

The

STRATA TITLE

"Two Step"

Things you **NEED**
to know about the
Strata Titles Act 1985



Do you own, or are you thinking of buying, a **duplex**, or **penthouse in a high rise building**, or a **shop at a local shopping centre**, or a **factory unit in a large group**, or an **office in a city tower**, or a **unit in a Retirement Village** or...

Do you lease one of these sorts of properties?

Do you know that all these places have something in common?

They're all subject to the *Strata Titles Act 1985*, because they're all registered as Strata Titles or Survey-Strata Titles at the Department of Land Information.

So What?

What's so special about having one of these sorts of title? Why should a purchaser or owner be interested? What has it got to do with a lessee?

Did you know that when you buy into a property governed by the Strata Titles Act, you become owner of your particular lot and you also become a partner with other people in ownership of common property within the strata scheme?

You may never meet some of the people who are your partners.

Once a property is registered under the Strata Titles Act there are restrictions applied to owners' wishes in respect of that property. Each owner has **rights** but each owner also has **responsibilities** that will be exercised in partnership with other owners.

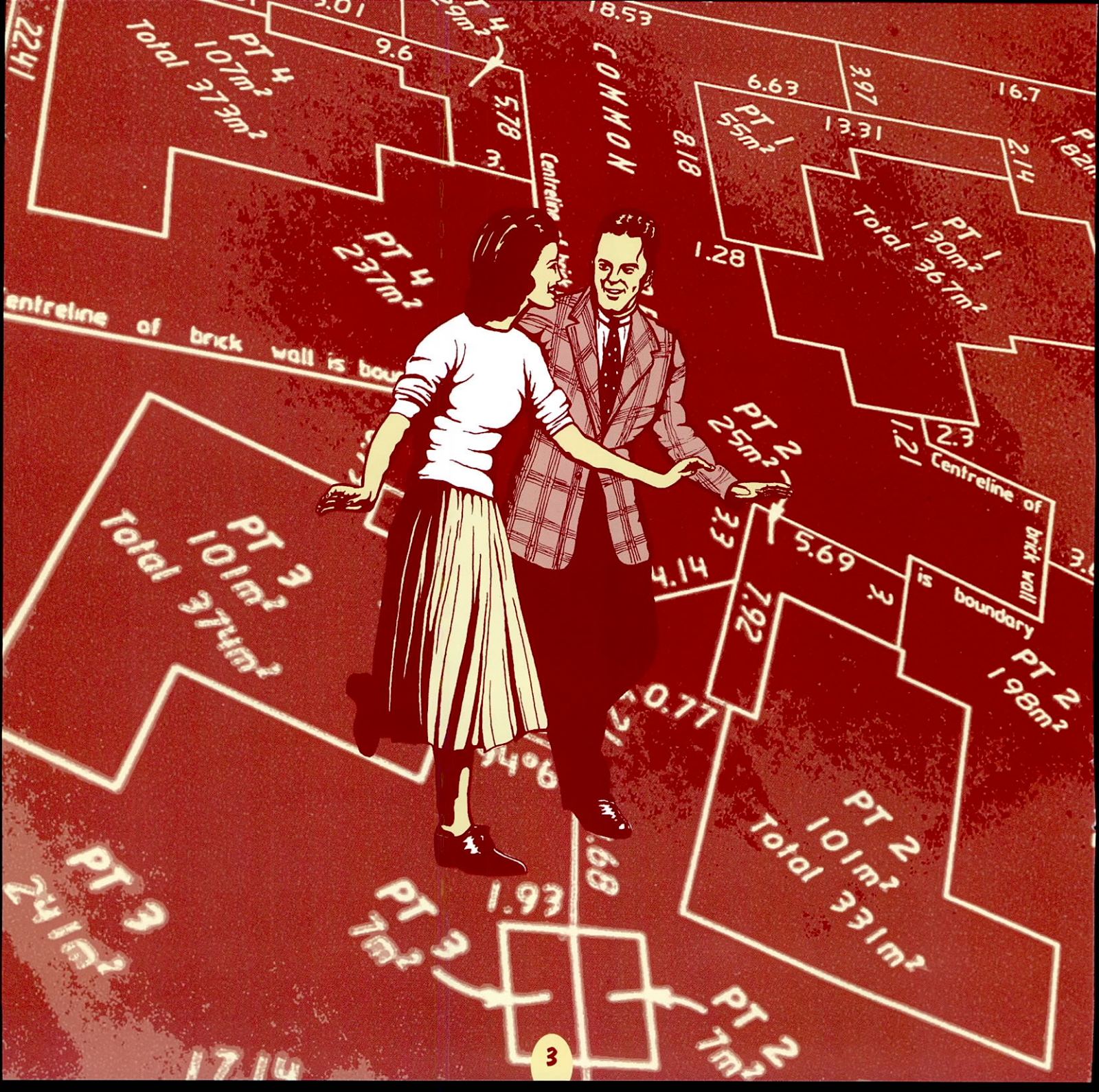
The rights and responsibilities of **lease holders** are outlined in their tenancy agreement and in the building's by-laws.

So: Welcome to the world of community living. To help get the most out of ownership of your **home or office or factory or investment property**, this booklet sets out some frequently asked questions and some generalised answers to those questions. It also provides you with a handy set of references to the Strata Titles Act. You will also find information about other related reading material and a list of organisations to which you can turn for advice.



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1. WHAT STRATA INFORMATION CAN I LOCATE BEFORE I PURCHASE?

Strata company records can be examined with the authority of the vendor (a fee may be payable). These records should indicate the financial position of the strata company. By viewing the company minute book the purchaser may gain an overview of the strata company history and plans for the future. The strata company secretary or manager has these records. Strata plan details are available from the vendor. (Refer to Strata Titles Act 1985, Section 43)

2. WHAT IS A STRATA PLAN?

A strata plan is created when a property is divided into lots and any common property. There can be any number of lots. Each lot can be composed of more than one part (called part lots) and each lot can have a different owner. You can obtain from the State Government Department of Land Information a copy of the Certificate of Title which relates to the lot you are interested in and you should also obtain from the same Department a copy of the Strata Plan of which the lot forms a part. If you are intending to buy a lot then the real estate agent/seller of the lot should provide you with a copy of both of these documents as part of their disclosure statement. (Refer to Strata Titles Act 1985, Section 4)

3. WHAT DO I OWN?

You own your lot (that may comprise several part lots) together with a share of the undivided common property. Your share of the common property is in proportion to your unit entitlement. When you purchase a lot it is required that the person selling the property makes the strata plan available to you and highlights the area(s) which you have purchased. If you have difficulty understanding the strata plan and paperwork given to you, seek advice from an expert. (At the back of this publication there are suggestions about sources for such advice.) (Refer to Strata Titles Act 1985, Section 4)

4. WHAT DOES "UNIT ENTITLEMENT" MEAN?

Your unit entitlement is recorded on the strata plan and it signifies your proportional entitlement and obligation within the whole scheme. It governs your proportional obligation to pay levies and your proportional vote in a poll. (See topic 16). The unit entitlement is a whole number (i.e. it is not shown as a decimal or fraction) and is determined by the licensed valuer's certificate that accompanies the strata plan at the time of lodgement for registration. It is possible to vary the schedule of unit entitlements for a strata scheme, providing firstly that there is a resolution by the strata company without dissent from any owner, under Section 15 of the Strata Titles Act 1985.

(Refer to Strata Titles Act 1985, Sections 3 (1) and 14 to 16)



5. WHERE ARE THE BOUNDARIES TO MY LOT?

Lot owners often have difficulty establishing where the boundaries to their lots are. You need to refer to notations on the strata plan and definitions in the Strata Titles Act to establish the boundaries of each lot or part lot. It is possible that your boundaries are the inside surface of the boundary walls, ceiling and floor of your lot. You may need professional help to identify the exact boundaries of your lot.

(Refer to Strata Titles Act 1985, Section 3)

6. WHAT IS "COMMON PROPERTY"?

Common property comprises all those parts of the land and building in your strata scheme that are not included in any lot. Some strata schemes do not have any common property. Common property is owned by all owners. Common property is at the root of the statement that persons buying into strata titled properties are buying into a **community**. Common property is managed by the strata company. Each owner has responsibility for the common property. Each owner will share in paying the cost of the upkeep of the common property. Gardens, swimming pools, parking areas, corridors, foyers, elevators, external walls are all usually part of the common property of a strata company. No individual owner may change the common property without the approval of the strata company (For more about the Strata Company, see topic 13)

(Refer to Strata Titles Act 1985, Sections 3)

7. CAN I KEEP PETS?

It is safest to assume that you **may not** keep a pet. The by-laws to the Act state that a pet shall not be kept if the pet owner is given notice by the strata company not to keep one. Seek advice from the Chairman of the Strata Council.

(Refer to Strata Titles Act 1985, Sections 91, 92 and Schedule 2, Item 12)

8. CAN I INSTALL TIMBER OR CERAMIC FLOORS?

First of all establish that the floor is not part of the common property (see topics 5 and 6). If it is not common property, then ask yourself some questions:

...Are you on the ground floor, or is your property detached from all others in the complex? If the answer to either or both of these questions is **yes**, then you can treat your floors in any way you choose.

...Is your floor someone else's ceiling? If this is the case, then kitchen and wet areas can have hard floors, but flooring in living areas and passages must not create a sound nuisance for other occupants. If you ignore this rule then you may be told to remove or cover your floor. Be aware that if you buy a property with inappropriate flooring, you may have to deal with the consequences!

(Refer to Strata Titles Act 1985 Schedule 2 Item 10)





9. CAN I CHANGE ANYTHING WITHIN MY LOT?

As a member of a community you are **required** to comply with rules of the strata company. As long as any changes you wish to make do not impact on the structural integrity of the building **or** its infrastructure **or** affect the common property **or** break any of the by-laws, then you can proceed. In most cases, because you share a building with other people, common sense indicates that you should advise the strata company if you are intending to undertake renovations.

NOTE: If your renovation requires local government approval, then you **must** first obtain strata company approval. (Refer to *Strata Titles Act 1985 Schedule 2, Items 13 and 14*)

10. CAN I CHANGE THE OUTSIDE OF MY LOT OR OF THE BUILDING?

Owners of strata lots are **not** permitted to carry out any works outside their lot without the approval of the strata company. (Refer to *Strata Titles Act 1985 Sections 7, 7A and 7B*)

11. THE BALCONY, COURTYARD, PARKING BAY ARE MINE, AREN'T THEY?

Have a look at topics 3 and 5 above. If the strata plan is marked to show that the boundaries of your lot include say a courtyard or parking bay as a part lot, then you own them. Alternatively, you **may** have exclusive use of those areas if a by-law has been registered to that effect. See the next section about "exclusive use".

12. WHAT DOES "EXCLUSIVE USE" MEAN?

A Strata company may decide that part of the common property should be allocated for the exclusive use of particular owners. Balconies and courtyards are good examples of bits of common property that are often allocated to owners for their exclusive use. This does not give the owner the right to change the balcony or courtyard. It just prevents another owner from demanding the right to share it and saying "it's really common property so I should have access to it". Parts of common property that are allocated for exclusive use to a particular owner must be recorded on the strata plan by way of formal notification of change of the by-laws. You should be aware that you may not have exclusive use of the parking bay that you happen to use. Note that an area marked "for the use of" does not mean the same as "for the exclusive use of." (See topics 3, 4 and 11.) (Refer to *Strata Titles Act 1985 Schedule 3, Items 13, 13A and 13B*)

13. WHAT IS A STRATA COMPANY AND HOW DO I FIT IN?

A strata company is created upon the registration of a strata plan at the Department of Land Information. A strata company is made up of all the owners of the lots comprising the strata plan (also called the strata scheme). Each owner is a shareholder in the company.

(Refer to *Strata Titles Act 1985 Section 32.*)

14. WHAT IS THE STRATA COMPANY'S NAME?

Upon registration of the strata plan, the original owner of all the lots gives the strata company a name. This name is registered on the strata plan and can be changed if the owners agree at a general meeting. (Refer to Strata Titles Act 1985 Sections 32(1) & 41)

15. WHAT ARE THE STRATA COMPANY'S OBLIGATIONS?

The strata company's obligations are to manage the common property, if any exists, for the benefit of all owners and to hold such meetings as are required by the Act. The Strata Company is also required to enforce the by-laws. The duties and obligations of the strata company are carried out by the strata council (see topic 25.) (Refer to Strata Titles Act 1985 Section 35)

16. DO I HAVE TO GO TO STRATA COMPANY MEETINGS?

All owners have an investment in the strata company, and because financial matters are decided at these meetings, it is in their own best interests to attend and participate. If you are unable to attend a strata company meeting, you may appoint a proxy to attend, speak and vote on your behalf. (See topic 22) (Refer to Strata Titles Act 1985 Section 35)

17. WHAT RULES MUST BE FOLLOWED AT MEETINGS TO GET PROPER DECISIONS?

Meeting procedures are well documented in the Act and are usually to be found in Schedule 1 of the by-laws of the strata company. These by-laws must be followed in order to achieve legally binding resolutions at meetings.

(Refer to Strata Titles Act 1985 Section 35 and Schedule 1, 4 to 14)

18. WHO INTERPRETS THE STRATA TITLES ACT FOR THE COMPANY?

If the strata company is professionally managed, the strata manager may provide advice. If there is no professional manager, then other sources of advice may be needed (see topic 37.)

19. WHAT ABOUT BY-LAWS? DO THEY MATTER?

Yes. Each strata company has a set of by-laws registered when the strata plan comes into existence. These by-laws are to be found either as the standard by-laws in schedules to the Act or in the form of a management statement. By-laws should set out owners' duties and obligations, procedural matters for the management of the company and behavioural rules for owners, occupiers and visitors. By-laws can be changed by the strata company. Any changes to the by-laws are required to be registered on the strata plan. Lessees are subject to all by-laws.

(Refer to Strata Titles Act 1985 Schedules 1 and 2)

20. WHAT IS A MANAGEMENT STATEMENT?

A management statement is a set of by-laws that are registered at the same time as the strata plan. A management statement is usually registered if a developer wishes to use different by-laws to those in the Act. This happens when the developer does not believe that the standard by-laws are as specific to the development as the developer wishes.

(Refer to Strata Titles Act 1985 Schedule 2A)

21. CAN THERE BE "HOUSE RULES"?

Yes, but house rules have no force unless a by-law authorises their existence. Usually the purpose of house rules is to assist in the control and management of the common property for the benefit of all owners – e.g. they may impose requirements for such things as when tradespeople may carry out work at a lot, or where visitors may park or opening times for the swimming pool etc. Any house rule that is not registered as a by-law is unenforceable.

22. ARE THERE SPECIAL ARRANGEMENTS FOR SMALL STRATA SCHEMES?

Small schemes (2 – 5 lots) are exempt (2lots) or can opt out of (3-5 lots) from certain provisions of the Act, particularly in regard to administrative funds, annual general meetings and some other formalities. *(See topic 26).*

(Refer to Strata Titles Act 1985 Sections 36A and 36B)

23. WHO PROVIDES LEGAL CERTIFICATES ABOUT THE STRATA COMPANY?

The secretary of each strata company is obliged to provide a Section 43 certificate upon the request of any owner. In professionally managed schemes, this is usually supplied by the strata company manager.

(Refer to Strata Titles Act 1985 Section 43)

24. WHAT IS A SECTION 43 CERTIFICATE?

This certificate provides information about strata company levies, any arrears outstanding and insurance details. A fee may be charged for the preparation of this certificate.

(Refer to Strata Titles Act 1985 Section 43)





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25. WHAT IS THE STRATA COUNCIL AND WHAT DOES IT DO?

The strata council is regarded as the "Board of Directors" of the strata company. Councillors are elected at general meetings. Strata companies have a range of duties and discretionary powers which are there to protect and promote the interests of all owners. An active council is the best way of ensuring that those duties are performed and those powers handled correctly. Any owner can be a councillor. The size of a council may be from 3-7 persons. Meetings are held as and when required and as long as a quorum is achieved those present can exercise all Council functions.

(Refer to Strata Titles Act 1985 Sections 44 to 48)

26. DO I HAVE TO CONTRIBUTE MONEY TO THE STRATA COMPANY?

Yes. A strata company is obliged to establish a fund for administrative expenses that, in the opinion of the company, is sufficient for the control and management of the common property and for the payment of insurance premiums and the discharge of any other obligations of the strata company. You are obliged to contribute to that fund by payment of a regular levy, usually quarterly.

You may also be obliged to contribute further money or pay another (special) levy if the strata company decides to establish a reserve fund for the purpose of accumulating funds to meet contingent expenses, other than those of a routine nature, and other major expenses of the strata company likely to arise in the future (e.g. infrequent repairs such as a roof replacement or renewing bitumen in parking lots or driveways).

NOTE: If you are an owner in a two lot scheme (e.g. one half of a duplex building), the strata company is not obliged to establish any funds for administrative expenses. *(See topic 22)*
(Refer to Strata Titles Act 1985 Section 36)

27. WHO DECIDES HOW MUCH I HAVE TO CONTRIBUTE?

The owners at general meetings collectively make decisions on funding.
(Refer to Strata Titles Act 1985 Section 36)

28. ARE STRATA COMPANY FUNDS AUDITED?

There is no requirement that strata company funds be audited. However, the strata company can have its funds audited if it so decides.
(Refer to Strata Titles Act 1985 Schedule 1 Item 10)



29. WHAT ARE MY RESPONSIBILITIES FOR BUILDING MAINTENANCE?

You are obliged to repair and maintain your lot and keep it in a good state of repair and carry out all work that may be ordered by any competent public authority or local government to be done in respect of your particular lot. Maintenance of the common property, if any, is the responsibility of the strata company and should be arranged by the strata council and paid for from levies collected by the strata company. You may be required to maintain common property on which you have the exclusive use. (See topic 26). (Refer to Strata Titles Act 1985 Schedule 1 Item 1)

30. WHAT ABOUT FENCES?

In single tier schemes fences are the responsibility of the parties that own the property on each side of the fence unless a by-law indicates differently. It might be lot owner/lot owner or lot owner/strata company or lot owner/local government or lot owner/owner of a different property. In a multi-tiered scheme the strata company is responsible for the fences with the owner of the adjoining land outside the scheme. (Refer to Dividing Fences Act 1961) (Refer to Strata Titles Act 1985 Sections 123, 123A, 123B and 123C)

31. WHAT ABOUT INSURANCE? IS MY LOT COVERED?

The basic principle of insurance in strata schemes is to provide for joint insurance of common property, to ensure that owners are adequately covered against loss or damage arising from claims against the strata company that arise from incidents occurring in or on common property. The responsibility for insurance varies depending on the type of strata scheme. Insurance of personal property is the responsibility of the lot owner. (Refer to Strata Titles Act 1985 Sections 53 to 59)

32. WHO PAYS LOCAL GOVERNMENT CHARGES, ELECTRICITY, GAS AND WATER?

Lot owners pay their own local government rates. They also pay electricity and gas charges based on individual meters as well as water, sewerage and drainage rates. Water consumption is a different matter. It may be paid by the strata company for the whole property on the basis of the reading of a single meter. Sometimes there are individual meters in which case lot owners may pay their own water consumption charges. This matter can be clarified for you by the real estate agent handling your purchase. (Refer to Strata Titles Act 1985 Section 66 and Schedule 2A, Item 10)



33. WHO HANDLES EMERGENCIES?

Many strata companies have documented emergency procedures in place and occupants should be well informed of these. There is no requirement in the Strata Titles Act 1985 for strata companies to have emergency procedures in place but it is good practice for them to do so.

34. WHO SORTS OUT ARGUMENTS BETWEEN OWNERS?

Disagreements between owners are best handled internally perhaps with the help of an independent member of the strata council or some other third party agreed upon by the owners in dispute. If direct discussion and negotiation doesn't work then the aggrieved party has the right to take the concern to the State Administrative Tribunal (SAT). The Tribunal gathers information from both parties and brings down a decision. (Refer to Strata Titles Act 1985 Sections 77, 77B, 78, 79 and Part VI, Division 3)

35. WHAT IS A SURVEY-STRATA SCHEME?

A survey-strata scheme is a strata scheme where the lots and common property are shown as a survey plan, giving distances and angles of each lot boundary. No buildings are shown on the survey-strata plan. The by-laws apply to survey-strata schemes in the same way as they do to all strata schemes. (Refer to Strata Titles Act 1958 Sections 5A, 5B, 5D, 6 and 7A)

36. WHAT ABOUT RETIREMENT VILLAGES?

There are special arrangements for Retirement Villages. Useful information is available from the Department of Consumer and Employment Protection as well as in the Retirement Villages Act 1992. (See the Retirement Villages Act 1992 and topics 37 and 38.)

37. PERSONS/AGENCIES THAT CAN PROVIDE ADVICE

1. **Department of Land Information** – telephone enquiries 9273 7044. General information can be obtained from the Department of Land Information website at www.dli.wa.gov.au
2. **The Office of the State Administrative Tribunal**. General information can be obtained from the State Administrative Tribunal website at www.sat.justice.wa.gov.au (There is a database of State Administrative Tribunal and the Strata Title Referee Decisions on the State Administrative Tribunal website. The Strata Title Referee's function has been taken over by the State Administrative Tribunal).
3. **The Strata Titles Institute of Western Australia**. Website: www.stiwa.com.au
4. **The Real Estate Institute of Western Australia**. Website: www.reiwa.com.au
5. **The Department for Consumer and Employment Protection**. The Consumer Protection advice phone line is 1300 30 40 54. Their website is www.docep.wa.gov.au

38. FURTHER READING

1. **The Strata Titles Act 1985.** The Act can be viewed and downloaded for no charge from www.slp.wa.gov.au
2. **Understanding Strata Titles – a Guide to the Management and Administration of Strata Companies in WA** - a book by John Angus that is available at bookshops or your local library.
3. **Code of Fair Practice for Retirement Villages.** The web site at the Department for Consumer and Employment Protection is useful. www.docep.wa.gov.au
4. The Retirement Villages Act 1992.
5. **So You're Thinking about Moving into a Retirement Village.** This booklet is available from Consumer Protection. Phone 1300 30 40 54
6. **A Guide to Strata Titles** – available from the Department of Land Information.

DISCLAIMER

The information provided in this publication is provided voluntarily as a public service. The information made available is provided in good faith and is derived from sources believed to be accurate at the time of publication. However, the information is of a general nature and is provided solely on the basis that readers will be responsible for making their own assessment of the matters discussed herein and they are advised to seek independent advice (including legal advice) on all representations, statements and information as they may or may not relate to their own circumstances.

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