



PROPERTY & BUSINESS LAWYERS

# Community Living

# Property Law Series

**This Information below answers some of the more commonly asked questions about buying strata and community title real estate and should be read in conjunction with our Information “Buying Real Estate”.**

**Please call us if you have any questions on this topic or any other real estate issues.**

## **How does strata title work?**

Most home units, town houses or villas in New South Wales are held under strata or community title. Strata and community titles are particular types of torrens title. When you own a house or a block of land you have absolute ownership of not only the house and land but also the air space above the land and the earth underneath. This is known as “absolute” ownership of the whole vertical column.

When you buy a strata title property the only thing that you “own”, in the absolute sense is the cubic space within the inner surface of the walls, floor and ceiling of the outside walls of the unit. In other words, you own a horizontal slice taken out of the vertical column. The rest of the property (excluding your unit and all the other units) is owned by a body called The Owner’s Corporation (formerly called the Body Corporate).

The owner’s corporation works very much like a company but the terminology is slightly different.

- A company has a board of directors – An owner’s corporation has an executive committee.
- A company has shareholders - An owner’s corporation has unit holders.
- A company has shares - An owner’s corporation has unit entitlements.
- The rules of a company are set out in its constitution (formerly called Memorandum and Articles of Association) - The rules of an owner’s corporation are set out in its by-laws.

When you purchase your strata title property, you automatically acquire the unit entitlement applicable to your particular unit. The developer who registered the strata plan will have determined the unit entitlement. Unit entitlements of various lots in the strata plan reflect their comparative values at the date of registration of the strata plan. The owner’s corporation has an obligation to look after the whole of the common property of the development apart from the strata spaces that are owned by the individual unit holders. It has an obligation to keep the property in good repair, to keep it clean and (because it is in fact the owner of the building) it has an obligation to keep the building adequately insured. This, of course, all costs money and each year The owner’s corporation will determine a budget for the next 12 months. The money required for that budget will be collected from the various unit holders by way of quarterly levies in proportion to their unit entitlements.

## **Management**

Management of the strata scheme is governed by the Strata Schemes Management Act. Generally, day-to-day decisions are made by the executive committee. However, the Act recognises that some decisions are more important than others and those decisions must be decided by a meeting of all unit holders. Most decisions of unit holders require a normal majority of 51 % but for more important decisions, a 75% majority (or sometimes even a unanimous resolution) is required. It is quite common for the members of an owner’s corporation to delegate the functions of the corporation to a managing agent.

## **Meetings**

When a strata plan is registered the owner’s corporation will usually be under the control of the developer who will at that time own all of the lots. The developer must call an initial meeting of the owner’s corporation when it has sold lots which have an aggregate of one-third of the unit entitlements of all of the lots in the strata scheme. The initial meeting is the first step in handing control of the development over to the ultimate

owners.

After the initial meeting the owner's corporation must hold an annual general meeting each year to elect office bearers and to review the levies and insurances. There are procedures under the legislation and by-laws for unit holders to call extraordinary general meetings if they wish to discuss other matters of concern.

### **What is community title?**

Community title was only introduced in New South Wales in 1989. Prior to its introduction, developers found that the strata titles legislation was not flexible enough to allow them to easily carry out staged developments or multi-use developments. For example, one development might contain both residential and commercial premises. It was always difficult under the Strata Titles Act to properly deal with the differing needs and concerns of the owners of residential premises and the owners of commercial premises. Even though the owners of both types of premises might share the same facilities, owners of the residential premises were often reluctant to pay an equal share of the cost of maintaining equipment in the commercial premises, such as air conditioning or escalators.

The community titles legislation provides a very flexible framework for dealing with these difficulties. In our example above, you could have a separate strata or land subdivision for the commercial part of the development and for the residential part. Each of these parts would have their own separate by-laws and would be under the control of its own membership. Each part would meet the costs of facilities only used by that part. There is also an "umbrella" community association which controls the common parts of the development including all shared facilities. Each of the separate subdivisions would have a say in the control of the community association and share in the cost of carrying out its functions.

### **What other enquiries are needed?**

#### **Pest and Building Reports**

These are of limited value in the context of a strata subdivision. The owner's corporation normally owns the outside walls, floors, ceiling and roof of the unit that you are buying and it is responsible for all repairs. A structural problem in your unit would usually only be at your cost to the extent that the cost is reflected in increased levies.

Equally, a structural problem relating to another unit in the same development would also be at your cost to the extent that it is reflected in increased levies. As a result, building and pest reports are of limited value unless all of the building including all other privately owned units are inspected.

#### **Owners Corporation Records**

It is very important to have someone inspect the records of the owner's corporation if you are about to commit yourself to a strata title purchase. The records should provide a lot of information about the owner's corporation expenses, the state of harmony in the building and any special by-laws. The records should also reveal any defects in the building which are known to the owner's corporation and any special levies which might be planned.

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