

# How strata works in WA

## How a strata scheme operates



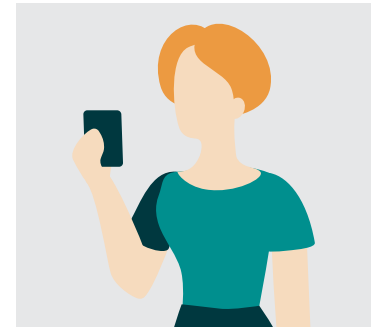
### Strata company

Automatically made up of all lot owners.



### Strata council

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



### Strata manager

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

## ► The strata company

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

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

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

- repair and maintenance of common property
- financial management

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

Among the specific responsibilities of the strata company are:

- Issuing a written notice to comply with a scheme by-law to a person alleged to have breached a scheme by-law. The next step after providing the required notice, is a strata company can apply to the State Administrative

Tribunal (SAT) for an order to enforce a scheme by-law.

- Arranging for inspections of records held by the strata company (section 109 of the *Strata Titles Act 1985* (STA)).
- Responding to written requests for a section 110 certificate from a person with a proper interest in information about the scheme (see section 107(2) of the STA for the meaning of a person with a proper interest in information about the scheme). The certificate provides certain scheme information or information about a lot specified in the written request and must be provided within 14 days.

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

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

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

- determining contributions certain decisions that can only be made by resolution of the strata company under WA strata law, such as leasing temporary common property in accordance with section 92 of the STA.
- a scheme function declared by the Strata Titles (General) Regulations 2019 (Regulations) to be a scheme function that cannot be performed by a strata manager

## ► The strata council

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

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

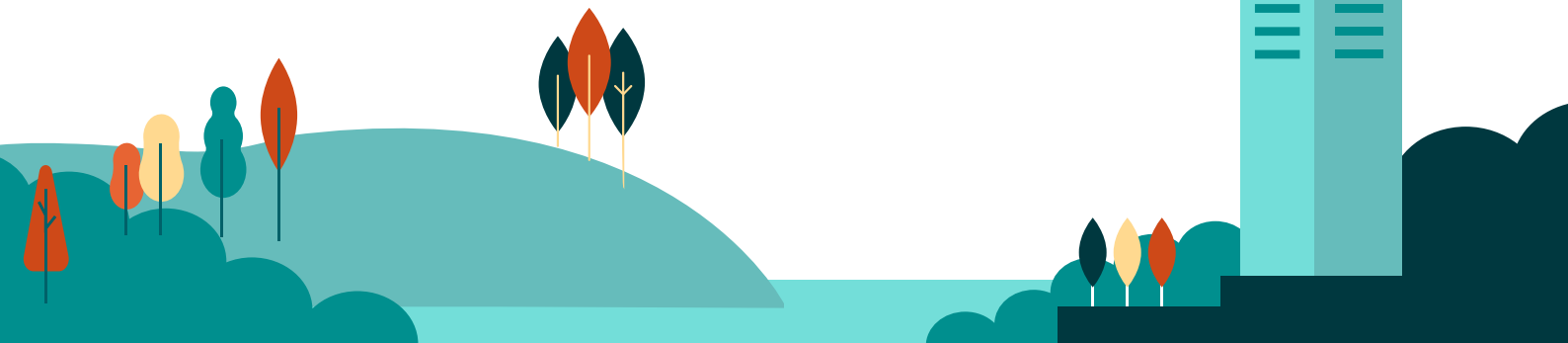
Scheme by-laws specify the number of council members. If the governance by-laws in Schedule 1 of the STA apply:

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

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

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

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



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

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

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

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

## Eligibility for the strata council

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

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

People eligible to be appointed to the strata council include:

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

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

Office bearers usually perform the following duties:

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

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

## Strata council meetings and decision-making

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

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

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

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

