

Community Titles



An
Explanation
of the
Community
Titles Act

1996



Department for Administrative and Information Services
Land Services Group

STREET

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Titles**

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***Land Services Group
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Community Titles in South Australia

1 The need for Community Titles

Prior to the commencement of the Community Titles Act 1996 on 4 November 1996, land division in South Australia (SA) could occur in only two ways, viz, conventional land division or by strata under the Strata Titles Act 1988. Over the past decade or so, developments have occurred that were not entirely suited to either form of division and were achieved only with some considerable difficulty. There was therefore a gap between these methods that needed to be filled. Community Titles is designed to fill that gap in a way to give a developer greater versatility to create and register any form of development that can be approved under the State's planning laws.

The advent of Community Titles in South Australia will have the potential to breathe new life into the real property development industry. It may, in specially planned communities, change the living-style for many South Australians. Other states are experiencing a burgeoning public awareness of the potential impact of community titles on the way in which people can live, work, play and relax. In South Australia recent enquiries to the Lands Titles Office show that local awareness is apparent among both property developers and land owners. A community scheme may also be based on an agricultural, horticultural, aquacultural, industrial, commercial, theme etc. Such commercial ventures should be established only with sound legal and marketing advice. The possibilities are limitless.

Community titles can be likened to strata titles but without many of the hassles of burdensome administrative responsibilities and some of the limitations imposed by that style of development. Community titles will appeal to people of all ages and families of all sizes whereas the Strata Titles Act has limited appeal.



2 What are Community Titles?

There are two types of Community Titles available to the developer depending on the nature of the scheme. Viz,

- a Community Scheme
- a Community Strata Scheme.

Regardless of type, Community Titles is the division of land into at least two Lots and Common Property in a manner similar to strata titles. See 'Plan of Community Division' later for types of lots that may be created.

A Lot can be dealt with under the Real Property Act 1886 as if an allotment. A management corporation, called a Community Corporation, is formed on deposit of a Plan of Community Division in the Lands Titles Registration Office.

3 Special Provisions relating to a Community Strata Plan

A single storey scheme can only be a Community Scheme under the Community Titles Act, unless it was established previously as a strata scheme under the Strata Titles Act, and subsequently converted by resolution under the transitional provisions (see 'Conversion' later). It then becomes a Primary Plan of Community Strata Division. Under the Community Titles Act, a strata scheme will only apply to the division of a multi-storey structure where at least one lot will exist above another. If however, a multi storey building is developed in a townhouse style, where one lot does not exist above another, then that development will be a Community Scheme, not a Community Strata Scheme.

A single storey strata scheme is not possible under the Community Titles Act unless it was established under the Strata Titles Act and converted by resolution under the transitional provisions (see 'Conversion' later). In fact, it states that a strata scheme will only apply to the division of a multi-storey building where at least one Strata Lot exists above another.



Then, all Lots in the plan will be Strata Lots, regardless of the fact that some may not have another Lot above them. Note that the division of a multi-storey in town house style where all Lots extend in unlimited height and depth will not be a community strata plan.

4 Community Corporation

A corporation, the community corporation, is formed by the deposit of a plan of community division in the Lands Titles Office. The name of a Corporation will be "Community Corporation No. Incorporated", where the blank will comprise the deposit number of the plan. The corporation has perpetual succession, may sue and be sued in its corporate name and has the functions and powers assigned or conferred by or under the Community Titles Act. The corporation must have a common seal bearing its name. Members of the corporation are the owners of the community lots. The owner of a Development Lot (see 'Staging later') is not a member of the corporation.

5 Functions of a Corporation

- to administer, manage and control the common property for the benefit of the owners of the community lots;
- to maintain the common property and the other property of the corporation in good order and condition;
- where practicable, to establish and maintain lawns or gardens on those parts of the common property not required or used for any other purpose;
- to enforce the by-laws and the development contracts (if any);
- to carry out the other functions assigned to it by this Act or conferred on it by the by-laws.

A community corporation must also insure the buildings and other improvements (if any) on its common property; and in the case of a strata scheme, the building or buildings divided by the strata plan.



A corporation must appoint a presiding officer, a treasurer and a secretary who must all be members of the corporation. In a scheme of ten or less lots two or all of the positions may be held by the same person, but in a larger scheme one person can only hold two of those positions.

The Act sets out the corporations responsibilities to hold meetings and the voting rights of members.

6 Common Property

Common property is land set aside for the use and enjoyment of owners of the community lots. Its use under the Strata Titles Act was traditionally limited to the building structure in a strata scheme and access, often with some areas of garden, however, common property in a community scheme has unlimited use provided that use does not contravene the State's planning laws.

Common property is set out in the plan of community division and described in the scheme description document (see 'Administrative Documents' later).

Common Property comprises:—

- those parts of the community parcel that do not comprise or form part of a lot and any land vesting as a street, road, thoroughfare, reserve, etc;
- any land that is not designated as a lot, including a strata Lot Subsidiary;
- buildings or other improvements erected by the developer or by the corporation at any time AS PART OF THE COMMON PROPERTY. These may be simple things such as a garden shed, barbecue, etc, to a very large facility such as a golf course or a boat marina.
- the service infrastructure (except for any part of the Service Infrastructure (see later) that is vested in a Minister of the Crown or other authority or person and the parts of the service infrastructure that provide a service to only one lot).



7 Use of the Common Property

The uses to which the common property can be put are limited only by the developer's imagination, eg, a swimming pool, tennis courts, bowling green, golf course, boat marina, etc. Subject to planning approval, common property may be used for any lawful purpose including commercial gain and any income arising from the use of the common property must be paid into the administrative fund or the sinking fund both of which are compulsory under this Act. Subject to a special resolution the corporation may distribute surplus profits between the owners of the community lots in proportion to the lot entitlements of their respective lots. Use of the common property or other property of the corporation to produce income must be authorised by a unanimous resolution of the corporation.

8 Ownership of Common Property

Notwithstanding that a certificate of title will issue for common property in the name of the community corporation, ownership of the common property in a scheme is vested for an estate in fee simple in the owners for the time being of the community lots as tenants in common in shares proportionate to the lot entitlements of their respective lots. The owners of secondary and tertiary lots (see 'Tiering' later) are similarly vested of an estate in fee simple as tenants in common in the common property of their respective secondary and tertiary plans. An owner's interest in a lot is inseparable from his or her interest in the common property.

If the Community corporation is authorised by or under this Act to enter into a transaction affecting the common property, it may do so and execute documents related to the transaction in its own name as if it were the owner of the common property.

A community corporation may sue and be sued for rights and liabilities related to the common property as if it were the owner and occupier of the common property.



9 Exclusive Right of Occupation of Common Property

The exclusive right to occupy part of the common property can be determined by either of two ways:-

• By-laws

This method applies only to Community Lot owners. It is not possible to confer an exclusive right to another person, including a Development Lot owner, by way of a by-law. The by-law may set out full details of the purpose or purposes of the right and specify the part of the common property to which it applies. This may be done by reference to the Community Plan or to a plan attached to the Scheme Description document. The by-law may impose conditions in relation to the use of that part of the common property; requirements on the owner or occupier of the lot and without limiting those requirements, may require the owner of the lot to pay a fee (whether periodically or not) to the community corporation or to the owner or owners of another lot or lots.

The occupier cannot erect a building or install a fixture on the part of the common property of which he or she has exclusive use or alter that part of the common property in any other way without the approval of a special resolution of the corporation.

• Lease

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 may be granted to any person, by unanimous resolution of the corporation, provided it is not contrary to the by-laws or the scheme description. Note that the only restriction the by-laws can impose in relation to the leasing or occupancy of a lot relates to short term occupancy; ie, a corporation may prohibit the leasing of a lot for valuable consideration for a period of less than two months.



In the case of the common property or a lot in a secondary scheme a lease must not be granted contrary to the by-laws of the primary and secondary schemes and in the case of the common property or a lot in a tertiary scheme, must not be granted contrary to the by-laws of the primary, secondary or tertiary schemes.

10 Rating of Common Property

The common property will not normally be separately rated. The interest in the common property that attaches to each lot will be regarded for the purposes of valuation as part of the lot.

However, if in the opinion of the Valuer-General, the use of the common property (or any part of it) is not reasonably incidental to the use of any of the community lots then the common property (or part of it) will be separately assessed from the community lots.

The following tests apply:

- Is the Common Property under separate occupation or capable of separate occupation?
- Is the Common Property used for commercial gain?

If the answer is yes to either of the above then the Valuer-General will separately assess those portions of the common property subject to (or capable of) separate occupation or used for commercial gain. The value of any portion of common property not separately assessed will be included with the assessment of the individual lots.

If the answer is no to both of the above then the value of the common property will be included with the individual lot assessments for rating purposes.

11 Plan of Community Division

The purpose of the plan is to define all Lots and Common Property, the Service Infrastructure (see later) and Lot Entitlements (see later).

Deposit of the plan initiates the scheme.



Rights of support, such as party wall easement rights, and other statutory easements are implied by the Act and therefore need not be registered. The walls and other parts of the structure giving rise to implied rights of support or projection may be shown as occupation on the community plan.

If staged development is contemplated, either type of plan must delineate at least one Development Lot (see 'Staging' later).

There are different types of lots that can be created depending on the nature of the scheme.

- **Community Lot**
Boundaries are fixed by survey measurements and are unlimited in height and depth. The owner of a community lot will therefore own the entirety of any structure erected on the lot.
- **Community Strata Lot**
Strata Lots can only exist in a multi-storey building where at least one lot is above another. Unless the Plan specifies otherwise, the boundaries of a Strata Lot are the internal surfaces of walls, ceilings and floors. A strata lot may also contain an ancillary parcel called a Lot Subsidiary.
- **Development Lot**
This is land set aside for future development. (See 'Staging' later.)

A Plan of Community Division comprises:–

- **Location Plan**
Shows the outer boundary of the parcel with full survey data and where appropriate, the common property. In a complex situation, the common property may require a separate sheet of the plan. The areas containing the lots and development lots will be shown and described with full survey data.
- **Detail Plan(s)**
This plan details the Lots, Common Property and Development Lots with full survey measurements.



A Community Strata Plan comprises:—

- **Site Plan**
Shows the outer boundary of the parcel with full survey data and where appropriate, the common property. The areas containing the strata lots and development lots will be shown and described by reference to the monumental walls, etc of the building.
- **Floor Plan**
This defines the strata lot by reference to the internal surfaces of the building.

And in each case

- A Common Property Plan (unless shown on a location or site plan or on any other sheet of the plan).
May be incorporated in site plan where appropriate.
- A Service Infrastructure Plan (unless shown on a location or site plan or on any other sheet of the plan). This may be on a separate sheet or on the site or common property plan. The Service Infrastructure means the pipes, wires, cables, ducts, etc, by which a service is supplied to the common property and lots and is discussed in some detail later.
- A Schedule of Lot Entitlements. (See 'Lot Entitlements' later.)

12 Implied statutory easements

These are easements for support, shelter, services and projections which exist between the lots and between the lots and common property, to the extent required by the nature of the community scheme or by the nature of the buildings or other improvements erected on, or made to, the community parcel whether before or after deposit of the community plan. For example:—

- an easement of support will arise where part of a structure on one lot (or common property) gives support for part of the structure on another lot. Consider the case of a wall which lies on the boundary of two adjacent lots and is used for mutual support of the part of the structure that lies on each lot. The Act provides that rights of support (in this case party wall rights) arise.



- Easements of shelter will arise when an improvement on common property or a lot is intended to provide shelter for another lot. (Consider a stand of trees intended to provide a wind break for the benefit of one or more lots.)
- easements for the establishment, maintenance and repair of the service infrastructure.
- easements for the provision of services by means of the service infrastructure.
- easements for the projection of window sills, windows, window awnings, eaves, guttering and other minor parts of a building provided the building was erected before the deposit of the community plan or, in the case of a development lot, before the division of the development lot by amendment of the community plan; or a building erected pursuant to a development contract.

It is advisable that the actual occupation of easements of support and projection be shown on the plan as survey occupation to provide evidence of their existence and position.

13 Service Infrastructure

Service Infrastructure means cables, wires, pipes, sewers, drains, ducts, plant and equipment by which lots or common property are provided with:—

- water reticulation or supply;
- gas reticulation or supply;
- electricity supply;
- heating oil;
- air conditioning or ventilation;
- a telephone service;
- a radio service;
- a computer data or television service;
- sewer systems;
- drainage;
- systems for the removal or disposal of garbage or waste;



- other systems or services designed to improve the amenity, or enhance the enjoyment, of the lots or common property;

The service infrastructure is delineated, as far as it is practical to do so, on the plan of community division. It is expected that the infrastructure will be shown through common property that is not contained within a building. The plan will not show that part of the service infrastructure within the boundaries of a community lot if it does not provide a service to any other lot or the common property.

It is noted that maintenance of the service infrastructure is covered by the implied easement rights in S.24 of the Act. Responsibility for maintenance of the service infrastructure lies with its owner. Eg:-

- Parts of the structure remain vested in a Minister of the Crown or other authority or person in which case responsibility for maintenance remains with them. Eg, pipes leading to and including a water meter are vested in SA Water Corporation and similarly electricity meters and wires leading to a meter are vested in ETSA Corporation.
- Where a part of the infrastructure serves only one lot, that part is part of the lot and maintenance rests with the lot owner.
- In any other case, the service infrastructure is common property and responsibility lies with the community corporation.

14 Lot Entitlements

The lot entitlement of a community lot is a number assigned to the lot that bears in relation to the aggregate of the lot entitlements of all of the community lots defined on the community plan (within a tolerance of plus or minus 10 per cent) the same proportion that the value of the lot bears to the aggregate value of those lots. For example, lot entitlements determine :-

- share in the ownership of common property



- the shares in which lot owners make monetary contributions to the community corporation
- the proportion of liabilities of the corporation that will attach to a lot owner
- the shares in which the assets of the corporation are divided on cancellation
- distribution of profits where common property is used for commercial gain and declared surplus to the requirements of the administrative or sinking funds
- the number of lot owners that can call a meeting of the corporation

The lot entitlement is displayed on a Schedule of Lot Entitlements included as part of the plan. A lot entitlement must be expressed as a whole number and the Schedule must also show an aggregate lot entitlement of all of the lot entitlements and must not equal or exceed 100,000. Lot entitlements must be certified on the plan as correct by a land valuer.

The unimproved value of the lots will be used to establish lot entitlements. In the case of a strata lot this 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 fixtures or other improvements. The Schedule of Lot Entitlements forming part of the community plan must be certified correct by a Land Valuer.

A community corporation must apply to the Registrar-General to amend the schedule of lot entitlements where a change to the plan or to the value of a lot changes.

15 Administration Documents

Community plans are accompanied by three documents that provide for the administration of the scheme. They will:—

- describe and set the standard of the scheme
- set out the rules under which the scheme will operate
- give the corporation a completion guarantee



- provide up-front disclosure to a prospective purchaser or mortgagee as to the nature of the scheme.
Eg.:—
 - a Scheme Description, to give a brief description of the scheme and set out matters relating to the administration and future development of the scheme
 - By-Laws, which set the management and other related rules of the scheme
and
 - a Development Contract to bind a developer to completion of the scheme in accordance with the Scheme Description:—
 - where staged development is contemplated
 - to complete the scheme in accordance with the Scheme Description

- **Scheme Description**

This is a document designed to give up-front notice to prospective owners/mortgagees of a Community Lot, Community Strata Lot and Development Lot of the nature of a scheme, any binding provision or requirement to develop a lot and to remind the corporation of the nature of the scheme. A scheme description must identify the community parcel and the lots and common property into which the parcel is to be divided, the purpose or purposes for which the lots and common property may be used and specify the standard of buildings and other improvements made or to be made, to the lots or common property. This will include details of any proposed staged developments to give owners an indication as to the final size of the scheme, time frames in which it will be completed and details of the nature and scope of a lot owners obligation to develop a lot in a particular manner. A scheme description must be endorsed by the relevant development authority to the effect that it is consistent with any approval given or special conditions set. It is binding on the corporation and lot owners, encumbrances and a developer.



A scheme description will not be required where the plan does not create more than 6 lots intended to be used solely or predominantly for residential purposes and does not create a Development Lot.

An application may be made to the Registrar-General to amend a scheme description. It must be supported by a unanimous resolution of the corporation and be accompanied by a copy of the scheme description as amended, endorsed with the consent of the relevant planning authority.

● **By-Laws**

The by-laws must provide for:—

- the administration, management and control of the common property,
- regulation of the use and enjoyment of the common property,
- the use and enjoyment of the lots to the extent necessary to give effect to the Scheme Description.
Eg,
 - the purpose or purposes for which community lots may be used,
 - the design, construction and appearance of buildings on the common property or community lots
 - landscaping of community lots.

The By-Laws of a community scheme are similar to the articles of the Strata Titles Act 1988 but play a wider role in the administration of a community scheme.

The By-Laws may also provide for:—

- the conferring of a right to the owner of a community lot for the exclusive right to occupy part of the common property;
- 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; imposing requirements or restrictions relating to the appearance of community lots or buildings or other improvements situated on community lots;
- the regulation of use and enjoyment of community lots in order to prevent interference with the use and enjoyment of other lots. The regulation of such other matters as are permitted by this Act to be regulated by by-laws.

The by-laws bind the community corporation, lot owners, occupiers of lots and persons entering the community scheme.

It should be noted that the By-Laws of a scheme are specific to that scheme and must be written with the nature of the scheme in mind.

By-Laws may also impose a fine for non-compliance or breach of them.

● **Development Contract**

The purpose of a development contract is to bind a developer to develop a development lot (see 'Staging' later), the common property, or part of the common property and develop a community lot in accordance with the scheme description.

The development contract must contain certain undertakings of the developer. These include:—

- to cause as little interference with the right of use and enjoyment of lot owners
- make good any damage caused to common property or a lot by the developer
- means by which the developer will have access to a development lot during construction and the times that access can occur



16 Tiered management structures

One of the main attributes of community titles, whether a strata scheme or not, is the ability to further divide a Community Lot or a Community Strata Lot into further Community or Community Strata Schemes and thus create a managerial hierarchy of a Primary Scheme with a maximum of two subservient schemes.

Tiering facilitates ease of administration in a large scheme. For example, a scheme may comprise 200 Lots that are laid out in clusters of say 40 Lots each. It may be that there are different land uses for each cluster of Lots. In this example there will be different issues to be addressed at meetings. It follows that each cluster of lots should be able to make decisions as regards their own individual requirements. This raises the issue of mixed land use. In communities such as this, tiering will make life easier for each group of lots. Consider that these Lots may be in a high rise building where there is retail shopping on the ground and first floors, commercial on the third and fourth floors and residential on the remaining upper floors. The entire building could be a Primary Plan of Community Strata Division and each group of floors for a different land use can be Primary Strata Lots. It follows that each Lot can be further divided into a secondary scheme to a total of three secondary strata plans. Each secondary scheme will have its own plan, corporation and administration and membership of the primary corporation. The larger the scheme the greater the need for tiers. Tertiary levels should only be reached in schemes of very large proportions or where mixed land use needs the structure to be so divided.

The first community plan lodged over an allotment is a Primary Plan of Community Division and creates Primary Lots, Primary Common Property a Primary Community Corporation.

A community plan lodged over a Primary lot is a Secondary Plan of Community Division and creates Secondary Lots, Secondary Common Property and a Secondary Community Corporation.

The Secondary Corporation is subservient to the Primary Corporation and has membership in it by virtue of its ownership of the Primary Lot from which it is formed.

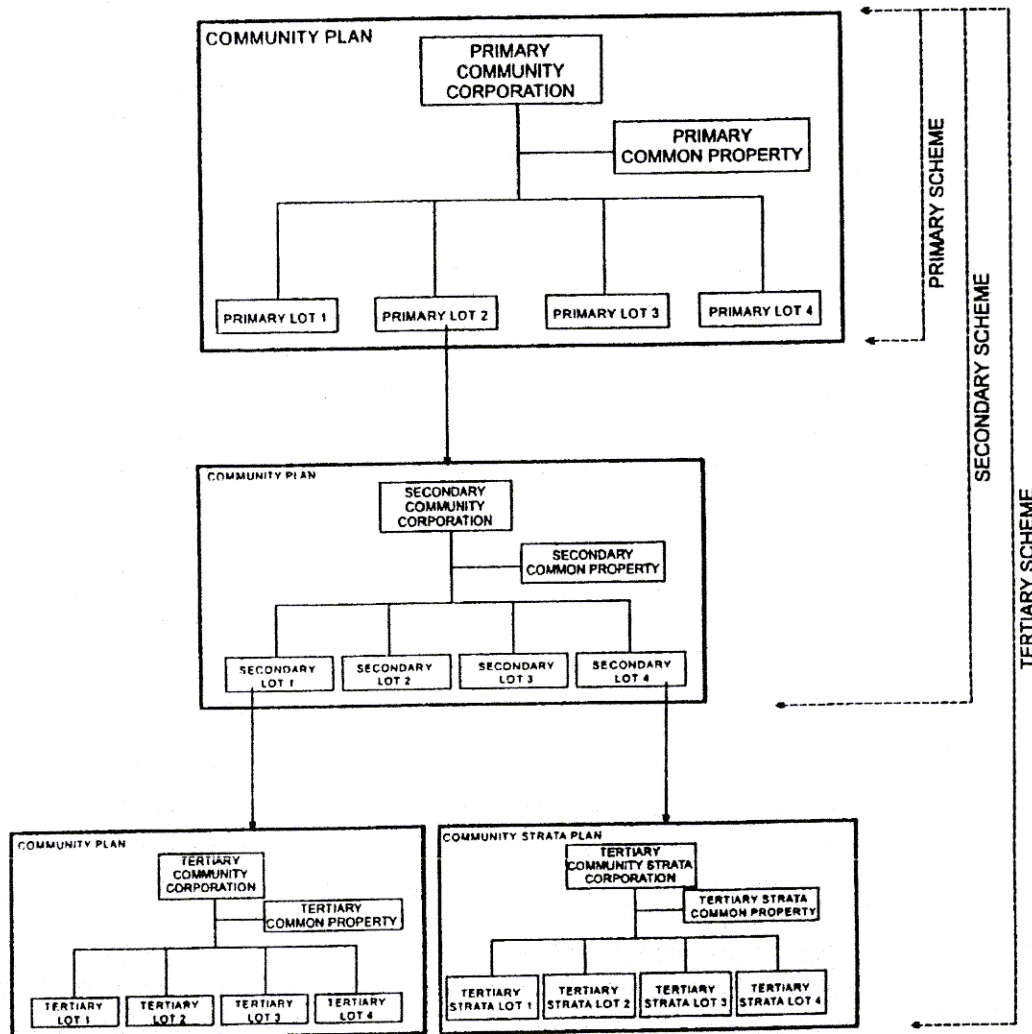


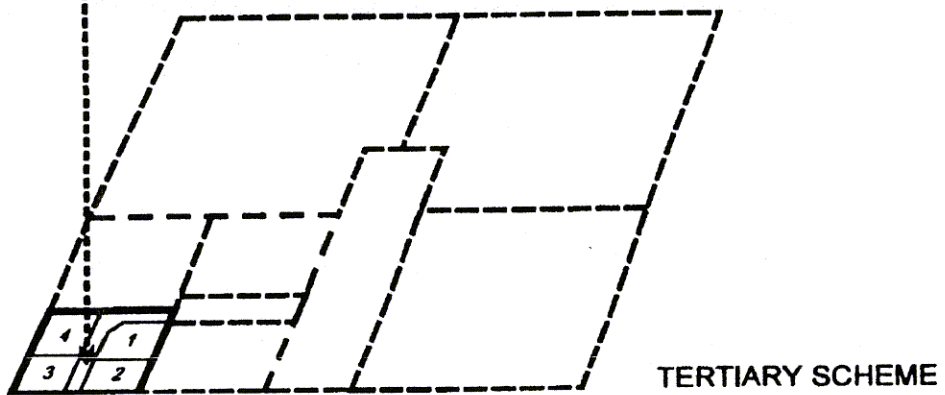
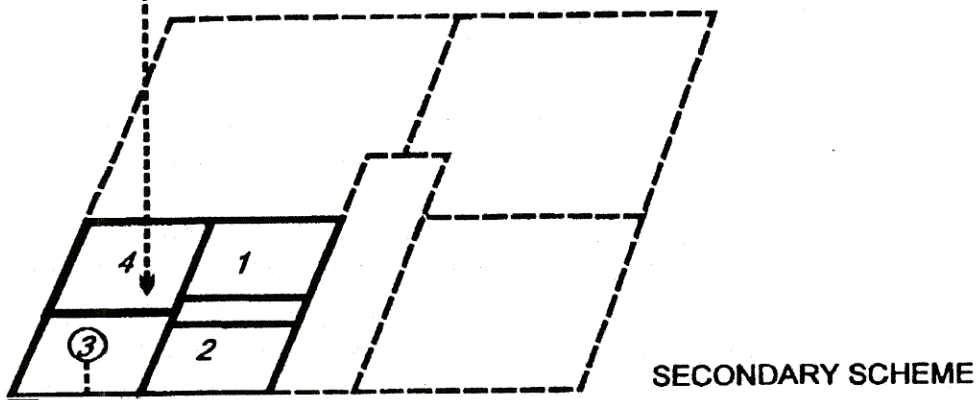
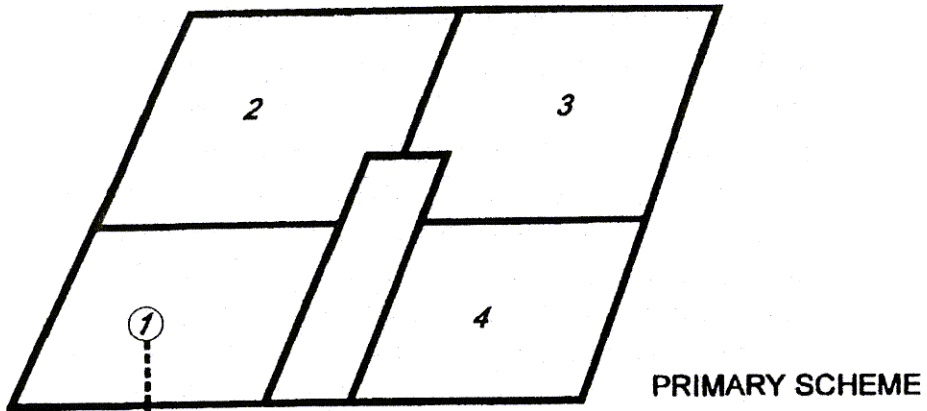
A community plan lodged over a Secondary Lot is a Tertiary Plan of Community Division and creates Tertiary Lots, Tertiary Common Property and a Tertiary Community Corporation. The Tertiary Corporation is subservient to the Primary and Secondary Corporations and has membership in the Secondary Corporation by virtue of its ownership of the Secondary Lot from which it is formed.

A Community Lot may also be divided by a Community Strata Plan, however, a Strata Lot may be divided only by a further Community Strata Plan.

The following diagrams illustrate the hierarchal structure of tiered schemes.

**TIERED COMMUNITY STRUCTURE
ASSUMING THREE LEVELS
EACH OF FOUR LOTS**





17 Staging

The Community Titles Act 1996 provides a simplified approach to developing a Community scheme in stages. The Act provides for the delineation of a Development Lot on a plan. This Lot, although not part of the scheme, is land set aside for future development. When developed and a plan showing the division of the Development Lot is lodged in the Lands Titles Office, the plan becomes part of the Community Plan and the Lots and Common Property (if any) it delineates become part of the scheme, subject to the Scheme Description, By-Laws and Development Contract. A plan may contain several Development Lots, one for each proposed stage. A Development Lot may also be developed in stages by showing new Lots and Common Property over portion of the land and a balance Development Lot.

Note that a Development Lot cannot be divided by a secondary plan unless it is first converted to a Community Lot by the amendment provisions of the Act.

In the accompanying Diagram A, Development Lot 33 has been included in the community plan. The intention is to divide the land into 32 Lots and Common Property (being a roadway named Gray Court) and a Development Lot for later inclusion of additional Lots and Common Property.

The addition of the second stage increases the size of the scheme by substituting the original plan with a later version as is shown in Diagram B.



DIAGRAM A

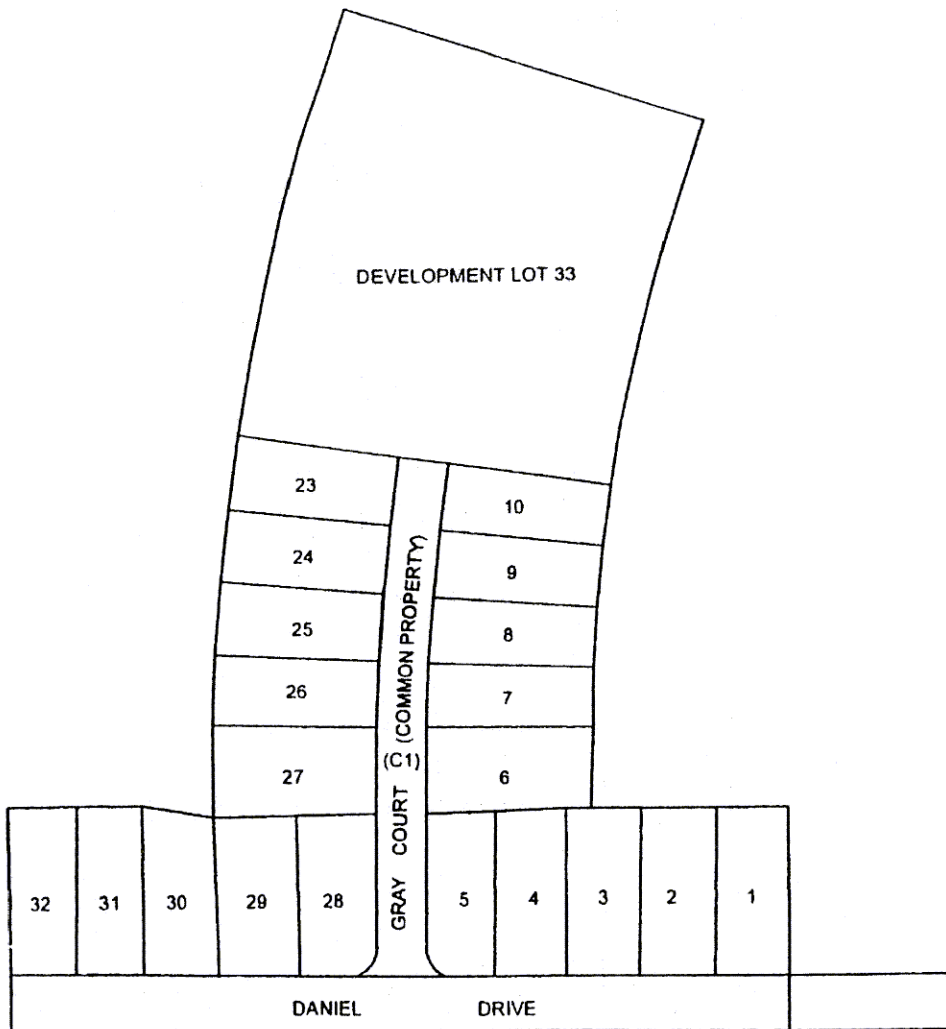
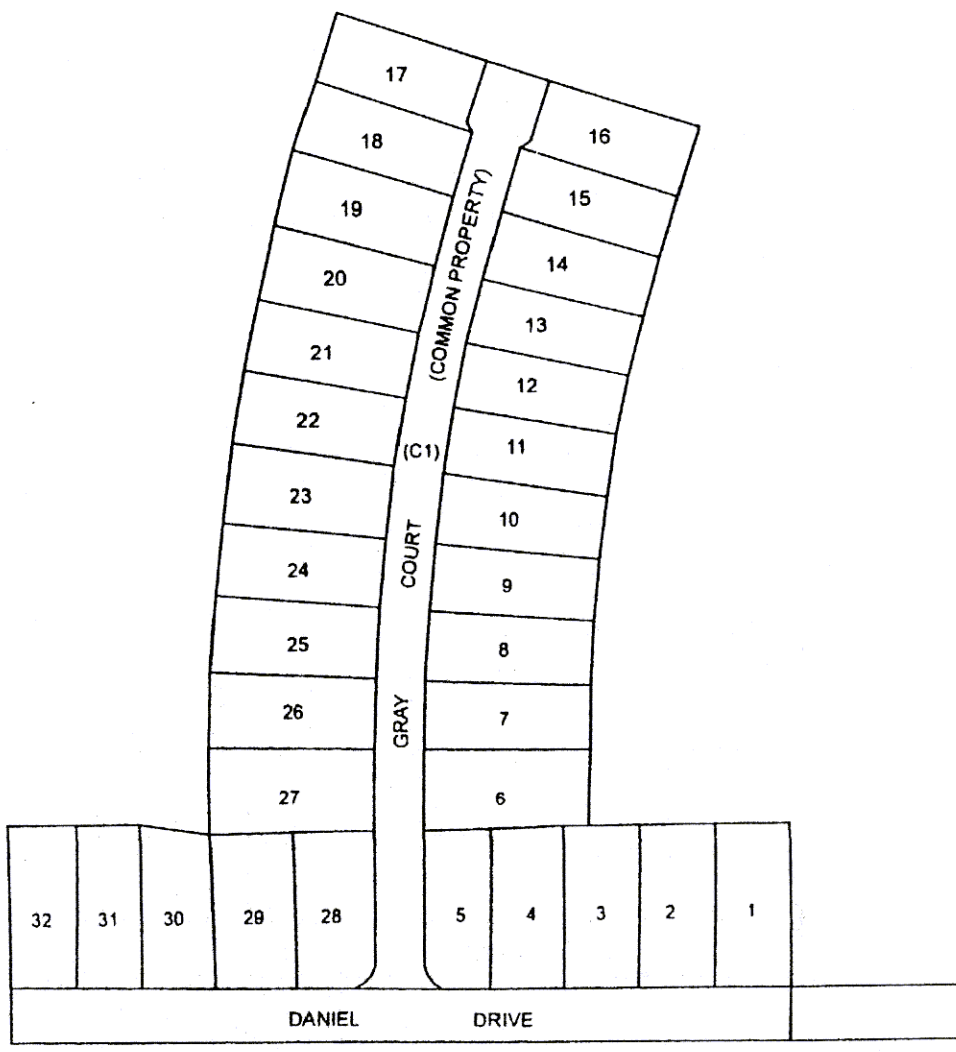


DIAGRAM B



18 Conversion of existing strata scheme to community titles

After the date of commencement of the Community Titles Act a scheme formed under the Strata Titles Act will remain as such unless the corporation takes advantage of a simple procedure whereby it may decide by ordinary resolution that the Community Titles Act and not the Strata Titles Act will be the Act under which it will operate for the purpose of future administration. This means that although the plan is not amended to display Community Lots and the current nomenclature of the plan prefix (SP), units, etc, and boundary definitions will remain the same, the scheme will be taken to be a Primary Plan of Community Strata Division. If the corporation wishes to prevent further division of a unit to form a secondary scheme, a Scheme Description document can be generated to disclose this or the articles can be amended accordingly. The corporation must now administer the scheme under the provisions of the Community Titles Act. The Strata Corporation continues in existence as a Primary Community Strata Corporation under this Act and its articles that exist under the Strata Titles Act continue as its by-laws. The only single storey strata scheme that can exist under the Community Titles Act is one that has been converted by this process.

On making a resolution in this regard, the corporation is required to lodge with the Registrar-General a copy of the resolution (certified in accordance with the regulations to be a true copy) and the Registrar-General must file the copy with the strata plan. The resolution comes into effect at the time the Registrar-General files the copy of the resolution with the strata plan. The Registrar-General will endorse the original certificates of title for the Strata Lots and Common Property to the effect that this Act and not the Strata Titles Act 1988 applies to, and in relation to, the strata scheme.

In a single storey scheme or in a multi-storey scheme where no unit lies above another, the plan may be amended to delineate the unit as lots fixed by measurements (rather than by monument) and unlimited in height and depth.



An appropriate application to the Registrar-General will be required, supported by a unanimous resolution and where dictated by the nature of the scheme, a scheme description. This application will require planning approval under the Development Act 1993.

Advantages of the resolution to use the provisions of the Community Titles Act include the ability to use common property for commercial uses and to be able to lodge a secondary plan over a strata unit in the plan. A secondary plan application must comply with the provisions of the Community Titles Act and will require production of a Scheme Description for the Primary Plan as well as a Scheme Description (unless excused by the Act), By-Laws and a Development Contract (if applicable) for the Secondary Scheme. Where a scheme description for the primary plan is necessary it need only be simplistic in nature.

19 Conversion of "Company Scheme" to a Community Scheme

The Community Titles Act 1996 provides for the conversion of a prescribed building unit scheme to a community scheme in a manner similar to a provision under the Strata Titles Act 1988 to convert a prescribed building unit scheme to a strata scheme.

A prescribed building unit scheme is one where land was, before 22 February 1968, laid out in a building unit scheme consisting of two or more units designed for separate occupation and as at that date, buildings to which the scheme relates, had been erected. Hence, an existing scheme is one where the units are considered to have been lawfully created and identified by a muniment of title, such as a lease, share certificate in a company, etc.

These schemes are sometimes referred to as:—

- a **company scheme** because they are established and managed through a company formed to control the scheme. Eg, the site may be registered in the name of a company.



A right to the exclusive occupation to a suite of rooms is evidenced by the issue of a share certificate to a purchaser of a unit or by a system whereby the company leases a unit to a purchaser as evidence of the right to exclusive occupation.

- a **moiety scheme** because the land was registered in the name of the owners of all of the units as tenants in common in undivided shares and then leased between themselves as regards of each respective unit.

The presence of a lease or a company share certificate is evidence used as a muniment of title (in place of a certificate of title) and gave the owner a predominant right of ownership of the unit. Consequently each unit owner is entitled to the issue of a certificate of title for their respective unit as a lot or strata lot. Note also that where the building unit scheme is a single storey structure, the community plan will need to delineate community lots fixed by survey data.

In the case of a multi storey building where lots exist one above another, the plan will show community strata lots in accordance with the Community Titles Act 1996. All other provisions of the Act requiring production of a Scheme Description, By-Laws, Development Contract (it is possible a development contract will never apply to an existing scheme) and the Community Plan will apply. An application may be made under this Act for the deposit of a plan of community division in relation to land subject to a building unit scheme. Where application is made and a plan is deposited, the existing scheme is terminated. Certificates of title for each Community Lot will be issued in the respective name(s) of the person(s) who are entitled to occupation of the units under the scheme, that is the owners of the predominant rights by virtue of a lease or company certificate (muniment of title).

The assets and liabilities of any company formed to administer the scheme are transferred to the community corporation.



20 Leaseback arrangements

The Act provides for leaseback arrangements. A leaseback arrangement is in force when all community lots in a community parcel are subject to a lease to the same lessee or where some of the lots are subject to a lease to the same lessee and the remaining lots are owned by the lessee.

The lessee is not taken to be the owner of the community parcel (whether it be primary, secondary or tertiary) however, for the purposes of administration, the lessee under a leaseback arrangement over a secondary parcel is taken to be the owner of the primary lot from which it is formed and similarly, the lessee under a leaseback arrangement over a tertiary scheme, is taken to be the owner of the secondary lot from which it is formed. Under the terms of the Act, the lessee has certain powers to control the scheme.

Eg, the lessee:-

- may nominate a person to comprise the executive committee of the scheme
- is responsible for any liability incurred during the term of the leaseback arrangement
- is responsible for maintenance of the scheme
- subject to the consent of the corporation, may run the scheme. This is popular in Queensland in resort type developments. The leaseback arrangement suits the foreign investor.

Note: A development lot is not a community lot. It therefore follows that a leaseback can exist where a development lot also exists and is not leased to the lessee.



21 Consequential Amendments to the Strata Titles Act

The Statutes Amendment (Community Titles) Act 1997, amended the Strata Titles Act 1988 to provide that the Registrar-General cannot, from a date to be proclaimed, accept a strata plan for deposit under the Strata Titles Act unless:

- the application to the relevant authority or authorities for approval for the deposit of the plan or the authorisation to divide the land by strata plan; or
- the application to the relevant authority for the approval for the construction of the building to be divided by the plan, (whichever is the first) was made before a date to be fixed by proclamation.

The date set by proclamation was 1 January 2002

However, the Strata Titles Act will remain operative for other applications such as the amendment of the plan or articles, amalgamation, etc. Amendments to the Strata Titles Act also provide for a simplified approach for a corporation to excise part of the common property or a unit from the scheme or convert the scheme to conventional land division allotments, and controls over the operation of trust accounts held by agents of the corporation.



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