

+ Guide to strata titles

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strata.wa.gov.au



Using this guide

This guide is produced by Landgate - the Western Australian Land Information Authority - to provide a basic understanding of strata titling principles.

- Information is presented under the following key themes to help you find the information that you're looking for:
 - **Introduction to strata**
 - **How is a strata scheme structured?**
 - **Buying and selling**
 - **Stakeholders in strata**
 - **Running a strata titles scheme**
 - **What if there is a dispute?**
 - **Creating or changing a strata titles scheme**
 - **Default by-laws**
 - **Where to get assistance**
- You can easily move between pages and return to the contents page at any time by selecting these interactive buttons at the bottom of each page:
- You may find it helpful to have a copy of this guide with you if contacting Landgate for further information. Our webchat support service is especially useful if you like to keep reading while asking questions.

This guide is a summary of the law as at 1 May 2020 and should not be taken as a precise guide to the law on strata titles or in any way regarded as legal advice.

You should refer to the *Strata Titles Act 1985* (the Act) as amended in 2018 and the Strata Titles (General) Regulations 2019 (STGR 2019) for details, available at www.legislation.wa.gov.au. In all matters, readers may wish to seek legal advice from an independent legal practitioner.

Living in a strata titles scheme

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

The cost of buying into a strata titles scheme is usually comparatively less than the cost of buying into non-strata freehold title properties. Day to day living costs can also be lower because shared services (e.g. maintenance costs, utility rates, or insurance premiums) are reduced. This means people can purchase better quality housing, or choose to live in a more desirable area, than in the non-strata freehold environment.

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

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Introduction to strata

1 Key concepts

Some people will be new to strata living. Others may be long standing owners or residents who have seen many changes come and go. To make sure everyone has a shared understanding, please take some time to read about the key concepts underpinning strata.

Terms and Definitions

Stakeholders

- An **owner of a lot** is the person registered as proprietor on the Certificate of Title for a particular lot in the scheme.
- An **occupier of a lot** is the tenant who resides in the residence.
- A **tenant in common** in a property owns all the land jointly with all the other lot owners, but you own a proportional share of the land (i.e. you don't own a defined section).
- A **strata company** is all the lot owners. Upon registration of the scheme, a strata company automatically comes into existence.
- A **strata council** is a subset of the lot owners, elected by the owners at the annual general meeting of the strata company. In schemes with only two or three lots, the lot owners are automatically the council (no election is required).
- A **strata manager** is an individual, partnership, or company, employed to manage certain functions of the strata company. Strata managers may do things like collecting contributions from lot owners, coordinating annual and extraordinary meetings of the strata company and keeping minutes, and arranging supplies of services and amenities to the strata company. The scope of the strata manager's role is defined in their contract.
- The **strata manager** could be a **volunteer**, but they must be an owner of a lot in the scheme and personally performing strata manager functions to do so. They may choose to perform their duties at no charge. If they do charge, the fee (or honorarium) must not exceed \$250 per lot in the scheme.

Structural

- A **Certificate of Title** is an official land ownership record.
- If the certificate of title shows the **property is a strata title**, this means you have **individual ownership** of **part** of a property (your lot) combined with **shared ownership** of the **remainder** of a property (common property).
- **Strata** (sometimes referred to as built strata) means a strata plan of subdivision for an existing building or buildings on a freehold lot into two or more strata lots that are cubic spaces with or without common property.
- **Survey-strata** means a survey-strata plan of subdivision of an existing freehold lot into smaller lots with surveyed boundaries, which may be limited in height and depth and with or without common property.
- A **strata titles scheme** is comprised of a set of documents that define the scheme, subject to the Act and STGR 2019. These are the scheme plan (defines the lot boundaries), schedule of unit entitlements (located with the plan), scheme notice and scheme by-laws. If it is a leasehold scheme, the documents also include the strata lease for each lot

The scheme plan may also identify any interests that affect the scheme that may not otherwise be shown on the strata titles.

- **Common property** means all the areas of the land and buildings in the scheme not included in any lot. Common property is jointly owned by all lot owners and is held as tenants in common in proportion to the unit entitlements of all lots in the scheme.

Rights and Obligations

- **What are scheme by-laws?** By-laws define what you can and can't do in the strata scheme. They are the set of rules that establish the conduct and governance standards in the strata. By-laws apply to owners, tenants, and the strata company. If the scheme is leasehold, the by-laws also apply to the owner of the leasehold scheme.
- **What do I own?** You own your lot, plus a share in common property as described in your certificate of title. To determine what is part of your lot and what is common property, please refer to your certificate of title and the scheme plan.

Your certificate of title contains an endorsement in the Limitations, Interests, Encumbrances and Notifications (second schedule) which states "INTERESTS NOTIFIED ON THE STRATA/SURVEY- STRATA PLAN AND ANY AMENDMENTS TO LOTS OR COMMON PROPERTY NOTIFIED THEREON BY VIRTUE OF THE PROVISIONS OF THE STRATA TITLES ACT 1985 AS AMENDED". This means that your lot and share in common property may be affected by other interests that may not be shown on your certificate of title alone, especially those interests that affect the common property. For that reason, a thorough search of the scheme plan should always be performed as well as searching the title. Those interests may be identified on the location plan of a strata plan or on the first sheet of a survey-strata plan, in the Interests and Notifications table, or endorsed on the Schedule of Dealings/Encumbrances, Form 8 and/or Record of Strata Titles Scheme that is filed at the back of the plan.

Examples of endorsements may look like this:

- **What obligations apply to people who are on common property?** Refer to the by-laws for initial guidance. If you're still unclear, raise the matter at a strata company meeting.
- **Why do I have to make financial contributions (previously referred to as levies)?** The financial contributions are required for the maintenance and upkeep of the scheme.
- **Who is responsible for maintaining the strata?** This depends on the specifics of your situation and there is no simple answer. The Act imposes a number of obligations on the strata company. These obligations are primarily carried out by the strata council, assisted in many cases by a strata manager. The Act also imposes obligations on lot owners. If you are unclear who has responsibility for a matter you may need to raise the matter at a strata company meeting.

- **Can I participate in decisions about how my strata scheme operates?** As a member of the strata company, it's important to participate in meetings and vote on the issues affecting your scheme. You may wish to consider joining the strata council or becoming a volunteer strata manager.
- **Will this guide assist me to resolve an issue with a tenant in a strata property?** It's possible a relevant by-law for your scheme may exist setting out the steps you are required to take when a dispute arises, but that is not often the case. Tenancy matters are dealt with by the Department of Mines, Industry Regulation and Safety. Criminal matters can be directed to the WA Police.
- **What if I have an issue with another lot owner or the strata company?** Some actions you can take include consulting the scheme by-laws, raising the issue with the strata council, or accessing an independent mediator. If the issue is still unresolved, then in most cases the issue can be referred to SAT.
- **What if I have an issue with the strata manager?** The first action you can take is to review the strata manager's contract to determine if the matter is one they are responsible for. If it appears the matter is in the scope of the contract, raise the issue with the strata council so the council can take up the matter with the strata manager. If the issue remains unresolved, the strata company can notify the strata manager to show cause why the contract should not be terminated. SAT has power to resolve disputes between the strata company and strata manager.

2 Your toolbox

You can do a lot to empower yourself if you are equipped with the right tools. Before reading this guide, it would be beneficial to obtain and review the following information:

- ▶ **A copy of the certificate of title.**
Available on application to Landgate.
- ▶ **A copy of the scheme plan**
Including schedule of unit entitlements and interests recorded or registered on the plan, that may or may not be registered or recorded on the certificate of title.
Available from the strata company or on application to Landgate.
- ▶ **A copy of the scheme by-laws**
Available from the strata company or on application to Landgate.
- ▶ **Planning laws and by-laws**
Depending on your circumstance, these are variously available from your local government authority, the Department of Planning, Lands and Heritage, and the Western Australian Planning Commission (WAPC).
- ▶ **A copy of the strata manager's contract or the strata roll**
Available from the strata company.

How is a strata scheme structured?

Have you ever wondered, when industry professionals refer to a 'strata scheme', what does that mean?

A strata scheme is a type of subdivision of a piece of land that allows one large freehold lot to be divided up into many smaller lots. There are different types of strata, with many rights, rules, obligations, documents and processes attached to them. Every scheme has its own set of by-laws to regulate the conduct of owners and occupiers of lots and to govern the scheme. Every scheme has a strata company comprising the owners of the scheme.

This section explains how to understand what you might see on the scheme plan, and what you need to know about how a strata scheme is set up.

3 Types of schemes

Two types of freehold schemes are permitted under the Act, strata schemes and survey-strata schemes. The comments in this guide apply to both strata schemes and survey-strata schemes, unless indicated otherwise. The plan of subdivision for the scheme determines if the scheme is a strata, survey-strata, leasehold or single-tier scheme.

Strata plans

Strata plans are the original form of subdivision plan for a scheme, commonly known as built strata. At least one building must be shown on the strata plan.

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 cubic spaces within a building. After that date, part of the lot could also be the land outside the building and include the external surfaces of the building structure.

A strata plan has four parts to it including the floor plan, location plan, record of interests and encumbrances the Registrar of Titles registers or records for the scheme (for example, amendments to scheme by-laws) and the schedule of unit entitlements.

The lot boundaries are shown on the floor plan of the strata plan. The wording on the floor plan must be read in conjunction with the graphics on the floor plan to ascertain the lot boundaries.

The location plan locates the building in relation to the parcel boundary. The parcel is the freehold lot that is the subject of the strata plan of subdivision.

In a strata scheme, common property is the part of the land subdivided by the strata scheme that does not form part of a lot. It is not separately identified on the plan. It may include the parts of a scheme building that do not form part of a lot.

Survey-strata plans

A survey-strata plan has three parts, the part showing the lots and common property, the record of interests and encumbrances and the schedule of unit entitlements.

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 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 example, 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 plans may have common property. If there is any common property on the survey-strata plan it must be unambiguously shown as common property and have its own unique number.

Leasehold schemes

Leasehold schemes are a new form of land tenure introduced by the *Strata Titles Amendment Act 2018*. A leasehold scheme is essentially a strata or survey-strata scheme set up for a fixed term of 20 to 99 years.

The majority of the *Strata Titles Act 1985* applies to leasehold schemes in the same way as it applies to freehold schemes. Leasehold schemes can be strata (built strata) or survey-strata schemes. The scheme plan will indicate if the scheme is leasehold. The scheme, all lots in the scheme and the strata leases for each of the lots, all expire on the same expiry day. The owner of a lot in a leasehold scheme has a long-term lease of a lot (a strata lease), which they can transfer and mortgage without the lessor's consent, the lessor being the owner of the parent parcel of land.

In leasehold schemes:

- a lot will have its own certificate of title
- there will be a separate certificate of title for the original parcel of land (for the owner of the leasehold scheme/lessor) over which the leasehold scheme operates. This is different to freehold strata/survey-strata scheme, where the certificate of title for the parcel is cancelled on registration of the scheme
- the scheme is created for a fixed term (a minimum of 20 years to a maximum of 99 years)
- the expiry day of the scheme may be postponed to a later date, if the scheme by-laws allow, and provided the later date is not more than 99 years after registration of the scheme
- people can buy, sell and mortgage a lot
- an owner of a lot (lessee) can sell the lot without needing the consent of the owner of the leasehold scheme (lessor)
- the owner of the leasehold scheme is entitled to take back the land upon expiry or termination of the scheme.

Leasehold schemes give the owner of the leasehold scheme an opportunity to develop land, which they otherwise wouldn't or couldn't develop. This is of particular benefit to organisations such as churches and universities if they want to retain ownership of their land and make it available for development. Leasehold schemes also offer an alternative form of tenure for retirement villages.

Single tier strata schemes

Single tier strata schemes are strata schemes where no lot is above another lot, that is, the floor of one lot cannot form part or all of the ceiling of another lot. Multi-storey blocks of flats/units are not single tier strata schemes, but a two-storey unit such as a townhouse/villa can be part of a single tier strata scheme.

In some circumstances, the Act allows a strata scheme to be a single tier strata scheme, even if parts of lots, such as balconies, or other parts of buildings overhang other lots. These overhangs are called Permitted Boundary Deviations, as specified in Schedule 2A clause 3 of the Act and Schedule 1 clause 3 of the Strata Titles (General) Regulations 2019 (STGR 2019).

Lot boundaries in a single tier strata scheme may be the external surfaces of the building shown on the floor plan. This includes things that project from or are attached to the building and are described in STGR 2019.

The insurance arrangements for single tier strata schemes are different to those of other strata schemes and are detailed in Schedule 2A Part 5 of the Act.

4 Common property

- **See section 10 of the Act.**



Common property is property that is jointly owned by all owners in the strata titles scheme as tenants in common and is not contained within any lot.

In a survey-strata, each area of common property is shown on the scheme plan and has its own unique number.

In a strata scheme, common property can be more difficult to identify because it is all the land in the parcel that does not form part of a lot, including parts of a scheme building that do not form part of a lot. Common property in a strata scheme is not separately identified by a unique number.

Due to changes to the Act over time, and different ways in which strata plans have been prepared, a number of individual ownership/common property scenarios exist. For example, a part (or even the whole) of the building structure could actually be common property.

There is often confusion surrounding the determination of what part of the property belongs to the lot owner and what is common property. Over time, strata plans have become more detailed in order to more accurately define the lot boundaries. If your plan was registered prior to 1995, there will typically be less information on the plan than if it was registered after this date.



Many strata owners incorrectly believe there is no common property in their scheme and they own the whole of 'their strata unit'. For example, the building they live in and the surrounding garden and carport area.

However, in many cases this is not correct.

To understand what you own, you should obtain a copy of the certificate of title for your lot and examine a current copy of your scheme plan and seek guidance on its interpretation. This guidance can be obtained from a licensed land surveyor (consider contacting the surveyor whose contact details are shown on the plan) or Landgate.

The certificate of title for your lot indicates that you own the specified lot on a specified plan, and that you own a share in the common property (if any) on the plan. Not all schemes have common property.

The strata company can acquire common property for the scheme on a temporary basis (temporary common property) by taking a lease of property (this might be land adjacent to the scheme boundary or a lot in the scheme). Owners of lots in the scheme have an interest as tenants in common in this temporary common property.

5 Unit entitlement

• See section 37 of the Act



The unit entitlement of a lot in a strata titles scheme determines the:

- voting rights of an owner of a lot in certain circumstances (for example, where an owner demands that an ordinary resolution be determined on unit entitlement or the resolution is a special resolution)
- lot owner’s share in the common property in the scheme as tenant in common with the other lot owners
- contributions payable by the owner of a lot in a scheme under Section 100 of the Act except where the scheme by-laws provide otherwise.

The schedule of unit entitlements for a strata titles scheme shows the unit entitlement of each lot in the scheme, and the sum of the unit entitlements of the lots. The schedule of unit entitlements currently forms part of the scheme plan.

Unit entitlement is set and certified by a licensed valuer. In a strata scheme, the unit entitlement of strata lots is calculated by reference to the capital value of each of the lots. 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 lot.

The Act allows for the unit entitlements to be changed under the following circumstances:

• Amendment of a scheme plan effecting a subdivision	Section 35
• Reallocation of unit entitlements by resolution without dissent of the strata company	Section 38
• Merger of common property into lots	Schedule 2A, Part 4, Division 1
• Conversion of certain strata plans to survey-strata plans	Schedule 2A, Part 4, Division 2
• Reallocation of unit entitlements by the SAT	Section 38
• Variation of a strata scheme by the SAT where a scheme building is damaged or destroyed	Section 166
• Variation of strata titles schemes on a taking	Sections 167 and 168

6 Statutory easements

An easement can be created over land in several ways, including by deed, creation on a plan or by statute. Examples of easements include shared driveways, drainage, vehicle access and power lines.

A simple definition of an easement is a right attached to a parcel of land allowing the owner of the parcel to use the land of another person, in a particular manner or restrict the use to a particular extent.

Easements may be registered against freehold land or Crown land under the *Transfer of Land Act 1893*. The easement is registered against the benefited land and burdened land as the case requires.

The Act creates certain easements, called statutory easements, that benefit and burden lots and common property in the strata titles scheme, but which are not registered on the certificates of title for the lots or on the scheme plan.

Easement for support, shelter and projections

• See section 61 and 62 of the Act



Every lot and common property are automatically benefited and burdened by these easements. All lots are benefited and burdened:

- by easements for subjacent and lateral support
- for the right to be sheltered by all such parts of the building as are capable of affording shelter.

Consequently, under section 95 of the Act, the strata company or its agents have the right to enter and maintain the services to lots.

Schedule 2A, clause 12A of the Act covers the rights of a lot proprietor to enter another lot to inspect, repair or replace a “permitted boundary deviation” as specified by Schedule 2A, clause 3AB of the Act. A lot proprietor in a single tier scheme may enter a neighbour’s property with vehicles and equipment to maintain, repair or replace that deviation. It is recommended owners exercising this right give due notice in writing of the intended entry to their neighbour, and on completion return the property to its original state.

Utility services easement

• See section 63 of the Act



A utility service easement exists for each lot and the common property in a strata titles scheme, so utility services (such as water, electricity, sewerage or telephone services can be provided to each lot and the common property, even after the scheme is registered.

A utility service easement entitles the strata company, and the owner of a lot, in the strata titles scheme to:

- install and remove utility conduits
- examine, maintain, repair, modify and replace utility conduits.

A utility conduit is a conduit for provision of a utility service, including pipes, wires, cables and ducts.

Common property (utility and sustainability infrastructure) easement

• See section 64 of the Act



It is possible to install sustainability infrastructure (e.g. solar panels) or utility infrastructure on common property within a strata titles scheme.

The infrastructure can be owned by:

- the strata company (as personal property)
- all the owners jointly (as common property)
- one or some of the owners
- a third party (such as a renewable energy supplier).

If the infrastructure is owned by a third party or one/some of the owners, the strata company can enter into an infrastructure contract with the person under which the person owns and operates the infrastructure. The strata company can pass an ordinary resolution that has the effect of applying the statutory common property infrastructure easement to the infrastructure in the contract. The owner of the infrastructure will have access to the infrastructure through the statutory easement.

The easement entitles the infrastructure owner to:

- install and remove the infrastructure specified in the contract
- operate the infrastructure
- examine, repair, maintain, modify and replace the infrastructure.

The easement ceases to exist if the infrastructure contract is terminated or otherwise ceases to exist.

Accessing statutory easements

A strata company has a right to enter the common property of its strata titles scheme to exercise its rights under a statutory easement without notice to any person. A strata company must give notice in the same circumstances, as a lot owner must give notice if the strata company needs to enter a lot for the purpose of exercising rights under a statutory easement.

If a lot owner needs to exercise rights under a statutory easement, they must give notice if they want to enter:

- another lot – they must notify the occupier of the lot
- common property – they must notify the strata company
- common property subject to an exclusive use by-law – they must notify the owners/occupiers of lots who have exclusive use and enjoyment of that common property.

Notice is unnecessary:

- in an emergency if there is insufficient time to give notice
- for entry to common property other than special common property, if the person exercising the rights under the statutory easement has the right to enter and enters only for the purpose of inspection or the strata company dispenses with the requirement for notice
- for entry to special common property if the requirement for notice is dispensed with
- for entry to a lot if the occupier of the lot dispenses with the requirement for notice with the requirement for notice to be given.

Rights of entry under a statutory easement include rights of entry by the lot owner or strata company's agents, employees and contractors, with vehicles, equipment, materials and other items as reasonably necessary for the purpose of exercising rights under the easement.

7 Restricted use conditions

- **See sections 32, 35 and 56 of the Act**



Restricted use conditions (such as that lots may be only, or predominantly, occupied by retired persons) can be:

- created on a scheme plan or amendment of a scheme plan
- imposed, varied or revoked by registration of an Application to Amend a Scheme Document – Restricted Use. See the 'Land Transactions Toolkit' section of Landgate's website for more information.

Consent from the Western Australian Planning Commission is required to impose, vary or revoke a restricted use condition. An amendment of a scheme plan to impose, vary or revoke a restricted use condition also requires a resolution without dissent of the strata company.



Care should be exercised in creating restrictions, as poorly drafted conditions may cause unexpected problems. It is advisable to have a lawyer draft the restriction.

Buying and selling

8 Compulsory Information

Before a buyer signs a contract for the sale of a lot in a strata titles scheme, the seller must give the buyer certain information, as set out in section 156 of the Act.

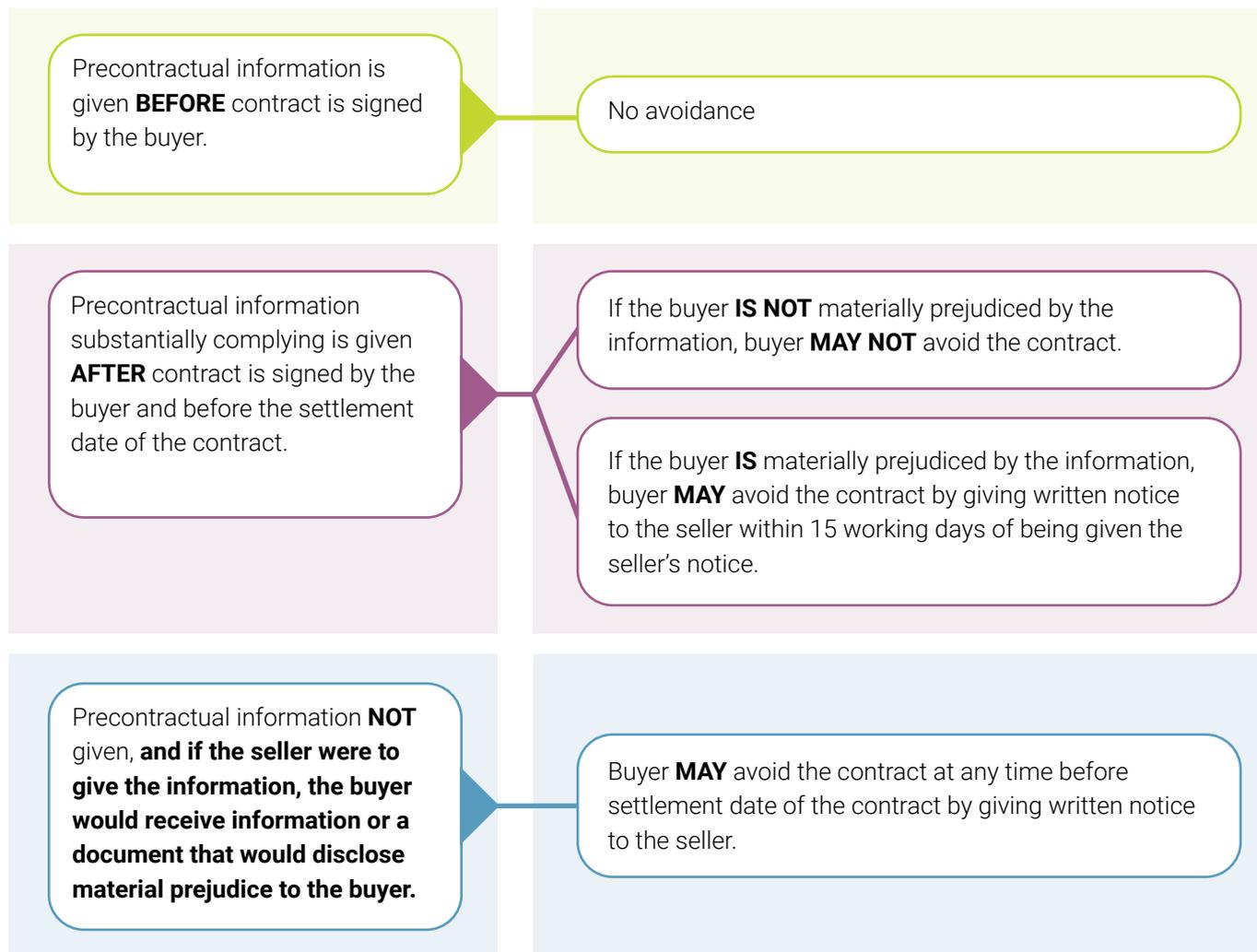
A seller disclosure form is available on the Landgate website, which sets out the information the seller must give to the buyer. It is the seller's obligation to provide the information before the buyer signs the contract for the sale and purchase of the lot.

After the contract for the sale of the strata lot is signed, the seller is obliged to provide information about any 'notifiable variations' in respect of any material changes. The list of notifiable variations is in section 3(1) of the Act, and is also included in the seller disclosure form.

Buyers have the right to avoid the contract in certain circumstances for the seller's failure to provide the required pre-contractual information, or for notifiable variations which occurred after the contract was signed.

Refer to the image below for a summary of the buyer's avoidance rights.

Buyer's avoidance and other rights



9 Additional Information

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

You can ask the seller to provide the information or seek access to the information directly by submitting a request in writing to the strata company. You may inspect the information from their files on payment of \$1 or pay a fee (set out in the Act) to obtain copies of the documents, if the strata company agrees to provide copies. The strata company is not obliged to provide copies of documents.

Sellers should also refer to the seller disclosure form to clarify if additional information is required, depending on if they are selling:

- an existing property
- an off-the-plan property (i.e. where the lot is not yet created on a registered scheme plan or amendment of scheme plan that effects a subdivision)
- a lot in a strata titles scheme which is being built in stages, or was built in stages.



Stakeholders in strata

10 Strata company

- See sections 14 of the Act



A strata company for the strata titles scheme is comprised of all the current owners of lots in the scheme. A strata company comes into existence automatically on the registration of the strata titles scheme.

Other than holding the first statutory meeting, no expenditure or action by the owners is required to form a strata company.

A strata company may sue and be sued in its own name for rights and liabilities. Though the strata company does not own the common property (the lot owners own the common property as tenants in common), it may enter into transactions related to the common property as if it were the owner and occupier of the common property, subject to appropriate resolutions and consents.

There is no requirement to register a strata company with the Australian Securities and Investments Commission. The *Corporations Act 2001* does not apply to a strata company.

A strata company has all the powers of a natural person to perform its functions (duties and powers) under the Act, subject to limitations set out in the Act. For example, some activities of the strata company require specific resolutions of the strata company before they can be performed. Section 117 of the Act sets out powers that the strata company is prohibited from exercising, including mortgaging common property, acting as a guarantor and establishing a corporation or subsidiary.

What does a strata company do?

Under the Act, a strata company has a number of characteristics (section 14 of the Act) and functions (Part 8 of the Act). At a high level, this includes responsibility for:

- control and management of the common property
- insurance
- financial management
- record keeping
- keeping a roll of members and other information
- providing information to members and others.

The objective of the strata company is to implement processes and achieve outcomes that are not:

- unfairly prejudicial to or discriminatory against a person; or
- oppressive or unreasonable.

The objectives of a strata company are more fully described in section 119 of the Act.

Strata company name

Section 14 of the Act requires the strata company name to be in a specific format, which is:

“The Owners of [the name of the scheme as stated on the scheme notice] Strata/Survey-Strata Scheme [the reference number allocated to the scheme]”.

In schemes registered before 14 April 1996, the name of the building is used instead of the name of the scheme.

11 Strata councils

- See sections 135-137 of the Act and governance by-laws



The 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.

Who can be a member of council?

The strata company is run by the council in accordance with the conditions specified in the Act, the by-laws in force for the strata scheme at that time, and subject to any restriction imposed or direction given by ordinary resolution of the strata company. For example, the strata company may make a resolution that only they (and not the council on their behalf) can make certain decisions, for example, appointing a strata manager or commencing proceedings in the SAT.

If the governance by-laws in Schedule 1 of the Act apply:

- the council may delegate its powers and duties to one or more of its members as it thinks fit, and may revoke the delegation at any time (see Schedule 1, governance by-law 8)
- in a scheme of three or less lots, the council consists of the owners of all the lots
- in a scheme of four lots or more, 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 council positions, the council must be elected by the owners in a general meeting (Schedule 1, governance by-law 4)
- where there are co-owners of a lot:
 - only one of the co-owners is eligible to be, or to be elected to be, a member of the council;
 - the co-owner who is so eligible must be nominated by the co-owners;
 - if the co-owners fail to agree on a nominee, the co-owner who owns the largest share of the lot is the nominee, or, if there is no co-owner who owns the largest share of the lot, the co-owner whose name appears first in the certificate of title for the lot is the nominee.

Section 136 of the Act provides that a corporation is eligible to be an officer of a strata company or a member of the council of a strata company. A corporation may authorise an individual to perform on its behalf a function conferred under the Act on the corporation as an officer of the strata company or as a member of the council and may revoke the authority of an individual so authorised. If an individual performs a function that the individual is authorised to perform by a corporation, the function is taken to be performed by the corporation.

It is a good idea to check the scheme by-laws for your scheme to see what they provide about the constitution of the council. Scheme developers can seek to control council membership as they develop stages of the scheme. Schemes that are in a retirement village may also have by-laws different to the governance by-laws in Schedule 1 of the Act.



Members of the council do not acquire any privileges by virtue of their position 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 following governance by-laws in Schedule 1 of the Act relate to the constitution of the council and office bearers (remember that these may be different in your scheme's by-laws):

- how the council of the strata company is constituted (see Schedule 1, governance by-law 4)
- how council members are elected (see Schedule 1, governance by-law 5)
- council duty to appoint council office bearers (see Schedule 1, governance by-law 6)
- the chairman, secretary and treasurer of the strata council hold the same respective positions in the strata company (see Schedule 1, governance by-law 7)
- meetings of council (see Schedule 1, governance by-law 8).

Further information on the duties of the secretary and treasurer of the strata company is contained in Schedule 1, governance by-laws 9 and 10 of the Act.

The constitution of the council will have a bearing on who can witness affixing the common seal (if the strata company has a seal) and who can be authorised signatories of the strata company to sign documents.

Strata council duties to the strata company

Members of the council will have these statutory duties imposed on them to:

- act honestly, with loyalty and in good faith in the performance of their functions
- exercise a reasonable degree of care and diligence in the performance of their functions
- ensure they do not make improper use of their position as a member to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to the strata company
- inform the council in writing of any conflict of interest as soon as practicable after they become aware of the conflict. This does not relate to the council member's ownership of a lot in the scheme.

Council members will not be able to vote where they have a conflict of interest. Council members who breach one of these statutory duties may be removed from the council, on a special resolution of the strata company (if Schedule 1 by-law 4(8) of the Act applies) or on application to SAT.

To ensure that your scheme is managed efficiently, it is imperative that owners form an effective council. This will make sure the functions and powers of the strata company are carried out. If a strata manager is employed to carry out some of the functions of the strata company, the council would then effectively instruct and monitor the strata manager.

If you are unhappy with the way your scheme is run, and you are eligible under the scheme by-laws to be elected as a council member, a possible solution is to stand for election to the council, so you can participate in the day to day running of the scheme. Remember that if the governance by-laws in Schedule 1 of the Act apply to your scheme and you are in a scheme of up to 3 lots, you are a council member.

Council members are protected from civil liability provided they act in good faith. (See section 141 of the Act for more details of the protection afforded to council members).

12 Strata managers

• See sections 143 to 155 of the Act



Many strata titles schemes will employ a strata manager to assist the council to carry out some of the duties of the strata company. The strata manager may be a company, partnership or an individual. This does not remove the need for a strata council. Rather, it may increase the need for one, to make sure the strata manager is effectively instructed and monitored.

The Act defines a strata manager as a person who is authorised by a strata company to perform a specified scheme function. A scheme function means a function of the strata company, the strata council or an officer of the strata company.

While the strata manager is employed by 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 (see Schedule 1, Governance 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.

A person who supplies services to the strata company, such as gardening or maintenance, will not be considered a strata manager because they are not authorised to perform the functions of the strata company.

The strata manager must:

- have a written contract with the strata company that specifies (among other things) the scheme functions the strata manager is to perform and the strata manager's remuneration



- act honestly and in good faith to the strata company
- exercise a reasonable degree of skill, care and diligence
- hold minimum education requirements as set out in Schedule 4 of the Strata Titles (General) Regulations 2019.
- provide a statutory declaration to the strata company before entering into a strata management contract, which must:
 - declare that the national criminal record checks required have been obtained and are less than three years old
 - if applicable, disclose the identity of any convicted person, the role of the person in the business of the strata manager and particulars of the offence(s) concerned
 - declare that there are no other convictions for property or dishonesty offences
- have a good working knowledge of the Act
- not make improper use of information acquired as strata manager for a strata company to gain an advantage for themselves or someone else, or cause a detriment to the strata company
- not make improper use of the position of strata manager to gain an advantage for themselves or someone else, or cause a detriment to the strata company
- take reasonable steps to ensure that the strata manager's employees comply with the Act
- have professional indemnity insurance of not less than \$1,000,000 for any one claim
- inform the strata company in writing as soon as they are aware they will obtain a financial benefit, which conflicts with their duty to the strata company (i.e. a conflict of interest)
- inform the strata company in writing as soon as they are aware they have or are likely to receive a commission (of more than \$100 from any single supplier in the course of a year)
- control the funds of the strata company in a separate or pooled trust account for the strata company which:
 - cannot be overdrawn
 - for separate accounts, the words "trust account" are prefixed to the account name
 - for pooled accounts, the strata manager's name prefixes the account name (which must include the words "trust account") and fees and charges for each scheme are charged to separate accounts
 - may be an interest-bearing account.
- Alternately, if authorised to do so, the strata manager may use the strata company's own account.

The strata manager must:

- be able to account separately for money that the strata manager pays or receives on behalf of the strata company
- provide the strata company (within a reasonable timeframe but in any event within seven days' after being given notice) with accounting information about:
 - the name, number and balance of each account operated by the strata manager on behalf of the strata company
 - details of money paid to or received, or any transactions entered into by the strata manager on behalf of the strata company
- give the strata company's auditor access and any other information in relation to accounts operated on behalf of the strata company.

Strata managers will not be permitted to:

- authorise a person to perform a scheme function other than as an agent, employee or contractor of the strata manager
- determine contributions
- enter into, vary, extend or terminate a contract with another strata manager
- terminate a contract for amenities or services under section 115 of the Act
- commence an action on behalf of the strata company in a court or tribunal
- authorise a person to sign documents on behalf of the strata company, the council or an officer of the strata company.

If the Act requires the strata company to pass a resolution in a general meeting of the strata company before the strata company can perform a specific function, the function can only be performed by the strata manager if the required resolution has been passed.

The Strata Titles (General) Regulations 2019 (STGR 2019) also requires a strata manager (not a volunteer strata manager) to provide specific information to Landgate by way of an annual return. Landgate will use this information to develop policy and advise the Minister on matters related to strata managers. Landgate may choose to publish a list of strata managers that have provided the information required by the STGR 2019.

Contracting a strata manager

- **See sections 145 of the Act**



When employing strata managers, strata companies should make sure they have a written contract with the strata manager containing details including:

- the strata manager's and strata company's name and address for service
- the Australian Company Number or Australian Business Number of each party with such a number
- duration of the strata manager's contract
- duties and tasks (scheme functions) the strata manager is to perform and any conditions that are to apply to the performance of those functions
- basis of payment of the strata manager
- details of which account the strata manager will operate for the money received on behalf of the strata company
- requirements for a strata manager to give written reports to the strata company about the functions performed
- grounds for which the contract may be terminated (which are detailed in section 15.4 of this guide)
- warranties that:
 - the strata manager will obtain national criminal record checks when required and notify the strata company in writing as soon as practicable if the strata manager becomes aware of convictions for property and dishonesty offences
 - relevant persons hold the prescribed education requirements
 - the strata manager holds and will hold for the duration of the strata management contract professional indemnity insurance at the prescribed level.

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. Be aware of automatic rollovers in strata management contracts if appropriate notice to terminate is not given in accordance with the contract.

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 strata management contract.

Resolving disputes between the strata company and strata manager

If there is a dispute between a strata manager, or former strata manager, and the strata company about:

- the strata management contract
- the performance of, or the failure to perform, a function conferred or imposed on the strata manager, then

SAT is empowered to issue an order:

- varying or terminating a strata management contract
- requiring a strata manager to pay a specified amount to a strata company, being the whole or a part of the remuneration or the value of a benefit that the strata manager has failed to disclose in breach of their duty of disclosure under the Act.

Strata management is not a regulated industry. However, many strata managers are real estate agents or members of the Strata Community Australia Western Australia (SCA(WA)).

If the strata manager is a real estate agent, in the first instance the strata company can take its complaint to the principal of the real estate agency. If the strata manager is a member of the Real Estate Institute of Western Australia (REIWA), the strata company may also take the complaint to REIWA. Please visit www.reiwa.com.au for their contact details.

If the strata manager is a member of SCA(WA), the strata company may take the complaint to that organisation, after having first raised the matter with the strata manager or the manager's principal or directors as relevant. Please visit www.wa.strata.community for their contact details.

Owners in the scheme do not have the right to take the strata manager to SAT, it is the strata company that takes this action. If the strata company refuses to do so, the owner can apply to SAT to bring action on behalf of the strata company.

Terminating the strata management contract

The strata company may serve a show cause notice on the strata manager if the strata manager:

- breaches their statutory duties
- breaches the strata management contract
- becomes bankrupt or insolvent, is wound up or goes into liquidation, voluntary administration or enters into an arrangement or compromise with creditors
- is convicted of an offence punishable by imprisonment for twelve months or longer (in WA or elsewhere) and the strata company believes the conviction affects the strata manager's suitability to perform their functions.

A show cause notice must:

- be in writing
- state that the strata company proposes to terminate the strata management contract
- specify the grounds on which it is proposed to terminate the contract
- set out particulars of the facts relied on as evidence of those grounds
- invite the strata manager to make written submissions to the strata company, stating why the contract should not be terminated.

The strata manager will have 14 days to provide written reasons to the strata company for why the contract should not be terminated.

If a strata company is satisfied that there are proper grounds for termination of the contract after the show cause notice has been served, they may notify the strata manager in writing stating the contract will terminate at least 28 days from the date of the notice. The strata company must inform the strata manager of the manager's right to apply to SAT for review of the decision.

The strata manager can apply to SAT to review the strata company's decision to terminate the contract. If the strata manager makes such an application, the termination of the contract is postponed until SAT makes a decision. Disputes between a strata manager and the strata company will be heard and resolved by SAT.

Where a strata manager's contract has been terminated, the strata manager must deliver to the strata company any of the strata company's records, keys and property the strata manager has under their control within 28 days of the date of termination. If the strata manager is required to return property to the strata company on termination of the contract, then the strata manager cannot exercise a lien or claim on or against the property.

Volunteer strata managers

- **See sections 3(1) and 144 of the Act**



Some of the duties on strata managers will not apply to an owner who serves as a strata manager for the scheme in which they own a lot, if they perform the work personally:

- as a volunteer (for no fee) or
- for an honorary payment or reward only, not exceeding \$250 per lot per annum.

These people are called volunteer strata managers under the Act.

Volunteer strata managers will not have to take out professional indemnity insurance or obtain educational qualifications. Rather than a contract with the strata company, they will need a written 'volunteer agreement'.

To encourage owners to volunteer to provide management services to a scheme on a voluntary basis, there will be an exclusion of liability in any civil proceedings for any act done in good faith when that person acts as a volunteer strata manager.



Running a strata titles scheme

For a strata titles scheme to run effectively, a strata company relies on a set of rules (known as scheme by-laws) which guide matters such as the holding of regular meetings, robust financial management, and other associated processes.

The best outcomes occur when all owners are engaged in the governance and management of their scheme. With the introduction of attendance and voting via electronic means, owners can exercise their rights regardless of their location or the demands on their time.

The key principles underpinning the processes necessary to run a strata titles scheme are outlined in this section.

13 Scheme by-laws

● See sections 39-48 of the Act



Scheme by-laws are the rules the strata company, owners, occupiers and the owner of a leasehold scheme need to abide by. It is important all owners and occupiers familiarise themselves with their scheme's by-laws.

The strata company has broad powers to make, amend and repeal by-laws. In addition, by-laws cannot be inconsistent with the Act, the Strata Titles (General) Regulations 2019 or any other written law. SAT is given the power to determine the validity of by-laws.

By-laws can be declared invalid for several reasons, including if they are:

- oppressive or unreasonable, or
- unfairly prejudicial to or unfairly discriminatory against one or more owners

Scheme by-laws

The by-laws that apply to all existing strata companies are:

- the by-laws registered for the scheme
- if there are no by-laws registered for the scheme, the governance and conduct by-laws in Schedules 1 and 2 (respectively) of the Act or
- a combination of the above.

A governance by-law is defined in section 3(1) of the Act to mean a by-law dealing with the:

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

A governance by-law includes (but is not limited to):

- the by-laws set out in Schedule 1 of the Act
- by-laws concerning the constitution or procedures of the council of the strata company, officers of the strata company, and procedures for general meetings of the strata company
- by-laws concerning contributions, levies or money payable by an owner to a strata company

A **conduct** by-law includes but is not limited to a by-law:

- as set out in Schedule 2 of the Act
- that deals with specified conduct of an owner or occupier
- that deals with a matter relating to the management, control, use and enjoyment of a lot or common property

Making, amending or repealing by-laws

In any strata titles scheme:

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

All new by-laws must specify whether they are governance or conduct by-laws.

By-laws may be made as a condition of a planning approval of local government, the Western Australian Planning Commission or other authority. These by-laws are called planning (scheme by-laws). These by-laws may not be amended or repealed without the consent of the relevant authority if that is a condition specified in the by-law.

Many schemes draft their own by-laws and 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 to make by-laws that are non-discriminatory and can be easily enforced.

Recording of by-laws

- **See section 48 of the Act**

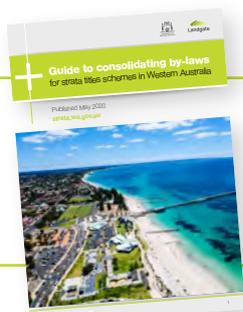


Any new by-law, or the amendment or repeal of an existing by-law must be lodged at Landgate for registration by the Registrar of Titles, within three months of the resolution making the by-law. If you need to wait 28 days after a meeting for the resolution to be confirmed, the by-law must be lodged at Landgate within three months after the date.

The by-law is not effective until registered by the Registrar of Titles. The Registrar of Titles currently registers scheme by-laws and amendments and repeals of by-laws. This is done by making a record on the record of interests and encumbrances on the scheme plan, and not on the individual certificates of title for the lots.

Registering by-laws does not guarantee their validity or enforceability. The Registrar of Titles may, but is not obliged to, examine scheme by-laws lodged for registration for compliance with the Act (section 59).

The application to register the making of a by-law must specify if it is a governance or conduct by-law and include a consolidated set of all the current by-laws for the strata titles scheme.



For more information on consolidating by-laws, please refer to Landgate's dedicated guide on this topic. Available at strata.wa.gov.au

Special by-laws

Short-stay accommodation by-laws

Under the Act, by-laws are established as secondary to any other legislation. As a result, by-laws will always have to conform to the planning legislation first and foremost. The Department of Planning, Lands and Heritage or your local government can provide advice regarding the most recent legislative requirements.

While a strata company does not need legislative authority to do short-term rentals, they might choose to set their own by-laws for short-term rentals in their complex. The standard by-laws currently included in the Strata Titles (General) Regulations 2019 don't include short-term rentals, so an owner can do short-term rentals unless another law prohibits or restricts them from doing so.

A short-stay accommodation by-law would fall into the category of a governance by-law, which would require the strata company to make a resolution without dissent to bring them into effect.

Pet by-laws

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

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

Apart from the above prohibitions and restrictions in the Act, if the conduct by-laws in Schedule 2 of the Act apply to the scheme (conduct by-law 12(c)), an owner or occupier of a lot must not keep animals on the lot or common property after notice is given to such person by the council. The implication in this by-law is that animals can be kept on the lot or common property until further notice is given not to.

A strata company can make different by-laws for the scheme concerning the keeping of pets. Any by-law made in relation to pets could be challenged if it could be argued that it is unfairly prejudicial or discriminatory against one or more lot owners, or oppressive or unreasonable.

Vehicle parking by-law

Conduct by-law 1(1) in Schedule 2 of the Act provides that an owner or occupier of a lot must take all reasonable steps to ensure that the owner's or occupier's visitors comply with the scheme by-laws relating to parking of motor vehicles. Conduct by-law 1(2) then provides that an owner or occupier of a lot must not park or stand any motor or other vehicle on common property, except with the written approval of the strata company.

A strata company may make vehicle and parking by-laws different to the conduct by-laws in Schedule 1 of the Act. Again, any such by-law should not be unfairly prejudicial, discriminatory, oppressive or unreasonable.

A strata company may enter into a contract or arrangement with a local government to enforce laws relating to roads on the parcel and enforcement of local laws.

Exclusive use by-laws

- **See section 43 of the Act**



It is possible to create by-laws granting individual lot owners exclusive use and enjoyment of, or special privileges in respect of, common property or any part of it.

Such by-laws will usually require a clear sketch plan of the relevant part of the common property (called special

common property). This may be subject to conditions, including obligations to maintain and repair the special common property or may be made subject to a payment or a combination of conditions and payment.

The lots that have the benefit of the rights and privileges over the special common property are known as 'special lots'. A lot owner having the benefit of such a by-law must give written consent to its making, amendment or repeal.

Exclusive use by-laws are governance by-laws. To pass a by-law relating to exclusive use and/or special privileges in a two-lot scheme, a unanimous resolution is required. In any other scheme, a resolution without dissent is required.

The details of an exclusive use by-law may include:

- terms and conditions of how the occupiers of special lots may use the special common property
- details relating to access to the special common property and the provision and keeping of any property (a key, for example)
- details of the hours when the special common property may be used
- details relating to the condition, maintenance, repair, renewal or replacement of the special common property
- details relating to insurance of the special common property to be maintained by the owners of special lots
- matters relating to the determination of amounts payable to the strata company by the owners of special lots and the imposition and collection of the amounts.

It is recommended that the sketch plan identifying the special common property is prepared by a licensed land surveyor.

Some older 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 registered to support them.

Leasehold by-laws

- **See section 40 and 41 of the Act**



As with freehold strata titles schemes, every leasehold scheme must have scheme by-laws for the scheme, such as the control, management and maintenance of the building and common property. A leasehold scheme may also have special leasehold by-laws called leasehold by-laws, which provide for the postponement of the expiry day of the scheme or for compensation payable on expiry of the scheme. These are governance by-laws.

Where a leasehold scheme has no leasehold by-laws and wishes to postpone the expiry day of the scheme, an amendment to the scheme by-laws will be needed to insert leasehold by-laws. This will require a resolution without dissent by the strata company, the agreement of the freehold owner of the leasehold scheme (lessor) and the approval of the Western Australian Planning Commission.

Staged subdivision by-laws

- **See section 42 of the Act**



If a developer wants to undertake the subdivision of a strata titles scheme in stages, they can set out those stages of subdivision in special staged subdivision by-laws, which are governance by-laws.

Staged subdivision by-laws must:

- describe in detail the stages of subdivision, and any amendments to the scheme plan and schedule of unit entitlements that will be made on completion of each stage
- identify the lots or common property affected by each stage of subdivision
- contain details of any additional by-laws, or amendment or repeal of existing by-laws, proposed to be made

and registered on the completion of each stage.

When a stage of subdivision is going to be just as it was set out in the staged subdivision by-laws, then the developer can proceed with the necessary works. However, if there have been significant variations to what was proposed in the by-laws (significant variation has the meaning in the Strata Titles (General) Regulations 2019, regulation 49), the developer will need to get a unanimous resolution from the strata company and consents from lot owners and holders of designated interests to be able to register the amendment of the strata titles scheme.

Enforcing scheme by-laws

• See section 47 of the Act



If someone has been breaching a by-law and the strata company wants to take enforcement action, it must give a written notice to the person in question. This notice is provided for fairness, and must set out the:

- by-law that it is claimed that the person has breached
- facts relied on as evidence of the breach
- action that the person must take to avoid breaching the by-law.

The following entities can apply to SAT to enforce a by-law:

- Strata company
- An owner/occupier
- Mortgagee of a lot in a scheme
- The owner of the leasehold scheme, if it is a leasehold scheme

SAT can issue an order to enforce a by-law on the grounds that the:

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

The written notice must include an explanation that if an application is made to SAT for enforcement of by-laws, SAT has power to make any order it considers appropriate to resolve the by-law enforcement proceeding. In particular, if SAT is satisfied the by-laws have been contravened, SAT has power to make an order that requires one or more of the following:

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

The maximum amount SAT can impose by way of penalty is \$2,000.

14 Resolutions

Many matters concerning the day to day running of the strata titles scheme can be managed and decisions taken without the need for the strata company to formally vote on them.

But in some cases, the Act sets out that a specific resolution is required – that is, a formal vote by the strata company on the matter. For example, if the owners of a strata scheme want to introduce a new governance by-law, it must be voted in by a resolution without dissent.

Types of resolutions

Section 123 of the Act provides for four main types of resolution that the strata company can vote on. Note that when a vote is to be counted by the number of votes cast, each lot in the scheme has one vote.

1. Unanimous resolution

Every strata lot votes in favour of the resolution.

The following criteria for the vote must also be met:

- Each lot owner receives 14 days' notice of the terms of the proposed resolution.
- There is a voting period of 28 days.
- If the vote is taken at a meeting, lot owners who were not present in person or by proxy receive written notice of the outcome of the vote.
- Any lot which did not vote at the meeting may vote by written notice before the voting period closes.

2. Resolution without dissent

No strata lots vote against the resolution.

The following criteria for the vote must also be met:

- Each member of the strata company receives 14 days' notice of the terms of the proposed resolution.
- There is a voting period of 28 days.
- If the vote is taken at a meeting, lot owners who were not present in person or by proxy receive written notice of the outcome of the vote.
- Any lot which did not vote at the meeting may vote by written notice before the voting period closes.

In a two-lot scheme, a 'resolution without dissent' is only passed if both lots vote in favour.

3. Special resolution

The criteria for a special resolution varies with the size of the scheme.

Special resolution – schemes with more than five lots

For all schemes with more than five lots, a special resolution is always in two parts: those that vote for the motion, and those that vote against:

- The votes in favour must be at least 50% of both the number of lots and the unit entitlements in the scheme.
- The votes against must be less than 25% of both the number of the lots and the unit entitlements in the scheme.

Special resolution – schemes with three to five lots

For three to five lot schemes, those that vote for the motion must hold at least 50% of the unit entitlements, as well as achieving the following number of votes:

- two lots in a three-lot scheme
- three lots in a four-lot scheme
- four lots in a five-lot scheme.

Special resolution – schemes with two lots

In a two-lot scheme, a 'special resolution' is only passed if both lots vote in favour.



No matter how many lots there are in a scheme, for a special resolution to be passed it must also meet the following criteria:

- Each member of the strata company receives 14 days' notice of the terms of the proposed resolution.
- There is a voting period of 28 days.
- If the vote is taken at a meeting, lot owners who were not present in person or by proxy receive written notice of the outcome of the vote.
- Any lot which did not vote at the meeting may vote by written notice before the voting period closes.

4. Ordinary Resolution

There are two methods of counting the votes for an ordinary resolution.

The first way is the default: an ordinary resolution is decided on the number of votes that were cast. More than 50% of votes cast must be in favour for the resolution to pass.

Example: In a 20-lot scheme, 11 lot owners have turned up to the meeting (so a quorum is present and the meeting can go ahead). The vote is on altering the address of the strata company, so an ordinary resolution is required, as set out in section 30(3).

Six lot owners are in favour of the resolution, and five are against it.

The vote is carried by ordinary resolution and the address of the strata company is changed, as more than half of the 11 lot owners who were present voted for it.

The second way of counting the votes for an ordinary resolution is by unit entitlements. When counted this way, more than 50% of the unit entitlements of lots in the scheme (for which votes are cast) must be in favour for the vote to pass.

The vote is only counted this way if a person entitled to vote demands it – and if they do, the vote must be counted this way.

Example: A six-lot scheme has a total unit entitlement of '100'. Four lot owners have turned up to the meeting (so a quorum is present and the meeting can go ahead). The vote is on solar panels being installed on the common property, so an ordinary resolution is required, as set out in section 64.

If added up, the unit entitlements held by the four lot owners who are at the meeting is '60'.

Mrs Smith from lot three (who wants the solar panels) demands that the vote be counted on unit entitlements, rather than by the number of people present. Mrs Smith has a unit entitlement of 30. She has a higher unit entitlements than others present at the meeting, because her lot is much larger. The other three owners at the meeting each have a unit entitlement of 10. Mrs Smith and one other lot owner vote for the solar panels, so the votes in favour have a combined unit entitlement of 40. The two other owners present vote against it – they have a combined unit entitlement of 20.

The vote is passed by ordinary resolution, and the solar panels will be installed. This is because the combined unit entitlements of those 'for' the motion was 40, compared to the 20 who were against it.

Note that if Mrs Smith had not demanded that the count be based on unit entitlements, the vote would have been counted by number of lots (the first method) and would not have passed. The first method would have resulted in two owners 'for', and two owners 'against', which would not achieve the requirement of more than 50% being in favour.

Resolutions passed at a meeting of the strata company are ordinary resolutions unless the Act requires otherwise (see section 133 of the Act).

If a proposed ordinary resolution is to be decided outside of a meeting, as allowed by section 120(3)(b), 14 days' notice of the terms of the proposed resolution must be given to lot owner before voting opens.

Other types of resolutions

There are two other types of resolutions, which apply under special circumstances.

- **A resolution postponing the expiry day of the leasehold scheme**, the votes in favour must be at least 75% of the number of lots in the scheme. Other criteria must also be met:
 - There must be leasehold by-laws which allow for the postponement.
 - 14 days' notice must be given to all members of the strata company.
 - The vote must happen at least six months before the expiry day.
- **A resolution to terminate a strata titles scheme**, which:
 - must be a unanimous resolution if the scheme has two to four lots.
 - for schemes of five or more lots, must have votes in favour of at least 80% of the total number of lots in the scheme. If this criteria is met, the termination resolution can go to the next step of being reviewed by SAT.

The process to terminate a scheme is quite complex, to ensure that all lot owners are treated fairly. Please refer to Part 12 of the Act for more information about this process.

Quorums at general meetings

No business can be transacted at a general meeting unless a quorum is present at the time when the meeting proceeds to business.

Attendance by persons entitled to vote (either in person, or by proxy) in respect of 50% of the lots in the scheme constitutes a quorum for general meetings. If a quorum is not present 30 minutes after the time appointed for a meeting (other than a two lot scheme), the persons entitled to vote who are present at the meeting are taken to constitute a quorum for that meeting (see section 130 of the Act).

In a two-lot scheme, there is a quorum if all persons who are entitled to cast the vote attached to each lot are present.

Voting

• See section 120 of the Act



The owner of each lot is entitled to one vote on a proposed resolution of the strata company. If both an owner and the person the owner appointed as their proxy are at a general meeting, only the owner may vote.

An owner is not entitled to cast the vote attached to the lot where the proposed resolution:

- is an ordinary resolution or a special resolution, unless the owner has paid all contributions payable for their lot and any other money payable to the strata company under the Act
- concerns a defect in a building/infrastructure within 10 years after completion of the scheme building/infrastructure, if the owner is the scheme developer of a subdivision of land by the strata titles scheme where the building is constructed or modified. This provision also applies if the construction or modification was carried out by an associate of such person.

An owner is entitled to cast the vote attached to the lot on a resolution without dissent, unanimous resolution, termination resolution, or resolution to postpone the expiry day of a leasehold scheme in accordance with leasehold by-laws, even if they owe money to the strata company.

The Act makes it clear that proposed resolutions can be put to members of the strata company outside of a general meeting as well as at a general meeting.

Votes at a general meeting may be cast by:

- raising a hand or making a verbal statement at a meeting
- giving a written statement to the chairperson
- a method set out in the notice of the meeting (e.g. via email or in real time such as Skype or by teleconference).

The voting system (either electronic or by other means) must enable votes to be cast in a manner designed to protect the integrity of the voting system. If a vote is to be taken outside of a general meeting, the voting system must specify:

- how the vote will be conducted and submitted
- the closing date for submitting a vote
- how owners will know their vote has been cast
- how the results will be published.

Voting period

The Act has provided clarity on the period allowed for voting on resolutions. A unanimous resolution, resolution without dissent, or special resolution has a voting period of 28 days. If the vote is being taken at a general meeting:

- the voting period opens at the meeting
- if for one or more lots there was no one present or in proxy at the meeting who could cast the vote for the lot, written notice of the outcome of the vote at the meeting must be given to the owner of each such lot and,
- if the vote for a lot was not cast at the meeting the vote may be cast by written notice to the strata company before the voting period closes.

The Act has clarified a person who demands an ordinary resolution be determined by unit entitlements must make the demand:

- if the vote is being taken at a general meeting, verbally or in writing before the resolution is put to the vote; and
- if the vote is being taken outside of a general meeting, when the vote is cast.

If a proper demand is made, the votes must be counted by the number of unit entitlements.

Proxies

- **See section 124 of the Act**



A proxy is a written statement that authorises a person other than the lot owner (the proxy holder) to cast the vote attached to the lot. Proxy voting allows a lot owner to use their vote through a third party.

An owner should carefully consider whether they want to appoint a person as their proxy, and if so the type of proxy to be given.

A proxy vote may only be exercised where the proxy has been appointed in writing by an instrument.

Subject to any limitations expressed in the instrument, the appointment of a proxy is for all general meetings and for all purposes, commonly known as an enduring proxy. However, the instrument may limit the appointment to:

- a specified general meeting or to voting on a specified resolution
- general meetings held, or votes taken, within a specified period
- a specified purpose or any other specified way.

A proxy holder may be, but is not required to be, a member of the strata company. If both an owner (being an individual and sole owner of the lot) and the proxy holder are at a general meeting, only the owner may vote.

Unless authorised by the instrument, the proxy holder may not vote on a resolution in relation to the provision of goods, amenity or services to the strata company if the proxy has a direct or indirect pecuniary interest in the matter. If the instrument does authorise the proxy holder to vote in the matter, it must specify whether the proxy holder is to vote in favour or against the resolution.

Voting in certain circumstances

The first mortgagee of a lot who has notified their interest in the lot to the strata company may cast the vote for the lot, in place of the owner if the owner is entitled to cast the vote for the lot. The owner may cast the vote for the lot if the first mortgagee does not do so.

An owner under the age of 18 is not eligible to cast the vote for the lot but the owner's guardian may do so.

If an owner is unable to control their property for some reason the person authorised by law to control the person's property may cast the vote.

Where there is more than one owner of a lot, the co-owners may only cast the vote for the lot through a jointly appointed proxy holder (who may be one of the co-owners).

Annual general meetings

- **See section 77 and 127 of the Act**



The first annual general meeting (AGM) of the strata company must be held by the scheme developer, within three months of the registration of the strata titles scheme.

At the first AGM, the scheme developer must hand over relevant plans, specifications and documents (referred to as key documents) to the strata company, including:

- the scheme documents, comprising:
 - scheme plan
 - the scheme by-laws
 - the schedule of unit entitlements
 - if a leasehold scheme, a copy of the lease
- certificates of development approval, subdivision approval, building approvals and occupancy permits
- official notices, including:
 - election of council members
 - consideration of accounts
 - the presentation of copies of certificates and schedules for the insurance required under this Act, current as at the date of the meeting

- specifications, diagrams and drawings of buildings within the scheme (including any specifications, diagrams and drawings that show utility conduits, utility infrastructure or sustainability infrastructure)
- warranty documents and operational and servicing manuals for equipment and infrastructure on the common property
- certificates and schedules of insurance
- contracts, leases or licences that will bind the strata company
- accounting records of the strata company
- any other key document relating to a stage of subdivision.

Subsequent AGMs must be held each year with no more than 15 months passing between meetings (see section 127 of the Act).

A two-lot scheme is not required to hold AGMs after the first statutory general meeting held by the scheme developer but can pass a by-law if they wish to hold AGMs.

General meetings

- **See sections 77, 127-134 of the Act**



All owners of lots in a strata titles scheme and first mortgagees of those lots must be given at least 14 days' notice of every general meeting of the strata company for the scheme.

The notice must include:

- the date, time and venue of the meeting
- for an AGM, each item of business required by s 127 (3) of the Act
- for special business, notice of the general nature of that business
- notice of each method of voting, through electronic communication or otherwise, that is acceptable to the strata company.

Accidental omission to give notice to or non-receipt of the notice by the owner or first mortgagee of a lot does not invalidate any proceedings at the meeting.

The owner of a lot may give written notice to a member of the council of the strata company of an item of business the owner requires to be included on the agenda for a general meeting. The item must be included on the agenda for the meeting and notice must be given of that item as an item of special business.

A general meeting may sometimes be adjourned by the chairperson, with the consent of the meeting. However, no business may be transacted at an adjourned meeting other than the business left unfinished at the meeting from when the adjournment took place.

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.

Extraordinary general meetings

- **See section 128 of the Act**



An extraordinary general meeting (EGM) of a strata company is a general meeting of the strata company other than an AGM and:

- may be convened by the council of the strata company as the council thinks fit; and
- must be convened by the council of the strata company on the written request of owners entitled to 25 per cent or more of the unit entitlements of the lots in the scheme.

The owners making the written request or any of them holding more than 50 per cent of the unit entitlements of the lots in the scheme, may convene an EGM if the council does not take steps to convene the meeting within 21 days of the request. This EGM must be held within of three months starting from the day the request was made.

All business transacted at an extraordinary general meeting is taken to be special business.

15 Financial management

• See sections 100 to 102 of the Act



Sound financial management is required to manage a strata titles scheme in order to respond to day to day administrative costs and larger amounts of expenditure. It is important that the strata company identifies its costs and expenses, properly budgets for them and levies contributions appropriately for them.

This includes having a proper understanding of the common property and personal property of the scheme, and the strata company's obligations under the Act.

Typical scheme expenses requiring management might include:

- paying for the required insurance of the scheme's insurable assets
- replacing and installing a lift
- installing security equipment and facilities for the disabled
- fees payable to a strata manager and other suppliers of services and amenities to the strata company (for example, facilities manager, gardener, handyman)
- costs of acquiring and maintaining record keeping systems and other computer hardware and software
- costs of recovering unpaid levies and other debts owed to the strata company
- costs of taking legal proceedings in SAT and the courts.

Administrative fund

• See section 100 of the Act



A strata company must:

- establish a fund for administrative expenses they deem sufficient for the control and management of the common property, for the payment of any insurance premiums and the discharge of any other obligation
- determine the amounts to be raised for payment into the administrative fund
- levy contributions on owners of lots
 - in proportion to the unit entitlements of their respective lot
 - in accordance with any scheme by-laws that provide for a different basis for levying contribution
- recover from an owner (by action in a court if necessary) any sum of money expended by the company for repairs or work done by it or at its direction or order made, under a written law in respect of the lot.

Reserve fund

• See section 100 of the Act and regulations 77



A strata company for a scheme which has 10 or more lots or a building replacement value of more than \$5,000,000 (called a designated strata company) must:

- establish a reserve fund for the purpose of accumulating funds to meet contingent expenses and other major expenses of the strata company likely to arise in the future
- determine the amounts to be raised for payment into the reserve fund and levy contributions on the owners in proportion to their unit entitlements. Note there is no provision in the Act for the scheme by-laws to set a

different method of levying contributions for the reserve fund

- prepare a 10 year plan setting out the maintenance, repairs and renewal or replacement of common property and the personal property of the strata company likely to be needed over the next 10 years, along with the estimated cost.

Strata companies that are not designated strata companies may choose to have a reserve fund or a 10-year plan for their scheme, but they are not required to.

The Act does not provide for how much should be in a reserve fund and there is no requirement that the costs estimated in the 10-year plan match the amounts in the reserve fund.

10-year plan

In a high-rise building, the lift may need replacing at some point, there may be new emergency requirements to meet, the external walls may need to be painted or rendered. In a survey-strata scheme the private road may need resurfacing or a shared swimming pool on common property may need to be re-tiled. These examples and many more provide sound reasons for having a 10-year plan identifying items of common property and personal property of the strata company that may need to be replaced over time. This is not about improving or altering the common property. This is about the strata company properly managing its obligation to keep the common property in good and serviceable repair. This includes, properly maintaining it and replacing and renewing as appropriate for the benefit of owners for the time being.

The 10-year plan must include the following information:

- the name of the strata company and the address of the scheme
- the name, address and if engaged by the strata company, the qualifications of the person or persons who prepared the plan
- the period covered by the plan
- an itemised list of common property, and personal property of the strata company (covered items), that it anticipates will require maintenance, repair, renewal or replacement in the period covered by the plan
- a condition report about the condition and anticipated maintenance, repair, renewal or replacement requirements of the covered items in the period covered by the plan
- the method by which the estimated costs for the maintenance, repair, renewal or replacement of the covered items were determined, including assumptions underlying that determination
- a plan or recommendation for the funding of the estimated costs for the maintenance, repairs, renewal or replacement of the covered items

The list of covered items must include any items of value that form part of the common property or the personal property of the strata company which, in the opinion of the strata company, should be included in the plan. The plan must show due regard for the maintenance, repair, renewal or replacement likely to be required in the period covered by the plan.

The following are items of value may be included in the plan:

This list is not exclusive, so if the strata company has other items of value that form part of the common property or personal property (for example, motor vehicles, computer hardware and software packages) they should be included

- roofs and gutters
- walls (including retaining walls), floors and ceilings
- windows, eaves, flashings, soffits and windowsills
- downpipes
- foundations of buildings
- driveways and footpaths
- steps, stairs and stair railings
- doors and doorways (including fire doors)
- lighting
- storage or plant rooms
- fencing and gates
- balconies, railings and balustrades



- lifts
- ventilation
- fire services, fire alarms and fire hoses
- air conditioning systems
- building and ancillary structures utility conduits and services
- garbage disposal
- hot water systems and electrical systems
- post boxes
- security components
- swimming pools, spas and pumps or filters
- water bores and water tanks
- back flow devices and pumping devices
- car stackers
- roof access safety equipment
- solar and other sustainability infrastructure

too:

A condition report must include the following information about a covered item, having regard to the design, age and overall condition of the scheme:

- the date of installation, construction or acquisition (if known)
- the present condition or operating state (including whether working or not)
- the date on which an inspection was last undertaken
- details of any maintenance, repair, renewal or replacement that is anticipated to be required in the period of the plan
- estimated date or dates for maintenance, repair, renewal or replacement is likely to be required in the period of the plan
- details of the estimated cost of maintenance, repair, renewal or replacement
- the estimated lifespan of the covered item or items once maintained, repaired, renewed or replaced.

A strata company's first 10-year plan must be submitted for approval at the first AGM that occurs more than 12 months after 1 May 2020. The plan must be revised at least every five years, and when revised must cover the next 10 years. The 10-year plan may guide the strata company in deciding how much money they need to set aside in the reserve fund each year to meet an anticipated expense.

Contributions

- **See section 100 of the Act**



The strata company's obligation to establish an administrative fund, determine amounts to be raised for the fund, levying contributions for the administrative fund and (if it is a designated strata company) the establishment of the reserve fund, must be performed by the strata company in accordance with resolutions passed by the strata company. The exception to this is where scheme by-laws have empowered the strata council to make these decisions.

Any contribution levied:

- becomes due and payable to the strata company in accordance with the terms of the decision to make the levy; and
- if not paid when due, bears interest on the amount unpaid at the rate of simple interest of 11 per cent, unless the company determines an unpaid contribution bears no interest or interest at a lesser rate; and
- including interest accrued, may be recovered as a debt by the strata company in a court of competent jurisdiction and the strata company may agree to a compromise of such a debt.

Statement of accounts and budget

- See sections 101 and 102 of the Act and regulations 59, 60 and 61



Statement of accounts

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

This requirement does not apply to two-lot schemes. It may not apply in three to five-lot schemes, if a scheme by-law has been passed to this effect.

Budget

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

Strata companies have a duty to keep the common property in good and serviceable repair. This may mean renewing and replacing it and doing so whether the damage arises from fair wear and tear, inherent defect or any other cause. The money put aside in the budget for keeping the common property in good repair is not subject to any specific expenditure controls. If the strata company agrees to budget for repairs, maintenance and replacement of the common property, they can do so by the ordinary resolution, which is required to agree to the budget.

Strata companies have the power to improve or alter common property in a way that goes beyond the maintenance, renewal or replacement needed to keep it in good and serviceable repair. For example, lot owners might want to convert a disused storage room into a bathroom. A change of this nature is subject to expenditure controls. If the strata company wants to make changes to the common property that goes beyond required maintenance and repair (other than sustainability infrastructure), the strata company can include the items in its budget for approval by ordinary resolution provided the amount does not exceed \$500 times the number of lots in the scheme. If the strata company wants to spend more than the budget, a special resolution of the strata company is required to approve the budget.

Notice of the proposed special resolution should contain:

- a description of the proposed improvement or alteration, with:
 - particulars of what is proposed in terms of design and materials
 - the proposed timeframe for completion
 - particulars of the estimated cost of the work necessary for completion
- a drawing showing the location of the improvements or alterations
- at least one quotation or tender obtained by the strata company for the work necessary to complete the proposed improvement or alteration.

The strata company can spend money not authorised by an approved budget but authorised by special resolution. If there is no special resolution, an amount not exceeding \$500 per lot in a financial year.

There is also a special procedure to get approval for expenditure under section 102(6)(b)). To get this approval, a strata company must give:

- written notice of the purpose and amount of the proposed expenditure to all owners and first mortgagees
- particulars of at least two separate quotations or tenders obtained by the strata company in relation to the proposed expenditure.

If this process is followed, the expenditure is approved unless, within 14 days, written objections are received from the owners or first mortgagees of either:

- 25 per cent or more of the lots, or
- lots of which the total unit entitlements are 25 per cent or more of the sum of the unit entitlements of all the lots in the scheme.

The strata company can also spend money not authorised in the budget if required by a court or tribunal or by a notice or order under a written law.

Scheme by-laws may require expenditure of a particular class to be approved by a unanimous resolution, resolution without dissent or special resolution. It is recommended you check the scheme by-laws to see if there are any special rules about strata company expenditure.

16 Strata company roll

- See section 105 of the Act



Every existing and new strata company must keep a roll. It is an offence for a strata company not to do so and attracts a penalty on conviction of up to \$3,000.

This requirement does not apply to two lot schemes. It may not apply to three to five lot schemes, provided a scheme by-law has been adopted.

The roll may be kept in any medium and must contain the following particulars:

- the name of the strata company
- the name and address for service of each member of the council, or officer, of the strata company
- the name and address for service of the owner of each lot, each strata manager, any lessee or tenant of a lot and any mortgagee of a lot.

17 Small scheme exemptions

- See section 140 of the Act



Strata companies of small schemes of two, three, four or five lots may be exempt from some of the management requirements under the Act. Despite these exemptions, the strata company remains in existence and the remaining provisions of the Act still apply to small schemes.

Two lot schemes

Two lot schemes are automatically exempt from the requirements to:

- hold annual general meetings, after the first one has been called by the original scheme developer
- keep accounting records and statement of accounts
- keep minutes of general meetings, meetings and decisions of council and records of resolutions
- have a separate letter box displaying the name of the strata company
- keep a roll of lot owners, but each lot owner must notify the other owner of his or her address for the service of notices
- establish an administrative fund for administrative expenses that is sufficient in the opinion of the strata company for the control and management of the common property, payment of any premiums of insurance and discharge of any other obligation of the strata company.

Owners of two lot schemes may decide to comply with any of these requirements. However, if they decide to

establish an administrative fund, they must first pass a scheme by-law to that effect.

Three, four or five lot schemes

Three, four or five lot schemes are required to hold AGMs. The other exemptions that apply to two lot schemes may apply to schemes having three, four or five lots, provided the strata company passes a governance by-law to that effect. By-laws made to adopt the exemptions can be set aside by a new governance by-law.

An owner of a lot in a two-to five-lot scheme can apply to SAT for the strata company to perform any of the exempted functions.

18 Insurance

• See sections 97 to 99 of the Act



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

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

The owner of a lot in a survey-strata scheme is responsible for insuring the infrastructure on their lot. Special rules apply to single tier strata schemes, and these are described below.

A strata company must also be insured against damage to property, death, bodily injury or illness for which they could become liable in damages, to an amount no less than \$10,000,000.

The owner of a lot is responsible for insuring against the above-mentioned risks for damages for which they could become liable.

If a strata company has taken all reasonably practicable steps available to obtain the required insurance but no insurer is willing to insure, the strata company must obtain whatever insurance it can obtain that most closely meets the requirements.

Insurable asset of a strata titles scheme means:

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

But does not include:

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

If a strata company receives money from an insurer in the event of damage to or destruction of an insurable asset, that money must be applied in rebuilding, replacing, repairing or restoring the insurable asset, unless:

- the scheme is a survey-strata scheme, and
- the strata company passes a resolution without dissent specifying how the money is to be distributed amongst members of the strata company or used, and

- the insurable asset or the area affected by the damage or destruction (if the insurable asset has been destroyed or removed) is left in a safe condition.

Strata companies and lot owners should consult their insurer to ensure there is adequate insurance cover for their prospective risks.

Insurance in a single tier strata scheme

- **See Schedule 2A, clauses 53A-53E of the Act**



In a single tier strata scheme, the owners are responsible for insuring the insurable assets in their lots, and taking public liability insurance against their individual lots, unless the strata company decides by ordinary resolution (majority decision) to take out joint insurance.

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

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

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

Other insurance

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

Notice to member of strata company

- **See section 98 of the Act**



If the strata company has difficulty in obtaining required insurance cover due to some activity within the scheme by a member of the strata company, the strata company may give the member notice in writing requiring the owner to:

- either take or refrain from taking specific action, or
- pay an amount equal to that part of the premium payable by the strata company for the required insurance attributable solely to the risk associated with something within the member's control. The payment must be made to the strata company within a specified period.

If the lot owner fails to comply with either of these requirements, the strata company may obtain an order from SAT determining action to be taken or refrained from being taken by the member.

Strata company fails to insure

- **See section 99 of the Act**



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

19 Service contracts

- See section 200 of the Act



The strata company may enter into contracts for services or amenities, subject to the normal expenditure provisions of the Act (see section 102 of the Act).

A contract relating to the provision of amenities or services to the strata company or the owners of lots can be terminated five years after if it was entered into, if it was made before registration of the strata titles scheme and when any owner held 50 per cent or more of the unit entitlements. For the strata company to terminate the contract, it must give written notice to every other party to the contract.

The contract must also have been made after the commencement of section 41 of the *Strata Titles Act 1985*, which was the first time the STA gave strata companies the power to terminate such contracts.

SAT can extend the contract period of five years on application of a person in respect of the contract if satisfied that the contract is fair to all owners of lots in the scheme and will remain fair for the extended period. An extended period is not to exceed the period specified in the contract or 10 years from start of the contract, whichever is less.

SAT may also make an order requiring a strata company to enter into, vary or terminate a contract, including a contract for services or amenities to the strata company or the members of the strata company.

20 Arranging utility connections

With the increasing use of solar photovoltaic panels, many strata owners have queries about how to arrange the appropriate utilities connections.

Strata schemes typically have a single connection point to the Western Power network that determines the total allocation of available electricity supply and generation capacity to be shared by all strata lots in the scheme.

This connection point has a fixed capacity, so it's important for strata lot owners and prospective purchasers to be aware of the arrangements and obligations relating to the connection, as it may restrict their ability to install equipment such as home EV charging stations, rooftop solar panels and batteries.

Before applying to connect this type of equipment, strata lot owners should first seek permission from their strata company to use an allocation of the total network capacity allocated to the strata scheme.

Failing to do this may prevent other strata lot owners from connecting their own equipment, or require the strata company to upgrade the connection to the Western Power network to accommodate the needs of all strata lot owners.

It's important to remember the strata company is ultimately responsible for the management of the common connection to the Western Power network and the common electrical system within the strata scheme. Effective management of this shared resource will allow the benefits of renewable energy solutions to be shared by the all strata lot owners.

For additional information please call Western Power on **131 087**.

21 Execution of documents

• See section 118 of the Act



A strata company can execute a document:

- **With** common seal, by applying the strata company’s common seal to the document as authorised by ordinary resolution of the strata company and attesting use of the seal by the signatures of **two council members** of the strata company;
- OR
- Without common seal, by having the document signed by a person or persons authorised by an ordinary resolution of the strata company to sign documents on behalf of the strata company. Under section 118(2) of the Act, the person or persons must be a member of the council, members of the council acting jointly (this could be more than two members of council) or a strata manager of the strata company.

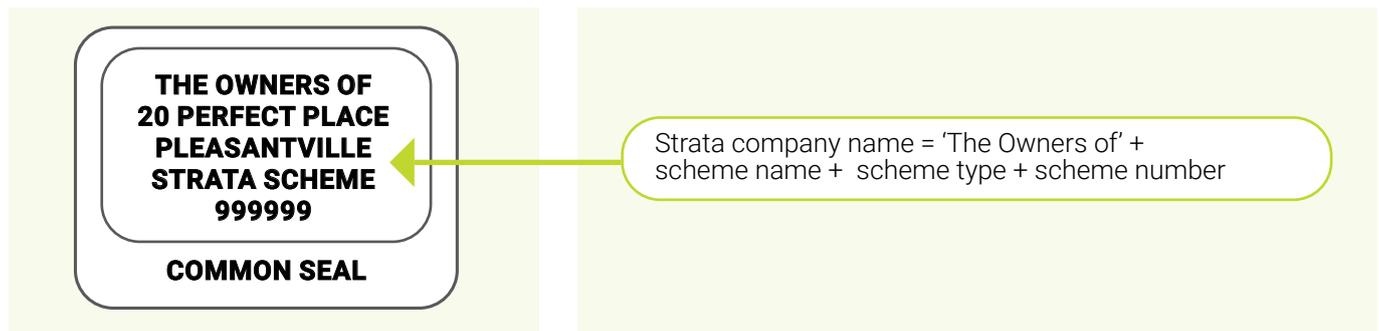
A common seal is optional for strata companies and may be electronic. It must contain the name of the strata company, with an example shown below.

The name of the strata company is made up of:

- the words “The Owners of”; and
- the scheme name; and
- the scheme type (i.e. strata scheme or survey-strata scheme); and
- the scheme number.

For plans registered before 1 May 2020 – the scheme name, scheme type and scheme number are shown on the scheme plan or Amendment of Scheme Notice where an amendment has been registered.

For schemes registered on or after 1 May 2020 – the scheme name, scheme type and scheme number are shown on the Scheme Notice or Amendment of Scheme Notice where an amendment has been registered.



Note that the ordinary resolution authorising persons to sign documents on behalf of the strata company may contain conditions and limitations. For example, a condition may impose a witnessing requirement.

See section 11 of this Guide for who can be a member of council of the strata company, how to appoint council members and duties of council members.

Please refer to Landgate’s Land Titles Registration Policy and Procedure guides for registration requirements in relation to execution of documents by a strata company.

What if there is a dispute?

22 SAT and dispute resolution

• **See sections 197-210 of the Act**



While the State Administrative Tribunal (SAT) has the statutory powers to efficiently resolve strata disputes, parties are encouraged to resolve the dispute between themselves in the first instance.

If direct resolution doesn't work the matter could be the subject of a council meeting and/or resolution of the strata company in general meeting. The scheme by-laws may have a dispute resolution process. Parties can also consider mediation services. Any of these options may resolve the matter and avoid the need to go to SAT. This way, both parties can gain an appreciation of the issues under dispute and decrease the likelihood of ongoing conflict between the parties.

When disputes cannot be resolved informally, there is a formal process of dispute resolution provided through SAT. Mediation is regularly used by SAT to assist the parties in resolving the issues in dispute.

There may be occasional problems associated with strata living, but most of those problems also exist in the non-strata environment. The advantage of strata living includes mechanisms such as by-laws and SAT exist to assist in the reconciliation of disputes.

The SAT website provides access to a decisions database, which contains the outcome of decisions made by SAT. This database includes decisions made pursuant to the Strata Titles Act 1985. You may wish to check through the database for decisions that may be similar to a current dispute in your strata scheme; the documented decision may assist in the dispute resolution process. The decision database can be found at www.sat.justice.wa.gov.au

Can I bring my dispute straight to SAT?

If you have a dispute, you can make an application straight to SAT. There used to be requirements for the application be accompanied by a certificate in respect of the existence of by-laws, but these were repealed in the amendments to the Act.

Can SAT resolve the dispute?

• **See sections 197 of the Act**



SAT has the power to resolve many kinds of disputes including disputes between:

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

The disputes may be about:

- the scheme documents (e.g. scheme plan, schedule of unit entitlements, scheme by-laws including the validity of by-laws, schedule of unit entitlements, etc)

- the performance of a function conferred or imposed on a person by the Act or the scheme by-laws
- an alleged contravention of the Act (other than an offence)
- a resolution or decision of a strata company or the strata council, including its validity
- the appointment or election of a member of the council or an officer of a strata company
- any other matter arising under the Act or the scheme by-laws
- an applicant and a person who must consent to an application for registration, or amendment, of a strata titles scheme
- a strata company and a person (other than WAPC or a local government authority) about a refusal to give an approval or consent where the scheme by-laws require the approval or consent (other than leasehold by-laws, staged subdivision by-laws and exclusive use by-laws)
- the owner of sustainability or utility infrastructure installed on the common property (through a contract with the strata company) and the strata company, about the matter connected with a common property (utility and sustainability infrastructure) easement
- the scheme developer and a strata company about matters involving the first AGM, key documents of the scheme, disclosure of remuneration and other benefits
- the strata company and a designated person about the giving of contact information, inspection of material and the giving of certificates
- a strata manager, or former strata manager, and the strata company about matters involving the authorised functions of a strata manager or the strata management contract
- a buyer or prospective buyer of a lot in a scheme and the seller of a lot about the giving of information to the buyer before or after the contract, the exercise of avoidance rights under the Act and other matters covered in the Protection of Buyers part of the Act
- an occupier of a lot in the scheme and the owner of the lot or the proponent about a proposal to terminate a strata titles scheme.

An occupier of a lot can apply for resolution of a dispute listed above only if the dispute is about the scheme by-laws, if they are directly affected by a resolution or decision of the strata company or an obligation or right of the occupier under the Act or the by-laws.

If SAT orders the amendment of a scheme document the order must specify the extent to which the amendment is subject to the obtaining of approvals and consents that would otherwise be required. An order requiring amendment of a scheme document does not take effect until the Registrar of Titles registers the amendment of the scheme document.

What types of orders SAT can make?

- **See sections 200 of the Act**



The orders which SAT may make includes:

- requiring a scheme document be amended in a specified manner
- requiring a structural element which defines the boundary of a lot to be reinstated following its damage, destruction or removal
- determining the form and location of utility conduits (pipe, wire, cable or duct) to provide specified utility services subject to a utility service easement
- requiring the scheme developer pay a specified amount to a strata company, being the whole or part of a remuneration or benefit that the scheme developer failed to disclose to the strata company
- determining action that must be taken, or refrained from being taken, by a member of a strata company to enable the strata company to obtain required insurance
- authorising a specified person to convene and preside at a general meeting:
 - as the first AGM



- to appoint or elect members of the strata council or officers of the strata company or
- for some other specified purpose
- authorising a specified person to convene and preside at a meeting of the strata council:
 - to appoint or elect officers of the strata company or
 - for some other specified purpose
- removing a person from the strata council or as an officer of a strata company
- appointing a specified person from office as a member of the strata council or as an officer of a strata company
- varying or terminating a strata management contract
- requiring a strata manager to pay a specified amount to a strata company, being the whole or a part of the remuneration or the value of a benefit that they failed to disclose
- requiring a strata company to take or refrain from taking specified action when performing or exercising its functions, including orders to:
 - sell or acquire real or personal property
 - to enter into, vary or terminate a contract, including a contract for services or amenities to the strata company or its members
 - to pursue an insurance claim
 - to vary the amount of insurance cover
 - to allow or prohibit the keeping of an animal
- requiring a person to take or refrain from taking specified action to remedy or prevent further contraventions of the Act, scheme by-laws or a strata management contract
- the strata company is taken to have passed/not passed a specified resolution required under the Act or the scheme by-laws as an ordinary resolution, special resolution, resolution without dissent or unanimous resolution
- requiring a party to pay money as compensation to a person for loss or damage suffered
- requiring a party to pay money to another party to adjust the position or rights on the termination or variation of a contract
- requiring a person who is holding a deposit or other moneys in trust to pay the deposit or other moneys to the former buyer
- appointing an administrator of a strata company to perform some or all scheme functions.

If a SAT order is inconsistent with scheme by-laws in force when the order is made, the order prevails. Section 197(3) of the Act lists the types of orders that SAT cannot make.

What evidence do I required to support an application?

Depending on the type of application you wish to submit, you may have to attach relevant documents to your application form.

When you have generated the 'Overview' document in the Application Wizard it will also have a download called a 'Practice Note'. There are numerous practice notes and the Overview will have the specific practice note for your application. The practice note gives you details on how to complete the application, what supporting documents are required, how to serve the other parties (if required) and information about the hearing process and possible outcomes for your matter.

If you are unsure about what documents you need to lodge, please contact SAT. Contact details for SAT are outlined at the back of this guide.

How do I submit a SAT application?

Depending on the type of application you are making, there may be a time limit on your application. You can view the Time Limits page on the SAT website for more information.

The easiest way to apply to SAT is by using the SAT Application Wizard. Hard copy application forms can also be requested by contacting SAT or visit their website www.sat.justice.wa.gov.au.

In special circumstances, such as when an applicant lives in a remote location, SAT's Executive Officer may agree to the application being emailed or faxed. If you have special needs please contact SAT to discuss. You will also need to give copies of the application to the parties named in the application, in the required manner. See Serving the Application on more details. Remember to keep a copy for your records.



For more information on dispute resolutions.

Please refer to Landgate's dedicated guide on this topic.

Available at strata.wa.gov.au

23 New building defects

Once established, the strata company is entitled to all the rights and remedies of the scheme developer in respect of:

- in a strata scheme – each scheme building
- in a strata scheme or survey-strata scheme – infrastructure comprising common property of the scheme.

Creating or changing a strata titles scheme

24 Strata titles development

In Western Australia, the relevant local government authorities and the Western Australian Planning Commission (WAPC) are responsible for the zoning, planning and approval process for the creation of strata titles schemes and changes affecting the lots and common property in a strata titles scheme.

The Act sets out requirements for approvals from relevant authorities and the requirements for registration of schemes by the Registrar of Titles. The Act also specifies the requirements for approvals and registration of amendments to scheme plans that effect a subdivision.

Amendments to scheme plans that effect a subdivision include converting a lot to common property, transferring common property out of the scheme, bringing land into the scheme as additional common property, consolidating lots in the scheme and the most common form of plan amendment, re-subdividing lots to create more or different lots and common property.

It is not permitted to re-subdivide a strata lot to create survey-strata lots or vice versa. Lots on a scheme plan must always be the same type (i.e. strata or survey-strata).

There are several factors to be considered in the planning and development approval process. It is advisable to consult with the relevant authorities and appropriate professionals, such as planning consultants and licensed land surveyors, as well as conveyancers, to ensure the process is completed without unnecessary delay and/or additional cost.

When considering strata titling a property, it is also always advisable to check the certificate of title to ensure there are no restrictions against subdividing the land, such as a single dwelling restrictive covenant. It can be a prolonged process to get the removal of such a covenant from the land.

25 Merger and conversion

Owners in a single tier strata scheme registered before 1 January 1998 who wish to merge buildings and/or land into strata lots or convert to survey-strata must engage a licensed land surveyor and licensed land valuer to assist with the merger/conversion process, and to obtain legal advice as appropriate.

Schedule 2A of the Act has some simplified processes for merger and conversion for such schemes.

It is important to note that a thorough search of all certificates of title and the scheme plan must always be performed to determine what consents must be provided, as required under Schedule 2A clauses 21T and 31E. Without these consents, the Registrar of Titles is not permitted to register the merger or conversion.

For strata schemes registered from 1 January 1998 onwards there is no simplified process to convert to survey-strata (the strata scheme must be terminated first). Common property can be brought into lots and other lot boundary changes effected by subdividing the land and lodging a scheme plan amendment under section 35 of the Act.

Please note 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.

For more information on how to merge common property or convert a pre-1 January 1998 single tier strata scheme to a survey-strata scheme, please refer to Landgate's 'Land Transactions Toolkit' on the www.landgate.wa.gov.au website, or call Landgate's Customer Service team for more information.

26 Structural alteration

• **See sections 86 to 90 of the Act**



This section covers how the Act deals with structural alterations on lots, and not common property. The Act requirements are in addition to development and building approvals, which might be required under other legislation (e.g. *Planning and Development Act 2005* and *Building Act 2011*). A consequence of non-compliance with the Act is that SAT may order an owner of a lot to remove the alteration.

The term structural alteration is used to cover the erection of a structure on a lot and an alteration of a structural kind to, or extension of a structure within the lot, by the lot owner.

Structure has been further defined in regulation 73 of the STGR 2019 to include any dwelling, shop, factory, commercial premises, garage, carport, shed or other building or improvement, whether free standing or annexed to or incorporated with any existing building on the lot:

- the construction or erection of which is required to be approved by the local government or any other authority
- the area of which is to be taken into account for the purposes of determining the plot ratio restrictions or open space requirements for the lot.

Strata schemes

• **See section 87 of the Act**



Approval for structural alterations

Structural alterations on a lot in a two-lot strata scheme cannot proceed without the prior written approval of the owner of the other lot, and if it is a leasehold scheme, the owner of the leasehold scheme.

Alterations in all other strata schemes cannot proceed without prior:

- approval (resolution without dissent) of the strata company, or
- written approval by the owner of each lot in the scheme, and
- written approval of the owner of the leasehold scheme, if it is a leasehold scheme.

If each lot owner's written approval is required, all approvals must be unconditional or subject to the same conditions and a copy of each approval served on the strata company.

If the scheme is a leasehold scheme, the written approval of the owner of the leasehold scheme is required in addition to the approval of the strata company or written approval of each lot owner.

Application to strata company or other owners

A lot owner wanting to carry out structural alterations to their lot must serve an application for approval of the structural alteration on the other lot owner(s) or the strata company depending on which approval route is chosen and if relevant, the owner of the leasehold scheme.

The application must contain the details required in regulation 75 of the STGR 2019:

- plans and specifications for the structural alteration
- the area of the structure, including the area of all existing and proposed structures to be considered for the purposes of calculating the plot ratio restrictions and open space requirements
- the open space or plot ratio requirements in relation to the parcel of land in the strata titles scheme
- if carrying out the alterations will exceed 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
- 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
- any likely interruption or interference with any statutory easements, short form easements and restrictive covenants and other easements or restrictive covenants affecting the parcel whether of a permanent or temporary nature granted under the Act
- whether the structural alteration to the lot changes the boundaries of the lot and if the applicant has sought advice from a licensed surveyor about the effect of the structural alteration.

If an application is made to the strata company for approval of the structural alteration to the lot, the strata company must provide a notice of the resolution to members of the strata company.

The notice of the resolution must include a statement that the vote for the lot may be cast:

- against the resolution to approve the application or
- in support of a resolution to refuse approval of the application, but only on a ground permitted under the Act (but not otherwise). A vote is of no effect unless the person casting the vote discloses a permitted ground for the person's vote.

If the vote on the resolution is taken at a meeting of the strata company, the chairman must read out the statement before the vote is taken.

Grounds for refusing application

• See section 87(5) of the Act



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
- the carrying out of the alterations will contravene a specified by-law of the strata company
- the carrying out of the proposal may interfere with a short form easement, restrictive covenant, or any other easement or covenant, affecting the parcel as shown on the scheme plan or registered against the parcel.

In addition, 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, which is not in keeping with the rest of the development
- may affect the structural soundness of a building
- may interfere with any statutory easement automatically granted under the Act.

Disclosure of grounds

- **See section 87(4)(d) of the Act**



A lot owner must disclose the grounds for refusing or voting against the application. If the grounds are a contravention of a by-law, the owner must specify the by-law which will be contravened.

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

Survey-strata schemes

- **See section 88 of the Act**



Approval for structural alterations

In a survey-strata scheme, the approval for structural alterations on a survey-strata lot is only required from the other lot owner in a 2-lot scheme or the strata company by resolution without dissent, if carrying out the alterations will breach the open space or plot ratio requirements for the lot. For all leasehold survey-strata schemes, the prior written approval of the owner of the leasehold scheme is also required.

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 provides otherwise.

Approvals and objections

- **See section 89 of the Act**



An application for the approval of the structural alteration of a lot must set out details of the proposal. If an application is received by the strata company, voting on it must open within 35 days after receipt. This is known as the allowed period. The owner of a lot or the owner of a leasehold scheme approves the structural alteration if:

- they provide written consent to the alteration, or
- they have not, at the end of 42 days after being given the application, made a written objection to the alteration, or
- for a strata scheme, the owner has made an objection which does not specify the grounds of the objection or the grounds specified are not grounds under the Act.

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

- it provides the applicant written consent to the alteration expressed by resolution without dissent, or
- it has not, at the end of 77 days after being given the application, made a written objection to the alteration, or
- for a strata scheme, it has made an objection which does not specify the grounds of the objection or the grounds specified are not grounds on which the strata company may object, under section 87.

Open space or plot ratio

Open space requirements and plot ratio restrictions are laid down by the local authority in relation to the area of the land (parcel), which comprises the whole of the strata titles scheme. 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 requirements and plot ratio restrictions for each lot is set out in regulations 7 and 8 of the STGR 2019. The by-laws of the strata company can set out a different method of apportioning the open space of the parcel among the lots in the scheme.

SAT application for exemption from requirements

An owner can apply to the SAT for exemption from the requirements for structural alterations to the lot, whether or not the necessary approval for the alteration has been sought and even if there has been a valid refusal of the alteration.

The SAT can only make an order if satisfied that the structural alteration is reasonable having regard to the merits of the alteration and interests of all lot owners in the use and enjoyment of their lots and the common property, and to the extent that the structural alteration has been carried out, it will not cause any significant detriment or inconvenience to the owners of the other lots.



Default by-laws

Schedules 1 and 2 to the *Strata Titles Act 1985* contain the default by-laws which apply to all strata schemes in Western Australia, unless your strata company has its own by-laws. To check if the default by-laws apply to your scheme, you can ask for a copy of your scheme's strata plan from your strata company or obtain a copy through Landgate.

27 Schedule 1 - Governance by-laws

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

1. Duties of owner

(1) The owner of a lot must –

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

(1A) The owner of a lot must –

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

2. Deleted by Strata Titles Amendment Act 2018

3. Power of strata company regarding submeters

- (1) If the supply of gas or electricity to a lot is regulated by means of a submeter, the strata company may require the owner or occupier of the lot to pay the strata company by way of security for the payment of charges arising through the submeter an amount not exceeding \$200 and, if any amount so paid is applied by the strata company under sub-by-law (3), to pay such further amount or amounts by way of such security as may be necessary to maintain the amount of the security as, subject to this sub-by-law, the strata company may require.
- (2) The strata company must lodge every sum received under this by-law to the credit of an interest-bearing ADI account and all interest accruing in respect of amounts so received must, subject to this by-law, be held on trust for the owner or occupier who made the payment.
- (3) If the owner or occupier of a lot in respect of which a submeter is used for the supply of gas or electricity refuses or fails to pay any charges due for the supply of gas or electricity to that lot, the strata company may apply in payment of those charges all, or such part as is necessary, of any amount paid to the strata company by that owner or occupier under this by-law, including any interest that may have accrued in respect of that amount.

- (4) If a person who has paid an amount under this by-law to a strata company satisfies the strata company that the person is no longer the owner or occupier of a lot and that the strata company no longer has any liability or contingent liability for the supply of gas or electricity to that lot during the period when that person was an owner or occupier of the lot, the strata company must refund to that person the amount then held on the person's behalf under this by-law.

4. Constitution of council

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



- (11) Except if 1 person is the owner of all of the lots in the scheme, a quorum of the council is 2 if the council consists of 3 or 4 members; 3, if it consists of 5 or 6 members; and 4, if it consists of 7 members.
- (12) The continuing members of the council may act even if there is a vacancy in the council, but so long as the number of members is reduced below the number fixed by these by-laws as the quorum of the council, the continuing members or member of the council may act for the purpose of increasing the number of members of the council or convening a general meeting of the strata company, but for no other purpose.
- (13) All acts done in good faith by the council, even if it is afterwards discovered that there was some defect in the appointment or continuance in office of any member of the council, are as valid as if that member had been duly appointed or had duly continued in office.

5. Election of council at general meeting

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

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



forms in favour of each candidate.

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

6. Chairperson, secretary and treasurer of council

- (1) The members of a council must, at the first meeting of the council after they assume office as such members, appoint a chairperson, a secretary and a treasurer of the council.
- (2) A person –
 - (a) must not be appointed to an office referred to in sub-bylaw (1) unless the person is a member of the council; and
 - (b) may be appointed to 1 or more of those offices.
- (3) A person appointed to an office referred to in sub-bylaw (1) holds office until the first of the following events happens –
 - (a) the person ceases to be a member of the council under by-law 4(9);
 - (b) receipt by the strata company of a written notice of the person's resignation from that office;
 - (c) another person is appointed by the council to hold that office.
- (3A) The remaining members of the council must appoint a member of the council to fill a vacancy in an office referred to in sub-bylaw (1), other than a vacancy arising under by-law 4(9)(c) or (d), and any person so appointed holds office, subject to this by-law, for the balance of the predecessor's term of office.
- (4) The chairperson is to preside at all meetings of the council but, if the chairperson is absent from, or is unwilling or unable to preside at, a meeting, the members of the council present at that meeting can appoint 1 of their number to preside at that meeting during the absence of the chairperson.

7. Chairperson, secretary and treasurer of strata company

- (1) Subject to sub-bylaw (2), the chairperson, secretary and treasurer of the council are also respectively the chairperson, secretary and treasurer of the strata company.
- (2) A strata company may at a general meeting authorise a person who is not an owner of a lot to act as the chairperson of the strata company for the purposes of that meeting.
- (3) A person appointed under sub-bylaw (2) may act until the end of the meeting for which the person was

appointed to act.

8. Meetings of council

- (1) At meetings of the council, all matters must be determined by a simple majority vote.
- (2) The council may –
 - (a) meet together for the conduct of business and adjourn and otherwise regulate its meetings as it thinks fit, but the council must meet when any member of the council gives to the other members not less than 7 days' notice of a meeting proposed by the member specifying in the notice the reason for calling the meeting; or
 - (b) employ or engage, on behalf of the strata company, any person as it thinks is necessary to provide any goods, amenity or service to the strata company; or
 - (c) subject to any restriction imposed or direction given at a general meeting of the strata company, delegate to 1 or more of its members such of its powers and duties as it thinks fit, and at any time revoke the delegation.
- (3) A member of a council may appoint an owner of a lot, or an individual authorised under the *Strata Titles Act 1985* section 136 by a corporation which is an owner of a lot, to act in the member's place as a member of the council at any meeting of the council.
- (4) An owner of a lot or individual may be appointed under sub-bylaw (3) whether or not that person is a member of the council.
- (5) If a person appointed under sub-bylaw (3) is a member of the council the person may, at any meeting of the council, separately vote in the person's capacity as a member and on behalf of the member in whose place the person has been appointed to act.

9. Powers and duties of secretary of strata company

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

- (a) the preparation and distribution of minutes of meetings of the strata company and the submission of a motion for confirmation of the minutes of any meeting of the strata company at the next such meeting; and
- (b) the giving on behalf of the strata company and of the council of the notices required to be given under the Act; and
- (c) the supply of information on behalf of the strata company in accordance with the *Strata Titles Act 1985* sections 108 and 109; and
- (d) the answering of communications addressed to the strata company; and
- (e) the calling of nominations of candidates for election as members of the council; and
- (f) subject to the *Strata Titles Act 1985* sections 127, 128, 129, 200(2)(f) and (g) the convening of meetings of the strata company and of the council.

10. Powers and duties of treasurer of strata company

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

- (a) the notifying of owners of lots of any contributions levied under the *Strata Titles Act 1985*; and
- (b) the receipt, acknowledgment and banking of and the accounting for any money paid to the strata company; and
- (c) the preparation of any certificate applied for under the *Strata Titles Act 1985* section 110; and
- (d) the keeping of the records of account referred to in the *Strata Titles Act 1985* section 101 and the preparation of the statement of accounts referred to in the *Strata Titles Act 1985* section 101.



28 Schedule 2 - Conduct by-Laws

1. Vehicles and parking

- (1) An owner or occupier of a lot must take all reasonable steps to ensure that the owner's or occupier's visitors comply with the scheme by-laws relating to the parking of motor vehicles.
- (2) An owner or occupier of a lot must not park or stand any motor or other vehicle on common property except with the written approval of the strata company.

2. Use of common property

An owner or occupier of a lot must –

- (a) use and enjoy the common property in such a manner as not unreasonably to interfere with the use and enjoyment of the common property by other owners or occupiers of lots or of their visitors; and
- (b) not use the lot or permit it to be used in such manner or for such purpose as causes a nuisance to an occupier of another lot (whether an owner or not) or the family of such an occupier; and
- (c) take all reasonable steps to ensure that the owner's or occupier's visitors do not behave in a manner likely to interfere with the peaceful enjoyment of an owner or occupier of another lot or of a person lawfully using common property; and
- (d) not obstruct lawful use of common property by any person.

3. Damage to lawns etc. on common property

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

- (a) damage any lawn, garden, tree, shrub, plant or flower on common property; or
- (b) use any portion of the common property for the owner's or occupier's own purposes as a garden.

4. Behaviour of owners and occupiers

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

5. Deleted by *Strata Titles Amendment Act 2018*

6. Depositing rubbish etc. on common property

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

7. Drying of laundry items and signage

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

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

8. Storage of inflammable liquids etc.

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

9. Moving furniture etc. on or through common property

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

10. Floor coverings

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

11. Garbage disposal

An owner or occupier of a lot must –

- (a) maintain within their lot, or on such part of the common property as may be authorised by the strata company, in clean and dry condition and adequately covered, a receptacle for garbage;
- (b) comply with all local laws relating to the disposal of garbage;
- (c) ensure that the health, hygiene and comfort of an owner or occupier of any other lot is not adversely affected by their disposal of garbage.

12. Additional duties of owners and occupiers

An owner or occupier of a lot must not –

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

13. Notice of alteration to lot

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

14. Appearance of lot

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

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

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



Where to get assistance

29 Information and support from Landgate

General information

Landgate can provide:

- document and scheme plan registration (for example, registering a change of by-laws, forms for registering schemes, etc)
- an explanation about common property and boundaries of individual strata lots.

Registration information can be obtained from Landgate by:

Tel: **+61 (0)8 9273 7373**

Regional Australia: **1300 365 288**

Email: customerservice@landgate.wa.gov.au

Website: www.landgate.wa.gov.au

Publications

Landgate produces a number of strata-related publications, for example how to convert common property to individual property and creating and changing by-laws.

These booklets are available from the Landgate website at landgate.wa.gov.au. In particular in the Land Transactions toolkit section: landgate.wa.gov.au/for-individuals/Land-Transactions-toolkit

Forms and documents

The forms and documents required to amend strata titles schemes and/or obtain copies of scheme plans and other documents are available online from Landgate's website.

Copies of scheme plans, other scheme documents and related documents (such as notification to amend by-laws) can also be obtained from Landgate's online support section at:

Tel: **+61 (0)8 9273 7373**

Email: customerservice@landgate.wa.gov.au

Website: landgate.wa.gov.au

Please see the forms and fees section of Landgate's website for the schedule of fees payable for copies of strata plans and related documents: landgate.wa.gov.au/for-individuals/forms-and-fees

30 Other information and support

Legal information and advice

You may seek legal advice to guide you on a strata matter, for example:

The Law Society of WA has an online database with contact details of lawyers providing services relating to strata.

Website: lawsocietywa.asn.au

Strata Community Association (Western Australia) (SCA(WA)) can supply contact details for legal practitioners who are also members of SCA(WA).

Tel: **+61 (0)8 9381 7084** (Please note: this number cannot be called for general strata advice).

Website: www.wa.strata.community

The Citizens Advice Bureau of WA may be able to provide information.

Tel: **+61 (0)8 9221 5711**

Website: cabwa.com.au

Strata consultants

There are strata professionals (strata consultants/strata managers) that may be able to assist with information and guidance relating to strata matters in WA.

SCA(WA) can provide contact details for strata consultants who are members of SCA(WA).

Visit **SCAWA** at:

Tel: **+ 61 (0)8 9381 7084** (please note this number cannot be called for strata advice)

Website: www.wa.strata.community

The Citizens Advice Bureau of WA may be able to provide information. Contact details are:

Tel: **+61 (0)8 9221 5711** – lines open Monday – Friday 9.30am – 4.00pm

(excluding public holidays)

Website: cabwa.com.au

Valuation advice

If you require valuation advice for your strata/survey-strata lot or for any other reason related to strata living, you will usually require the services of a licensed valuer (for example to create a schedule of unit entitlements or determine if the entitlements of the lots should be changed).

The WA division of the Australian Property Institute may be able to assist you to contact a licensed valuer. They can be contacted by:

Tel: **+61(0)8 9381 7288**

Website: wa.api.org.au

Subdivision advice

If you are making enquiries about the subdivision of your property (by strata or survey-strata) a licensed surveyor will be able to assist you in the subdivision process (required to submit the strata plans with Landgate). The copy of the scheme plan for your scheme will have the details of the surveyor who lodged the plan and it is possible that they will still be contactable. Alternatively, to find a licensed surveyor consider an internet search. Otherwise, surveyors details are held by:

The Land Surveyors Licensing Board of WA can provide a list of licensed surveyors in WA.

Dispute resolution

If you have not been able to resolve the dispute directly with another lot owner or the strata company including following any dispute resolution process in the scheme by-laws, mediation is commonly considered to be a useful method to resolve disputes in strata titles schemes.

The Citizens Advice Bureau of WA may be able to provide information. Contact details are:

Tel: **+61 (0)8 9221 5711** – lines open Monday – Friday
9.30am – 4.00pm

(excluding public holidays)

Website: cabwa.com.au

Landgate does not have any judicial powers to assist in the dispute resolution process.

If mediation has not been successful or not considered, you may wish to avail yourself of the dispute resolution process provided by SAT (not for advice other than how to lodge an application).

There are a limited number of provisions in the Act that can be the subject of a criminal prosecution. In this event Landgate is the appropriate agency to refer the matter to for consideration of prosecution action.

Contact details are:

Level 6

565 Hay Street

PERTH WA 6000.

Tel: **+61 (0)8 9219 3111**

Facsimile: **+61 (0)8 9219 3115**

Website: sat.justice.wa.gov.au

31 Lodging documents

Consistent with the Government's Tariffs, Fees and Charges policy, Landgate has a schedule of approved fees payable when lodging your documents. Please visit Landgate's website to see the schedule or contact a Customer Service Officer by telephone on **+61 (0)8 9273 7373** if you have a query.

Office hours for lodgement of documents are 8.30 am to 4.30pm.

Our offices are located at:

MIDLAND

1 Midland Square

Corner of Great Northern Highway and Morrison Road

Midland WA 6056

PERTH CBD

Cloisters Building Ground Floor

200 St Georges Terrace PERTH WA 6000.

Postal lodgements can be sent to:

Landgate

Document Lodgement Section PO Box 2222

MIDLAND WA 6936

Disclaimer of liability

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