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[Main page](#)
[Contents](#)
[Featured content](#)
[Current events](#)
[Random article](#)
[Donate to Wikipedia](#)

▼ [Interaction](#)
[Help](#)
[About Wikipedia](#)
[Community portal](#)
[Recent changes](#)
[Contact Wikipedia](#)

► [Toolbox](#)

► [Print/export](#)

▼ [Languages](#)
[Deutsch](#)
[Nederlands](#)


Article

[Talk](#)

Read

[Edit](#)

↘

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Strata title

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For other uses, see [Strata \(disambiguation\)](#).

Strata title is a form of [ownership](#) devised for multi-level [apartment blocks](#) and horizontal subdivisions with shared areas. The 'strata' part of the term refers to apartments being on different levels, or "strata".

Strata title was first introduced in 1961 in the [state of New South Wales, Australia](#), to better cope with the legal ownership of [apartment](#) blocks. Previously, the only adequate method of dividing ownership was company title, which suffered from a number of defects, such as the difficulty of instituting mortgages. This term also applies to [house](#)-type strata title units in Australia.

Other countries that have adopted the Australian system (or a similar variant) of apartment ownership include

- [Canada](#) ([Alberta](#), [British Columbia](#))
- [Singapore](#)
- [South Africa](#)
- [Indonesia](#)
- [Malaysia](#)
- [Fiji](#)
- [Philippines](#)^[1]
- [India](#)
- [Dubai](#)
- [Abu Dhabi](#) (under draft as at 2010)

Other countries have legislation based on similar principles but with different definitions and using different mechanisms in their administration.

Strata Title Schemes are composed of individual lots and common property. Lots are either apartments, garages or storerooms and each is shown on the title as being owned by a Lot Owner. Common Property is defined as everything else on the parcel of land that is not comprised in a Lot, such as common stairwells, driveways, roofs, gardens and so on.

Contents [[hide](#)]

- [1 History in Australia](#)
- [2 Common terms](#)
 - [2.1 Strata titles](#)

Property law

Part of the [common law series](#)

Acquisition

[Gift](#) · [Adverse possession](#) · [Deed](#) · [Conquest](#) · [Discovery](#) · [Accession](#) · [Lost, mislaid, and abandoned property](#) · [Treasure trove](#) · [Bailment](#) · [License](#) · [Alienation](#) ·

Estates in land

[Allodial title](#) · [Fee simple](#) · [Fee tail](#) · [Life estate](#) · [Defeasible estate](#) · [Future interest](#) · [Concurrent estate](#) · [Leasehold estate](#) · [Condominiums](#) · [Real estate](#) ·

Conveyancing

[Bona fide purchaser](#) · [Torrens title](#) · [Strata title](#) · [Estoppel by deed](#) · [Quitclaim deed](#) · [Mortgage](#) · [Equitable conversion](#) · [Action to quiet title](#) · [Escheat](#) ·

Future use control

[Restraint on alienation](#) · [Rule against perpetuities](#) · [Rule in Shelley's Case](#) · [Doctrine of worthier title](#) ·

Nonpossessory interest

[Easement](#) · [Profit](#) · [Covenant](#) · [Equitable servitude](#) ·

Related topics

[Fixtures](#) · [Waste](#) · [Partition](#) · [Riparian water rights](#) · [Prior-appropriation water rights](#) · [Lateral and subjacent support](#) · [Assignment](#) · [Nemo dat](#) · [Conflict of property laws](#) · [Blackacre](#) ·

Other common law areas

[Contract law](#) · [Tort law](#) · [Wills, trusts and estates](#) · [Criminal law](#) · [Evidence](#) ·

V · T · E ·

- 2.2 Community titles
- 2.3 Subdivision
- 2.4 Boundaries
- 2.5 Original Owner
- 2.6 Lot entitlements
- 2.7 Body Corporate
 - 2.7.1 Committee
- 2.8 By-Laws
- 3 Management
 - 3.1 Managing Agents
 - 3.2 Strata Management Software
 - 3.2.1 Commercially available in Australia
 - 3.2.2 Commercially available in the United Arab Emirates
 - 3.2.3 Commercially available in Qatar
 - 3.3 Building managers
 - 3.4 Management rights
 - 3.5 Self management compared with professional management
 - 3.6 Owner participation
- 4 Insurance
- 5 Financials
 - 5.1 Levies
 - 5.2 Rates & Taxes
- 6 Disputes
 - 6.1 General Disputes
 - 6.2 Litigation
- 7 Building defects
- 8 Sales & purchases of strata lots
- 9 See also
- 10 References

History in Australia

[[edit](#)]

The various Australian states and territories each have jurisdiction in relation to strata and community titles. This means that each one has its own legislation, and while there is a degree of uniformity among some of the states, no two pieces of legislation are exactly the same.

Both strata and community titles in their statutory form originated in [New South Wales](#). The first strata titles legislation was enacted in 1961 when the New South Wales Parliament passed the Conveyancing (Strata Titles) Act 1961. The first community titles legislation was enacted when the Community Land Development Act 1989 and the Community Land Management Act 1989 were passed by the same Parliament.

Beginning in 1961 all other Australian states and territories have passed strata titles legislation, although it is known by different names in some jurisdictions (e.g. building units titles, community titles and unit titles).

During the 1990s a number of states expanded their strata titles legislation to include community title type subdivisions, although, unlike New South Wales, they did not use separate statutes.

The two principal Australian jurisdictions are New South Wales and [Queensland](#). Both of those states have "third generation" legislation. New South Wales replaced its 1961 legislation in 1973 and the 1973 legislation was substantially changed in 1996. Queensland's first strata titles legislation was

passed in 1965 and replaced in 1980. The 1980 legislation was subsequently replaced in 1997.

Ongoing reviews of strata and community titles legislation are common in all Australian [jurisdictions](#) as governments try to meet the demands of home unit owners for resolution of the various problems of communal living.

Common terms

[\[edit\]](#)

Strata titles

[\[edit\]](#)

Strata titles involve the vertical subdivision of land and the building on the land into lots and common property. The lots comprise the units or apartments while the common property comprises the land above, below and around the building, as well as common facilities within the building (such as foyers, elevators, stairs, landings, car park, driveways and a range of equipment).

The lots are effectively parcels of "airspace" usually bounded by floors, walls and ceilings as defined on a plan drawn by a surveyor and registered in the local titles office. The common property is everything that is left after the lots are taken out of the original land parcel. Because of this approach the plan does not actually define the common property. Sometimes there are structural features and services located within a lot but which serve other lots. These are usually deemed to be common property even though they are situated within a lot.^[2]

Community titles

[\[edit\]](#)

Community titles involve the horizontal subdivision of land (usually without involving buildings) into lots and common property. The lots usually comprise building parcels, although it is common for the buildings to be constructed on the proposed lots before the plan is registered.

In the case of community titles, the common property usually comprises access roads, open space and recreational facilities (such as swimming pool, tennis court, clubhouse, etc.).

The lots are defined in much the same way that conventional land lots are defined and it is common for services to be deemed to be common property. Again, the common property comprises everything not included in the lots, although, unlike strata titles, the subdivision plan usually defines the common property by survey means.

Subdivision

[\[edit\]](#)

Strata title subdivisions cannot be undertaken until the building structures are in place. This is because the surveyor uses the physical structure (floors, walls and ceilings) to define the boundaries of the lots.

In practice local government approvals cannot be obtained for strata subdivision plans until the building has been completed. When the building is ready for occupation the local government approves the plan, it is signed by the land owner and other relevant parties and then it is registered at the titles office.

Community title subdivisions are not dependant upon buildings. They involve normal survey techniques and can be completed and approved once access roads and services are in place. However, it is common for buildings to be completed on the various lots before the subdivision is undertaken.

When a subdivision plan is registered a separate title deed is issued for each lot shown on the plan. The title issues in the name of the person who was the owner of the land parcel being subdivided, namely, the developer.

Boundaries

[\[edit\]](#)

Every land parcel and/or building subdivided by a strata or community titles plan has both lots and

common property. The boundary between the two depends upon:

- how the particular plan has been drawn;
- and the rules of the particular jurisdiction relating to boundaries.

The boundary is commonly the centre of the walls, floors and ceilings enclosing the lot, or the internal surface of the floors, walls and ceilings enclosing the lots. Where parts of a lot are not enclosed, the boundaries are usually defined with reference to the nearby walls, floors and ceilings, or other physical structure.

Original Owner

[\[edit\]](#)

The lots are initially owned by the developer (sometimes called the "original owner"). The developer transfers the lots to the first purchasers while the common property becomes the responsibility of a [body corporate](#). In most jurisdictions the original owner must establish the body corporate records and effect the initial insurance covers. They are usually required to hand over the body corporate and building records to lot owners at the first annual general meeting of the body corporate. Some jurisdictions also restrict the activities of original owners during the period when they own the majority of lots in the scheme.

Lot entitlements

[\[edit\]](#)

Each lot in a scheme has a lot (or unit) entitlement. When added together they comprise the aggregate lot entitlement.

In Queensland there are 2 types of entitlements, interest schedule lot entitlements and contribution schedule lot entitlements.

The lot entitlements determine:

- Share of ownership of the common property
- Voting entitlement on a poll
- Contributions (or levies) payable for the particular lot
- Entitlement to distribution of surplus assets (upon a distribution or winding up)
- Liability for rates and taxes. They are like the lot owners "shareholding" in the body corporate.

Body Corporate

[\[edit\]](#)

When a strata or community titles plan is registered it becomes a [legal person](#) much like a company. This legal person takes on the role of a [management company](#) of the apartment complex, and is typically referred to in legislation as a "body corporate" (in Queensland), an "owners corporation" (in New South Wales) or as a "community corporation" (in South Australia).

Depending upon the jurisdiction, the common property will either:

- vest in the body corporate itself; or
- vest in the lot owners for the time being, as tenants in common in shares proportional to their lot entitlements.

Where the common property vests in the body corporate, it is effectively held by the body corporate as a trustee for the lot owners, as tenants in common in shares proportional to their lot entitlements. Either way, the body corporate is charged with administering the common property for the benefit of the lot owners.

It obtains the funds it needs to discharge this function by imposing levies (or contributions) on the lot owners.

Some jurisdictions allow for layered body corporate structures. These involve one body corporate being a member of another body corporate. Two and three layers (or tiers) are not uncommon.

Typically, these occur where land and building subdivisions are mixed and are undertaken in stages,

or where a particular development site has a number of different uses. For example; a large parcel of land is subdivided into 6 lots (each intended for further subdivision) and common areas (comprising roads, open space and recreational facilities).

A community plan is used for this subdivision. When the plan is registered a body corporate ("principal body corporate") is constituted and it becomes responsible for the common areas.

The developer, as the owner of the 6 development lots is the sole member of the body corporate. The development lots are progressively developed by constructing buildings on them.

The 6 building comprise:

1. hotel
2. shopping centre
3. office building
4. 2 storey row-houses
5. high rise apartment building
6. mid rise apartment building

The office building and the 2 apartment buildings are then subdivided by separate strata plans. Bodies corporate ("subsidiary bodies corporate") are constituted upon registration of those plans.

The subsidiary bodies corporate become responsible for the common areas within their respective land parcels, but not the common area in the community plan. They are members of the principal body corporate.

The row houses are then subdivided by another community plan and a further subsidiary body corporate is constituted. Again, that further subsidiary body corporate becomes a member of the principal body corporate.

The management structure then looks like this – Each body corporate is able to make decisions at general meetings of its members. The general meeting elects a committee each year.

Committee

[\[edit\]](#)

Every body corporate has a committee. The committee is like the board of directors of a company. It has specified powers, although generally speaking, it shares power with the general meeting of the body corporate. The committee's powers are not as extensive as the powers of the average company board of directors. It is responsible for formulating policy for consideration by the body corporate in general meeting. Once the policy is set the committee is responsible for ensuring that its office bearers implement that policy.

The office bearers of the committee comprise a chairperson, a secretary and a treasurer. Each office bearer has a range of duties. They are answerable to the committee. Because they are volunteers they are usually assisted by a professional administrative officer.

By-Laws

[\[edit\]](#)

All strata and community schemes have by-laws. Potentially, every scheme may have different by-laws. These by-laws are rules by which lot owners must live in their community. They are therefore important and should be investigated as part of the purchase process. For example; if a purchaser has a cat, they need to ensure that the scheme by-laws do not prohibit the keeping of animals on their lot. Alternatively, body corporate consent may be required to keep the cat. In this event the purchase contract could be made conditional upon the consent being granted.

Sometimes car parking and storage spaces are allocated for use by lot owners by means of a by-law. In those cases the validity of the by-law may need to be investigated and the actual areas allocated to the lot being purchased needs to be checked. Special care is needed where by-laws are used for this purpose. As a general rule, it is preferable for these areas to be included on the title to

the lot rather than allocated in a by-law.

Existing owners in strata and community title schemes have no control over who buys into the scheme or who is permitted to lease or occupy a lot. This is because there is a total prohibition in all Australian jurisdictions against interfering with the transfer, lease or other dealing with a lot.

Therefore, the only mechanism available to a body corporate to regulate conduct within the scheme is the by-laws. And the content of the by-laws is restricted to matters involving the control, management and administration of the common property, and in some cases, the lots. The level and scope of control through the by-laws is therefore limited.

Management [\[edit\]](#)

Managing Agents [\[edit\]](#)

See [Strata management](#).

The professional administrative officer that assists the committee and its office bearers is called a strata managing agent or body corporate manager. They are engaged as the "agent" of the body corporate and in most jurisdictions they are delegated certain powers, authorities, duties and functions by the general meeting of the body corporate. These functions are usually of a clerical or "record keeping" and organisational nature. As an agent, they are "fiduciaries" of the body corporate. This means that, apart from their agreed fees and remuneration, they cannot profit from any dealing in which the body corporate is involved. For example; a managing agent cannot receive a commission from a tradesperson for introducing the tradesperson to body corporate work, unless the commission is properly disclosed to and approved by the body corporate.

In New South Wales strata managing agents must be licensed and their conduct is subject to scrutiny by a Government department and independent tribunal.

Queensland is currently considering whether to license their body corporate managers.

Managing agents can also be appointed by dispute tribunals when the affairs of a strata or community scheme are so bad that a court imposed compulsory management is considered necessary. Where this occurs, the managing agent is given very wide powers, usually to the exclusion of the owners themselves.

Strata Management Software [\[edit\]](#)

Managing agents, or "Strata Managers" usually operate specialised software designed specifically for the management of strata schemes. These software packages are often based around an accounting package with the ability to issue levies and run ledgers for each owner. Their functionality also often extends in to CRM, document management and report generation.

Commercially available in Australia [\[edit\]](#)

- [Strataware](#)
- BCMax
- Strata Master
- Stratamatic (Note: Stratamatic was discontinued in 2010)
- StrataManager Pro (TimeTRACER Technologies)

Commercially available in the United Arab Emirates [\[edit\]](#)

- [Strataware](#)

Commercially available in Qatar [\[edit\]](#)

- [Strataware](#)

Building managers [\[edit\]](#)

Managing agents usually have a limited role in relation to building maintenance. In smaller schemes owners tend to monitor maintenance requirements and then rely upon the managing agent to arrange for and pay tradespersons. However, the building management in larger schemes is much more complex and a full time building manager is often engaged to look after the building.

The powers of building managers are much more restricted than the powers of managing agents. These building managers are paid a fee and are usually engaged on long term contracts. In most cases they are also permitted to conduct a letting business in conjunction with their building management role.

Management rights

[\[edit\]](#)

The building managers usually pay for the right to manage a strata building or community scheme. They do this by purchasing the "management rights". They are usually purchased from the developer in the first instance, but they are then re-sold in the secondary market.

This secondary market is particularly strong in Queensland where management rights can sell for millions of dollars.

Management rights are effectively a "package" of rights and assets. The package commonly comprises:

- A caretakers unit in the building
- A Building Management Agreement between the manager and the body corporate under which the manager agrees to care-take the building in exchange for a fee
- A Letting Authority under which the body corporate agrees to the manager conducting a letting business in conjunction with the caretaking functions
- A reception desk, office and various storage facilities (which can be part of the unit lot, a separate lot or the subject of a license or "right to use" in favour of the owner of the caretakers unit)
- An exclusivity arrangement that is often evidenced in the letting authority or a by-law.

With this package the manager is able to operate a letting pool within the building. The letting pool usually caters for holiday lettings, but pools for permanent lettings are not unheard of.

Owners wishing to place their units in the pool do so by entering into an agency agreement with the building manager. This is similar to the normal agency agreement between a landowner and a real estate agent. These agency agreements are the final component of the management rights package.

Self management compared with professional management [\[edit\]](#)

The question of self management or professional management often arises. The choice is very much an individual one. Some schemes are very successful in managing themselves. Others fail miserably - usually because of the self interest of those owners responsible for management, lack of skills or general lack of support from the community.

The decision to self manage should not be taken lightly. The issues to be considered include:

- Are there sufficient owners with the time and interest to undertake the tasks?
- Are these people sufficiently skilled?
- Are these people likely to lose interest in a year or two?
- Is the state of harmony within the scheme such that self management will be supported?
- Is the complexity of strata and community management fully appreciated?

If the decision is to self manage, then the right "equipment" needs to be assembled. This includes publications, copies of legislation, computer facilities and suitable programs. In some jurisdictions this is available in the form of a web based "package".

Owner participation

[\[edit\]](#)

Schemes depend heavily upon owner participation to function correctly. An active managing agent is very important, but there is a limit to the ability of a managing agent to create a good living environment and to effectively protect and enhance the assets of the body corporate, particularly the building.

The best situation is an active committee supported by interested owners working with a competent and dedicated managing agent.

Insurance

[\[edit\]](#)

Lot owners need to understand how insurance arrangements work in strata and community title schemes. These arrangements vary from jurisdiction to jurisdiction and often from building to building. The managing agent or secretary should be able to assist in this regard.

In a strata title situation, in very general terms, the body corporate is responsible for the following insurances:

- The building and outbuildings
- Common property public liability
- Workers compensation
- Voluntary workers

Lot owners are, in turn, responsible to insure the contents of their lots, as well as covering themselves against personal liability. Even the question of contents is not without its problems.

Issues arise as to whether carpets or wall coverings are part of the building or its contents. And what about the kitchen cupboards and hot water system? These are the issues a lot owner needs to address when considering the type and extent of insurance coverage they require. Some insurers offer policies that "dovetail" with each other. In other words, the items not covered under the body corporate policy are clearly covered under the contents policy. Where different companies issue the policies this "dovetailing" effect is sometimes not achieved.

Financials

[\[edit\]](#)

Levies

[\[edit\]](#)

The level of funds required to run the body corporate is determined each year in a budget. In most jurisdictions a sinking fund is also required to accumulate funds to undertake future renewals and replacements involving substantial capital expenditure. This budget is then used to determine the level of levies that should be imposed on lot owners.

These levies are imposed by service of a levy notice. They are payable before a specified date and sometimes there is a discount of up to 20% if they are paid on time. If they are not paid on time penalty interest is imposed and the body corporate can sue to recover the amount owing.

Rates & Taxes

[\[edit\]](#)

Local government rates are levied on strata and community title lots. They are usually based on the apportionment of the underlying land value among the lots in proportion to the lot owners' lot entitlements. State government land taxes are usually applied in a similar manner. Because of the number of lots in a particular scheme the incidence of rates and land tax is often very low when compared with standard houses. This may lead to local government imposing a "minimum rate" for strata or community title lots. Sometimes "services", such as water and garbage removal, are charged as extras against the individual lot owners. Of course, the body corporate levies are in addition to these rates and taxes. Purchasers of lots therefore need to enquire about the overall level of rates, taxes and levies to ensure that they are not over committing themselves on the purchase.

Disputes

[\[edit\]](#)

General Disputes

[\[edit\]](#)

Communal living, whether in an apartment building or a master planned community, involves higher density living than conventional land subdivisions. It also involves the sharing of services and facilities. This results in an environment conducive to disputes and disagreements. It is therefore not surprising that three Australian jurisdictions have established specialist dispute resolution regimes. They each involve a quasi-judicial "paper based" adjudication process from which an appeal lies to a special tribunal or to the mainstream court system.

For example, in Queensland, a commissioner oversees a dispute resolution process, under which adjudicators determine disputes by making orders. An appeal lies against the decision of an adjudicator to the District Court, but only on questions of law.

In contrast, in New South Wales, the appeal from an adjudicator's order is to a special tribunal (the Consumer, Trader, and Tenancy Tribunal) "as of right" and then to the Supreme Court on a question of law. If an adjudicator's order is not obeyed, then the person against whom the order was made commits an offence and is liable to prosecution and a fine. In some circumstances disputes can be taken directly to the Supreme Court. A registrar can only refer a matter to an adjudicator if the registrar is shown that an official request for mediation has been made by the applicant to the respondent, though neither the applicant nor respondent has an obligation to attend the mediation.

In those jurisdictions where there is no specialist dispute resolution regimes, resort to the Supreme Court is often the only avenue available. Supreme Court proceedings for these types of disputes are expensive and can take a long time to resolve.

Litigation

[\[edit\]](#)

Bodies corporate can generally sue and be sued, both in relation to civil and criminal matters.

In some jurisdictions there are restrictions on the commencement of proceedings without a vote of a general meeting. Care needs to be taken when commencing serious legal proceedings.

Bodies corporate do not have a good track record in weathering the substantial costs involved in serious proceedings. Legal proceedings can be a cause of disharmony within a scheme and should only be undertaken where there are no alternatives and there is a clear resolve on the part of the body corporate to see the proceedings through.

Building defects

[\[edit\]](#)

Strata title buildings frequently suffer from building defects. The builder licensing authorities in the various jurisdictions often assist in dealing with these types of problems and in some jurisdictions the home builder insurance schemes are available to bodies corporate and lot owners, although they are usually limited to major structural defects.

Sometimes bodies corporate need to have recourse to legal proceedings to resolve these problems. In all jurisdictions some level of recourse is available against the builder and the project consultants.

Sales & purchases of strata lots

[\[edit\]](#)

Strata and community title lots are bought and sold in much the same way as other parcels of land are bought and sold.

Because of the body corporate and its levy process, these transactions usually involve a special sale contract or special conditions in the normal sale contract. However, the existence of the body corporate presents other difficulties for a purchaser and their financier.

Because lot owners must contribute funds to a body corporate in sufficient amounts to enable the body corporate to discharge its liabilities, the legal position of the body corporate is akin to that of an unlimited liability company. That is to say, the lot owners are liable to discharge the body corporate's debts and successive levies can be imposed until sufficient funds are available, even if this means that one or more of the lot owners are forced into bankruptcy.

Add to this the fact that a purchaser automatically becomes a member of the body corporate when their interest is registered and it will be appreciated that lot purchasers should be very concerned to ensure that there are sufficient funds in the body corporate's bank account to discharge its liabilities.

If this is not the case, then the purchaser will have to make up their share of the deficiency once they are registered as the owner of the lot they are purchasing. Clearly, this is also a matter of concern for a financier who, in the event of a default under their mortgage, may need to enter into possession of the lot and exercise their power of sale. In this event they are potentially liable for any unpaid levies.

In practice, many purchasers and financiers arrange for a "due diligence" exercise to be carried out in respect of the body corporate. This is usually arranged by the purchaser's solicitor, although some purchasers undertake the process themselves. This process should only be undertaken by purchasers who are confident that they know exactly what to look for and the records that need to be examined.

See also

[edit]

- [Commonhold](#)
- [Condominium \(housing\)](#)

References

[edit]

- [^] <http://manilaofficespace.com/articles/2010/strata-title-buildings-in-the-philippines> ↗
- [^] <http://mystrata.com> ↗

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