

Chapter 14

MISCELLANEOUS PROVISIONS

IN WHICH THE FOLLOWING TOPICS ARE DISCUSSED:-

- 1401 TRANSITIONAL PROVISIONS.
EXISTING PLANS.
STRATA CORPORATION TRANSITIONAL PROVISIONS.
ARTICLES OF CORPORATION.
- 1402 PROCEDURE WHERE THE WHEREABOUTS OF CERTAIN PERSONS IS UNKNOWN.
- 1403 RELIEF WHERE UNANIMOUS RESOLUTION REQUIRED.
- 1404 PERSONS UNDER DISABILITY, ETC.
- 1405 DEALING WITH PART OF A UNIT.
- 1406 NAME OF A STRATA CORPORATION - PLACING OF COMMON SEAL.
- 1407 OFFICERS OF CORPORATION.
- 1408 BODY CORPORATE MAY ACT AS OFFICER,ETC.
- 1409 FUNCTIONS OF CORPORATION.
- 1410 GENERAL POWERS OF A STRATA CORPORATION.
- 1411 STATUTORY EASEMENTS.
- 1412 UNIT HOLDERS POWER OF ENTRY.
- 1413 ALTERATIONS AND ADDITIONS.
- 1414 CONTRACTUAL FORMALITIES.
- 1415 ARTICLES OF A CORPORATION - AMENDING ARTICLES.
- 1416 BINDING NATURE OF ARTICLES.
- 1417 ADMINISTRATORS.
- 1418 DULY CONVENED MEETING , VOTING RIGHTS.
- 1419 SERVICE OF NOTICES, ETC., CORPORATION LETTER BOX.
- 1420 DUTIES OF ORIGINAL REGISTERED PROPRIETOR .
- 1421 POWER TO REQUIRE HANDING OVER OF PROPERTY.
- 1422 STRATA CORPORATION IS NOT A COMPANY UNDER CORPORATIONS LAW.
TAX FILE NO. TO BE APPLIED FOR.
CERTIFICATE OF REGISTRATION NOT APPLICABLE .
- 1423 OFFENCES UNDER THE ACT.

CHAPTER 14 MISCELLANEOUS PROVISIONS

Some of the matters discussed in this Chapter relate to strata corporation responsibilities and are included here only because they are of interest to conveyancers and surveyors. Some of this information may be treated in a cursory way. More detailed information will be included in Volume 2 of this Manual, "Strata Facts, For Corporations".

1401 TRANSITIONAL PROVISIONS - EFFECT OF THE CURRENT ACT ON PRE-EXISTING STRATA SCHEMES

Plans deposited in the Lands Titles Registration Office under the repealed strata legislation (Part XIXB of the Real Property Act 1886) are taken to be plans under the current Act.

← SEE SCHEDULE 2
C.2(1)

This means that plans lodged under the repealed legislation continue to be strata plans within the meaning of the Strata Titles Act 1988. The provisions of the new Act therefore prevail over the old except where the transitional provisions of the Strata Titles Act state otherwise. These differences are as follows:-

1. UNIT AND COMMON PROPERTY BOUNDARIES

A significant difference between the repealed strata provisions and the current legislation is that of boundary definitions of units and common property. Boundaries under the previous legislation were to the centre line of fences, ceilings, floors, etc, unless otherwise stated on the plan.

Boundaries of units and common property in plans deposited under the current Act are the inner face of walls, ceilings and floors, etc, **unless** otherwise stated on the plan.

← SEE S.5(5) AND
PARA 604

Boundaries of plans lodged under the repealed Act (they will have a number less than SP10000) remain the same under the new Act. I.e., they will remain as shown on the deposited strata plan.

A redefinition of boundaries may occur in a plan deposited under the repealed Act when amalgamated with a plan deposited under present Act.. This is due to the different definition between unit boundaries in both Acts. The Strata Corporation should be aware of any change. It is of course possible for the plan deposited under the present Act to adopt the boundaries of the repealed Act if the fact is annotated in the panel of the plan.

← SEE PARA 1109

Similarly, if a plan deposited under the repealed legislation is altered by the addition of a new structure it must be amended under the provisions of Sections 12 or 13 of the current Act. The plan of amendment will need to ensure that differences in boundary definitions do not occur between added structure and units/common property. If this is not done, disputes between unit holders may result. E.g., a disparity in amounts of contribution between units for maintenance may cause conflict between the unit holders.

← SEE PARA 1015

2. STRATA CORPORATIONS

A strata corporation formed by the deposit of a strata plan under the repealed Act and in existence at the time of commencement of the current Act continues to be a strata corporation under the current Act.

← SEE Sched 2 c.3(1)
AND PARA 1406

STRATA FACTS

MISCELLANEOUS PROVISIONS - CHAPTER 14

- 1401(2) A committee of a corporation formed under the provisions of the repealed legislation, becomes a Management Committee under the Strata Titles Act. ← SEE Sched. 2 C.3(2) AND S.35
- However, the corporation will need to appoint Officers as required by the current Act. Appointment should be by majority vote at a duly convened general meeting of the corporation. ← SEE PARA's 1407 AND 1408
- 3. ARTICLES OF A STRATA CORPORATION**
- The articles of a strata corporation, prescribed by the repealed provisions, ceased to apply to a corporation 6 months after the commencement of the current Act (1/9/1988). I.e. on 1/3/89, corporations formed under the repealed Act, adopted the articles prescribed in Schedule 3 of the Strata Titles Act 1988. ← SEE Sched. 2 C.3(3)
- Any amendments previously made to articles will be taken to be a corresponding amendment to the articles of Schedule 3 of the current Act. ← SEE PARA 1415
- However, where articles adopted by a corporation in substitution for any or all of those prescribed by the repealed legislation, those articles continue to apply under the current Act, unless inconsistent with the provisions of the Act. ← SEE Sched. 2 C.3(3)
- 1402 CONSENT OF PERSON WHOSE WHEREABOUTS IS UNKNOWN - PROCEDURES** ← SEE S.17a
- Where application under Division II (Application to Deposit a Strata Plan) or Division IV (Application to Amend a Strata Plan) is made to the Registrar-General under this Act and the consent of a person whose whereabouts is unknown is required, the applicant may apply to the Registrar-General to dispense with that consent. Application is made, by submitting (attached to the application to deposit or amend a strata plan) the Form shown in Appendix A to this Chapter.
- The Registrar-General must be satisfied with evidence produced before deciding to grant the application. The Form in Appendix A, which is in the form of a Statutory Declaration, contains evidence required by the Registrar-General. ← SEE S.17a (1)(c)
- (1) Evidence that the applicant has made reasonable enquiries as to the persons whereabouts. This evidence should include, where possible:- ← SEE S.17a (1)(c)(i)
- Statutory Declarations from long standing neighbours (if any) to the effect that the person is unknown or their whereabouts is unknown,
 - A search of the Births, Deaths and Marriages Office showing that the person is or is not dead or has remarried or has otherwise changed his/her name,
 - if believed living, efforts have been made to contact the person in their new name,
 - if deceased, a search of the Probate Office to determine whether there is a personal representative of the person who can give evidence that the interests of the person's estate is not prejudiced by the application to deposit or amend a strata plan.
 - An enquiry against the LOTS file to determine whether there is an address for the person other than that on the Register Book, and evidence that a notice in the Form in Appendix B has been posted to that address.

- 1402 (2) That the applicant has complied with the notice requirements of the Act. This requirement related to the Form in Appendix B which requires the following Action:-
- The form, containing the information prescribed, is to be posted to the person to his/her last recorded address .
 - A copy of the notice is to be published in a newspaper circulating generally throughout the State.
 - Where the consent relates to the encroachment of part of the structure on adjoining private land, a copy of the notice is to be left in a conspicuous place on or near the land over which the encroachment has occurred.
- (3) That the applicant has waited 28 days since the requirements of (i) and (ii) above were complied with, and
- (4) A statement that no objection has been lodged by the person.
- If the Registrar-General is satisfied with the application, he/she may, in his/her absolute discretion, dispense with the production of the consent of the person and the consent of that person will be taken to have been given.
- An interesting aspect of this provision is that it allows the Registrar-General to also dispense with production of a duplicate certificate of title that would normally be required to be produced by the person. (now missing). In this instance only, the provisions of Section 79 (Application for Issue of Substituted Certificate of Title, etc, of the Real Property Act) can be bypassed. However an appropriate request should be included in the application, if appropriate, as shown in the form in Appendix A.
- 1403 RELIEF WHERE A UNANIMOUS RESOLUTION IS REQUIRED**
- Some decisions to be made by a strata corporation, such as those to amend a strata plan or amalgamate with another strata plan, require the unanimous resolution of the corporation.
- A problem will arise if a person or a number of persons cast a dissentient vote against a motion, which in the opinion of those in favour may be unfair or unwarranted. The Strata Titles Act provides that where there are sufficient votes in favour of the motion to achieve a special resolution (i.e. a $\frac{2}{3}$ majority vote), any person included in the majority in favour may apply to the Supreme Court to have the resolution declared sufficient to authorise the particular act. If the Court so orders, the resolution will be taken to have been passed as a unanimous resolution.
- The applicant must serve a notice of the application to the Court on:-
- every person who was entitled to exercise the power of voting and did not, either in person or by proxy, vote in favour of the resolution.
 - any other person whom the Court declares to have a sufficient interest in the proceedings to require that the person should be served with notice of the application.
- The Court may direct that any person served with, or to be served with, a notice of proceedings under this subsection, be joined as a party to the proceedings.

STRATA FACTS

MISCELLANEOUS PROVISIONS - CHAPTER 14

- 1403 The Act also provides that the Court cannot order a party who opposes an application to pay the costs of a successful applicant unless the Court determines that the party had acted unreasonably. ← SEE S.46 (3)
- 1404 PERSONS UNDER DISABILITY, ETC.**
Where a unit holder is under a disability, the rights and powers of the person under the Strata Titles Act, may be exercised on his or her behalf by a guardian. ← SEE S.45 (10)
- Disability means a person under a legal disability, such as a minor, a protected person under the Aged and Infirm Persons Property Act 1940, a protected person under the Mental Health Act 1977, bankruptcy, etc.
- A guardian means, a parent of a minor, a person appointed by a Court, a person appointed by statute upon a prescribed event, etc.
- If a person is under a disability or cannot be found, the Supreme Court may, on application by the strata corporation or any other person with a proper interest in the matter, dispense with any consent, approval or vote that would otherwise be required by the person. ← SEE S.45 (2)
- 1405 DEALING WITH PART OF A UNIT**
The Strata Titles Act provides that a unit holder may not enter into a dealing with part of a unit except as allowed by the Act. ← SEE S.44 (1) AND FLOWCHART IN APPENDIX C
- Part of a unit here includes a room or rooms in a unit, an area within a unit, a unit subsidiary or part of a unit subsidiary.
- Some dealings with part of a unit are permitted by the statute. E.g.,
- those to be effected by the amendment of a strata plan, such as a transfer of land between units/common property, ← SEE S.44 (1)(a)
 - the granting, surrendering or extinction of an easement. ← SEE S.44 (1)(b)
 - the granting by a unit holder of a lease or licence over part of a unit: ← SEE S.44 (2)(a) & (b)(i)
 - in a non residential scheme, or
 - where one or more of the units is a residential unit(s) the granting of a lease or licence to another unit holder (in the same scheme),without the consent of the strata corporation.
 - the granting by a unit holder, in a scheme comprising one or more residential units, of a lease or licence over part of a unit to a person other than a fellow unit holder, with the unanimous resolution of the strata corporation. ← SEE S.44 (2)(b)(ii)
- A dealing in contravention of the provision is void and no instrument purporting to give effect to the dealing may be lodged for registration. ← SEE S.44 (3)
- This means that responsibility for ensuring the dealing is not lodged, rests with the person certifying the document correct and the unit holder is guilty of an offence. ← SEE S.50 AND PARA 1423

STRATA FACTS

1406 NAME OF STRATA CORPORATION

Under the Strata titles Act the name of a strata corporation is prescribed as

← SEE S.18

"Strata Corporation No. Incorporated",

the blank space being the number of the deposited strata plan. The corporation must have a common seal showing the corporation name. An ACN number is not required as a strata corporation is established under a State Act.

Under the previous legislation, the name of a strata corporation was "Strata Plan No. Incorporated". The Strata Titles Act 1988 has changed the name of corporations formed under the previous legislation, however there is no obligation on a corporation to register the Change of Name on the certificate of title for the common property.

The Lands Titles Registration Office will reissue the title for the common property in the new corporation name whenever the duplicate certificate of title is produced to that office (usually due to a dealing). The corporation must then use the new name and replace the common seal.

1407 OFFICERS OF A STRATA CORPORATION

The Strata Titles Act requires the appointment of officers of a strata corporation. These persons will form the executive committee of the corporation.

← SEE S. 23

Required are:-

← SEE S.23(1)

- a Presiding Officer to preside at meetings of the corporation.
- a Secretary, and
- a Treasurer.

If one or more of the units in a scheme is a residential unit, officers of the corporation must be unit holders. If there are no residential units, a person other than a unit holder or a body corporate may be appointed an officer of the corporation.

← SEE S. 23(1a) AND
PARA 1408

Finding sufficient unit holders to fill the positions may prove to be difficult. The Act allows any two or more of the positions to be held simultaneously by the same person. However where no unit holder is prepared to act as an officer, application should be made to the Supreme Court for the appointment of an administrator.

← SEE S.23(2) AND
PARA 1417

Where a scheme is new and prior to the holding of the first general meeting of the corporation, the positions of officers will be held by the original proprietor, however if this is a body corporate, by its nominee or, in the absence of a nominee, by its secretary.

← SEE S.23(3)

Appointment of officers must be made at a general meeting of the corporation by a majority vote.

← SEE SS:23(4) AND
34(8)

None of the positions of officers must be allowed to remain vacant for more than six months.

← SEE S.23(5)

STRATA FACTS

MISCELLANEOUS PROVISIONS - CHAPTER 14

1407 A strata corporation may appoint or engage any person to assist an officer of the corporation. This means that a person appointed to assist can only carry out duties of a nature that is of assistance to the relevant officer. This does not include any duty that requires decision making. That is the duty of the strata corporation. E.g. a person (manager) may not assist the presiding officer by sitting in the chair at a meeting as this is a decision making process. Where there is no person capable or willing to act as an officer, a person (other than a unit holder) may, by appointment as administrator by the Supreme Court, perform the duties of the corporation or as otherwise directed by the court.

← SEE SS.23(6) AND 37 AND PARA 1417

1408 BODY CORPORATE MAY ACT AS OFFICER, ETC

Where a unit holder is a body corporate, the body corporate is eligible to hold the office of presiding officer, secretary or treasurer of the strata corporation or to be a member of a management committee.

← SEE S.44a(1)

If appointed to a position of officer or to the management committee, the body corporate may, by instrument in writing, appoint a person to act on its behalf in any matter that is conferred on them by virtue of the appointment.

← SEE S.44a(2)

Any person appointed must be a director, manager, secretary or other officer of the body corporate, unless-

← SEE S.44a (2a), (2b) (3) AND (4)

- at least one of the units is a residential unit.
- the body corporate is the SA Housing Trust, or
- is a body corporate prescribed by regulation to be exempt from this provision. At the time of writing no such regulation has been promulgated.

Any function performed by an appointee will be considered to have been performed by the body corporate. An appointment may be revoked at any time.

1409 FUNCTIONS OF A STRATA CORPORATION

The Strata Titles Act prescribes three functions (and responsibilities) of a strata corporation. Viz.,

- to administer and maintain the common property for the benefit of unit holders and to such extent as may be appropriate, other members of the strata community.

← SE S.25(a)

It must be remembered here that the common property will comprise most of the structure. It is clearly the responsibility of the corporation that all scheme buildings (and other structures) be maintained in good condition at all times. It is evident that many schemes are failing in this duty with the result that unit holders cannot afford to pay the cost of some repairs that arise. A well run strata corporation should maintain a maintenance fund, a sinking fund for other unexpected expenses and ensure the requirements of Sections 29a, 30 and 31 of the Act as regards building insurance and insurance against liability in tort are complied with.

- to administer all other property of the corporation. This will include all items of personal property and other real property of the corporation (if any)

← SEE S.25(b)

STRATA FACTS

- 1409 ■ to enforce the articles of the corporation. These are the rules of the corporation and designed to maintain a balance of harmony in the strata community. ← SEE S.25(c) AND PARA 1415
- 1410 GENERAL POWERS OF A STRATA CORPORATION**
The Strata Titles Act prescribes general powers which enable a strata corporation to carry out its functions. ← SEE S.26
Viz: A corporation may:
- 1. REAL PROPERTY MATTERS**
Acquire, deal with and dispose of real and personal property (including an interest in a unit) and rights in relation to real and personal property. This provision enables a corporation to purchase additional land (whether held as common property or not) or dispose of surplus land including common property. ← SEE S.26(1)(a)
 - 2. PURCHASE OF LAND**
Property can be acquired only if it is reasonably required for the purpose of the corporation or for the benefit of the strata community. A corporation may also acquire an interest in a unit provided it is within the site or is adjacent to the site. ← SEE S.26(2)

This does not imply that a strata corporation can use land for the purposes of making a profit. A strata corporation is not a company formed for the purpose of operating as a business nor is the common property intended to be used for that purpose. These restrictions should not be confused with the right of a unit holder to purchase additional land adjacent to the site for the purpose of conducting a business in association with a unit. ← SEE PARA 1422

A strata corporation may only acquire, deal with or dispose of land in pursuance of a unanimous resolution made at a duly convened general meeting of the corporation. ← SEE S.26(3) AND PARA 1418

If a strata corporation wishes additional adjacent land to be described as common property on the strata plan, the corporation may:
 - If the land acquired is an allotment within the meaning of the Real Property Act, use the amalgamation provisions of Part XIXAB of that Act, or
 - where the acquired land is not an allotment, use the land division provisions of Part XIXAB of the RPA to consolidate (and merge) the land with common property in the strata plan.
 - 3. DISPOSING OF LAND**
The Act provides that common property can only be sold if it no longer forms part of the site. This is achieved by excising the area from the strata plan by using the land division provisions of Part XIXAB of the Real Property Act. ← SEE S.26(5) AND PARA 1021 - WITHDRAWING A UNIT FROM A SCHEME
 - 4. DISTRIBUTION OF SURPLUS MONEYS**
Any money received from the sale of land (after paying costs of the sale and other associated expenses) must be paid into the funds of the corporation and used to meet any outstanding administrative expenses. Any surplus moneys may then be divided between the unit holder in proportion to the unit entitlements of their respective units. ← SEE S.26(6)

STRATA FACTS

MISCELLANEOUS PROVISIONS - CHAPTER 14

1410 5. DEALING WITH LAND

A strata corporation may, if authorised by special resolution at a duly convened general meeting, grant (by lease or licence) to any person (including a unit holder) an exclusive right to occupy part of the common property for a specified period. It is important to realise here that a development approval pursuant to the Development Act 1993 is necessary as there is a change in land use.

← SEE S.26(4)

6. USE OF COMMON SEAL

A strata corporation must have a common seal bearing the corporation name.

← SEE PARA 1406

The common seal of a strata corporation must be placed on any document executed by the corporation.

No signatory to the seal is necessary under the Act unless the articles of the strata corporation dictate otherwise. Incorporated may be abbreviated as "Inc".

The Lands Titles Registration will only accept a dealing with the old seal affixed while the common property title remains in the old name. A strata corporation should purchase a new seal as soon as the certificate of title for the common property is re-issued in the new name. Note that under the TATS conversion program, all common property titles are being converted in the new name. All existing paper titles will be automatically reissued in the TATS format when next produced for any reason.

← TATS MEANS
TORRENS
AUTOMATED TITLE
SYSTEM
(COMPUTERISED
TITLES)

7. MONETARY MATTERS

A strata corporation may:

- borrow money and obtain other forms of financial accommodation
- open and maintain accounts at banks, building societies and credit unions.
- invest money not immediately required for its purposes in investments in which trustees are authorised by statute to invest funds and any prescribed investment (none prescribed at the time of writing).

← SEE S.26(1)(b)

← SEE S.26(1)(c)

← SEE S.5 TRUSTEE
ACT 1936 AND
PARA 1422.2

8. OTHER MATTERS

A strata corporation may:

- enter into any kind of contract or arrangement.
- do anything reasonably incidental to its functions under the Strata Titles Act.
- purchase personal property if authorised by a majority resolution. The provisions of S.26 relating to unanimous resolutions refer only to real property (land).

← SEE S.26(1)(e) AND
PARA 1414

← SEE S.26(1)(f)

1411 EASEMENTS IMPLIED BY THE ACT

The Strata Titles Act creates easement rights that exist to the extent of the nature of the strata scheme between the units and between the units and common property.

These rights are created by the statute and cannot be changed by the corporation. They are intended to assist in maintaining harmony within a scheme and to prevent a person from obstructing another person from the reasonable installation of an item in a unit or to allow unit holders to exercise rights in relation to the lawful use of a unit.

E.g., The Act provides for:

- easements for support and shelter. This prevents a person from altering a structure in such a way as to undermine the structure or to cause weather to penetrate a structure to the detriment of the structure, another unit or common property. ← SEE S.9(a)
- easements allowing for the establishment and maintenance of pipes, ducts, cables and other equipment so that a unit may be: ← SEE S.9(b) AND ALSO S.42 UNIT HOLDER'S POWER OF ENTRY
 - supplied with water, gas, electricity, heating oil, or air conditioned air.
 - connected to a telephone or to a radio or television antenna. Note that this does not include the erection of an antenna. Unless large enough to be deemed a structure, this requires a majority resolution of the strata corporation.
 - connected to sewerage, garbage, drainage or other similar services. E.g., the right to put out a rubbish bin by access through another yard in times of inclement weather.

1412 ALTERATIONS AND ADDITIONS

The Strata Titles Act provides that a person cannot carry out prescribed work in relation to a unit unless he or she is authorised to do so by the strata corporation. ← SEE S.29(1) AND PARA 1413

Prescribed work means: ← SEE S.29 (6)

- the erection, alteration, demolition or removal of a building or structure,
- the alteration of the external appearance of a building or structure.

Chapter 10 of this manual discusses at length the procedures involved in amending a deposited strata plan as the result of an alteration or addition to the structure. Although the ultimate amendment of a plan requires the unanimous resolution of a strata corporation, the initial approval necessary for the work to be carried out must be:

- where the scheme is entirely comprised of non residential units, as provided by the articles of the corporation where the scheme is entirely comprised of non residential units, or ← SEE S.29(1)(a)
- where there is at least one residential unit, by special resolution. ← SEE S.29(1)(b)

STRATA FACTS

MISCELLANEOUS PROVISIONS - CHAPTER 14

1412 This causes confusion as, where the alteration or addition requires an alteration of the plan, the approval in the first instance might just as well be unanimous. To seek approval as a special resolution and to later ask for a unanimous resolution to amend the plan may not be given if a unit holder has not understood the nature of the amendment and the affect on his or her unit. The initial motion put to the strata corporation should be expressed in the fullest terms and include the unanimous approval to amend the plan and authorisation for the placement of the common seal on the relevant application.

If a person is in contravention of this provision, the strata corporation may require the person, by notice in writing to carry out specified work within a reasonable period to:

- remedy any structural deficiency caused by the work, or ← SEE S.29(2)(a)
- to restore the unit to its previous state. ← SEE S.29(2)(b)

1413 POWER TO ENFORCE DUTIES OF MAINTENANCE OR REPAIR

As part of its duty to ensure the structure is maintained in good condition at all times, a strata corporation may give notice in writing to a unit holder requiring that person:

← SEE S.28(1)(a)

- to carry out specified work in pursuance of a duty of maintenance or repair to a unit imposed by the articles.
Article 1 of Schedule 3 of the Act requires a unit holder to maintain the unit in good repair and to carry out any work ordered by a council or other public authority in respect of the unit and an occupier must keep a unit in a clean and tidy condition.
- to carry out specified work to remedy a breach of this act or the articles on the part of the unit holder or an occupier or former occupier of the unit. ← SEE S.28(1)(b)
- to carry out specified work required to be carried out on the unit by a public authority or council. ← SEE S.28(1)(c)

Specified work here means work of a nature set out in a notice served on a unit holder by a strata corporation or a council or other public authority.

If the unit holder fails to comply with the terms of the notice of the corporation within the specified time, a person or persons authorised by the corporation may, using such force as may be reasonably necessary in the circumstances, enter the unit and carry out the specified work.

← SEE S.28(2)

This power cannot be used unless the unit holder has been given reasonable notice of the proposed entry.

← SEE S.28(3)

Costs reasonably incurred by the corporation may be recovered as a debt from the unit holder.

← SEE S.28(4)

Where corporation costs have been recovered from a unit holder for work carried out and need for that work is attributable to another person, the unit holder has a right to recover those costs from that person.

← SEE S.28(5)

1414 CONTRACTUAL FORMALITIES

In support of its powers to deal with real and personal property, a strata corporation may enter into a contract. The contract must be entered into under the common seal of the corporation by an officer of the corporation or an agent authorised by the corporation to act on its behalf.

← SEE S.24 AND
PARA 1410.6

The nature of the dealing resulting from the contract will determine whether the authorization should be made pursuant to a unanimous, special or majority resolution.

1415 ARTICLES OF A STRATA CORPORATION

The articles of a strata corporation are the rules by which all members of the strata community must abide in order to maintain a harmonious state between members. Disputes arise in a scheme when a member of the strata community fails to comply with the articles or appear to (in the minds of other members) not comply with the articles. It is therefore of the utmost importance that all members of the community be aware of and understand the articles applicable to their particular scheme. The contents of Schedule 3 are not discussed here, but factors that may be of importance to a conveyance are as follows:

← SEE S.19

1. SCHEDULE 3 MAY BE CHANGED

The articles are set out in Schedule 3 of the Strata Titles Act 1988 as the first articles of the corporation. Although set initially by statute, they may be altered or substituted in any way to suit a particular strata scheme.

← SEE S.19(2)

Some schemes, such as industrial, commercial and recreational schemes, may find that the articles of Schedule 3 are not suitable and need to be changed or substituted. An ideal time to do this is immediately after deposit of the strata plan and the strata corporation is formed.

A strata corporation may by special resolution:

1. Adopt articles in substitution of those of Schedule 3.
2. Revoke or vary articles previously so adopted. This means that only articles made in substitution of those of Schedule 3 may be revoked or varied.

← SEE S.19(2)

2. CERTIFIED COPY OF RESOLUTION MUST BE LODGED WITH REGISTRAR-GENERAL

Any special resolution to amend the articles of a strata corporation have no effect unless an application, *Certificate Relating to the Amendment of the Articles of a Strata Corporation* (in the prescribed form) with a copy of the resolution attached, is lodged with the Registrar-General. Once received, the Lands Titles Registration Office will assign the application a number and note the fact that the articles have been amended on the strata plan deposited in that office. Any person wishing to determine whether the articles of a strata corporation have been amended need only search the deposited strata plan in the LTRO. The form of certification is prescribed in the Ninth Schedule of the Strata Titles Regulations 1988 and is reproduced in Appendix D to this Chapter.

3. ARTICLES MUST COMPLY WITH THE LAW

Any change to the articles must comply with the law. The articles cannot be changed to :

STRATA FACTS

MISCELLANEOUS PROVISIONS - CHAPTER 14

- 1415
- prevent or restrict alienation of a unit by a unit holder. ← SEE S.19.(4)(a)
 - prevent or restrict a unit holder from or leasing or granting rights of occupation in respect of a unit. ← SEE S.19(4)(b)
 - prevent an occupier of a unit who is blind or deaf from keeping a guide dog at the unit, or restrict the use of a guide dog by such a person. ← SEE S.19(4)(c)

1416 BINDING NATURE OF ARTICLES

The Articles of a strata corporation are, by statute, binding on:

1. The corporation ← SEE S.20(1)(a)
2. The unit holders ← SEE S.20(1)(b)
3. In respect of the use of a unit or common property, occupiers of a unit other than unit holders. ← SEE S.20(1)(c)

Enforcement of the articles on occupiers who are not unit holders, is the responsibility of the unit holder or, if applicable, a mortgagee in possession. ← SEE S.20(2)

1417 ADMINISTRATORS

Where a strata corporation is unable to appoint officers or where officers are unable to carry out the duties of office competently, the Supreme Court may, on application by:-

- a strata corporation ← SEE S.37.(1)(a)
- a creditor of a strata corporation ← SEE S.37.(1)(b)
- a person with an registered interest in a unit (which includes a unit owner), ← SEE S.37(1)(c)

appoint an a person to be administrator of the strata corporation. ← SEE S.37(1)

Similarly, the Court may remove or replace an administrator previously appointed.

During a period of appointment, an administrator has full and exclusive power to administer the affairs of the corporation. This includes any action that would otherwise require a unanimous or special resolution of the corporation. ← SEE S.37(2)

Other matters of interest are:

- An administrator must comply with any directions given by the Court from time to time ← SEE S.37(3)
- The Court will fix the remuneration of an administrator payable from corporation funds. ← SEE S.37.(5)
- An administrator may delegate his or her powers. Such delegation may be made of such conditions as the administrator determines, is revokable at will and does not derogate from the power of the administrator to act in any matter personally. ← SEE S.37(6)

STRATA FACTS

1417 An administrator must give notice of appointment, removal or replacement by the Court to the Registrar-General within 14 days of the appointment or removal/replacement. Forms of Notice of the Appointment of an Administrator and Notice of Person Ceasing to be the Administrator of a Corporation were prescribed in a notice to lodging parties No. 56 dated 14 September 1988 and are reproduced here in Appendix E to this Chapter. ← SEE S.37(7)

1418 DULY CONVENED MEETING

The decisions of a strata corporation, whether by unanimous, special or majority resolution must be made at a duly convened meeting. The purpose of this Para is to provide an understanding of the term.

A duly convened meeting is a meeting that complies with the requirements of Section 33 of the Strata Titles Act 1988.

1. WHO CAN CONVENE A MEETING

← SEE S.33(1)

A meeting of a strata corporation is called a *General Meeting* and may be convened by:

- the secretary ← SEE S.33(2)(a)
- if the corporation has a management committee, any two members of the committee ← SEE S.33(2)(b)
- the unit holders of one fifth of the total number of units: ← SEE S.33(2)(c)

or

- in the case of the first such meeting, the original registered proprietor. ← SEE S.(2)(d)

2. NOTICE TO BE GIVEN

← SEE S.33(3)

A meeting is convened by the conveners (in the Para above) by giving written notice of the day, time and place of the meeting to all unit holders at least 14 days before the date of the meeting.

3. SITE OF THE MEETING TO BE CONVENIENT

← SEE S.33(3a)

The conveners of a general meeting should take reasonable steps to ensure that the proposed meeting is held at a time, day and place that is reasonably convenient to a majority of members of the corporation. This provision is a recent insertion to prevent difficulties that arise from time to time. In one incident the owner of a majority of units in a scheme, informed the corporation that he had held a meeting, appointed himself as the officers of the corporation and that the next meeting would be held at his place of residence in Queensland.

4. THE ANNUAL GENERAL MEETING

← SEE S.33(4)

There must be at least one meeting in every calendar year, called the "Annual General Meeting and must be held no more than 15 months after the previous Annual General Meeting.

5. A QUORUM MUST BE PRESENT

← SEE S.33.(5)

No business may be transacted at a meeting unless a quorum is present. A quorum consists of persons entitled to exercise a vote in respect of at least one half of the units being present at the meeting at the appointed time.

STRATA FACTS

MISCELLANEOUS PROVISIONS - CHAPTER 14

- 1418.5 As actual presence is necessary, absentee votes and proxies are not counted for the purpose of determining whether a quorum is present. In other words, if there are 10 units in a scheme, 4 are represented in person and 1 proxy is present, a quorum is not formed.
- If a quorum is not present within one half of an hour after the appointed time, the unit holders present must appoint another day for the meeting being a day at least seven days but not more than 14 days away. The meeting then stands adjourned to that day at the same place and time. If a quorum is not formed within half an hour of the new time, the persons who are present and entitled to vote constitute a quorum. ← SEE S.33(6)
- It is important to note that the Act requires the Secretary to give reasonable notice of the day, place and time of the adjourned meeting, in writing, to all unit holders. ← SEE S.33(7)
- If the Presiding Officer is not present at a meeting, another unit holder must be chosen to preside at that meeting. ← SEE S.33(8)
- 6. PERSONS ENTITLED TO VOTE**
- At any general meeting of a strata corporation, one vote may be exercised in respect of each unit on any matter arising for decision. ← SEE S.34(1)
- A vote is exercisable by a unit holder or a proxy of the unit holder. ← SEE S.34.(3)(a)
- Where there are more than one unit holder representing a unit at a meeting, a vote is exercisable by any one of them in accordance of an agreement between them, or if a dispute as to who votes arises, the person first named on the certificate of title for that unit, has the vote. ← SEE S.34(3)(b)
- A unit holder may exercise an absentee vote on a proposed resolution by giving the Secretary written notice at least six hours prior to the time of the meeting. ← SEE S.34(4)
- Other matters of importance to voting rights are:
- a written ballot may be demanded by a unit holder or a proxy attending a meeting and taken in a manner determined by the Presiding Officer. ← SEE S.34(5) AND (6)
 - a vote is not exercisable for all except a unanimous resolution in respect of a unit unless all amounts due and payable to the strata corporation have been paid. ← SEE S.34(7)
 - any resolution, other than a special or unanimous resolution, must be determined by a majority of votes cast. A majority will be half of the number of votes cast plus one or where this forms a half vote, the number is rounded up to the next whole number. I.e., 6 out of 10, 7 out of 13, 25 out of 49, etc. ← SEE S.(34)(8)
- Where all of the units are non-residential, a strata corporation may, by unanimous resolution, adopt a voting system whereby the number of votes exercisable in respect of a unit is equivalent to the unit entitlements of that unit. ← SEE S.33(2)

1419 SERVICE OF DOCUMENTS

The Strata Titles Act provides that a document to be served on a strata corporation or a unit holder or occupant under this Act, or the articles, may be served personally or by post. Documents that could be served under this provision include: ← SEE S.49

- a form of instrument of proxy.
- an absentee vote.
- delivery of the duplicate certificate of title for the common property after registration of a dealing.
- Order of Court, ordering the cancellation of amendment of a strata plan.
- notices of rates and taxes
- application of person requiring the consent of a strata corporation.
- a summons of the Registrar-General pursuant to Section 60 of the Real Property Act 1886.
- statements from banks, building societies and credit unions, etc.
- notices of breach of articles
- etc.

← SEE S.49(2)

For the purposes of delivery and service to a strata corporation, the corporation is required to keep a letter box, with the name of the corporation clearly shown on it. In districts where there is no postal delivery to the site, the corporation is required to keep a post office box. Failure to provide a letter box is one of the most common faults of a strata developer. It is recommended that, where a separate letter box is not provided or it is an unreasonable expense to provide one, a movable name plate, bearing the corporation name, be attached to the letter box of the secretary.

A document may be served on the corporation, its secretary or treasurer, or a member of its management committee (if any) by placing it in the corporation letter box or by post addressed to the corporation or relevant officer at the postal address of the corporation. A notice cannot be directed to the office of a strata manager. ← SEE S. 49(3)

1420 DUTIES OF ORIGINAL REGISTERED PROPRIETOR

The Strata Titles Act provides that the original registered proprietor (the developer) of a strata scheme has duties to perform in relation to the scheme. The proprietor must:

- ensure that a general meeting of the corporation must be convened within three months after the sale of at least one of the units. If no units are sold, the proprietor of the units can transact business by making entries in the minute book or making application to the Registrar-General to amend the articles. ← SEE S.38(1) AND (2)
- place in the possession of the corporation,
 - the duplicate certificate of title for the common property,

STRATA FACTS

MISCELLANEOUS PROVISIONS - CHAPTER 14

- 1420
- a copy of all plans, drawings, specifications and reports in his or her possession relating to the design and construction of buildings and building improvements on the site. NOTE; This will allow strata corporations to determine, albeit years in the future, the boundaries of units. E.g. a false ceiling may have been added to a unit. The original ceiling height as approved by Council will remain as the unit boundary unless the strata plan deposited in the Lands Titles Office is altered by application for amendment, ← SEE S.38(3)
 - a copy of any other notice, order or document in his or her possession relating to the strata scheme of which the strata corporation will need to know in order to carry out its statutory functions.

The strata corporation should be aware that all items handed over by the original registered proprietor should be retained in safe keeping at all times. This is particularly so in the case of the duplicate certificate of title which is required to be produced to the Lands Titles Registration Office for the purpose of registering dealings with the common property, including the amendment of a strata plan and the cancellation of the scheme.

A person who fails to comply with this provision is guilty of an offence, Division 7 Fine. ← SEE PARA 1423

1421 POWER TO REQUIRE HANDING OVER OF PROPERTY

If a strata corporation is aware that a person is in possession of any record, key, or other property of the corporation, serve notice in writing to that person to deliver the item to the corporation on or before a specified time. A person who fails to comply with the notice is guilty of an offence. ← SEE S.39 AND PARA 1423

1422 A STRATA CORPORATION NOT UNDER CORPORATIONS LAW

1. ANNUAL RETURNS

A question commonly asked of the Lands Titles Registration Office is, "Does our strata corporation, being a company, have to lodge annual returns". **The answer is no!** A strata corporation is a company constituted under the Strata Titles Act 1988 (a State Act) and is not subject to Corporations law. There is no requirement in that law or under the Strata Titles Act to require a strata corporation to lodge annual returns with any authority.

2. TAX FILE NUMBERS

Although the Strata Titles Act provides that a corporation can invest money and deal in real estate, it does not provide for general speculation and profit making. Where moneys are invested to earn interest, a strata corporation must apply to the Taxation Office for a Tax File Number and lodge annual company income tax returns. Enquiries must be made to that office before proceeding with any investment.

3. EVIDENCE OF INCORPORATION

Occasionally, the Lands Titles Registration office is asked to produce a Certificate of Registration of a strata corporation to enable the corporation to open a bank account, register a motor vehicle, etc. A strata corporation, not being a company under Corporations law, does not benefit from the issue of a certificate of registration. Proof of existence of the corporation can usually be satisfied by explaining the information contained in this Para and production of a current copy of the certificate of title for the common property or a print of the strata plan.

1423 OFFENCES UNDER THE ACT

The Strata Titles act provides that an offence under the Act is a summary offence. ← SEE S.50(1)

Under the legislative changes to the courts system that came into effect in July 1992, summary offences are heard by the Magistrates Court of South Australia. The Strata Titles Act prescribes penalties where appropriate. Persons wishing to instigate an action pursuant to this provision is well advised to seek advice from a legal practitioner before proceeding. ← SEE S.50(2)

Proceedings for an offence may only be commenced with the written consent of the Attorney-General.

1424 RESOLUTIONS OF A STRATA CORPORATION

The performance of any of the various powers and functions bestowed on a strata corporation will require a decision to be made at a duly convened meeting of the corporation. The Strata Titles Act prescribes three different types of resolution required by the corporation, each for a different purpose.

These resolutions are:-

- a unanimous resolution
- a special resolution
- a consent, approval or any decision to be made by a corporation other than a unanimous or a special resolution

Persons who are entitled to vote are:-

- *Unit holders who attend a duly convened meeting.* Where there is more than one owner to a unit, a decision must be made between them as to who will cast the vote. Where a decision cannot be made, the Act provides that the person whose name first appears on the certificate of title for the unit will cast the vote.
- *A person holding a proxy of a unit holder.* The person must be present. If the unit holder is also present, the unit holder must cast the vote.
- *A unit holder exercising an absentee vote.* Where a unit holder cannot attend the meeting and cannot appoint a proxy, may submit to the secretary of the corporation, an absentee vote at least 6 hours before the set commencement time of the meeting.

Note: The Act does not provide a presiding officer with a casting or second vote, and the calculation of votes is made by rounding fraction of votes up.

Abstention from voting

An abstention occurs where a person entitled to vote attends the meeting and either:

- **refuses to vote either in favour or against** the issue, or
- receives a notice setting out the terms of the resolution at least 14 days prior to the meeting and **fails to attend, send a proxy vote or absentee vote.**

Note: Where a person is not sent a notice as required by the Act and that person fails to attend or otherwise vote, such failure is not an abstention and a unanimous resolution cannot be made as the requirements of the Act have not been complied with.

← SEE SS. 33 & 34 STRATA RIGHTS AND PARA 1418 RE MEETINGS

STRATA FACTS

MISCELLANEOUS PROVISIONS - CHAPTER 14

1424 THE RESOLUTIONS

The following discussion defines each resolution and sets out to give a list of uses of each. These lists are as comprehensive as possible, but may not be complete.

1. UNANIMOUS RESOLUTION

A unanimous Resolution is defined in the Act as:-

"unanimous resolution in relation to a strata corporation means a special resolution passed without any dissentient vote at a general meeting of the corporation"

← SEE S.3
Interpretation
Clause STA

Thus a vote representative of all units must be cast in favour of the resolution. The only vote that can be excluded from the count is an abstention.

Votes counted must include all proxy and absentee votes.

Unfinancial corporation members can vote.

E.g. Unanimous resolution
If there are 20 units, and:

- 10 unit holders entitled to vote attend,
 - 7 proxy votes are received,
 - 1 absentee vote is received, and
 - 2 unit holders abstain, (fail to attend or otherwise do not vote)
- and 18 votes are made in favour of the issue,
the vote is unanimous.

If the resolution is lost but there are sufficient votes for a special resolution, a unit holder who voted in favour of the resolution may apply to the Supreme Court for the resolution to be declared sufficient to authorise the particular issue. Application is made pursuant to Section 46 of the Strata Titles Act, 1988 and will require the services of a solicitor.

2. SPECIAL RESOLUTION

A special resolution is defined in the Act as:-

Special Resolution means:-

"in relation to a strata corporation means a resolution as to which the following conditions are satisfied-

- (a) *at least 14 days written notice, setting out the terms of the proposed resolution, is given to the unit holders;*
- (b) *the resolution is supported at a duly convened general meeting of the strata corporation by a number of votes equal to, or exceeding, two-thirds of the total number of votes that could be exercised at a general meeting of the corporation assuming that all unit holders attended and exercised their right to vote."*

← SEE S.3
Interpretation
Clause STA

Unfinancial corporation members cannot vote.

Dissentient votes count against the resolution, however, votes for the resolution totalling $\frac{2}{3}$ or more of the total number of persons entitled to vote will decide the resolution in the affirmative.

1424 E.g. of Special Resolution.

If there are 20 units and:-

- 10 unit holder entitled to vote are present,
- 6 proxy votes are present.
- 1 absentee vote received.
- 3 voters abstain.

There are 17 votes entitled to be counted. If $\frac{2}{3}$ of the votes or more are in favour, the resolution is passed.

When calculating a $\frac{2}{3}$ majority, fractions must be rounded up. Hence $\frac{2}{3}$ of 20 is 14 ($13\frac{1}{3}$) for the purpose of determining a majority for a special resolution.

3. CONSENT OF A STRATA CORPORATION

Consent of a corporation means a majority vote of the persons entitled to vote and are present at a meeting or represented by a proxy or have submitted an absentee vote.

A majority decision is made when at least $\frac{1}{2}$ of the votes cast are in favour of the resolution. The vote is counted from the persons attending (including proxy and absentee votes) provided the meeting is duly convened as defined in the Act.

← SEE S.33 & PARA 1418

The Act provides:-

"A decision supported by the majority of votes cast at a duly convened meeting of the corporation will be taken to be a decision of the corporation (unless a special or unanimous resolution is required)".

← SEE S.34(8)

Proxy and absentee votes are counted.

It is important to note that, other than absentee and proxy votes, a majority vote is counted from the unit holders entitled to vote who are present, provided that a legal quorum is achieved.

E.g.

If there are 20 units and:

- 8 unit holders are present,
- 3 proxy votes attend.
- 0 absentee votes received
- 7 voters fail to attend and therefore abstain.

The total number of votes that may be cast is 11, insufficient for a special or unanimous resolution.

A consent is gained if 6 votes are cast in favour of the resolution. E.g., $11/2 = 5.5$ or 6 (rounded up).

STRATA FACTS

MISCELLANEOUS PROVISIONS - CHAPTER 14

1425 PURPOSE OF RESOLUTIONS

1. UNANIMOUS RESOLUTION

To amend a strata plan. An application to amend a strata plan as regards unit, common property boundaries or unit entitlements must be executed pursuant to a unanimous resolution of the strata corporation. Boundaries will most likely change as a result of a structural addition or alteration to a unit. ← SEE CHAPTER 10

To change unit entitlements for any reason. Unit entitlements are likely to be amended as a result of a revaluation of the units or due to an alteration or addition to a unit. ← SEE CHAPTER 10

Amalgamation of adjacent strata schemes will require a unanimous resolution of each strata scheme involved ← SEE CHAPTER 11

Purchase of real and personal property. A strata corporation may acquire real or personal property. In the case of real property (land or an interest in land such as an easement) the corporation may:- ← SEE S.26 STA

- buy additional land (whether that land is to be held as common property or not).
- deal with common property or other land owned by the corporation or dispose of common property
- sell land. If common property, land division will be required.
- lease or license a unit holder to occupy part of the common property for a specified period. This will include the right to park a car in corporation carparks. However, extreme care will need to be taken to ensure that such carparks are not designated as visitor carparks or were otherwise approved by the council as visitor carparks. In these cases, the lease or license over any of them will be an offence against the Planning Act 1982. The advice of the council will need to be sought in this regard.
- cancel the scheme if required, change to another system of tenure such as a party wall right scheme. Cancellation will be necessary if the scheme ceases to exist through destruction or damage beyond repair.

Monetary matters. A strata corporation may:-

■ distribute to unit holders any surplus moneys after the sale of land. this money must first be used to pay costs of the sale and any other outstanding administrative expenses. Any balance may be distributed to unit holders in proportion of unit entitlements. ← SEE SS.26,27 STA

■ levy funds or alter contributions to funds by means other than in proportion to unit entitlements. ← SEE S.27(3)

Voting system

■ change the system of voting rights from one vote per unit to one vote per number of unit entitlement in a non-residential scheme. ← SEE S.34 STA

1425 **Dealing with part of a unit.** This includes leasing/licensing a person to occupy a unit, use of a carport, garage, etc.

- in a residential scheme (one where there is at least one unit used as a residence) a unit holder may lease or license the use of part of a unit to another unit holder in the same scheme without any corporation approval. However, where the intention is to lease or licence a person to occupy part of a unit (e.g., a unit subsidiary) to a person other than a fellow unit owner, a unanimous resolution is required ← SEE S. 44 (1) STA
- any other dealing with part of a unit is unlawful except where that dealing is for the purpose of amending a strata plan (such as an agreement to purchase land from the corporation by a unit holder), the granting, surrendering, variation or extinction of an easement. In a non residential scheme, no approval is required to lease of licence part of a unit to any person. ← SEE S.44 (1) STA

NOTE: An administrator duly appointed by the court may be have full and exclusive power to do anything for which a unanimous resolution is otherwise required ← SEE S.37

2. SPECIAL RESOLUTION

Changing the articles of a strata corporation. A strata corporation is at liberty to change the articles of the corporation at any time provided the change is not contrary to the Strata Titles Act or any other law of the land. On deposit of a strata plan, the articles set out in Schedule 3 of the Strata Titles Act become the rules of the corporation. Articles can be revoked, added to, altered or substituted. ← SEE PARA 1415

Any change made is void until lodged with the Lands Titles Office. The fact that a change has been made is recorded on the strata plan. The absence of any notation on the plan means that the articles set out in Schedule 3 are the rules of the corporation.

Make alterations and additions that do not alter a unit or common property boundary or unit entitlements. ← SEE PARA 1412

Alteration of the external appearance of any part of the building or structure means:- ← SEE S.29 (6)

- paint or clad the structure or any part thereof
- grow creepers and vines over the building (but not over a pergola or gazebo which has an implied garden use)
- replacement of doors and windows for non maintenance purposes only
- addition of awnings and outside blinds
- etc., etc.

Duty to insure against liability

It is mandatory for a strata corporation to keep itself insured against liability in tort and to insure the structure(s) of the scheme for full replacement value. ← SEE S.31 STA

STRATA FACTS

MISCELLANEOUS PROVISIONS - CHAPTER 14

1425.2 Where required by special resolution, a Strata Corporation must keep itself insured against any liability other than tort.

Liability in tort includes injury or harm to a person or personal property caused by the corporation not taking reasonable care. Eg, slippery foot path, falling limb causing injury or damage to personal property, unsafe ladder, faulty gas bottle, etc, etc)

Liability other than tort includes, depending on the nature of the scheme, insurance against:- ← SEE S.31 STA

- breach of a contract
- mechanical failure of a machine (lift, etc)
- theft of chattels (moveable articles such as lawn mowers, barbecue kettles, rubbish bins, etc, etc)
- comprehensive vehicle insurance
- etc., etc.

3. CONSENT OF A STRATA CORPORATION

The consent of a strata corporation is required to :-

- levy contributions to funds as the corporation thinks necessary (including future capital works) and determined by unit entitlements. ← SEE S.27 (2)
- establish new, or alter existing, accounts for meeting administrative expenses. ← SEE S.26
- borrow money, and levy contribution where not in accordance with unit entitlements. ← SEE S.26
- invest money. Accounts may be held in banks, building societies and credit unions. ← SEE S.26
- fix rate of interest for unpaid contributions from a current owner ← SEE S.27 (4)
- recover cost of work that substantially benefits a unit or group of units from the owners of that unit or units. ← SEE S.27 (5)
- require a unit holder to carry out specified maintenance on a unit. Recover costs of maintenance carried out by the corporation to a unit. ← SEE S.28
- appoint a management committee. ← SEE S.35
- require a person, by notice in writing, to hand over any record, key or other property of the corporation in their possession on or before a specified time. ← SEE S.39
- appoint officers. Eg. Presiding Officer, Secretary and Treasurer. ← SEE S.23
- appoint any person, who need not be a unit holder, to assist an officer of the corporation and to dismiss that person. ← SEE S.26 (3)

STRATA FACTS

- 1425.3 ■ give consent for the keeping of any animal in or in the vicinity of a unit. This is intending to pick up any animal that could be regarded as a source of nuisance to other members of the strata community, such as cats, dogs and noisy birds. ← SEE SCHED. 3 ARTICLE 4
- authorise a unit holder or occupier to use part of the common property as a garden (including the placement of pot plants on common property) ← SEE SCHED. 3 ARTICLE 6
- authorise a unit holder or occupier to maintain common property (including any lawn, garden, tree, shrub, plant or flower on the common property). ← SEE SCHED. 3 ARTICLE 6
- erect a display sign etc., on part of a unit so as to be visible from outside the building or on any part of the common property. This includes a "for sale" sign. ← SEE SCHED. 3 ARTICLE 8
- authorise the occupier of a residential unit to store explosive or other dangerous goods in a unit or on common property. ← SEE SCHED. 3 ARTICLE 10
- erection of TV antennae in the roof of the structure ← SEE S.29
- distribute surplus funds (after the sale of real estate) in accordance with unit entitlements. ← SEE S.26 (6)
- take action to prevent undue noise or nuisance by unit holders, clients and visitors, etc in units or on common property. ← SEE SCHED. 3 ARTICLE 2
- Note:* No consent of a strata corporation is required to paint, cover or in any other way decorate the inside of any building forming part of a unit and may, provided that unreasonable damage is not caused to any common property, fix locks, catches, screens, hooks and other similar items to that building. ← SEE SCHED. 3 ARTICLE 9

STRATA FACTS

MISCELLANEOUS PROVISIONS - CHAPTER 14

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APPENDIX A

REQUEST TO DISPENSE WITH THE CONSENT OF A PERSON WHOSE WHEREABOUTS IS UNKNOWN

(PURSUANT TO S.17a OF THE STRATA TITLES ACT 1988)

To the Registrar-General,

I/We, (insert name(s) address(es) of applicants) making application to you for (insert nature of application) hereby request you to proceed with the said application without the consent of (insert name(s), last known address(es) whose consent is required as (insert nature of interest of person [mortgagee, registered proprietor of land encroached upon, etc) in respect of the land in Certificate(s) of Title Register Book Volume Folio and production* of that/those Certificate(s) of Title, mortgage, etc.

In support of this application I/We solemnly and sincerely declare that I/We have:

- (1) Made reasonable enquiries to ascertain the whereabouts of the said (insert name(s) in person(s)) without success as supported by the evidence attached hereto.
- (2) Complied with the provisions of Section 17a (2) of the Strata Titles Act 1988. A copy of the Form of the 10th Schedule as posted is attached hereto.

and

- (3) Twenty Eight (28) days have elapsed since the I/We complied with the provisions of S.17a (2) of the Strata Titles Act 1988.
- (4)** Placed a notice in a conspicuous place on/near the site over which the encroachment has occurred.

and

- (5) No objection has been lodged by the person or any other person claiming to be a successor of the person.

[* Delete if inapplicable - See note in Para 1402]

[** Delete if inapplicable]

And I/We make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1936

Dated the day of 19.....

Declared and subscribed at
 by the said

 this day of
 19 before me
 JP, etc.

}

NOTE: PROOF OF SIGNATURES IS NOT REQUIRED

STRATA FACTS

APPENDIX B

NOTICE OF INTENTION TO APPLY TO REGISTRAR-GENERAL TO DEPOSIT STRATA PLAN OR AMEND STRATA PLAN

Section 17a (2)(a)

To..... of
(name of person to whom this notice is given) (address of person to whom this notice is given)

Re:
(description of the interest in land described below of the person to whom this notice is given)

*I/We of
.....
.....
.....
(name of each person giving this notice) (address of each person giving this notice)

hereby notify you that-

1. I/We intend to make application to the Registrar-General under Division of the Strata Titles Act 1988 in respect of the land comprised on Certificate(s) of Title Register Book Volume Folio
.....
2. Your consent to
.....
(give particulars of the application or related matter to which consent is required)

is required and hereby sought to enable *deposit/amendment of the Strata Plan for the land described below.

3. If you intend to refuse that consent and you fail to lodge an objection with the Registrar-General within 28 days from the date on which this notice is-
 - (a) posted to you:
and
 - (b) published in a newspaper circulating generally throughout the State:
**and
 - ** (c) left on or near the land over which the encroachment has occurred,

whichever occurs last, Section 17a of the Strata Titles Act 1988 empowers the Registrar-General to proceed with the application to *deposit/amend the Strata Plan without your consent and your consent will, by law, be taken to have been given.

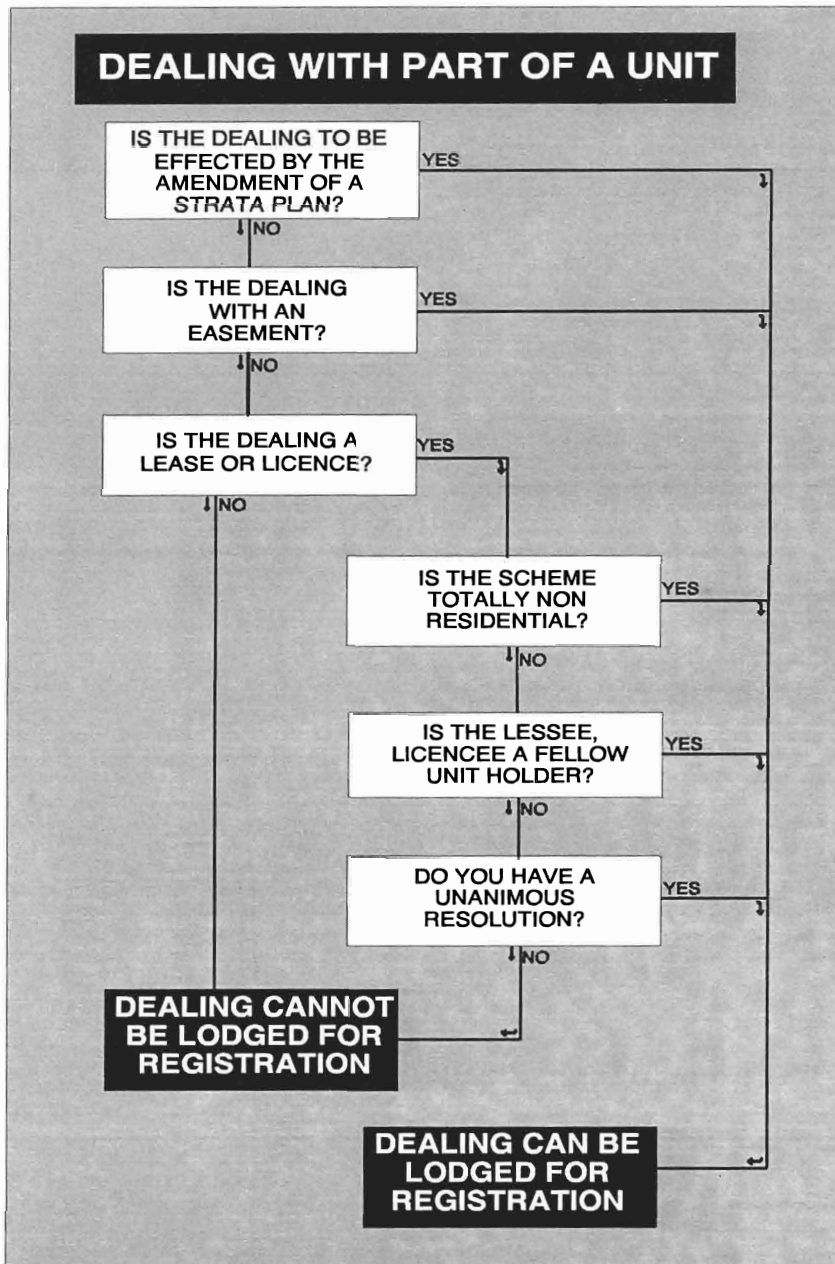
Dated this day of 19

.....
(signature of person(s) giving notice)

(* strike out whichever is inapplicable)
(** strike out if no encroachment is involved)

STRATA FACTS

APPENDIX C



STRATA FACTS

Type into Panel Form B2 or B3

APPENDIX D

NINTH SCHEDULE

Certificate Relating to the Amendment of the Articles of a Strata Corporation

Strata Corporation No. Incorporated

I, of
being an officer of the Strata Corporation No. Incorporated, certify that the attached resolution is a true and correct copy of a special resolution amending the articles of the corporation passed at a duly convened meeting of the corporation on the day of 19..... .

Dated the day of 19

Note: This certificate must be accompanied by any new articles, or variation to existing articles, passed by the corporation pursuant to the special resolution.

STRATA FACTS

MISCELLANEOUS PROVISIONS - CHAPTER 14

APPENDIX E

Type into panel Form B2

STRATA TITLES ACT 1988

NOTICE OF THE APPOINTMENT OF AN ADMINISTRATOR

To the Registrar-General,

re Strata Corporation No. Incorporated

I.....of.....
hereby give notice that on the day of 19,
the Supreme Court of South Australia appointed me administrator of the above mentioned Corporation.
An office copy of the Order of Supreme Court dated the day of
..... 19 effecting such appointment is attached hereto.

Dated the day of 19

.....
Administrator

Type into Panel Form B2

STRATA TITLES ACT 1988

NOTICE OF PERSON CEASING TO BE THE ADMINISTRATOR OF A CORPORATION

To the Registrar-General

re Strata Corporation No. Incorporated.

I.....of.....
hereby give notice that on the day of 19,
I ceased to be administrator of the abovementioned Corporation. An office copy of the Order of the Supreme
Court removing/replacing me from the said office is attached hereto.

Dated the day of 19

.....
Former Administrator

Note applicable to both forms:

Both instruments must be certified correct by a Solicitor, Licensed Land Broker or the Applicant. An entry of either notice will be made on the original Certificate of Title for the Common Property only. The duplicate CT need not be produced.