

House of Assembly—No 118

As laid on the table and read a first time, 3 March 2021

South Australia

**Statutes Amendment (Community and Strata
Titles) Bill 2021**

A BILL FOR

An Act to amend the *Community Titles Act 1996* and the *Strata Titles Act 1988*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Community and Strata Titles) Act 2021*.

2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Community Titles Act 1996*

4—Amendment of section 12—First by-laws

Section 12(1)—delete "may be" and substitute:
are

5—Amendment of section 32—Persons whose consents are required

Section 32—after subsection (3) insert:

- 10 (3a) The Registrar-General may dispense with the consent of a person referred to in subsection (1)(d) or in subsection (2)(a)(iii) or (b)(iii) if the Registrar-General is satisfied that—
- 15 (a) the amendment to the scheme description is to correct a clear error; or
 - (b) the amendment is a minor amendment of a kind prescribed by the regulations.

6—Amendment of section 34—By-laws

Section 34(3)—after paragraph (c) insert:

- 20 (caa) regulate or prohibit smoking in the common property or the drifting of tobacco smoke from one lot to another or to the common property;
or

7—Amendment of section 39—Variation of by-laws

Section 39(2)—delete "14 days" and substitute:
21 days

8—Amendment of section 73—Execution of documents

(1) Section 73(1)—delete subsection (1) and substitute:

- (1) A community corporation may have a common seal bearing its name for the purpose of executing documents.

(2) Section 73—after subsection (3) insert:

- 30 (4) A community corporation may execute a document without using a common seal if the document is signed by—
- (a) any 2 of the presiding officer, treasurer and secretary of the corporation; or
 - (b) where all 3 of those offices are held by 1 person—by that person.
- 35 (5) A contract may be entered into by an officer or agent authorised by the corporation to enter into the contract on its behalf.

9—Amendment of section 78B—Body corporate managers

(1) Section 78B(8)—delete subsection (8) and substitute:

(8) The body corporate manager must, at least 5 clear days before the date of the meeting at which the corporation is to consider whether or not to enter into the contract—

(a) serve on each member of the corporation a pamphlet that sets out the role of the body corporate manager and the rights of the community corporation and its members, including any matters prescribed by regulation; and

(b) ensure that a copy of the contract, and any other prescribed information or document of a kind prescribed by regulation, is available for inspection by members of the corporation in a manner specified in the pamphlet served on members under paragraph (a).

(2) Section 78B—after subsection (11) insert:

(11a) For the avoidance of doubt, a body corporate manager's remuneration in respect of work performed in exercising delegated functions or powers is taken to include any fee or commission payable by the corporation in respect of the performance of the delegated functions or powers.

10—Amendment of section 78D—Offences

Section 78D—after subsection (4) insert:

(4a) A delegate of a community corporation must not charge a fee or commission to the corporation in respect of the performance of delegated functions or powers unless the delegate has disclosed the amount of the fee or commission, or the basis on which it will be calculated—

(a) in the case of a body corporate manager—in the contract with the corporation in accordance with section 78B; or

(b) in any other case—in writing to the corporation before performing the functions or powers.

Maximum penalty: \$500.

Example—

For example, if a body corporate manager wants to charge a fee or commission to the community corporation for work undertaken for the corporation in arranging for the performance of building work, or for the purchase of insurance, but the amount of that fee or commission, or the basis for calculating it, was not disclosed in the contract under section 78B(3)(e), the body corporate manager cannot charge the fee or commission. See also section 78B(2).

11—Amendment of section 80—Business at first statutory general meeting

(1) Section 80(1)(i)—delete paragraph (i)

(2) Section 80(2)(b)—delete paragraph (b) and substitute:

- (b) the manner in which the corporation will execute documents and, if the corporation is to have a common seal, custody of the corporation's common seal and the manner of its use;

5 **12—Amendment of section 83—Procedure at meetings**

Section 83(4), (5) and (6)—delete subsections (4), (5) and (6) and substitute:

- (4) Subject to subsection (6), no business may be transacted at a general meeting of the corporation unless a quorum is present at the time when the meeting proceeds to business.
- 10 (5) The quorum for the transaction of business at a general meeting is determined by dividing the number of persons who are entitled to attend the meeting and exercise the voting power in respect of a lot by 2, disregarding any fraction and adding 1.
- 15 (6) If a quorum is not present after 30 minutes has elapsed from the time appointed for a general meeting of the corporation, the persons entitled to vote who are present at the meeting are taken to constitute a quorum for the purposes of that meeting.

13—Amendment of section 104—Other insurance by community corporation

Section 104(2)—delete "ten million dollars" and substitute:

20 \$20 000 000

14—Amendment of section 113—Statement of expenditure etc

Section 113(1)(aa)—delete "(which must not exceed 5 years)"

15—Amendment of section 138—Audit

(1) Section 138(1)—delete subsection (1) and substitute:

- 25 (1) Subject to subsection (4), a community corporation must have the annual statement of accounts audited if—
 - (a) the aggregate of the contributions made or to be made by members of the corporation in respect of that year exceeds the prescribed amount; or
 - 30 (b) the community scheme consists of more than 100 lots.

(2) Section 138(4)—delete subsection (4) and substitute:

- (4) The annual statement of accounts of a community corporation in respect of a financial year need not be audited if—
 - (a) if all community lots are owned by the same person; or
 - 35 (b) the community corporation is exempted from the requirement by the regulations.

16—Amendment of section 139—Information to be provided by corporation

(1) Section 139(1)—after paragraph (b) insert:

(ba) provide a copy of the plan of community division; and

(bb) provide a copy of the most recent statement under section 113; and

5 (2) Section 139(3)—after "community corporation" insert:

, or a person acting on behalf of a community corporation,

17—Amendment of section 155—Service

Section 155—after "notice" wherever occurring insert:

or other document

Part 3—Amendment of *Strata Titles Act 1988*

18—Amendment of section 16—Amalgamation of adjacent sites

Section 16(2)(a)—delete "under the common seals of" and substitute:

executed by

19—Amendment of section 17—Cancellation

15 Section 17(2)—delete "under the seal of" and substitute:

executed by

20—Amendment of section 18—Name of strata corporation

Section 18(3)—delete subsection (3)

21—Substitution of section 24

20 Section 24—delete the section and substitute:

24—Execution of documents etc

(1) A strata corporation may have a common seal bearing its name for the purpose of executing documents.

25 (2) The seal may only be used in a manner directed by the corporation in general meeting or, if the corporation has not given such a direction, may only be used in the presence of any 2 of the presiding officer, treasurer and secretary of the corporation both of whom must sign the document to which the seal is affixed as witnesses.

30 (3) Where all 3 of those offices are held by 1 person, the presence of that person is sufficient for compliance with subsection (2).

(4) A strata corporation may execute a document without using a common seal if the document is signed by—

(a) any 2 of the presiding officer, treasurer and secretary of the corporation; or

35 (b) where all 3 of those offices are held by 1 person—by that person.

- (5) A contract may be entered into by an officer or agent authorised by the corporation to enter into the contract on its behalf.

22—Amendment of section 27B—Body corporate managers

- (1) Section 27B(8)—delete subsection (8) and substitute:

- 5 (8) The body corporate manager must, at least 5 clear days before the date of the meeting at which the corporation is to consider whether or not to enter into the contract—
- 10 (a) serve on a unit holder a pamphlet that sets out the role of the body corporate manager and the rights of the strata corporation and its unit holders, including any matters prescribed by regulation; and
- 15 (b) ensure that a copy of the contract, and any other prescribed information or document of a kind prescribed by regulation, is available for inspection by unit holders in a manner specified in the pamphlet served on unit holders under paragraph (a).

- (2) Section 27B—after subsection (11) insert:

- 20 (11a) For the avoidance of doubt, a body corporate manager's remuneration in respect of work performed in exercising delegated functions or powers is taken to include any fee or commission payable by the corporation in respect of the performance of the delegated functions or powers.

23—Amendment of section 27D—Offences

- Section 27D—after subsection (4) insert:

- 25 (4a) A delegate of a strata corporation must not charge a fee or commission to the corporation in respect of the performance of delegated functions or powers unless the delegate has disclosed the amount of the fee or commission, or the basis on which it will be calculated—
- 30 (a) in the case of a body corporate manager—in the contract with the corporation in accordance with section 27B; or
- (b) in any other case—in writing to the corporation before performing the functions or powers.

Maximum penalty: \$500.

35 **Example—**

40 For example, if a body corporate manager wants to charge a fee or commission to the strata corporation for work undertaken for the corporation in arranging for the performance of building work, or for the purchase of insurance, but the amount of that fee or commission or the basis for calculating it was not disclosed in the contract under section 27B(3)(e), the body corporate manager cannot charge the fee or commission. See also section 27B(2).

24—Amendment of section 31—Other insurance by strata corporation

Section 31(2)—delete "\$5 000 000" and substitute:

\$20 000 000

25—Amendment of section 33—Holding of general meetings

5 (1) Section 33(2)(a)—after "the" insert:

presiding officer, treasurer or

(2) Section 33(5), (6) and (7)—delete subsections (5), (6) and (7) and substitute:

10 (5) Subject to subsection (7), no business may be transacted at a general meeting of the corporation unless a quorum is present at the time when the meeting proceeds to business.

(6) The quorum for the transaction of business at a general meeting is determined by dividing the number of persons who are entitled to attend the meeting and exercise the voting power in respect of a unit by 2, disregarding any fraction and adding 1.

15 (7) If a quorum is not present after 30 minutes has elapsed from the time appointed for a general meeting of the corporation, the persons entitled to vote who are present at the meeting are taken to constitute a quorum for the purposes of that meeting.

26—Amendment of section 33A—Statement of expenditure etc

20 Section 33A(1)(a)—delete "(which must not exceed 5 years)"

27—Amendment of section 34—Voting at general meetings

(1) Section 34(3)(b)(ii)—delete "or, if there is no such agreement, by the unit holder whose name appears first on the certificate of title for the unit" and substitute:

but, if there is no such agreement, none of them is entitled to vote

25 (2) Section 34(7)—delete subsection (7) and substitute:

(7) A vote cannot be exercised in relation to a unit unless all amounts payable to the corporation in respect of the unit have been paid.

28—Amendment of section 41—Information to be furnished

(1) Section 41(1)—after paragraph (b) insert:

30 (ba) provide a copy of the strata plan; and

(bb) provide a copy of the most recent statement under section 33A; and

(2) Section 41(2a)—after "strata corporation" insert:

, or a person acting on behalf of a strata corporation,

29—Amendment of section 49—Service

Section 49(1)—delete subsection (1) and substitute:

- 5
- (1) A notice or other document to be served on a person under this Act may be served as follows:
- (a) by giving it to the person or an agent of the person;
- (b) by leaving it for the person with someone apparently over the age of 16 years at his or her place of residence or at any place at which he or she carries on business;
- 10 (c) by posting it to the person at his or her last known address;
- (d) if the person consents to receiving the notice or other document by email—by transmitting the notice or other document by email to the email address provided by the person for that purpose;
- 15 (e) where the person is the owner or occupier of a unit—by fixing the notice or other document in the manner prescribed by regulation in a prominent position on the unit.
- (1a) Where a notice or other document is to be served on the owner of a unit and the owner has died, the notice or other document may be served on the executor or administrator of the owner's estate or, where an executor or administrator has not been appointed, by fixing the notice or other document in the manner prescribed by regulation in a prominent position on the unit.
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- (1b) If there are 2 or more owners or occupiers of a unit, a notice or other document will be taken to have been served on all of them if it is served on any 1 of them.
- 25