



FACT SHEET 6

STRATA TITLE REFORMS

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Liability limited by a scheme approved under Professional Standard Legislation

1. INTRODUCTION

Broad reforms to the *Strata Titles Act 1985 (Old Act)* were introduced via the *Strata Titles Amendment Act 2018* in later 2018. These amendments came into effect on 1 May 2020 (**Amended Act**).

The purpose of this fact sheet is to provide an overview of the key changes and relevant impact of the Amended Act.

2. OVERVIEW OF AMENDMENTS

2.1. Scheme Notices

Under the Amended Act, a 'Scheme Notice' is required to be registered in order for a strata titles scheme to be registered. A scheme notice must contain basic information, namely the name of the scheme and the address for serving of notices. The Scheme Notice will be lodged with the application to register the strata titles scheme and will be registered on the strata plan.

2.2. Pre-Contractual Disclosure

In addition to pre-contractual disclosure requirements under the Old Act, the additional information required to be disclosed to buyers under the Amended Act include:

- Scheme plan;
- Scheme Notice (if applicable);
- Contributions payable for the previous 12 months for the lot, or if the scheme is new, estimates of contributions likely to be payable for 12 months after settlement;
- Minutes from the most recent AGM and any subsequent EGM (or a written statement explaining why this cannot be provided);
- Most recent statement of accounts of the strata scheme (or a written statement explaining why this cannot be provided);
- Any debts owed by the seller to the strata company;
- Full set of scheme by-laws; and
- Information about any termination proposal received by the seller from the strata company; and
- Any voting right restrictions.

If the scheme is not yet created, the latest draft of the required document can be disclosed in lieu.

Form 28 and 29 will no longer be accepted by Landgate and have been replaced by an approved form, being the Pre-Contractual Disclosure Statement to the Buyer, which accounts for the additional disclosure requirements.

2.3. Reclassification of Notifiable Variations

Under the Amended Act, notifiable variations have been split into 2 categories, being:

- Type 1: area of the lot is reduced by 5% or more, unit entitlement is changed in any way by 5% or more, anything relating to proposal for termination of scheme.
- Type 2: a notifiable variation that does not fall into a Type 1 variation, including modifications to the scheme plan that affect the lot or common property, modification to scheme by-laws, granting or variation of lease/ licence/ right over common property in scheme.

The seller's notice must identify the type of notifiable variation and inform the buyer of its rights to terminate the contract when that type of notifiable variation occurs (detailed further below).

If the seller becomes aware of the notifiable variation less than 15 working days before the settlement date, they must inform the buyer as soon as practicable and in any other case, no later than 10 working days after the seller becomes aware of the notifiable variation.

Even if a notifiable variation is disclosed in the contract, the seller must still give notice to the buyer within the relevant time periods once the matter consisting of the notifiable variation is complete.

2.4. Buyer Termination Rights

The Amended Act provides for greater termination rights:

- If the seller **fails to comply** with pre-contractual disclosure, the buyer can terminate at any time (**material prejudice** must be demonstrated).
- If the seller **complies with pre-contractual after signing**, the buyer can terminate within 15 working days of the seller's notice being given (**material prejudice** must be demonstrated).
- If the seller **fails to give notice of a type 1 variation**, the buyer can terminate at any time (**no reason** needed).
- If the seller **fails to give notice of a type 2 variation**, the buyer can terminate at any time (**material prejudice** must be demonstrated).
- If the seller **gives notice of either a type 1 or 2 variation within the relevant time periods** the buyer can only terminate within 15 working days of the date of notice (**material prejudice** must be demonstrated).
- If the seller **gives late notice of a type 1 variation**, the buyer can terminate within 15 working days of the date of notice (**no reason** needed).
- If the seller **gives late notice of a type 2 variation**, the contract can be avoided within 15 working days of the date of notice (**material prejudice** must be demonstrated).

2.5. By-laws

Under the Amended Act, there is a new requirement for strata title scheme to lodge a consolidated set of by-laws with Landgate every time a by-law is created/ amended/ removed.

Schedules 1 and 2, containing the standard by-laws, have each been renamed to 'Governance by-laws' and 'Conduct by-laws' respectively, and standard by-laws relating to strata meetings and voting have been incorporated into the Amended Act and therefore cannot be amended.

The Amended Act also provides for a broad range of circumstances where a by-law will be invalid including but not limited to circumstances where a by-law is unreasonable or prejudicial/ discriminatory against 1 or more lot owners.

2.6. Leasehold strata Schemes

The Amended Act introduces leasehold strata schemes which will allow a leasehold scheme to be created, with a fixed term of between 20 and 99 years, the owner of scheme being the lessor and the owner of the lot being the lessee. All strata leases in a leasehold scheme will expire on the same day.

2.7. Ten Year Maintenance Plans

From 1 May 2020, schemes of 10 or more lots, or schemes with a building value of \$5 million or more, must have a 10-year maintenance plan and reserve fund based on a list of common property elements that the strata company expects will require maintenance/ repair etc. over the a 10 year period.

2.8. Dispute Resolution

Under the Amended Act, all new strata disputes will be heard by SAT (existing disputes will continue in their original forum) with the exception of recovery of unpaid levies, which can still be heard in civil courts.

The Amended Act provides SAT with have broader powers to resolve strata scheme disputes and enforce by-laws.

3. CONCLUSION

For all your queries and concerns about the impact of Strata Title Reforms on rights and obligations of sellers and buyers and governance call Janette Tavelli (0417 926 155), Michael Sonter (0419 900 299), or another team member on 08 9218 8588.