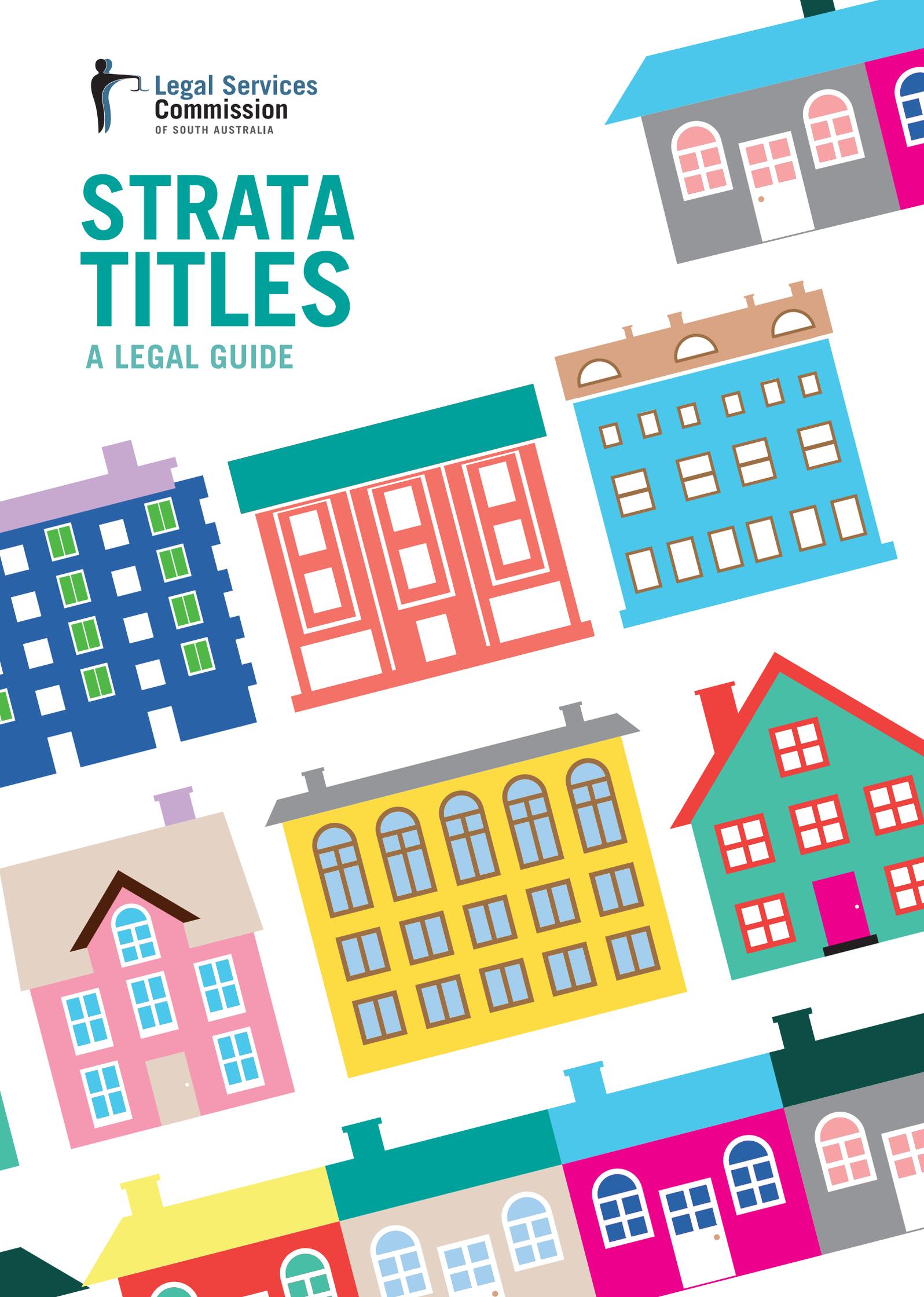




**Legal Services
Commission**
OF SOUTH AUSTRALIA

STRATA TITLES

A LEGAL GUIDE



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Strata Titles

A Legal Guide

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Strata Titles

Important things to consider

This booklet is about residential strata titles. If you are planning to buy a strata titled property, there are some important legal matters that you should know.

Community living offers some benefits but it does not suit everyone. Before you buy a unit, think carefully about what is involved. You will be living in close proximity to others, possibly sharing walls and some facilities.

Each group, no matter how big or small, has a corporation, which is a legal entity like a company. All owners are automatically members of their corporation and are bound by the rules of their corporation.

The corporation is responsible for the maintenance and repairs of the common areas.

There is no government agency to oversee the management of strata titles or to resolve disputes. If a dispute cannot be resolved by negotiation or mediation, an application may have to be made to the Magistrates Court to decide the matter.

Buying a Strata Title

Anyone thinking of buying into a strata scheme should, before signing a contract, make sure they understand the operations and finances of the particular corporation.

On application by an owner or potential buyer, a corporation must provide information on the following:

1. How much money must be paid for the upkeep, maintenance and management of the common areas, including money already owed.
2. Assets and liabilities of the corporation.
3. Details of any expenses incurred or about to be incurred by the corporation, such as painting or gutter replacement.
4. Copies of minutes of general meetings and management committee meetings for the last two years.
5. Statements of accounts and financial records of the corporation.
6. Articles or by-laws of the corporation currently in force.
7. Current insurance policies.

The corporation may charge a fee for providing copies of this information.

Checklist

Before you buy a unit or lot, ask yourself these questions:

- ➔ Have I read the articles or rules and sought independent advice about these?
- ➔ What system does the corporation have for resolving disputes?
- ➔ What are the rules about having other people visiting and parking?
- ➔ Are there any unpaid contributions owing on my unit?
- ➔ How do the contributions and other charges compare with similar corporations?
- ➔ Is there a sinking fund or reserve of money held by the corporation for emergency expenses and major maintenance costs such as painting?
- ➔ Will the unit, building or site be accessible if I am disabled and require a wheelchair or walking aid? If not, can suitable modifications be made easily?
- ➔ What maintenance services are provided and what are the charges for these?
- ➔ What are the restrictions on the use of my unit and the common property?
- ➔ Can I store my caravan/boat/bicycle?
- ➔ Are pets permitted?
- ➔ Is the corporation planning any major expenditure that I may be asked to contribute to?
- ➔ Are there any structural problems in the building?
- ➔ Have I seen a copy of the plan that defines my unit?
- ➔ Do the boundaries of the unit match the boundaries shown on the plan?

Strata titles

A strata title is created by the division of land into separate units (at least two) plus common property. The boundaries of a unit are defined by the structural divisions in a building, not by the land.



The law concerning residential strata titles is contained in the Strata Titles Act 1988 (SA), the Strata Titles Regulations 2003 (SA), and the common law. All references to legislation and regulations in this booklet are to the Strata Titles Act 1988 (SA) and the Strata Titles Regulations 2003 (SA).

Since 1 June 2009, it has not been possible to deposit new strata plans under the Act. New divisions now use the Community Titles Act 1996 (SA). Strata corporations existing at 1 June 2009 were not affected by the change and are still regulated under the Strata Titles Act.

The Strata Corporation

Every strata title property has its own strata corporation. The role of a strata corporation is to administer and maintain the common property for the benefit of all unit owners, to administer all other property of the corporation, and to enforce the articles of the strata corporation [s 25].

All unit owners are automatically members of the corporation [s 18(4)], but tenants are not.

Note that unit owners are guarantors of their corporation's liabilities (obligations), which means the corporation's debts can be enforced against each of the unit owners directly [s 21(1)].

The corporation must have a common seal [s 18(3)], which must be used on relevant documentation lodged with the Lands Titles Office to amend a strata plan where a unanimous resolution is required.

The strata corporation can delegate some or all of its functions to a management committee and may appoint a strata manager or other agent to assist with the management of the corporation.

The articles are the rules of the strata corporation. The corporation can make rules which are binding on the corporation, unit owners and tenants about the use of common property and the units [ss 19, 20], providing that the rules do not contravene the Act or other laws. Schedule 3 of the Act sets out the model articles for all strata corporations. A strata corporation can adopt their own articles or vary the existing articles (See [Articles](#)).

COMMON PROPERTY

The common property is held by the strata corporation in trust for all the unit owners [s 10]. It is the responsibility of the corporation to maintain the common property [s 25(a)] while it is the responsibility of individual unit owners to maintain what is not common property, that is, to maintain their own units [article 1, Strata Corporation Articles]. For example, a unit owner is not required to clean the gutter attached to their unit; this is the corporation's responsibility.

What is common property?

The question of what is and what is not common property is a difficult issue, and can cause many disputes. Generally speaking, common property is any land or space that is not within a unit [s 5(6)]. Unless a particular strata plan indicates otherwise, the boundary of a unit is the internal surface of the walls, floors and ceilings [s 5(5)]. In most strata corporations, the roof, guttering, external walls and foundations are common property. Internal walls are the owner's responsibility.

Common property also includes [s 5(6)]:

- any pipe, cable, wire, duct or drain that is not for the exclusive use of a unit (any that service only one unit are considered part of that unit, not common property)
- any structure that is not for the exclusive use of a unit installed before the deposit of the strata plan
- any structure installed by a strata corporation as part of the common property
- any other structure on the site committed to the care of a strata corporation as part of the common property.

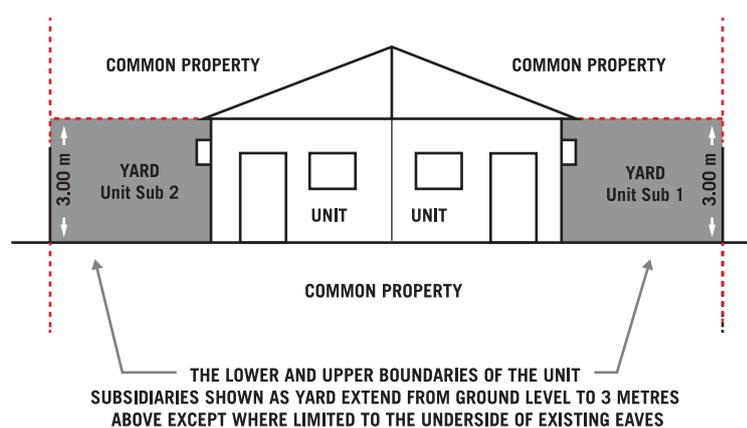
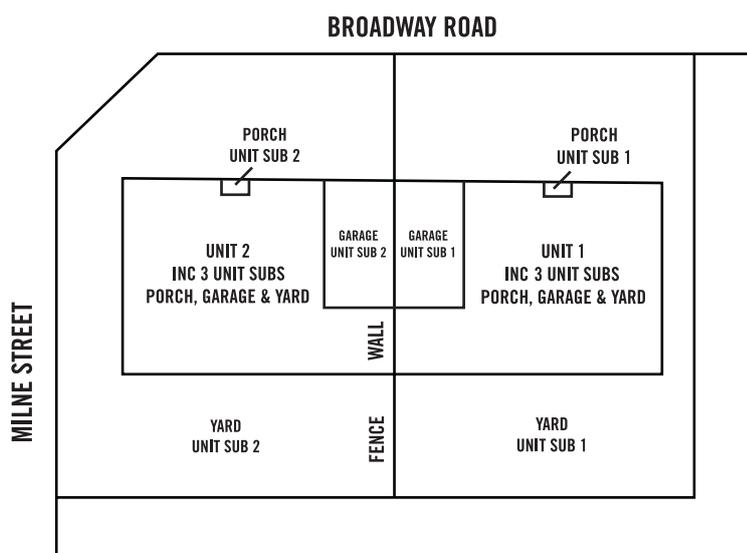
In older strata plans that were deposited before 1 September 1988 the unit boundary was defined as midway between the surfaces of walls, floors and ceilings. In those older plans this definition continues today, unless it has been changed by an amendment to the strata plan. Legal advice may be necessary to work out the correct boundaries of strata plans in place before 1 September 1988.

A unit may also include an area defined on the unit plan as a 'unit subsidiary', which is not common property but an area for the exclusive use of a particular unit, for example a carport or yard [s 5(4)(e)]. Unless the strata plan states otherwise, a wall or fence between a building that forms part of a unit and a unit subsidiary to that unit is part of the common property [s 5(7)].

Unit and Common Property boundaries explained

Any area shown on a Strata Plan that is not labelled as a Unit or a Unit Subsidiary is considered 'Common Property'. In the plan example adjacent, the walls and building structure is Common Property and the Unit Subsidiaries shown as "Yard" extend in height to 3 metres above the ground level.

Strata Plan example showing unit boundaries and subsidiaries



POWERS OF THE STRATA CORPORATION

Some of the powers of the strata corporation are to:

- borrow money, maintain bank accounts and invest surplus funds [s 26(1)(b), (c), (d)]
- enter into contracts [s 26(1)(e)] (see [Contracts](#) below)
- levy maintenance payments against unit owners [s 27(2)] (see [Contributions](#) below)
- require a unit owner to carry out necessary work, such as internal plumbing repairs [s 28] (see [Maintenance and repairs](#) below)
- do anything reasonable to enable it to fulfil its functions under the Act [s 26(1)(f)].

Contracts

The strata corporation may enter into any kind of contract [s 26(1)(e)]. It may do so either by using its common seal, or by authorising an officer of the corporation or an agent (such as a strata manager) to do so on its behalf [s 24].

Contributions

The corporation raises funds by levying contributions against all unit owners, in accordance with an ordinary resolution passed at a general meeting [s 27(2)]. The amount that each unit owner contributes to funds is normally calculated according to the 'unit entitlement' set out in the strata plan [s 27(3)(a)]. Put simply, a unit entitlement is the portion, or ratio, of the capital value of a unit as against the sum of the capital values of all the units [s 6]. The corporation may, by unanimous resolution, determine that contributions are paid on some other basis [s 27(3)(b)].

The corporation may, by an ordinary resolution at a general meeting, allow contributions to be paid in instalments [s 27(4)(a)].

If contributions are not paid, they are recoverable as a debt [s 27(5)]; the corporation can sue the unit owner for the money.

Interest may be charged by the corporation on contributions or instalments owing, this is done by ordinary resolution [s 27(4)(b)]. The amount of interest charged may not be more than 15% per year, and interest cannot be charged on unpaid interest [reg 8A].

Maintenance and repairs - entry to premises

The corporation's articles will usually include a responsibility on a unit owner to maintain and repair their unit. If a unit owner does not, the strata corporation may give a unit owner written notice requiring them to carry out specific work by a certain time. If the work is not done in the set time, the strata corporation may authorise workers to enter the unit to do the work. This can only happen after the corporation gives at least two days notice in writing to both the unit owner and the occupier (for example, any tenant), This can be done even if the breach was by a former unit holder, an occupier (tenant) or former occupier [ss 28(1), (2), (3)].

Similarly, the corporation may require and enforce work on a unit to remedy a breach of the Act or the articles even if the breach was by a former unit owner, an occupier (tenant) or former occupier [s 28(1)].

If an officer of the corporation or a person authorised by the corporation (such as a strata manager) is satisfied that urgent action is necessary to prevent a risk of death, injury or significant damage to property, the officer or

authorised person can, after giving whatever notice (if any) to the unit owner and occupier they consider reasonable in the circumstances, authorise entry to a unit for the performance of work reasonably necessary to deal with the risk. To enter the unit, such force as is reasonably necessary may be used. [s 28(3a), (3b)]

The individual unit owner is liable to the corporation for the reasonable cost of work done [s 28(4)]. If the need for the work arose because of someone else, for example a tenant or previous owner, the unit owner can recover the cost as a debt from that person [s 28(5)].

Return of property

A strata corporation may require anyone in possession of any record, key, or other property of the corporation to return it to an officer of the corporation by a specified time. The person in possession of the property must be given written notice to return the property, and the person it must be given to must be stated in the notice[s 39].

INSURANCE

A strata corporation must have building insurance [s 30] and public liability insurance [s 31]. A strata corporation with an administrative or sinking fund must have fidelity guarantee insurance from 27 October 2014 [reg 9(2)(b)], s 31(2a)]. It may also, by special resolution, decide to insure against other potential liabilities, for example, office bearer liability.

A unit owner, a mortgagee of a unit or a potential buyer or mortgagee of a unit may, by contacting the secretary of the strata corporation, request to see any or all of the insurance policies currently held by the corporation [s 32].

Building insurance

The strata corporation must insure buildings and building improvements to replacement value [s 30], which includes any costs associated with replacement, such as demolition, surveying, architectural or engineering work. The insurance must cover damage caused by the events, apart from subsidence (sinking ground movement), listed in regulation 10 Insurance Contracts Regulations 1985 (Cth) [s 30(3)]. A corporation cannot allow each unit owner to take out their own individual building insurance.

The corporation's building insurance will not cover the contents of a unit, so occupiers may need to take out their own contents and public liability insurance. The provisions of both policies should be checked to ensure there are no items left unprotected, such as a carport.

Public liability insurance

The strata corporation must have public liability insurance for an amount specified in the regulations, currently at least \$10 million [s 31, reg 9].

Fidelity guarantee insurance

A strata corporation with an administrative or sinking fund [reg 9(2)(b)] must have fidelity guarantee insurance [s 31(2a)] from 27 October 2014. A policy of fidelity guarantee insurance covers the risk of theft or fraud of the corporation's funds by any person authorised to handle the corporation's funds, including a manager. Although the requirement to have fidelity guarantee insurance is a new requirement from 27 October 2014, a strata corporation may already have fidelity guarantee cover included with its building insurance policy. The insurance cover must be for the amount of the maximum total balance of the corporation's bank accounts at any time in the preceding three years, or \$50 000, whichever is higher [reg 9(2)].

OFFICERS OF THE STRATA CORPORATION

At all times a strata corporation must have a presiding officer, a secretary and a treasurer who are appointed at a general meeting. These officers must be unit owners but one person may hold two or more of these positions. The strata corporation commits an offence if any of these positions is allowed to remain vacant for more than six months [s 23]. A strata manager can assist in running the affairs of the corporation.

Secretary

The secretary of a strata corporation has the following functions [reg 25]:

- to prepare and distribute minutes of meetings of the corporation
- to submit a motion for confirmation of the minutes of any meeting of the corporation at the next meeting of the corporation
- to give the notices required to be given under the Act by the members of the corporation and the management committee
- to answer communications addressed to the corporation
- to convene meetings of the management committee
- to deal with administrative and secretarial matters for the corporation and the management committee.

Treasurer

The treasurer of a strata corporation has the following functions [reg 25]:

- to notify unit owners of any contributions to be raised from them in accordance with the Act
- to receive, acknowledge, bank and account for any money paid to the corporation
- to keep accounting records and prepare financial statements.

RECORDS

The strata corporation has a responsibility to maintain proper records. It must keep:

- a register of the names of the unit owners (showing the unit owner's last contact address, telephone number and email address known to the corporation, and the unit owner's unit entitlement) for 7 years [s 39A, reg 23]
- minutes of meetings (both general meetings [s 40] and management committee meetings [s 35(8)]) for 30 years [reg 10]
- accounting records relating to receipts and expenditure (of both the corporation [s 40] and the management committee [s 35(8)]) for 7 years [reg 10]
- notices and orders served on the corporation for 7 years [s 40, reg 10]
- copies of correspondence received or sent by the corporation for 7 years [reg 10]
- notices of meetings of the corporation and its management committee for 7 years [reg 10]
- the duplicate certificate of title for the common property of the strata corporation for the life of the strata corporation [reg 10]
- documents received by the strata corporation from the original registered proprietor under s 38(3)(b) and (c) for 30 years [reg 10].
- A strata corporation must ensure that a statement of accounts is prepared for each accounting period [s 40], and must keep each statements of account for 7 years [reg 10].

ACCESS TO INFORMATION BY UNIT OWNERS

Insurance policies

A unit owner, a mortgagee of a unit, or a potential buyer or mortgagee of a unit may, by contacting the secretary or manager of the strata corporation, request to see any or all of the insurance policies currently held by the corporation

[s 32]. A request for copies of those policies may be made either to the secretary or a member of the management committee [s 41(1)(b)].

The corporation must make the information available within five business days after the request [s 32, s 41]. Failure to do so is an offence with a maximum penalty of \$500.

FEES: No fee is applicable for simply viewing the insurance policies.

For copies of the insurance policies, if the applicant is the owner of a unit, a \$5 fee applies [reg 11(2)(b)(i)]. If the applicant is a mortgagee of a unit, or a prospective purchaser or mortgagee of a unit, a \$35 fee applies [reg 11(2)(b)(ii)].

Bank statements

On the request of a unit owner made through the secretary or a member of the management committee, a corporation that does not have a strata manager must provide a unit owner with quarterly bank statements for all accounts maintained by the corporation, and must continue to provide the statements until the person is no longer a unit owner or withdraws their application [s 41(1a)]. Failure to do so is an offence with a maximum penalty of \$500.

If a corporation has a strata manager, application can be made to the strata manager for quarterly financial statements (see **Duties of strata managers**).

Other information in relation to a unit or the corporation

A unit owner or a potential buyer or mortgagee of a unit (or someone on their behalf) can apply to the strata corporation, through the secretary or manager or a member of the management committee, to access to the following information or documents [s 41(1)]:

INFORMATION TO BE PROVIDED:

- details of any contribution payable in relation to the unit, including details of any owed contributions related to the unit
- details of the assets and obligations of the corporation

- details of any expenses that the corporation has or has planned to acquire, and to which the unit owner of the unit must contribute, or is likely to be required to contribute.

FEES: If the applicant is the owner of a unit, no fee applies [reg 11(2)(a)(i)]. If the applicant is a mortgagee of a unit, or a prospective purchaser or mortgagee of a unit, a \$25 fee applies [reg 11(2)(a)(ii)].

COPIES OF DOCUMENTS TO BE PROVIDED:

- the minutes of general meetings of the corporation and meetings of its management committee for such period, not exceeding two years, specified in the application
- the statement of accounts of the corporation last prepared by the corporation
- the articles for the time being in force.

FEES: If the applicant is the owner of a unit, a \$5 fee applies [reg 11(2)(b)(i)]. If the applicant is a mortgagee of a unit, or a prospective purchaser or mortgagee of a unit, a \$25 fee applies [reg 11(2)(b)(ii)].

DOCUMENTS TO BE MADE AVAILABLE FOR INSPECTION:

- a copy of the accounting records of the corporation
- the minute books of the corporation
- any documents received by the strata corporation from the original registered proprietor under s 38(3), including the duplicate certificate of title for the common property of the strata corporation
- a copy of any contract with a strata manager
- the register of unit owners.

FEES: No fee applies to inspecting a copy of the contract with a strata manager or the register of unit owners. If the applicant is the owner of a unit, no fee applies to inspect other documents [reg 11(2)(c)(i)]. If the applicant is a mortgagee of a unit, or a prospective purchaser or mortgagee of a unit, a \$5 fee applies [reg 11(2)(c)(ii)] in relation to accounting records, minutes and s 38(3) documents.

The information or documents must be provided within five business days after the request [s 41(1)]. Failure to do so is an offence with a maximum penalty of \$500.

The corporation may reduce or waive any of the specified fees [reg 11].

Articles (Rules)

Articles are the rules of the strata corporation. Schedule 3 of the Act sets out the model articles for all strata corporations. If a particular strata corporation wishes to adopt its own articles, or amend any number of its articles, it can do so [s 19(2)].

While legal obligations under the Act cannot be avoided or changed, the articles can be determined by the strata corporation itself.

The articles are binding on the strata corporation and the unit owners [s 20]. Articles that relate to the use of units or the common property are binding on tenants [s 20(1) (c)]. A unit owner who has a tenant in the unit must take reasonable steps to ensure that the tenant complies with the articles [s 20(2)].

Some common provisions require the owner or occupier to:

- keep the unit in a clean and tidy condition
- not interfere with lawns or gardens on the common property
- not display signs without consent
- not keep animals in or about the unit without consent
- notify the corporation of changes in ownership or occupier
- use the common property reasonably.

How to change the articles of a strata corporation

The articles of a strata corporation can be changed by a special resolution of its members (see **Voting: Types of resolutions**) [s 19(2)]. Any change must be lodged with the Registrar-General at the Lands Titles Office to be effective and legal [s 19(3)]. It is recommended that a registered conveyancer or lawyer prepares the amendment to articles document.

Schedule 3 is set out on the following page.

SCHEDULE 3 ARTICLES OF STRATA CORPORATION

1 (1) A UNIT HOLDER MUST—

- (a) maintain the unit in good repair;
- (b) carry out any work ordered by a council or other public authority in respect of the unit.

(2) The occupier of a unit must keep it in a clean and tidy condition.

2 A person bound by these articles—

- (a) must not obstruct the lawful use of the common property by any person; and
- (b) must not use the common property in a manner that unreasonably interferes with the use and enjoyment of the common property by the other members of the strata community, their customers, clients or visitors; and
- (c) must not make, or allow his or her customers, clients or visitors to make, undue noise in or about any unit or the common property; and
- (d) must not interfere, or allow his or her customers, clients or visitors to interfere, with others in the enjoyment of their rights in relation to units or common property.

3 A person bound by these articles must not use the unit, or permit the unit to be used, for any unlawful purpose.

4 Subject to the Strata Titles Act 1988, a person bound by these articles must not, without the strata corporation's consent, keep any animal in, or in the vicinity of, a unit.

5 A person bound by these articles—

- (a) must not park a motor vehicle in a parking space allocated for others or on a part of the common property on which parking is not authorised by the strata corporation; and
- (b) must take reasonable steps to ensure that his or her customers, clients or visitors do not park in parking spaces allocated for others or on parts of the common property on which parking is not authorised by the strata corporation.

6 A person bound by these articles must not, without the consent of the strata corporation—

- (a) damage or interfere with any lawn, garden, tree, shrub, plant or flower on the common property; or
- (b) use any portion of the common property for his or her own purposes as a garden.

7 A person bound by these articles must not—

- (a) bring objects or materials onto the site of a kind that are likely to cause justified offence to the other members of the strata community; or
- (b) allow refuse to accumulate so as to cause justified offence to others.

8 A person bound by these articles must not, without the consent of the strata corporation, display any sign, advertisement, placard, banner or any other conspicuous material of a similar nature—

- (a) on part of his or her unit so as to be visible from outside the building; or
- (b) on any part of the common property.

9 The occupier of a unit may, without the consent of the strata corporation, paint, cover or in any other way decorate the inside of any building forming part of the 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.

10 The occupier of a unit used for residential purposes must not, without the consent of the strata corporation, use or store on the unit or on the common property any explosive or other dangerous substance.

11 A person bound by these articles—

- (a) must maintain within the unit, or on a part of the common property set apart for the purpose by the strata corporation, a receptacle for garbage adequately covered; and
- (b) must comply with all council by-laws relating to the disposal of garbage.

12 A unit holder must immediately notify the strata corporation of—

- (a) any change in the ownership of the unit, or any change in the address of an owner;
- (b) any change in the occupancy of the unit.

WHAT CANNOT BE IN THE ARTICLES

Dealing with a unit

A corporation cannot prevent a unit owner from selling their unit [s 19(4)(a)], or leasing or allowing someone to live in their unit [s 19(4)(b)].

Assistance dogs and therapeutic animals

The articles may not prevent an occupier of a unit who has a disability (see s 5(1) Equal Opportunity Act 1984 (SA)) from having and using an assistance dog or a therapeutic animal [s 19(4)(c), s 3(1)]. Similarly, a visitor to a unit who has a disability may not be prevented from using their assistance dog or therapeutic animal [s 19(4)(d), s 3(1)].

An assistance dog is an accredited guide dog or hearing dog, or a disability dog under the Dog and Cat Management Act 1995 [s 5(1) Equal Opportunity Act 1984 (SA)]. A therapeutic animal is an animal, other than an assistance dog, certified by a medical practitioner as being required to assist a person as a consequence of the person's disability [s 88A Equal Opportunity Act 1984 (SA)].

ARTICLES THAT REDUCE THE VALUE OF A UNIT OR UNFAIRLY DISCRIMINATE AGAINST A UNIT OWNER

Any articles that reduce the value of a unit or unfairly discriminate against a unit owner may be struck out (removed) by order of the Magistrates Court or the District Court [s 19A(1)].

The application to strike out the article/s must be made by a person who was a unit owner, which includes a person who has contracted to purchase the unit, when the article/s came into force.

The application must be made within three months after the person (or either or any of the unit owners where the unit is held by two or more persons) first knew, or could reasonably be expected to have known, that the articles had been made [s 19(2)].

An application to strike out an article would normally be made to the Magistrates Court as a minor civil action under s 41A. If the matter was particularly complex or significant [s 41A(5)], a unit owner could seek the permission of the District Court to commence proceedings there [s 41A(3)]. Alternatively, the District Court could agree to transfer proceedings begun in the Magistrates Court to the District Court [s 41A(4)].

BREACHES OF THE ARTICLES

If it is claimed that a unit owner or occupier (for example, a tenant) of a unit is in breach of the articles, the

corporation may request that the person either do what is required under the articles, or stop doing something that is not allowed under the articles. If the person continues to breach the articles, the corporation might seek a mediation (a negotiation meeting), or a penalty may be imposed by the corporation if there is provision for this in the articles. Also the matter may be taken to the Magistrates Court (see [Disputes](#)).

Penalties for breaching the articles

The articles of a strata corporation may impose a penalty of up to \$500 [s 19(5)(b)] for contravention of, or failure to comply with, any articles [s 19(3a)]. Note that the articles set out in Schedule 3 of the Act (see above) do not include provision for imposing a penalty for a breach of the articles. If a corporation wants this power, it must amend its articles accordingly (see [How to change the articles of a strata corporation](#) below).

If the articles state that the corporation 'may impose a penalty of up to \$500' for a breach of the articles, this does not mean that any penalty must be \$500.

A corporation should ensure that the amount of any penalty imposed is reasonable in relation to the nature and extent of the breach. The amount of a penalty could be disputed in the Magistrates Court if it is oppressive, unreasonable or unjust [s 41A] (see [Disputes](#)).

Note that it is the strata corporation that may impose a penalty for an alleged breach. If a corporation has a management committee, the management committee may act for the corporation. Thus, unless some other valid delegation has been made, a properly called meeting of either the corporation or the management committee will be needed to impose a penalty for an alleged breach of the articles. A strata manager cannot impose a penalty for an alleged breach of the articles [see [Strata managers: Delegation of powers and functions to a strata manager](#)].

Notice of a penalty

The strata corporation must give notice of the imposition of a penalty using the form set out in Schedule 1 of the *Strata Titles Regulations 2003* [s 19(3b)(c)(i)]. The form is set out below:

SCHEDULE 1 - PENALTY NOTICE

(Section 19(3b)(c))

To [insert name and unit number of the person to whom notice is given]

The [insert name of the strata corporation giving notice] gives you notice that you have contravened or failed to comply with [specify the by-law or article that has been contravened or not complied with] by [set out the details of the contravention or non-compliance].

The penalty of [specify the amount of the penalty] is payable to the corporation by you not later than [specify the date for payment].

If you do not pay the penalty as required by this notice, the penalty is recoverable from you by the corporation as a debt. If this notice is served on you as a unit holder, the penalty may be recovered by the corporation under section 27 of the Strata Titles Act 1988 (and interest will be payable on the penalty amount in the same way as if it were such a contribution).

Under section 19(3b)(e) of the Act you are entitled to apply to the Magistrates Court for revocation of this notice. The application must be made within 60 days after service of this notice. If you make such an application, the penalty specified in this notice is not payable unless the application is withdrawn or otherwise discontinued by you, or is dismissed or refused by the Court (and, in such a case, the penalty will be payable on the date on which the application is so withdrawn, discontinued, dismissed or refused or on the date for payment specified in the notice, whichever occurs later).

Time for payment of a penalty

The date set for payment of the penalty must be at least 60 days after the date the notice is served [s 19(3b)(c)(ii)].

Non-payment of a penalty

If the penalty is not paid in time, the strata corporation may recover the amount as a debt. If the notice has been given to a tenant, then, ultimately, action can be taken in the Magistrates Court (minor civil action jurisdiction) to recover the debt. If the notice has been given to a unit owner, the penalty may be recovered by the strata corporation as if it were a contribution payable to the strata corporation, and interest will be payable on the penalty amount in the same way as if it were a contribution [s 19(3b)(d)].

Challenging a penalty

REVOCATION OF THE NOTICE

A person who has received a penalty notice may, within 60 days after service of the notice, apply to the Magistrates Court for revocation of the notice [s 19(3b)(e)]. A representative of the strata corporation will be required to attend the hearing and will have to show that, on the balance of probabilities, the person committed the alleged breach [s 19(3b)(f)].

When an application to revoke a penalty is made, the requirement to pay the penalty is suspended until the matter is resolved [s 19(3b)(g)].

The Court must revoke the penalty if it is not satisfied that the person breached the articles as alleged, or if it is satisfied that the alleged breach is trifling (insignificant) [s 19(3b)(e)].

A breach may be regarded as 'trifling' if the circumstances surrounding the breach were such that the person ought to be excused from the imposition of a penalty on any of the following grounds [s 19(3c)]:

- there were compelling humanitarian or safety reasons for the conduct that allegedly constituted the breach, or
- the person could not, in all the circumstances, reasonably have averted the breach, or
- the conduct allegedly constituting the breach was merely a technical, trivial or petty instance of a contravention of or failure to comply with the relevant articles.

CHALLENGING THE AMOUNT OF THE PENALTY OR TIME TO PAY

If a person served with a penalty notice considers the amount of the penalty or the time given to pay the penalty to be oppressive, unreasonable or unjust, they may approach the corporation in the first instance (in writing to the secretary) to request that the amount and/or time be reviewed. If unsuccessful, an application may be made to the Magistrates Court to review the corporation's decision (see **Disputes**). While there is no time limit for such an application, be aware that the requirement to pay the penalty may not necessarily be suspended until the matter is resolved, and that interest may be payable on unpaid amounts. Legal advice is useful in such matters.

Management Committee

The strata corporation can choose to run all of its business through general meetings or it can delegate some functions to a management committee [s 35]. The management committee's job is to carry out the business of the strata corporation.

POWERS AND RESPONSIBILITIES OF THE MANAGEMENT COMMITTEE

The management committee has full power to transact any business of the corporation [s 35(2)], except that:

- the strata corporation may impose limitations on what the committee can do [s 35(2)], and
- the committee does not have the power to do anything for which a special or unanimous resolution is required [s 35(3)].

If a management committee is considering a controversial issue, such as raising special levies, it may be sensible to invite all unit owners to the committee meeting.

A management committee must keep minutes of its meetings and ensure accurate and proper accounting records are kept in respect of financial affairs [s 35(8)].

MEMBERSHIP OF THE MANAGEMENT COMMITTEE

A management committee is appointed by an ordinary resolution at a general meeting of the strata corporation [s 35(1)]. The members of the management committee must be unit owners. The number of committee members and the term of their office (usually 1 year) are fixed by the corporation. Members may be removed by an ordinary resolution of the strata corporation at any time [s 35(5)].

Committee members can appoint another unit owner as their proxy for any meeting they cannot attend [s 35(7)]. If there is a casual vacancy in the membership of the committee, the management committee may appoint a suitable person to fill the vacancy [s 35(6)].

A strata manager can be appointed to assist the management committee in the running of the affairs of the corporation.

LIABILITY OF COMMITTEE MEMBERS

Members of the management committee are personally liable for any offences of the strata corporation against the Act. Each person who was a member of the management committee at the time of the offence is also guilty of an offence, and is legally responsible to a penalty of up to half of the maximum set for the offence committed by the corporation [s 47(1)].

A management committee member has a defence if [s 47(2)]:

- the member exercised reasonable care in the exercise of their responsibilities as a member of the management committee, and
- if the offence is not linked to any intentional or negligent act or omission on the member's part.

Many insurance companies offer office bearer liability cover against such risk.

MEETINGS OF THE MANAGEMENT COMMITTEE

Notice of meetings

At least three days notice of a management committee meeting must be given [s 35(4b)].

Decisions

Decisions of the management committee are made by majority vote [s 35(4b)].

Quorum

To work out the quorum required for a management committee meeting, divide the total number of members of the committee by two, ignoring any fraction resulting from the division, and add one [s 35(4a)].

EXAMPLE 1

If the strata corporation has resolved that the management committee has five members, then:

- ➔ divide 5 by 2 (= 2 ½)
- ➔ ignore the half (= 2)
- ➔ add one (= 3)

So the quorum for a management committee with five members is three.

EXAMPLE 2

If the strata corporation has resolved that the management committee has eight members, then:

- ➔ divide 8 by 2 (= 4)
- ➔ add one (= 5)

So the quorum for a management committee with eight members is five.

General Meetings

A strata corporation may hold a meeting of its members (a general meeting) at any time [s33(1)].

A meeting must be held at least once every calendar year (the annual general meeting), and within 15 months of the last annual general meeting [s 33(4)].

CALLING OF GENERAL MEETINGS

A general meeting can be called by the secretary, or any two members of the management committee, or one fifth of the unit owners, or by order of the Magistrates Court [s 33(2)]. An application to the Magistrates Court (minor civil action jurisdiction) to call a general meeting can be made by the owner or occupier of a unit, a person who has contracted to purchase a unit, or any other person bound by the articles of the strata corporation (except for persons invited to or visiting the site) [s 41AA].

Note that, while a strata manager may be given the task of issuing the notice for a general meeting, a strata manager may not call a general meeting.

NOTICE OF GENERAL MEETINGS

At least 14 days written notice must be given to all unit owners before the meeting [s 33(3)]. Anyone proposing to convene a meeting of the members of a strata corporation must take reasonable steps to ensure that the proposed day, time and place are reasonably convenient to a majority of members of the corporation [s 33(3a)].

A unit owner may request that the strata corporation provide notices of meeting to another person in addition to (not instead of) the unit owner, for example, someone they have appointed as a proxy. The unit owner must still be sent notices of meetings [s 33(3aa)].

AGENDA

The notice convening a general meeting must set out the agenda for the meeting [s 33(4a)]. The agenda must include [s 33(4b)]:

- the text of any unanimous or special resolutions to be moved at the meeting
- a motion confirming the minutes of the previous general meeting.

In the case of an **annual general meeting**, the agenda must also include [s 33(4b)(c)(v); reg 9A]:

- report of the accounts for the previous accounting period
- contributions to be paid by members for the current accounting period
- report of statements required under section 33A (see below)
- report of copies of all insurance policies required under the Act
- discussion of the policies of insurance required by the Act to be held by the corporation
- the appointment of the presiding officer, treasurer and secretary of the corporation
- other appointments to be made or revoked by the corporation at the meeting
- the number of applications for relief made under Part 3A of the Act (see **Disputes**) and the nature of the claims or disputes the subject of those applications
- proposed controls on expenditure by delegates of the corporation
- if it is proposed to enter into a contract, or renew or extend a contract, with a paid strata manager, then
 - ▷ the text of the resolution to enter into, or renew or extend, the contract, and
 - ▷ where and when a copy of the contract or proposed contract, including the attached schedule of the strata manager's professional indemnity insurance policy, and the explanatory pamphlet, can be viewed or obtained by members of the corporation.

QUORUM

It is necessary to have at least half of all unit owners represented at any meeting, in person or by proxy or, if applicable, via remote communication. If a quorum is not present, the meeting must be adjourned for at least 7 days, but no more than 14 days, and written notice given to unit owners of another meeting. If less than half of the unit owners are represented at the second meeting, those present are entitled to work as a 'quorum', which means they can legally make decisions, even when special and unanimous resolutions are required [s 33(5), (6), (7)].

Attendance by remote communication

The articles of a corporation may make provision for attendance and voting at meetings by unit owners by means of telephone, video-link, internet connection or any similar means of remote communication. If the unit owner complies with the requirements in the articles, they may attend and vote at a meeting by remote communication [s 33(11); reg 9B(3)].

If the articles do not mention attendance by remote communication, a unit owner may request the secretary of the corporation, in writing, to attend and vote at the meeting by means of remote communication. If the secretary of the corporation makes the necessary arrangements to receive and record the unit owner's attendance and voting at the meeting by remote communication, and the unit owner complies with any requirements of the secretary in relation to the request, then the unit owner may attend and vote at the meeting by remote communication [s 33(11); reg 9B(3)].

A corporation is under no obligation to provide facilities for remote communication to unit owners [s 33(11)].

CHAIRING OF MEETINGS

A strata corporation must elect a presiding officer, who must be a unit owner (see **The strata corporation: Officers of the strata corporation**). The role of the presiding officer is to chair meetings of the corporation. However, if the presiding officer is not present, another person at the meeting may be appointed to chair [s 33(8)].

If it is proposed that the corporation's strata manager, or an employee of the strata manager, will chair a meeting of the corporation, a majority of those present and entitled to vote at the meeting must agree to this [s 33(9)].

In addition, if it is proposed that the manager chair the meeting, the manager must inform the meeting, before any vote is taken [reg 9B(2)]:

- of any proxies the manager holds for the meeting, and that the proxies are available for inspection (in accordance with the rules for proxy voting)

- that the manager may only chair the meeting if a majority of those present and entitled to vote agree
- that the manager may only vote on the question of who is to chair the meeting if the manager holds proxies specifically allowing them to vote on this
- that he or she has no right to prevent any member from moving or voting on any question or motion.

Disclosure of interest by chair

Any person chairing a meeting who has a direct or indirect financial interest in any matter to be voted on at the meeting must disclose the nature of the interest to the members present at the meeting before the vote is taken, even if they themselves cannot or are not voting on the matter. Failure to do so is an offence with a maximum penalty of \$15 000. [s 34A(3)]

Voting

Normally, each unit is entitled to one vote. If there are two or more unit owners for one unit, only one of them, or a proxy appointed by one of them, needs to attend the meeting to vote. If both or all unit owners attend a meeting, only one may vote. If they cannot agree on who will vote, the unit owner whose name appears first on the certificate of title for the unit is the one who may vote [s 34(3)(b)].

Where a unit owner is under a disability, the rights and powers of that unit owner under this Act may be exercised on their behalf by a guardian [s 45(1)]. A guardian of a person under a disability may vote on behalf of the person.

DISCLOSURE OF INTEREST

A person who attends and is entitled to vote at a meeting of a strata corporation, and who has a direct or indirect financial interest in any matter to be voted on at the meeting must disclose the nature of the interest to the members present at the meeting before the vote is taken. Failure to do so is an offence with a maximum penalty of \$15 000. [s 34A(3)] See also Disclosure of interest by a proxy (below).

PROXY VOTING

Unit owners may appoint in writing a ‘proxy’ or someone to vote for them if they will not be present [s 34(2a)]. The proxy may be another unit owner, a tenant, relative or friend. The strata manager or an employee of the strata manager may also be appointed as a proxy, but if they no longer have these roles, the proxy also ends [s 34(3c)]. Even if a proxy nomination has been made, a unit owner may attend and vote at meetings on his or her own behalf [s 34(3a)(f)].

How to appoint a proxy

The nomination of a person as a proxy of a unit owner must be [s 34(3a)(a)]:

- sent in writing to the secretary of the strata corporation, and
- state whether the nominated person is nominated to attend and vote
 - ▷ at all meetings, and in relation to all matters, on behalf of the unit owner, or
 - ▷ only at specified meetings, or in relation to specified matters, on behalf of the unit owner.

Failure to comply with these requirements of section 34(3a)(a) will make the nomination invalid [s 34(3b)].

SAMPLE PROXY NOMINATION

I [your full name], the owner of [your unit number], [the strata corporation’s address] appoint [proxy’s full name] of [proxy’s address] to attend and vote on my behalf:

- ▷ at all meetings of the strata corporation, and in relation to all matters,
or
- ▷ to attend and vote only at these meetings
.....(specify).
or
- ▷ in relation to these matters
.....(specify).
(cross out what does not apply)

DATED:
SIGNED:

Disclosure of interest by a proxy

DECLARATION OF A UNIT OWNER’S INTEREST

If the proxy is required to vote in a particular way in relation to a matter in which the unit owner has a direct or indirect financial interest (other than an interest that the unit owner has in common with all the owners of the strata units), the nomination must specify the nature of the unit holder’s financial owner’s pecuniary interest [s 34(3a)(c)]. In addition the proxy must declare the unit owner’s interest before the vote is taken [s 34A(1)(b)]. Failure to declare the unit owner’s interest is an offence with a maximum penalty of \$15 000.

DECLARATION OF A PROXY'S INTEREST TO THE MEETING

Similarly, if the proxy themselves has a direct or indirect financial interest in any matter to be voted on at the meeting, they must disclose the nature of the interest to the members present at the meeting before the vote is taken [s 34A(3)]. Failure to do so is an offence with a maximum penalty of \$15 000.

DECLARATION OF A PROXY'S INTEREST TO THE PERSON WHO NOMINATED THEM

If a proxy has a direct or indirect financial interest in any matter to be voted on at a meeting (other than an interest that a proxy who is a co-owner has in common with all the other co-owners [s 34A(2)]), they must, if it is practicable to do so, disclose the nature of the interest to the person who nominated them before the vote is taken. If this is not practicable, they must reveal the nature of the interest to the person who nominated them as soon as possible after the vote is taken. Failure to do so is an offence with a maximum penalty of \$15 000 [s 34A(1)(a)].

Conditions on a proxy

A proxy nomination may specify conditions [s 34(3a)(b)] for example, how the unit owner requires the proxy to vote on certain matters. See also [Declaration of a unit owner's interest](#) above.

Period of proxy nomination

A proxy nomination is effective for a period of 12 months or such lesser period as may be specified in the written notice of nomination [s 34(3a)(e)]. However, the nomination may be withdrawn earlier at any time by the unit owner, by giving written notice to the secretary [s 34(3a)(d)].

An attorney as a proxy

A person who has been appointed to exercise a general power of attorney or an enduring power of attorney may vote on behalf of a unit owner. Note that, if a person is appointed by general power of attorney specifically for the purpose of attending and voting at meetings, or specified meetings, of the strata corporation, the appointment is (despite any provision of the Powers of Attorney and Agency Act 1984 (SA) or the terms of the general power of attorney) only effective for a period of 12 months. The unit owner can, of course, specify a lesser period in the power of attorney, or revoke the power of attorney at any time [s 34(3d)].

If a general power of attorney appoints a body corporate manager specifically for the purpose of attending and voting at meetings, or specified meetings, of the strata corporation, a copy of the general power of attorney form

must be provided to the secretary of the corporation before the meeting, or the first of the meetings, to which it relates [s 34(3e)].

Proxy forms must be available for inspection

The secretary of the corporation must ensure that a copy of each written proxy nomination, and each general power of attorney form appointing a body corporate manager, is available for inspection at a meeting before any matter is voted on. Failure to do so may incur a maximum penalty of \$500 [s 34(3f)].

ABSENTEE VOTES

A unit owner may exercise an absentee vote by giving the secretary of the strata corporation written notice of the proposed vote at least six hours before the meeting [s 34(4)].

RIGHT TO VOTE

Normally, all voters must be paid up members of the corporation; however non-financial members of the corporation can vote for or against a motion requiring a unanimous resolution [s 34(7)].

APPLICATION TO DISPENSE WITH A VOTE

If a unit owner is under a disability or cannot be found, the strata corporation or any other person with a proper interest in the matter may apply to the Magistrates Court (minor civil action jurisdiction) to dispense with the need to have the unit owner vote [s 45(2)].

WRITTEN BALLOT

A written ballot may be demanded by a unit owner (or a proxy of a unit owner) attending a meeting [s 34(5)]. The person presiding at a meeting has the power to manage a written ballot as they think fit [s 34(6)].

Remote communication and written ballots

A person attending a meeting via remote communication such as telephone [s 33(11); reg 9B(3)] may participate in a written ballot if it is provided for in the corporation's articles, or if approved and arranged by the secretary. If the situation of a written ballot is not covered in the articles or arrangements this may prevent someone attending via remote communication from participating in a written ballot. However, the person presiding at a meeting has the power to manage a written ballot as they think fit [s 34(6)].

TYPES OF RESOLUTIONS

Ordinary resolutions

An ordinary resolution is one passed at a properly organised meeting of the corporation by a simple majority of the votes of unit owners present and voting on the resolution [s 3]. Decisions of a strata corporation are

made by ordinary resolution unless the Act or articles specify otherwise.

Special resolutions

Special resolutions must be proposed by at least 14 days written notice to all unit owners, including the terms of the proposed resolution and the reasons for the proposed resolution [s 3(1)(a)].

A special resolution is required to:

- change or adopt new articles [s 19(2)]
- authorise the construction, alteration, demolition or removal of a building or structure, or authorise changes to the external appearance of a building by a unit owner [s 29(1)(b)]
- approve any special insurance [s 31(3)].

A special resolution is achieved if the resolution is passed at a properly convened meeting of the strata corporation and the number of votes (if any) cast against the resolution is 25% or less of the total number of votes that could be cast at a meeting at which all unit owners are present and entitled to vote [s 3(1)(a)].

WHEN THERE ARE TWO OR THREE UNITS

When there are only two units, both unit owners must agree to achieve a special resolution. When there are three units and the owner of each unit is entitled to 1 vote, a special resolution is achieved if the resolution is passed at a properly convened meeting of the strata corporation at which either no vote, or only 1 vote, is cast against the resolution [s 3(1)(a)].

SPECIAL RESOLUTION EXAMPLE 1.

If the number of units is 12 and 8 unit owners are present at the meeting

If the number of units is 12,

then: the total number of votes that could be cast at a meeting at which all unit holders are present and entitled to vote is 12

and: 25% of 12 = 3

thus: for the resolution to pass, no more than 3 votes may be cast against it.

Assuming the meeting has been validly called and 8 of the 12 unit holders are present,

then: the motion fails if 4 vote against it.

result of vote	against	for	abstain
Pass	0	8	0
	1	7	0
	2	6	0
	3	5	0
	3	4	1
Fail	4	4	0

SPECIAL RESOLUTION EXAMPLE 2.

If the number of units is 6 and 4 unit owners are present at the meeting

If the number of units is 6,

then: the total number of votes that could be cast at a meeting at which all unit holders are present and entitled to vote is 6

and: 25% of 6 = 1.5

thus: for the resolution to pass, no more than 1 vote may be cast against it.

Assuming the meeting has been validly called and 4 of the 6 unit holders are present,

then: the motion fails if 2 vote against it.

result of vote	against	for	abstain
Pass	0	4	0
	1	3	1
	1	2	1
Fail	2	2	0
	2	1	1
	3	1	0

Unanimous resolutions

A unanimous resolution is the same as a special resolution but passed without any dissenting (opposing) vote, that is nobody must vote against the resolution. Any unit owner who does not attend (or send a proxy to vote), or attends and chooses not to vote, is not counted as a dissenting vote.

Unanimous resolutions are required when:

- acquiring, dealing with or disposing of real property [s 26(3)]
- granting to a unit owner exclusive use of part of the common property for a specified period [s 26(4)]
- distributing surplus funds from the sale of land [s 26(6)]
- determining contributions other than on the basis of unit entitlement [s 27(3)]
- permitting a unit owner to grant a lease or licence over part of the unit to someone other than another unit owner (but no authorisation is required in relation to a lease or licence over the whole of a unit) [s 44(2)(b)]
- amending the strata plan [s 12]
- amalgamating with another adjacent strata plan [s 16].

Note that, although a special resolution is required to make alterations or additions to a unit, a unanimous resolution is required if the alterations affect the boundaries of a unit or the common property. Any changes to unit or common property boundaries must be ratified in an amendment to the strata plan which must be lodged together with an application to amend the plan in the Lands Titles Office.

WHEN A UNANIMOUS RESOLUTION IS NOT OBTAINED

Where a unanimous resolution is necessary but is not obtained, but the resolution is supported to the extent necessary for a special resolution, then a person included in the majority in favour of the resolution may apply to the Magistrates Court or the Supreme Court to have the resolution declared sufficient to authorise the particular act proposed [s 46].

Notice of an application to convert a special resolution to a unanimous resolution must be served on every person who was entitled to vote and did not, either in person or by proxy, vote in favour of the resolution. The court may also order that any other person the court declares to have a enough interest in the proceedings be served with notice of the application. The court may direct that any such persons be joined as a party to the proceedings [s 46].

Meeting and Proxy Checklist

WHAT IS A 'PROPERLY CONVENED' GENERAL MEETING?

1. The meeting must be called by an authorized person/s (the secretary, or any two members of the management committee, or one fifth of the unit owners).
2. Anyone proposing to convene a meeting of the members of a strata corporation must take reasonable steps to ensure that the proposed day, time and place are reasonably convenient to a majority of members of the corporation. It is possible to set the date for the next annual general meeting at the annual general meeting. While the date can be set a year in advance, it is advisable, particularly in smaller corporations, to have a clear process whereby unit owners can notify the secretary of their circumstances and request a change in the day or time.
The ability to attend a meeting via remote communication may also be taken into account.
3. Correct notice must be given: 14 days written notice, including the agenda, must be given to all unit owners.
4. If the meeting is not an annual general meeting, the agenda must include the text of any unanimous or special resolutions to be moved at the meeting and a motion confirming the minutes of the previous general meeting.
5. If the meeting is an annual general meeting, certain items must be placed on the agenda (see General meetings: Agenda).
6. A quorum (half of the members) must be present in person, by validly appointed proxy, or by remote communication. To check the rules for appointing a proxy, see Voting: Proxy voting.
7. The meeting must be chaired by the presiding officer, or, if the presiding officer is not present, by another person present and appointed by the meeting. Alternatively, the strata manager may chair the meeting if a majority agrees.

APPOINTING A PROXY

YOU MAY APPOINT A PROXY BY PREPARING A WRITTEN NOTICE.

1. The nomination of a person as a proxy of a unit owner must be sent in writing to the secretary of the strata corporation. The secretary must have the nominations available for inspection at a meeting before any matter is voted on.
2. A nomination must specify whether the nominated person is nominated to attend and vote at all meetings, and in relation to all matters, on behalf of the unit owner, or only at specified meetings, or in relation to specified matters, on behalf of the unit owner.
3. If the proxy may only attend specific meetings, these must be stated. If the proxy may only vote on certain matters, these must be stated.
4. If you want your proxy to vote in a certain way on a specific matter, this condition must be stated on the nomination.
5. If the proxy is required to vote in a certain way in relation to a matter in which you have a direct or indirect pecuniary interest, the nomination must specify the nature of your pecuniary interest.
6. Remember that any proxy nomination only remains effective for a maximum of 12 months.

YOU MAY APPOINT A PROXY BY GRANTING A GENERAL POWER OF ATTORNEY.

1. The ability to attend and vote at meetings is included in the powers your attorney has. Alternatively, you may appoint an attorney specifically for the purpose of attending and voting at meetings, or specified meetings, of the strata corporation.
2. The secretary must have the general power of attorney forms available for inspection at a meeting before any matter is voted on.
3. If you appoint a strata manager as your attorney, the power of attorney form must be sent to the secretary before the first of the meetings to which it relates.
4. Remember that the appointment of your attorney as your proxy only remains effective for a maximum of 12 months.

Financial Matters

EXPENDITURE STATEMENTS [S 33A]

An expenditure statement must be presented by a strata corporation to each annual general meeting of the corporation. The statement must include [s 33A]:

- for the current financial year, the estimated expenditure of a recurrent nature and the estimated expenditure of a non-recurrent nature
- in relation to reserve funds, the estimated expenditure in future years for which funds should be raised now and held in reserve
- the amount to be raised by way of contributions from unit owners to cover the current financial year expenditure and reserve funds.

Recurrent expenditure is expenditure for a particular purpose that is normally made every year or more frequently [s 33A(5)].

Forward budget (sinking fund budget)

While strata corporations are not required to have sinking funds (unlike community title corporations, which must do so), certain strata corporations are required to present forward budgets at their annual general meetings.

EXEMPT CORPORATIONS

Strata corporations with six or less strata units, and strata corporations with improvements (including buildings or other structures) on the common property insured for less than \$100 000, are not required to present a forward budget as part of their expenditure statement at their annual general meeting [reg 9C(3)].

CORPORATIONS REQUIRED TO HAVE FORWARD BUDGETS

For corporations with seven to twenty units, and with improvements (including buildings or other structures) on the common property insured for \$100 000 or more, a forward budget must be presented at each annual general meeting, as part of the expenditure statement. The forward budget must include proposed expenditure (other than recurrent expenditure (ongoing costs) for a three year period. New information must be presented about proposed non-recurrent expenditure every three years [reg 9C].

For corporations with more than twenty units, and with improvements (including buildings or other structures) on the common property insured for \$100 000 or more, the forward budget presented at each annual general meeting must include proposed expenditure (other than recurrent expenditure) for a five year period. New information must be presented about proposed non-recurrent expenditure every five years [reg 9C].

Strata managers

The business of properly running a strata corporation, such as keeping records and running meetings, can be complex, particularly when there is a large number of units in a group. Many strata corporations choose to select a strata manager to assist in running the affairs of the corporation. Professional strata management firms charge for these services.

A strata manager can only carry out the powers and functions delegated to them by the corporation and stated in the contract appointing them. A strata manager does not have any powers independent of the corporation. Strata managers have to act in the best interests of the corporation; if they do not, they can be sued for negligence by the strata corporation. As a preventative measure, it is advisable for a corporation to maintain an active involvement in its affairs.

The legal responsibilities of the strata corporation do not change with the appointment of a manager. It must still have a presiding officer, a secretary and a treasurer, who must all be unit owners, and is still legally liable for decisions made on its behalf.

DELEGATION OF POWERS AND FUNCTIONS TO A STRATA MANAGER

By an ordinary resolution [s 27A(3)] a corporation can delegate the following powers or functions to a strata manager, so that the strata manager can deal with them on the corporation's behalf s 27A(2):

- the receipt and holding of money and other personal property on behalf of the corporation
- payment of money on behalf of the corporation
- the preparation of statements of expenditure and proposed expenditure and statements of accounts
- the collection of money due to the corporation
- entering into contracts of insurance with insurers on behalf of the corporation
- maintaining and keeping records on behalf of the corporation
- issuing and signing notices on behalf of the corporation
- preparing minutes of meetings of the corporation
- providing information as required by the Act on behalf of the corporation
- investing money on behalf of the corporation
- arranging for the maintenance and repair of the common property on behalf of the corporation. However, a strata manager cannot do anything which requires a special or unanimous resolution of the corporation [s 27A(4)].

A corporation can place conditions on the exercise of any delegated power or function [s 27A(5)]. Even if a corporation has delegated powers or functions to a strata manager, it is still able to exercise those powers or functions itself [s 27A(5)].

APPOINTING A STRATA MANAGER

Strata managers (also called 'body corporate managers') can be appointed at a general meeting by an ordinary resolution [s 27A(3)], although the power to appoint may be delegated to a management committee [s 35(2)]. If it proposed to appoint a strata manager (or extend or renew a strata manager's contract) at an annual general meeting, then the agenda for the meeting must include [reg 9A]:

- the text of the resolution to enter into, or renew or extend, the contract
- where and when a copy of the contract or proposed contract, including the attached schedule of the strata manager's professional indemnity insurance policy, and the required explanatory pamphlet, can be viewed or obtained by members of the corporation
- proposed controls on expenditure by the strata manager.

Documents to be provided

The following requirements must be met when selecting a strata manager, or renewing or extending a contract with a strata manager.

At least five clear days before the date of the meeting at which the corporation is to consider whether or not to enter into a contract with a strata manager, the strata manager must make available for inspection by unit owners [s 27B(8)]:

- a pamphlet setting out the role of the manager and the rights of the strata corporation [reg 8B(4)]
- a copy of the proposed contract, which must have attached to it a copy of the schedule to the policy of professional indemnity insurance kept by the strata manager [reg 8B(1)].

THE PAMPHLET

The pamphlet must state the rights of the corporation to [reg 8B(4)]:

- inspect records held by the manager
- revoke the delegation of a particular function of the manager
- appoint the manager as a proxy and revoke that appointment

- be informed of any payment that the manager receives from another trader for placing the corporation's business
- terminate the contract
- apply to the Magistrates Court for a resolution of any dispute.

THE CONTRACT

The contract must [s 27B(3)]:

- be in writing
- specify the term of the contract
- set out the functions or powers to be delegated
- specify the rights of the strata corporation to terminate the contract under certain circumstances (see **Strata managers: Ending a strata manager's contract**)
- set out the remuneration payable to the body corporate manager in respect of the work performed in exercising the delegated functions or powers, or set out the basis on which such remuneration is to be calculated
- contain a statement verifying that the body corporate manager is insured under a policy of professional indemnity insurance as required by the Act and an undertaking by the body corporate manager that the body corporate manager will maintain that insurance throughout the life of the contract [reg 8B(3)(a)]
- contain an undertaking by the body corporate manager that the body corporate manager will allow any unit owner of the strata corporation to inspect, at any time during ordinary business hours, the records of the strata corporation in the possession or control of the body corporate manager and specifying how an inspection can be arranged [reg 8B(3)(b)]
- have annexed to it, in accordance with reg 8B(1), a copy of the schedule to the policy of professional indemnity insurance maintained by the strata manager.

THE PROFESSIONAL INDEMNITY INSURANCE POLICY SCHEDULE

The professional indemnity insurance policy schedule must state [reg 8B(1)]:

- the name of the body corporate manager
- the name of the insurer
- the nature of the policy
- the amount for which indemnity is provided under the policy.

DUTIES OF STRATA MANAGERS

Professional indemnity insurance

A strata manager must have professional indemnity insurance of at least \$1.5 million per claim during a period of 12 months [reg 8B(2)]. A corporation's strata manager must maintain this level of professional indemnity cover while working for the corporation [s 27B(2)(c)].

Duty to act in the best interests of the corporation

When doing work for the corporation, a strata manager must [s 27C(2)]:

- act honestly and in good faith
- exercise due care and diligence
- not make improper use of their position to gain, directly or indirectly, an advantage personally or for any other person.

Disclosure of interest

If a strata manager, or their employee or agent, has a financial interest in a matter in relation to which they propose to perform delegated functions or powers, the strata manager must disclose the nature of the interest, in writing, to the corporation before carrying out the functions or powers [s 27D(1), (2)]. Failure to do so is an offence, with a maximum penalty of \$15 000.

For example, if a strata manager (or their employee or agent) would receive a commission from a building maintenance company for contracting them to maintain the corporation's common property (mow lawns, clean gutters etc.), the strata manager would have to inform the corporation in writing about the commission before entering into a contract with the company.

See also **General meetings: Disclosure of interest by chair, and Voting: Disclosure of interest by a proxy.**

Access to records

If a unit owner requests, a strata manager must provide the unit owner, on a quarterly basis, with a statement setting out details of the strata manager's dealings with the corporation's money. The strata manager must continue to provide the statements until the person stops being a unit owner or withdraws their request. Failure to provide this information when requested is an offence, with a maximum penalty of \$500 [s 27D(5)].

If a unit owner requests access to records of the strata corporation, a strata manager must make the records available for the unit owner to inspect within 10 business days of the request [s 27D(7)(a)]. If the unit owner asks for copies of any records, on payment of a fee (no more than \$1.20 per page [reg 8C(3)]), the strata manager

must also provide copies [s 27D(7)(b)]. Failure to provide access or copies is an offence, with a maximum penalty of \$500.

Trust account audits

Strata managers or any agent who is permitted by the strata corporation to receive and hold money on behalf of the corporation are under strict legal obligations. An audit report of the strata manager's trust account in relation to a corporation must be sent to the secretary of the strata corporation each financial year [s 36H, reg 20(1)]. In addition, a statement setting out details of dealings by the strata manager or agent with the corporation's money must be produced to the strata corporation upon request [s 36G(3)], and all financial records must be kept for at least five years [s 36G(4)]. Any manager or agent who fails to comply with any of these requirements is guilty of an offence with a maximum penalty of \$8,000.

Return of records and trust money

If a corporation withdraws the delegations it has given to a strata manager (if the corporation dismisses the strata manager or if the contract between them is not renewed), then the strata manager must return all records and trust money.

RETURN OF RECORDS

Within 10 business days of the delegations being withdrawn, records must either be returned by mail sent by registered post, or be made available for collection [reg 8C].

RETURN OF TRUST MONEY

Within 10 business days of the delegations being withdrawn, trust money must either be returned by electronic funds transfer, or by cheque sent by registered post, or be made available for collection [reg 8C].

Ending a strata manager's contract

A corporation's contract with a strata manager must state the term of the contract. If a corporation wishes to end a contract before the end of the term because it believes the strata manager is not performing well, it is advisable for the corporation to obtain legal advice. If the corporation believes the strata manager has breached their duty to act in the best interests of the corporation, or any other duties under the Act, the corporation is entitled to seek to end the contract. If the corporation and the strata manager cannot agree about a proposed termination, or the terms of a termination, the dispute resolution process set out in the Act may be used. This process involves making an application to the Magistrates Court (minor civil action jurisdiction).

A corporation may end a strata manager's contract that is for a period of over 12 months, which is taken to include any renewal period at the option of the manager [s 27B(5)], after the contract has run for 12 months. The corporation must give at least 28 days' written notice of the termination, although the notice period can be less if agreed in the contract [s 27B(4)].

Rights of Unit owners

COMPLIANCE WITH THE ARTICLES

Unit owners have certain responsibilities as outlined in the articles of the strata corporation. In addition to complying with the articles themselves, unit owners are also required to take reasonable steps to make sure that their visitors or tenants do not breach the articles [s 20].

CONTRIBUTIONS

Unit owners must keep up their contributions to the corporation. If the funds are not paid, they are recoverable as a debt [s 27(5)], which means the corporation can sue the unit owner for the money, possibly with interest added at a rate reasonably decided by the strata corporation [s 27(4)(b)]. If you buy a unit and there is a contribution owing, you as the new owner are legally responsible for that contribution [s 27(5)]. Check carefully before buying any unit as there may be debts outstanding on that unit.

DEBTS OF THE STRATA CORPORATION

If the strata corporation does not or cannot pay its debts, the individual unit owners are personally responsible. The corporation's debts are enforceable against each or any of the unit owners directly [s 21(1)]. If the corporation has a debt, the unit owners have, amongst themselves, the right of contribution to the debt based on their respective unit entitlements [s 21(2)].

WORK BENEFITTING PARTICULAR UNITS

Certain unit owners may have to pay for work which substantially benefits their own particular unit or group of units and not the strata corporation as a whole. However, this may be difficult to determine. Consider the example of a leaking pipe causing damage to one particular unit. If the pipe was common property, then the cost of repairs would have to be borne by the corporation. On the other hand, if the pipe was not common property, then the individual unit owner would be responsible.

STRUCTURAL WORK

Unit owners must seek permission from the strata corporation before starting any building or structural work, or generally altering the outward appearance of a unit [s 29], for example, installing an air conditioner or external awnings. An exception is if work is required because of an order under the Housing Improvement Act 1940 (SA).

Structural changes that affect the definition of a unit or what exists on the common property should be recorded by amending the strata plan lodged with the Lands Titles Office. Failure to do so may affect ownership of a unit and insurance policies held by unit owners and the corporation.

RIGHT OF ENTRY TO ANOTHER UNIT

A unit owner, or a person authorised by them, has the right of entry into another unit, after giving such notice to the other unit owner as may be practicable in the circumstances, if [s 42]:

- the proper supply of hot or cold water, gas, electricity, heating oil or air-conditioned air to their unit fails, or
- the sewerage, garbage or drainage system as it affects their unit fails to operate properly, and
- another unit must be entered in order to investigate the cause of the failure, or to carry out necessary repairs.

Reasonable force may be used to enter the other unit, but any damage to the other unit must be immediately made good at the expense of the unit owner exercising the right of entry.

Disputes

Disputes often arise when people live close together. Problems with a strata corporation can arise, for example, if the requirements of the Act are not followed, if the common property is not maintained or there are complaints about how meetings are run. In most cases, problems can be resolved within the corporation, and often a community mediation service can assist to sort out problems.

The strata corporation can intervene where a dispute between unit owners involves a breach of the articles, for example where a unit owner continues to play loud music late at night. The strata corporation may write to the unit owner and point out that there has been a breach of the articles and that, under the Act the unit owner is bound by the articles (see also Articles: Breaches of the articles). In other disputes not involving a breach of the articles, the strata corporation may also try to intervene (usually through its management committee or strata manager) to sort out the problem.

APPLICATION TO THE MAGISTRATES COURT

If no resolution can be worked out, then an application may be made to the Magistrates Court as a minor civil action [s 48A] to decide the matter. If the matter is particularly complex or significant [s 41A(5)], a unit owner can seek the permission of the District Court to start proceedings there [s 41A(3)]. Alternatively, the District Court can agree to transfer proceedings begun in the Magistrates Court to the District Court [s 41A(4)].

An application can be made to the court by [s 41AA]:

- a strata corporation
- the owner or occupier of a unit (including a tenant)
- a person who has contracted to purchase a unit
- any other person bound by the articles of a strata corporation except for persons invited to or visiting the site.

The court can deal with disputes where [s 41A]:

- it is claimed a breach of the Act or the articles of the corporation has occurred
- an occupier of a unit claims to have been prejudiced by the wrongful act or default of the strata corporation, or a delegate (including a strata manager), or the management committee, or some other member of the strata corporation
- a member of a strata corporation claims that a decision of the strata corporation, or a delegate (including a strata manager), or the management committee is unreasonable, oppressive or unjust
- any aspect of the occupation or use of a strata unit is in dispute between a strata corporation and a member of the corporation, or between two or more members of a strata corporation.

The strata corporation may appoint a member of the corporation to represent it in any proceedings [s 41A(8)], or it may be represented by its strata manager.

The court may [s 41A(9)]:

- order a party do something
- order that a party refrain from any action, or stop doing something
- request further information or records
- order that accounts be audited
- decide on the validity of an article
- decide on the validity of a decision of the corporation
- order that the articles of association be altered

- reverse or vary any decision of the corporation or management committee
- vary, avoid or terminate a contract entered into between a strata corporation and a strata manager or an associate of the strata manager (the court will only do so if it is satisfied that the contract involves a breach of fiduciary duties or other duties under the Act)
- award money as damages or compensation
- make any other incidental or ancillary orders
- make an interim order in urgent matters [s 41A(11), (12)].

Any person who fails to comply with an order of the court is guilty of an offence with a maximum penalty of \$2 000 [s 41A(13)].

APPOINTMENT OF AN ADMINISTRATOR

If substantial problems arise, the corporation, a creditor of the corporation, a unit owner, or someone with a registered interest in a unit (for example, a mortgagee) can apply to the Magistrates Court or Supreme Court to have an administrator appointed to take over the affairs of the corporation [s 37]. Any application to court would only be in extreme circumstances, and the court would be reluctant to appoint an administrator unless incompetence or illegality was clearly shown. An administrator has wide powers and can do anything for which a special or unanimous resolution is usually required [s 37(2)]. The legal costs relating to the appointment of an administrator and remuneration of the administrator are payable from the funds of the strata corporation [s 37(4)].

EVICTING A TENANT

If a tenant of a unit uses the unit for an illegal purpose or causes a nuisance or interferes with the reasonable peace, comfort or privacy of occupiers of the other units, then the affected person or persons can apply to the Residential Tenancies Tribunal (soon to be the Civil and Administrative Tribunal) to terminate the tenancy. Legal advice should be sought in this situation.



Buying a strata unit

MATTERS TO BE CONSIDERED IN PURCHASING A STRATA UNIT

There are particular issues related to buying a strata unit. Effectively, you are buying into a strata corporation and will become a member of the strata corporation. As well as being responsible for maintaining your own unit, you will share the responsibility for maintaining the common property (the external structure and foundations of the buildings and pipes, cables, wires, ducts and drains).

As a potential buyer, you may apply to the strata corporation for a range of information for moderate fees (see [The strata corporation: Access to information by unit owners](#)).

If you enter a contract, the vendor must provide certain information (see below), including the notice in Division 3 of the Schedule of Form 1, *Land and Business (Sale and Conveyancing) Regulations 2010 (SA)*, which sets out a range of issues to consider when buying into a strata corporation. The following issues are part of the notice:

GOVERNANCE

You will automatically become a member of the body corporate, which includes all owners and has the job of maintaining the common property and enforcing the rules. Decisions, such as the amount you must pay in levies, will be made by vote of the body corporate. You will need to take part in meetings if you wish to have a say. If outvoted, you will have to live with decisions that you might not agree with.

USE OF YOUR PROPERTY

You, and anyone who visits or occupies your property, will be bound by rules in the form of articles or by-laws. These can restrict the use of the property, for example, they can deal with keeping pets, car parking, noise, rubbish disposal, short-term letting, upkeep of buildings and so on. Make sure that you have read the articles or by-laws before you decide whether this property will suit you.

Depending on the rules, you might not be permitted to make changes to the exterior of your unit, such as installing a television aerial or an air-conditioner, building a pergola, attaching external blinds etc. without the permission of the body corporate. A meeting may be needed before permission can be granted. Permission may be refused.

Note that the articles or by-laws could change between now and when you become the owner: the body corporate might vote to change them.

ARE YOU BUYING A DEBT?

If there are unpaid contributions owing on this property, you can be made to pay them. You are entitled to know the financial state of the body corporate and you should make sure you see its records before deciding whether to buy. As a prospective owner, you can write to the body corporate requiring to see the records, including minutes of meetings, details of assets and liabilities, contributions payable, outstanding or planned expenses and insurance policies.

There is a fee. To make a request, write to the secretary or management committee of the body corporate.

EXPENSES

The body corporate can require you to maintain your property, even if you do not agree, or can carry out maintenance and bill you for it. The body corporate can require you to contribute to the cost of upkeep of the common property, even if you do not agree. Consider what future maintenance or repairs might be needed on the property in the long term.

GUARANTEE

As an owner, you are a guarantor of the liabilities of the body corporate. If it does not pay its debts, you can be called on to do so. Make sure you know what the liabilities are before you decide to buy. Ask the body corporate for copies of the financial records.

CONTRACTS

The body corporate can make contracts. For example, it may engage a body corporate manager to do some or all of its work. It may contract with traders for maintenance work. It might engage a caretaker to look after the property. It might make any other kind of contract to buy services or products for the body corporate. Find out what contracts the body corporate is committed to and the cost.

The body corporate will have to raise funds from the owners to pay the money due under these contracts. As a guarantor, you could be liable if the body corporate owes money under a contract.

INFORMATION AND DOCUMENTS A VENDOR IS REQUIRED TO PROVIDE

Along with the information that must be provided in relation to any proposed sale of land, certain information about a strata corporation must also be provided under Division 2 of the Schedule of Form 1, Land and Business (Sale and Conveyancing) Regulations 2010 (SA):

- particulars of contributions payable in relation to the unit, including details of arrears of contributions related to the unit

- particulars of the assets and liabilities of the strata corporation
- particulars of expenditure that the strata corporation has incurred, or has resolved to incur, and to which the unit owner of the unit must contribute, or is likely to be required to contribute
- particulars of the unit entitlement of the unit.

The following documents should also be provided:

- a copy of the minutes of the general meetings of the strata corporation and management committee for the preceding 2 years
- a copy of the statement of accounts of the strata corporation last prepared
- a copy of current policies of insurance taken out by the strata corporation
- a copy of the articles of the strata corporation (copies of the articles may also be obtained from the Lands Titles Registration Office).

Note that, if the vendor has no agent but the purchaser has an agent, the purchaser's agent must apply for the information s 9(2) Land and Business (Sale and Conveyancing) Act 1994 (SA).

The notice in Division 3 of the Schedule of Form 1 must also be provided to the purchaser. This notice sets out a range of issues to consider when buying into a strata corporation.

DOCUMENTS YOU MAY INSPECT

You are entitled to inspect (look at) [s 41(1), reg 11]:

- a copy of the accounting records of the corporation (fee: \$5)
- the minute books of the corporation (fee: \$5)
- any documents received by the strata corporation from the original registered proprietor under s 38(3), including the duplicate certificate of title for the common property of the strata corporation (fee: \$5)
- a copy of any contract with a strata manager (no fee)
- the register of unit owners (no fee).

Common Questions



Annual general meeting

WHEN SHOULD WE HAVE AN ANNUAL GENERAL MEETING?

The strata corporation must hold the next annual general meeting no more than 15 months after its last meeting. An annual general meeting should be held in every calendar year [s 33(4)].

Approval for structural work

AN OWNER IN OUR BLOCK OF UNITS WANTS TO PUT AWNINGS ON THE OUTSIDE OF THE BUILDING TO SHADE HER KITCHEN WINDOWS FROM THE AFTERNOON SUN. DOES SHE NEED PERMISSION FROM THE CORPORATION TO DO THIS?

Yes. The decision to alter the external appearance of the units must be taken by the corporation. A special resolution of the corporation will be required to grant permission for this work [s 29].

Attendance by proxy at meetings

I AM A MEMBER OF THE MANAGEMENT COMMITTEE BUT FIND IT HARD TO GET TO EVERY MEETING. CAN I APPOINT A PROXY (SOMEONE TO VOTE FOR ME) FOR THESE MEETINGS OR AT GENERAL MEETINGS?

If a member of the management committee is unable to attend a committee meeting, they can appoint another unit owner as their proxy [s 35(7)].

However, for a general meeting, there are strict rules about the appointment of a proxy: the nomination must be sent in writing to the secretary of the strata corporation; it must specify whether the nominated person is nominated to attend and vote at all meetings, and in relation to all matters, on behalf of the unit owner, or only at specified meetings, or in relation to specified matters, on behalf of the unit owner.

Auctions and sales

CAN I SELL MY UNIT AT ANYTIME? CAN I HOLD AN AUCTION IN MY UNIT WHEN I WISH TO SELL IT?

Yes. There are no limits on the sale of a unit by the unit owner, but you will need the corporation's permission to place an auction or sale sign on common property.

Auditing

DO WE HAVE TO MAKE SURE THE CORPORATION BOOKS AND RECORDS ARE AUDITED?

This depends on whether your strata corporation has appointed a strata manager or agent to receive and hold money on behalf of the corporation. A manager or agent must keep money in a trust account and has a legal obligation to have the trust account audited at regular

intervals. The Act does not require a member of the corporation who is the treasurer or holds corporation money to have accounts audited; however the appointment of an auditor is sensible to make sure that a proper statement of accounts has been prepared. This should be balanced against the cost of auditing the accounts.

Bank Accounts

HOW DO WE OPEN A NEW BANK ACCOUNT IN THE NAME OF THE CORPORATION?

Section 26(1)(c) of the Act gives the corporation the power to open and maintain a bank account. The bank will require evidence that the account owner is an incorporated body. This could include a copy of the deposited Strata Plan, a copy of the common property title or a copy of the deposit slip. These can all be requested from the Lands Titles Office with payment of the prescribed fee.

A strata manager can be asked to open a bank account for the corporation. If there is no strata manager, the bank may also wish to see evidence that the individual/s opening the account on behalf of the corporation have the power to do so. Minutes of the general or management committee meeting giving authority to open the account would usually be accepted.

Books and records

I HAVE RECENTLY BEEN ELECTED TREASURER AND SECRETARY OF OUR CORPORATION. WHAT SORT OF BOOKS AND RECORDS DO I HAVE TO KEEP?

The requirements in relation to maintaining and keeping records of the corporation may be delegated to a strata manager. If this function is not delegated, as the treasurer, you must keep all accounting records relating to receipts and expenditure of the corporation and management committee.

As the secretary, you are responsible for administrative and secretarial matters for the corporation and the management committee. Record keeping is part of this function. If the function of maintaining and keeping records has not been delegated to a strata manager, you must keep: a register of the names of the unit owners; minutes of all meetings; notices and orders served on the corporation; copies of correspondence received or sent by the corporation; notices of meetings of the corporation and its management committee; the duplicate certificate of title for the common property of the strata corporation; documents received by the strata corporation from the original registered proprietor.

For further detail, see [The strata corporation: Records](#).

Calling meetings and initiating action

I HAVE ADVISED THE SECRETARY OF THE STRATA CORPORATION THAT REPAIRS ARE NEEDED TO MY WATER PIPES DUE TO TREE ROOT DAMAGE, BUT SHE HAS TAKEN NO ACTION. WHAT CAN I DO?

If the damage is the responsibility of the strata corporation, and the secretary is not acting when asked, the unit owner could approach any two members of the committee, or if the corporation does not have a management committee, the unit owners of one fifth or more units, and ask them to convene a general meeting. If the situation becomes an emergency, the unit owner could have the repairs done and bill the strata corporation. If all else fails, the unit owner could take the strata corporation to court, either to force them to take reasonable action, or to recover costs of repairs.

Car parking

VISITORS TO OTHER UNITS OFTEN PARK IN MY SPACE, OR ON COMMON PROPERTY, OBSTRUCTING MY ACCESS. WHAT CAN I DO TO STOP THIS?

Unit occupiers have an obligation under the articles to make sure that their visitors do not park in other unit owner's spaces, or parts of the common property not authorised for parking. The upset unit occupier can first talk to the other unit occupier about the problem. If the unit occupier is a tenant, the unit owner may also be approached, as they have an obligation to take reasonable steps to ensure that the tenant complies with the articles. If there is no resolution, the management committee or the corporation may be asked to intervene. If the problem continues, it is suggested that a community mediation service be approached. If the articles of the corporation provide for a penalty to be imposed for a breach of the articles, the corporation may impose a penalty on the unit occupier. As a last resort, an application can be made to the Magistrates Court for an order to prevent future breaches. If a court order is not complied with, fines or even gaol sentences can be imposed.

Corporation Records

I AM WORRIED ABOUT THE CORPORATION'S FINANCES. CAN I LOOK AT THE BOOKS AND RECORDS OF THE CORPORATION TO PUT MY MIND AT EASE?

Yes. The corporation must keep the minutes of meetings for 30 years and accounting records and correspondence for seven years. As a unit owner you can apply to the secretary or a committee member or the strata manager, and they must arrange for you to see the information you require within five business days after the request. Most information is provided free of charge to unit owners but some copying charges may apply (see The strata

corporation: Access to information by unit owners). You may also arrange to have quarterly bank statements for all accounts maintained by the corporation.

Corporation address

WHAT IS THE STRATA CORPORATION'S OFFICIAL ADDRESS?

The official address of the corporation is that shown on the certificate of title issued for the common property in the name of the strata corporation. A corporation must keep a letter box with its name clearly shown on it for postal deliveries to the site. A post office box can only be used as the address of a corporation in districts where there is no postal delivery service. A document may be served on a strata corporation, its secretary or treasurer by posting or delivering to the address of the corporation.

Exclusive use of common property

ONE OF THE OWNERS IN THE BLOCK WAS GRANTED 'EXCLUSIVE USE' OF A LARGE PART OF THE COMMON PROPERTY BY THE CORPORATION SOME YEARS AGO. WE FEEL THAT THIS IS AN UNFAIR SITUATION. HOW CAN WE REGAIN THIS COMMON PROPERTY FOR USE BY ALL OWNERS?

The corporation can agree, by unanimous resolution, to grant exclusive use of the common property for a set period. A unanimous resolution is also required to revoke the exclusive use or for it to continue past the agreed date. If the exclusive use is not limited by time, it was an invalid resolution, as the Act requires any unanimous resolution allowing a unit owner exclusive use of a part of common property to be for a specified time.

ONE OF THE OWNERS HAS FENCED IN COMMON PROPERTY NEXT TO THEIR UNIT FOR THEIR OWN USE. CAN THEY DO THIS?

Excluding others from common property is contrary to the articles, as is using common property as a garden for a unit owner's own purposes. The corporation or management committee may treat this behaviour as a breach of the articles and go through the steps of communication – mediation – penalty (if possible under the articles) – Magistrates Court minor civil action.

Fences

THE FENCE AROUND MY UNIT IS OLD AND NEEDS TO BE REPLACED. SHOULD THE CORPORATION PAY FOR A NEW FENCE?

Generally, fences are common property and therefore the responsibility of the strata corporation. The corporation must maintain the common property to an acceptable standard, which may involve replacing or repairing the fence.

However, a strata plan could specify that a fence is part of a unit, or a fence built by a unit owner may not be common property. If the fence is not common property, you as the unit owner, are responsible to maintain it. In fact, in this case, the corporation could require you to replace the fence. Legal advice should be sought in these situations.

How many members are allowed on the management committee?

FOR THE LAST 5 YEARS AT EACH ANNUAL GENERAL MEETING, OUR CORPORATION, COMPRISING 20 UNITS, HAS ELECTED A PRESIDING OFFICER, SECRETARY, TREASURER AND 7 OTHER MANAGEMENT COMMITTEE MEMBERS. THIS NUMBER OF PEOPLE ON ONE COMMITTEE SEEMS TO ME TO BE TOO MANY. HOW MANY PEOPLE ARE THERE SUPPOSED TO BE?

There is no maximum number for a management committee. A general meeting of the corporation can fix the numbers for a management committee and must elect the presiding officer, secretary and treasurer. If a unit owner thinks the management committee is too large they could raise this at a general meeting.

Improvements to common property

SOME OF THE UNIT OWNERS WANT THE CORPORATION TO INSTALL HAND RAILS ON THE COMMON STAIRS. WHAT WOULD BE NECESSARY TO HAVE THE WORK APPROVED?

As the common stairs are shared by all unit owners, they are considered common property. A simple majority vote at a general meeting can approve this addition to the common property. The corporation is responsible for public risk in the common property area and it may be sensible to install these rails.

Investing funds and borrowing money

OUR STRATA CORPORATION IS HOLDING FUNDS PUT IN BY THE UNIT OWNERS. WHERE CAN WE INVEST THESE SURPLUS FUNDS? SIMILARLY, IF THE CORPORATION WANTED TO BORROW MONEY, ARE THERE ANY RESTRICTIONS?

The Act states that the corporation's money should be in an account which does not expose the funds to great risk. If a strata manager or agent is authorised by the corporation to receive or hold money on the corporation's behalf, that money must be held in a trust account. Under the Act, the strata corporation can borrow money to carry out its functions. The articles can state who is authorised to borrow the money and from which financial institutions.

Management committee meetings

CAN I ATTEND MANAGEMENT COMMITTEE MEETINGS EVEN THOUGH I AM NOT ON THE COMMITTEE?

You can only attend those meetings with the committee's permission, or if the articles allow your attendance, or a general meeting decides you can attend.

Management committee vacancies

RECENTLY SOME MEMBERS OF OUR MANAGEMENT COMMITTEE RESIGNED AND THIS LEFT THE COMMITTEE WITHOUT A SECRETARY. WHAT DO WE DO?

The management committee can appoint a person to fill a casual vacancy until a permanent appointment is made at the next general meeting. The position of secretary must not be left vacant more than six months.

If the number of resignations takes the number of members below the number required for a quorum, and there is difficulty filling vacancies, decisions can still be made, but they will need to be ratified at the next committee meeting with a quorum, or at a general meeting of the corporation.

Negligence and Insurance

A TREE ON COMMON PROPERTY OVERHANGS THE STREET AND DROPS BERRIES. I AM WORRIED THAT A MEMBER OF THE PUBLIC MIGHT SUFFER INJURY. ARE WE RESPONSIBLE?

If a member of the public, or a unit owner, suffers injury as a result of the negligence of the strata corporation, then the strata corporation may be liable. This may include the strata corporation's negligence in not pruning or maintaining trees in a safe manner. All strata corporations must hold public liability insurance to the value of 10 million dollars to cover these risks.

DOES THE CORPORATION'S INSURANCE COVER A BURST HOT WATER SERVICE?

An insurance policy does not normally cover wear and tear. Unit owners and the corporation have a duty to maintain their equipment. However the building damage caused by a leaking hot water service may be covered.

Notice of meetings

A GENERAL MEETING OF OUR GROUP HAS BEEN CALLED BUT THEY HAVE GIVEN ME A NOTICE POSTED LESS THAN 14 DAYS BEFORE THE DATE OF THE MEETING. ARE THE DECISIONS OF THE MEETING LEGAL?

Written notice of the time, place and agenda of a general meeting must be given to all unit owners at least 14 days before the date of a meeting. Contact the secretary if you have not received a notice. You could point out that any decision made at the meeting would be invalid as the

meeting was not properly called, and any decisions would need to be ratified at a properly convened meeting.

Ongoing costs

WHAT TYPES OF EXPENSES ARE INVOLVED IF I WISH TO OWN A STRATA UNIT?

Apart from the usual expenses associated with owning land (council rates, water and sewerage, gas, electricity etc.), as a member of the strata scheme you will be required to contribute to the costs associated with the running and maintenance of the scheme. These can be split into two categories: recurrent fees (those that occur on an annual basis), and costs for the long term maintenance of the scheme (often referred to as a sinking fund). Inquiries should be made with the strata corporation that administers the scheme to find out these additional costs.

Painting and gutters

CAN THE CORPORATION OBLIGE UNIT OWNERS TO CLEAN THE GUTTERS ON THEIR UNIT?

Gutters and roofs are common property. There is no reason why unit owners could not agree to clean their own gutters to reduce maintenance costs, but there is no legal obligation to do so. If a unit owner does not or cannot clean their gutters, the corporation remains liable for repairs. A thorough clean before winter is good preventative maintenance.

CAN OWNERS DECIDE TO SAVE MAINTENANCE COSTS BY PAINTING THE OUTSIDE OF THEIR OWN UNITS?

The corporation could agree to this arrangement but it carries some risks in that the end result could be poor or inconsistent. The corporation is liable in the first instance for fixing the external paintwork on a poorly painted unit.

Quorum

I LIVE IN A BLOCK OF 8 UNITS. AT OUR ANNUAL GENERAL MEETING ONLY THREE PEOPLE TURNED UP. IS THIS A QUORUM?

No business may be transacted at a general meeting unless a quorum of at least half the unit owners is represented (in person, or by validly appointed proxy, or by remote communication if this has been allowed). In your particular strata corporation, four persons entitled to vote would constitute a quorum. If a quorum is not present, the meeting must be adjourned for at least one week, but not more than 14 days, and written notice given to unit owners of another meeting. Then if after one half an hour of the relevant time less than half of the unit owners are represented, those present are entitled to work as a quorum.

Rates

I HAVE BOUGHT A UNIT IN A BLOCK OF THREE. DO ALL THREE OWNERS INDIVIDUALLY HAVE TO PAY THE WATER AND SEWERAGE RATES AND THE COUNCIL RATES?

Each of the units in your block will be billed separately for council and sewerage rates. However, unless there are separate water meters for each unit, there is no way to determine a unit's water usage. Contributions are normally paid by unit entitlement; a unanimous resolution is needed to change this arrangement. SA Water offers the following billing options: sending one lump sum bill for water usage every three months to the strata corporation secretary; dividing the bill in percentages nominated by the corporation and billing owners separately; dividing the bill equally between the unit owners and billing them separately. Whatever the billing arrangement, the strata corporation is ultimately responsible to SA Water for the bill. Private water meters may be installed to each unit to determine how the SA Water account should be divided. There are costs associated with the installation and reading of private meters.

Renting

I AM RENTING OUT MY UNIT. DO I HAVE TO TELL THE STRATA CORPORATION? WHAT RIGHTS DO THE TENANTS HAVE IN RELATION TO THE STRATA CORPORATION? CAN THEY ATTEND AND VOTE AT MEETINGS? WHAT HAPPENS IF MY TENANTS CAUSE PROBLEMS FOR OTHER UNIT OCCUPIERS?

The unit owner must immediately notify the strata corporation of any change in the occupancy of the unit. Tenants do not have any voting rights in relation to the unit. However you may appoint your tenant as your proxy to attend general meetings and vote. You have an obligation to ensure your tenants abide by the articles of the strata corporation. It should be noted that it is not possible for a strata corporation to restrict your rights to rent your unit or to specify to whom the unit can be rented.

If your tenant causes the unit to be used for an illegal purpose, or interferes with the peace, privacy or comfort of other residents, the affected residents could approach the Residential Tenancies Tribunal for an order that your tenants be evicted.

Salt (rising) damp

I OWN A UNIT IN A GROUP WHERE TWO OF THE OTHER UNITS HAVE PLASTER FALLING OFF FROM RISING DAMP. WHY SHOULD I PAY FOR DAMAGE INSIDE THEIR UNITS?

The building foundations are common property and the corporation is therefore responsible for maintaining the damp course that protects the walls. The corporation has an obligation to make good damage caused by rising damp that can be shown to come from the soil through the foundations.

Trees

WHO IS RESPONSIBLE FOR A TREE LOCATED IN A UNIT OWNER'S YARD?

Generally this needs to be determined by looking at the definition of what is a yard and common property on the strata plan. Reference to the care of trees within unit subsidiaries could be made in the articles so that any costs associated with the tree (including damage and trimming) can be allocated between the unit owner and the corporation.

Voting

OUR STRATA MANAGER HAS SENT THE OWNERS A POSTAL FORM TO VOTE ABOUT WHICH PAINTING QUOTE TO ACCEPT. IS THE RESULT BINDING ON ALL OWNERS?

The Act only provides for decisions to be made at a general or management committee meeting. However, the meeting could decide to authorise the strata manager to obtain quotes and select the preferred quote by postal vote.

What is common property?

I HAVE PAID FOR MY BLOCKED SEWER PIPE TO BE CLEARED, BUT THE SECRETARY REFUSES TO REIMBURSE ME, CLAIMING IT WAS NOT COMMON PROPERTY. WHO SHOULD PAY?

The issue of what is and what is not common property can cause many disputes. Generally speaking, the boundary of a unit is the internal surface of its walls, floors and ceilings, and a unit can also include an area known as a 'unit subsidiary' marked on the strata plan as being for the exclusive use of a particular unit, for example, a carport or garden area.

Common property comprises any land or space that is not within a unit, and such things as pipes, drains or electrical wiring that are not for the exclusive use of a unit. The strata corporation has a responsibility to maintain the common property. However, if the corporation carries out work that wholly or substantially benefits a particular unit,

or group of units, then responsibility for payment may be placed on those unit owners. In past court cases, 'benefit' has been interpreted as meaning something more than ongoing maintenance. If the pipe serves only your unit it could be argued that the clearing of the pipes should be at your expense. The cause of the blockage may also be relevant to who pays the bill. If it was clearly your fault, for example, your child's toy blocked the pipe, then you may well have a responsibility to pay for clearing and possibly even repairs. On the other hand, if the blockage was caused by roots from a tree on common property then the corporation is liable.

White ants

I AM THE OWNER/OCCUPIER OF A UNIT IN A BLOCK OF 12. RECENTLY THE CORPORATION HAS DECIDED TO HAVE EACH UNIT TREATED FOR WHITE ANTS. I SUFFER FROM ASTHMA AND I AM CONCERNED ABOUT PESTICIDES AND THEIR EFFECT ON MY FAMILY AND THE ENVIRONMENT. CAN THE CORPORATION FORCE ME TO UNDERTAKE THIS WORK?

The corporation has an obligation to administer and maintain the common property for the benefit of all unit owners. This includes protecting the units from white ants as they come from outside the unit boundaries. Any white ant damage to a unit will need to be made good by the corporation. As the proposed work is for the benefit of the entire block of units the corporation would be allowed to treat your unit and recover the cost.

You could approach the presiding officer with your special reasons for an exemption or suggest an alternative treatment for your unit. If a suitable resolution cannot be reached, it is suggested you approach a mediation service. Finally, if there is still no satisfaction, the Magistrates Court can make a decision on the matter. It is advisable to obtain legal advice in this situation.



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Contacts

STRATA AND COMMUNITY ADVICE SERVICE

1300 366 424
Legal Services Commission
www.lsc.sa.gov.au

ADELAIDE OFFICE

159 Gawler Place
Adelaide 5000
Telephone: 8111 5555

ELIZABETH OFFICE

Windsor Building
Elizabeth Shopping Centre
Elizabeth 5112
Telephone: 8111 5400

HOLDEN HILL

Tenancy 7, 560 North East Road
Holden Hill 5088
Telephone: 8111 5440

MT BARKER

18 Walker Street
Mt Barker 5251
Telephone: 8111 5320

NOARLUNGA

Noarlunga House
Colonnades Shopping Centre
Noarlunga Centre 5168
Telephone: 8111 5340

PORT ADELAIDE

306 St Vincent Street
Port Adelaide 5015
Telephone: 8111 5460

PORT AUGUSTA

13 Flinders Terrace
Port Augusta SA 5700
Telephone: 8686 2200

WHYALLA

Tenancy 7, 169 Nicolson Ave
Whyalla Norrie 5608
Telephone: 8686 2240

COMMUNITY MEDIATION SERVICES

www.saccls.org.au/cb_pages/mediation
Telephone: 8350 0376 / 1300 850 650

Mediation services can assist in the settlement of neighbourhood and other community disputes. Mediation is a voluntary process where trained mediators work with people in conflict to help them to resolve their differences. The role of the mediator is to listen, ask questions and find out the facts, not to blame anyone or take sides. With all the information, the mediator helps people to put together an agreement which is not legally binding, but is made in good faith.

The advantages of mediation as a way to resolve disputes are:

- it can save on court and solicitor costs for both parties
- mediation sessions are conducted in private, unlike court proceedings
- it can contribute to the early resolution of problems, thereby reducing stress and anxiety
- both parties take responsibility for their role and are given the opportunity to resolve their own disputes.

Mediation services intervene in disputes at the request of at least one of the parties. If an approach is made to a service, the service can write to invite the other side to come to a mediation session to discuss the problem.

Because attendance is voluntary from both sides, any party may withdraw from the resolution process at any time.

LAND SERVICES GROUP

Lands Titles Office
101 Grenfell Street
Adelaide 5000
Telephone: 8226 3983
www.sa.gov.au/landservices

COMMUNITY LEGAL CENTRES

Central Community Legal Service
Shop 2, 59 Main North Road
Medindie Gardens 5081
Telephone: 8342 1800

NORTHERN CLS

26 John Street
Salisbury 5108
Telephone: 8281 6911

RIVERLAND CLS

8 Wilson Street
Berri 5343
Telephone: 8582 2255

SOUTHERN CLS

40 Beach Road
Christies Beach 5168
Telephone: 8384 5222

SOUTH EAST CLS

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WESTSIDE COMMUNITY LAWYERS INC.

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Hindmarsh SA 5007
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