

A Guide to Strata Titles



REVISED MARCH 2014



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A GUIDE TO STRATA TITLES IN WESTERN AUSTRALIA

EDITION 3.07

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A Guide to Strata Titles

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You should refer to the:

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1 INTRODUCTION

This book is produced as a community service by the Western Australian Land Information Authority (Landgate) to give people a basic understanding of strata titling principles. It is a summary only of the law as at 20 July 1997 and should not be taken as a precise guide to the law on strata titles. You should refer to the *Strata Titles Act 1985* (STA) as amended and the *Strata Titles General Regulations 1996* (STGR) as amended in 2006 for details.

Residential strata schemes provide for grouped housing with a community atmosphere. This combined with smaller areas, such as gardens to maintain, and the use of common facilities, such as bores and swimming pools, can make strata schemes attractive for many people. Strata schemes are also practical for industrial and commercial developments.

The cost of buying into strata schemes is usually comparatively less than the cost of buying into non-strata freehold title properties. This is because all the buildings are part of a single scheme and the planning requirements are relaxed. This reduces costs by allowing larger buildings on smaller lots and shared services such as electricity, gas, sewerage and water.

The outcome of this is that people are able to purchase better quality housing, and/or in a better area than they might be able to in the non-strata freehold environment.

Day to day living costs are also reduced in strata schemes, because shared services often mean that the cost of maintenance, such as painting, is reduced. Strata schemes also have the option of strata company insurance which is generally cheaper than individual insurance. Utility costs such as shire and water rates are generally less expensive in strata schemes.

There may be occasional problems associated with strata living, but most of those problems, such as disagreements with neighbours, also exist in the non-strata freehold title environment. The advantage of strata living, is that mechanisms such as by-laws, the Western Australian Land Information Authority (Landgate) and the State Administrative Tribunal (SAT) exist to assist the reconciliation of disputes.

2 BUYING A STRATA UNIT

As with any purchase of property, the rule of "buyer beware" applies. However when purchasing strata titled properties, the vendor is required by law to provide certain notifiable information, sec 69(A) & 69(B), about the scheme **before** the purchaser signs the contract to buy the property.

This information includes:

- Form 28 - "Disclosure Statement" (this information can form part of the contract);
- Form 29 - "Buying and Selling a Strata Titled Lot" (this may contain, or have attached, the standard by-laws);
- a copy of the registered or proposed strata /survey-strata plan, in particular drawing attention to any information that relates specifically to the lot being purchased;
- the unit entitlement of every lot within the scheme, and the total unit entitlement. If the scheme is not registered, the proposed unit entitlements;
- a copy of any by-laws, either registered, or yet to be registered, that vary the standard by-laws; and,

- in the case of a proposed scheme, the proposed by-laws where they vary the standard by-laws.

Where the strata/survey-strata plan has not been registered, the original proprietor must also provide additional information which includes:

- Details and costs of any service agreements to be entered into by the strata company, including any pecuniary interests held by the original proprietor in agreements to provide the services;
- The proposed budget of the strata company in its first 12 months and the estimated contributions to levies by the purchaser during that period; and,
- Details of any leases, licences, exclusive use, or privileges, granted over common property.
- If the vendor has failed to give the purchaser information that substantially complies with the requirements of section 69 or 69C and at the time required by that section of the STA, the purchaser has a right to avoid the contract. (sec 69D STA)
- With new developments the original proprietor is required to convene and hold a meeting of the Strata Company within 3 months after the registration of the Strata Plan whether or not he is a proprietor at the time he does so. (reg 23 STGR and sec 49 STA) Penalty \$2000

3 STRATA DEVELOPMENT

Local government authorities and the Western Australian Planning Commission are responsible for the zoning, planning and approval process for the creation of strata schemes. Listed below are the basic steps required to complete development of a strata scheme.

1. Check with your local authority to determine if the property is zoned for a strata development.
2. If the strata development is residential, contains a maximum of five lots and is 2,500 square metres less, a preliminary application is made to the local government authority. Otherwise, it is made to the Western Australian Planning Commission. A licensed surveyor can provide a detailed site plan.(reg 15 STGR)
3. All survey-strata schemes require Western Australian Planning Commission approval.
4. Once the building plan is approved in principle, a building licence is required from the local government authority before the commencement of building. Building plans and specifications are also required.
5. The strata plan is prepared by a licensed land surveyor after the buildings have been fully completed, including fences and driveways.
6. The strata / survey-strata plan is lodged at Landgate where a strata plan number is issued if not already pre-allocated.
7. The strata plan is approved by the local authority and to the Western Australian Planning Commission (if applicable).
8. An application is lodged at Landgate to register the Strata plan. The duplicate title must be produced at this stage. A new Title is then issued for each lot created by the Strata plan.

There are a number of factors that can complicate the process, and it is often advisable to consult appropriate professionals, such as planning consultants, conveyancers, as well as licensed land surveyors to ensure the process is completed without unnecessary delay, and/or additional cost.

You should also check the title for your property to ensure there is nothing preventing the strata titling, or subdivision of the land, such as a restrictive covenant.

4 TYPES OF SCHEMES

Two types of schemes are permitted under the *Strata Titles Act 1985*, strata schemes and survey-strata schemes. The comments in this book apply to both strata schemes and survey-strata schemes, unless indicated otherwise.

4.1 Strata Schemes

This is the original form of "strata scheme", or "strata plan", commonly known as a "building strata". At least one building must be shown on these strata plans and the boundaries of the strata lots, including the height of the lots (stratum) are defined by reference to the building. Prior to 30 June 1985, lots could only be within a building. After that date, part of the lot could also be the land outside the building and may also include the building structure.

The lot boundaries are shown on the floor plan of the strata plan and the wording on the floor plan must be read in conjunction with the sketch to ascertain the lot boundaries. (See also paragraph 16 "What You Own Individually And What Is Common Property")

4.2 Survey-Strata Schemes

The Strata Titles Amendment Act 1995 created a new form of strata scheme known as a "survey-strata scheme".

No buildings are shown on a survey-strata plan, even though there may in fact be buildings on the survey-strata lots.

The boundaries of survey-strata lots are surveyed by a licensed land surveyor and shown on the survey-strata plan. The lots on a survey-strata plan look much the same as lots that are shown on surveys (deposited plans, plans and diagrams) for non-strata freehold titles.

Survey-strata lots may, or may not be limited in height. The height of a lot may be limited for a number of reasons, eg. to protect a neighbour's view.

If there is a height limitation, it will be shown on the survey-strata plan and referenced to the Australian Height Datum (AHD).

Survey-strata schemes may have common property. If there is any common property in a survey-strata scheme, it is separately numbered as a lot and prefixed with the letters "CP".

The other features and obligations which apply to strata schemes also apply to survey-strata schemes, e.g. by-laws, common property, strata company, and structural alterations (sec 7A STA).

5 UNIT ENTITLEMENT SEC 14 STA

The *Strata Titles Act* (STA) defines unit entitlement as establishing the following:

- (a) The voting rights of a proprietor
- (b) The undivided share of each proprietor in the common property
- (c) The proportion payable by each proprietor of contributions levied under section 36.

(See also paragraph 21.1 Strata Levies)

Strata plans show the relative proportion of each owner's share in the scheme. This is called unit entitlement and is set by a Licensed Valuer. In a strata scheme, the unit entitlement of strata lots is calculated to take into account the capital value of buildings on strata lots as well as the land (whether it is common property or individually owned). The unit entitlement of survey-strata lots is calculated on the unimproved site value of the lots and ignores the value of any buildings on the lots.

The Act allows for the unit entitlement to be changed in some circumstances:

- Re-subdivision (see paragraph 8)
- Merger of Land and / or Buildings
- Conversion to Survey Strata Plan
- Reallocation of unit entitlement by resolution (sec 15 STA)
- Reallocation of unit entitlement by Land Valuation Tribunal (sec 16 STA)
- Order for variation of unit entitlement (sec 103H STA) .

6 SINGLE TIER STRATA SCHEMES

Single tier strata schemes are ones where no lot is above another lot i.e. the floor of one lot cannot be the ceiling of another lot. Multistorey blocks of flats/units are not single tier strata schemes, but a two storey unit such as a two story townhouse/villa is still a single tier strata scheme.

In some circumstances, the *Strata Titles Act* allows schemes to be single tier schemes, even if parts of lots, such as balconies, or other parts of buildings overhang other lots. These overhangs are called "Permitted Boundary Deviations", as defined in the Strata Titles General Regulations (reg 37A)

7 MERGER AND CONVERSION

Owners in single tier strata schemes registered before 1 January 1998 may use a simplified process for the following :

(PART II – STRATA SCHEMES AND SURVEY-STRATA SCHEMES Division 2A STA)

- Option 1 merger of buildings into the strata lots
- Option 2 merger of land into strata lots
- Option 1 and 2 merger of buildings and land into strata lots and / or;

(PART III – VARIATION, TERMINATION AND CONVERSION OF SCHEMES Division 3 STA)

- Option 3 Converting to survey-strata

For details on how to merge common property or convert to a survey-strata scheme, you may obtain an appropriate brochure from Landgate's Land Registration Centre.

Owners in single tier schemes merging buildings and/or land into strata lots or converting to survey-strata, must engage a Licensed Land Surveyor.

All other schemes registered after the 1 January 1998 can achieve the same results by the standard re-subdivision process.

7.1 Capital Gains Tax

The conversion of common property may have capital gains tax implications for some strata owners. Please contact your taxation adviser or the Australian Taxation Office for further information.

8 RE-SUBDIVISION (SEC 8, 8A, 8B, AND 8C STA)

Subject to the passing of appropriate resolutions, lots on a strata, or survey-strata plan may only be further subdivided by a re-subdivision plan of the same type, i.e. a strata lot may only be re-subdivided by another strata plan and a survey-strata lot may only be re-subdivided by another survey-strata plan. A licensed land surveyor will be required to make the appropriate changes to the strata, or survey-strata plan which must be lodged and examined by Landgate before being acted upon.

In some cases the unit entitlement may change and a Licensed Valuer will be required to do a new schedule of unit entitlement.

An Application for Re-Subdivision as per "Form 20" (STGR) is registered at Landgate to effect these changes. In some cases a Disposition on Re-Subdivision "Form 23" (STGR) will also be required.

9 RESTRICTIONS (SEC 6 AND 6A STA)

Restrictions may be added to, varied or removed with appropriate consents and lodgement of appropriate documents with Landgate. Restrictions on Strata Plans under sec 6 & 6A of the STA are not registered as By-Laws, a "Form 19" from the *Strata Titles General Regulations* is to be used and the appropriate consents from Local Government and the Western Australian Planning Commission may also be required).

The Act allows a restriction which requires that lots may be only, or predominantly occupied by retired persons to be registered on a strata plan, or a survey-strata plan, either at the time it is registered or registered at a later date after passing the relevant resolutions. Other restrictions may also be registered on the plan. (Note these restrictions are shown on the Strata Plan and are not recorded as by-laws under the Schedule of Encumbrances.)

Care should be exercised in creating restrictions as poorly drafted areas may cause unexpected problems. It may be advisable to have a lawyer, strata consultant or other professional draft the restriction.

10 ACCESS TO SERVICES SUCH AS WATER AND SEWERAGE

The *Strata Titles Act* allows sharing of access to services such as water, sewerage and electricity etc. This means that these services often pass through common property and other lots in the scheme. To ensure continuity and maintenance of these services within the scheme, the *Strata Titles Act* allows access (implied easements sec 11 & 12 STA) to common property and lots for maintenance of the existing services (sec 12A STA and Reg 37A, 37B).

11 STRATA COMPANY (SEC 32 STA)

The Strata Company (formerly called the Body Corporate) comes into existence automatically on the registration of the strata/survey-strata plan when the titles are issued. Other than holding the first annual general meeting (Para 20.8), no expenditure, or action by the owners is required to form it. All owners of lots on the strata/survey-strata plan are automatically members of the Strata Company.

There is no requirement to register a Strata Company with the Australian Securities & Investments Commission.

11.1 Duties of Strata Companies (sec 35 STA)

Some of the principal duties of strata companies are to:

- enforce the by-laws;
- control and manage the common property for the benefit of all proprietors;
- properly maintain and, where necessary, renew and replace the common property, including the fittings and fixtures used in connection with the common property.

12 STRATA COUNCILS

The *Strata Titles Act* recognises that in some schemes, it may be impractical for all owners to participate in the day to day management of the scheme and therefore provides for the strata company to be operated by a council of owners.

The strata company is run by the council in accordance with the conditions specified in the *Strata Titles Act*, the by-laws in force for the strata scheme at that time and subject to any restriction imposed or direction given at a general meeting of the strata company.

The council may delegate to one or more of its members such of its powers and duties as it thinks fit, and at any time revoke the delegation (schedule 1 - by-law 8).

The by-laws in schedule 1 provide that if there are three or less owners, the council consists of all owners. A council may consist of between three to seven owners as determined by the strata company. If there are more nominations than the number of councillor positions, the council must be elected. (Schedule 1 by-law 4)

Members of the Council of Owners do not acquire any privileges by virtue of their election to it, or because they become office bearers of the council. They are required to carry out their duties for the benefit of all owners, without favour.

The schedule 1 by-laws contained in paragraph 28.1 of this book detail how:

- the council of the strata company is constituted (by-law 4),
- how council members are elected (by-law 5),
- what the duties of the council office bearers are (by-law 6) and
- meetings of council (by-law 8).

The chairman secretary and treasurer of the strata council hold the same respective positions of the strata company see schedule 1 by-law 7.

Further information on the duties of the office bearers of the strata company is contained in schedule 1 by-laws 9 and 10.

To ensure that your scheme is managed efficiently it is imperative that owners form an effective council. This will ensure that the duties of the strata company are carried out, and if a strata manager is employed to carry out some of the duties of the strata company, **the manager is effectively instructed and controlled.**

If you are unhappy with the way your scheme is run, a possible solution is to stand for election to the council, so you can participate in the day to day running of the scheme.

13 STRATA COMPANY NAME

The *Strata Titles Act* requires the strata company name to be in a specific format, this is "The Owners of (insert the name of the scheme as shown on the strata plan) Strata Plan Number (insert the number of the strata plan).(sec 32 STA)

In schemes created before 14 April 1996, the name of the building is used instead of the name of the scheme. See the example below.

Example of Strata Plan created before 14 April 1996

PLAN OF PORTION OF CANNING LOCATION 2 AND BEING LOT 446 ON PLAN 1740(1) CERTIFICATE OF TITLE VOL. 1588 FOL. 682 LOCAL AUTHORITY CITY OF PERTH LOCALITY CARLISLE INDEX PLAN PERTH 2000 16 22 NAME OF BUILDING 144 RUTLAND AVENUE CARLISLE NAME OF BODY CORPORATE (IF STRATA PLAN OF SUBDIVISION OR CONSOLIDATION) ADDRESS FOR SERVING OF UNIT 1/ 144 RUTLAND AVENUE NOTICES ON COMPANY CARLISLE WA 6101 PURPOSE	STRATA PLAN 20216 LODGED 22-8-90 5548 EXAMINED 14-8-90 NP REGISTERED 1-11-90 App E476532 REGISTRAR OF TITLES
---	--

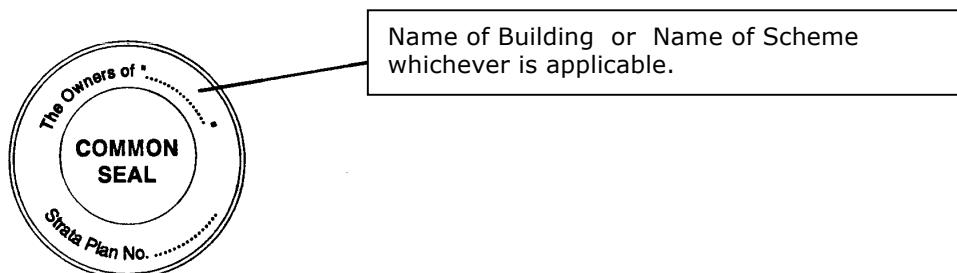
Example of Strata Plan created after 14 April 1996

NAME OF SCHEME 44-52 SCANLON WAY, LOCKRIDGE	DOLA Department of LAND ADMINISTRATION
ADDRESS OF PARCEL 44-52 SCANLON WAY, LOCKRIDGE, W.A.	

STRATA PLAN 32003

14 COMMON SEAL SEC 32 (2) STA

Strata companies can only sign documents using a common seal which is usually affixed in the presence of at least two members of the council of the strata company (schedule 1 by-law 15). Council members signing the document should print their names underneath. A common seal should contain the name of the strata company and the strata plan number and be made by a rubber stamp manufacturer. See the example below.



15 STRATA MANAGERS

Larger strata schemes often employ strata managers to assist the council to carry out some of the duties of the strata company. The strata manager may be a company or an individual. This does not remove the need for a strata council. Rather, it may increase the need for one, to ensure the strata manager is effectively instructed and monitored.

While the strata manager is the servant of the strata company, the quality and level of service the strata company receives from the strata manager often depends on effective instruction and control of the strata manager by the strata company, or the strata council. (schedule 1 by-law 8)

The only powers strata managers have, are those given to them by the strata company. Generally, the strata manager cannot make decisions on behalf of the strata company and cannot do anything that requires a resolution of the strata company.

15.1 Contract of employment and provision of services

When employing strata managers, strata companies should ensure that:

- The services required to be provided by the strata manager are clearly set out in the service contract.
- All owners have a clear understanding of the role and services that are to be provided by the strata manager.
- Lines of communication between the parties are clearly set out (generally all communications should be between the strata council and the strata manager, and be in writing).
- The strata council monitors the performance of the strata manager.
- The strata council continues to undertake any responsibilities it has retained.

Contracts with strata managers should generally be for a relatively short term, such as a year, so if the strata manager does not meet the required level of service, their services can be easily terminated.

15.2 Transfer of Management Contracts

Strata managers sometimes transfer their management portfolios to other managers. If you do not want this to happen without your consent, that requirement should form part of the contract for the service.

15.3 What to do if You are Unhappy with Your Strata Manager

If you think your strata manager is not meeting its contract obligations, you should check the contract to ensure that the services in question are in fact required to be performed by the strata manager. You should also ensure that the strata manager has been advised of the need to carry out the particular duties.

If it is ascertained that the strata manager is failing to meet contract obligations, the strata council should request in writing that the duties be performed as per the contract.

15.4 Where to Complain if You are Unhappy With Your Strata Manager

Strata management, at present is not a regulated industry. However many strata managers are real estate agents, or members of the Strata Community Australia W.A. SCA(WA) formerly known as STIWA (Strata Titles Institute of WA).

If the strata manager is a real estate agent, in the first instance you should take your complaint to the principal of the real estate agency.

If that fails to resolve the situation, the strata council may re-direct their complaint to the Property Industries Directorate, Consumer Protection Division of the Department of Commerce, Consumer Protection at 6th Floor, 219 St George's Terrace, Perth. The telephone number is (08) 9282 0843.

Consumer Protection is now the statutory authority responsible for regulating real estate agents under the *Real Estate and Business Agents Act 1978*. Consumer Protection may conciliate in the dispute or take disciplinary action against the agent, as appropriate. In certain circumstances, Consumer Protection can also require agents to refund fees or commissions paid to consumers.

In addition to taking the matter to Consumer Protection, if the strata manager is a member of the Real Estate Institute of Western Australia (REIWA), the strata council may also take the complaint to REIWA. The postal address for REIWA is PO Box 8099, Subiaco East, WA 6008. The telephone number is (08) 9380 8222.

If the strata manager is not a real estate agent but is a member of SCA(WA), the strata council may take the complaint to that organisation. The SCA(WA) postal address is PO Box 968, Victoria Park, WA 6979. The telephone number is (08) 9361 0411.

If you as an individual consider that your strata complex is not being managed properly by the strata council; then you may apply to the State Administrative Tribunal to have the matter resolved.

15.5 If You Wish to Terminate Your Strata Management Contract

Before you take action to terminate your strata management contract, you should:

- ensure the contract for the service allows you to do so; and;
- ensure that arrangements are put in place to carry out services previously carried out by the strata manager eg. have you selected a new strata manager and do you need further authority to approve the expenditure necessary to employ the new strata manager?

You may need to seek legal advice before you terminate the contract.

16 WHAT YOU OWN INDIVIDUALLY AND WHAT IS COMMON PROPERTY

The most common scenario for two to five lot single tier schemes is for the buildings to be individually owned and:

- in schemes registered before 30 June 1985, the outside areas are usually common property; and,
- in schemes registered after 30 June 1985, part or all of the outside areas may also be individually owned.

To understand what you own, it is essential that you obtain and examine a current copy of your strata plan and seek advice on its interpretation.

16.1 Common Property

Common property is property which is jointly owned by all of the owners in the strata scheme and is not contained within any lot. (sec 3 STA)

Many strata owners believe that there is no common property in their scheme, and that they own the whole of "their strata unit" (i.e. the building in which they live) and the surrounding garden and carport area.

However, in many cases this is not correct!

Due to changes to the *Strata Titles Act*, and different ways in which strata plans have been prepared, a number of individual ownership/ common property scenarios exist. In many cases, some part, if not the whole, of the building structure is common property.

16.2 Schemes Created Before 30 June 1985

In schemes created prior to 30 June, 1985, the building and areas outside the buildings are common property, unless:

- there has been a strata plan of re-subdivision lodged changing the lot boundaries;
- the boundaries of the lots in a two to five lot single tier strata scheme have been moved to the external surfaces of the buildings on 20 July 1997, pursuant to the automatic merger provisions of the *Strata Titles Amendment Act 1996*; or,
- the boundaries of the lots in a single tier strata scheme have been moved by resolution of the strata company at some time after 20 January 1997, pursuant to the provisions of the *Strata Titles Amendment Act 1996*.

16.3 Schemes Created After 30 June 1985

After 30 June 1985, it was also possible to own buildings and outside areas.

From 30 June 1985, the *Strata Titles Act* allowed for variation of the standard provisions to include individual ownership of buildings and land outside, as well as the cubic space inside the building. This has led to a number of combinations of individual ownership and common property. Some examples are:

- individual ownership of the buildings and areas inside and outside the buildings;
- individual ownership of the inside and outside areas, but only part of the buildings, e.g. the walls, but not the roof; and,
- ownership of the inside and outside areas, but not any part of the building.

The scheme requirements dictate the mix of individual ownership and common property.

16.4 Changes Which Commenced 20 July 1997

One change to the *Strata Titles Act* which became effective on 20 July 1997 automatically moved the boundaries of the lots, or part lots within buildings shown on the strata plan, to the "external surfaces of the buildings" in single tier schemes of five lots or less.

This means that the building, including attachments, such as television antennae, water heaters and air conditioners etc. are individually owned. Building additions, added on carports and pergolas are not included in this boundary change.

The change only occurred, if no owner lodged an objection to it with Landgate before 21 July 1997, after which time, it was no longer possible to object to the automatic changes.

It should be noted, the change even affected schemes where the building was already individually owned, this is because it included attachments to the building that were not previously included in the definition of a lot.

The Capital Gains Tax implications described in paragraph 7.1 also apply to the automatic boundary changes.

16.5 Changes to description of Boundaries in the *Strata Titles General Regulations* (Reg 37AA - Gazetted 24 Jan 2006 and amendment Gazetted 2 Sep 2011)

Any boundaries on new Strata Plans that are described in a manner defined under section 3. (2) (b) STA will now be limited to the inner surfaces of the floor, walls and ceilings and in any other case – in a manner that unambiguously defines the cubic space and its location in relation to the relevant building.

EG: Multi-Tier Schemes. The subsequent amendment allows for buildings which are single tier and buildings which are multi tier that are contained within the same strata plan to be defined differently.

17 SMALL SCHEME EXEMPTIONS SEC 36A, 36B STA

The 1995 amendments to the Act allowed small schemes to be exempt from some of the management requirements under the Act. The strata company for the scheme remains in existence, despite the exemptions for small schemes.

17.1 Two Lot Schemes (sec 36A STA)

Two lot schemes are automatically exempt from the following requirements:

- to hold annual general meetings, after the first one has been called by the original proprietor;
- to keep minutes of meetings and books of account;
- to prepare annual accounts;
- to have a separate mail box for the strata company;
- to 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; and,
- to establish an administrative fund, i.e. a strata levy fund.

Owners of two lot schemes may decide to comply with any of these requirements. However, if they decide to establish an administrative fund they must first pass a by-law to that effect.

17.2 Three to Five Lot Schemes (sec 36B STA)

The same exemptions that apply to two lot schemes may apply to schemes having 3 to 5 lots if the strata company passes a by-law to that effect. The by-law must be made by a resolution without dissent. By-laws made to adopt the exemptions can be set aside by a new by-law passed by resolution without dissent.

18 INSURANCE (SEC 53 STA)

The basic principle of insurance in strata schemes is to provide for joint insurance of common property, to ensure that owners are adequately covered against loss or damage arising from claims against the strata company that occur in or on common property.

You should consult your insurer to ensure you have adequate insurance cover for both individually owned lots and common property in your strata scheme.

18.1 Single Tier Strata Scheme

In a single tier strata scheme:

- The strata company must take out joint insurance of buildings (to their replacement value) and insure for public liability (for at least \$5,000,000) **in respect of common property unless:**
 - (a) the only common property is the air above the lots and the soil below them, or fences; or,
 - (b) the strata company decides by resolution without dissent (or unanimous resolution in a 2-lot scheme) not to take out joint insurance.

Any owner can insist on joint insurance of common property at any time.

- The strata company must also take out any other insurance required by law, e.g. workers' compensation, if applicable, and any other risks which the strata company decides to insure against. **This is the same as for non-strata freehold titled properties.**
- The owners can take out individual building and public liability insurance of their individual lots, unless the strata company decides by majority decision to take out joint insurance.

18.2 Non-Single Tier Strata Scheme

In a strata scheme which is not a single tier strata scheme (eg. a multi-storey /highrise building), the strata company must take out the following insurances:

- building insurance for all buildings on the land in the scheme (except if there is an exemption under the *Strata Titles General Regulations* 1996) to their replacement value; and
- public liability insurance for the common property, for at least \$5,000,000, unless exempted by an order of the Strata Titles Referee.

The strata company must also take out any other insurance required by law, e.g. workers' compensation, if applicable, and any other risks which the strata company decides to insure against. **This is the same as for non-strata freehold titled properties.**

18.3 Survey-Strata Scheme

Where there is common property is a survey-strata scheme, the strata company must take out the following insurances:

- building insurance for any buildings on the common property, to their replacement value; and

- public liability insurance for the common property (if any), for at least \$5,000,000.

The strata company must also take out any other insurance on common property required by law, e.g. workers compensation, if applicable, and any other risks which the strata company decides to insure against. **This is the same as for non-strata freehold titled properties.**

18.4 Increased Premium (sec 54, 54A STA)

If the strata company has difficulty in obtaining reasonable insurance cover for any buildings due to some activity on a lot, the strata company may do one of the following:

- give the owner of that lot notice in writing requiring the owner to stop carrying on that activity on the lot; or,
- give the owner notice in writing requiring the owner to do certain works specified in the notice.

If the lot owner fails to comply with either of these requirements, the strata company may obtain an order from the SAT requiring compliance.

As an alternative to either of these requirements, the owner may be required to pay the amount by which any insurance premium is increased due to the activity carried on the lot.

If any insurance premium payable by the strata company (not only for building insurance) is increased solely due to some activity on a lot, the owner of that lot may be required to pay the amount of that increase.

18.5 Strata Company Fails to Insure (sec 103L STA)

If the strata company fails to take out any insurance required by the Act, an owner may take out that insurance in the name of the strata company. The Strata Titles Referee has power to make orders for that owner to be compensated for any payment made.

19 BY-LAWS (SEC 42 STA)

The standard schedule 1 and schedule 2 by-laws contained in the *Strata Titles Act* are reprinted in paragraphs 28.1 and 28.2 of this book.

19.1 Standard By-laws Apply to All Strata Companies

The by-laws which apply to all new (from registration of the plan) and existing strata companies are:

- the Schedule 1 and 2 By-laws, which are printed in the Schedules to the Act; and
- any new or changes to existing by-laws which are registered on the plan, including any changes to the Schedule 1 and 2 by-laws.

19.2 New, Amended or Repealed By-laws

Schedule 1 By-laws may be made, amended or repealed by a resolution without dissent. Schedule 2 By-laws may be made, amended or repealed by a special resolution.(sec 42 (2) STA)

All new by-laws must specify whether the by-law is a Schedule 1 or Schedule 2 By-law and be consecutively numbered after the existing by-laws for the relevant Schedule they belong.

By-laws may be made at the request of Local Government or other authorities. The by-law may not be amended or repealed without the consent of the requesting authority, if that requirement is specified in the by-law.(sec 42 (2d) STA)

Many schemes draft their own by-laws. While the owners at the time understand what was intended, the by-laws may be interpreted differently by new owners. Many registered by-laws are ambiguous and may be unenforceable from a practical standpoint. It is therefore advisable to have by-laws drafted by an appropriate professional, or to seek legal advice.

Care should be taken not to make by-laws that are discriminatory, or that cannot be easily enforced.

Registration of by-laws at Landgate does not guarantee their enforceability, either at law, or in practice.

19.3 Registration of By-laws (sec 42 (4) STA)

Any new by-law, amendment to, or repeal of an existing by-law must be lodged at Landgate within three months of the date of the meeting that passes the resolution. If you need to wait 28 days after the meeting for the resolution to be confirmed, the by-law must still be lodged at Landgate within 3 months of the date of the meeting.

The by-law is not effective until reference is made on the registered strata plan.

19.4 Matters in By-laws

"By-laws may be made dealing with any of the following matters:

- the corporate affairs of the strata company;
- any matter listed in Schedule 2A to the Act;
- any matter relating to the management, control, use and enjoyment of the lots and any common property;
- exclusive use of common property;
- apportionment of strata levies;
- the plot ratio restrictions or open space requirements,
- fines for breaches of the by-laws.

A strata company may provide for a penalty in a bylaw which may be imposed by the Strata Titles Referee."

19.5 Exclusive Use By-Laws (sec 42 (8) STA)

It is possible to create by-laws allowing individual lot owners exclusive use of certain areas of common property. These by-laws are usually required to be supported by sketches depicting the areas granted for exclusive use. They are required to be passed by a resolution without dissent.

Proprietors granted exclusive use are responsible for the repair and maintenance of their exclusive use area, unless the by-law states otherwise. (sec 42 (11) (b) STA)

19.5.1 “For The Use of” Statements on Strata Plans

Some strata plans have notations indicating certain areas are “for the use of” particular lots. **These notations do not have any effect, unless an exclusive use by-law has been lodged to support them.**

In most cases the sketch on the strata plan would not be sufficient to define the areas of exclusive use and it would necessary to have a suitably dimensioned sketch prepared to support any proposed by-law.

19.6 Management Statement (Schedule 2A STA)

A document known as a "Management Statement" may be registered at the same time as the strata or survey-strata plan is registered. The Management Statement specifies by-laws which are to apply to the scheme from the time of registration and may include:

- restrictions on what types of houses or other buildings may be built on the lots or what activities may be conducted on the lots; and,
- a plan of re-subdivision for future subdivision of a lot within the scheme.

The Act also specifies a number of other matters that can be provided for in Management Statements.

19.7 Orders by State Administrative Tribunal (sec 81 to 103R STA)

The SAT may make various orders in relation to by-laws made by the strata company, or where the strata company has refused to make certain by-laws.

20 RESOLUTIONS

20.1 Types of Resolutions (See also paragraph 20.2 – Voting for Resolutions)

The Act provides for four different types of resolutions which can be passed at general meetings of the strata company.

1. A unanimous resolution must be passed by ALL lot owners (or their proxies-see paragraph 23 of this guide), or other persons entitled to vote. (sec 3 STA)
2. A resolution without dissent is passed, if the owners (or their proxies) of at least half of the units, and who have at least half of the *unit entitlements*, are at the meeting, and no owner votes against it. (sec 3AC STA)

In most cases the Act requires a unanimous resolution in a two lot scheme.

3. A special resolution is passed if those lot owners or other persons entitled to vote:
 - who vote in favour of the resolution -have no less than 50% of the lots in the scheme OR have no less than 50% of the unit entitlement in the scheme ; and,

- who vote against the resolution - do not have 25% or more of the unit entitlement in the scheme OR 25% or more of the lots in the scheme. (sec 3B STA)

In schemes having 3 to 5 lots, a special resolution is passed in:

- 3 lots, not less than 2 of the lots;
- 4 lots, not less than 3 of the lots; or
- 5 lots, not less than 4 of the lots,

and those votes have no less than 50% of the aggregate unit entitlement.

4. An ordinary resolution is any resolution which is not required to be passed as one of the previous resolutions. The Schedule 1 by-laws in the Act provide that, unless a poll is called, an ordinary resolution is passed by a simple majority of persons voting (including proxies) on a show of hands at a meeting of the strata company.

(Schedule 1 by-law 12 (6))

20.2 Voting For Resolutions - Unanimous, Special and without Dissent

The votes for any of these resolutions may be cast either personally, or by proxy: (Schedule 1 by-law 14 (3))

- at a meeting of the strata company; or, -
- by notice in writing to the strata company (or other owners if there are 2 to 5 units in your scheme) within 28 days after the meeting.

20.3 Notice of Proposed Resolutions - Unanimous, Special and Without Dissent

A minimum of 14 days notice must be given for unanimous resolutions, resolutions without dissent and special resolutions. (Schedule 1 by-law 11 (5))

20.4 Amended Resolutions (sec 3C (2))

If a special, or without dissent resolution is passed with amendment, the strata company must within seven days after the meeting, serve a copy of the amended resolution on the lot owners who were not present in person or represented by proxy at the meeting.

20.5 Quorums at General Meetings

Attendance by half of the persons entitled to vote (either in person, or by proxy) constitutes a quorum. (Schedule 1 by law 12 (3))

20.5.1 Quorum in a Two Lot Scheme

All proprietors or their proxies are required for a quorum in a two lot scheme.

The SAT has power to make orders in respect to the failure of a proprietor in a two lot scheme to attend a general meeting of a strata company.

20.6 Voting at General Meetings

The Schedule 1 by-laws contained in paragraph 28.1 of this book detail the voting procedures at general meetings. (Schedule 1 by-law 14)

Lot owners who have not paid their strata levies or other monies owed to the strata company cannot vote at general meetings of the strata company, unless the vote requires a unanimous resolution, or a resolution without dissent.
(Schedule 1 by-law 14 (6) and sec 3D STA)

20.7 Orders by State Administrative Tribunal, District Court

A lot owner may apply for an order from the SAT or the District Court in specified circumstances if a necessary resolution required by the Act is not passed.

20.8 General Meetings

The first annual general meeting of the strata company must be held by the original proprietor within three months of the registration of the strata plan. At this meeting, the developer must provide relevant plans, specifications and documents to the strata company. This includes insurance policies, building plans and drawings showing locations of water and drainage pipes and electrical wiring. (sec 49 STA)

Subsequent annual general meetings must be held each year with no more than 15 months passing between meetings. (Schedule 1 by-law 11)

Additional general meetings (extraordinary general meetings) can be held if required.

Certain schemes can be, or are exempted from holding annual general meetings (see paragraph 17 small scheme exemptions).(sec 36A, 36B STA)

The schedule 1 by-laws contained in paragraph 28.1 of this book detail requirements for conducting general meetings.

21 MANAGEMENT

21.1 Strata Levies and Fees

Levies are apportioned in the same proportion that the unit entitlement of each lot bears to the total unit entitlement of the scheme. The strata company can also pass a by-law which allows strata levies to be apportioned on some other basis, which must be specified in the by-law (Sec 42B STA)

If there is no common property, there may be no need to raise levies.

The strata company can charge interest at a rate of 15% per annum (reg 26 STGR) on unpaid levies and can take court action to recover unpaid levies from lot owners (sec 36 (4) STA).

The strata company may charge fees for the provision of information under section 43 of the STA. A list of the fees is shown in schedule 1 (4) of the *Strata Titles General Regulations*.

21.2 Expenditure by Council

At the time of printing, the maximum amount of expenditure which the council of a strata company may spend per lot for particular maintenance work or other matters without going to a general meeting is:

- the amount per lot fixed by a special resolution of the strata company; or,
- if no amount is fixed, \$65 per lot. (Regulations Schedule 1)

21.3 Exceptions

There are certain circumstances in which the limit does not apply. One exception is where notice of the proposed expenditure is given to all lot owners and first mortgagees and is not objected to by those owners and mortgagees who have 25% or more of the lots or unit entitlement in the scheme. The objections must be received within 14 days after the notice is given.

The State Administration Tribunal can also authorise expenditure in an emergency.

21.4 Expenditure Approval at General Meetings

If any of the exceptions do not apply, then before the council may exceed the expenditure limit it must be approved at a general meeting of the strata company. If the proposed expenditure is for the performance of work or to purchase goods, at least two tenders must be presented at the meeting. (sec 47 STA)

21.5 Validation of Expenditure Authorised by Budget

Prior to the changes to the Act in 1996, there was not an exception for expenditure authorised as part of the strata company's budget. However, the Act now provides that any amount spent previously which was authorised by a budget is valid.

22 ROLL TO BE KEPT BY STRATA COMPANY (SEC 35A STA)

Every existing and new strata company must keep a roll, unless it is exempted in the case of small schemes.

The roll must contain the following particulars:

- the number of the strata plan or survey-strata plan;
- the name and address of every lot owner;
- the name and address of any mortgagee which has notified its interest to the strata company;
- the name of any tenant of any lot which has been notified to the strata company; and,
- the address for the service of notices which has been notified to the strata company by any lot owner or mortgagee.
- the name and address of any agent employed by the strata company

23 PROXIES

An owner may appoint another person to act as a proxy. The appointment of the proxy must be in writing and may be either general, or specific. (Schedule 1 by-law 14 (4) STA)

23.1 Certain Persons Cannot Vote as Proxy (sec 50A STA)

Except in certain circumstances, a person may not vote as a proxy at a meeting of a strata company, or the council on a motion which relates to a management contract with the strata company, if that person has a financial interest in the contract.

24 SERVICE CONTRACTS

The strata company may enter into contracts for services, subject to the normal expenditure provisions of the Act. (sec 47 STA)

24.1 Unfair or Excessively Long Service Contracts Before 14 April 1996 (sec 39A STA)

If a strata company, or a lot owner believes a continuing contract which was in existence on 14 April 1996 for the provision of services to the strata company is unfair, or excessively long, it may apply to the SAT for an order terminating, or shortening the contract.

The SAT may include in the order, an order for the payment of any money, by any party, to adjust the rights of the parties.

24.2 Service Contracts After 14 April 1996

Some service contracts entered into after 14 April 1996 may be terminated after five years in certain circumstances.

25 BUILDING ALTERATIONS (SEC 7 STA)

This section deals only with building alterations on lots, and not common property. Various Local Government Authorities may also have differing requirements in respect to building approvals.

The term "alterations" is used to cover the construction, alteration or extension of a structure on any lot by the lot owner.(reg 30 to 35 STGR)

New buildings and alterations to buildings can usually be shown on the strata plan by a merger in schemes registered before 1 January 1998 (see paragraph 7), or by a strata plan of re-subdivision in schemes registered after that date. It is not a requirement of the *Strata Titles Act* that new buildings be shown on the strata plans. However, failure to show these changes may result in incorrect unit entitlements, inappropriate maintenance responsibilities, difficulties in selling the property and other problems.

25.1 Strata Schemes (sec 7 and 7B STA)

25.1.1 Approval for Structural Alterations

The alterations of any structure on a strata lot must be approved by the other lot owners in writing or the strata company by a resolution without dissent at a general meeting.

25.1.2 Application to Strata Company, Other Owners

A lot owner wishing to carry out alterations on a lot must serve an application on the other lot owner in a two lot scheme, or the strata company in any other case.

The application must contain the following details:

- the open space or plot ratio requirements of the local authority which apply to the strata scheme as a whole and the particular lot;
- if carrying out the alterations will exceed those requirements, the percentage and area by which these will be exceeded;
- if carrying out the alterations will not exceed those 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;

and if the lot is not a vacant lot:

- 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 easement of support or for services automatically granted under the Act.

This is a summary of the details which are required to be included in the application. You should refer to regulation 34 of the *Strata Titles General Regulations 1996* which sets out in detail what must be provided with the application.

25.1.3 Notice of Meeting

The strata company must call a meeting within 35 days to consider the application. The notice of the meeting must have contained in it the statement set out in regulation 30 of the *Strata Titles General Regulations 1996*.

That statement must also be read out at the meeting by the chairperson.

25.1.4 Grounds for Refusing Application (sec 7 (5) STA)

A lot owner may only refuse or vote against the application on one or more of the following grounds, and not on any other ground:

- the carrying out of the alterations will breach the open space or plot ratio requirements for the lot; or,
- will contravene a by-law of the strata company;

and if the lot is not a vacant lot, the carrying out of the alterations:

- will result in a structure that is visible from outside the lot that is not in keeping with the rest of the development;
- may affect the structural soundness of a building; or,
- may interfere with any easement of support or for services automatically granted under the Act.

25.1.5 Disclosure of Grounds (sec 7B (6) STA)

A lot owner must disclose the ground on which he or she refuses or votes against the application. If the ground is a contravention of a bylaw, the owner must disclose the by-law which will be contravened.

If the grounds are not disclosed, the vote is ineffective.

25.1.6 Vacant Lot

A vacant lot is one where, no house, premises, or other building has been constructed, even if draining, filling, clearing or retaining works may have been carried out on the lot.

25.2 Survey-Strata Schemes (sec 7 and 7A STA)

25.2.1 Approval for Structural Alterations

In a survey-strata scheme, the approval for alterations of any structure on a survey-strata lot is only required to be approved by the other lot owner in a 2 lot scheme or the strata company if carrying out the alterations will breach the open space or plot ratio requirements for the lot.

If these requirements will not be breached, there is no requirement to get the approval of the other owner or the strata company, unless a by-law, or management statement provides otherwise.

In the case of the strata company, the approval must be given by a resolution without dissent at a general meeting.

25.2.2 Application to Strata Company, Other Owners (sec 7B STA)

If the lot owner wishing to carry out the alterations is required to get the approval of the strata company or the other owners, he or she must serve an application on the strata company or the other lot owners.

The application must contain the following details:

- the open space or plot ratio requirements of the local authority which apply to the strata scheme as a whole and the particular lot;
- the percentage and area by which these will be exceeded; and,
- the dimensions of the structure when it is completed.

This is a summary of the details which are required to be included in the application. You should refer to regulation 34 of the *Strata Titles General Regulations 1996* which sets out in detail what must be provided with the application.

25.2.3 Notice of Meeting (sec 7B (2) STA)

The strata company must call a meeting within 35 days to consider the application, but no special statement is required to be contained in the notice of the meeting.

25.3 Requirements Applicable to Strata and Survey-Strata Schemes

25.3.1 Plot Ratio

The types of buildings and other improvements which are included in the definition of a "structure" are significant building works which will affect the open space or plot ratio requirements for the lot, or in the case of a strata scheme, require local government approval. You should refer to regulation 32 (in the case of a strata scheme) or 33 (in the case of a survey-strata scheme) of the *Strata Titles General Regulations 1996* for a list of what is included.

Open space or plot ratio requirements are laid down by the local authority in relation to the area of the land which comprises the whole of the strata or survey-strata scheme (parcel). 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.

The method for calculating the open space or plot ratio requirement for each lot is set out in the Act, unless the strata company passes a by-law which sets out a different method.

25.3.2 Notice of Decision (sec 7B (5) STA)

The lot owner must be notified of the decision:

- within 42 days of service of the application, in a 2 lot scheme; or,
- within 77 days of service of the application, by the strata company.
- in a strata scheme, the notice of decision must also set out the grounds on which the application was refused.(sec 7B (5) and (6) STA)

25.3.3 Approval Deemed Given (sec 7B (7) STA)

Approval to an application is deemed to have been given, if notice of the decision is not given within the time periods set out in the above paragraph headed, "Notice of Decision", or in the case of a strata scheme, the grounds for refusal are not set out in the Notice of Decision.

26 STATE ADMINISTRATIVE TRIBUNAL AND DISPUTE RESOLUTION

The *State Administrative Tribunal Act 2004* provides for the State Administrative Tribunal (SAT) to assist in the resolution of disputes. The use of SAT should be seen as a last resort. The SAT makes decisions based on law, meaning that there will usually be a "winner" and a "loser" as result of the SAT decision. This does not necessarily resolve the dispute, and further court action may be required to enforce the orders.

[Note: At the time of writing Edition 3, the SAT has assumed the duties of the Strata Titles Referee. It is strongly recommended that you contact the SAT should you intend using the SAT for dispute resolution.]

SAT is not able to provide advice on strata matters, other than in respect to the requirements for lodgement of applications to the SAT.

People who become involved in disputes in strata schemes should initially seek to resolve issues between parties concerned, or consider having the dispute mediated at a free, or low cost mediation service.

Mediation can ensure the dispute is resolved without further action, allows both parties to gain an appreciation of the issues under dispute and decreases the likelihood of ongoing conflict between the parties.

26.1 Dispute Procedure in By-laws

Before an application may be made to the SAT, the applicant must have complied with any procedure for the resolution of disputes which may be contained in the by-laws of the strata company.

26.2 Investigation of Application

SAT is given flexibility as to the manner in which an application may be investigated. Once the SAT accepts your application, all parties named in the application will be notified whether:

- a directions hearing has been scheduled;
- a final hearing has been scheduled; or
- the SAT will be making a decision based on documents.

26.3 Powers to Obtain Information

The SAT has the following powers:

- to summons any person to attend;
- to require books, etc., to be produced; to
- inspect any books or records; and,
- to require any person to give evidence, which may or may not be on oath or affirmation.

Penalty for failure to comply with the SAT powers to obtain information (refer SAT Act – s96 Failing to comply with Summons under s66(1) – Penalty \$5000).

26.4 State Administrative Tribunal's Orders

The SAT may only make an order if the SAT is satisfied that certain specified circumstances exist. You should refer to the Act and the amendments to the Act for the circumstances which must exist before each order may be made.

26.5 Types of Orders the State Administrative Tribunal can Make

Some of the Orders which the SAT may make are:

- to settle disputes or complaints in relation to a scheme;
- varying the amount of strata levies or the manner in which these are to be paid;
- granting a by-law for exclusive use in respect to any fixtures or fittings to be attached to the common property;
- requiring a pet to be removed or some action to be taken to stop it being a nuisance;
- that a new by-law or an amendment to an existing by-law is invalid, or is repealed, or for the reinstatement of a by-law;
- that strata levies are to be apportioned on the basis of unit entitlement or on some other basis;
- that the lot owners in a 2 lot scheme are required to comply with any of the requirements of the Act from which they would otherwise be automatically exempt under the terms of the Act;
- appointing a person to attend and vote on behalf of a lot owner in a 2 lot scheme who fails or refuses to attend a meeting of the strata company;
- cancelling a special resolution in a scheme having 3 to 5 lots where one of the lot owners did not vote in favour of the special resolution;

- terminating or shortening the term of a contract for the provision of services to the strata company, including a management contract, if the contract was made prior to 14 April 1996;
- approving structural alterations to a lot where the lot owner has applied to the strata company for its approval but it has been refused;
- for the construction of structural alterations to be stopped or pulled down where a lot owner has carried out those alterations without the necessary approval of the strata company;
- to change the schedule of unit entitlement on the strata or survey-strata plan;
- to impose a fine for a breach of a by-law if the by-law specifies a fine for its breach;
- requiring a lot owner to comply with a requirement of the strata company to stop an activity on his or her lot or to do certain works on the lot, for insurance reasons;
- adjusting the strata levy contributions or requiring a credit to be given to a lot owner, who has taken out insurance which is the responsibility of the strata company to take out, effectively reimbursing a current or previous lot owner for an insurance premium, where that owner has taken out an insurance policy which is the responsibility of the strata company to take out; or,
- payment of costs – please refer to s87 of the SAT Act – the SAT has a “qualified discretion” to award costs associated with an application to the SAT.

26.6 Registration of Orders on Plan

Certain Orders of the SAT must be recorded on the strata or survey-strata plan at Landgate. These orders are listed in section 115 of the Act, or the SAT may specify in the terms of any order that it is to be recorded. A registration fee is also required to be paid at Landgate for recording the Order on the strata/survey-strata plan

26.7 Penalty for Non-compliance with Order

The maximum penalty for not complying with an Order of the SAT has been increased to \$10,000 (Refer to s95 of the SAT Act).

26.8 How to Apply to the State Administrative SAT

Applications to the SAT cost \$55.00 (at publication of this guide) and must be made on the appropriate form which is available from the SAT Office (see www.sat.justice.wa.gov.au or details under "Additional Information").

The SAT has a publication outlining the requirements for an application to the SAT.

26.9 Enforcement of SAT Orders

The SAT, has no powers to enforce its own Orders. If the party against whom the SAT has made an Order, does not comply with it, it is necessary to go to a court of competent jurisdiction (monetary order) or the Supreme Court (other than a monetary order) to enforce the Order (Refer s85 and s86 of the SAT Act).

26.10 Enforcement Order

If SAT has made an Order under the Act which requires a person to do some act, the SAT may order that that act is to be done by some other person if:

- the first person has been convicted under the Act of contravening the order; and,
- the order has not been complied with.

This Order basically allows another lot owner or the strata company to carry out an Order of the SAT for some work to be done and to recover the cost from the lot owner in default.

The act is done initially at the cost of the applicant, who may seek a further order from the SAT for the person who has failed to comply with the order to reimburse the applicant for that cost.

27 ANSWERS TO SOME COMMONLY ASKED QUESTIONS

1. *When I bought my unit, I didn't know I was buying a strata property. Why wasn't I told it was a strata property?*

Prior to the 1995 amendments to the *Strata Titles Act 1985*, there was no compulsory requirement for a Real Estate Agent to advise a purchaser that the unit was subject to the Strata Titles Act, except if the lot was being sold by the original proprietor.

Under the 1995 amendments to the *Strata Titles Act 1985*, every owner of a strata property who wishes to sell his or her property must disclose to all prospective purchasers certain information which may be given in a disclosure statement. (Form 28)

The Disclosure Statement, if used sets out clearly that the property is a strata property, and must have attached to it a copy of the strata or survey-strata plan and an information brochure called "Buying and Selling a Strata Titled Lot", as well as other information relating to the strata or survey-strata scheme. (Form 29)

Alternatively, the disclosure information may be incorporated into the contract for sale instead of a separate Disclosure Statement being given.

2. *Is there a simple method to convert my strata property to a conventional title, also known as a "non-strata freehold title"?*

All of the lots in a strata or survey-strata scheme may be converted to conventional titles if:

- the scheme is terminated by a unanimous resolution of all of the lot owners; and
- the lots comply with the normal requirements for a conventional subdivision, such as minimum lot size and setbacks.

If you think your scheme may be suitable for conversion to non-strata freehold title, you should consult your local government authority (local council), a land development consultant, a licensed land surveyor, or other relevant professional.

3. *I own a lot in a strata scheme established under the 1966 Strata Titles Act. When I bought my unit I thought I owned my garden and car bay, but now I've found out that these are common property. How can I own these areas as part of my lot?*

If you live in a single tier strata scheme of 2 to 5 units, the buildings shown on your plan automatically became part of the individual lots on 20 July 1997, unless an objection to the automatic change was lodged with Landgate.

The owners in your strata company can agree to merge the common property buildings and land to become part of the individual lots or to convert the strata scheme to a survey-strata scheme, if you live in a single tier strata scheme.

To do this, certain resolutions will need to be passed and documents registered at Landgate.

To take advantage of the merger and conversion options, obtain the appropriate "How to" kit from the Landgate's, Land Registration Centre (see contact details on page 39)

4. *Does our strata company have to be registered at the Australian Securities Commission?*

No, the strata company automatically comes into existence when the strata or survey-strata plan is registered at Landgate. (sec 32 STA)

5. *What control does the strata company have over activities by the lot owners on the common property?*

Under the 1995 amendments to the *Strata Titles Act 1985*, the standard by-laws in Schedules 1 and 2 to the Act will apply to all strata companies, unless specifically amended by the strata company.

There are a number of by-laws in Schedules 1 and 2 to the Act which control the use of common property by lot owners including:

- parking vehicles on common property;
- children playing on common property; and,
- the right to use common property in common with all other lot owners.

The strata company is required to enforce the by-laws. (sec 35 STA)

6. *Can I allow my car bay to be used by other people?*

It depends on whether your car bay is part of your strata lot or is common property.

If the car bay is part of your strata lot, you may allow other people to use your car bay.

If the car bay is part of the common property, you may allow other people to use your car bay, only if the strata company has passed a by-law giving you exclusive use of it, or, the strata company has given you general or specific permission such as a lease to do so. A car bay is still common property even if you have the right to use it under an exclusive use by-law.

7. Can the strata company force me to remove my pet from my strata unit?

Yes, but only after the strata council has given you a notice requiring the pet to be removed. (schedule 2 by-law 12c) The strata company can seek an order from the SAT for the removal of the pet. (sec 91 and 92 STA) You cannot be forced to remove a guide dog. (sec 42 (15) STA)

8. Our strata company has appointed a Strata Manager. What powers does the Strata Manager have?

The strata manager has only those powers which are given to the strata manager in the agreement which appoints the manager. A strata manager cannot be given any powers other than those powers which are given to the strata company under the *Strata Titles Act 1985*.

The strata manager may not do anything which requires a resolution of the strata company or council, until that resolution has been passed by the strata company or council.

9. Do the accounts of our strata company have to be audited?

There is no requirement in the *Strata Titles Act 1985* for accounts of any strata company to be audited, because in some small schemes it may not be appropriate.

However, a strata company may pass a resolution or by-law which requires its accounts to be audited.

10. Can the strata company fine a lot owner if that lot owner breaches a by-law?

The by-laws may contain a provision for a fine (sec 42A STA) to be imposed for a breach of any particular by-law. The amount of the fine for any one breach may not exceed \$500.

The fine may only be imposed on any lot owner who has actually breached the by-law if an order for payment is made by the SAT. (sec 103I STA)

11. Who is liable to pay for the upkeep and maintenance of dividing fences? (sec 123 STA)

For most schemes (single tier strata schemes and survey-strata schemes), unless an objection has been lodged or a by-law has been registered on the plan, then:

- if the fence divides a lot and the adjoining property (which is not part of the scheme), the owners of the lot and the adjoining property are liable;
- if the fence divides common property and the adjoining property (which is not part of the scheme), the strata company and the owner of the adjoining property are liable;
- if the fence divides 2 lots in the scheme, the owners of those 2 lots are liable;
- if the fence divides a lot and common property in the scheme, the owner of that lot and the strata company are liable; if the fence divides common property in the scheme, the strata company is liable.

In other schemes (e.g. in a multi-tier scheme), the strata company is liable for these costs with the owner of the adjoining land.

28 STANDARD BY-LAWS

Schedules 1 and 2 to the Strata Titles Act contain the standard by-laws which apply to all strata schemes unless the strata company has amended them. You should obtain a copy of the strata plan to ascertain if the standard by-laws apply.

28.1 Schedule 1 By-laws

Duties Of Proprietor, Occupiers, Etc.

1. (1) A proprietor shall -

Carry out work (a) forthwith carry out all work that may be ordered by any competent public authority or local government in respect of his 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 his lot;

Repair maintain (b) repair and maintain his lot, and keep it in a state of good repair, reasonable wear and tear, and damage by fire, storm, tempest or act of God excepted.

(1a) A proprietor shall -

Change of owner a) notify the strata company forthwith upon any change of ownership, including in the notice an address of the proprietor for service of notices and other documents under this Act; and

Mortgage, lease b) if required in writing by the strata company, notify the strata company of any mortgage or other dealing in connection with his lot, including in the case of a lease of a lot, the name of the lessee and the term of the lease.

(2) A proprietor, occupier or other resident of a lot shall -

Use and enjoy (a) use and enjoy the common property in such a manner as not unreasonably to interfere with the use and enjoyment thereof by other proprietors, occupiers or residents, or of their visitors; and

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

Behaviour (c) take all reasonable steps to ensure that his visitors do not behave in a manner likely to interfere with the peaceful enjoyment of the proprietor, occupier or other resident of another lot or of any person lawfully using common property; and

Visitors (d) take all reasonable steps to ensure that his visitors comply with the by-laws of the strata company relating to the parking of motor vehicles.

Power Of Proprietor To Decorate Etc.

Decorate **2.** A proprietor may, without obtaining the consent of the strata company, paint, wallpaper or otherwise decorate the structure which forms the inner surface of the boundary of his lot or affix locking devices, flyscreens, furnishings, furniture, carpets and other similar things to that surface, if and so long as such action does not unreasonably damage the common property.

Power Of Strata Company Regarding Submeters

- 3.** (1) Where the supply of gas or electricity to a lot is regulated by means of a submeter, the strata company may require the proprietor or other 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-bylaw (2), 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-bylaw, the strata company may require.
- (2) The strata company shall lodge every sum received under this by-law to the credit of an interest-bearing account with an ADI (authorised deposit-taking institution) as defined in section 5 of the *Banking Act 1959* of the Commonwealth and all interest accruing in respect of amounts so received shall, subject to this by-law, be held on trust for the proprietor or occupier who made the payment.
- (3) If the proprietor or other 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 proprietor or occupier under this by-law, including any interest that may have accrued in respect of that amount.
- (4) Where a person who has paid an amount under this by-law to a strata company satisfies the strata company that he is no longer the proprietor 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 a proprietor or occupier of the lot, the strata company shall refund to that person the amount then held on his behalf under this by-law.

Deposit
\$200

Interest
bearing
account

Fails to
pay
charges

No longer
proprietor,
occupier

Constitution Of The Council

- 4.** (1) The powers and duties of the strata company shall, 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 shall be 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 proprietors of all the lots shall constitute the council.
- (3) Where there are not more than 3 proprietors the council shall consist of all proprietors and where there are more than 3 proprietors the council shall consist of not less than 3 nor more than 7 proprietors as is determined by the strata company.
- (4) Where there are more than 3 proprietors the members of the council shall be elected at each annual general meeting of the strata company or, if the number of proprietors increases to more than 3, at an extraordinary general meeting convened for the purpose.
- (5) In determining the number of proprietors for the purposes of this by-law, co-proprietors of a lot or more than one lot shall be deemed to be one proprietor and a person who owns more than one lot shall also be deemed to be one proprietor.

Council acts
as Strata
Company.

Until first
AGM see
s46 s49

No less than
3 no more
than 7

Council elected
at general
meeting.
Only
"proprietors"
may be elected
to Council. See
also sec 45.

- | | |
|--|--|
| Co-proprietors deemed as one | (6) If there are co-proprietors of a lot, one only of the co-proprietors shall be eligible to be, or to be elected to be, a member of the council and the co-proprietor who is so eligible shall be nominated by his co-proprietors, but, if the co-proprietors fail to agree on a nominee, the co-proprietor who owns the largest share of the lot shall be the nominee or if there is no co-proprietor who owns the largest share of the lot, the co-proprietor whose name appears first in the certificate of title for the lot shall be the nominee. |
| Only one Co-proprietor is eligible | |
| Council members have one vote | (7) On an election of members of the council, a proprietor shall have one vote in respect of each lot owned by him. |
| Removal of council member | (8) Except where the council consists of all the proprietors, the strata company may by special resolution remove any member of the council before the expiration of his term of office. |
| Vacates office when... | (9) A member of the council vacates his office as a member of the council <ul style="list-style-type: none">(a) if he dies or ceases to be a proprietor or a co-proprietor of a lot;(b) upon receipt by the strata company of notice in writing of his resignation from the office of member,(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 he is not elected or re-elected;(d) in a case where he is a member of the council by reason of there being not more than 3 proprietors, upon an election of members of the council (as a result of there being an increase in the number of proprietors to more than 3) at which he is not elected; or(e) where he is removed from office under sub-by-law (8) of this by-law. |
| Vacancy filled from within Council | (10) Any casual vacancy on the council may be filled by the remaining members of the council, except that, in a case where a casual vacancy arises because of the removal from office of a member under sub-by-law (8), the strata company may resolve that the casual vacancy shall be filled by the strata company at a general meeting. |
| Quorum of the council | (11) Except where there is only one proprietor, a quorum of the council shall be 2 where the council consists of 3 or 4 members; 3, where it consists of 5 or 6 members; and 4, where it consists of 7 members. |
| Continuing members may act as council unless no quorum | (12) The continuing members of the council may act notwithstanding any 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. |
| All acts done by council done in good faith | (13) All acts done in good faith by the council shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment or continuance in office of any member of the council, be as valid as if that member had been duly appointed or had duly continued in office. |

Election Of Council

- 5.** The procedure for nomination and election of members of a council shall be in accordance with the following rules.

No more than 3, no less than 7

- (1) The meeting shall determine, in accordance with the requirements of by-law 4 (3) of this schedule the number of persons of whom the council shall consist.

Call for nominations

- (2) The chairman shall call upon those persons present and entitled to nominate candidates for election to the council.

Consent in writing or orally by nominee

- (3) A nomination is ineffective unless supported by the consent of the nominee to his nomination, given -

- (a) in writing, and furnished to the chairman at the meeting; or
- (b) orally by a nominee who is present at the meeting.

- (4) When no further nominations are forthcoming, the chairman -

When a ballot is required

- (a) where the number of candidates equals the number of members of the council determined in accordance with the requirements of by-law 4 (3) of this schedule, shall declare those candidates to be elected as members of the council;

- (b) where the number of candidates exceeds the number of members of the council as so determined, shall direct that a ballot be held.

Ballot process

- (5) If a ballot is to be held, the chairman shall -

- (a) announce the names of the candidates; and
- (b) cause to be furnished to each person present and entitled to vote a blank paper in respect of each lot in respect of which he is entitled to vote for use as a ballot-paper.

- (6) A person who is entitled to vote shall complete a valid ballot paper by -

Voting by persons entitled to vote

- (a) writing thereon the names of candidates, equal in number to the number of members of the council so that no name is repeated;
- (b) indicating thereon the number of each lot in respect of which his vote is cast and whether he so votes as proprietor or first mortgagee of each such lot or as proxy of the proprietor or first mortgagee;
- (c) signing the ballot-paper; and
- (d) returning it to the chairman.

Votes counted

- (7) The chairman, or a person appointed by him, shall count the votes recorded on valid ballot-papers in favour of each candidate.

- (8) Subject to rule (9), candidates, being equal in number to the number of members of the council determined in accordance with bylaw 4 (3) of this schedule, who receive the highest numbers of votes shall be declared elected to the council.

- Number of votes recorded
- (9) Where the number of votes recorded in favour of any candidate is the lowest of the numbers of votes referred to in rule (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 shall be decided by a show of hands of those present and entitled to vote.

Chairman, Secretary And Treasurer Of Council

- Appoint Chairman Secretary Treasurer
6. (1) The members of a council shall, at the first meeting of the council after they assume office as such members, appoint a chairman, a secretary and a treasurer of the council.
- Only a member of council may hold an office
- (2) A person –
- (a) shall not be appointed to an office referred to in sub-bylaw(l) of this by-law unless he is a member of the council; and
 - (b) may be appointed to one or more of those offices.
- Term of office valid until...
- (3) A person appointed to an office referred to in sub-bylaw (1) of this by-law shall hold office until –
- (a) he ceases to be a member of the council;
 - (b) receipt by the strata company of notice in writing of his resignation from that office; or
 - (c) another person is appointed by the council to hold that office,
- whichever first happens.
- Chairman shall preside at council
- (4) The chairman shall preside at all meetings of the council at which he is present and, if he is absent from any meeting, the members of the council present at that meeting shall appoint one of their number to preside at that meeting during the absence of the chairman.

Chairman, Secretary And Treasurer Of Strata Company

7. (1) Subject to sub-bylaw (2), the chairman, secretary and treasurer of the council are also respectively the chairman, secretary and treasurer of the strata company.
- Chairman of General meeting need not be a proprietor
- (2) A strata company may at a general meeting authorise a person who is not a proprietor to act as the chairman of the strata company for the purposes of that meeting.
- (3) A person appointed under sub-bylaw (2) may act until the end of the meeting for which he was appointed to act.

Meetings Of Council

- 8.** (1) At meetings of the council, all matters shall be determined by a simple majority vote.

Majority vote
at council

- (2) The council may -

Council
regulates
meetings as it
sees fit

- (a) meet together for the conduct of business and adjourn and otherwise regulate its meetings as it thinks fit, but the council shall meet when any member of the council gives to the other members not less than 7 days' notice of a meeting proposed by him, specifying in the notice the reason for calling the meeting;

Employ
agents and
employees

- (b) employ on behalf of the strata company such agents and employees as it thinks fit in connection with the control and management of the common property and the exercise and performance of the powers and duties of the strata company;

Strata company
may delegate its
powers

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

A Corporation
may appoint a
proprietor or
individual to
act in its place
at Council
meetings

- (3) A member of a council may appoint a proprietor, or an individual authorised under section 45 of the Act by a corporation which is a proprietor, to act in his place as a member of the council at any meeting of the council and any proprietor or individual so appointed shall, when so acting, be deemed to be a member of the council.

- (4) A proprietor or individual may be appointed under sub-by-law (3) of this by-law whether or not he is a member of the council.

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

Minutes

- (6) The council shall keep minutes of its proceedings.

Powers And Duties Of Secretary Of Strata Company

- 9.** The powers and duties of the secretary of a strata company include -

Distribute
minutes

- (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;

Distribute
notices

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

Supply
information
see s43

- (c) the supply of information on behalf of the strata company in accordance with section 43 (1) (a) and (b) of the Act.

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

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

- (f) subject to sections 49 and 103 of the Act the convening of meetings of the strata company and of the council.

Powers And Duties Of Treasurer Of Strata Company

10. The powers and duties of the treasurer of a strata company include -

- | | |
|------------------|---|
| Levies | (a) the notifying of proprietors of any contributions levied pursuant to the Act; |
| Banking | (b) the receipt, acknowledgment and banking of and the accounting for any money paid to the strata company; |
| s43 certificate | (c) the preparation of any certificate applied for under section 43 of the Act; and |
| Books of account | (d) the keeping of the books of account referred to in section 35 (1) (f) of the Act and the preparation of the statement of accounts referred to in section 35 (1) (g) of the Act. |

General Meetings Of Strata Company

11. (1) General meetings of the strata company shall be held once in each year and so that not more than 15 months shall elapse between the date of one annual general meeting and that of the next.

- | | |
|--|---|
| AGM's | (1) General meetings of the strata company shall be held once in each year and so that not more than 15 months shall elapse between the date of one annual general meeting and that of the next. |
| EGM's | (2) All general meetings other than the annual general meeting shall be called extraordinary general meetings. |
| Calling EGM's | (3) The council may when ever it thinks fit and shall upon a requisition in writing made by proprietors entitled to a quarter or more of the aggregate unit entitlement of the lots convene an extraordinary general meeting. |
| EGM may be requisitioned | (4) If the council does not within 21 days after the date of the making of a requisition under this by-law proceed to convene an extraordinary general meeting, the requisitionists, or any of them representing more than one-half of the aggregate unit entitlement of all of them, may themselves, in the same manner as nearly as possible as that in which meetings are to be convened by the council, convene an extraordinary general meeting, but any meeting so convened shall not be held after the expiration of 3 months from the date on which the requisition was made. |
| No less than 14 days notice for General meetings | (5) Not less than 14 days' notice of every general meeting specifying the place, the date and the hour of meeting and in case of special business the general nature of that business, shall be given to all proprietors and registered first mortgagees who have notified their interests to the strata company, but accidental omission to give the notice to any proprietor or to any registered first mortgagee or non - receipt of the notice by any proprietor or by any registered first mortgagee does not invalidate any proceedings at any such meeting. |
| Items of special business to be shown on Agenda | (6) If a proprietor gives notice in writing to the secretary of an item of business that the proprietor requires to be included on the agenda for the next general meeting of the strata company, the secretary shall include that item on the agenda accordingly and shall give notice of that item as an item of special business in accordance with sub-bylaw (5) of this by-law. |

Proceedings At General Meetings

- | | |
|--|---|
| Special business at AGM, EGM | <p>12. (1) All business shall be deemed special that is transacted at an annual general meeting, with the exception of the consideration of accounts and election of members to the council, or at an extraordinary general meeting.</p> |
| No business unless quorum | <p>(2) Except as otherwise provided in these by-laws, no business may be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.</p> |
| Quorum of financial members
By-Law 14.6 | <p>(3) One-half of the persons entitled to vote present in person or by duly appointed proxy constitutes a quorum.</p> |
| If no quorum | <p>(4) If within half an hour from the time appointed for a general meeting a quorum is not present, the meeting, if convened upon the requisition of proprietors, shall be dissolved and in any other case it shall stand adjourned to the same day in the next week at the same place and time and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the persons entitled to vote and present constitute a quorum.</p> |
| 2 lot scheme | <p>(4a) Sub-bylaws (3) and (4) do not apply to a general meeting of a strata company referred to in section 50B.</p> |
| Adjourn | <p>(5) The chairman, may with the consent of the meeting, adjourn any general meeting from time to time and from place to place but no business may be transacted at an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.</p> |
| Simple majority | <p>(6) Except where otherwise required by or under the Act, resolutions may be passed at a general meeting by a simple majority vote.</p> |
| Show of hands unless Poll | <p>(7) At any general meeting a resolution by the vote of the meeting shall be decided on a show of hands unless a poll is demanded by any proprietor present in person or by proxy.</p> |
| Chairman declares vote carried | <p>(8) Unless a poll be so demanded a declaration by the chairman that a resolution has on the show of hands been carried is conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against such resolution.</p> |
| Withdraw poll | <p>(9) A demand for a poll may be withdrawn.</p> |
| Chairman determines method of poll | <p>(10) A poll if demanded shall be taken in such manner as the chairman thinks fit and the result of the poll shall be deemed to be the resolution of the meeting at which such poll was demanded.</p> |
| Equality of votes | <p>(11) In the case of equality in the votes whether on a show of hands or on a poll, the question is determined in the negative.</p> |

Restriction On Moving Motion Or Nominating Candidate

- | | |
|---|--|
| <p>13. Must be financial to be "entitled"
ByLaw 14.6</p> | <p>A person is not entitled to move a motion at a general meeting or to nominate a candidate for election as a member of the council unless the person is entitled to vote on the motion or at the election.</p> |
|---|--|

Votes Of Proprietors

14. (1) On a show of hands each proprietor has one vote.

Show of
hands
Poll

(2) On a poll the proprietors have the same number of votes as the unit entitlements of their respective lots.

By Proxy

(3) On a show of hands or on a poll votes may be given either personally or by duly appointed proxy.

Proxy to be
in writing

(4) An instrument appointing a proxy shall be in writing under the hand of the appointer or his attorney and may be either general or for a particular meeting.

(5) A proxy need not be a proprietor.

Unfinancial
may not vote
see s3D

(6) Except in cases where by or under the Act a unanimous resolution or a resolution without dissent is required, no proprietor is entitled to vote at any general meeting unless all contributions payable in respect of his lot have been duly paid and any other moneys recoverable under the Act by the strata company from him at the date of the notice given to proprietors of the meeting have been duly paid before the commencement of the meeting.

Pay up before
meeting starts

Co-proprietors
must have
proxy

(7) Co-proprietors may vote by proxy jointly appointed by them and in the absence of such a proxy are not entitled to vote on a show of hands, except when the unanimous resolution of proprietors is required by the Act.

Poll votes are
equal to unit
entitlement

(8) On any poll each co-proprietor is entitled to such part of the vote applicable to a lot as is proportionate to his interest in the lot.

(9) The joint proxy (if any) on a poll has a vote proportionate to the interests in the lot of such of the joint proprietors as do not vote personally or by individual proxy.

Common Seal

15. (1) The common seal of the strata company shall at no time be used except by authority of the council previously given and in the presence of the members of the council or at least 2 members of the council, who shall sign every instrument to which the seal is affixed, but where there is only one member of the strata company his signature shall be sufficient for the purpose of this by-law.

Affixed in the
presence of 2
members and
signed

(2) The council shall make provision for the safe custody of the common seal.

28.2 Schedule 2 By-laws

Vehicles

1. A proprietor, occupier, or other resident of a lot shall not park or stand any motor or other vehicle upon common property except with the written approval of the strata company.

Parking

Obstruction Of Common Property

2. A proprietor, occupier, or other resident of a lot shall not obstruct lawful use of common property by any person.

See
also
sched 1
by-law
1 (2)

Damage To Lawns, Etc., On Common Property

3. Except with the approval of the strata company, a proprietor, occupier, or other resident of a lot shall not –
 - (a) damage any lawn, garden, tree, shrub, plant or flower upon common property; or
 - (b) use any portion of the common property for his own purposes as a garden.

Behaviour Of Proprietors And Occupiers

4. A proprietor, occupier, or other resident of a lot shall be adequately clothed when upon common property and shall not use language or behave in a manner likely to cause offence or embarrassment to the proprietor, occupier, or other resident of another lot or to any person lawfully using common property.

See
also
sched
1 by-
law 1
(2)

Children Playing Upon Common Property In Building

5. A proprietor, occupier, or other resident of a lot shall not permit any child of whom he has control to play upon common property within the building or, unless accompanied by an adult exercising effective control, to be or to remain upon common property comprising a laundry, car parking area or other area of possible danger or hazard to children.

Depositing Rubbish, Etc., On Common Property

6. A proprietor, occupier, or other resident of a lot shall not deposit or throw upon 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 another proprietor, occupier or resident or of any person lawfully using the common property.

Drying Of Laundry Items

7. A proprietor, occupier, or other resident of a lot shall not, except with the consent in writing of the strata company –

- | | |
|-------------------|--|
| Laundry | (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 |
| Advertising signs | (b) display any sign, advertisement, placard, banner, pamphlet or like matter on any part of his lot in such a way as to be visible from outside the building. |

Storage Of Inflammable Liquids, Etc.

8. A proprietor, occupier, or other resident of a lot shall not, except with the approval in writing of the strata company, use or store upon the lot or upon 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.

Moving Furniture Etc., On Or Through Common Property

- 9.** A proprietor, occupier, or other resident of a lot shall not transport any furniture or large object through or upon common property within the building unless he has first given to the council sufficient notice of his intention to do so to enable the council to arrange for its nominee to be present at the time when he does so.

Floor Coverings

Peaceful
enjoyment

- 10.** A proprietor of a lot shall 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 thereof of noise likely to disturb the peaceful enjoyment of the proprietor, occupier or other resident of another lot.

Garbage Disposal

- 11.** A proprietor or occupier of a lot -
- (a) shall maintain within his 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 the proprietor, occupier or other resident of any other lot is not adversely affected by his disposal of garbage.

Additional Duties Of Proprietors, Occupiers, Etc.

Illegal

Noise

Animals

- 12.** A proprietor, occupier or other resident shall not -
- (a) use the lot that he owns, occupies or resides in for any purpose that may be illegal or injurious to the reputation of the building;
 - (b) make undue noise in or about any lot or common property; or
 - (c) subject to section 42(15) of the Act, keep any animals on the lot that he owns, occupies or resides in or the common property after notice in that behalf given to him by the council

Notice Of Alteration To Lot

See sec 7
STA and
strata
regulations
30 to 35

- 13.** A proprietor of a lot shall not alter the structure of the lot except as may be permitted and provided for under the Act and the by-laws and in any event shall 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.

Appearance Of Lot

- 14.** A proprietor, occupier or other resident of a lot shall 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.

29 ADDITIONAL INFORMATION

29.1 Where to get Help

Landgate Strata Advisory Service

The Strata Titles Advisory Service (Land Registration Centre) at Landgate is located at 1 Midland Square, Midland (near the corner of Morrison Road & Great Northern Highway). Landgate's postal address is PO Box 2222 Midland WA 6936.

Landgate's Advice Officers can provide advice (limited to the information contained in this booklet) and guidance on strata title registration matters by personal attendance, telephone or by email. This service is available between 8:30 a.m. – 5:00 p.m. Monday to Friday, in Landgate's Midland Office. Contact details are;

Strata Titles Advisory Service	(08) 9273 7044
Land Title Registration Information	(08) 9273 7044
Facsimile	(08) 9273 7651
Email	advice@landgate.wa.gov.au

Note: Advice is not available at Landgate's Bunbury Regional Office.

State Administrative Tribunal

(Not for advice other than how to lodge an application)

Level 4, 12 St. George's Terrace, Perth WA 6000.

Telephone (08) 92193111 Facsimile (08) 92193115

Website: www.sat.justice.wa.gov.au

29.2 Non Government Assistance

Assistance is also available from industry professionals such as Licensed Land Surveyors, Settlement Agents, Solicitors, Licensed Valuers and Strata Managers. Citizens Advice Bureau and community based legal services can also provide free or low cost legal advice and assistance with the resolution of disputes.

29.3 Smoke Alarm Laws for Existing Dwellings

Since 1 October 2009, regulations have been in place in Western Australia requiring existing dwellings to be fitted with hard-wired smoke alarms prior to sale and when a new residential tenancy agreement is signed for rental properties.

As of 1 October 2011, the requirement under the *Building Regulations 1989* for smoke alarms will apply to dwellings made available for hire on a casual basis, such as holiday homes, bed and breakfast accommodation, guest houses and the like.

Further information about the requirement for smoke alarms or fire safety in the home please contact the Fire and Emergency Services Authority on (08) 9323 9816 or visit www.fesa.wa.gov.au

29.4 Installation of Residual Current Devices (RCD's) in Residential Premises

29.4.1 What is an RCD?

An RCD is a safety device that disconnects an electrical circuit when it detects an imbalance of electric current. RCD's are extremely sensitive, disconnecting within 10 to 50 milliseconds of detecting a leakage current. This stops the flow of electricity through someone's body to earth. RCD's are required to be fitted at the meter box (main switchboard) or distribution board for the residence.

29.4.2 RCD Laws

The Western Australian Government implemented new RCD regulations in August 2009. The new legislation applies to people selling their homes and to landlords.

Every home sold or leased must be fitted with a minimum of two RCD's to protect the power and lighting circuits as part of an electrical installation.

When a new tenant takes up residency, landlords will need to install the devices before the lease agreement is signed. However, for homes with a continuing tenancy, landlords had until 8 August 2011 to fit RCD's.

Strata owners should also be aware of the need to have RCD's fitted to any Common Property lighting and / or power supply switchboards for their strata scheme.

For more information visit www.energysafety.wa.gov.au/RCD or call (08) 9422 5200.

29.5 Solar Panels

Reducing your carbon footprint may not be as easy as you imagined. With strata schemes it is important to realise that you need consent of the strata company to make alterations to your lot.

Adding solar panels for either power or hot water systems may not be in keeping with the rest of the strata scheme.

Anyone wishing to fit solar panels to their building will need to consult with their strata company before erecting anything to the exterior of the building. It is important to consider obtaining appropriate engineering approvals to ensure that the load bearing capacity of the roof is also adequate.

29.6 New Building Defects

If you have recently purchased into a new strata scheme, and the building has developed leaks or cracks you should consult with the builder of the scheme. It may be possible to have these defects rectified by the builder if the building is under 6 years old.

The Building Commission is the government body responsible for any disputes with the quality of the construction of the building or materials used. They are located at Level 1, 31 Troode Street, West Perth WA

Telephone (08) 1300 489 099 Facsimile (08) 9476 1333

Website info@buildingcommission.wa.gov.au

30 FURTHER READING

Landgate produces a number of strata title publications on the converting of common property to individual property and creating and changing by-laws. These booklets are available from the Landgate website at www.Landgate.wa.gov.au by clicking on the "publications" banner along the bottom of the webpage or by following this link www.landgate.wa.gov.au/corporate.nsf/web/How+to+guides+for+Single+Tier+strata+scheme+merger+and+conversion+options

A number of text books on strata titles are also available from independent book sellers.

The State Administrative Tribunal has a publication outlining the requirements to lodge applications with SAT. www.sat.justice.wa.gov.au

30.1 Where to Get Documents

The documents and forms required to amend strata schemes are available online from Landgate's website at www.Landgate.wa.gov.au by clicking on "forms and fees" under the Quicklinks banner or by following this link: www.landgate.wa.gov.au/corporate.nsf/web/Forms+and+Fees

Copies of strata plans are also available online from the Landgate website at www.Landgate.wa.gov.au by clicking on "obtain a copy of a title or survey plan" under the "I would like to" banner or by following this link: www.landgate.wa.gov.au/corporate.nsf/web/Strata+Plan

Copies of strata plans and any related documents (such as notification to amend by-laws) can also be obtained from Landgate's online support section by phone on 08 92737314 or by email to onlinesupport@landgate.wa.gov.au. Please note: there are fees payable to search strata plans and related documents.

The Strata Titles Act and Strata Titles General Regulations are available from the State Law Publisher at 10 William Street, Perth or online at www.slp.wa.gov.au

30.2 Where to Lodge Documents

Documents can be lodged with Landgate at:

- 1 Midland Square, Midland (corner of Great Northern Highway and Morrison Road)
- Cloisters Perth Office, Ground Floor, 200 St Georges Terrace, Perth.
- Bunbury Regional Office, 61 Victoria Street, Bunbury.

Office hours for lodgement of documents are 8.30 a.m. to 4.30 p.m.

Documents can also be lodged by posting to:
Landgate
Document Lodgement Section
PO Box 2222
MIDLAND WA 6936

Please note: registration fees are payable when lodging documents. Contact an advisory officer on 08 9273 7044 to discuss the fee payable.

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