

# Chapter 1

## WHY STRATA?

IN WHICH THE FOLLOWING TOPICS ARE DISCUSSED:-

101	STRATUM OR STRATA?
102	DIVISION OF LAND PER STRATUM
103	LATERAL DIVISION OF LAND
104	HEIGHT LIMITATIONS - AHD
105	TYPES OF LATERAL DIVISION
106	PROBLEMS ASSOCIATED WITH LATERAL DIVISION
107	COMMENCEMENT DATE OF STRATA SCHEMES IN SA
108	BASIC COMPONENTS OF A STRATA SCHEME
109	REASONS TO STRATA TITLE
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## CHAPTER 1 WHY STRATA?

### 101 STRATUM OR STRATA?

This Chapter sets out to explain the differences between a title for a stratum of land of land and a strata title.

### 102 DIVISION OF LAND PER STRATUM

There are three principles of law upon which the term "land" is to be defined in this context and which are of importance to understanding the concept of strata titles.

1. The physical extent of ownership of land not only extends laterally but vertically as well. The Latin Maxim "***Cujus est solum ejus est usque ad coelum et ad inferos***" gives a definition of land which means that land extends indefinitely upwards through the superincumbent stratum of air, and indefinitely downwards to the centre of the Earth. Interested readers who wish to read further on this subject are referred to the publication "An Introduction To The Principles Of Land Law (NSW)" by Hargreaves and Helmore, p.5.
2. A second maxim "***Quicquid plantatur solo, solo cedit***" states that whatever is attached to the land (such as structures, etc) becomes part of the land and travels with it (ie, on conveyance).
3. The Real Property Act, 1886 defines land as including all hereditaments both corporeal (tangible objects such as houses, etc) and incorporeal (intangible things such as granted rights, easements etc).

← S.3 RPA  
DEFINITION OF  
"LAND"

### 103 LATERAL DIVISION

Lateral (stratum) division of land, such as the creation of allotments one above the other, has always been possible in South Australia. The Law of Property Act, 1936, makes mention of the division of buildings either horizontally or vertically in its definition of "land". The photograph at the end of this Chapter shows a building that is in part, a stratum title as it cantilevers over and adjacent Certificate of Title. However, regardless of the direction of the division, the planning laws of the State relating to the development of land will always apply.

*Figure 1 shows the boundaries of a parcel of land extending from the centre of the Earth to the Heavens above and hypothetically divided into "stratum" allotments*



← SEE S.223la RPA  
FOR DEFINITION  
OF AN  
"ALLOTMENT"

Figure 1 LATERAL DIVISION

# STRATA FACTS

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### 104 HEIGHT LIMITATIONS - AHD

It is not unknown for land in a certificate of title to be limited in height or between heights. Eg. Limited to a lower level of 96.5 metres AHD and an upper limit of 101.5 metres AHD. It is relatively common to see an easement created to a particular height limitation. A free and unrestricted right of way may be limited to the underside of the eaves of a building, which may be expressed in terms of AHD. AHD means AUSTRALIAN HEIGHT DATUM (by agreement between the States and the Commonwealth).

← Eg. SEE CT  
4069/811

### 105 TYPES OF LATERAL DIVISION

It follows that it has always been possible to divide the fee simple of land into allotments that are coincidental with rooms in a building without the need for strata titles. This in practice, to the best of knowledge, has never occurred due to a multitude of problems that relate to the administration of such a scheme. Prior to the enactment of the strata titles provisions of 1968, the preferred methods of giving the exclusive occupation of portion of a building (being a room or suite of rooms) was by one of the following:

← SEE PART XIXB OF  
RPA (NOW  
REPEALED)

#### ***By a system of Leases.***

The purchase of an undivided share in the whole of the land as a tenant in common with others and the right to exclusive occupation to a particular home unit by way of a lease. Eg, in a three unit scheme proprietors A, B & C are registered as tenants in common. A, B and C lease unit 1 to A; A,B and C lease unit 2 to B; and A, B and C lease unit 3 to C. The term of the lease was, for all practical purposes, a lease in perpetuity.

A variation of this occurred when the proprietor and promoter of the scheme leased the land to a company registered under the Companies Act, 1934 who then underleased back the home units to their respective owner.

***Ownership of shares in a company*** registered under the Companies Act, 1934. The right to exclusive occupation of a home unit in a building unit scheme was evidenced by means of an endorsement on a share certificate to the effect that the owner is the registered holder of a nominated home unit subject to the Articles of Association. There was no registration on the certificate of title for the land to evidence such ownership.

The two examples are characteristic of those referred to in the Act as "prescribed building unit schemes". Proprietors of home units are known in these instances as "*predominant owners*". This term is used to distinguish unit owners (for inclusion in the schedule of mode of issue in an application for an existing scheme) from persons having other registered and unregistered interests in the land.

← SCHED. 2, C. 5  
AND PARA 906

### 106 PROBLEMS ASSOCIATED WITH LATERAL DIVISION

Neither of the above methods of home unit ownership (or any variation of them) were popular for several reasons.

- Eg,
1. The complex nature of the registration of dealings with leases and underleases;
  2. Dealings with share certificates were not registered on the certificate of title for the land; and
  3. Some lending institutions saw them as a risk and would not accept them as security while others would advance loans only at a rate of interest higher than that for land contained in a certificate of title.

# STRATA FACTS

- 106      4.    Articles of Association were necessary in order to register the company. These articles set the rules by which the community must live. These rules could restrict the sale of a unit to keep out potential owners or occupiers that could be considered undesirable.

107      **COMMENCEMENT DATE OF STRATA SCHEMES IN SA**

The obvious solution to the problems associated with home unit ownership was to follow the lead of New South Wales and provide, by Act of Parliament, means by which a certificate of title could be issued for portion of a building (being a self contained unit) supported by a corporate structure to administer the scheme. This resulted in the enactment of Part XIXB of the Real Property Act, 1886 which came into operation on 22/2/1968.

← SEE ACT  
No.37/1967  
WHICH INSERTED  
PART XIXB IN RPA

108      **BASIC COMPONENTS OF A STRATA SCHEME**

The Act provided for the following basic components that have become the norm for the strata title concept and are repeated in the Strata Titles Act, 1988:

1.    There must be at least two Units (which may include Unit Subsidiaries where desirable) and Common Property,
2.    A plan delineating the boundaries of 1 above,
3.    A corporation to administer the scheme, membership of which is automatic on purchase of a unit,
4.    Rules with which members and others must comply to ensure harmony within the scheme,
5.    Unit Entitlements by which a corporation may determine contributions payable by unit owners to established funds and other uses such as voting rights in some instances and the extent of ownership in the common property.

← SEE S.5(1)

← SEE PART II, STA

← S.8(2)(c)

← PARTS III AND V,  
STA GENERALLY

← S.6 AND PARA 503

109      **REASONS TO STRATA TITLE**

The answer to the original question "Why Strata?" is the security which the Strata Titles Act provides. Viz;

1.    The security of a certificate of title registered under the Real Property Act, 1886.
2.    Simplicity of title - easier to understand.
3.    Freedom to deal with a unit without fear of a power of veto of others.
4.    Protection of an Act of Parliament that determines how a strata scheme is administered.
5.    Increased value of a unit.
6.    Ability to mortgage at reasonable rates of interest.
7.    Boundaries fixed by monuments (tangible structures that can be seen).
8.    Legislated procedures for the resolution of disputes.
9.    The alternative methods were clumsy to administer.