

Chapter 13

CANCELLATION OF A STRATA PLAN

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1301 REASONS FOR CANCELLATION

There will come a time when the life of each strata plan will come to an end. A scheme may have served its useful purpose or has been destroyed by fire, flood or earthquake etc, or perhaps has not been properly maintained and is beyond repair. This latter reason should not occur as the Act requires a strata corporation to keep a scheme in good order and repair, however, some schemes are known to be badly maintained.

← SEE S.25

1302 APPLICATION FOR CANCELLATION OF A STRATA PLAN

Provision is made in the Strata Titles Act for the cancellation of a strata plan. Application is made in an instrument of cancellation and must be in a form approved by the Registrar-General. Two forms are prescribed in Notice to Lodging Parties No.56, issued on 14 September 1988, one for application by a strata corporation, the other when made pursuant to an Order of the Supreme Court. Both forms are set in Appendix A and Appendix B to this Chapter respectively.

← SEE S.17 (1)&(2)

An instrument of cancellation is made by under the seal of the strata corporation and must be accompanied by:-

← SEE S.17(2)

■ consent of all unit holders.

← SEE S.17 (2)(a)

■ consent of all other persons having a registered interest on the units and common property (encumbrancees etc).

← SEE S.17 (2)(b)

■ duplicate certificates of title for all units and common property.

← SEE S.17 (3)(a)

■ where the Registrar-General directs, the duplicate of any instrument for any registered interest on a unit or common property.

← SEE S.17 (3)(a)

■ such other documentary material as the Registrar-General may require.

← SEE S.17 (3)(b)

E.g., consent for the revival of an easement or production of a certificate of title of adjacent land for the deletion of a notice of consent to an encroachment. In the latter case, where an adjacent owner cannot (due to its loss, etc) or will not produce the title, the Registrar-General may, provided a satisfactory reason can be certified on the application, dispense with the production and delete the note from the Register Book. The certificate of title will be up-dated when next produced.

1303 AFFECT OF CANCELLATION

On cancellation of a strata plan:-

■ the Strata Corporation is dissolved.

← SEE S.17. (7)(b)

■ all land comprised in the plan (other than roads and reserves vested in a council at the time of deposit of the plan) vests in fee simple in the former registered proprietors of the units as tenants in common in proportions fixed by reference to their unit entitlements. It is noted here that the strata plan will remain "live" as regards roads and reserves. These are delineated as allotments on the plan. E.g., Allotment 10, SP30000 being a public street named Smith Street.

← SEE S.17 (7)(a)

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- 1303
- all certificates of title for units and common property are cancelled. ← SEE S.17 (6)
 - the liabilities of the former strata corporation will attach directly to the former registered proprietors jointly and severally in the proportion of their unit entitlements. ← SEE S.17 (7)(c)
 - the assets of the corporation will be divided similarly. ← SEE S.17 (7)(d)
 - A certificate of title will issue in the names of the previous unit holders for the land that comprised the former scheme as tenants in common in undivided shares in accord with their respective unit entitlements. ← SEE S.17 (7)(a)

1304 AFFECT ON REGISTERED INTERESTS

The estate vested in a former registered proprietor of a unit on cancellation of the plan will be subject to the same registered interests as were registered against the unit at the time of cancellation. In other words, if Unit 1 in a strata plan is subject to a Mortgage and a lease, the undivided share of the owner in the certificate of title issued on cancellation, will be subject to that mortgage and lease. A lease presents a particular problem as the registration of a lease over an undivided share is most unsatisfactory, particularly for the lessee. The lease should be registered in respect of all of the of the land such that all former unit holders are lessors. It is strongly recommended that a lease be extinguished prior to cancellation and re-granted by all of the former unit owners afterwards. ← SEE S.17 (7a)(a)

Where a registered encumbrance exists over common property and was executed by the strata corporation, that encumbrance should be discharged prior to cancellation. Although the Act is silent of the matter, it must be kept in mind that the strata corporation, as encumbrancee, is dissolved on cancellation. If a dispute arises over cancellation of an encumbrance, an application pursuant to an order of court may be necessary.

A Statutory Encumbrance will prevail and the certificate of title(s) to issue on cancellation, will be subject to that Statutory Encumbrance. If the Encumbrance has served its purpose, extinguishment must be made under the appropriate enabling legislation.

A consent to an encroachment is made under the Strata Titles Act and accordingly, when a strata scheme is cancelled, the Act ceases to apply. The consent is therefore no longer valid.. The proprietor of land affected should be informed that the consent will be removed from the certificate of title to the land and production of that title is necessary.

1305 AFFECT ON EASEMENTS

The certificate of title issued on cancellation will be subject to and together with any easement registered immediately prior to cancellation. However, where an easement had been extinguished, either in whole or in part (but not varied in position), on deposit of the strata plan, that easement will return to its original state provided the proprietors of both dominant and servient tenements have consented. This provision can be used whether the strata scheme was either the dominant or servient tenement. ← SEE S.17 (7a)(a) & (b)

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- 1305 A problem can arise if this provision used is not used. If for example a strata plan was deposited extinguishing an easement through the air space occupied by a unit without the consent of the dominant owner for its revival, the certificate of title for the land comprised in the former scheme will issue subject to an easement over the land except for the space formerly occupied by that unit. In other words, a 'hole' will appear in the easement. The effect is shown in Figure 80.

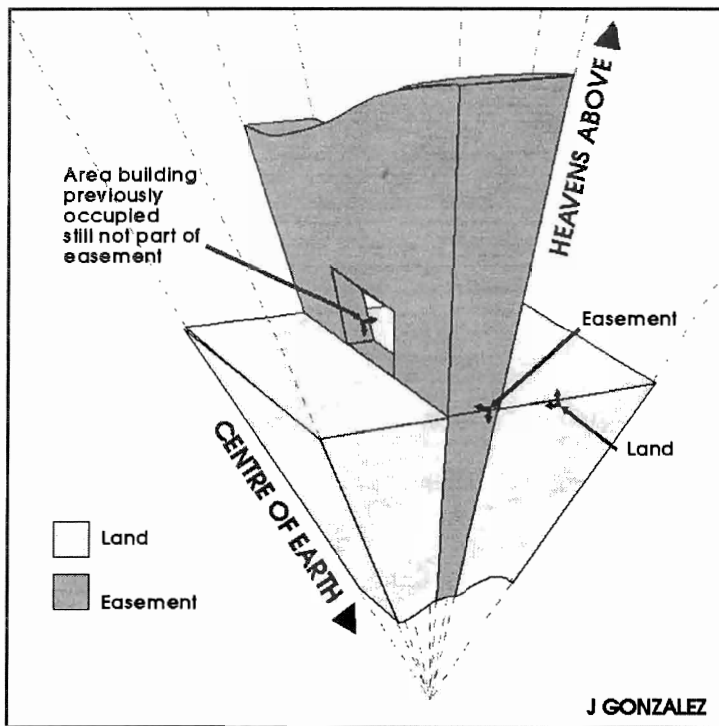


Figure 80 ILLUSTRATION OF "HOLE IN EASEMENT" AFTER CANCELLATION

1306 NEW TITLE ASSUMES FORMER LAND IDENTIFIER

The certificate of title issued for the land of the former scheme will assume the former identity of the land that existed at the time of deposit of the strata plan, provided there has been no vesting of roads and reserves.

Thus, if the plan was deposited over Lot 3 in DP30000, the certificate of title issued on cancellation will assume this identifier. As a strata plan is not division within the meaning of Part XIXAB of the Real Property Act 1886, Lot 3 is not superseded by the deposit of the strata plan.

← SEE S. 2231a (2) RPA

Where the original land was not uniquely identified, ie., was described as a part allotment or section etc, or where roads or reserves had previously vested, a Filed Plan allotting a unique identifier for the land will be required. If additional land had been added to the common property by either amalgamation or land division, the former allotment(s) comprising that land will also revive as the land was merged with the common property and not the former land identifier. However, if the additional land was not previously uniquely identified, a filed plan allotting a new identifier must be lodged.

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1307 CANCELLATION BY ORDER OF COURT

The Act provides that where the consent of a strata corporation for the cancellation of a strata scheme cannot be gained, or at the instigation of a strata corporation (perhaps when a consent of an encumbrancee is withheld), application may be made to the Supreme Court for an order cancelling the scheme. ← SEE S.17 (1)(b)

1308 APPLICATION TO THE COURT

Application for an order of court may be made by:—

- the strata corporation. ← SEE S.17. (4)(a)
- a unit holder. ← SEE S.17 (4)(b)
- any other person who has a registered interest in a unit. ← SEE S.17 (4)(c)

1309 THE ORDER OF COURT

If the court makes an order for the cancellation of a strata plan, the corporation must lodge with the Registrar-General:— ← SEE S.17 (5)

- an application to note the order. ← SEE S.17 (5)(a)
- a copy of the order under the seal of the court. ← SEE S.17 (5)(a)
- duplicate certificates of title for all units and common property. ← SEE S.17 (5)(b)
- any duplicate instruments relating to registered interests in the units and common property, except any duplicate title or instrument exempted from production by the order of court. ← SEE S.17 (5)(b)

If the Registrar-General is satisfied that all of the requirements of the order have been complied with, he/she will cancel the strata plan. ← SEE S.17 (6)

It should be noted that assets will be divided as set out earlier in this Chapter, but subject to the terms of the order of court. ← SEE S.17 (7)(d)

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APPENDIX A

INSTRUMENT OF CANCELLATION OF A STRATA PLAN

To the Registrar-General:

Strata Corporation No. Incorporated of
pursuant to Section 17 (2) of the Strata Titles Act 1988 hereby applies to you to cancel Deposited Plan No.
.....

EXECUTION OF STRATA CORPORATION

Dated the day of 19



.....
(where required by articles, signature of Officer(s) of the Corporation)

CONSENT OF UNIT HOLDERS AND ALL PERSONS WITH REGISTERED ESTATE AND INTERESTS IN RESPECT OF UNITS OR COMMON PROPERTY AND PROPRIETORS OF ALL AFFECTED EASEMENTS OVER THE LAND AND OTHER LAND.

Name, Address and Description of Consenting Persons	Nature of Estate or Interest (Registered Proprietor(s) of units, Mortgagee(s), etc.	Signature of Consenting Parties	Witness

Notes: Application may be made by an administrator, if appointed pursuant to Section 37 of the Strata Titles Act 1988.

Use Panel Form B2 or B3.

Signatures to Seal need only be given where required by articles of the Corporation.

This instrument must be certified correct by a Solicitor or Licensed Land Broker.

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Strata Titles Act 1988, S.17 (5)

INSTRUMENT OF CANCELLATION OF A STRATA PLAN CONSEQUENTIAL ON AN ORDER OF COURT

To the Registrar-General:

Strata Corporation No. incorporated, hereby request you to cancel deposited Strata Plan No.

Annexed hereto is a copy of an Order dated day of 19..... made by the Supreme Court of South Australia.

It is hereby certified that all the terms of the Order required to be complied with prior to the cancellation of the scheme have been satisfied.

Dated the day of 19



.....
(where required by articles, signature of Officer(s) of the Corporation)

Note: This application must be accompanied by:-

- (a) a copy of the Order of Court under the seal of the court.
- (b) Duplicate Certificates of Title for all Units and Common Property (unless the Order directs otherwise).
- (c) any duplicate instruments relating to registered interests in the Units and Common Property (unless the Order directs otherwise).

Application to the court may be made by the corporation, a unit holder, or any other person with a registered interest in a unit.

Use Panel Form B2.

This instrument must be certified correct by a Solicitor of Licensed Land Broker.