



ANNO TRICESIMO NONO

ELIZABETHAE II REGINAE

A.D. 1990

No. 13 of 1990

An Act to amend the Strata Titles Act, 1988.

[Assented to 12 April 1990]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Strata Titles Act Amendment Act, 1990*.
- (2) The *Strata Titles Act, 1988*, is referred to in this Act as “the principal Act”.

Commencement

2. (1) Subject to subsection (2), this Act will come into operation by proclamation.
- (2) Sections 6 (b) and 27 will be taken to have come into operation on 1 September, 1988.

Interpretation

3. Section 3 of the principal Act is amended—

(a) by inserting after the definition of “encumbrance” in subsection (1) the following definition:

“fence” includes a gate;;

and

(b) by inserting after the definition of “special resolution” in subsection (1) the following definition:

“statutory encumbrance” means—

- (a) an agreement relating to the development, preservation or conservation of land registered by the Registrar-General under the *Planning Act, 1982*;
- (b) a proclamation relating to open space noted on a certificate of title under the *Planning Act, 1982*;
- (c) an agreement relating to the development, preservation or conservation of land registered by the Registrar-General under the *City of Adelaide Development Control Act, 1976*;

- (d) a heritage agreement entered into under the *South Australian Heritage Act, 1978*;
- (e) an endorsement relating to a retirement village made on a certificate of title under the *Retirement Villages Act, 1987*;
- (f) any other encumbrance created by statute and prescribed by the regulations for the purposes of this definition.

Nature of strata plan and requirements with which it must conform

4. Section 5 of the principal Act is amended by inserting after paragraph (d) of subsection (6) the following paragraph:

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

Application for deposit of strata plan

5. Section 7 of the principal Act is amended—

- (a) by inserting after “footings” in subparagraph (ii) of paragraph (b) of subsection (6) “, or footings and associated structures of a prescribed nature,”;
- (b) by striking out from subsection (7) “Where an application is accepted by the Registrar-General under subsection (6)” and substituting “Where an application affected by an encroachment is accepted by the Registrar-General”;

and

- (c) by striking out from paragraph (b) of subsection (7) “given under that subsection” and substituting “given in relation to the encroachment”.

Deposit of strata plan

6. Section 8 of the principal Act is amended—

- (a) by striking out subsection (5) and substituting the following subsection:

(5) Where the land (or part of the land) to which a strata plan relates is either the servient tenement or the dominant tenement of a registered easement, the Registrar-General may, on the application of the registered proprietor of the land, or on the Registrar-General’s own initiative, and with the consent of—

- (a) the proprietor of the easement;
- (b) the registered proprietor of the servient tenement;

and

- (c) any person registered as the holder of an encumbrance over the servient tenement or the dominant tenement (if any),

discharge or vary the easement.;

and

- (b) by striking out subsection (6) and substituting the following subsections:

(6) Subject to subsection (7), where land to which a strata plan relates is subject to a registered encumbrance (other than an easement) that is to continue after the deposit of the plan, the encumbrance—

- (a) will be registered on the certificate of title for each unit;

but

(b) will not be registered on the certificate for the common property (and the encumbrance will be taken to be discharged to the extent to which the encumbrance is not registered on that certificate).

(7) The Registrar-General must, in relation to a statutory encumbrance, make such notes or other endorsements on the certificate of title for any unit, or for the common property, as may be appropriate according to the nature and extent of the encumbrance.

Application for amendment

7. Section 12 of the principal Act is amended—

(a) by inserting after “in relation to units” in paragraph (b) of subsection (2) “or common property”;

(b) by inserting after subsection (3) the following subsection:

(3a) Where—

(a) the erection or alteration of a building on the site causes an encroachment on land not included in the site;

and

(b) the application for amendment relates (wholly or in part) to the erection or alteration of that building,

the application can only be accepted if—

(c) no part of a unit would, if the amendment were made, form part of the encroachment;

and

(d) —

(i) the encroachment is over public land and the council within whose area the land is situated consents to the encroachment;

(ii) the encroachment consists of the protrusion of footings, or footings and associated structures of a prescribed nature, by not more than the prescribed distance beyond the boundaries of the site, and the owner of the land over which the encroachment occurs consents to the encroachment;

or

(iii) it is established to the Registrar-General’s satisfaction that the encroachment is otherwise authorized by law.;

(c) by inserting after subsection (4) the following subsection:

(4a) Where an application affected by an encroachment is accepted by the Registrar-General—

(a) unless the encroachment is over public land, the Registrar-General will, on the amendment of the plan, enter the encroachment on any relevant certificate of title;

and

(b) any consent given in relation to the encroachment is binding on present and subsequent owners and occupiers of the land.;

(d) by striking out subsection (5) and substituting the following subsections:

(5) Where part of a unit is, on the amendment of the strata plan by the Registrar-General, transferred to another unit or to common property, then—

(a) the part is discharged from any encumbrance (other than an easement) registered over the unit from which it is transferred;

and

(b) if the part is being transferred to another unit—the part will be held subject to any encumbrance registered over the whole of that unit.

(5a) Where part of the common property is, on the amendment of the strata plan by the Registrar-General, transferred to a unit, then—

(a) the part is discharged from any encumbrance (other than an easement) registered over the common property;

and

(b) the part will be held subject to any encumbrance registered over the whole of the unit.;

(e) by striking out from subsection (6) “Where an” and substituting “Subject to subsection (6a), where an”;

and

(f) by inserting after subsection (6) the following subsection:

(6a) Where land to which an amendment relates is either the servient tenement or the dominant tenement of a registered easement, the Registrar-General may, on the application of the registered proprietor of the land, or on the Registrar-General’s own initiative, and with the consent of—

(a) the proprietor of the easement;

(b) the registered proprietor of the servient tenement;

and

(c) any person registered as the holder of an encumbrance over the servient tenement or the dominant tenement (if any),

discharge or vary the easement.

Approvals required for deposit or amendment of strata plan

8. Section 14 of the principal Act is amended by striking out subparagraph (i) of paragraph (b) of subsection (7) and substituting the following subparagraph:

(i)—

(A) in the case of land within the City of Adelaide—the *City of Adelaide Development Control Act, 1976*, and The Principles of Development Control under that Act;

(B) in any other case—the *Planning Act, 1982*, and the Development Plan under that Act.;

Amalgamation of adjacent sites

9. Section 16 of the principal Act is amended by inserting after subparagraph (i) of paragraph (d) of subsection (2) the following subparagraph:

(ia) a certificate from a licensed valuer certifying that the schedule of unit entitlements included in the fresh strata plan is correct.;

Cancellation

10. Section 17 of the principal Act is amended—

(a) by striking out paragraph (a) of subsection (7) and substituting the following paragraph:

(a) all land comprised in the plan (other than land vested in the council) vests in fee simple in the former registered proprietors of the units as tenants in common in proportions fixed by reference to the unit entitlements of their respective units;;

and

(b) by inserting after subsection (7) the following subsection:

(7a) The estate vested in a former registered proprietor of a unit under subsection (7) (a) will be subject to—

(a) any estate or interest that was, immediately prior to the cancellation of the strata plan, entered on the original certificate of his or her unit;

and

(b) at the request of the registered proprietor of the servient tenement and the dominant tenement (if any)—any easement that was discharged when the strata plan was originally deposited in the Lands Titles Registration Office.

Insertion of new Division

11. The following Division is inserted immediately after section 17 of the principal Act:

DIVISION VIII—SUPPLEMENTARY**Procedure where the whereabouts of certain persons is unknown**

17a. (1) Where—

(a) application is made to the Registrar-General under Division II or IV;

(b) a person's consent to the application, or in respect to some other related matter under the relevant Division, is required;

(c) the Registrar-General is satisfied by such evidence as the Registrar-General may require—

(i) that the applicant has been unable, after making reasonable inquiries, to ascertain the whereabouts of the person;

(ii) that the applicant has complied with the notice requirements under subsection (2);

(iii) that at least 28 days have elapsed since the applicant complied with those requirements;

and

(iv) that no objection has been lodged by the person;

and

(d) the Registrar-General determines (in his or her absolute discretion) that it is reasonable to proceed without the consent,

the person will be taken to have given his or her consent, and, notwithstanding *The Real Property Act, 1886*, the Registrar-General may, if he or she thinks fit, dispense

with the requirement that a duplicate certificate of title be produced for the purpose of any dealing to which the person's consent is taken to have been given if the duplicate certificate of title would normally be produced by that person.

(2) The notice requirements referred to in subsection (1) (c) (ii) are that the applicant has—

(a) posted to the person whose consent is required, at the last address of the person appearing in the Register Book, a notice containing the prescribed information;

(b) published a copy of the notice in a newspaper circulating generally throughout the State;

and

(c) in a case involving an encroachment, left a copy of the notice in a conspicuous place on or near the land over which the encroachment has occurred.

Creation of easements

17b. (1) Where it appears that land within a site is intended to be the dominant or servient tenement of an easement created on the deposit or amendment of a strata plan, the applicant for the deposit or amendment of the plan must lodge with the Registrar-General an instrument, in a form approved by the Registrar-General—

(a) describing the land (if any) to which the easement will be appurtenant;

(b) describing the land that will be subject to the easement;

and

(c) setting out the terms of the easement.

(2) The instrument referred to in subsection (1) must be executed by the registered proprietor of the land to which the easement will be appurtenant and by the registered proprietor of the land that will be subject to the easement.

(3) On the deposit or amendment of the strata plan (as the case may be), the easement may vest in the registered proprietor of the dominant tenement (if any) notwithstanding that he or she may also be the registered proprietor of the servient tenement.

(4) The easement will not be discharged or varied except—

(a) as provided by subsection (5);

or

(b) as otherwise provided by this or any other Act.

(5) The Registrar-General may, on application by the proprietor of the easement and the registered proprietor of the servient tenement, made with the consent of the appropriate planning authority, discharge or vary the easement and make consequential entries in the Register Book as the Registrar-General thinks fit.

(6) In subsection (5)—

“appropriate planning authority” means the council in whose area the land is situated or where the land is not situated in the area of a council, means the Commission.

Officers of strata corporation

12. Section 23 of the principal Act is amended—

(a) by striking out from subsection (1) “(who must be unit holders)”;

and

(b) by inserting after subsection (1) the following subsection:

(1a) Unless all of the units comprised in the strata scheme consist of non-residential premises, the officers of a strata corporation must be unit holders.

Functions

13. Section 25 of the principal Act is amended by inserting after “unit holders and” in paragraph (a) “, to such extent as may be appropriate,”.

General powers

14. Section 26 of the principal Act is amended—

(a) by inserting after “unit” in paragraph (b) of subsection (2) “within the site”;

and

(b) by inserting after “acquire” in subsection (3) “, deal with”.

Power to raise money

15. Section 27 of the principal Act is amended by inserting after subsection (7) the following subsection:

(8) An amount paid by a person under this section is not recoverable by the person from the strata corporation when he or she ceases to be a unit holder.

Alterations and additions

16. Section 29 of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

(1) A person must not carry out prescribed work in relation to a unit unless the person is authorized to do so—

(a) where all of the units comprised in the strata scheme consist of non-residential premises—under the articles of the strata corporation;

or

(b) in any case—by special resolution of the strata corporation.

Duty to insure

17. Section 30 of the principal Act is amended by inserting after “events” in paragraph (a) of subsection (3) “(other than subsidence)”.

Duty to insure against liability

18. Section 31 of the principal Act is amended by striking out from subsection (2) “\$1 000 000” and substituting “\$5 000 000”.

Holding of general meetings

19. Section 33 of the principal Act is amended—

(a) by striking out from paragraph (c) of subsection (2) “if the corporation does not have a management committee—”;

(b) by inserting after “written notice of the” in subsection (3) “day,”;

(c) by inserting after subsection (3) the following subsection:

(3a) A person or group of persons proposing to convene a meeting of the members of a strata corporation should take reasonable steps to ensure that the proposed day, time and place are reasonably convenient to a majority of members of the corporation.;

(d) by striking out subsection (6) and substituting the following subsection:

(6) If a quorum is not formed within half an hour of the time appointed for a general meeting of the corporation—

(a) the unit holders present must appoint another day for the meeting, being a day at least seven days but not more than 14 days away;

(b) the meeting then stands adjourned to that day at the same place and time;

and

(c) if the quorum is not formed at the adjourned meeting within half an hour of the relevant time, the persons who are present and entitled to vote constitute a quorum.;

(e) by inserting after “reasonable notice of the” in subsection (7) “day,”;

and

(f) by inserting after subsection (7) the following subsection:

(8) In the absence of the presiding officer at a meeting of the corporation, another person who is entitled to vote at the meeting must be chosen to preside.

Voting rights at general meetings

20. Section 34 of the principal Act is amended—

(a) by striking out paragraph (a) of subsection (2) and substituting the following paragraph:

(a) all of the units comprised in the strata scheme consist of non-residential premises;;

(b) by striking out from subsection (5) “A poll” and substituting “A written ballot”;

(c) by striking out subsection (6) and substituting the following subsection:

(6) Such a ballot will be taken amongst the unit holders (or proxies of unit holders) attending the meeting in such manner as the person presiding at the meeting thinks fit.;

and

(d) by striking out subsection (8) and substituting the following subsection:

(8) A decision supported by the majority of votes cast at a duly convened meeting of the corporation will be taken to be a decision of the corporation (unless a special or unanimous resolution is required).

Management committee

21. Section 35 of the principal Act is amended—

(a) by striking out from subsection (1) “A strata corporation” and substituting “Subject to subsection (1a), a strata corporation”;

(b) by inserting after subsection (1) the following subsection:

(1a) Where all of the units comprised in the strata scheme consist of non-residential premises, the management committee may consist of, or include, persons who are not unit holders.;

(c) by striking out subsection (4) and substituting the following subsections:

(4) The prescribed number of members of a management committee constitute a quorum of the committee and no business may be transacted at a meeting of the committee unless a quorum is present.

(4a) The prescribed number for the purposes of subsection (4) is a number ascertained by dividing the total number of members of the committee by two, ignoring any fraction resulting from the division, and adding one.

(4b) A decision supported by a majority of the members at a meeting of a management committee of which at least three days notice has been given to all members will be taken to be a decision of the committee.;

(d) by inserting after “may co-opt a” in subsection (6) “suitable”;

and

(e) by striking out from subsection (7) “unit holder” and substituting “person (who must, unless all of the units comprised in the strata scheme consist of non-residential units, be a unit holder)”.

Duties of the original proprietor in relation to strata corporation

22. Section 38 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

(2) The relevant date is the first date on which there are two or more members of the corporation holding different units.

Information to be furnished

23. Section 41 of the principal Act is amended—

(a) by inserting after subparagraph (iii) of paragraph (b) of subsection (1) the following subparagraph:

(iv) current policies of insurance taken out by the corporation.;

(b) by striking out subparagraph (ii) of paragraph (c) of subsection (1) and substituting the following subparagraph:

(ii) the minute books of the corporation.;

and

(c) by inserting after subsection (2) the following subsection:

(2a) A strata corporation must not charge more than the prescribed fee in respect of a service provided in pursuance of an application under this section.

Penalty: \$500.

Dealing with part of unit

24. Section 44 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

(2) Subject to any other law, a unit holder may grant a lease or licence over a part of a unit—

(a) if all of the units comprised in the strata scheme consist of non-residential premises;

or

(b) where paragraph (a) does not apply—

(i) if the lease or licence is granted to another unit holder;

or

(ii) if the lease or licence is authorized by unanimous resolution of the strata corporation (but no authorization is required in relation to a lease or licence over the whole of a unit).

Body corporate may act as officer, etc.

25. Section 44a of the principal Act is amended by inserting after subsection (2) the following subsections:

(2a) Subject to subsection (2b), the person appointed under subsection (2) must be a director, manager, secretary or other officer of the body corporate.

(2b) Subsection (2a) does not apply—

(a) if all of the units comprised in the relevant strata scheme consist of non-residential premises;

(b) if the body corporate is the South Australian Housing Trust;

or

(c) in any other case prescribed by regulation.

Proceedings for offences

26. Section 50 of the principal Act is amended by striking out from subsection (4) “the Court” and substituting “the court”.

Schedule 2

27. Schedule 2 to the principal Act is amended by striking out clause 2 and substituting the following clause:

Existing plans

2. (1) Subject to subclause (2), a plan deposited in the Lands Titles Registration Office by the Registrar-General in pursuance of the repealed strata title provisions will be taken to be a deposited plan under this Act.

(2) Subject to any amendment under this Act, the boundaries of a unit within a plan to which subclause (1) applies are not affected by the enactment of this Act.

Schedule 3

28. Schedule 3 to the principal Act is amended by inserting after “damage” in paragraph (a) of article 6 “or interfere with”.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor