

Strata Living in Tasmania

February 2008
2nd Edition



What you should know about Strata Schemes



FOREWORD

This 2nd edition of **Strata Living in Tasmania** includes amendments to the *Strata Titles Act 1998* passed by Parliament since the last edition.

The major amendments relate to insurance. In short bodies corporate have been made responsible for taking out relevant insurances relating to the strata development.

Strata Living in Tasmania remains an excellent reference booklet and introduction to strata development living in Tasmania.

It should be read in conjunction with the pamphlets recently produced relating to insurance, activation of bodies corporate and by-laws, and the legislation itself.



David Llewellyn MHA

Minister for Primary Industries and Water

This book has been produced by the Office of the Recorder of Titles, Department of Primary Industries and Water. This publication will be available on the Internet at www.dpiw.tas.gov.au. Additional printed copies are available from the Service Tasmania Centre, 134 Macquarie Street, Hobart, 7000, phone 6233 3382.

ISBN-13 978-0-7246-6996-7

© 2008 Tasmania Government

Every attempt has been made to ensure the accuracy and reliability of the information contained in this brochure. However it is a summary only of the law and should not be taken as a precise guide to the law on strata titles. You should refer to the *Strata Titles Act 1998*, and any amendments of the Act, and seek your own legal advice on its interpretation.

The State of Tasmania, its employees and agents will not be responsible for any loss arising from the use of, or reliance on this information.

CONTENTS

Introduction	2
What is a strata scheme?	2
Who is the Recorder of Titles?	2
1. The body corporate	3
Functions of the body corporate	3
Insurance	3
Meetings of the body corporate	3
Committee of management	4
Appointment of manager	4
Common seal	4
Strata contributions	4
Address of the body corporate	4
2. Common property	5
What you own individually and what is common property	5

3. Unit entitlements	6
General unit entitlements	6
Special unit entitlements	6
Changing unit entitlements	7
4. Insurance	8
Insurance of the strata scheme	8
Insurance excess	8
Public risk insurance	8
Increased premium	9
If the body corporate fails to insure	9
5. Meetings of the body corporate	10
General meetings	10
If the body corporate fails to hold a meeting	10
Special general meetings	10
Resolutions of the body corporate	10
Quorum	11
Voting for unanimous and ordinary resolutions	11
Proxies	11
6. By-laws	12
Types of by-laws	12
By-laws for the letting of lots	12
Exclusive use by-laws	13
Limitations on by-laws making power	13
Enforcement of by-laws	13
The Model by-laws	13
7. Recorder of Titles and dispute resolution	15
How to apply to the Recorder for relief	15
Register of strata disputes	15
Investigation of application	15
Orders of the Recorder	16
Compliance with an order from the Recorder	16
Some types of orders which the Recorder may make	16
Appeals	16
8. Types of schemes	17
Strata schemes	17
Staged development schemes	17
Community development schemes	17
9. Answers to some commonly asked questions	19

INTRODUCTION

The *Strata Titles Act 1998* (referred to in this booklet as 'the Act') regulates the registration of strata plans and the day to day operation of strata bodies corporate. The Act has recently been amended. If you are the owner of a strata lot, living in a strata lot or are considering a strata development you should be aware of your rights and responsibilities under the Act.

This book has been produced by the Recorder of Titles to give people a general overview of current strata laws. While we have tried to cover as much of the Act as possible, you should refer to the Act for more precise detail, and seek your own legal advice.

You can purchase a copy of the Act from the Printing Authority of Tasmania (see back cover for details), or view the Act free of charge on the Internet at <http://www.thelaw.tas.gov.au>

What is a strata scheme?

A strata scheme is a particular type of development which divides a parcel of land into "lots" and "common property", and which specifies a system of management.

Who is the Recorder of Titles?

The Recorder of Titles is appointed under the *Land Titles Act 1980* and is the statutory officer responsible for maintaining the register of land titles in Tasmania. The Recorder's responsibilities include the registration of dealings with land, as well as strata plans.

The Recorder is also appointed by the Act to determine strata disputes (this is discussed in Chapter 7).

The Recorder of Titles and the Land Data Registration Branch, where land dealings and strata plans are lodged, are together known as the Land Titles Office and form part of the Information and Land Services Division within the Department of Primary Industries and Water.

I. THE BODY CORPORATE

The body corporate is the controlling body of a strata scheme. The owners of the lots in the scheme form the body corporate which comes into existence automatically on registration of the strata plan. No expenditure by the owners is required to form a body corporate (section 71).

The name of the body corporate is in a specific format, that is " Strata Corporation No. ... (insert the plan number and name of the scheme as shown on the strata plan) . The name of the scheme is normally the address, so that the name of the body corporate would be the strata plan number and the address of the building for example "Strata Corporation No. 12345, 31 Black Street, Keilor Downs".

Functions of the body corporate (section 81)

The body corporate has certain functions under the Act. These include:

- ✧ to enforce the by-laws;
- ✧ to control, manage and improve the common property;
- ✧ to maintain the common property in good condition and keep it in good and serviceable repair;
- ✧ to maintain the insurance required by the Act and any further insurance that may be required by ordinary resolution of the body corporate;
- ✧ to allocate spaces to lots for vehicle parking on the common property; and
- ✧ to carry out other functions for the benefit of lot owners.

Insurance (sections 98 to 101)

The body corporate must insure all buildings and other improvements (if any) on the site. This applies whether the buildings or improvements are on common property or are on privately owned lots.

The body corporate must also take out and maintain public risk insurance over the site (see Chapter 4 for more information on a body corporate's responsibilities to insure).

Meetings of the body corporate (section 75)

A body corporate must hold an annual general meeting at least once every 15 months. Meetings of bodies corporate are more fully discussed in Chapter 5.

Committee of management (section 79)

The body corporate may appoint a committee of management, consisting of at least three members of the body corporate.

A committee of management may exercise any powers delegated to it by the body corporate except powers that may only be exercised by unanimous resolution of the body corporate. It is recommended that any delegation of powers be made in writing setting out in detail what powers are delegated and any conditions on those powers.

Appointment of manager (section 80)

The body corporate may appoint a manager and delegate to the manager functions related to the administration, management and control of the common property, subject to the direction of meetings of the body corporate, and/or the committee of management. Again it is recommended that the appointment of the manager be in writing and sets out in detail the rights and obligations of all parties.

Common seal (section 73)

A common seal of the body corporate must contain the name of the body corporate. An example of a body corporate seal is shown below.



The seal must not be affixed to a document unless authorised by a resolution of the body corporate and witnessed by at least 2 members of the body corporate, unless there is only one member in which case the affixing of the seal is to be witnessed by that member.

Strata contributions (section 83)

The body corporate may levy contributions from lot owners to meet anticipated expenditure or for any other purpose agreed to by ordinary resolution of the body corporate (for example emergency plumbing repairs). An owner's contribution is determined by the general unit entitlement shown on the strata plan or by a special unit entitlement if this applies (see Chapter 3).

Address of the body corporate (section 87)

A strata plan must state the address of the body corporate. This address is the address for service of any notices on the body corporate. To change this address the body corporate must advise the Recorder of Titles in writing. This can be done by a letter addressed to the Recorder.

2. COMMON PROPERTY

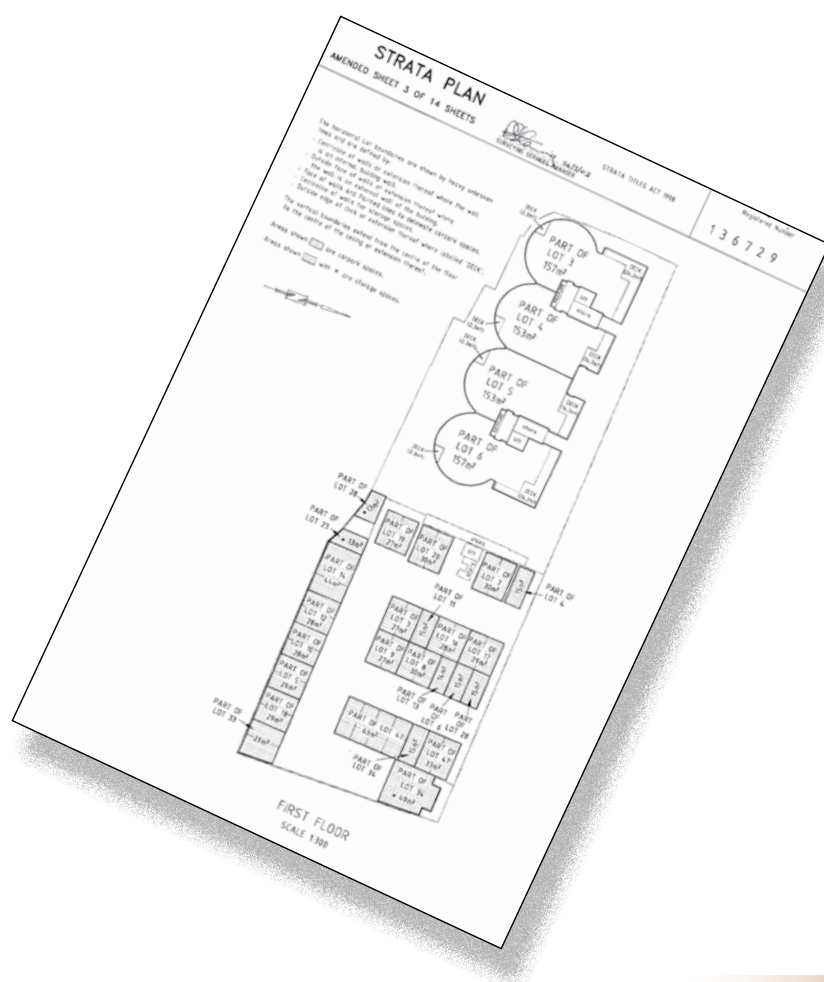
Common property comprises all the areas of the land and buildings in a strata scheme not included in any lot. It is owned and maintained by the body corporate on behalf of the individual lot owners in the strata scheme. Service infrastructure serving more than one lot, such as cables, pipes or equipment, is also common property. The strata plan sets out the lots and common property in the strata scheme.

What a lot owner owns individually and what is common property

Many lot owners may believe that there is no common property in their scheme, but this is not the case - all strata schemes contain areas of common property, although they are not always obvious.

A common scenario is that the buildings are individually owned and part or all of the outside areas, such as shared gardens, is common property. Shared stairwells and hallways may also be common property. However, even in the absence of these obvious shared areas, all the areas above and below the boundaries of a lot are common property as is service infrastructure. If the boundaries of lots are not stated on the strata plan, the boundaries are taken to be the centre of all floors, walls and ceilings.

To understand what a lot owner owns, and what is common property, it is essential a lot owner obtains a copy of the strata plan from the Land Titles Office or electronically from the LIST at www.thelist.tas.gov.au.



3. UNIT ENTITLEMENTS

Each lot on a strata plan has a unit entitlement.

Unit entitlements determine a lot owner's rights and responsibilities in the strata scheme, including such things as voting rights, the lot owner's body corporate contribution, and the lot owner's share in the common property.

General and special unit entitlements (section 16)

General unit entitlements

All lots have a general unit entitlement which is set out in a schedule on the last page of the strata plan. These general unit entitlements apply for all purposes of the Act unless special unit entitlements apply for a particular purpose.

Special unit entitlements

Some lots may have a special unit entitlement. Special unit entitlements allow differing circumstances to be taken into account, for example in a multi-storey development some lots may benefit from lift facilities and others may not. Whilst these lifts would form part of the common property only those lots which could use them would need to pay for such things as maintenance and upkeep. This would be achieved by means of a special unit entitlement.

Special unit entitlements, however, can apply to vary a lot owner's:

- ✧ proportionate contribution to the body corporate;
- ✧ proportionate interest in the common property;
- ✧ number of votes exercisable at a general meeting of the body corporate; or
- ✧ proportion of the body corporate's income.

If a special unit entitlement has not been determined for any of these specific purposes, then the general unit entitlement applies for that purpose.

- ❑ a unanimous resolution of the body corporate; or
- ❑ order of the Recorder of Titles under Part 9 of the Act; or
- ❑ by the affected lot owners if the total unit entitlements of the lots subject to the change are not affected and the consent of any registered mortgagees and lessees of the lot has been obtained; for example lot 2 has 1 existing unit entitlement and lot 3 has 3 existing unit entitlements, a total between these lots of 4 unit entitlements. The owners of these lots agree to change the unit entitlements so that lots 2 and 3 have 2 unit entitlements each. As the total unit entitlements held between the lots remains at 4, no resolution of the body corporate is required.

STRATA PLAN

AMENDED SHEET 13 OF 14 SHEETS

NOTE: THIS SHEET SHOULD ONLY BE USED WHERE:-
 (i) THE LOTS HAVE A SPECIAL UNIT ENTITLEMENT, OR
 (ii) THE BODY CORPORATE HAS BEEN DIVIDED

THE PURPOSE UNDER SECTION 18 FOR WHICH A SPECIAL UNIT ENTITLEMENT MAY BE USED

NAME OF (THIS) BODY CORPORATE
 STRATA CORPORATION NO. 136729

ADDRESS FOR THE SERVICE OF NOTICES

Registered Number
136729

THE SILOS
 1 CASTRAY ESPLANADE
 BATTERY POINT, HOBART

THE HOBART SILOS

LOT NO	UNIT ENTITLEMENT			LOT NO	UNIT ENTITLEMENT			LOT NO	UNIT ENTITLEMENT		
	GENERAL (G)	SPECIAL (OF ANY) (S)	(S) (S)		GENERAL (G)	SPECIAL (OF ANY) (S)	(S) (S)		GENERAL (G)	SPECIAL (OF ANY) (S)	(S) (S)
1	40	40	40	23	45	45	10	2	45		
2	30	30	30	24	45	45	10	2	45		
3	30	30	30	25	45	45	10	2	45		
4	30	30	30	26	45	45	10	2	45		
5	30	30	30	27	45	45	10	2	45		
6	30	30	30	28	90	90	20	2	90		
7	30	30	30	29	90	90	20	2	90		
8	30	30	30	30	90	90	20	2	90		
9	30	30	30	31	90	90	20	2	90		
10	30	30	30	32	150	150	40	3	150		
11	35	35	35	33	150	150	40	3	150		
12	35	35	35	34	40	40	20	41	0		
13	35	35	35	35	30	30	10	30	0		
14	35	35	35	36	5	5	10	0	5		
15	40	40	40	37	330	330	100	330	0		
16	40	40	40								
17	40	40	40								
18	40	40	40								
19	45	45	45								
20	45	45	45								
21	45	45	45								
22	45	45	45								

Continued next column

TOTAL 2015/2015 2015/570 444/1515

4. INSURANCE

Insurance of the strata scheme (section 99)

The body corporate must insure all buildings and other improvements (if any) on the strata site. This includes buildings whether conjoined buildings or free standing villas and other improvements whether on common property or on privately owned lots.

The insurance policy must:

- α cover damage from fire, storm, tempest and explosion, and costs incidental to reinstatement; replacement of the buildings, including the cost of removing debris, and the fees of architects and other professional advisers; and
- α provide for the reinstatement of the buildings and improvements to their condition when new.

The body corporate must also take out and maintain any additional insurance agreed to by ordinary resolution of the body corporate.

The body corporate may also insure against:

- α loss from dishonesty, negligence or other wrongful conduct; or
- α other risks.

Insurance excess (section 99)

Where a claim is made on the body corporate insurance policy any excess would, where it relates to one lot only, be payable by the owner of that lot. This provision applies except where the body corporate determines by ordinary resolution that it is unreasonable for the lot owner to pay the excess, for example where a broken window is caused by a structural fault in the wall of the building.

Where the claim relates to more than one lot the body corporate is responsible for the excess.

Public risk insurance (section 101)

The body corporate must insure for public risk in respect of the site.

Increased premium (section 100)

If the body corporate is unable to obtain insurance on reasonable terms for any buildings due to an activity on a lot, or work is required in relation to the lot to reduce the insurance risk to a reasonable level the body corporate may give notice in writing requiring the lot owner to ensure that the activity ceases or to have work carried out (as the case requires).

The written notice must give the affected lot owner the option of paying any additional insurance premium payable by the body corporate in the event of the continuance of the activity or the non-performance of the work.

If body corporate fails to insure (section 103)

First talk to the body corporate. If the body corporate refuses to take out the insurance required by the Act, a lot owner may obtain the insurance and recover the cost of the premium from the body corporate.

The lot owner may then request the body corporate to reimburse the cost of the insurance premium.

Alternatively, section 103 of the Act permits the cost to be deducted from any contributions payable by the lot owner to the body corporate. If the cost of the insurance cannot be obtained from the body corporate a claim for the premium may be made against the body corporate by an application for relief to the Recorder of Titles.



5. MEETINGS OF THE BODY CORPORATE

General meetings (section 75)

The first annual general meeting of the body corporate must be held within three months of the registration of the strata plan or on the sale of at least one half of the lots on the plan (whichever is the earlier). The original registered proprietor of the land at the time the strata plan is registered (called 'the original proprietor' in the Act) is required to call the first meeting of the body corporate.

Subsequent annual general meetings must be held each year with no more than 15 months passing between meetings.

An original proprietor who fails to call the first meeting may be subject to a penalty set out in the Act. The maximum penalty for the failure to call the meeting is 50 penalty units (at the time of writing \$5,000).

If the body corporate fails to hold a meeting (section 128)

First talk to the other lot owners and arrange a meeting at a time and place that suits all lot owners. If no agreement can be reached between lot owners, any lot owner may apply to the Recorder of Titles by way of application for relief requesting an order to appoint a person to call a meeting.

Special general meetings (section 75)

Special general meetings may be convened at any time and must be called if required by at least one-third of lot owners.

Resolutions of the body corporate (section 3)

The body corporate may make two types of resolution at its meetings:

- ✧ a unanimous resolution is a resolution passed at a meeting of the body corporate against which no lot owner casts a dissenting vote, (either at the meeting or within 28 days of the meeting) for that resolution; or
- ✧ an ordinary resolution is a resolution which is passed by a majority of the votes of lot owners present and voting at the meeting of the body corporate.

Under the Act, certain decisions of the body corporate require a unanimous resolution. These include: buying or selling part of the common property; changing the total of the unit entitlements in a development; creating or surrendering easements or covenants and dealings with profits a prendre which affect common property; merger

or division of bodies corporate; and consolidation or cancellation of strata plans.

In other cases matters may be dealt with by an ordinary resolution. This could include creating, amending or repealing by-laws; and the making and confirmation of an exclusive use by-law.

If a section in the Act requires a resolution but does not state whether the resolution required is an ordinary or unanimous resolution, an ordinary resolution would be required unless the body corporate by-laws provide otherwise.

Quorum (Model by-law 10)

A quorum for a meeting of the body corporate is a majority of the total number of the members of the body corporate.

This quorum applies unless the body corporate has its own by-law which sets a quorum of the body corporate.

Voting for unanimous, and ordinary resolutions (sections 76 & 78)

Voting at a meeting of the body corporate may be cast personally or by proxy. Voting may be by show of hands or by poll.

In the case of a motion requiring a unanimous resolution, votes may also be cast by notice in writing to the body corporate within 28 days after the meeting.

Proxies (section 76)

A proxy must be in writing. It can be used by a lot owner or co-owner to appoint a person to vote on that owner's behalf. It may apply to one motion, one meeting of the body corporate, for a specified period of time, or until it is revoked.



6. BY-LAWS

By-laws of the body corporate promote the concept of community living whilst facilitating administration of the strata scheme. By-laws must be observed by all owners and occupiers and their invitees and visitors as well as by the body corporate. The by-laws cover:

- ❑ the administration, management and control of the common property, for example a by-law requiring occupiers and visitors of a lot owner to park in a designated area;
- ❑ the use and enjoyment of the lots and the common property, for example a by-law allowing one small dog only on a lot; and
- ❑ exclusive use of common property, for example a by-law which gives exclusive use of a garden to one lot owner only.

Types of by-laws (section 90)

By-laws of the body corporate may be:

first by-laws these are by-laws which are lodged with the strata plan;

model by-laws these are by-laws which apply automatically to new and existing strata schemes unless first by-laws are lodged with the strata plan. The model by-laws are set out in Schedule 1 of the Act;

exclusive use by-laws these are by-laws which give exclusive use rights to common property or part of common property to a particular lot; and

change of by-laws (section 92) by-laws may be created, amended or rescinded by a resolution of the body corporate.

Any new, amended, or rescinded by-law must be lodged for registration as a change of by-laws with the Recorder of Titles within three months after the resolution of the body corporate is passed, otherwise the resolution lapses. The by-law is not effective until it is registered.

By-laws for letting of lots (section 91)

A by-law may impose a minimum term (not exceeding six months) for the letting of lots.

This means that a body corporate by-law may ban short-term leasing (less than six months) but cannot ban leasing of lots for six months or more.

Exclusive use by-laws (section 94)

It is possible to create by-laws that allow individual lot owners exclusive use of certain areas of common property. These by-laws must be passed by an ordinary resolution of the body corporate and be agreed to by the affected lot owner.

Lot owners granted exclusive use are responsible for the repair and maintenance of their exclusive use area, unless the by-law states otherwise.

An exclusive-use by-law lapses after 5 years unless confirmed within the period by ordinary resolution of the body corporate.

This provision does not apply to exclusive use by-laws stated to be of permanent effect.

Limitations on by-laws making power (section 91)

By-laws should be consistent with the strata scheme. Generally by-laws cannot be unreasonable, cannot unfairly discriminate or adversely affect the health or welfare of others; or be inconsistent with the provisions of the scheme.

Specifically a by-law cannot:

- ❑ modify, prohibit or restrict a statutory easement as set out in section 13 of the Act; or
- ❑ restrict an owner's right to use, deal with or dispose of a lot.

A model by-law on a particular subject in Schedule 1 of the Act, is a by-law of the body corporate unless the body corporate has its own by-law on that subject.

Enforcement of by-laws

Compliance notice (section 95)

Where a person is in contravention of a by-law the body corporate may give written notice requiring the person to refrain from further contravention or to take action specified in the notice to remedy the contravention within a period of not less than 30 days.

The body corporate may, in addition to or instead of giving the notice, apply for relief to the Recorder of Titles under Part 9 of the Act.

Enforcement by Resource Management and Planning Appeal Tribunal (the Tribunal) (section 96)

If a person fails to comply with the notice under section 95 the body corporate may apply to the Tribunal for an order for enforcement of the relevant by-law.

In making its decision on the application the Tribunal may impose a fine not exceeding 50 penalty units (at the time of writing \$5000) and/or make other orders the Tribunal considers appropriate for enforcement of the relevant by-law.

Enforcement by the Recorder (section 113)

This section provides the Recorder with the power to make orders regarding contravention or failure to comply with a requirement of a by-law. The Recorder may order a person to take or refrain from taking a particular action, or to pay compensation not exceeding \$5000 to another party to the proceedings.

Impositions of penalties (section 133)

Where a by-law provides for a penalty for a breach of a by-law an application can be made to the Recorder or Tribunal to order payment of that penalty. The body corporate may apply for a breach by a person bound by a by-law and a person may apply for a breach by the body corporate of a by-law.

In the case of the Recorder the fine may not exceed 20 penalty units (at the time of writing \$2000) for contravention of a by-law. In the case of the Tribunal the fine may not exceed 50 penalty units (at the time of writing \$5000) for contravention of a by-law.

The Model by-laws

A body corporate may make its own by-laws or adopt the Model by-laws.

A search of the common property folio of the Register will ascertain what by-laws are applicable to a strata scheme.

Schedule 1 of the Act contains the Model by-laws and these are reprinted here.

I. Duty to keep lot in good order and repair

- (1) The owner of a lot must keep buildings and structural improvements on the lot in a state of good repair and to a standard in keeping with other buildings and structural improvements on the site.
- (2) The owner must carry out any work in relation to the owner's lot that the owner is required to carry out by-
 - (a) a public or local authority; or
 - (b) the body corporate.
- (3) The owner of a lot must not, without the written permission of the body corporate-
 - (a) make or permit a change to the exterior character design or finish of buildings or structural improvements on the lot, or

- (b) construct any new building or make any structural improvements on the lot unless they conform to the exterior character, design and finish of any existing buildings or structural improvements on the site.

2. Duty to prevent nuisance

The owner or occupier of a lot must not use the lot, or permit its use, in a way that causes a nuisance to the owner or occupier of any other lot.

3. Duty to allow access for maintenance and repair of common property

- (1) The body corporate is entitled to reasonable access to a lot for the purpose of maintaining, repairing or replacing the common property.
- (2) A person authorised by the body corporate may enter the lot for that purpose:
 - (a) after giving reasonable notice of intention to exercise the rights of access to the occupier of the lot; or
 - (b) in an emergency, without notice.

4. Duty to pay rates and taxes

The owner of a lot must pay all rates, taxes and charges that may be payable in relation to the owner's lot.

5. Use of common property

- (1) The occupier of a lot must not behave in a way likely to interfere with the reasonable use and enjoyment of another lot or the common property by the owner or occupier of another lot or the invitees of the owner or occupier of another lot.
- (2) An owner or occupier of a lot must take reasonable steps to ensure that invitees do not behave in a way likely to interfere with the reasonable use and enjoyment of another lot or the common property by the owner or occupier of another lot or the invitees of the owner or occupier of another lot.

6. Duty to provide information

The owner of a lot must give the body corporate written notice of any change in the ownership of the lot.

7. Keeping of animals

- (1) Subject to subclause (2), the occupier of a lot must not, without the body corporate's written approval:
 - (a) bring an animal onto, or keep an animal on, the lot or the common property; or
 - (b) permit an invitee to bring an animal onto, or keep an animal on, the lot or the common property.

- (2) If a person reasonably requires the assistance of a guide-dog by reason of impairment of sight or hearing, the person is entitled to be accompanied by a guide-dog while on a lot or the common property and, if the person is the owner or occupier of a lot, is entitled to keep a guide-dog on the lot.

8. Body corporate's duties in relation to common property

The body corporate must:

- (a) administer, manage and control the common property reasonably and for the benefit of the owners and occupiers of the lots;
- (b) establish and maintain (where appropriate) suitable lawns and gardens on the common property; and
- (c) maintain the service infrastructure in good and serviceable order and condition.

9. Parking of motor vehicles

Where a space for vehicle parking has been allocated to a lot under section 81(1)(da), only the owner or occupier of that lot or his or her invitee may park a vehicle in that space.

10. Quorum

A quorum at a meeting of the body corporate is a majority of the total number of the members of the body corporate.

7. RECORDER OF TITLES AND DISPUTE RESOLUTION

At times disagreements occur between people living within a strata scheme. While most of these can be settled simply by talking about it, the Act appoints the Recorder of Titles to determine strata disputes. The official term given to this dispute resolution procedure in the Act is an “application for relief”.

Before an application for relief can be made to the Recorder, a person must have complied with any procedures for dispute resolution contained in the by-laws of the strata scheme.

The Recorder is not able to provide advice on strata matters, other than in respect to the requirements of the Act, or for lodgment of applications to the Recorder.

How to apply to the Recorder for relief (section 105)

Applications for relief to the Recorder cost \$25 (at the time of writing) and must be made on the appropriate form which is available from the Land Titles Office (see back cover). The application must set out in detail the grounds for the claim and the nature of the relief sought.

Applicants should note that the grounds for the application and any submissions to the application must be limited in length to five (5) pages. Any additional pages will be returned unread.

Register of strata disputes (sections 140 & 141)

The Recorder maintains a register of applications for relief. This register may be searched on payment of the prescribed fee.

Investigation of application (sections 108 & 110)

The Recorder has flexibility as to how an application may be investigated. The Recorder may hold a hearing, but is not obliged to do so. Information may be gathered by the Recorder in a number of ways including by:

- ✧ submissions of the parties;
- ✧ summoning any person to attend;
- ✧ requiring books, papers and documents to be produced;
- ✧ the Recorder may also inspect any books, papers or documents;
- ✧ requiring any person to give evidence which may or may not be on oath or affirmation; and
- ✧ to answer relevant questions.

The maximum penalty for failure to comply with any of these requirements is 50 penalty units (at the time of writing \$5,000).

Orders of the Recorder (sections 113 to 134)

As a result of an application for relief, the Recorder may make certain orders to require some action to take place or to be stopped.

However, the Recorder may only make an order if satisfied that specified circumstances exist. The Act must be referred to for those circumstances.

Some of the orders that the Recorder may make are listed later in this chapter.

Compliance with an order from the Recorder (sections 136 and 137)

The maximum penalty for not complying with an order of the Recorder is fifty penalty units (at the time of writing \$5,000) and a daily penalty of one penalty unit (at the time of writing \$100) for the period that the non-compliance continues.

If an order to take or refrain from taking an action has not been complied with, the Recorder, on application, may make an order authorising the applicant to carry out the original order. The costs incurred by the applicant can be recovered from the person who failed to comply.

If the Recorder makes an order for the payment of money, the order may be registered as an order of an appropriate court and recovered through that court.

Some types of orders which the Recorder may make (sections 113 to 132)

- ❑ requiring a person to pay body corporate contributions or take or refrain from taking an action;
- ❑ to make or allow repairs or alterations to the common property;
- ❑ ordering the purchase or sale of personal property by the body corporate;
- ❑ requiring an insurance claim to be made or pursued;
- ❑ varying the rate of interest for late payment of contributions;
- ❑ ordering information or documents to be supplied;
- ❑ ordering an animal to be removed from or controlled on a lot or common property;
- ❑ invalidating, repealing, reinstating or making a by-law;

- ❑ granting a licence of a particular kind;
- ❑ invalidating a meeting, resolution of, or election by, the body corporate;
- ❑ reallocating unit entitlements;
- ❑ varying the amount or the manner of payment of contributions;
- ❑ varying the amount of insurance taken out by the body corporate;
- ❑ ordering the body corporate to refund the cost of insurance to the lot owner;
- ❑ appointing an administrator of the body corporate;
- ❑ convening a meeting of members of the body corporate;
- ❑ terminating or shortening a contract for service of the body corporate;
- ❑ make orders relating to structural alterations or building additions to a lot;
- ❑ ordering compliance with a staged development scheme or community development scheme; and
- ❑ imposing penalties on a lot owner or body corporate for breach of by-law where the by-law provides for the penalty.

Appeals (section 144)

Appeals against an order of the Recorder of Titles are dealt with by the Resource Management and Planning Appeal Tribunal.

An aggrieved party who wishes to lodge an appeal, can obtain a form from the Land Titles Office, Level 1, 134 Macquarie Street, Hobart. The appeal needs to be lodged at the Land Titles Office. The fee for an appeal at the time of writing is \$252.00.

8. TYPES OF SCHEMES

Three types of schemes are permitted under the Act: strata schemes; staged development schemes; and community development schemes.

Strata schemes (section 5)

This is the most common form of strata development. The name of the strata scheme building must be shown on the strata plan, together with the boundaries of the lots including their height and depth. The areas of the lots and the unit entitlements of the lots must also be shown on the strata plan.

Staged development schemes (sections 34 and 35)

These allow strata developments to proceed in a series of stages, whilst providing prospective purchasers with full details of ongoing developments.

A staged development scheme consists of a master plan and a disclosure statement.

The master plan includes:

- ✧ a plan of the site; and
- ✧ a plan for each proposed stage showing the location of proposed and existing buildings, the boundaries of the proposed lots and common property and proposed construction and access zones.

The disclosure statement includes:

- ✧ a warning setting out basic information;
- ✧ the name and address of the developer;
- ✧ a description of the proposed development and the stages;
- ✧ times for commencing and completing each stage;
- ✧ a schedule of work hours; and
- ✧ description of amenities, the extent they are available for use and arrangements for maintenance and defraying costs.

Community development schemes (section 51)

A community development scheme enables a number of independent developments to be brought together to function as a single entity to meet particular community needs.

For example, a community development scheme may contain a mixture of conventional housing for families, strata development for older people, retirement accommodation, shopping, business and recreational facilities.

A community development scheme must include two or more elements whether of the same kind or not:

The elements are:

- ❑ strata scheme;
- ❑ sealed plan;
- ❑ some other form of land division;
- ❑ establishment of a retirement village;
- ❑ a marina or water based development.

A community development scheme consists of a master plan, a management statement, constituent documents for the body corporate and the by-laws.

The master plan includes:

- ❑ a plan of the site showing the location of each element of the scheme;
- ❑ a sketch showing the expected appearance of the completed development;
- ❑ description of the general theme of the development, the architectural style and nature of the landscaping; and
- ❑ description of the land which is not subject to private occupation.

The management statement includes:

- ❑ a warning setting out basic information to be brought to the attention of potential purchasers;
- ❑ the name and address of the developer;
- ❑ description and sequence of stages of the development;
- ❑ description and nature of use of construction and access zones;
- ❑ a schedule of times for the start and completion of each element;
- ❑ a schedule of working hours;
- ❑ constituent documents for the managing body corporate; and
- ❑ description of amenities.

The constituent documents consist of documents which deal with:

- ❑ the basis of membership of the body corporate;
- ❑ the power and functions of the body corporate; and
- ❑ how its affairs are to be administered.



9. ANSWERS TO SOME COMMONLY ASKED QUESTIONS

1. Does the body corporate have to be registered at the Australian Securities Commission?

No, the body corporate automatically comes into existence when the strata scheme is registered by the Recorder of Titles. The corporations law does not apply to a body corporate established under the Act.

2. What can a lot owner do if the body corporate fails to insure as required by the Strata Titles Act?

The Act requires the body corporate to take out and maintain insurance for all buildings and other improvements on the site and public risk insurance over the common property.

If the body corporate fails to insure, a lot owner may either (i) request an order from the Recorder of Titles pursuant to an application for relief requiring the body corporate to take out the required insurance or (ii) obtain the required insurance and recover the cost from the body corporate by refund or deduction from levied contributions or by order of the Recorder.

3. What control does the body corporate have over activities by the lot owners on the common property?

The by-laws of the body corporate apply. The Model by-laws apply unless the body corporate has its own by-laws. There are a number of Model by-laws in Schedule 1 of the Act which control the use of common property by lot owners, and the body corporate may enforce these by-laws.

4. Can a lot owner allow his/her car space to be used by other people?

It depends on whether the car space is part of the owner's strata lot or is common property. If the car space is part of the lot, the lot owner may allow other people to use the car space. If the car space is common property the body corporate may allocate part of the common property to a particular lot for the purposes of vehicle parking. If the body corporate allocates a parking space to a lot then that parking space may be used by the occupiers of the lot and their visitors.

5. Can a lot owner keep a pet on his/her strata lot?

This depends on the by-laws of the body corporate. If the body corporate has its own by-laws these will need to be checked. If the body corporate does not have a by-law which relates to the keeping of animals then the Model by-law will apply. The Model by-law provides that the written approval of the body corporate is required to keep animals on a lot or common property.

6. Can the body corporate force a lot owner to remove a pet from his/her strata lot?

This depends on the by-law for the body corporate. If an animal is kept contrary to the by-laws, the body corporate may give notice requiring the pet to be removed. Further, the body corporate can apply to the Recorder of Titles by application for relief for an order to remove the pet if it is kept contrary to the by-laws. An occupier cannot be forced to remove a guide-dog.

7. The body corporate has appointed a manager. What powers does the manager have?

The manager has only those powers which are given to the manager by the body corporate. This should be detailed in a written agreement between the manager and the body corporate. The manager carries out his functions subject to the direction of the body corporate and/or committee of management.

8. Can the body corporate or a lot owner be fined for breaches of a by-law?

Yes, under section 96 of the Act if an owner or occupier of a lot or the body corporate fails to comply with a compliance notice the Resource Management and Planning Appeal Tribunal may impose a fine not exceeding 50 penalty units (at the time of writing \$5000). Under section 133 the Recorder or the Tribunal may on application impose a penalty for the breach of a by-law if the by-law provides for a fine for a contravention.

9. Does a lot owner have to apply to become a member of the body corporate?

No. Each owner of a lot automatically becomes a member of the body corporate when the transfer of the strata lot is registered by the Recorder of Titles.

10. Who must be notified when a meeting of the body corporate is to be held?

The secretary of the body corporate must give at least seven days written notice to each member of the body corporate which sets out the date, time and place of the meeting, the nature of business and any unanimous resolutions to be put to the meeting. Where a lot is owned jointly by two or more persons the notice may be addressed to the co-owners jointly and given or sent to any one of them.

11. Is a tenant bound by the by-laws?

Yes, section 93 of the Act states that by-laws are binding on any occupier of a lot and their invitees.

12. Are there any restrictions on the leasing of a lot?

A lot owner is entitled to lease his/her lot. However, the body corporate may pass a by-law which restricts the term of a lease.

A by-law may impose a minimum term (not exceeding six months) for the letting of lots.

This means that a body corporate by-law may ban leases for short terms (that is, for terms less than six months) but cannot ban longer term leases (that is, for terms of six months or more).

13. What recourse is there where a tenant is breaching the by-laws of the body corporate?

The best course of action is to approach the tenant and the owner of the lot to discuss your concerns. If this does not succeed then an application for relief can be made to the Recorder of Titles to have the tenant ordered to comply with the by-laws of the body corporate.

14. Who is entitled to a copy of the by-laws?

The body corporate must provide a copy of the by-laws in force at the time, if reasonably requested by a lot owner or occupier.

15. What is a quorum for a body corporate meeting?

Model by-law 10 of the Act provides that a quorum for a meeting of the body corporate is the majority of the members. This quorum applies unless the body corporate's own by-law make other requirements for a quorum.

ADDITIONAL INFORMATION

Where to Get Help

Land Titles Office
Department of Primary Industries and Water
Level 1
Lands Building
134 Macquarie Street, Hobart
Telephone: (03) 6233 2618
Facsimile: (03) 6223 8089

Note: the Land Titles Office staff are able to provide assistance on lodgment of applications for relief. However, staff are not able to provide legal advice.

Assistance is available from industry professionals such as registered land surveyors, solicitors, land valuers and strata managers. Citizens advice bureaux and community based legal services can also provide free or low cost legal advice and assistance with the resolution of disputes.

Where to collect and lodge documents

Land Titles Office
Department of Primary Industries and Water
1st Floor Lands Building
134 Macquarie Street, HOBART
Office opening hours 9.00 am - 5.00 p.m.

Further Reading

The Act and Regulations are available free of charge at the following web site: <http://www.thelaw.tas.gov.au>



Tasmania
Explore the possibilities

CONTACT DETAILS:

Enquiries

Land Titles Office

Ph: 6233 3659

