

Sales Agent Fact Sheet 1

Real Estate Sales Agents (RESA) often have to deal with strata & community corporations and their managers. This is the 1st of a series of fact sheets designed to assist RESAs in ensuring they know how to get the most out of their dealings with body corporates (BCs), to ensure a prompt and safe sale.

1: Listing

Searches: When listing and selling a BC unit agents are required to undertake a special search in addition to the local Council, SA Water etc. This search forms part of the contract (Form 1).

BCs are required by law to supply search documents upon request (*Sect 41 of Strata Titles Act - STA & Sect 139 of the Community Titles Act - CTA*)

Here are some pointers to help RESAs achieve a quick and safe sale:

- How much? Fees are set by Regulation. For a full search needed for Form 1 the cost is \$55 inc GST. If you need a full copy of the insurance policy there is an additional \$11 fee.
- What you should get for your money? (*Sect 139 & 41 on page 4*) For the regulation \$55 you should receive: last 2 years of minutes, last financial statement, current state of the funds, levy information for the unit you are listing, any special levies that may be coming up, the current Articles/By Laws and policy decisions, all Special & Unanimous resolutions along with the current insurance certificate. For community titles the Scheme Description should be supplied. In addition it is wise to ask for a copy of the strata or community title plans. **Note:** Some community titles are required by their by-laws to insure all buildings including those on lots, others choose to do so to save money and ensure all lots are covered.
- What to look for? Check the plans for all the land/buildings or spaces owned by your vendor, ie: carport & yards. Check for the policy on pets. Can the management committee approve an application at short notice (*3 days under STA & CTA*)? Check previous decisions and By Laws/Articles for approvals given for works, ie: shed, airconditioner, pergola. This information could be useful in advertising and at open inspections. Note: Some Strata groups have amended their articles from the default set (shown on page 4)
- Pets - hints for the application? Sometimes approval for a pet can be a deal maker. Where you need to make an application to a BC for a pet it may help the application if: 1: you supply a photo of the pet (assumes an attractive smaller animal, not great dane or doberman), advise the BC that 2: the animal will be kept in the unit if this is the case, 3: the age of the pet if older and sedentary, 4: if the pet is desexed. (See **Pets** item on page 2)

- Updates - some BC managers (BCM) will supply an update on the search at no cost if requested within months of the original application. Always check with the BCM, especially if the group has had a general meeting since your listing.
- No Search - sometimes it is impossible to obtain a search. This can occur when the BCs secretary or manager are, on holiday or uncooperative. Many of the documents can be sourced from the vendor along with a call to the insurance company to confirm cover. The sales contract allows for these circumstances.

2: Repairs/Works - who pays for what?

When listing a strata unit or community lot for sale many maintenance issues can come to light. Some of these if unattended may reduce the sale price or make it difficult to attract purchasers.

Knowing who is legally liable for what maintenance is useful for RESAs in their dealings with a body corporate or its manager (BCM). The question of what is and what is not common property is a difficult issue, and can cause many disputes. Generally speaking, the boundary of a unit is the internal surface of its walls, floors and ceilings (rarely another boundary may be specified on the strata plan). A unit also includes an area defined on the unit plan as a 'unit subsidiary', which is an area for the exclusive use of a particular unit, for example a carport or yard. Common property is any land or space that is not within a unit. Common property such as pipes or electrical wiring which service a number of units can run into these boundaries, which then complicates any strict definition of 'common' property. Such things as pipes or electrical wiring which service only one unit are considered part of that unit and not part of the common property. It should be noted that in most strata corporations the roof, guttering, external walls and foundations are common property.

There are significant differences between a Strata & Community Title. The following are some

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Selling Units & Lots



Fact Sheet (continued)

Repairs/Works - who pays for what? continued from page 1

examples to illustrate strata related issues.

Common Examples for Strata Corporations:

Termites and damage: Termites are discovered in a kitchen cupboard on inspection by one of a prospective purchasers. The RESA rings the BCM and is told that:

a) the Strata Corporation policy is that each owner pays for termite treatments and building damage. Is this true?

No. The Strata Corporation owns the floor and all space and ground beneath it and beneath the yards and common grounds. Section 5 (5b) applies. The termites come from the common property. The Corporation is responsible for protecting the units from attack by termites. The Corporation is liable to fix any resultant damage.

Best Practice: Corporation undertakes a regular termite inspection and ensures risks are minimised e.g. remove any soil against the building. Any infestations are treated by the Corporation.

Hint: The RESA fax the BCM putting the Strata on formal notice under Section 25 of STA. Give them say 3 days to treat the termites and a further 7 days to fix the resultant damage.

Leaking Shower: The RESA notices peeling paint and a wet wall in the hallway. The shower is on the other side of the wall. The agent suggests that the owner have the BC fix the problem.

The vendor rings the BCM and asks them to fix the problem as it must be a leaking pipe and therefore strata insurance. The BCM states that the problem is inside the unit and therefore the owners to fix. Is the owner responsible?

Yes & No. The BC insurance will usually cover damage resulting from a 'leaking water apparatus'. So if a water pipe or shower tiles are leaking the water damaged wall will be fixed under insurance subject to any excess. The shower tiles are a treatment on top of the floor/wall and as such the owners to maintain. If a pipe is leaking some of the cost may be paid by the insurance company however pipes exclusively servicing a unit are the owners to maintain.

Best Practice: The BC should send out its plumber to investigate and report on the cause and fix any leaking pipe if needed. Once the report is received the BC would need to advise the insurance company and have the resultant damage made good once the cause was fixed. Some costs may be recovered from the owner. Leaving the wall damp can encourage a termite attack.

Air conditioning: A prospective purchaser asks if they can install ducted evaporative air conditioning. They site other airconditioners on the property. The RESA contacts the BCM and finds that the BC has no general policy on air conditioners and each application is considered on its merits. The RESA is horrified to find that a decision takes at least two weeks. Is this the case?

Yes. Section 29 requires any works relating to a unit that change its appearance or structure to be approved by at least 2/3rds of owners at a general meeting (special resolution).

Best Practice: Air conditioning is becoming ever more popular. If at listing the unit is not airconditioned check on the search for a general policy/standard approval that applies to all units. If there is not one then suggest to you vendor that they seek urgent approval of the BC.

Pets: A prospective purchaser notes on an open inspection a cat in window of unit 2 next door. She wants to bring her old cat to live with her. The search you received states that the BC policy is NO to pets. Is this the final word?

No. A case in 2002 illustrates the issue - Magistrate Elizabeth Bolton said the corporate body's decision was unreasonable, oppressive and unjust. The magistrate overturned the BC's order to evict the cat. "I'm not persuaded that the committee ever really considered the views of the applicants, In particular whether or not this was an appropriate instance in which the corporation should grant approval to keep the pet," Ms Bolton said. BCs have to consider each application on its merits.

Best Practice: Fax or post an application to the BC and include a reference to this case. See *Pets - hints on application* on page 1 ☐

This fact sheet is created and published by UnitCare Services for REI Training sessions. It is subject to copyright and is intended to be of assistance to residential sales agents selling units & lots in South Australia.

For sales agents needing more detailed advice and dispute resolution services we suggest they seek legal advice and or seek assistance the REISA advisory service ☐




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Strata Titles Supporting Legislation / Case Law

Common Property:

What the Strata Corporation must maintain..

Section 25. The functions of the strata corporation are as follows:

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

Boundaries - who owns what, and what is common property..

Section 5 pt 5: Subject to any explicit statement to the contrary in a strata plan, the following principles apply to the **definition of a unit** by strata plan

(a) where a boundary is defined by reference to a wall or fence - the boundary is the inner surface of the wall or fence; (*eg the owner owns the paint on the inside wall*)

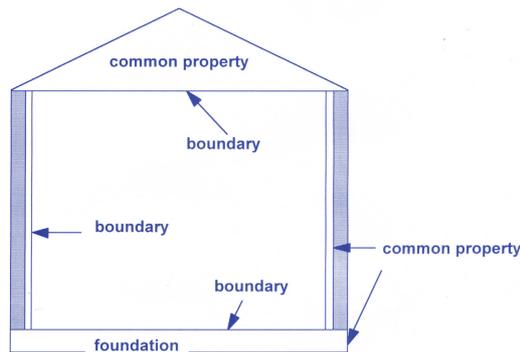
(b) where a boundary is defined by reference to a floor - the boundary is the upper surface of the floor;

(c) where a boundary is defined by reference to a ceiling or roof - the boundary is the under surface of the ceiling or roof. (*i.e. the owner owns the paint on ceiling, the Corporation owns the roof space, roof, gutters etc.*).

Section 5 pt 6: Common Property Comprises:

(a) any land or space that is not within a unit

(b) any pipe, cable, wire, duct or drain that is not for the exclusive use of a unit;



(c) any structure that is not for the exclusive use of a unit installed before the deposit of the strata plan;

(d) any structure installed by a strata corporation as part of the common property;

(e) any other structure on the site committed to the care of a strata corporation as part of the common property.

Benefit - when an owner pays for maintenance of common property..

Section 27(6) If the strata corporation carries out work that wholly or substantially benefits a particular unit or group of units, the corporation may, subject to any agreement to the contrary, recover the cost of that work as a debt from the unit holder or unit holders of the unit or units.

In the case *Hughes vs Strata Corporation* the Judge had to rule on Section 27(6) of the Strata Titles Act. This section allows the Corporation to recover costs for work on common property where it benefits an owner or group of owners.

The case revolved around repairs to cracked walls caused by heaving soils. The Corporation argued that the owner "benefited" from the works and therefore should pay.

The Judge ruled *'The repair will not benefit the applicants ... not putting them in some more advantageous position vis-a-vis any other unit holder*

This is a welcome ruling as Section 27(6) has led to many arguments between owners. The ruling makes it clear that reinstatement is not always a benefit

ARTICLES OF STRATA CORPORATION

1. A Unit holder must:

(a) maintain the Unit in good repair;

(b) carry out any work ordered by a Council or other Public Authority in respect of the Unit.

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

2.A person bound by these Articles:

(a) must not obstruct the lawful use of the Common Property by any person;

(b) must not use the Common Property in a manner that unreasonably interferes with the use and enjoyment of the Common Property by the other members of the strata community, their customers, clients or visitors;

(c) must not make, or allow his or her customers, clients or visitors to make undue noise in or about any Unit or the Common Property and

(d) must not interfere, or allow his or her customers clients or visitors to interfere with others in the enjoyment their rights in relation to Units or Common Property.

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

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

5. A person bound by these Articles:

(a) must not park a motor vehicle in a parking space allocated for others or on a part of the Common Property on which is not authorised by the Strata Corporation; AND

(b) must take reasonable steps to ensure that his or her customers, clients or visitors do not park in parking spaces allocated for others or on parts of the Common Property on which parking is not authorised by the Strata Corporation.

6. A person bound by these Articles must not, without the consent of the Strata Corporation: -

(a) damage or interfere with any lawn, garden, tree, shrub, plant or flower on the Common Property, **OR**

(b) use any portion of the Common Property for his or her own purposes as a garden.

7. A person bound by these Articles must not:-

(a) bring objects or materials onto the site of a kind that are likely to cause justified offence to the other members of the Strata Community; **OR**

(b) allow refuse to accumulate so as to cause justified offence to others.

8. A person bound by these Articles must not, without the consent of the Strata Corporation. display any sign, advertisement, placard, banner or any other conspicuous material of a similar nature. -

(a) on part of his or her Unit so as to be visible from the outside of the building; **OR** (b) on any part of the Common Property.

9 The occupier of a Unit may, without the consent of the Strata Corporation, paint, cover or in any other way decorate the inside of any building forming part of the Unit and may, provided that unreasonable damage is not cause to any Common Property, fix locks, catches, screens, hooks and other similar items to that building.

10. The occupier of a Unit used for residential purposes must not, without the consent of the Strata Corporation, use or store on the Unit or on the Common Property any explosive or other dangerous substance.

11. A person bound by these Articles:

(a) must maintain within the Unit, or on a part of the Common Property set apart for the purpose by the Strata Corporation, a receptacle for garbage adequately covered; AND

(b) must comply with all Council By-Laws relating to the disposal of garbage.

12. A Unit holder must immediately notify the Strata Corporation of:

(a) any change in the ownership of the Unit, or any change in the address of an owner: and

(b) any change in the occupancy of the Unit

Community Titles what are they & what is different

COMMUNITY TITLES

The Community Titles Act 1996 creates community titles that divide land into lots and common property, similar to strata titles. Unlike a strata title, the structure of a unit lies within the boundaries of the lot and does not form part of the common property. Therefore there is no obligation on the owner of a lot for maintenance of other lot owner's buildings. A community lot can apply to both attached and semi-detached dwellings.

The Community Corporation has the responsibility to manage the community property, which includes the infrastructure and the land outside the lots as shown on the community plan as common property.

In community titles, land is divided into **lots** and **common property**. The flexible nature of community titles allows for a variety of developments. These range from a group of residential units to a development containing a mixture of land uses (eg, residential, commercial and recreational uses). A community title scheme also allows for a development to be staged. A community parcel (the whole of the land containing the community scheme) may include a development lot which is earmarked for later division into community lots to be incorporated into the scheme.

Title boundaries do not relate to any part of a structure but are determined by surveyed land measurements. People own their own 'lots', and common property is owned and controlled by the 'community corporation'. Unlike strata titles, common property is vested in the owners of the lots. Lot owners own the common property as tenants in common.

A community title has more flexibility than a strata title and allows for a variety of developments. These range from a group of residential lots to a development containing a mixture of land uses, such as residential, commercial and recreational uses. Primary, secondary or tertiary corporations can be created allowing up to three levels of management. For example, a marina development with residential apartments, public boating facilities and a retail shopping centre.

Community Corporation

A community title establishes a community corporation to manage the common land and any fixtures erected on it. Owners will automatically have membership of the corporation. Primary, secondary or tertiary corporations can be created allowing up to three levels of management. This is referred to in the Act as 'tiered' management. Corporations in the lower tiers will be members of the corporation of the tier above. Most residential schemes, consisting only of a number of residential units, will be a primary community corporation and have only one level of management.

Complex schemes involving residential, commercial and even recreational uses should form secondary or tertiary community corporations. For example, a development with a large retail section and fifteen smaller residential lots would most likely have one primary corporation covering the entire development and two secondary corporations, one for the residential lots and one for the retail lots. A tiered management structure also may be set up where there is a large number of lots in a community parcel, even if each of the lots is used for the same purpose. Each level of the scheme has its own common property which its corporation will manage. Creating a development with more than one level is very complex and expert legal advice should be sought.

Common property: Common property is managed by the community corporation and unlike strata titles, can be used for commercial ventures such as a public golf course or retail centre. Any profits are returned to the community corporation which may distribute the profits between owners. As there can be losses as well as profits, any commercial venture should only be undertaken after receiving detailed financial and legal advice.

Maintenance, repairs, insurance and finances: Owners of a 'lot' are responsible for the maintenance, repairs and insurance of their own property. However, if they do not fulfil their responsibilities of

maintenance and repair, the community corporation may have the work done and the cost of the work will be a debt owed by the owner or owners to the corporation. Owners also have a duty to insure any part of their property such as a wall which provides support to a building or other structure on another lot or on the common property. The community corporation is responsible for the common property and must comply with rules relating to auditing and investments and are required to keep a sinking or reserve fund to cover emergency outgoings. Schemes with a small number of community lots may be exempt from such requirements.

Rules: While the Act contains some controls that cannot be changed, generally corporations are free to create their own rules (*by-laws*), that regulate the use and enjoyment of common property, prescribe uses for lots, or set design standards for lots etc. Unlike the *Strata Titles Act*, the *Community Titles Act* does not include a standard set of by laws which corporations may adopt. The *Community Titles Act* encourages developers of community schemes to draft individual by laws which reflect the nature of the particular scheme. A corporation can impose a penalty of up to \$500 for breaches of a by-law which must be paid to the community corporation. These fines may be imposed on members of the community corporation or any other person, including visitors or outsiders.

Buying into a community title: Prospective purchasers in larger community schemes should be offered a 'scheme description' that sets out what future development may be undertaken by the developer or community lot owners. Schemes with no more than six community lots (none of which are used for non-residential purposes) are not required to have a scheme description. Where future development is set out, a development contract must also be offered that will bind the developer to complete the scheme as set out in the development contract. The result of these requirements is that developers must do much more than provide buildings. They must also define the plans for continuing development of the project so that any prospective purchasers will know what they are entering. The *Community Titles Act* also provides restrictions on the voting power of developers who are members of a community corporation (through also being the owners of community lots). This is designed to prevent developers changing scheme descriptions and development contracts.

Meetings and voting: The provisions relating to meetings and resolutions although different, work in a similar fashion to those relating to strata titles. A community corporation must have a presiding officer, treasurer and secretary and general meetings must be held at least once in a calendar year. Ordinary, special and unanimous resolutions are required for different motions at meetings. The members of the community corporation are the owners of the community lots. Owners of development lots are not members of the corporation unless they also own community lots. As mentioned above, the Act limits the voting power of the developer of community schemes. The developer is the person who was the registered proprietor of the land which now comprises the community parcel immediately before the lodgment of the plan of community division. The number of votes cast by the developer may not exceed the total of votes cast by other community corporation members. This provision has implications for groups of people who buy land and form a community scheme with the intention of selling some lots to other persons. Every member of the group would be considered to be a developer under the Act and all members would not be able to out vote the other lot owners.

Community strata schemes: In single story buildings, title boundaries do not relate to any part of a structure, but are determined by surveyed land measurements. In the case of a multi-storey building, where lots exist above one another, the plan will show community strata lots in which the titles are determined in relation to structural divisions in a building, similar to a strata title. A community strata lot has the same obligations as a community lot. Unlike a strata title, a community strata scheme may include a development lot retained for later division into community lots, to be incorporated into the community strata scheme at a later time

Our thanks to the Legal Services Commission for the above extract from their publication 'Strata & Community Titles'.

