between participants in a strata titles scheme, such as:

- a strata company,
- a lot owner,
- an occupier of a lot in the scheme,
- an owner of a leasehold scheme,
- an administrator of a strata company,
- the mortgagee of a lot,
- a member of the strata council, or
- an officer of the strata company.

### Examples of disputes the SAT might review

- The owner of sustainability or utility infrastructure that has been installed on the common property (through a contract with the strata company) and the strata company, about the matter connected with a common property (utility and sustainability infrastructure) easement.
- The scheme developer and a strata company about matters involving the first AGM, key documents of the scheme, disclosure of remuneration and other benefits.
- The strata company and a designated person about the giving of contact information, inspection of material and the giving of certificates.
- A strata manager, or former strata manager, and the strata company about matters involving the authorised functions of a strata manager or the strata management contract.
- A buyer or prospective buyer of a lot in a scheme and the seller of a lot about the giving of information to the buyer before or after the contract, the exercise of avoidance rights under the STA and other matters covered in the 'Protection of buyers' part of the STA.

- An occupier of a lot in the scheme and the owner of the lot or the proponent about a proposal to terminate a strata titles scheme.

### How to apply to SAT

Applications can be made to SAT by visiting their website: [sat.justice.wa.gov.au](http://sat.justice.wa.gov.au).

Keep in mind that depending on the type of application you are making, there may be a time limit for applying to SAT. Check the STA to see if there is a time limit for your dispute. Other information can be found on the SAT website.

### SAT's procedures

Once SAT accepts your application, you will be required to give a copy of the application and all the documents which you submit with it to each respondent named in your application.

The next step is usually a directions hearing to decide how to move forward.

### SAT decisions database

It's also worth noting that the SAT website provides access to a decisions database, which contains the outcome of decisions made by SAT. This database includes decisions made pursuant to the STA.

You may wish to check through the database for decisions that may be similar to a current dispute in your strata titles scheme, as the documented decision may assist in your dispute resolution process.

The decision database can also be found at [sat.justice.wa.gov.au](http://sat.justice.wa.gov.au).



## ► Common strata disputes

The below information sets out some common issues experienced within strata titles schemes and practical steps to help you reach a resolution.

Disclaimer: These examples serve as a guide only and do not constitute legal advice.

### **Breach of by-laws** For example, unauthorised parking, excess noise, nuisance.



#### 1. Understand the issue

Check the STA and your scheme's by-laws to ensure that there is a by-law which prohibits the resident from undertaking the particular action. For example, if the resident is parking on common property, is there a by-law which prohibits this from occurring?



#### 2. Talk about the issue

Raise the issue with the person who is responsible for the breach and/or advise the strata company or strata council. The strata company can give a written notice to a person alleged to have contravened the scheme by-laws.



#### 3. Apply to SAT

If the conduct continues, the strata company can make an application to SAT for an order to enforce a by-law, including an order to pay a penalty.

### **Damage to a lot** For example, by water.



#### 1. Understand the issue

Check and compile your facts on how the water damage occurred and the extent of the damage – that is, does the water damage only affect your lot, another owner's lot, or common property? This is important to determine whether you are personally responsible to repair the damage, or whether it is the responsibility of the strata company.



#### 2. Talk about this issue

Raise the issue with the strata company, strata council, or the strata manager. Check to see if your scheme has an internal dispute resolution process set out in the by-laws.



#### 3. Approach the strata council

Raise the matter with the strata council. It may be appropriate for the issue to be included on the agenda of the next council meeting or general meeting of the strata company for consideration. The request must be in writing.



#### 4. Mediation

If the issue is not resolved by resolution of the strata company, consider using mediation to reach an agreed outcome.



#### 5. Apply to SAT

If the issue remains unresolved, apply to SAT for a determination.

## Common property requires repair



#### 1. Understand the issue

Check and compile your facts on the common property that requires repair – that is, what is the extent of the damage/what needs repairing?



#### 2. Talk about the issue

Raise the issue with the strata company, strata council, or the strata manager. Check to see if your scheme has an internal dispute resolution process set out in the by-laws or rules (if any).



#### 3. Approach the strata council

Raise the matter with the strata council. It may be appropriate for the issue to be included on the agenda of the next council meeting or general meeting of the strata company for consideration. The request must be in writing.



#### 4. Mediation

If the issue is not resolved by resolution of the strata company, consider using mediation to reach an agreed outcome.



#### 5. Apply to SAT

If the issue remains unresolved, apply to SAT for a determination.

## Obtaining exclusive use of common property



#### 1. Understand the issue

Check the STA and your scheme's by-laws to determine whether there are any by-laws which prohibit exclusive use of common property being requested.



#### 2. Talk about the issue

Raise your request with the strata company/strata council.



#### 3. Apply in writing to the strata company to create an exclusive use by-law

Exclusive use by-laws are governance by-laws which require a resolution of the strata company to be passed. In schemes of two lots, a unanimous resolution is required, and in all other schemes, a resolution without dissent is required.



#### 4. Mediation

If you do not obtain the required resolution of the strata company to pass the exclusive use by-law, and wish to progress the denied request, consider using mediation to reach an agreed outcome.



#### 5. Apply to SAT

If the issue remains unresolved, apply to SAT for a determination. SAT is empowered to resolve disputes regarding a resolution or decision of the strata company/ strata council including its validity.

## Disagreeing with a decision made by the strata company/ strata council



### 1. Understand the issue

Check and compile your facts – that is, what was decided by the strata company/strata council and what are your concerns with this decision. Check the STA to understand what duties the strata company/council has to fulfil.



### 2. Talk about the issue

Raise the issue with the strata company, strata council, or the strata manager. Check to see if your scheme has an internal dispute resolution process set out in the by-laws or rules (if any).



### 3. Approach the strata council

Raise the matter with the strata council. It may be appropriate for the issue to be included on the agenda of the next council meeting or general meeting of the strata company for consideration. The request must be in writing.



### 4. Mediation

If the issue is not resolved by resolution of the strata company, consider using mediation to reach an agreed outcome.



### 5. Apply to SAT

If the issue remains unresolved, apply to SAT for a determination. SAT is empowered to resolve disputes regarding a resolution or decision of the strata company/ strata council, including its validity.

## Dissatisfied with strata manager



### 1. Understand the issue

Check and compile your facts to understand what the strata manager has or hasn't done and compare it with the STA to understand the duties of strata managers. Understand that the strata manager is engaged by the strata company, so ultimately it is the strata company that must decide if any action is to be taken.



### 2. Talk about the issue

Raise the issue with the strata company or strata council, explaining your reasons for being concerned. The strata manager is engaged by the strata company, so ultimately it is the strata company that must decide if any action is to be taken.



### 3. Next steps

Under some circumstances it is possible for the strata company to terminate the strata management contract - for example, if the strata manager has been dishonest or not followed the STA. Refer to the STA to see the full process for terminating the contract or refer to 'The role of strata managers' section in this guide. Note that the strata manager has the right to apply to SAT for a review of the decision to terminate the contract.

# 6

## Buying and selling

- Before you buy
- The seller's duty of disclosure
- Buyer's avoidance and other rights



### ► Before you buy

People look to buy into strata schemes for different reasons - often they are cheaper than the equivalent freehold title or it is the location or property type that attracts them.

Whatever your reason for favouring a strata property, it is important to understand the ways that it is different from a freehold property.

Some examples of how living in a strata property is different to a freehold lot:

- Strata owners share ownership of any common property such as gardens, external walls, roofs, driveways, and stairwells, and need to share costs associated with this common property, including repairs and insurance.
- In a freehold lot, there are many things you can do without getting approval from your neighbours, such as keeping several dogs or having a late-night party. However, most strata titles schemes will have by-laws in place to ensure that people can live in close quarters with one another as harmoniously as possible.

It is important to understand what you're buying into so that you can better compare properties and make a more informed decision.

The STA sets out a series of provisions that empower you to understand the property details, ongoing costs and rules associated with a strata titles scheme that you're considering.

That means you must be given certain details on the strata titles scheme you are buying into, in addition to the strata lot you are looking to purchase.

Be sure that you are familiar with the information that needs to be provided to you by the seller before you buy and that you understand your rights and responsibilities as a buyer.

Please refer to the seller's duty of disclosure information below to learn more. You might also review Part 10 of the STA that sets out the protections for buyers of strata lots.

### Tips

- Budget for any ongoing scheme costs after purchase (for example, by understanding the strata levies).
- Understand the existing level of cooperation among the strata community and what upcoming costs there might be, such as any major repairs (via the minutes from the most recent annual general meeting).
- See what the overall financial status of the scheme is looking like (via the statement of accounts).

### ► The seller's duty of disclosure

Selling a property that forms part of a strata titles scheme comes with a series of obligations of disclosure. The STA details a list of information the seller must provide to a prospective buyer before the buyer signs a contract for sale and purchase of the lot.

This information covers important details on the strata titles scheme, along with the specific lot being sold. This is to ensure buyers are well informed before the purchase proceeds.

#### For the strata titles scheme

- The scheme documents (that is, scheme notice, scheme plan, scheme by-laws and schedule of unit entitlements for the strata titles scheme).
- In the case of a leasehold scheme, the strata lease for the lot is also required.
- The minutes of the most recent annual general meeting and of any subsequent extraordinary general meetings of the strata company.
- The most recent statement of accounts as prepared by the strata company.
- Information on any termination proposal that may have been put to the strata company.
- Estimated contributions they will have to pay as their strata levy over a 12-month period.
- Any amount already owed to the strata company by the current lot owner.

#### For the lot

- The exact location of the lot, shown on the scheme plan for the strata titles scheme.
- The definition of the lot, as contained in the scheme plan for the strata titles scheme.
- The unit entitlement of the lot, which determines the lot owner's share of common property in the scheme, subject to the scheme by-laws, contributions payable by the owner and the voting rights that attach to the lot
- If contributions have been determined by the strata company within the previous 12 months.
- The amount and due date of the contributions payable by the lot owner or a reasonable estimate.
- Details of any debt owed by the seller to the strata company, including how the debt arose, the date on which it arose and the amount outstanding.
- If the lot is a special lot, details of the exclusive use by-laws that apply to the lot.

This might look like a lot of information to gather, but almost all of it will be information you already have. The rest of it you can seek from the strata company or strata manager (if the scheme has one).



## Notifiable variations

The seller must also notify the buyer in writing of certain variations to the initial information they have provided. These are called notifiable variations.

There are two types of notifiable variation, type 1 and type 2. The details of each of these variations are set out below:

### Type 1 notifiable variation

A type 1 notifiable variation is any of the below-listed variations that occurs after a contract for the sale and purchase of a lot is entered into but before the settlement date for the contract.

- The area or size of the lot or proposed lot is reduced by 5% or more from the area or size notified to the buyer before they entered into the contract.
- The proportion that the unit entitlement (or estimate of the unit entitlement) of the lot bears to the sum of the unit entitlements of all the lots increases or decreases by 5% or more than the unit entitlement details notified to the buyer before they entered into the contract.
- Anything that is served on the seller by the strata company relating to a proposal for the termination of the strata titles scheme.
- Any other event classified by the regulations as a type 1 notifiable variation.

### Type 2 notifiable variation

A type 2 notifiable variation is any of the below-listed variations that occur after a contract for the sale and purchase of a lot is entered into but before the settlement date for the contract but do not give rise to a type 1 notifiable variation.

- The scheme plan, proposed scheme plan, or an amendment of the scheme plan is modified in a way that affects the lot or the common property.
- The schedule of unit entitlements, proposed schedule of unit entitlements, or amendment of the schedule of unit entitlements, for the strata titles scheme is modified in a way that affects the lot.
- The scheme by-laws, or proposed scheme by-laws, are modified.
- The strata company or a scheme developer:
  - enters into a contract that is likely to affect the rights of the buyer including a contract for the provision of services or amenities to the strata company or to members of the strata company, or
  - varies an existing contract of this kind in a way that is likely to affect the rights of the buyer.
- A lease, licence, right or privilege over the common property in the strata titles scheme is granted or varied.

## Additional information

In addition to the compulsory information, a buyer may wish to seek additional information – for example, about insurance, the strata council, the existence and details of a 10 year plan or litigation involving the strata company.

You can ask the seller to provide the information or seek access to the information directly by submitting a request in writing to the strata company.

You may inspect the information from their files on payment of \$1 and photograph materials, subject to any limitations in the Regulations or pay a fee (set out in the Regulations) to obtain copies of the documents, if the strata company agrees to provide copies. The strata company is not obliged to provide copies of documents.

## Electronic disclosure of information

Information can be disclosed electronically if:

- both the seller and buyer agree this is the most appropriate way to disclose,
- the buyer provides an email address to send the information to, and
- the buyer acknowledges receipt of the information.

### ► Buyer's avoidance and other rights

Failure to disclose all information required by the STA may mean the buyer can avoid the contract.

To prevent this, make sure all the necessary information is disclosed both before any contract is signed by the buyer and if a notifiable variation occurs.

### Buyer's avoidance rights | Based on delivery of precontractual information

Precontractual information is given **BEFORE** contract is signed by the buyer.

No avoidance right.

Precontractual information substantially complying is given **AFTER** contract is signed by the buyer and before the settlement date of the contract.

If the buyer **IS NOT** materially prejudiced by the information, buyer **MAY NOT** avoid the contract.

If the buyer **IS** materially prejudiced by the information, buyer **MAY** avoid the contract by giving written notice to the seller within 15 working days of being given the seller's notice.

Precontractual information **NOT** given, **and if the seller were to give the information, the buyer would receive information or a document that would disclose material prejudice to the buyer.**

Buyer **MAY** avoid the contract at any time before settlement date of the contract by giving written notice to the seller.

## Buyer's avoidance rights | Based on notifiable variations

Seller **GIVES** buyer notice of notifiable variation within:

10 working days of variation

OR

If within 15 working days of settlement, as soon as practicable.

For both type 1 and type 2 variations, the buyer may avoid the contract within 15 working days of notification provided the buyer:

1) Has not already agreed to the notifiable variation in the contract

AND

2) The buyer is materially prejudiced by the notifiable variation.

Seller **DOES NOT GIVE** the buyer notice of notifiable variation.

### Type 1 notifiable variation

Buyer may avoid the contract at any time before settlement (no need to prove material prejudice).

### Type 2 notifiable variation

Buyer may avoid the contract any time before settlement provided buyer is materially prejudiced by the notifiable variation.

If notice of the notifiable variation is **GIVEN LATE**.

### Type 1 notifiable variation

Buyer may avoid the contract within 15 working days of receiving notice.

### Type 2 notifiable variation

Buyer may avoid the contract within 15 working days of receiving notice, provided buyer is materially prejudiced by the notifiable variation.



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