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*an introduction to the*

**COMMUNITY TITLES  
LEGISLATION**

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## **16. Plan Information**

Plans of community subdivisions will essentially be land subdivisions based on survey information and will therefore require council approval under the Local Government Act 1919 and the Environmental Planning and Assessment Act 1979.

Plans lodged under the legislation will be a special class of deposited plan, clearly distinguishable from other deposited plans by a distinctive notation and numbering.

In relation to survey requirements, as the status of the land comprising the road system within a community will generally be common property, the usual requirement for the placement of permanent marks within roads may not apply. As this could result in there being no internal marking of a substantial and permanent nature, the legislation requires that the internal survey marking system will incorporate permanent marks placed under Regulation 12 of the Survey Practice Regulations 1933 of the type specified in the Survey Co-ordination Act 1949 or otherwise approved by the Surveyor General and will be in positions determined with the concurrence of the Surveyor General.

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## COMMUNITY TITLES LEGISLATION

The community titles legislation was designed to fill the vacuum between conventional subdivision and strata subdivision which were previously the only methods of subdividing land in New South Wales. The effect of the legislation is to enable common property to be created within conventional subdivisions.

In addition to extending the concept of the shared use of common facilities to subdivisions which might consist of no more than vacant blocks of land, the legislation also provides for the development of planned communities of any type where the use of some of the land is shared. It enables development of non-stage schemes or of schemes comprising several stages over an unlimited time frame, and will permit projects ranging in size from small groups of houses clustered around common open space to large communities with shared roadways and facilities based on commercial, sporting, recreational or agricultural features.

As is the case with the strata legislation, common areas within a development will be owned and managed by a body corporate (known as an association) comprising all lot owners. The association will own the common areas, referred to in the Act as association property, as agent for its members in shares proportional to the members' unit entitlement, based on site values, which will determine voting rights and contributions to maintenance levies.

However, as a means of overcoming the limiting effect of the strata legislation, which does not facilitate the promotion of theme developments or mixed developments containing separate areas for residential, commercial, recreation and industrial uses, the legislation also provides the machinery for flexibility in the management and administrative arrangements operating within a scheme. This necessary degree of flexibility will be achieved by providing for a multi-tiered management concept and by permitting a management statement to be prepared for each scheme, setting out the rules and procedures relating to the administration of, and participation in, the scheme.

Community style subdivision can be used as a legislative framework for medium density housing and also facilitates the construction of major resort developments in New South Wales.

The legislation contains a number of significant features to permit its application to a wide variety of developments and to provide sufficient flexibility to maximise its use by developers. The features are as follows:

### 13. Replacement Sheets and Additional Sheets

It is envisaged that during the course of development of a scheme many changes to the plans may be necessary, either by way of boundary adjustment, subdivision, consolidation or the like. To further promote the flexibility which is the key feature of the legislation, the Acts provide for such changes to be made by replacement sheets or additional sheets being added to the plan. Replacement and additional sheets will be required to be signed by either the local council, the association or both to ensure that the interests of lot owners are protected. However, by allowing changes to be made by way of replacement or additional sheet, time and money will be saved.

The replacement sheets will be given the same deposited plan number as is applicable to the scheme and the amendment will be noted by the Land Titles Office on the front sheet of the scheme plan. Superseded sheets will be available for inspection by way of Historical Search.

### 14. Restricted Common Property

Another key feature of the legislation is the adoption of the "restricted common property" concept. Restricted common property within a scheme may be determined at the outset of the development by means of a suitable inclusion in the management statement, or subsequently by means of a special resolution by the association.

Restricted common property will be managed and maintained by the association in accordance with the management statement which must specify the nature and extent of the restrictions, the parties within the community benefiting and details relating to matters such as access, maintenance or hours of use.

### 15. Disputes

In any such group-based schemes with shared facilities and resources there are likely to be disputes, both between proprietors individually and with the body corporate. The legislation makes provision for disputes to be dealt with by a Community Schemes Commissioner and Community Schemes Boards in a manner similar to the resolution of disputes in strata schemes by the Strata Titles Commissioner and Strata Titles Boards. An appeal may be taken from the Community Schemes Board to the Supreme Court on a question of law.

If a developer breaches a development contract an association or a member of an association may commence an action in the Land and Environment Court. Similarly, if a developer is unable to obtain an association's approval to an amendment to a development contract the developer may apply to the Land and Environment Court for an order approving the amendment.

## 11. Private Road Networks

The legislation enables private roads to be established within a scheme by allowing part of the association property to be deemed as open access ways and private access ways. Neither of the access ways are defined as public street, public place or road. Certain Acts, however, such as the Motor Accidents Act 1988, the Traffic Act 1909 and the Summary Offences Act 1988 apply to an open access way as if it were a public street. Only the Motor Accidents Act 1988 applies to private access ways. The legislation regulates such matters as the entry of certain authorised people, including members of the Police Force or employees of the Road and Traffic Authority, onto an access way.

The use of the private access way network will be regulated by appropriate laws set out in the management statement. Such provisions could facilitate the introduction of security measures in appropriate developments.

The standard for construction of open and private access ways will be determined by the local council and will depend on the use to which such access ways are to be put and the locality of the relevant scheme.

## 12. Adjustment of Boundaries

The legislation also recognises that in a staged development there may be instances where some adjustment is required of the boundaries of development lots with community property shown on the original community plan. It is envisaged that during the course of a development, especially a large scheme planned for development over a period of several years, minor changes of this nature may become necessary due, for example, to engineering factors. It is proposed that these changes should be effected simply by registration of a boundary adjustment plan which would correct the boundaries of the development lots and community property or precinct lots and precinct property without any further assurance.

This simplified procedure is specifically designed to enable changes to be made without the expense associated with usual conveyancing procedures yet with proper protection of the interests of existing associations whose consent would be endorsed on the plan. This procedure would also obviate the need for the issue of replacement certificates of title to reflect the adjusted boundaries, as it is proposed that the boundary adjustment plan would simply supersede the community plan as originally drawn by assuming the same plan number and the same lot numbering sequence as the original plan.

## 1. Staged Development of Schemes

The Community Land Development Act 1989 permits community schemes to be completed in stages. This has several advantages:

- ◆ initial development costs will be lower because one stage can be used to finance the construction of later stages;
- ◆ higher density may be achieved;
- ◆ with an amalgamated site, greater flexibility of design will permit the more appropriate siting of buildings in sympathy with each other and with the environment. The legislation will thus promote the more effective use of land than existing forms of subdivision;
- ◆ purchase prices should be lower if the initial development costs are reduced.

Because staged projects may be completed over a period of several years, developers have been given flexibility to alter schemes to adapt to changing social and economic circumstances. The legislation does not require a developer to provide full details of a completed scheme at the outset of a community development. There is provision for a developer to make optional disclosures in the form of a development contract lodged with the community plan. The development contract is discussed in paragraph 7 below.

It is possible for a developer to amend a scheme prior to completion and this is referred to in greater detail in paragraph 6 below headed "flexibility of development".

## 2. Non-stage Development

The legislation permits developers to undertake a non-staged subdivision by registration of a neighbourhood plan. Upon registration of the plan, a body corporate known as a neighbourhood association will be created.

A developer undertaking a neighbourhood scheme will be required to disclose at the outset whether facilities are to be constructed on the association property (known as neighbourhood property). The disclosure will be contained in a development contract which will accompany the neighbourhood plan when lodged for registration and which will be binding on the developer and subsequent purchasers.

## 3. Management Structures

The multi-tier management concept is regarded as a key feature of the legislation. Experience has shown that the management and related provisions of the strata legislation are inadequate to cope with the management of large scale developments. The concept is designed to overcome these deficiencies by enabling promoters to develop large scale schemes in the knowledge that there is adequate statutory support to ensure that the schemes will be effectively managed in the future.

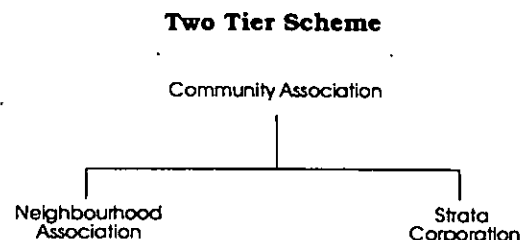
The multi-tier management concept applies only to schemes which are developed in stages. Accordingly, only one level of management will be permitted in a non-stage scheme. It is left to the discretion of the developer to determine whether a scheme should be developed in stages and, if so, the resulting management structure which should apply.

A two tier or the maximum three tier management structure will apply where a stage development is undertaken. The first plan to be lodged for registration in a stage scheme will be a community plan, and upon registration of the plan a community association will come into existence. It will be entrusted with the first tier of management and would exercise "umbrella" control over matters concerning the community as a whole.

For example, the community association may be concerned with maintenance of the overall community theme, architectural guidelines, security, road network and landscaping.

In a proposed two tier managerial structure, the second tier of management is created by registration of a neighbourhood plan subdividing a community development lot in a community plan into lots for separate use or disposition known as neighbourhood lots. The neighbourhood scheme will be administered by a neighbourhood association which will automatically become a member of the community association. Alternatively, development lots may be subdivided by strata plans, in which case the strata body corporate created upon registration of the strata plan (known as a strata corporation) would become a member of the community association and would constitute the second level of management.

The resulting levels of management would be as follows:



In certain instances a developer may wish to introduce a third tier of management into a scheme. It is not envisaged that a three tier scheme will be necessary often however it is available as an option and might be used in a particularly large scheme or where a variety of uses are mixed within the one development.

Where a developer wishes to create three levels of management, this may be done by interposing a precinct association between the community association and any neighbourhood association or strata corporation as follows:

## 9. Conversion of Existing Schemes to Community Title

The legislation recognises that there are developments presently being undertaken which would be more appropriately completed under the community titles legislation. Schedule 12 contains transitional provisions which permit where appropriate, and where participants in the scheme consent:

- ◆ the conversion of land subdivisions to neighbourhood schemes where, for example, one lot is owned jointly by the proprietors of all the remaining lots and is, in effect, the equivalent of "common property"
- ◆ the conversion of existing strata developments to community schemes
- ◆ the conversion to neighbourhood schemes of what are essentially land subdivisions effected by strata plans
- ◆ the formation of a community scheme by adjoining strata schemes which retain their separate identity.

## 10. Flexibility of Creation of Easements for Services

Another measure considered essential in a community is provision for a system of reciprocal statutory easements for services over all lots and association property within a scheme. In conventional subdivisions, services are normally supplied through the public road grid. However, under the community titles legislation, services may be supplied through the land within the community, none of which may be public land. The extent of the easements will be limited to the physical service lines and access for maintenance or similar purposes will be by way of ancillary rights.

The easements will be created by the statute rather than by instrument. The location of the pipes and cables affected by the easements will be shown on a working plan forming part of the management statement lodged at the Land Titles Office. A statutory easement will not automatically be created over all service lines but will only be applicable where the working plan has been included as part of the management statement.

If a developer wishes to take advantage of the statutory easement provisions but service lines have not been laid at the time of lodgment of the plans, a diagram can be included into the management statement showing the proposed position of the services. The easement will then be created upon the service lines being installed. Provision is made for the working plan to be amended if the position of the service lines does not correspond to the registered diagram.

The legislation prescribes a number of matters which must be addressed in a development contract. However this does not prevent other matters being included. The contract must include:

- ◆ the description of the land to be developed,
- ◆ the amenities to be provided,
- ◆ the basic architectural design and landscaping,
- ◆ any theme upon which the scheme is based,
- ◆ a simple pictorial description in the form of a concept plan depicting the anticipated appearance of the completed scheme.
- ◆ particulars regarding the building zone, hours of work, means of access and rights of storage of building equipment. By entering into a contract which includes matters essential to construction, the developer will be ensured of sufficient power to complete the stage.

The development contract may be varied but only with the consent of all lot owners within the particular stage and with council approval.

### 8. Maintenance of Existing Functions of Local Councils

The above discussion highlights the fact that the zoning and planning legislation and its administration by local councils have been largely unaffected by the new laws.

Plans of community schemes will essentially be land subdivisions, and will require council approval in the manner already provided in the Local Government Act 1919 and the Environmental Planning and Assessment Act 1979.

Councils in most cases where a staged scheme is being undertaken will continue to prepare a development control plan setting out in some detail the contents of the scheme.

Developments must either fit existing zoning requirements or an application for rezoning will be required. Changes to schemes involving amendment of the local environmental plan, development control plan or development consent will also require the approval of council.

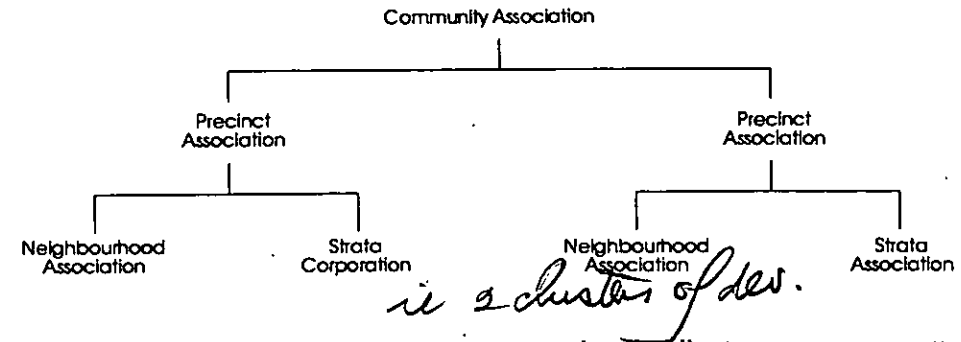
The alternatives available to a developer proposing to develop a scheme in stages are:

- ◆ to obtain council approval for the whole scheme at the outset; or
- ◆ to obtain council approval separately for each stage.

However, should these options prove inadequate, consideration will be given to amending the Environmental Planning and Assessment Act to expand the concept of the staged approval process. This would permit councils to approve the whole project in principle at the outset and to separately approve detailed development applications for each stage of the scheme.

Prospective purchasers will continue to have the opportunity to obtain details of any local environmental plan, development control plan or development consent affecting the scheme from the local council.

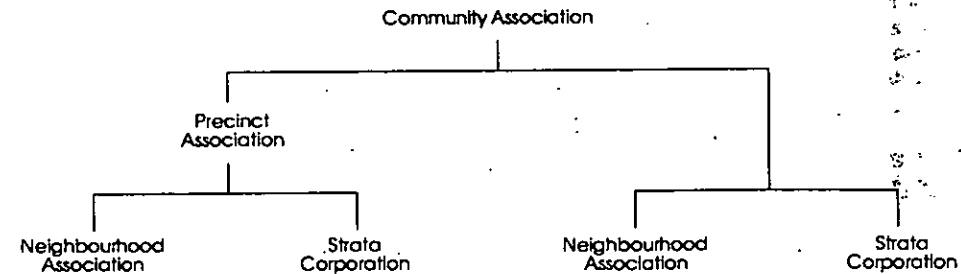
### Three Tier Scheme



Thus the three tier management structure is created in the following way: a community plan divides land into development lots and community property, giving rise to a community association. A precinct plan is then prepared, subdividing one of the development lots into precinct lots and precinct property. Upon registration of the precinct plan, a precinct association comes into being. A precinct lot is then subdivided by a neighbourhood plan or a strata plan, giving rise to a neighbourhood association or strata corporation, the third tier of management.

It is not necessary in a three tier scheme that each community development lot be subdivided by a precinct plan. The management structure could, for example, be as follows:

### Three Tier Scheme



### 4. Management Statement

Because the common areas are owned and managed by proprietors of lots in a community scheme, the legislation gives statutory recognition to the need for adoption of management rules and conditions that are especially relevant to the particular development concerned. The legislation recognises that the management provisions essential to the effective administration of, for example, a retirement scheme, would be substantially different from those applying within a rural community or a scheme established for special sporting or recreational activities.

All management and related details applying within a scheme will be set out in a management statement which will be binding on all participants in the scheme. The management statement will accompany the relevant plan lodged for registration at the Land Titles Office and will therefore be on public record for inspection by any prospective purchaser. The statement will include the particular rules associated with participation in the scheme and the by-laws attaching to related common property.

While Schedules 3 and 4 of the Community Land Development Act 1989 list a number of issues which must be accommodated in the rules or by-laws attaching to community schemes, the terms in which those particular issues and other relevant matters are addressed in the management statement will be left to the discretion of the developer. The Schedules also include a number of optional matters that a developer may wish to refer to in the management statement.

The use of a management statement provides sufficient flexibility to adapt management requirements to the type of development undertaken. For example, where the scheme includes a private road network which is not deemed to be public road (see later in paragraph 11), the community association may establish appropriate rules for the use of such roads. Where the scheme includes private waterways, their use may similarly be regulated in the management statement.

The legislation also recognises that circumstances may arise where it is necessary or desirable to vary the terms of a management statement. Protective measures have been included to ensure that in such cases a variation may not be effected without participants taking part in the decision-making process.

## 5. Managing Agents

The Community Land Management Act 1989 confers duties and powers upon an association with regard to its management. The Act requires an association to do such things as keeping any building or structure erected on association property insured and maintaining a roll listing details of all proprietors within a scheme. An association is given power to enter into an agreement with any proprietor for the provision of services to a particular lot and to levy contributions upon its members to meet payment of its liabilities.

An association is authorised to appoint a managing agent to whom it may delegate certain functions. An amendment has been made to the Auctioneers and Agents Act 1941 to include reference to community managing agents. A person holding a strata managing agent's licence is qualified for appointment as a community management agent. Community managing agents are regulated similarly to strata managing agents.

## 6. Flexibility of Development

In a staged scheme, it is possible that the development may take several years to complete. During that time, events beyond the control of the developer may affect the viability of the project and may necessitate changes to the scheme. Alternatively, market forces might compel the developer to alter the scheme before completion.

As mentioned earlier flexibility is provided by not requiring the developer at the outset to disclose in a binding form a description of the whole scheme. Thus, later stages of a development project may be amended without the need for approval from residents in the scheme, provided the developer:

- ◆ complies with existing planning laws governing the amendment of any local environmental plan, development control plan or development consent; and
- ◆ obtains the approval of the council.

However, developers who wish to make a full disclosure of all particulars of a project at the commencement of the scheme will be permitted to voluntarily furnish a development contract for the community development binding on the developer and enforceable by all participants in the scheme.

Where at some point during construction of the scheme a developer decides to depart from the development approval granted by council, it may be necessary to apply to the council for a variation of the development consent (or, in some cases, the development control plan or the local environmental plan). The council will publicly advertise applications to amend a development control plan or local environmental plan.

## 7. Development Contract

To balance the need for flexibility with the need to provide a mechanism for disclosures to be made in respect of a scheme, the legislation introduces the concept of a development contract which may be registered along with community plans, precinct plans or neighbourhood plans.

A development contract is optional during the community and precinct stages but must be lodged with a neighbourhood plan, regardless of whether the neighbourhood plan is a non-stage or part of a staged development. Although a development contract is optional, once given it will be deemed to be a binding agreement between the developer and subsequent lot owners within the stage described in the contract.