



## KNOW ABOUT STRATA OWNERSHIP

### *Disclaimer*

*This paper is written to give potential unit owners some background into strata unit ownership. This is not a legal document however it has been written by a number of individuals some have owned a strata unit others in this group work within the legal fraternity and deal with strata issues almost daily. Whilst Streamline has as much as possible tried to ensure the accuracy of what is written we cannot be liable for any act or omission that may or may not be in the document. This document provides early advice. Before making a strata unit purchase you should seek independent advice on owning a unit.*

### Where did strata come from?

Strata legislation first appeared in Australia in NSW in the early 1960's. Other States soon followed and although there have been many changes to the legislation across Australia during the time the ethos still remains the same, that is, a unit owner has a tangible asset usually under the Torrens Title. Torrens Title system is one where your title or ownership right, to the property is actually created by the very act of registration, or recording in a central (usually governmental) register or record. Torrens Title is an Australian invention by the Sir Robert Richard Torrens and it is used throughout the world. Torrens Title is Australia's most famous legal export.

### What is strata?

A strata scheme is a particular type of development which divides a parcel of land into "lots" and "common property", and which specifies a system of management. In a residential strata scheme, housing is grouped, and for many people this provides a secure, community atmosphere. Combined with smaller areas, such as gardens to maintain and the use of common facilities, strata living can be an attractive option for many people.

### The Body Corporate (Qld) or Owners Corporation (NSW)

The body corporate is the controlling body of a strata scheme. It is comprised of all of the owners of the lots in the scheme and comes into existence automatically on registration of the strata plan.

### Duties of the Body Corporate (Qld) or Owners Corporation (NSW)

The body corporate has certain duties relating to the common property:

- to administer, manage and control the common property reasonably and for the benefit of the owners and occupiers
- of the lots; and
- to establish and maintain (where appropriate) suitable lawns and gardens on the common property; and
- to maintain the service infrastructure in good and serviceable order and condition.

### What you own individually and what is common property

Many lot owners may believe that there is no common property in their scheme, but this is not the case. All strata schemes contain areas of common property, although they are not always obvious. A common scenario is that the buildings are individually owned and part or all of the outside areas, such as shared gardens, are common property. Shared stairwells and hallways are usually common property, however, even in the absence of these obvious shared areas, all the areas vertically above and below the boundaries of a lot are common property. Common property is also relevant to when the plan was registered. In early strata windows of units were not common property in later strata registrations external windows and doors became common property. This means that if you are buying into an older strata plan, you should ensure the ruling on ownership of your external windows and doors. In the event of maintenance to windows that you own the cost just to paint the windows could be huge if you are more than a few floors off the ground. Replacement of windows through deterioration are also expensive. The big issue may be a fire upgrade order on the building which determines that all unit entry doors need to be replaced with fire doors. Fire doors can cost over \$2500 to install. It is worth checking out. *PS Many individuals who are involved in strata do not know the differences in the legislation even exist, if asked most strata management staff and real estate agents will immediately say windows and door are covered under common property. If it is an early registered plan check it closely. Just don't take their word for it ensure it is written in the minutes or is given to you in writing.*



#### Unit entitlements

Unit entitlements determine a lot owner's rights and responsibilities in the strata scheme, including such things as voting rights, the amount you are to contribute to levies, and your share in the common property. All lots have a general unit entitlement which is set out in the strata role. These entitlements are usually worked out when the plan is registered however they must be fair and equitable basis. Some lots may also have a special unit entitlement. Special unit entitlements allow differing circumstances to be taken into account. For example, in a multi-storey development some lots may benefit more than others from lift facilities, and the special unit entitlement could take this into account.

#### How unit entitlement works

To show how this works a building of 4 levels i.e. ground and 4 levels above has 4 units on each floor apart from the top level which has 2 units. There one elevator which services Level 1 through to Level 5. That means there are 18 units (i.e. 4 on ground, 4 on level 1, 4 on level 2, 4 on level 3 and 2 on level 4. Let's say that total unit entitlement is 180,000.

There 18 units so it would be fair to say that each units entitlement is 10,000. Well that would be right if you didn't consider that the units on the top floor are twice the floor area of the other units in the building. In actual fact unit entitlement would be fairer if you divide 180,000/20 which is 9000 for each unit and 18,000 for the top 2 units. Now that is closer but units on the ground floor don't use the lifts and lifts are expensive to maintain. So this would mean that we need to work out how much the lifts cost to maintain and divide this cost by 14 units i.e. excluding the ground floor units to get closer to unit entitlement. This is just an example of how it is worked out. The building is divided costs are estimated and a figure right or wrong is worked out. It is very important for you to ensure you are happy with the unit entitlement before you buy it is extremely hard to change at a later date.

#### By-laws

By-laws are rules and regulations which must be observed by all lot owners and occupiers. The by-laws govern the conduct and business of the body corporate and may cover:

- the administration, management and control of the common property
- the use and enjoyment of the lots and the common property
- exclusive use of common property.

#### Are there any meetings I would have to attend?

While it is not compulsory for any lot owner to attend owners corporation meetings, a strata scheme operates better if those concerned take an interest in its affairs. It is helpful if people are willing to make themselves available for election to the executive committee. There would usually be several meetings of the owners corporation each year, although the annual general meeting (when levies are set for the coming year and the executive committee is elected) is the only meeting required by law. The executive committee would usually meet more often than the full owners corporation, as there would normally be a number of issues to deal with during the year.

#### Prior to buying into a strata Plan

Even if you have not bought into a strata unit you should make your self familiar with the minutes and even attend committee meetings. Whilst you are not able to vote or even comment it is a public meeting and you can attend. This is a time of discovery, some owners sell when they fear that there quite little block of units could be affected by proposed road works, clearways, development as all of these things affect the environment where you live.

Attending meetings prior to purchase is rarely done by most buyers but a wealth of information can be learned about up coming levy increases by judging the need of finance required, disputes between owners and local council information relating to development nearby. i.e. council may inform local residents of potential development such as a massive supermarket proposed next door.

#### Being a cautious purchaser

When you buy into a strata plan you are actually buying into something similar to an unlimited liability company. This can mean, in extreme cases, where the owners corporation are unable to pay its debts, for any reason owners are



responsible for these debts and can be pursued through the courts to liquidate their assets to pay outstanding money. It is even more frightening to know that it not only the unit that can be lost all assets owned by the owner can become part of court proceedings to settle outstanding matters. If debts exceed your assets you can be made bankrupt.

This is the most extreme case of strata unit ownership. Whilst it is the most extreme case there are some but few examples of this occurring and when compared to the estimated, 4 million units on the east coast of Australia, the odds are highly in your favour that this is unlikely to occur. There are other less devastating risks but these are also costly and could result in you needing to find tens of thousands of dollars for repairs or significant building defects which may have been known to owners for years prior to your purchase. Even if the previous owner knew of the problems and sold the unit without mentioning the problems.

There are things you can do to reduce your risk particularly when a strata plan has an existing problem, much of the risk needs to be known before your purchase as if you fail to uncover an existing problem before you settle it may be too late for you to recover from this position.

Where do the risks come from?

- insurance claims where the liability exceeds the insurance limits of liability
- building defects where the cost to repair the building is almost as much as the cost to replace it.
- uninsured or periods where the insurance was inadvertently allowed to lapse and a claim occurred during this period. It could be as simple as a person who falls over on a slippery floor in the building and as a result of the injury becomes a quadriplegic. If during this period there was no public liability insurance the building could be hit with a bill of easily \$4M, particularly if it was known that the floor was slippery.
- the raising of special levies to undertake some type of maintenance or raising capital to finance any of the above.

So you finally found the unit

When you finally decide to buy a unit, visit the unit a number of times at different times during the day and different week days. Pay attention to the flight path, traffic noise, parking for your guests both visitor and on street parking, other residents noise such as crying children, loud TV's older residents may have hearing loss, younger residents may just like to hear Metallica played through a 400 watt system at 120 dB, Check out where the garbage storage area is as you don't want it too close to your window. Is the building maintenance generally OK and be sure to check out other important things such as night lighting, pool maintenance and upkeep of gardens.

Be sure the building security suits your needs, are there areas to transfer from your car to the building during rainy days so you don't get wet. How long must you wait for the lift if there is one will it be able to take your furniture?, is there an ability to add another telephone line (some buildings are unable to have new lines installed as they have reached the cable servicing capacity), is there cable TV installed, is air conditioning installed or will you be allowed to install a small split system (some buildings do not allow it), are you allowed to keep pets or does your budgie and moggy need to find another home. Lastly think how you are going to get your furniture up the stairs and around some of the corners, you may have to re-think the grand piano as units are not renowned as being removalist friendly

If all of this comes together and I hope it does, do two last things

1. Get a strata records inspection report (even if you don't get it from Streamline), I encourage you to spend the money on this as the cost of the report will be small when compared to the cost of the unit and the potential risk exposure
2. Get a building report and give the building inspector the strata inspection report as the strata report is the early warning system to uncover potential problems report will help the building inspector do a more thorough report

Overall Strata Living is a great alternative to a home and a block of land with all the maintenance requirements and costs. Really it is what suits the purchaser's life style and bank balance. Streamline wishes you well in your purchase.