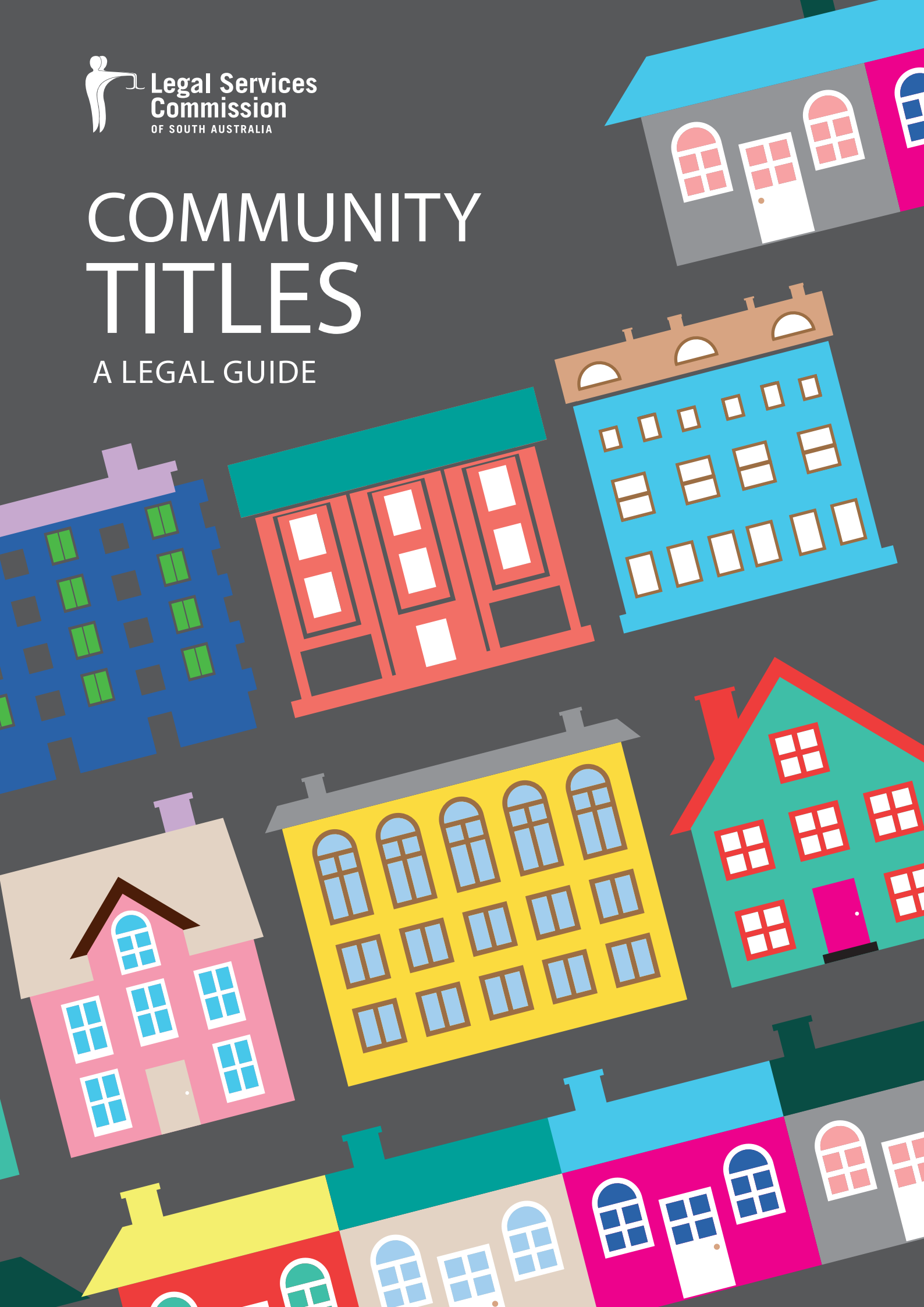


# COMMUNITY TITLES

A LEGAL GUIDE





# Contents

<b>Owning (or Buying) a Community Title Property</b> .....	<b>4</b>
The key documents .....	4
The plan .....	4
The by-laws .....	4
The scheme description .....	4
The development contract .....	4
Important terms .....	4
The Community Corporation .....	4
Community schemes .....	5
Community strata schemes .....	5
Creation of community strata schemes .....	5
Features of community strata schemes .....	5
Common property .....	5
Common property in community strata schemes .....	5
Service infrastructure .....	6
Commercial use of the common property .....	6
Lot entitlements .....	6
Small schemes .....	6
By-laws may exempt corporations from certain requirements .....	6
Forward budgets .....	6
Fidelity guarantee insurance .....	6
Officers of the corporation .....	6
<b>Buying a Community Title Property</b> .....	<b>7</b>
Obtaining information as a prospective purchaser .....	7
Key documents .....	7
Service infrastructure for new developments .....	7
Information to be provided when entering into a contract .....	7
General information .....	7
Matters to be considered in purchasing a community lot or strata unit .....	8
Specific information .....	9
<b>Community Corporation</b> .....	<b>9</b>
Powers of the corporation .....	9
Contributions .....	10
Management of the common property .....	10
Maintenance and repair of lots - entry to premises .....	10
Maintenance and repair of service infrastructure - entry to premises .....	10
Provision of services .....	11
Return of property .....	11
Insurance .....	11
Building insurance .....	11
Fidelity guarantee insurance .....	11

## Community Titles

### A Legal Guide

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Other insurance .....	11	Voting by developer .....	19
Officers of the corporation .....	11	Disclosure of interest .....	19
Presiding Officer .....	12	Absentee votes .....	19
Secretary .....	12	Written ballots .....	19
Treasurer .....	12	Proxy voting .....	19
Liability of officers .....	12	Proxy voting where there is one owner of a lot .....	20
Records .....	12	Appointment of a proxy by general power of attorney .....	20
Register of names .....	12	Proxy voting where there is more than one owner of a lot .....	20
Accounting documents, records and statements .....	12	Disclosure of interest by a proxy .....	20
Notices, orders and correspondence .....	12	Declaration of a member's interest .....	20
Minutes .....	13	Declaration of a proxy's interest to the meeting .....	20
Access to information .....	13	Declaration of a proxy's interest to the person who nominated them .....	20
Insurance policies .....	13	<b>Types of Resolutions .....</b>	<b>21</b>
Bank statements .....	13	Ordinary resolutions .....	21
By-laws .....	13	Special resolutions .....	21
Other information in relation to a lot or the corporation .....	13	When there are only two community lots .....	21
Information to be provided .....	13	When there are three community lots .....	21
Copies of documents to be provided .....	13	When there are four or more community lots .....	21
Documents to be made available for inspection .....	13	Special resolution example 1 .....	22
<b>By-laws (Rules) .....</b>	<b>14</b>	Special resolution example 2 .....	22
Those bound by the by-laws .....	14	Unanimous resolutions .....	23
Variation of the by-laws .....	14	When a unanimous or special resolution is not obtained .....	23
Monetary obligations .....	15	<b>Management Committee .....</b>	<b>24</b>
Access to a lot .....	15	Powers and responsibilities of the management committee .....	24
Assistance dogs and therapeutic animals .....	15	Membership of the management committee .....	24
By-laws that reduce the value of a lot or unfairly discriminate against a lot owner .....	15	Duty of honesty .....	24
Breaches of the by-laws .....	15	Immunity of committee members from liability .....	24
Penalties for breaching the by-laws .....	15	Meetings of the management committee .....	24
Time for payment of a penalty .....	15	Chairing .....	25
Non-payment of a penalty .....	15	Decisions and disclosure of interest .....	25
Notice of a penalty .....	16	Decisions without meeting .....	25
Applying to revoke a penalty notice .....	16	Proxies .....	25
Quorum for a general meeting .....	16	Quorum .....	25
<b>General Meetings .....</b>	<b>17</b>	<b>Financial Management .....</b>	<b>26</b>
Agenda .....	17	Sinking fund and administrative fund .....	26
Attendance by remote communication .....	18	Expenditure statements .....	26
Chairing of general meetings .....	18	Forward budget (sinking fund budget) .....	26
Presiding officer as chair .....	18	Exempt corporations .....	27
Body corporate manager as chair .....	18	Audit of accounts .....	27
Disclosure of interest by chair .....	18	Exempt corporations .....	27
<b>Voting at General Meetings .....</b>	<b>19</b>	Authorizing expenditure .....	27
Lots with two or more owners .....	19	<b>Body Corporate Managers .....</b>	<b>28</b>

Appointing a manager .....	28	Property matters .....	38
Documents to be provided .....	28	Financial matters .....	38
The pamphlet .....	28		
The contract .....	29	Management matters .....	38
The professional indemnity insurance policy schedule .....	29	Style of living .....	38
Duties of managers .....	29	Company and moiety titles .....	39
Professional indemnity insurance .....	29	Contributions .....	39
Duty to act in the best interests of the corporation .....	29	Converting to community title .....	39
Disclosure of interest .....	29	Exclusive use of the common property .....	39
Corporation records .....	29	Fences .....	39
The manager's dealings with the corporation's money .....	29	Fines .....	40
Professional indemnity insurance policy .....	29	Insurance .....	40
Trust account audits .....	30	Managers .....	40
Ending a manager's contract .....	30	Restrictive rules .....	41
Return of corporation records and trust money .....	30	Trees .....	41
<b>Owners' Rights and Responsibilities</b> .....	<b>31</b>	Water rates and meters .....	41
Right of entry .....	31	Short term rentals .....	42
In relation to service infrastructure .....	31	Types of community titles .....	42
In an emergency .....	31	Primary community schemes .....	42
Maintenance and repairs .....	31	Primary community strata schemes .....	42
Insurance .....	31	<b>Contacts</b> .....	<b>44</b>
Compliance with the by-laws .....	31		
Non-interference .....	32		
Contributions .....	32		
Debts of the corporation .....	32		
Structural work .....	32		
Community schemes .....	32		
Community strata schemes (residential) .....	32		
<b>Disputes</b> .....	<b>33</b>		
Mediation .....	33		
Court proceedings .....	33		
What disputes can be taken to court? .....	33		
Who can make an application to the court? .....	33		
Which court hears disputes? .....	33		
Orders that can be made .....	34		
Appointment of an Administrator .....	34		
<b>Converting from Strata Title</b> .....	<b>36</b>		
Converting from other types of schemes .....	36		
<b>Complex Schemes</b> .....	<b>36</b>		
Development lots .....	36		
Secondary and tertiary schemes .....	36		
<b>Common Questions</b> .....	<b>37</b>		
Building on a lot .....	38		
Buying a community title .....	38		

# Owning (or buying) a Community Title Property

The law concerning community titles is contained in the Community Titles Act 1996 (SA), and the Community Titles Regulations 2011 (SA).

All references to legislation and regulations in this booklet are to these documents, unless otherwise stated.

There are two types of community titles available in SA.

- Community Schemes
- Community Strata Schemes.

## THE KEY DOCUMENTS

Owners and prospective buyers of a community title property should be aware of four documents which are associated with the title. The Plan and the By-Laws must be lodged with the Land Titles Office. If there is a scheme description and a development contract then those documents must also be lodged with the LTO. These documents may be attached to the contract of sale but can also be purchased from the LTO for a fee.

## THE PLAN

The plan identifies whether it is a community scheme or a community strata scheme. There are significant differences between the two schemes.

The plan divides the land into community lots and common property [S7(1)] In a community strata scheme the plan refers to strata lots and lot subsidiaries [S9, S 19].

The plan will also show whether it covers a primary, secondary or tertiary scheme. Most residential properties are a primary scheme but properties with mixed uses may have two or even three schemes [S 7]. [See [Development of the Community Title: Tiering](#)].

There may also be a development lot which may be divided at a later date to create additional lots [S 6(2) and S 8]. Ideally the plan should show service infrastructure. [S3 and S14(5)(e)].

A community strata plan further divides the site by reference to the buildings on the land and must also have upper and lower boundaries [for instance relating to the storeys of a building] [ss 9 and 19]. A strata lot may also include a lot subsidiary which is an area either within the building or on land outside the building [S19(3)(d)].

The Plan also includes a schedule of the Lot Entitlements [S 14)5)(i)].

## THE BY-LAWS

By-laws are the rules of the community corporation [ss 12 and 34]. They provide for the administration of the common property but also can regulate the use and enjoyment and appearance of the community lots and the purposes for which a lot may be used. They are binding on the corporation, the owners and occupiers of the lots and persons (such as contractors and visitors) entering the property [S 43].

## THE SCHEME DESCRIPTION

The scheme description gives the owner or prospective purchaser an overall view of how the scheme is to be developed and the end result. This document is optional for schemes of six lots or less that are used predominantly for residential purposes. This document must be lodged for commercial schemes, irrespective of the number of lots, or if the plan contains a development lot, or if the common property or a lot within the scheme is to be developed in a specific way.

## THE DEVELOPMENT CONTRACT

This is a contract entered into by the developer to develop a development lot, the common property and community lots in accordance with the scheme description and the by-laws [s 47 and s 48]. The corporation or a lot owner may sue if the developer does not comply with the contract [s 49].

## IMPORTANT TERMS

### THE COMMUNITY CORPORATION

The owners of the lots (but not the owner of a development lot) are members of the community corporation. The owners of secondary lots are not members of the primary corporation and nor are owners of tertiary lots members of the secondary corporation. The secondary or tertiary corporation is a member of the respective primary or secondary corporation [S74]. The certificate of title for the common property is issued in the name of the community corporation. Among other functions the corporation is responsible for administering, maintaining and insuring the common property and enforcing the by-laws and the development contract (if any)[S75]; and to enforce the duty of maintenance and

repair imposed upon the lot owner by the Act or the by-laws [S 101] [See [Community Corporation](#)]

## COMMUNITY SCHEMES

In a community scheme, lot boundaries generally do not relate to a structure, but are determined by surveyed land measurements and are unlimited in height and depth, unless otherwise specified on the plan. Unlike a community strata scheme, the lot owner owns the land and buildings on the lot and is usually responsible for maintaining them in good order or condition. The corporation may enforce that obligation [S 101]. Alternatively, the by-laws may require the community corporation to undertake that obligation [S134]. The owner is also responsible for insuring the property, but the by-laws may authorize or require the community corporation to act as an agent for the owners in arranging policies of insurance.

Unlike a Torrens Title property, a lot owner may be restricted by the by-laws of the corporation which may regulate the design, construction and appearance of buildings and other improvements and even regulate the landscaping on the lot. The by-laws must be consistent with the scheme description [S11(4)] [see BY-LAWS].

The owner of a lot is also responsible for the service infrastructure (pipes, cables etc. ) which only services that particular unit.

As a member of the community corporation the lot holder is also responsible through the corporation for maintaining and insuring the common property.

## COMMUNITY STRATA SCHEMES

### Creation of community strata schemes

There are three reasons why a community strata scheme rather than a community scheme is created.

Firstly, if a new scheme is created under the Community Titles Act and there is at least one lot that exists above another lot then it must form part of a community strata scheme [S 19(1)]. So apartment blocks must form a community strata scheme and so must land which comprises even one double storey building which has a lot on each floor even if all other buildings are single storey. In the later example the property could be split into a primary community scheme comprising the single storey buildings and a secondary community strata scheme for the remaining building.

Secondly, clause 2 of the Schedule to the Community Titles Act provides that a strata corporation under the Strata Titles Act 1988 may, by ordinary resolution, decide that the Community Titles Act 1996 and not the Strata Titles Act 1988 will apply to the corporation and the scheme, [see: [Converting from Strata Title](#)]

Clause 3 of the Schedule allows some company and moiety schemes to apply to be covered by the Community Titles Act 1996. If this can be achieved then the scheme will become a community strata scheme.

### Features of a community strata scheme

The major differences between a community scheme and community strata scheme is that in the later each lot must be wholly or partly within a building. In addition to the lot there may also be lot subsidiaries which are for the exclusive use of the lot holder [S 19(3)(d)]. Examples of subsidiaries are: yards, garages, carports or parking spaces, storage places, balconies and porches.

The corporation is responsible for insuring the common property [S103].

## COMMON PROPERTY

The common property consists of those parts of the community parcel that do not comprise or form part of a lot, and includes the service infrastructure not for the exclusive use of a lot [ss 28(1)(a)-(b)]. In addition, the common property includes any building that is not for the exclusive use of a lot and was erected before the deposit of the community plan, any building erected by the developer or the community corporation as part of the common property, and any other building on the community parcel that has been committed to the care of the community corporation as part of the common property [ss 28(1)(d)-(f)].

### Common property in community strata schemes

In the case of a community strata plan the common property includes those parts of the building that are not part of a lot [s 28(1)(c)]. Boundaries of the part of the lot within a building are defined by reference to the building and upper and lower boundaries must be defined [S 9].

Unless the strata plan explicitly states to the contrary:

- where a boundary of a lot is defined by reference to a wall or fence the boundary is the inner surface of the wall of fence;
- where a boundary of a lot is defined by reference to a floor [where, for instance, a lot is above another lot] the boundary is the upper surface of the floor;
- where a boundary is defined by reference to a ceiling or roof then the boundary is the under surface of the ceiling or roof. For instance if a lot is below another lot then the upper boundary of the lot is the under surface of the ceiling [S 19(4)].



## Service infrastructure

Service infrastructure is the cables, wires, pipes, sewers, drains, ducts, plant and equipment that provide services to lot owners and the common property [s 3].

Services are [s 3]:

Water and gas reticulation or supply; electricity and heating oil supply; air-conditioning or ventilation; a telephone, computer data, television or radio service; sewer systems and drainage; systems for the removal or disposal of garbage or waste; and other systems or services designed to improve the amenity, or enhance the enjoyment of the lots or common property.

The service infrastructure is shown, as far as it is practical to do so, on the plan of community division through the common property, and on a lot where it services more than the one lot [s 14(5)(e)]. As service infrastructure that serves more than one lot forms part of the common property, it is the responsibility of the corporation to maintain it [s 75]. Service infrastructure that only serves one lot is the responsibility of that lot owner to maintain.

## Commercial use of the common property

The common property can be used in a community title scheme, subject to planning approval, for commercial ventures such as a public golf course or retail centre [s 28(2)]. Any profits are returned to the community corporation and must be paid into the administrative or sinking funds [s 28(3)]. Surplus profits may, by special resolution, be distributed to owners of the lots in proportion to lot entitlement, if more money than is needed is held in the administrative fund or the sinking fund [s 117]. As there can be losses as well as profits, any commercial venture should be based on detailed financial and legal advice.

## LOT ENTITLEMENTS

The lot entitlement of a lot in a community scheme is the proportion of the unimproved value of the lot to the aggregate value of the lots. It is expressed as a whole number. If the value of the respective lots is 45%, 30.5 % and 24.5% of the total then the lot entitlements may be expressed as 90, 61 and 49 out of 200 [S 20(1) - (4)]

In the case of a strata lot the value will be taken to include the value of the part of the building containing or comprising the lot without taking into account the value of the fixtures and other improvements.

## SMALL SCHEMES

Some requirements in the Community Titles Act 1996 (SA) do not apply to some small schemes. In addition, the by-laws of some schemes may exempt a scheme from certain requirements. Exemptions vary depending on the number of lots in the scheme or the value of the common property. See also [Types of Resolutions: Special resolutions](#) and [Financial Management: Audit of accounts](#).

### By-laws may exempt a corporation from certain requirements

The by-laws of a scheme consisting of two lots may exempt the corporation from the requirements to [s 35]:

- hold annual general meetings (except the first general meeting)
- prepare accounting records of the corporation's receipts and expenditure and to prepare an annual statement of accounts
- have the annual statement of accounts audited
- establish administrative and sinking funds, and
- maintain a register of the names of the owners of the community lots.

The by-laws of a three lot scheme may only exempt the corporation from the requirement to maintain a register of names of the owners of the community lots.

### Forward budgets

In relation to forward budgets, corporations with six or less community lots, and corporations with buildings and improvements 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 (see [Financial Management](#)).

### Fidelity guarantee insurance

The requirement to have fidelity guarantee insurance does not apply to two lot community corporations with no administrative or sinking fund, or to community corporations with common property insurance cover of \$100 000 or less (see [Community Corporation: Insurance](#)).

### Officers of the corporation

If a scheme has ten or less lots, one person may hold two or all of the positions of presiding officer, secretary and treasurer [s 76(3)(a)] (see [Community Corporation: Officers of the corporation](#)).





# Buying a Community Title Property

## OBTAINING INFORMATION AS A PROSPECTIVE PURCHASER

There are particular issues related to buying a community lot. Effectively, you are buying into a corporation and will become a member of the corporation. It is therefore essential that you have as much information as possible about the corporation before you decide to purchase.

You may obtain information before you enter into a contract. Alternatively, if you have entered into a contract, you must be provided with certain information at least 10 clear days before the date of settlement under the Land and Business (Sale and Conveyancing) Act 1994 (SA) s 7(1) (see below: [Information to be provided when entering into a contract](#)).

As a prospective purchaser, you may apply to the community corporation for a range of information for moderate fees (see [Community Corporation: Access to information by lot owners](#)). Some of the information must be made available as copies, and some must be made available for inspection. Any information requested should be provided within five business days of making the application. The information should enable you to establish the current financial position of the corporation.

See also: [Owning \(or Buying\) a Community Title Property](#) for important information to bear in mind when deciding whether to purchase a lot in a community scheme or community strata scheme,

## Key Documents

There are a number of documents to always consider when purchasing a community title property.

The community [or community strata] plan determines the fundamental nature of what you are buying. It will also show the lot entitlements which determine the proportion of the contributions that you will be required to make.

The by-laws set out the rules of the corporation that you are buying into. The by-laws, along with the scheme description (if any) and the development contract (if any) may impose restrictions on what you or other owners can do with or on a lot. For instance you may not be able to let your property

on short term stays if the by-laws prevent leases of less than two months.

These documents should be included in the attachments to the contract of sale. You should also look at the minutes, financial records and insurance policies held by the corporation.

## Service infrastructure for new developments

Both SA Power Networks and SA Water have requirements for the location of connection points for power, water and sewerage. The location of connection points and meter enclosures that service more than one lot may be shown on the community plan, which is available for a fee from the Land Titles Office. However, these details are often not shown. If service infrastructure is not shown on the community plan, agreement must be reached among the lot owners as to the location of the services [s 24(4)(b)], subject to the requirements of the relevant agencies. Even if there is an existing house on one of the lots with connections in place, it may be necessary for new connection points to be established which cater for all lots. To determine requirements for the number and location of connections and meters, contact the relevant utility.

## INFORMATION TO BE PROVIDED WHEN ENTERING INTO A CONTRACT

If you enter a contract to buy a community lot, along with the information that must be provided in relation to any proposed sale of land, the vendor must provide certain information under the Land and Business (Sale and Conveyancing) Act 1994 (SA) s 7(1) and the Land and Business (Sale and Conveyancing) Regulations 2010 (SA) reg 8. Both general information about community titles and information specific to the community title you are proposing to buy must be provided.

## General information

The general information is found in the notice in the Land and Business (Sale and Conveyancing) Regulations 2010 (SA) sch 1 div 3, which sets out a range of issues to consider when buying into a strata corporation, as follows.

## MATTERS TO BE CONSIDERED IN PURCHASING A COMMUNITY LOT OR STRATA UNIT

The property you are buying is on strata or community title. There are special obligations and restrictions that go with this kind of title. Make sure you understand these. If unsure, seek legal advice before signing a contract.

### 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.

If you are buying into a mixed use development (one that includes commercial as well as residential lots), owners of some types of lots may be in a position to outvote owners of other types of lots. Make sure you fully understand your voting rights.

### 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 cover 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 or attaching external blinds) without the permission of the body corporate. A meeting may be needed before permission can be granted and permission may be refused.

Note that the articles or by-laws might change if the body corporate votes to change them. Also, if you are buying before the community plan is registered, then any by-laws you have been shown are just a draft.

### Are you buying a debt?

If there are unpaid contributions owing on the 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.

To request this information, write to the secretary or management committee of the body corporate. They may charge a fee for providing these records.

### Expenses

The body corporate can require you to maintain your property, even if you do not agree, or can carry out necessary 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 builders 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.

### Buying off the plan

If you are buying a property that has not yet been built, then you cannot be certain what the end product will be. If you are buying before a community plan has been deposited, then any proposed development contract, scheme description or by-laws you have been shown could change.

### Mixed use developments

You may be buying into a group that is run by several different community corporations. This is common in mixed use developments, for example, where a group of apartments is combined with a hotel or shops. Make enquiries so that you understand how many corporations there are and what voting rights you will have. If at least one of the lots in your corporation is residential then there will be one vote per lot [S 87]. If none of the lots are residential then the by-laws may allow a different number of votes for each lot.

# Community Corporation

## Specific information

Information specific to the community corporation and lot you are proposing to buy must be provided by the vendor under the Land and Business (Sale and Conveyancing) Regulations 2010 (SA) sch 1 div 2:

- particulars of contributions payable in relation to the lot, including details of arrears of contributions related to the lot
- particulars of the assets and liabilities of the community corporation
- particulars of expenditure that the community corporation has incurred, or has resolved to incur, and to which the owner of the lot must contribute, or is likely to be required to contribute
- if the lot is a development lot, particulars of the scheme description relating to the development lot and particulars of the obligations of the owner of the development lot under the development contract
- if the lot is a community lot, particulars of the lot entitlement of the lot.

The following documents should also be provided under the Land and Business (Sale and Conveyancing) Regulations 2010 (SA) sch 1 div 2:

- a copy of the minutes of the general meetings of the community corporation and management committee for the preceding two years or since the deposit of the community plan (whichever is the lesser)
- a copy of the statement of accounts of the community corporation last prepared
- a copy of current policies of insurance taken out by the community corporation
- a copy of the scheme description (if any) and the development contract (if any) – these documents may be obtained from the community corporation or the Lands Titles Office
- a copy of the by-laws of the community scheme - copies of the by-laws may also be obtained from either the corporation or the Lands Titles Office.

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

A community corporation is created upon deposit of the community plan [s 10, s 71] to administer the scheme's by-laws and manage the common property and any fixtures erected on it [s 75].

The members of the corporation are the owners of the community lots [s 10(2), s 74]. Owners of development lots are not members of the corporation unless they also own community lots [s 10(2), s 74].

Lot owners are guarantors of their community corporation's liabilities, which means the corporation's debts are enforceable against each of the lot holders directly [s 77].

A community corporation must have a presiding officer, treasurer and secretary [s 76], and may establish a management committee [s 90(1)] to carry out the functions and perform the duties of the corporation within the limits of the committee's powers [s 92(1)]. A community corporation may also delegate some of its functions to a person outside the corporation (such as a body corporate manager) to assist in the running of the corporation [s 78A(2)].

The corporation must have a common seal [s 73].

A community corporation must keep a letter box with the name of the corporation clearly shown on it, for postal delivery to the corporation. Where there is no postal delivery to the community parcel, the corporation must keep a post office box. [s 155(4)]

The by-laws are the rules of the corporation. The corporation can make rules which are binding on the corporation, lot owners, tenants and visitors [s 43] about the management and use of common property and the use of community lots [s 34(2)]. The first by-laws of a corporation are those filed when the community plan is deposited with the Lands Titles Office. A corporation can vary the by-laws [s 39].

## POWERS OF THE CORPORATION

Some of the powers of the corporation are:

- to administer, manage and control the common property for the benefit of the owners of the community lots [s 75(1)(a)]

- to maintain the common property and the property of the corporation in good order and condition [s 75(1)(b)]
- where practicable, to establish and maintain lawns or gardens on those parts of the common property not required or used for any other purpose [s 75(1)(c)]
- to enforce the by-laws and the development contracts (if any) [s 75(1)(d)]
- to enforce an owner's duty to maintain and repair their lot [s 101]
- to borrow money or obtain other forms of financial accommodation and, subject to the Act or the regulations, give such security for that purpose as it thinks fit [s 118]
- to carry out the other functions assigned to it by the Act or conferred on it by the by-laws [s 75(1)(e)].

## Contributions

The corporation raises funds by levying contributions against all lot owners, in accordance with an ordinary resolution passed at a general meeting [s 114(1)].

The management committee may not set the contribution amount [s 114(2)]. The amount that each owner contributes to funds is normally calculated according to the 'lot entitlement' set out in the community plan [s 114(3)]. A lot entitlement is the portion, or ratio, of the unimproved value of a lot as against the sum of the unimproved values of all the lots [s 20].

The corporation may, by unanimous resolution, determine that contributions are paid on some other basis [s 114(3)].

The corporation may, by an ordinary resolution at a general meeting, allow contributions to be paid in instalments [s 114(4)(a)].

If contributions are not paid, they are recoverable as a debt [s 114(8)]; the corporation can sue the lot owner and any subsequent owner (if more than one owner, any or all of them) for the money [s 114(7)].

Interest may be charged by the corporation on contributions or instalments owing, this is done by ordinary resolution [s 114(4)(b)]. The amount of interest charged may not be more than 15% per year, and interest cannot be charged on unpaid interest [reg 19].

## Management of the common property

Common property is managed by the community corporation [s 75], which is required to keep an administrative and a sinking fund [s 116]. A two lot scheme may be exempt from the requirement to keep an administrative and a sinking fund through its by-laws [s 35(1)(d)].

## Maintenance and repair of lots - entry to premises

The Act imposes a responsibility on a lot owner to maintain and repair their lot [s 134(1)], unless the corporation's by-laws have transferred this responsibility to the corporation [s 134(2)]. If the responsibility to maintain and repair lies with lot owners, and a lot owner does not fulfil this responsibility, the corporation may give a lot owner written notice requiring them to carry out specific work by a certain time [s 101(1)(a)].

Similarly, the corporation may require and enforce work on a lot to remedy a breach of the Act or the corporation's by-laws, even if the breach was by a former lot owner, or a current or former occupier or tenant. [s 101(1)(b)(i)].

The corporation can also pre-empt problems and require an owner to do work to remedy a situation that is likely to result in a breach of the Act or the by-laws [s 101(1)(b)(ii)].

If the work is not done in the set time, the corporation may authorize workers to enter the lot to do the work [s 101(2)]. This can only happen after the corporation has given at least two days notice in writing to both the lot owner and the occupier (for example, any tenant) [s 101(3)].

Force cannot be used to enter the lot without an order from the Magistrates Court [s 101(4)], unless an officer of the corporation or a person authorized by the corporation is satisfied that urgent action is necessary to prevent a risk of death, injury or significant damage to property [s 101(4a)]. If urgent action is necessary then the officer or authorized person can, after giving whatever notice (if any) to the lot owner and occupier is considered reasonable in the circumstances, authorize entry to a lot for the performance of work reasonably necessary to deal with the risk. To enter the lot in urgent circumstances, such force as is reasonably necessary may be used.

However, if urgent action is not necessary then the corporation would have to file an application in the Magistrates Court seeking an order to enable entry to be gained.

The individual lot owner is liable to the corporation for the reasonable cost of work done [s 101(5)]. If the need for the work arose because of someone else, for example a tenant or previous owner, the lot owner can recover the cost as a debt from that person [s 101(6)].

## Maintenance and repair of service infrastructure - entry to premises

The corporation may need to enter a lot in order to set up, maintain or repair service infrastructure. If so, the corporation must give notice to the owner of the lot to be entered [s 146(1)(a)]. The amount of notice required is whatever is reasonable in the circumstances [s 146(3)].

If the situation is an emergency and there is no time to give notice, then notice need not be given [s 146(2)(a)]. A lot owner may agree that their lot can be entered without notice [s 146(2)(b)].

If a person acting on the corporation's behalf cannot enter the lot without using force, such force as is reasonable in the circumstances may be used [s 146(4)]. Any damage caused by the use of force must be made good as soon as practicable by the corporation, unless the need for force was the result of an unreasonable act or omission on the part of the owner of the lot that was entered [s 146(5)].

### Provision of services

A community corporation may provide, for the benefit of owners and occupiers of the lots in the scheme, any kind of service that relates to the ownership or occupation of the lot [s 143(1), reg 26(1)]. A corporation may only provide a service if an owner or occupier has agreed to accept the service [reg 26(2)(a)]. The corporation may charge for the provision of those services [s 143(2)], but the cost of the service must be paid for by the persons who have agreed to accept it and must not be subsidised by the corporation [reg 26(2)(b)].

### Return of property

A 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. Failure to comply with such a notice is an offence with a maximum penalty of \$2000. [s 147]

## INSURANCE

### Building insurance

It is the responsibility of the community corporation to insure the common property [s 103(1)].

As a general rule, buildings in a community strata scheme are common property (unless otherwise defined on the plan) and should be insured by the corporation [s 103(1)(b)].

In a community scheme, buildings within a lot are not common property and are the responsibility of the lot owners. However, the corporation's by-laws may authorize or require the community corporation to act as agent for the owners of community lots in arranging policies of insurance [s 34(3)(ca)]. If the by-laws do so, the by-laws may also impose a monetary obligation on the owner of a lot in relation to the payment of the insurance premium [s 37(2)(b)].

Owners in a community scheme also have a duty to insure any part of their property, such as a party wall, which provides support and shelter to a building or other structure on another lot or on the common property [s 106(1)].

### Fidelity guarantee insurance

Since 27 October 2014, fidelity guarantee insurance must be held by all corporations [s 104(3)], apart from two lot community corporations with no administrative or sinking fund and community corporations with common property insurance cover of \$100 000 or less [reg 16C(b)]. A policy of fidelity guarantee insurance covers the risk of theft or fraud of the corporation's funds by any person authorized to handle the corporation's funds, including a manager. A corporation may 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 16C(a)].

### Other insurance

A community corporation must insure itself against risks that a normally prudent person would insure against and the amount of the insurance must be the amount that a normally prudent person would insure for [ss 104(1)-(2)]. In the case of insurance for bodily injury, the insurance must be for at least ten million dollars [s 104(2)].

## OFFICERS OF THE CORPORATION

A community corporation must have a presiding officer, a secretary and a treasurer, who are appointed by ordinary resolution [s 76(1)]. Normally, these officers must be lot owners [s 76(2)]. If the scheme has ten or less lots, one person may hold two or all of these positions, and if the scheme has more than ten lots, one person may hold up to two of these positions [s 76(3)].

An officer can be appointed for up to a year, with all positions becoming vacant no later than the next annual general meeting of the corporation [s 76(6)].

If a vacancy arises in any of the positions, the position can either be filled at a general meeting, or, if the corporation has a management committee, the committee may, by ordinary resolution, appoint a lot owner to fill the vacancy [s 92].

A vacancy will arise before the annual general meeting if the officer:

- resigns in writing to the secretary, or, in the case of the secretary, to the presiding officer [s 76(7)(e)]
- dies or sells their lot [ss 76(7)(a), (c)]



- becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors [s 76(7)(f)]
- is convicted of an indictable offence (an offence that may be heard before a jury) or is imprisoned for any offence [s 76(7)(g)].

An officer may be removed by special resolution of the corporation (not the committee) on the grounds of misconduct, or neglect of duty, or incapacity or failure to carry out satisfactorily the duties of the office [ss 76(7)(h), (8)].

A community corporation may appoint or engage a person to assist the presiding officer, treasurer or secretary [s 76(9)]. If this person is a body corporate manager then there are legal requirements which must be complied with. See Body Corporate Managers.

### Presiding Officer

The presiding officer presides at meetings of the corporation. [s 23(1)(a)].

### Secretary

The secretary of a community corporation has the following functions [reg 26A]:

- to prepare and distribute minutes of meetings of the corporation and submit a motion for confirmation of the minutes of any meeting of the corporation at the next such meeting
- to give, on behalf of the members of the corporation and the management committee, the notices required to be given under the Act
- to answer communications addressed to the corporation
- to convene meetings of the management committee
- to attend to matters of an administrative or secretarial nature in connection with the exercise, by the corporation or the management committee, of its functions.

General meetings and committee meetings can also be convened by members of the corporation and other officers (see [Management Committee](#) and [General Meetings](#) below).

### Treasurer

The treasurer of a community corporation has the following functions [reg 26A]:

- to notify owners of community lots 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.

### Liability of officers

Where a provision of the Act authorizes or requires an officer of a community corporation to certify as to any matter or thing, the officer incurs no civil or criminal liability in respect of an act or omission in good faith in the exercise of that function. A liability that would, but for this rule, attach to an officer attaches instead to the corporation. [s 151A]

### RECORDS

The corporation has a responsibility to maintain proper records, and to keep them in an orderly manner so they can be found easily for the purposes of inspection or copying [reg 23(2)].

### Register of names

A community corporation must maintain a register of the names of the lot owners, showing the owner's last contact address, telephone number and email address known to the corporation, and the owner's lot entitlement [s 135(1)], and must keep any information in the register for 7 years [reg 22].

The by-laws of corporations with only two or three lots may exempt the corporation from the requirement to maintain a register of names of lot owners [ss 35(1)(e), (2)].

### Accounting documents, records and statements

The corporation must keep the following documents [reg 23(1)] for 7 years [reg 23(3)(b)]:

- receipts for the expenditure of money
- passbooks, deposit books and all other documents providing evidence of the deposit or investment of money
- bank statements and all other documents providing evidence of dealing with money invested or on deposit.

The corporation must make accounting records of its receipts and expenditure [s 136] and keep the records for 7 years [reg 23(3)(b)]. However, the by-laws of corporations with only two lots may exempt the corporation from the requirement to prepare accounting records [s 35(1)(b)].

A corporation must ensure that a statement of accounts is prepared for each accounting period [s 137], and must keep each statement of accounts for 7 years [reg 23(3)(c)]. However, the by-laws of corporations with only two lots may exempt the corporation from the requirement to prepare an annual statement of accounts [s 35(1)(b)].

### Notices, orders and correspondence

The corporation must make a record of notices and orders served on the corporation and keep the notices and orders for 7 years [s 136, reg 23].

Notices of meetings of the corporation and its management committee must be kept for 7 years [s 136, reg 23(3)(f)].

Copies of correspondence received or sent by the corporation must be kept for 7 years [s 136, reg 23(3)(e)].

## Minutes

Minutes of meetings must be kept for 30 years [s 136, reg 23(3)].

## ACCESS TO INFORMATION

### Insurance policies

A lot owner, a mortgagee of a lot, or a prospective owner or mortgagee of a lot may request to see any or all of the insurance policies currently held by the corporation [s 108]. No fee is applicable.

If the applicant wishes to have copies of the current insurance policies under s 139(1)(b), a small fee applies [reg 25(1)(b)]. See the Community Titles Regulations 2011 to determine the relevant fee that applies. The corporation must make the information available within five business days after the request [ss 108, 139]. Failure to do so is an offence with a maximum penalty of \$500.

### Bank statements

On the request of a lot owner, a corporation that does not have a body corporate manager must provide the lot owner with quarterly bank statements for all accounts maintained by the corporation, and must continue to provide the statements until the person ceases to be an owner or revokes their application [s 139(1a)]. Failure to do so is an offence with a maximum penalty of \$500.

If a corporation has a manager, an application can be made to the manager for quarterly financial statements (see [Body Corporate Managers: Duties of managers](#)).

### By-laws

The corporation must make available up-to-date copies of the by-laws that owners and occupiers of lots, prospective purchasers of a lot or someone considering entering into any other transaction in relation to a lot may inspect or purchase [s 44(1)].

No fee may be charged for inspection of the by-laws [s 44(2)]. The maximum fee a corporation may charge for buying a copy of the by-laws is set out in the Community Titles Regulations 2011 sch 2. Copies of by-laws can also be obtained from the Lands Titles Office for a fee. [Community Titles Regulations 2011 sch 2]

## Other information in relation to a lot or the corporation

A lot owner, a mortgagee of a lot, or a prospective owner or mortgagee of a lot (or someone on their behalf) may apply to the corporation for access to the following information or documents [s 139(1)]. The information or documents must be provided within five business days after the request [s 139(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 25(3)].

### INFORMATION TO BE PROVIDED:

- particulars of any contribution payable in relation to the lot, including details of any arrears of contribution related to the lot
- particulars of the assets and liabilities of the corporation
- particulars of any expenditure that the corporation has incurred, or has resolved to incur, and to which the lot owner must contribute, or is likely to be required to contribute.

If the applicant is a lot owner, no fee applies [reg 25(1)(a)(i)]. If the applicant is a mortgagee of a lot, or a prospective owner or mortgagee of a lot, a regulated fee applies [reg 25(1)(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.

See the Community Titles Regulations 2011 to determine the relevant fee that applies [reg 25(1)(b)].

### DOCUMENTS TO BE MADE AVAILABLE FOR INSPECTION:

- a copy of the accounting records of the corporation
- the minute books of the corporation
- a copy of any contract with a manager
- the register of lot owners.

No fee applies to inspecting a copy of the contract with a manager or the register of lot owners.

If the applicant is a lot owner, no fee applies to inspect accounting records or minutes [reg 25(1)(c)(i)]. If the applicant is a mortgagee of a lot, or a prospective owner or mortgagee of a lot, a regulated fee applies for each application [reg 25(1)(c)(ii)] in relation to accounting records and minutes.





# By-laws (Rules)

Unlike the Strata Titles Act 1988 (SA), the Community Titles Act 1996 (SA) does not include a standard set of by-laws. The Community Titles Act 1996 (SA) requires developers of community schemes to draft individual by-laws (ss 12, 34) which reflect the nature of the particular scheme [(s 11(4)]. The by-laws must cover the administration, management and control of the common property; regulate the use and enjoyment of common property; and regulate the use and enjoyment of community lots to give effect to the scheme description [s 34(2)].

In relation to buildings and other structures on community lots, the by-laws may also regulate issues such as position, design, dimensions, construction, appearance, maintenance and repair [ss 34(3)(a)(i)-(ii)]. Landscaping and the appearance of community lots can be covered in the by-laws [ss 34(3)(a)(iii), (b)], and requirements or restrictions on the use of community lots can be imposed to prevent interference with the use and enjoyment of other lots [s 34(3)(c)].

The by-laws cannot be inconsistent with the scheme description (if any) or development contract (if any) of the scheme or, if there are higher levels above the scheme, the by-laws, scheme description or development contract of those schemes [s 41].

A by-law comes into force when the original by-laws are deposited with the Land Titles Office or a certified copy of the new by-laws is lodged with that office [S 40].

## THOSE BOUND BY THE BY-LAWS

The by-laws are binding on the community corporation, the owners and occupiers of the community lots and the development lot or lots (if any) comprising the scheme, and persons entering the community parcel [s 43(1)].

## VARIATION OF THE BY-LAWS

In schemes where one or more lots are used, or intended to be used, for residential purposes, the by-laws may be varied by special resolution of the corporation [S 39]. That provision also applies to schemes with only commercial lots but, in that case, any by-law that stipulates the number of votes that a lot may have can only be varied by a unanimous resolution. [s 87(2)].

Note: If one or more of the lots in a scheme is used or intended to be used solely or predominantly for residential purposes then each community lot only has one vote [s 87(1)(a)]. See Voting at General Meetings.

## Monetary obligations

The by-laws may not impose a monetary obligation on the owner or occupier of a lot except where:

- the by-law provides for the exclusive use of part of the common property by that owner or occupier [s 37(1)(b)] or
- the by-law deals with a lot owner's responsibility to pay an insurance premium, where the by-laws authorize or require the community corporation to act as agent for the owner in arranging the insurance policy [s 37(2)(b)].

## Access to a lot

The corporation may not prevent access by the owner or occupier or other person to a lot [s 37(1)(c)].

## Assistance dogs and therapeutic animals

The by-laws may not prevent an occupier of a lot who has a disability from having and using an assistance dog, or a therapeutic animal [s 37(1)(d)]. Similarly, a visitor to a lot who has a disability may not be prevented from using their assistance dog or therapeutic animal [s 37(1)(e)].

- An assistance dog is an accredited guide, hearing or disability dog.
- A therapeutic animal is an animal that has been certified by a medical practitioner as being required to assist a person with their disability [S 88A Equal Opportunity Act 1985 (SA)]. The animal must have been trained, in some way, for that task.

## BY-LAWS THAT REDUCE THE VALUE OF A LOT OR UNFAIRLY DISCRIMINATE AGAINST A LOT OWNER

Any by-laws that reduce the value of a lot or unfairly discriminate against a lot owner may be struck out by court order [s 38(1)]. The application to strike out the by-law must be made by a person who was a lot owner, which includes a person who has contracted to purchase the lot, when the by-laws came into force. The application must be made within three months after the person (or either or any of the lot owners where the lot is owned by two or more persons) first knew, or could reasonably be expected to have known, that the by-laws had been made [s 38(2)]. An application to strike out a by-law would normally be made to the Magistrates Court as a minor civil action under s 142.

## BREACHES OF THE BY-LAWS

If it is claimed that a lot owner or occupier (for example, a tenant) of a lot is in breach of the by-laws, the corporation may request that the person either do what is required under the by-laws, or stop doing what is not allowed under the by-laws. If the person continues to breach the by-laws, mediation may be sought. A penalty may be imposed by the corporation if there is provision for this in the by-laws. If necessary, the matter may be taken to the Magistrates Court (see [Disputes](#)).

## Penalties for breaching the by-laws

The by-laws of a strata corporation may impose a penalty of up to \$500 for contravention of or failure to comply with any by-laws [ss 34(3)(e), (9)]. If all the units in the scheme are non-residential, the penalty may be up to \$2 000 [s 34(9)]. These fines may be imposed on members of the community corporation, occupiers, visitors or any other person entering the community parcel [s 43].

If the by-laws state that the corporation 'may impose a penalty of up to \$500' for a breach of the by-laws, 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.

Note that it is the 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, a duly 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 body corporate manager cannot impose a penalty for an alleged breach of the articles, although a manager may be given the power to issue and sign any penalty notice [see [Body Corporate Managers: Appointing a manager](#)].

## 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 34(6)(c)(ii)].

## Non-payment of a penalty

If the penalty is not paid in time, the corporation may recover the amount as a debt. If the notice has been given to a tenant or a visitor, 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 the owner of a community lot, the penalty may be recovered by the corporation as if it were a contribution payable to the corporation, and interest will be payable on the penalty amount in the same way as if it were such a contribution. [s 34(6)(d)]

## Notice of a penalty

The corporation must give notice of the imposition of a penalty using Form 11 of the Community Titles Regulations 2003 (SA). The form is set out below.

### FORM 11 - PENALTY NOTICE

Section 34(6)(c)(i) of Act and Form 11 in the Regulations.

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

The [insert name of the community 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 the owner of a community lot, the penalty may be recovered by the corporation under section 114 of the Community Titles Act 1996 (SA) (and interest will be payable on the penalty amount in the same way as if it were such a contribution).

Under section 34(6) 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).

### Applying to revoke a penalty 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 34(6)(e)]. A representative of the 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 34(6)(f)].

When an application to revoke a penalty is made, the requirement to pay the penalty is suspended until the matter is resolved [s 34(6)(g)].

The Court must revoke the penalty if it is not satisfied that the person breached the by-laws as alleged, or if it is satisfied that the alleged breach is trifling [s 34(6)(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 34(7)]:

- 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 by-laws.

### QUORUM FOR A GENERAL MEETING

To work out the quorum required for a general meeting, divide the total number of members entitled to attend and vote (see [Voting at General Meetings](#)) by two, ignoring any fraction resulting from the division, and add one [s 83(4)].

Members may be present in person or by proxy or, if applicable, via remote communication (see below).

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 members of another meeting. If a quorum is not present at the second meeting, those present are entitled to work as a 'quorum', which means they can legally make decisions. [ss 83(5), (6)]

#### EXAMPLE 1

If 2 out of 7 lot owners are not financial and there are no unanimous resolutions on the agenda then:  
5 lot owners are entitled to attend and vote  
divide 5 by 2 (= 2 ½)  
ignore the half (=2)  
add 1 (=3)

So the quorum for a general meeting is 3.

#### EXAMPLE 2

If 2 of the 7 lot owners are not financial and there is a unanimous resolution on the agenda of a general meeting then:  
All 7 lot owners are entitled to attend and vote (if only on the unanimous resolution)  
7 ÷ by 2 (=3 ½)  
ignore the half  
add 1 (1 + 3 = 4)

So the quorum for a general meeting is 4.

# General Meetings

A general meeting of owners must be held within three months of the commencement of a primary community corporation's end of financial year [s 82(1)]. This meeting is referred to as the 'annual general meeting'. The annual general meeting of a secondary or tertiary community corporation must be held within six months after the commencement of each financial year [s 82(2)].

However, the by-laws of a corporation with only two lots may say that an annual general meeting does not have to be held [s 35(1)(a)].

The rules about calling general meetings apply to both the annual general meeting and any other general meeting of owners.

A general meeting may be called by [s 81(1)]:

- the presiding officer, treasurer or secretary of the corporation
- any two members of the management committee
- a member or members of the corporation the value of whose lot entitlement or combined lot entitlements is 20 per cent or more of the aggregate value of all the lot entitlements
- a member or members of the corporation who holds, or who together hold, 20 per cent or more of the total number of community lots in the scheme, or
- on the order of the Magistrates Court following an application under s 141 (see [Disputes](#)).

At least 14 days written notice of a general meeting must be given [s 81(2)]. The notice must set out the day, time and place of the meeting, and the meeting agenda [ss 81(2), (4)].

The day, time and place of the meeting must be reasonably convenient to a majority of the members of the corporation [s 81(3)].

## AGENDA

The agenda of every general meeting must include [s 81(5)]:

- 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 the first statutory general meeting, the agenda must also include [s 80(2), reg 15]:

- the appointment of the presiding officer, treasurer and secretary
- the custody of the corporation's common seal and the manner of its use
- the corporation's recurrent and non-recurrent expenditure in its first financial year and the amount to be raised by contributions from owners of community lots to cover that expenditure
- the appointment of an auditor of the corporation's accounts in its first financial year or a special resolution that the accounts for that year need not be audited
- whether the policies of insurance taken out by the developer are adequate
- whether the corporation should establish a management committee
- the delegation of functions and powers by the corporation
- whether the by-laws of the scheme need amendment.

In the case of all subsequent annual general meetings, the agenda must also include [s 81(5)(d), reg 16]:

- presentation of the accounts for the previous financial year
- contributions to be paid by members for the current financial year
- presentation of copies of the corporation's insurance policies required by the Act (see [Community Corporation: Insurance](#))
- presentation of any expenditure statements required by the Act (see [Financial Management](#))
- if the corporation must have its annual statement of accounts audited (see [Financial Management](#)), the appointment of an auditor of the accounts for the current financial year
- 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
- discussion of the policies of insurance required by the Act to be held by the corporation
- the number of applications for relief made under Part 14 of the Act (see [Disputes](#)) and the nature of the claims or



disputes the subject of those applications

- if it is proposed to enter into a contract, or renew or extend a contract, with a body corporate manager
  - > 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 and the explanatory pamphlet (see [Body Corporate Managers](#)) can be viewed or obtained by members of the corporation
- proposed controls on expenditure by delegates of the corporation.

## ATTENDANCE BY REMOTE COMMUNICATION

The by-laws of a corporation may make provision for attendance and voting at meetings by members by means of telephone, video-link, internet connection or any similar means of remote communication. If the member complies with the requirements in the by-laws, they may attend and vote at a meeting by remote communication. [s 83(6a), reg 16A(3)(a)]

Alternatively, a member 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 member's attendance and voting at the meeting by remote communication, and the member complies with any requirements of the secretary in relation to the request, then the member may attend and vote at the meeting by remote communication [s 83(6a), reg 16A(3)(b)].

A corporation is under no obligation to provide facilities for remote communication to members [s 83(6a)].

## CHAIRING OF GENERAL MEETINGS

### Presiding officer as chair

The presiding officer chairs general meetings of the corporation but a body corporate manager may be appointed by the meeting to fulfil that role.

In the absence of the presiding officer a person [including a body corporate manager or an employee of the manager] present at the meeting may be appointed to chair the meeting [s83(3)].

### Body corporate manager as chair

If it is proposed that the corporation's manager, or an employee of the 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 83(3a)].

In addition, the manager or employee must inform the meeting, before any vote is taken [reg 16A(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 pecuniary 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 85(2a)] However, an owner of a community lot is not obliged by s 85 (2a) to disclose an interest that he or she has in common with all of the owners of the community lots [s 83(2b)].

# Voting at General Meetings

The owner of a community lot is entitled to attend general meetings of the corporation, and is entitled to vote if there are no overdue amounts payable in respect of the lot [s 84(1), (14)].

The owner of a development lot is not entitled to attend or vote at general meetings in his or her capacity as the owner of that lot [s 84(2)].

If at least one of the lots is used or intended to be used, solely or predominantly for residential purposes then the number of votes that may be cast in respect of each of the lots [whether those other lots are commercial or residential] is one. [s 87(1)(a). However if none of the lots are used or intended to be used solely or predominantly for residential purposes then the number of votes that may be cast in respect of each lot is one unless the by-laws prescribe a different number [s87(1)(b)].

## LOTS WITH TWO OR MORE OWNERS

Where there is more than one owner of a lot and one of them has not been formally appointed to vote on behalf of all the owners (see [Proxy voting where there is more than one owner of a lot](#)), then [s 84(7)]:

- if only one of the owners attends a meeting, the vote is exercisable by that person
- if two or more of the owners attend a meeting, the vote is exercisable by one of them in accordance with an agreement between all the owners attending the meeting but, if there is no such agreement, none of them is entitled to vote.

## VOTING BY THE DEVELOPER

The Act limits the voting power of the developer of a community scheme who owns one or more community lots. The developer is the person who was the registered proprietor of the land that now comprises the community parcel immediately before the lodgement of the plan of community division [s 3(1)]. The number of votes cast by the developer, and anyone 'associated' with the developer

according to s 4(2), may not exceed the total of votes cast by other community corporation members [s 87(3)]. This is designed to prevent developers changing scheme descriptions and development contracts.

## DISCLOSURE OF INTEREST

A lot owner who attends and is entitled to vote (other than as a nominee) at a meeting of a community corporation and who has a direct or indirect pecuniary 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 [s 85(2a)(a)]. Failure to do so is an offence with a maximum penalty of \$15 000.

Similarly, anyone who presides at a meeting of a community corporation and who has a direct or indirect pecuniary 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 [s 85(2a)(b)]. Failure to do so is an offence with a maximum penalty of \$15 000.

However, an owner of a community lot is not obliged to disclose an interest held in common with all of the owners of the community lots [s 85(2b)].

## ABSENTEE VOTES

A lot owner may exercise an absentee vote by giving the secretary of the corporation written notice of the proposed vote at least six hours before the meeting [s 84(11)].

## WRITTEN BALLOTS

A lot owner attending a meeting of the corporation may demand a written ballot on any question [s 84(12)].

A person attending a meeting via remote communication such as telephone [s 83(6a), reg 16A(3)] may participate in a written ballot if it is provided for in the corporation's by-laws, or if approved and arranged by the secretary. The person presiding at a meeting has the power to manage a written ballot as they think fit [s 84(13)].

## PROXY VOTING

A copy of each proxy nomination and any general power of attorney appointing a proxy in relation to a meeting must be made available by the secretary of the corporation (or, in the case of a nomination relating to the first statutory general meeting, the person initially presiding at the meeting) for inspection by persons attending the meeting before any matter is voted on at the meeting [s 85(10a)]. Failure to do so is an offence with a maximum penalty of \$500.

## Proxy voting where there is one owner of a lot

An owner may appoint another person to vote on their behalf [s 84(3)]. Even if a proxy nomination has been made, an owner may attend and vote at meetings on his or her own behalf [s 84(5)(g)].

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 84(5)(f)]. However, the nomination may be revoked earlier at any time by the lot holder, by giving written notice to the secretary; any contract or agreement purporting to prevent revocation is unenforceable [s 84(5)(e)].

In addition, if the corporation's manager, or an employee of the manager, is nominated as a proxy, the nomination ceases to have effect on the person ceasing to be the corporation's manager or an employee of the manager [s 84(6a)].

A member may specify conditions on the proxy nomination [s 84(5)(c)], for example, how the proxy is to vote on certain matters.

The nomination of a person as a proxy of a member must [s 84(5)]:

- be sent in writing to the secretary of the corporation (except for the first statutory general meeting, when written notice must be given to the person initially presiding at the meeting), and
- specify whether the nominated person is nominated to attend and vote:
  - > at all meetings, and in relation to all matters, on behalf of the lot holder, or
  - > only at specified meetings, or in relation to specified matters, on behalf of the lot holder
- if the proxy is required to vote in a particular way on a matter in which the owner has a direct or indirect pecuniary interest (other than an interest that the owner has in common with all the owners of the community lots), specify the nature of the owner's pecuniary interest.

Failure to comply with these requirements will invalidate the nomination [s 84(5a)].

## APPOINTMENT OF A PROXY BY GENERAL POWER OF ATTORNEY

If an owner appoints a person as their attorney under the Powers of Attorney and Agency Act 1984 (SA) specifically for the purpose of attending and voting at meetings, or specified meetings, of the community corporation, the appointment is effective for a period of 12 months or such lesser period as may be specified in the power of attorney,

unless the power of attorney is revoked earlier [s 85(9a)].

If a body corporate manager is appointed as an owner's proxy, a copy of the power of attorney must be given to the secretary of the corporation before the meeting, or the first of the meetings, to which it relates [s 85(9b)].

## Proxy voting where there is more than one owner of a lot

Where there is more than one owner of a lot, a person (who may, but need not, be one of the owners) may be nominated by all of the owners to vote on their behalf [s 84(4)].

The owners may specify conditions in relation to the nomination [s 84(6)(ba)].

The nomination of a person as a proxy of multiple owners must [s 84(6)]:

- be made by written notice to the secretary of the corporation by all of the owners of the lot
- specify the meeting or meetings to which it relates
- if a specified condition requires the nominated person to vote in a particular way in relation to a matter in which an owner has a direct or indirect pecuniary interest (other than an interest that the owner has in common with all the owners of the community lots), specify the nature of the owner's pecuniary interest.

The nomination may be revoked at any time by one of the owners by written notice to the secretary [s 84(6)(c)].

If the corporation's manager, or an employee of the manager, is nominated as a proxy, the nomination ceases to have effect on the person ceasing to be the corporation's manager or an employee of the manager [s 84(6a)].

## DISCLOSURE OF INTEREST BY A PROXY

### Declaration of a member's interest

If the nomination declares a lot owner's pecuniary interest in a matter (because the proxy is required to vote in a particular way in relation to the matter and the member has a direct or indirect pecuniary interest in the matter [see above: s 84(5)(d); s 84(6)(bb)]), then the proxy must declare the member's interest before the vote is taken [s 85(1)(b)]. Failure to declare the member's interest is an offence with a maximum penalty of \$15000.

### Declaration of a proxy's interest to the meeting

Similarly, if the proxy has a direct or indirect pecuniary 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 85(1)(a)(ii)]. Failure to do so is an offence with a maximum penalty of \$15000.



## Declaration of a proxy's interest to the person who nominated them

If a proxy has a direct or indirect pecuniary interest in any matter to be voted on at a meeting, 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 disclose the nature of the interest to the person who nominated them as soon as practicable after the vote is taken. Failure to do so is an offence with a maximum penalty of \$15000 [s 85(1)(a)(i)].

# Types of Resolutions

## ORDINARY RESOLUTIONS

An ordinary resolution is one passed at a properly convened meeting of the corporation by a simple majority of the votes of members present and voting on the resolution [s 3(1)]. Decisions of a corporation are made by ordinary resolution unless the Act or by-laws specify otherwise.

## SPECIAL RESOLUTIONS

A special resolution is required to:

- change any by-law for schemes where at least one of the lots is used or intended to be used for residential purposes [ss 12(2), 39(1)].
- change the by-laws for schemes that are commercial [in that none of the lots are used or intended to be used for residential purposes] except when the variation relates that the number of votes that may be cast in respect of each lot when a unanimous resolution is needed. [ss 12(2), 39(1), 87(2)]
- allow an occupier of a lot who has been given exclusive use of part of the common property under s 36(1) to erect a building or install a fixture on the part of the common property of which they have exclusive use, or alter that part of the common property in any other way [s 36(4)]
- vary or end a development contract [s 50(2)]
- erect a building on or make any other improvements to (apart from establishing lawns or gardens) the common property [ss 75(3), (1)(c)]

- remove the presiding officer, treasurer or secretary from office [s 76(7)(h)]
- decide that the accounts for the corporation's first financial year need not be audited [s 80(2)(d)]
- revoke a decision that was originally required to be made by special resolution [s 89(2)]
- in relation to a strata scheme (except one solely or predominantly for non-residential purposes), authorize the erection, alteration, demolition or removal of a building, or changes to the external appearance of a building [s 102(1)]
- authorize acquisition of property (other than a freehold or leasehold interest in land) worth less than \$5,000 [s 112(3)(b), reg 18(2)(b)]
- dispose of excess funds in the administrative fund or the sinking fund [s 117]
- expenditure above a certain amount ([see Financial Management – authorizing expenditure](#)).

Special resolutions must be proposed by at least 14 days written notice to all community lot owners, including the text of the proposed resolution and the reasons for the proposed resolution [s 3(1), reg 2(2)].

### When there are only two community lots

When there are only two lots then the resolution will be defeated if one of the owners votes against it. It will pass if one of the owners votes for it and the other owner either does not attend the meeting, does attend but abstains or cannot exercise a vote because of overdue amounts payable to the corporation.

### When there are three community lots

When there are three community lots and the owner of each lot is entitled to one vote, a special resolution is achieved if the resolution is passed at a properly convened meeting of the corporation at which either no vote, or only one vote, is cast against the resolution [s 88].

### When there are four or more community lots

When there are four or more community lots, 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 lot owners are present and entitled to vote [s 3(1)].

## SPECIAL RESOLUTION EXAMPLE 1

Example: There are 60 lots and 31 lot owners attend, in person or by proxy or via remote communication (31 is the minimum required for a quorum).

If the number of lots is 60,

then: the total number of votes that could be cast at a meeting at which all lot owners are present and entitled to vote is 60

and: 25% of 60 = 15

thus: for the special resolution to pass, no more than 15 votes may be cast against the resolution.

Assuming the meeting has been validly called and 31 of the 60 lot owners are present,

then: 16 votes are required for the motion to pass (majority vote), and the motion fails if more than 15 vote against it.

result of vote	against	for	abstain
Pass	15	16	0
Fail	15	15*	1
	16	15	0

\* Even though there are only 15 votes against, 15/31 votes in favour is not enough to pass the resolution.

## SPECIAL RESOLUTION EXAMPLE 2

Example: There are 60 lots and 40 lot owners attend, in person or by proxy or via remote communication.

If the number of lots is 60,

then: the total number of votes that could be cast at a meeting at which all lot owners are present and entitled to vote is 60

and: 25% of 60 = 15

thus: for the resolution to pass, only 15 votes may be cast against it.

Assuming the meeting has been validly called and 40 of the 60 lot owners are present,

then: 21 votes are required for the motion to pass (majority vote), and the motion fails if more than 15 vote against it.

result of vote	against	for	abstain
Pass	15	25	0
	15	21	4
Fail	14	20*	6
	15	20**	5
	16	20	4
	16	24	0

\* Although there are only 14 votes against, 20/40 votes is not enough to pass the resolution.

\*\* Although there are only 15 votes against, 20/40 votes is not enough to pass the resolution.

## UNANIMOUS RESOLUTIONS

A unanimous resolution is achieved if the resolution is passed without any dissenting (opposing) vote; that is, nobody must vote against the resolution.

The resolution must be proposed by at least 14 days written notice to all community lot owners, including the text of the proposed resolution and the reasons for the proposed resolution [s 3(1), reg 2(3)].

Any lot 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 to:

- decide to apply to the Registrar-General to amend the schedule of lot entitlements [s 21(3)]
- amend the scheme description [s 31]
- decide to apply for the amendment of a deposited community plan, when the corporation is the applicant [s 52(2)]
- decide to apply to amalgamate with another community plan [s 60(4)]
- decide to use the common property or the property of the corporation to produce income [s 75(4)(c)]
- in commercial schemes (where none of the lots are used or intended to be used for residential purposes), vary the number of votes prescribed by the by-laws that may be cast in respect of each community lot [s 87(2)]
- revoke a decision that was originally required to be made by unanimous resolution [s 89(1)]
- decide to apply money received from an insurance claim for purposes other than making good the loss in respect of which the money was paid [s 105]
- grant an easement over the common property, or consent to the extinguishment of an easement that was granted for the benefit of the common property [s 110(1)]
- grant a right to occupy the whole or a part of the common property to the exclusion of all or some of the owners or occupiers of the community lots [s 111(1)]
- authorize acquisition of freehold or leasehold interest in land [s 112(3)(a)]
- authorize acquisition of property (other than a freehold or leasehold interest in land) worth \$5 000 or more [s 112(3)(b), reg 18(2)(a)]
- determine contributions other than on the basis of lot entitlement [s 114(3)]

- exceed the prescribed limitation on the corporation's expenditure [s 119, reg 21] (see [Financial Management – authorizing expenditure](#))
- in the case of a residential community scheme with not more than 6 community lots, decide not to have the statement of accounts for that financial year audited [s 138(4)(c)]

## WHEN A UNANIMOUS OR SPECIAL RESOLUTION IS NOT OBTAINED

Where a unanimous resolution is necessary but only the votes necessary for a special or ordinary resolution are obtained, or where a special resolution is required but only an ordinary resolution is passed, then the corporation or a member of the corporation who voted for the resolution or whose vote was cast by another person for the resolution may apply to the Magistrates Court or the District Court to have the resolution declared sufficient to authorize the particular act proposed [s 149].

Notice of an application to convert the resolution must be served on every person who voted against the resolution, and every person who was entitled to vote but did not. The court may also order that any other person the court declares to have a sufficient 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 149].

# Management Committee

The corporation can choose to run all of its business through general meetings or it can, by ordinary resolution [s 90(2)], set up a management committee [s 90(1)] to carry out the functions and perform the duties of the corporation within the limits of the committee's powers [s 92(1)]. The committee cannot delegate its functions or powers, but the corporation can appoint someone, such as a body corporate manager, to assist the committee to carry out its role [s 92(3)].

## POWERS AND RESPONSIBILITIES OF THE MANAGEMENT COMMITTEE

The management committee has full power to transact any business of the corporation [s 92(2)], except that:

- the corporation may impose limitations in the by-laws on what the committee can do [s 92(2)], and
- the committee does not have the power to do anything for which a special or unanimous resolution is required [s 92(4)].

If a management committee is considering a controversial issue, such as raising special levies, it would be sensible to give advance notice of this to all lot owners.

## MEMBERSHIP OF THE MANAGEMENT COMMITTEE

A management committee is appointed by an ordinary resolution at a general meeting of the corporation [s 90(2)]. The corporation's office bearers (presiding officer, treasurer and secretary) must be members of the committee [s 90(3)]. All members of the committee must be natural persons (not, for example, companies) [s 90(3)]. In a residential, or mainly residential, scheme, the members of the management committee must be members of the corporation (lot owners), but, if a body corporate is a lot owner, the person appointed by it to vote at meetings is taken to be a member of the corporation [s 90(4)].

A member of the committee must be appointed for a term that expires at or before the next annual general meeting of the corporation. [s 91(1)]. A committee member may be re-elected at the AGM.

A vacancy will arise before the annual general meeting if the member:

- is an office bearer and ceases to be an office bearer [s 91(2)(d)]
- resigns in writing to the secretary [s 91(2)(e)] (note that an office bearer may not resign from the committee while continuing to act as an office bearer)
- dies or sells their lot [ss 91(2)(a), (c)]
- becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors [s 91(2)(f)]
- is convicted of an indictable offence (an offence that may be heard before a jury) or is imprisoned for any offence [s 76(7)(g)].

A member may be removed by ordinary resolution of the corporation (not the committee) on the grounds of misconduct, or neglect of duty, or incapacity or failure to carry out satisfactorily the duties of the office [ss 91(2)(h), (3)].

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 97].

## Duty of honesty

A committee member must at all times act honestly in the performance of their duties. Failure to do so is an offence with a maximum penalty of \$4 000, or, if an intention to deceive or defraud is proved, \$15 000 or four years imprisonment [s 96(1)].

A committee member must not make improper use of their official position to gain a personal advantage for themselves or another. Doing so is an offence with a maximum penalty of \$15 000 or four years imprisonment [s 96(2)].

## Immunity of committee members from liability

A committee member is not personally liable for an act or omission while acting, or purportedly acting, as a committee member unless the act or omission was dishonest or negligent [s 99(1)]. A liability that would, but for s99(1), have attached to a committee member attaches to the corporation [s 99(2)].

## MEETINGS OF THE MANAGEMENT COMMITTEE

A management committee must keep minutes of its meetings [s 94(7)].

A management committee meeting may be called by the presiding officer, treasurer or secretary, or by any two members of the committee [s 93(1)].

At least three days written notice of a management committee meeting must be given [s 93(2)]. The notice must set out the day, time and place of the meeting, and the meeting agenda [ss 93(2), (4)].



The day, time and place of the meeting must be reasonably convenient to a majority of the members of the committee [s 93(3)].

### Chairing

The presiding officer chairs committee meetings, but in the absence of the presiding officer, the members present may appoint another member to chair the meeting [s 94(1)].

### Decisions and disclosure of interest

Decisions of the management committee are made by majority vote [s 94(3)].

It is an offence with a maximum penalty of \$15000 if a committee member who has a direct or indirect pecuniary interest (apart from an interest arising solely from the fact that the member is also a member of the community corporation [s 95(4)]) in a matter under consideration by the committee does not disclose the nature of the interest to the committee or takes part in any discussions or decisions of the committee in relation to that matter [s 95(1)].

Any disclosure of interest must be recorded in the minutes of the committee [s 95(3)].

### Decisions without meeting

A decision may be made by a committee without meeting if [s 94(6)]:

- written notice setting out the proposed decision is served on every committee member, and
- within seven days after the notice is served on all members of the committee a majority of the members give written notice to the secretary setting out the proposed decision and expressing their agreement with it.

### Proxies

A committee member may appoint another person {who must, in the case of a residential scheme be another committee member or a member of the community corporation] to act as their proxy at a committee meeting that the member is unable to attend [s 94(4) -(5)].

### 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 94(2)].

# Financial Management

## SINKING FUND AND ADMINISTRATIVE FUND

A community corporation must establish a sinking fund (for non-recurrent expenditure only) and an administrative fund (for all other expenditure) [ss 116(1)-(2)]. However, the by-laws of a corporation with only two lots may exempt the corporation from the requirement to have an administrative and sinking fund [s 35(1)(d)].

Non-recurrent expenditure is expenditure for a particular purpose that is normally made less frequently than once a year [s 3(1)]. Recurrent expenditure is expenditure for a particular purpose that is normally made every year or more frequently [s 3(1)].

Money received by a corporation, including contributions of lot owners, must generally be credited to the sinking or administrative fund according to the purpose for which the money will be used [s 116(4)].

All money to be credited to a sinking or administrative fund must be paid into an account with an approved financial institution [s 116(6)(a)] UNLESS the corporation has delegated the power to receive and hold money to another person such as a body corporate manager in which case the money must be paid into a trust account held by that person [s 116(6)(b)].

## EXPENDITURE STATEMENTS

An expenditure statement must be presented by a corporation to each annual general meeting of the corporation. The statement must include [s 113(1)]:

- for the current financial year, the estimated expenditure of a recurrent nature and the estimated expenditure of a non-recurrent nature
- 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 lot owners to cover the current financial year expenditure and reserve funds.

Some corporations must also include a forward budget (a 'sinking fund' budget) as part of the expenditure statement.





## Forward budget (sinking fund budget)

For corporations with 7 to 20 lots, and with improvements on the common property insured for \$100000 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) for a three year period. New information must be presented about proposed non-recurrent expenditure every three years. [s 113(1)(aa), reg 18A].

For corporations with more than twenty units, and with improvements on the common property insured for \$100000 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 [s 113(1)(aa), reg 18A].

## EXEMPT CORPORATIONS

Community corporations with six or less community lots and community corporations with buildings and improvements on the common property insured for less than \$100000 are not required to present a forward budget as part of their expenditure statement at their annual general meeting [reg 18A(3)].

## AUDIT OF ACCOUNTS

A community corporation must have its annual statement of accounts audited unless it is exempted from this requirement [s 138(1)].

The auditor must be a registered company auditor within the meaning of the Corporations Act 2001 (Cth) [s 138(2)]. A member of the corporation and any person who has a personal or pecuniary interest in the results of an audit must not be appointed as auditor [s 138(3)].

## Exempt corporations

An annual statement of accounts in respect of a financial year need not be audited in any of the following circumstances.

- If the aggregate of the contributions made or to be made by members of the corporation in respect of that year does not exceed \$20000 AND the balance standing to the credit of the administrative fund at the commencement of that year does not exceed \$20000 AND the balance standing to the credit of the sinking fund at the commencement of that year does not exceed \$20000 [s 138(4)(a), reg 24].
- If all community lots are owned by the same person [s 138(b)].

- If the community scheme consists only of lots used for residential purposes AND there are not more than 6 community lots AND the community corporation, by unanimous resolution, resolves not to have the statement of accounts for that financial year audited [s 138(4)(c)].
- If the by-laws of a community corporation with two lots exempt the corporation from the requirement to have its statement of accounts audited [s 35(1)(c)].

## Authorizing expenditure

Depending on the amount the corporation proposes to spend, different types of resolutions are needed in order to authorize the expenditure [s 119, reg 21].

If the proposed expenditure is less than the number of community lots in the scheme \$2000, an ordinary resolution is required.

If the proposed expenditure is more than the number of community lots in the scheme \$2000 and less than the number of community lots \$5000 then a special resolution is required.

If the proposed expenditure is more than the number of community lots in the scheme \$5000, then a unanimous resolution must be passed to authorize the expenditure.



# Body Corporate Managers

Many corporations choose to appoint a manager to assist in running the affairs of the corporation, or to assist the management committee in carrying out its role.

A manager can only carry out the powers and functions delegated to them by the corporation and stated in the contract appointing them. A manager does not have any powers independent of the corporation. Managers have to act in the best interests of the corporation; if they do not, they can potentially be sued for negligence by the corporation.

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

## APPOINTING A MANAGER

Managers can be appointed at a general meeting by an ordinary resolution [s 78A(3)].

The appointment should specify the powers or functions being delegated to the manager. The delegation may have conditions imposed upon it [s 78A(5)(a)]. Even if a delegation of a function or power has been made, this does not prevent the corporation from carrying out the function or power itself [s 78A(5)(b)].

A community corporation may delegate the following functions and powers to a manager [s 78A(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.

A manager cannot be given power to do anything that requires a special or unanimous resolution of the corporation [s 78A(4)].

If it proposed to appoint a manager (or extend or renew a manager's contract) at an annual general meeting, then the agenda for the meeting must include certain items relating to the relevant contract and controls on expenditure [s 81(5)(d), reg 16] (see [General Meetings](#)).

## Documents to be provided

The following requirements must be met when appointing a manager, or renewing or extending a contract with a 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 manager, the manager must make available for inspection by members [s 78B(8), reg 14(1)]:

- a pamphlet setting out the role of the manager and the rights of the corporation
- a copy of the proposed contract, which must have attached to it a copy of the schedule to the policy of professional indemnity insurance maintained by the manager.

## THE PAMPHLET

The pamphlet must specify the rights of the corporation to [reg 14(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 78B(3), reg 14(3)]:

- be in writing
- specify the term of the contract
- set out the functions or powers to be delegated
- specify the rights of the corporation if it wishes to end the contract after 12 months
- 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
- contain an undertaking by the body corporate manager that the body corporate manager will allow any member of the corporation to inspect, at any time during ordinary business hours, the records of the corporation in the possession or control of the body corporate manager and specifying how an inspection can be arranged
- have annexed to it a copy of the schedule to the policy of professional indemnity insurance maintained by the manager.

## THE PROFESSIONAL INDEMNITY INSURANCE POLICY SCHEDULE

The professional indemnity insurance policy schedule must state [reg 14(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 MANAGERS

### Professional indemnity insurance

A manager must have professional indemnity insurance of at least \$1.5 million per claim during a period of 12 months [reg 14(2)]. A corporation's manager must maintain this level of professional indemnity cover while working for the corporation; if not, the manager does not have to be paid for any period of time they were not covered [s 78B(2)(c)].

### Duty to act in the best interests of the corporation

When doing work for the corporation, a manager must [s 78C(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 manager, or their employee or agent, has a direct or indirect pecuniary interest in a matter in relation to which they propose to perform delegated functions or powers, the manager must disclose the nature of the interest, in writing, to the corporation before performing the functions or powers [s 78D(1)]. Failure to do so is an offence, with a maximum penalty of \$15000.

For instance, if the manager will receive a commission for arranging a contract, has an interest in the maintenance company or is related to a service provider then this must be disclosed to the corporation.

## CORPORATION RECORDS

A manager who holds records of the corporation must, at the request of any member of the corporation, make those records available for the member to inspect within 10 business days of the request, and provide the member with a copy of any of the records on payment of a fee (the maximum fee is regulated) [s 78D(7), reg 14A(3)]. Failure to do so is an offence with a maximum penalty of \$500.

## THE MANAGER'S DEALINGS WITH THE CORPORATION'S MONEY

If a corporation member requests, a manager must provide the member, on a quarterly basis, with a statement setting out details of the manager's dealings with the corporation's money. The manager must continue to provide the statements until the person ceases to be a member or revokes their request [s 78D(5)]. Failure to provide this information when requested is an offence with a maximum penalty of \$500.

## PROFESSIONAL INDEMNITY INSURANCE POLICY

The body corporate manager must, at the request of any member of the corporation, make a copy of the body corporate manager's policy of professional indemnity insurance available for inspection and copying by the member within three business days of the request [s 78B(9)]. Failure to do so is an offence with a maximum penalty of \$500.

## Trust account audits

Managers or any agent who is authorized by the corporation to receive and hold money on behalf of the corporation are under strict legal obligations. Detailed and complete records must be kept of all financial transactions in relation to the corporation [ss 126(1), (2)] and these records must be kept by the manager or agent for at least five years [s 126(4)]. An audit report of the manager's trust account in relation to a corporation must be forwarded to the secretary of the strata corporation each financial year [s 127(1)(b)]. Any manager or agent who fails to comply with any of these requirements is guilty of an offence with a maximum penalty of \$8000.

In addition, a statement setting out details of dealings by the manager or agent with the corporation's money must be produced to the corporation upon request by the corporation, and within five business days of the request [s 126(3)]. Failure to do so is an offence with a maximum penalty of \$500.

## ENDING A MANAGER'S CONTRACT

A corporation's contract with a manager must state the term of the contract [s 78B(3)(b)]. If a corporation wishes to end a contract before the end of the term because it believes the manager is not performing well, it would be advisable for the corporation to obtain legal advice. If the corporation believes the manager has breached their duty to act in the best interests of the corporation, or any other duties under the Community Titles Act 1996 (SA), the corporation is entitled to seek to end the contract. If the corporation and the 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 (see [Disputes](#)). This process involves making an application to the Magistrates Court.

A corporation may, by ordinary resolution, end a 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, after the contract has run for at least 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 [ss 78B(4), (5), (7)].

## Return of corporation records and trust money

If a corporation revokes the delegations it has given to a manager (effectively, if the corporation dismisses the manager or if the contract between them is not renewed), then the manager must return all corporation records and trust money within 10 business days of the delegations being revoked [s 78D(6); reg 14A(1)-(2)]. Failure to do so is an offence with a maximum penalty of \$2000.

Records must either be returned by mail sent by registered post, or be made available for collection [reg 14A(1)].

Trust money must either be returned by electronic funds transfer, or by cheque sent by registered post, or be made available for collection [reg 14A(2)].

# Owners' rights and responsibilities

The key rights of lot owners are contained in the by-laws of the corporation and in provisions of the Act related to access to information (see [Community Corporation: Access to information](#)).

## RIGHT OF ENTRY

### In relation to service infrastructure

A lot owner may need to enter another lot in order to set up, maintain or repair service infrastructure. If so, the lot owner wishing to enter must give notice to the other owner [s 146(1)(a)]. Similarly, if a lot owner needs to enter the common property because they have the right to set up, maintain or repair service infrastructure, the lot owner must notify the corporation [s 146(1)(a)], unless they have the right to enter the common property [s 146(2)(c)(i)]. The amount of notice required is whatever is reasonable in the circumstances [s 146(3)].

If the situation is an emergency and there is no time to give notice, then notice need not be given [s 146(2)(a)]. A lot owner may agree that their lot can be entered without notice [s 146(2)(b)], as may the corporation in relation to the common property [s 146(2)(c)(ii)].

If the owner or a person acting on the owner's behalf cannot enter the lot without using force, such force as is reasonable in the circumstances may be used [s 146(4)]. Any damage caused by the use of force must be made good as soon as practicable by the owner, unless the need for force was the result of an unreasonable act or omission on the part of the owner of the lot that was entered [s 146(5)].

### In an emergency

In an emergency, the owner or occupier of a lot may enter another lot or the common property to assist a person on the lot or common property, or to prevent or reduce damage to the lot or another lot or to the common property [s 146(6)].

An owner or occupier who uses force when entering a lot or the common property, or a building on a lot or the

common property, to assist in an emergency is not liable for any damage caused if they acted reasonably in the circumstances [s 146(7)].

## MAINTENANCE AND REPAIRS

Owners of a lot are responsible for the maintenance and repairs of their own property, and must keep the lot, and buildings and improvements on the lot, in good order and condition [s 134(1)], unless the corporation's by-laws have transferred this responsibility to the corporation [s 134(2)]. If owners do not fulfil their responsibilities of maintenance and repair, the community corporation may require the work be done within a set time [s 101(1)(a)] (see [Community Corporation: Powers of the corporation](#)).

An occupier of a lot must keep the external part of the lot and of any building or other improvement on the lot in a clean and tidy condition [s 134(4)]. If a tenant is occupying the lot and does not fulfil this requirement, the corporation can require the lot owner to remedy the situation [s 101(1)(b)(i)] (see [Community Corporation: Powers of the corporation](#)).

## INSURANCE

Where support or shelter required by an easement pursuant to this Act is provided by a building situated on a lot, the owner of the lot must insure the building against risks that a normally prudent person would insure against for the full cost of replacing the building with new materials and must insure against incidental costs such as demolition, site clearance and architect's fees [s 106(1)]. Failure to do so is an offence with a maximum penalty of \$15 000.

A lot owner who is required to insure a building under s 106(1) must provide a photocopy of the current certificate of the insurance that they have taken out to the community corporation as soon as practicable after taking out the policy and after any subsequent change to the terms and conditions of the policy [s 106(2)(a), reg 17]. Failure to do so is an offence with a maximum penalty of \$500.

A lot owner must also provide a photocopy of the current certificate of the insurance policy to another owner or prospective owner, or the registered mortgagee or prospective mortgagee, of a community lot or a development lot that benefits from the easement. The copy must be provided within five business days after the making of the request [s 106(2)(b), reg 17]. Failure to do so is an offence with a maximum penalty of \$500.

## COMPLIANCE WITH THE BY-LAWS

Lot owners have certain responsibilities as outlined in the corporation's by-laws, with which they are required to comply [s 43(1)]. The corporation may require

and enforce work on a lot to remedy a breach of the corporation's by-laws, even if the breach was by a former lot owner, an occupier (tenant) or former occupier [s 101(1)(b)(i)] (see [Community Corporation: Powers of the corporation](#)).

## NON-INTERFERENCE

An owner or occupier of a lot must not use, or permit the use of, the lot or the common property in a way that causes a nuisance or interferes unreasonably with the use or enjoyment of another lot or the common property [s 133].

An owner or occupier of a lot must not interfere, or permit interference, with support or shelter provided for another lot or for the common property [s 132(1)], or with the service infrastructure or a service provided by means of the service infrastructure in a way that may prejudice the use or enjoyment of another lot or the common property [s 132(2)].

## CONTRIBUTIONS

Lot owners must keep up their contributions to the corporation. If the funds are not paid, they are recoverable as a debt [s 114(8)], which means the corporation can sue the lot owner for the money, possibly with interest added at a rate reasonably decided by the corporation [s 114(4)(b)]. If you buy a lot and there is a contribution owing, you as the new owner are legally responsible for that contribution [s 114(7)]. Check carefully before buying any lot, as there may be debts outstanding in relation to it.

## DEBTS OF THE CORPORATION

Lot owners are guarantors of their community corporation's liabilities, which means the corporation's debts are enforceable against each of the lot holders directly [s 77].

If the corporation does not or cannot pay its debts, the individual lot owners are personally responsible. The corporation's debts are enforceable against each or any of the lot owners directly [s 77(1)]. If the corporation has a debt, the lot owners have, amongst themselves, the right of contribution to the debt based on their respective lot entitlements [s 77(2)].

## STRUCTURAL WORK

### Community schemes

Lot owners in a community scheme may carry out structural work on their lots, subject to Council approval, where necessary, and compliance with the scheme description and by-laws. But see: community strata schemes (residential). The scheme description must specify the standard of buildings and other improvements that

may be erected on a lot [s 30(1)(d)]. The by-laws may also regulate [s 34(3)(a)]:

- the position, design, dimensions, methods and materials of construction and external appearance of buildings or other improvements on community lots
- the maintenance and repair of buildings or other improvements on community lots
- landscaping, including the establishment, care and maintenance of lawns, gardens and other areas on community lots.

In addition, the by-laws may impose requirements or restrictions relating to the appearance of community lots or buildings or other improvements situated on community lots [s 34(3)(b)].

### Community strata schemes (residential)

Lot owners in a residential community strata scheme must seek permission from the corporation before carrying out the erection, alteration, demolition or removal of a building, or altering the external appearance of a building [ss 102(1), (7)]. The corporation will need to pass a special resolution to authorize the work [s 102(1)(b)]. An exception is if work is required because of an order under the Housing Improvement Act 1940 (SA), when no permission is needed [s 102(1a)].

If a lot owner carries out work without permission, the corporation may, by notice in writing to the owner of the lot, require them to carry out, within a reasonable period fixed in the notice, specified work to remedy any structural deficiency caused by the work or to restore the lot to its previous state [s 102(2)].

If the lot owner does not comply with the corporation's notice within the time allowed in the notice, the corporation may authorize workers to enter the lot to carry out the specified work [s 102(3)], as long as reasonable notice of the proposed entry is given to the lot owner [s 102(4)].

If force is necessary to enter a lot to carry out work in the corporation's notice, an order authorising the entry must be obtained from the Magistrates Court [s 102(5)].

Any cost reasonably incurred by the corporation in having the work carried out may be recovered as a debt from the owner of the lot [s 102(6)].



# Disputes

## MEDIATION

Mediation is worth considering for disputes in relation to community titles as it is more likely than legal action to enhance and preserve positive relationships.

Mediation is a voluntary process where trained mediators work with people to help them resolve their differences. A mediator can become involved in a dispute at the request of at least one of the parties. A mediator can write to invite the other party to discuss the problem and participate in mediation. Because attendance is voluntary from both sides, any party may withdraw from the resolution process at any time.

The role of the mediator is to listen, ask questions and ascertain the facts, not to blame anyone or take sides. With all the information provided by the parties, the mediator can help people to put together an agreement. The agreement 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 cost for both parties
- it can contribute to the early resolution of problems, thereby reducing stress and anxiety
- it allows both parties to take responsibility for their role and gives them the opportunity to resolve their own disputes
- mediation sessions are conducted in private, unlike court proceedings.

For details of mediation services see Contacts.

If no resolution can be worked out then an application may be made to the court to decide the matter.

## COURT PROCEEDINGS

### What disputes can be taken to court?

The types of disputes that may be heard by the court are set out in Section 142(1) of the Act and are as follows:

- a breach of the Act or the corporation by-laws is alleged
- an occupier claims to have been prejudiced by a wrongful act or omission of the corporation, management committee, the developer, or the owner or occupier of another lot
- a member of a community corporation claims that a decision of the corporation or the management

committee is unreasonable, oppressive or unjust

- the community corporation and a corporation member, or two or more corporation members are in dispute about the occupation or use of a lot, or the position in which a cable, wire, pipe, sewer, drain, duct, plant or equipment should be laid or installed, or
- an order authorising a person to use force to enter a lot or a building on a lot is sought.

In addition the court can deal with the following issues:

- Striking out a by-law that reduces the value of a lot or unfairly discriminates against the owner of a lot. [S 38(1)]. (see [By-laws](#)).
- A community corporation or an owner or occupier of a lot who is a party to a development contract is entitled to take proceeding for the enforcement of the contract (including damages for breach of contract) against the developer and (if the contract is for the development of a development lot or a community lot) against the subsequent owner or owners of the lot [S49(2)]. Proceedings are commenced in the Magistrates Court but may be transferred to the District Court or the Supreme Court if appropriate. [S49(2a) and (2)(b)]
- The Environment, Resources and Development Court may, on application by the community corporation or an owner of a lot [or certain other listed entities], amend the community plan to correct an error in the plan, to vary the lot entitlements of the lots or to make certain other amendments. The ERD Court may also hear an application to cancel the community plan [S 67 and S69].
- The Magistrates Court may order the convening of a general meeting of the corporation.

### Who can make an application to the court?

Those who can make an application are [s 141]:

- the corporation
- the owner or occupier of a community lot
- the owner or occupier of a development lot
- a person who has contracted to purchase a community lot or a development lot
- any other person bound by the by-laws of a community scheme, except for persons invited to or visiting the community land.

### Which court hears disputes?

An application to resolve a dispute must usually be made to the Magistrates Court [s 142(2)]. An application is heard as a minor civil action [s 149A], unless it involves enforcement of a development contract under s 49(2),

when it is heard in the general claims jurisdiction of the Magistrates Court.

If the matter is particularly complex or significant [s 142(5)], an applicant can seek the permission of the District Court to commence proceedings there [s 142(3)], or a party may seek to transfer a matter from the Magistrates Court to the District Court [s 142(4)].

A court may, on its own initiative or on an application by a party to the proceedings, transfer a matter to the Supreme Court on the ground that the application raises a matter of general importance [s 142(6)(a)]. Similarly, a court may, on its own initiative or on an application by a party to the proceedings, state a question of law for the opinion of the Supreme Court [s 142(6)(b)].

A court may decline to proceed with an application to resolve a dispute if it considers that it would be more appropriate for proceedings to be taken in another court or tribunal [s 142(15)].

## Orders that can be made

If appropriate, the court may attempt to achieve settlement of the proceedings by agreement between the parties [s 142(8)(a)].

In an urgent case, the court can make an interim order to safeguard the position of any person pending its final decision.

The court has power to make a range of orders under s 142.

- The court may order that reports or other information be provided for the purposes of the proceedings. In addition, it can order that accounts be audited or that a person be reimbursed for the costs of having any accounts audited. [ss 142(8)(b)-(ba)]
- The court may [ss 142(8)(c)-(d)]:
  - > specify action that a party must take to remedy any default, or to resolve any dispute, or
  - > specify action that a party must refrain from doing.
- The court may give judgment on any monetary claim [s 142(8)(f)].
- The court may determine the position in which a cable, wire, pipe, sewer, drain, duct, plant or equipment is to be laid or installed [s 142(8)(g)].
- The court may:
  - > make a declaration as to the validity of any decision or purported decision of the corporation [s 142(da)]
  - > vary or reverse any decision of the corporation, or of the management committee of the corporation or of a delegate of the corporation [142(8)(e)(ii)].

In relation to by-laws, the court may:

- make a declaration as to the validity of any by-law or purported by-law of the corporation [s 142(da)]
- alter the by-laws of the community scheme, and make any necessary consequential changes to the scheme description and development contracts [142(8)(e)(i)], but only if [s 142(9)]:
  - > the corporation is a party to the proceedings or the court is satisfied that the corporation has been given a reasonable opportunity to become a party to the proceedings, and
  - > if it appears to the court that the alteration could adversely affect a member of the corporation who is not a party to the proceedings, the court is satisfied that the member has been notified of the possibility that such an order could be made and has been given a reasonable opportunity to make submissions to the court in relation to the matter, and
  - > the court is satisfied that the order is essential to achieving a fair and equitable resolution of the matters in dispute.

In relation to contracts, the court may [s 142(8)(ea)]:

- vary, avoid or terminate a contract entered into (regardless of when it was entered into) between a community corporation and any of the developer, an associate of the developer, the body corporate manager, or an associate of the body corporate manager, but only if:
  - > the court is satisfied that the contract involves a breach of fiduciary duties or other duties under this Act [s 142(9a)].

The court may also [ss 142(8)(h)-(i)]:

- make orders as to costs
- make any incidental or ancillary orders

A person who fails to comply with an order under s 142 is, in addition to being liable to punishment for contempt [s 142(14)], guilty of an offence with a maximum penalty of \$15 000 [s 142(13)].

## APPOINTMENT OF AN ADMINISTRATOR

The Magistrates Court or the District Court may appoint an administrator to administer the affairs of the corporation [s 100(1)] in cases where governance has broken down to an extent that the group is not functioning. An administrator has, while the appointment remains in force, full and exclusive power to administer the affairs of the community corporation, including power to do anything for which a special or unanimous resolution of the corporation is required [s 100(2)].





An application to appoint an administrator may be made by [s 100(1)]:

- a community corporation
- a creditor of a community corporation
- the owner of a community lot or a development lot, or
- a person who holds a registered encumbrance over a community lot or a development lot.

It is important to get legal advice before seeking or opposing the appointment of an Administrator.

# Converting from Strata Title

When the Community Titles Act 1996 (SA) came into operation, it did not affect existing strata corporations, but no new strata schemes are allowed under the Strata Titles Act 1988 (SA). Community titles have been created instead. A strata scheme and a community strata scheme are similar, as the boundaries are defined by reference to structural divisions in a building, whereas in a community scheme lot boundaries are determined by surveyed land measurements and generally do not relate to a structure.

Existing strata corporations may, by an ordinary resolution of the strata corporation, become a community strata scheme, which means the corporation will be covered by the Community Titles Act 1996 (SA) and not the Strata Titles Act 1988 (SA). The resolution does not take effect until a copy of the resolution is lodged with the Registrar-General and filed with the Strata Plan. The resolution will not change the boundaries of the units or the common property. If it is desired that the boundaries be changed, an amendment to the plan and the appropriate application must be lodged at the Lands Titles Office.

The articles that existed under the Strata Titles Act 1988 (SA) continue as its by-laws but may be amended if required [sch cl 2(3)(e)]. Similarly, the officers of the strata corporation continue as the officers of the community corporation [sch cl 2(3)(g)].

## CONVERTING FROM OTHER TYPES OF SCHEMES

The Community Titles Act also allows many company and moiety title schemes to apply to convert to a community strata scheme. This may not be possible in all circumstances and the local council may require improvements (such as the erection of firewalls) before giving planning consent.

# Complex Schemes

Some plans refer to Development Lots or Secondary and Tertiary Lots. These are a feature of more complex and mixed use developments.

## DEVELOPMENT LOTS

A development lot is a lot that is intended to be divided into additional lots at a later date. Any development must be in accordance with the Development Contract, Scheme Description and By-laws of the scheme.

## SECONDARY AND TERTIARY SCHEMES

When a property has lots grouped together for different purposes (such as residential, retail or offices) then secondary or tertiary schemes may be created. The primary, secondary and tertiary corporations have their own meetings and functions but are also connected to each other. The secondary (and tertiary) corporations are also bound by the development contracts, scheme descriptions and by-laws of the primary (and secondary) corporations.

# Common Questions

## BUILDING ON A LOT

I want to build an addition onto my house, which is part of a community scheme. Can I just go ahead and organise the building work, without involving the corporation? My friend is in a community strata scheme, and I know she cannot alter the outside of her unit without agreement from the corporation, but community schemes are different, aren't they?

In many community schemes approval may not be required to extend or alter the appearance of a building on a lot [approval must be obtained in community strata schemes]. However, the scheme description (if any) and the by-laws in a particular community scheme may prevent or impose restrictions or conditions on work being undertaken on a lot. Council approval may also be required depending on the nature of the work to be undertaken.

## BUYING A COMMUNITY TITLE

What do I need to be aware of if I wish to purchase a lot in a community plan?

There are various things that must be considered. They include:

### PROPERTY MATTERS

- The type of scheme – is it a community scheme or a community strata scheme? This will indicate what a lot owner actually owns.
- The by-laws and, if applicable, scheme description and development contract(s) for the scheme. It is advisable to obtain independent advice about the content of these documents.
- The level of the scheme. Is it a primary, secondary or tertiary scheme? If a secondary or tertiary scheme, have I seen the plans, development contract(s) (if any), by-laws and scheme description of the scheme or schemes above?
- Have I seen a copy of the plan that defines my lot? Do the boundaries of the lot agree with boundaries shown on the plan?
- What constitutes the common property?
- Do the scheme description or by-laws limit the type of structures I can build on my lot?

### FINANCIAL MATTERS

- The statement of accounts and financial records of the corporation and those of any scheme above.
- What must I contribute to the upkeep, maintenance and management of the common area in the scheme? In the case of a secondary or tertiary scheme this will also include contributions that the scheme is required to make to the scheme(s) above.

- How do the contributions and other charges compare with other corporations?
- Are there any unpaid contributions owing on my lot? If any outstanding contributions are not paid by the vendor before settlement then they will become the new owner's responsibility.
- Is the corporation planning any major expenditure that I may be asked to contribute to?
- Are there any structural problems in the building?
- What is the amount of money in the sinking fund? Is it adequate for future needs?
- What maintenance services are provided? What are the charges for these?
- In relation to insurance, whether the corporation has all required insurance coverage including for public liability for at least \$10 million, for the full cost of replacing the buildings and improvements on the common property (and in the case of a strata plan the buildings divided by the strata plan) and related costs and if required appropriate fidelity guarantee insurance.
- In the case of a shared wall where an easement for support or shelter exists do the owners of the adjoining community lots have the appropriate insurance cover? Note this requirement does not relate to community strata schemes.

### MANAGEMENT MATTERS

- Is there a body corporate manager?
- Is there a management committee?
- What system does the corporation have for resolving disputes?
- If the scheme has only two lots, have the by-laws exempted the corporation from certain requirements of the Act including to hold annual meetings and to have administrative and sinking funds.

### STYLE OF LIVING

- What are the rules about having other people visiting and parking?
- Will the 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 are the restrictions on the use of my lot and the common property?
- Can I store my caravan/boat/bicycle?
- Are pets permitted?

## COMPANY AND MOIETY TITLES

[Are moiety and company titles the same as community titles?](#)

They are not the same. Company and moiety titles are schemes where either a company or a group of owners own the property and the shares or ownership gives rise to a right to occupy a unit. Strictly speaking, a shareholder does not own the property, but owns shares in the company that owns the property. The shares give an entitlement to occupy a unit. Such schemes can be more expensive and complex to administer, and prospective buyers may find it difficult to obtain finance to buy shares in a company title. Depending on the structure of the building, it may be possible to convert to a community strata scheme.

## CONTRIBUTIONS

[I don't use the common property driveway, as I have a driveway on my lot that accesses the street. Do I have to pay contributions for the maintenance of the common property?](#)

The amount of each owner's contribution to the corporation is normally calculated according to the lot entitlement set out in the community plan. The corporation may, by unanimous resolution, determine that contributions are paid on some other basis.

Contributions are not just used to cover maintenance of the common property. Other costs, for example in relation to insurance, service infrastructure, and management costs are also covered by contributions. Just because you do not use the common property driveway does not mean you do not have to contribute to its maintenance, as a member of the corporation.

## CONVERTING TO COMMUNITY TITLE

[Our strata manager has suggested that we adopt the Community Titles Act \(SA\). Would we be better off?](#)

If a conversion occurs then much remains the same unless additional expense is incurred to change the nature of the now community strata plan. For instance, you are still required to obtain approval to change the exterior of your building; the corporation must insure the property rather than individual owners; you must still have annual meetings and you will need to have administrative and sinking funds that you may not have had in your strata corporation.

The by-laws of schemes with only two lots may exempt the corporation from having annual general meetings or administrative and sinking funds.

A conversion to a community strata corporation will also allow the members to vote on a resolution to amend the by-laws to prohibit short term rentals of the holiday let type [S37(2)(a)].

The question of whether a corporation would be better off is a complex one and dependent on factors such as:

- the number of units involved
- the expectations of the lot owners
- the purpose the land is to be used for
- whether the common property is to be used for commercial gain

It is suggested that legal advice should be sought before that step is taken, as the Strata Titles Act 1988 (SA) will no longer apply and the conversion cannot be reversed.

If a strata corporation wishes to create a new community scheme rather than convert to a community strata scheme then this could only be done if there is no unit existing above another unit. It would require the unanimous resolution of the unit owners (and not an ordinary resolution as required for a mere conversion), a survey to create a new plan, a valuation to establish new lot entitlements, possible approval by the local government authority and conveyancing and LTO fees. It can be an expensive exercise.

## EXCLUSIVE USE OF THE COMMON PROPERTY

[One of the lot owners in our community scheme was granted exclusive use of 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?](#)

A by-law may confer on the occupiers of a group of lots the exclusive right to use a specified part of the common property. The by-laws may impose conditions in relation to the use and may require an owner of a lot to pay a fee for the exclusive use of the common property.

The benefits of the by-law regarding exclusive occupancy are not limited in time and will benefit subsequent occupiers. Normally a special resolution would be required to vary the by-laws to put conditions on the use or to impose a fee, but the owner or owners to which it relates must also give written consent.

## FENCES

[The fence between my lot and an adjacent lot is in need of repair. The body corporate manager says we have to sort it out ourselves and that it is not the corporation's responsibility. Is this correct?](#)

If you are part of a community scheme (not a community



strata scheme), then you and your neighbour are joint owners of the dividing fence. The fence is not common property, so the corporation is not responsible to fix it. The issue of repairing the fence is between you and your neighbour.

Similarly, if a fence between your lot and neighbouring land that is not part of your community scheme needs repair, you will need to discuss the matter with your neighbour. The corporation has no responsibility to be involved.

If the fence is between common property and your lot or between common property and a neighbour who is not part of the scheme then the corporation will own half of the fence and be responsible for negotiating with you or the neighbour. See the Fences and the Law booklet, published by the Legal Services Commission.

If you are part of a community strata scheme, dividing fences will usually be common property, (unless the plan states otherwise) therefore it would generally be the corporation's responsibility to repair a dividing fence. Similarly, a fence between a lot in a community strata scheme and neighbouring land that is not part of the scheme may (subject to the plan) be the responsibility of the corporation and the owner of the neighbouring land.

## FINES

[A visitor to my apartment received a letter from the corporation stating she could be fined \\$500 for unauthorized parking. Is this legal?](#)

The by-laws may give the corporation the power to impose penalty of up to \$500 (\$2000 if the scheme only includes lots that are used, or are intended to be used, solely or predominantly for business or commercial purposes} for breaches of the by-laws. An occupier such as a tenant or anyone who comes onto the property is bound by the by-laws. Anyone who receives a penalty notice may apply to the Magistrates Court to have the notice revoked. The corporation can enforce the penalty notice by suing the occupier or visitor in the Magistrates Court.

## INSURANCE

[Our body corporate manager has advised us that she can arrange our individual building insurance policies for us. Could there be any problems with this?](#)

While each lot owner in a community scheme is responsible for insuring their own buildings, the by-laws of a community scheme may allow for the community corporation to act as an agent for the lot owners in arranging insurance. The corporation may delegate this task to a body corporate manager. If arranging building insurance for lot owners is an option, not a requirement, under the by-laws, then individual lot owners can choose

whether they want the corporation to arrange their insurance or whether they want to do it themselves; there is no requirement for all owners to agree.

Problems can arise in relation to the way an insurer invoices the corporation for the insurance premium. If building insurance is arranged on behalf of two or more owners, an insurer may invoice the corporation for one amount, without showing the amount that would be payable for individual lots. If an insurer will not provide a breakdown, then the corporation has to work out each owner's contribution. Contributions are normally determined according to lot entitlements, but this may not be appropriate in relation to building insurance, because lot entitlements are based on the unimproved value of the land, not the value of the buildings. Thus, whether an insurer will provide a breakdown of the premium in relation to each lot may be one of the factors to consider when choosing an insurer.

A corporation may decide that a lot owner's building insurance premium, or share of the premium, will be paid as part of the annual contribution levied by the corporation. If so, the levy applicable to your lot may compare unfavourably with the levy applicable to another lot where the owner has arranged their own insurance, or to the contributions levied by another corporation that does not arrange lot owners' building insurance. Such a disparity in levies may be a problem if you wish to sell your lot.

## MANAGERS

[What are some issues to consider when choosing a 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 manager, the manager must make available for inspection by members:

- a pamphlet setting out the role of the manager and the rights of the corporation
- a copy of the proposed contract
- a copy of the schedule to the policy of professional indemnity insurance maintained by the manager; the insurance must be for at least \$1.5 million per claim.

In addition to the information required to be set out in these documents (see [Body Corporate Managers: Appointing a manager: Documents to be provided](#)), you may wish to consider the following.

- What services are included in the fee?
- Is there any fee charged for keeping the corporation's funds?
- Will all bank interest be passed on to the corporation?

- Will the manager ensure the corporation receives the best bank interest rate?
- What maintenance company or contractors does the manager normally use, and does the manager receive any commissions, or have any financial relationship with contractors?
- Will the manager provide your treasurer with regular financial statements to keep the corporation up to date and allow for scrutiny? If so, how often? Note that the manager must provide a financial statement upon request by the corporation, within five days of the request (see [Body Corporate Managers: Duties of managers: Trust account audits](#)).
- Will the manager supply references from current clients?
- Does the manager have the skills to help resolve disputes?
- What fees will be charged for any additional services by the manager?

## RESTRICTIVE RULES

[The rules of my apartment complex are very restrictive. I can't put up a blind on my balcony or have a barbeque. Am I bound by the rules and what can I do about them?](#)

The by-laws that govern a scheme can be amended by a special resolution passed at a properly convened meeting of the corporation, if they meet the above requirements. A copy of the by-laws as amended must be lodged with the Registrar-General within 14 days of the passing of the resolution.

Any by-law that is inconsistent with the scheme description will be invalid. The by-laws of a secondary (or tertiary) scheme must also be consistent with the scheme descriptions and the by-laws of the primary (and secondary) schemes. Scheme descriptions can be amended by a unanimous resolution but there are various other requirements to be met before the amendment can be lodged with the LTO.

By-laws are the rules by which the scheme is to be run and bind all of the owners, occupiers and persons entering the property. The by-laws and scheme description of a primary scheme bind any secondary or tertiary corporation and owners and those of a secondary scheme also bind the corporation and owners of the tertiary scheme. The by-laws and scheme description of a secondary (or tertiary) corporation cannot be inconsistent with the by-laws and scheme descriptions of the primary (or secondary) corporation. The tertiary by-laws must also not be inconsistent with its scheme description.

## TREES

[The owner of an adjoining lot has a tree on their property and its roots are damaging the paving on my lot. Can I ask the body corporate manager to raise the matter with the other owner?](#)

If you are in a community title scheme (rather than a community strata scheme) and the tree is on an owner's lot (not on common property) and is only affecting your property, then it is a matter between you and your neighbour; it is not the corporation's responsibility to get involved.

Similarly, if a tree on a neighbouring property that is not part of the community scheme is affecting your lot, then it is up to you to discuss the matter with the neighbouring owner.

If an owner's tree is affecting the common property, then the corporation can discuss the matter with the owner.

If a tree on common property is affecting your property, then you could raise the matter with the corporation.

If you are in a community strata scheme then the corporation is able to become involved in any cross-boundary dispute between neighbouring lot owners or between lot owners and outside neighbours.

## WATER RATES AND METERS

[Our lots do not have separate water meters and we all pay the same for water, no matter how much we use. Can this be changed?](#)

Unless your lot entitlements are all the same your corporation would have had to pass a unanimous resolution to impose an equal share of the bill upon each lot owner. Without a unanimous resolution the bill should be apportioned according to the lot entitlements.

SA Water has three options when it comes to billing. It may send the total bill to the corporation for it to pay. If it is satisfied that any appropriate resolution is in place it may divide the total bill equally amongst all of the lots and send out individual bills to each lot owner. It may also apportion the bill as the corporation directs – for instance based on lot entitlements - and send out individual bills to the lot owners based on that apportionment.

A more expensive alternative is that SA Water may be able to install separate meters for each lot in Community or community strata schemes currently without individual meters. There is a cost for this service. The individual lot owners are then responsible for the cost of connecting their lot to the new meter. As the meters are generally grouped together in one location this may be an expensive exercise and it may be impractical or even impossible to do

this (for instance in multi storey apartment blocks).

Private water meters may be installed on each lot to determine individual usage. These may be read by the corporation itself or the corporation may engage a firm which provides the meters and then reads them.

## SHORT TERM RENTALS

[A neighbouring lot owner advertises his property for short term holiday stays. We do not want strangers coming onto the property - particularly if there is a risk that they may breach the by-laws or cause damage. Can we do anything about this?](#)

Under the provisions of Section 37(2)(a) of the Community Titles Act 1996 your corporation can pass a special resolution to include a by-law that prohibits or restricts an owner of a lot from leasing for a period of less than two months.

## TYPES OF COMMUNITY TITLES

[What is the difference between a regular community title and a strata community title?](#)

There are two types of community titles:

- community schemes
- community strata schemes.

### PRIMARY COMMUNITY SCHEMES (FIGURE 01.)

The diagram and plan are of a primary community plan. Each building sits on its own lot. The owners have title to the land under the lot and the sky above, unlike strata titles. Subject to the scheme description and the by-laws, they are responsible for the maintenance and insurance of their respective buildings. Where buildings share a common (party) wall the owners of each building are jointly responsible for its maintenance. The common property is the shared driveway down the middle of the group. The body corporate is responsible for the maintenance and insurance of the driveway and any other common property which may not be shown on the plan e.g. letter boxes, lighting and any service infrastructure that provides a service to more than one lot.

### PRIMARY COMMUNITY STRATA SCHEMES (FIGURE 02.)

The photograph and plan are of a primary community strata plan. In a community strata scheme the lot boundaries are generally defined by reference to parts of the building, similar to a strata title. There must be at least one lot that exists above another, unless the scheme is a converted Strata Title, company or moiety scheme which has been brought under the Community Titles Act 1996 (SA).

Community strata schemes are very similar to strata titled unit groups. Common property includes land that is not within a lot, and infrastructure (such as driveways, water, sewer, electricity) that do not serve single lots. In the case of a community strata scheme, depending on the plan, the common property may include the external walls and floors, the foundations, the roof, the space in the roof, gutters and eaves. It does not include the owner's fixtures and fittings such as kitchens and bathrooms.

The internal walls and lot subsidiaries are not common property and are the owner's responsibility to maintain.

It is the responsibility of the corporation to insure all buildings on the land and any improvements on the common property and to maintain the common property, including those parts of the buildings that form part of the common property.



# Contacts

## LEGAL SERVICES COMMISSION

1300 366 424  
[www.lsc.sa.gov.au](http://www.lsc.sa.gov.au)

### ADELAIDE OFFICE

159 Gawler Place  
Adelaide 5000  
Telephone: 8111 5555

### ELIZABETH OFFICE

Windsor Building  
Elizabeth Shopping Centre  
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### MT BARKER

18 Walker Street  
Mt Barker 5251  
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### NOARLUNGA

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Colonnades Shopping Centre  
Noarlunga Centre 5168  
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### PORT ADELAIDE

306 St Vincent Street  
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### PORT AUGUSTA

13 Flinders Terrace  
Port Augusta 5700  
Telephone: 8686 2200

### WHYALLA

Tenancy 7, 169 Nicolson Avenue  
Whyalla Norrie 5608  
Telephone: 8620 8500

## COMMUNITY LEGAL CENTRES

Northern Community Legal  
Service

26 John Street  
Salisbury SA 5108  
Tel: 8281 6911

Southern and Limestone Coast  
Community Justice Centre  
40 Beach Road  
Christies Beach SA 5168  
Tel: 8384 5222

Uniting Communities Law  
Centre

Shop 2/59 Main North Road  
Medindie Gardens 5081  
Tel: 8342 1800

Westside Lawyers

Hindmarsh Office  
212 Port Road  
Hindmarsh SA 5007  
Tel: 8340 9009

Port Pirie Office  
72 Ellen Street  
Port Pirie 5540  
Tel: 8633 3600

Women's Legal Service

151 Franklin Street  
Adelaide SA 5000  
Tel: 8221 5553

## UNITING COMMUNITIES MEDIATION SERVICE

For an appointment telephone  
Tel: 8342 1800

## LAND SERVICES GROUP

Lands Titles Office  
101 Grenfell Street  
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[www.sa.gov.au/landservices](http://www.sa.gov.au/landservices)

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