

South Australia

Community Titles Regulations 2011

under the *Community Titles Act 1996*

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Community Titles Regulations 2011*.

2—Interpretation

- (1) In these regulations—
Act means the *Community Titles Act 1996*.
- (2) For the purposes of paragraph (b)(i) of the definition of ***special resolution*** in section 3(1) of the Act, the reasons for the proposed resolution is information that must be served in accordance with that paragraph.
- (3) For the purposes of paragraph (a) of the definition of ***unanimous resolution*** in section 3(1) of the Act, the reasons for the proposed resolution is information that must be served in accordance with that paragraph.

Part 2—Requirements relating to plans

4—Plans and maps to comply with guidelines

A plan or map lodged with the Registrar-General for the purposes of the Act must comply with any requirements specified in guidelines issued, from time to time, by the Registrar-General.

5—Lot entitlements (section 20(3) of Act)

The aggregate of the lot entitlements of all community lots defined on a plan of community divisions may be any whole number between 2 and 100 000 but must not be a number that exceeds 100 000.

6—Encroachments

For the purposes of section 27(1)(b)(ii) of the Act—

- (a) associated structures are all structures (including a roof) that are supported by footings that protrude beyond the boundaries of the community parcel and include all things attached to those structures;
- (b) the prescribed distance for the protrusion of footings and associated structures is 200 millimetres or such other distance as the Registrar-General may determine in a particular case.

7—Minor amendment of plan

The minor amendment of the delineation of lots or common property referred to in section 54(3) of the Act is a change in the position of the boundary of a lot or the common property by 200 millimetres or less.

8—Submission of outer boundary survey plan

- (1) Subject to subregulation (2), a person who intends making an application for the division of an allotment or allotments by a primary plan of community division must, before making the application, submit to the Registrar-General—
 - (a) an outer boundary survey plan of the land to be divided in a form approved by the Registrar-General; and
 - (b) the appropriate fee prescribed for the purposes of the Act.
- (2) Subregulation (1) does not apply in relation to an application for the division of land in respect of which the Registrar-General has determined that subregulation (1) should not apply.
- (3) The Registrar-General must examine the outer boundary survey plan and must, if satisfied that the requirements of these regulations have been met and the information on the plan appears to be adequate and accurate, send a copy of the plan to—
 - (a) the applicant or the applicant's agent; and
 - (b) the council (if any) for the area in which the land is situated.

9—Examination of plans

The Registrar-General must not deposit a plan under the Act unless he or she has examined the plan and is satisfied with it.

10—Additional information as to applications

The Registrar-General may require a person who has made an application to him or her under the Act to provide him or her with any information that the Registrar-General requires to consider the application.

11—Certification of irregular boundaries

Where a plan shows land bounded by a watercourse, lake, the sea or some other irregular boundary, the Registrar-General may require the accuracy of the boundary as shown on the plan to be certified by a licensed surveyor.

12—Notification on deposit of plan

- (1) After the Registrar-General deposits a plan in the Lands Titles Registration Office under the Act he or she must—
 - (a) notify the applicant or the applicant's agent in writing of the deposit; and
 - (b) notify the council (if any) for the area in which the land is situated in writing of the deposit and send a copy of the deposited plan to the council.
- (2) A notification or other document required to be given under this regulation may be sent by electronic means.

13—Issue of certificates of title on deposit of plan

On depositing a plan of community division in the Lands Titles Registration Office the Registrar-General must issue a separate certificate of title for each lot and the common property created by the plan.

13A—Application to ERD Court to amend or cancel a community plan (sections 59 and 67 of Act)

For the purposes of sections 59(3b) and 67(1b) of the Act, in determining an application to amend or cancel a community plan, the ERD Court must have regard to the following matters:

- (a) whether there is evidence that any owners object to the amendment or cancellation and, if so, how many owners object to it;
- (b) whether there are to be any adverse consequences to owners if the application is granted and the extent to which those adverse consequences could be ameliorated or alleviated by court order or other action;
- (c) whether there are to be any adverse consequences to owners if the application is refused and the extent to which those adverse consequences could be ameliorated or alleviated by court order or other action;
- (d) any other reason why it is in the interests of justice that the application should be granted or refused.

Part 3—Administration of community schemes

Division 1—General

14—Body corporate managers (section 78B of Act)

- (1) For the purposes of section 78B(2)(b) of the Act, a body corporate manager must provide the community corporation with a copy of the schedule to the policy of professional indemnity insurance maintained by the body corporate manager that sets out—
 - (a) the name of the body corporate manager; and
 - (b) the name of the insurer; and
 - (c) the nature of the policy; and
 - (d) the amount for which indemnity is provided under the policy.
- (2) For the purposes of section 78B(2)(c) of the Act, a policy of professional indemnity insurance maintained by a body corporate manager must provide an indemnity of at least \$1.5 million per claim during a period of 12 months.
- (3) For the purposes of section 78B(3)(f) of the Act, a contract between a body corporate manager and a community corporation must contain the following particulars:
 - (a) a statement verifying that the body corporate manager is insured under a policy of professional indemnity insurance as required by the Act and an undertaking by the body corporate manager that the body corporate manager will maintain that insurance throughout the life of the contract;
 - (b) an undertaking by the body corporate manager that the body corporate manager will allow any member of the community corporation to inspect, at any time during ordinary business hours, the records of the community corporation in the possession or control of the body corporate manager and specifying how an inspection can be arranged.
- (4) For the purposes of section 78B(8) of the Act, the body corporate manager must ensure the availability of a copy of a pamphlet that sets out the role of the body corporate manager and the rights of the community corporation and its members, including—
 - (a) the right to inspect records held by the manager; and
 - (b) the right to revoke the delegation of a particular function of the manager; and
 - (c) the right to appoint the manager as a proxy and revoke that appointment; and
 - (d) the right to be informed of any payment that the manager receives from another trader for placing the corporation's business; and
 - (e) the right to terminate the contract; and
 - (f) the right to apply to the Magistrates Court for a resolution of any dispute.

14A—Return of records and trust money when delegations revoked (section 78D of Act)

- (1) For the purposes of section 78D(6)(a) of the Act, records must—
 - (a) be returned by mail sent by registered post; or
 - (b) be made available for collection,within 10 business days of the delegations being revoked.
- (2) For the purposes of section 78D(6)(b) of the Act, trust money must—
 - (a) be returned by electronic funds transfer; or
 - (b) be returned by cheque sent by registered post; or
 - (c) be made available for collection,within 10 business days of the delegations being revoked.
- (3) For the purposes of section 78D(7)(b) of the Act, the maximum fee that may be charged for providing a copy of records of the corporation is \$1.20 per page.

15—Matters to be addressed at first statutory general meeting

The following are prescribed under section 80(2)(e) of the Act as matters that must be addressed at the first statutory general meeting of a corporation:

- (a) whether the policies of insurance taken out by the developer are adequate;
- (b) whether the corporation should establish a management committee;
- (c) the delegation of functions and powers by the corporation;
- (d) whether the by-laws of the scheme need amendment.

16—Agenda at annual general meeting (section 81(5)(d) of Act)

The agenda for each annual general meeting must include—

- (a) the appointment of the presiding officer, treasurer and secretary of the corporation; and
- (b) other appointments to be made or revoked by the corporation at the meeting; and
- (c) the policies of insurance required by the Act to be held by the corporation; and
- (d) the number of applications for relief made under Part 14 of the Act and the nature of the claims or disputes the subject of those applications; and
- (e) if it is proposed to enter into a contract, or renew or extend a contract, with a body corporate manager under section 78B of the Act—
 - (i) the text of the resolution to enter into, or renew or extend, the contract; and
 - (ii) where and when a copy of the contract or proposed contract, and the pamphlet referred to in regulation 14(4), can be viewed or obtained by members of the corporation; and
- (f) proposed controls on expenditure by delegates of the corporation.

16A—Procedure at meetings (section 83 of Act)

- (1) For the purposes of section 83(3a) of the Act, if a member of the corporation has given the body corporate manager or an employee of the body corporate manager a specific proxy or power of attorney to vote on the question of whether the manager or employee of the manager is to preside at a meeting of the corporation, the manager or employee is entitled to vote on that question at the meeting as a proxy or attorney of the member in accordance with the terms of that specific proxy or power of attorney.
- (2) For the purposes of section 83(3b) of the Act, the following procedures must be followed at a meeting to which that subsection applies:
 - (a) the body corporate manager or employee of a body corporate manager must, at the outset of the meeting, inform the persons present and entitled to vote at the meeting of the proxies or powers of attorney that are held by him or her for the meeting and that those proxies or powers of attorney are available for inspection;
 - (b) the manager or employee of the manager must, at the outset of the meeting, also inform the persons present and entitled to vote at the meeting—
 - (i) that he or she may preside at the meeting only if the majority of persons present and entitled to vote agree to him or her presiding; and
 - (ii) that he or she is not entitled to vote on the question of whether he or she should preside at the meeting except as a proxy or attorney of a member of the corporation acting in accordance with the terms of a specific proxy or power of attorney given in relation to the question; and
 - (iii) that he or she has no right to prevent any person present and entitled to vote at the meeting from moving or voting on any question or motion;
 - (c) the manager or employee of the manager must make any proxies or powers of attorney held by him or her available for inspection by persons present and entitled to vote at the meeting.
- (3) For the purposes of section 83(6a) of the Act, a member of a community corporation may attend and vote at a meeting by a means of remote communication—
 - (a) if—
 - (i) the by-laws of the corporation make provision for attendance and voting at meetings by members by means of remote communication; and
 - (ii) the member complies with any applicable requirements specified in those by-laws; or
 - (b) if—
 - (i) the member makes a request in writing, given to the secretary of the corporation, to attend and vote at the meeting by means of remote communication; and

- (ii) the secretary of the corporation makes the necessary arrangements to receive and record the member's attendance and voting at the meeting by remote communication; and
- (iii) the member complies with any requirements of the secretary in relation to the request referred to in subparagraph (i).

16B—Special resolutions—3 lot schemes (section 88 of Act)

For the purposes of section 88(2)(a) of the Act, a notice setting out the text of a proposed special resolution must also set out the reasons for the proposed resolution.

16C—Fidelity guarantee insurance (section 104 of Act)

For the purposes of section 104(3) of the Act—

- (a) a policy of fidelity guarantee insurance must insure a community corporation in the amount of—
 - (i) the maximum total balance of the corporation's bank accounts at any time in the preceding 3 years; or
 - (ii) \$50 000,whichever is higher;
- (b) the following kinds of community corporations are not required to maintain fidelity guarantee insurance:
 - (i) community corporations that have buildings and other improvements on its common property insured for a sum not exceeding \$100 000;
 - (ii) 2-lot community corporations with no administrative or sinking funds.

17—Proof of insurance

A person who is required by section 106(1) of the Act to insure a building must provide a photocopy of the current certificate of the insurance that he or she has taken out to satisfy that requirement.

18—Unanimous or special resolution for acquisition of property

- (1) A community corporation's acquisition of a freehold or leasehold interest in a lot must be authorised by a unanimous resolution of the corporation (see section 112(3)(a) of the Act).
- (2) If the cost of the acquisition by a community corporation of property (other than property referred to in subregulation (1))—
 - (a) is \$5 000 or more the acquisition must be authorised by a unanimous resolution of the corporation; or
 - (b) is less than \$5 000 the acquisition must be authorised by a special resolution of the corporation.

18A—Statement of expenditure etc (section 113 of Act)

- (1) For the purposes of section 113(1)(aa) of the Act, the prescribed period is—
 - (a) in the case of a community corporation consisting of at least 7 but not more than 20 community lots—3 years; or
 - (b) in the case of a community corporation consisting of more than 20 community lots—5 years.
- (2) For the purposes of section 113(1a) of the Act, new information must be prepared for the purposes of section 113(1)(aa) of the Act—
 - (a) if the proposed expenditure (other than recurrent expenditure) is for a period of 3 years—every 3 years; or
 - (b) if the proposed expenditure (other than recurrent expenditure) is for a period of 5 years—every 5 years.
- (3) The following are excluded from the operation of section 113(1)(aa) and (1a) of the Act:
 - (a) community corporations consisting of 6 or less community lots;
 - (b) community corporations that have buildings and other improvements on its common property insured for a sum not exceeding \$100 000.

19—Interest on arrears of contributions by lot owners (section 114(4)(b) of Act)

A community corporation, when fixing interest payable by the owner of a community lot in respect of a contribution, or an instalment of a contribution, that is in arrears must not—

- (a) exceed a rate of 15% per annum; and
- (b) must not demand payment of interest on unpaid interest.

20—Notice for payment of contribution or instalment (section 114(6)(a) of Act)

A notice of a contribution or instalment of a contribution served by a community corporation on the owner of a lot must include the following information:

- (a) identification of the lot in relation to which the contribution or instalment is payable; and
- (b) the amount of the contribution or instalment; and
- (c) in the case of a contribution that is payable in instalments—the amount of each instalment and the day on which each instalment is payable; and
- (d) the day on or before which the contribution or instalment must be paid (being a day not less than 14 days after the notice is served); and
- (e) the total amount that the corporation has decided to raise by way of contributions by the owners of community lots; and
- (f) the purpose or purposes for which the money raised will be used; and
- (g) the rate of interest payable in respect of a contribution or instalment that is in arrears; and

- (h) the name of the person to whom the contribution or instalment should be sent or delivered.

21—Resolutions authorising expenditure (section 119 of Act)

Expenditure by a community corporation—

- (a) of less than an amount that is equivalent to \$2 000 multiplied by the number of community lots in the scheme must be authorised by an ordinary resolution of the corporation;
- (b) of the amount referred to in paragraph (a) or more but less than an amount that is equivalent to \$5 000 multiplied by the number of community lots in the scheme must be authorised by a special resolution;
- (c) of the larger of the two amounts referred to in paragraph (b) or more must be authorised by a unanimous resolution.

22—Register of owners of community lots (section 135(2) of Act)

A community corporation must keep a record of information used to compile its register of the names and addresses of the owners of the community lots for a period of at least 7 years.

23—Records (sections 136 and 137 of Act)

- (1) Documents of the following kinds must be kept by community corporations:
 - (a) receipts for the expenditure of money;
 - (b) passbooks, deposit books and all other documents providing evidence of the deposit or investment of money;
 - (c) ADI statements and all other documents providing evidence of dealing with money invested or on deposit.
- (2) All documents and records kept by a corporation must be kept in an orderly manner to enable them to be found easily for the purposes of inspection or copying.
- (3) The following periods are prescribed under sections 136 and 137(2) of the Act as the period for which a corporation must keep its records and documents:
 - (a) minutes of meetings—30 years;
 - (b) accounting records—7 years;
 - (c) any statements of account—7 years;
 - (d) notices or orders served on the corporation—7 years;
 - (e) correspondence—7 years;
 - (f) notices of meetings—7 years.

24—Audit (section 138(4) of Act)

- (1) For the purposes of section 138(4)(a)(i) of the Act, the prescribed amount of the aggregate of the contributions made or to be made by members of the corporation in respect of that year is an amount not exceeding \$20 000.

- (2) For the purposes of section 138(4)(a)(ii) of the Act—
 - (a) the prescribed amount of the balance standing to the credit of the administrative fund at the commencement of the financial year is an amount not exceeding \$20 000; and
 - (b) the prescribed amount of the balance standing to the credit of the sinking fund at the commencement of the financial year is an amount not exceeding \$20 000.

25—Fee for provision of information

- (1) Subject to subregulation (2), the following fees are prescribed for the purposes of section 139(2) of the Act:
 - (a) in the case of an application for all or any of the information referred to in section 139(1)(a)—
 - (i) where the applicant is the owner of a community lot—no fee;
 - (ii) in any other case—\$25 per application;
 - (ab) in the case of an application for the documentary material referred to in section 139(1a)—\$25 per application;
 - (b) in the case of an application for copies of all or any of the documentary material referred to in section 139(1)(b)—
 - (i) where the applicant is the owner of a community lot—\$5 per application;
 - (ii) in any other case—\$25 per application, plus an additional fee of \$10 where the application is for, or includes a request for, a copy of current policies of insurance taken out by the corporation;
 - (c) where an application is made to inspect all or any of the documentary material referred to in section 139(1)(c)—
 - (i) where the applicant is the owner of a community lot—no fee;
 - (ii) in any other case—\$5 per application.
- (2) Where GST is payable in relation to goods, services or other things supplied in response to an application referred to in subregulation (1), the fee prescribed by that subregulation is increased so that, after deduction of the GST, the amount of the fee remaining is equal to the fee prescribed by subregulation (1).
- (3) A community corporation may reduce or waive any fees under subregulation (1).
- (4) In this regulation—

GST means the tax payable under the GST law;

GST law means—

- (a) *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth); and
- (b) the related legislation of the Commonwealth dealing with the imposition of a tax on the supply of goods, services and other things.

26—Services provided by corporations

- (1) A community corporation may, pursuant to section 143 of the Act, provide to the owner or occupier of a lot any kind of service that relates to the ownership or occupation of the lot.
- (2) The provision of a service under subregulation (1) is subject to the following restrictions:
 - (a) a service must not be provided to a person who has not agreed with the corporation to accept the service;
 - (b) the cost of the service must be paid for by the persons who have agreed to accept it and must not be subsidised by the corporation.

26A—Functions of secretary and treasurer of corporation

- (1) The secretary of a community corporation has the following functions:
 - (a) to prepare and distribute minutes of meetings of the corporation and submit a motion for confirmation of the minutes of any meeting of the corporation at the next such meeting;
 - (b) to give, on behalf of the members of the corporation and the management committee, the notices required to be given under the Act;
 - (c) to answer communications addressed to the corporation;
 - (d) to convene meetings of the management committee;
 - (e) to attend to matters of an administrative or secretarial nature in connection with the exercise, by the corporation or the management committee, of its functions.

Note—

Meetings can also be convened by members of the corporation and other officers—see sections 81 and 93 of the Act.

- (2) The treasurer of a community corporation has the following functions:
 - (a) to notify owners of community lots of any contributions to be raised from them in accordance with the Act;
 - (b) to receive, acknowledge, bank and account for any money paid to the corporation;
 - (c) to keep accounting records and prepare financial statements.

Note—

The offices of secretary and treasurer can be held by the same person in certain circumstances—see section 76 of the Act.

Division 2—Agent's trust accounts

27—Authorisation of fees, costs and disbursements (section 123(b) of Act)

- (1) An agent may withdraw money from a trust account held on behalf of a community corporation in satisfaction of a claim that the agent has against the corporation for fees, costs or disbursements if the corporation has agreed in writing to pay to the agent those fees, costs or disbursements.

- (2) An agent who becomes entitled to money held in the agent's trust account in or towards satisfaction of the agent's fees, costs or disbursements must, as soon as practicable (and in any event within 3 months), transfer the money to an account maintained by the agent for receipts other than trust money.

Maximum penalty: \$500.

28—Authorised trust accounts (section 124 of Act)

Accounts for the time being approved by the Commissioner for Consumer Affairs in relation to the holding of trust money under the *Land Agents Act 1994* and the *Conveyancers Act 1994* are prescribed for the purposes of section 124 of the Act.

29—General duty with respect to electronic records

If an agent uses a computer program to keep records under this Division, the agent must ensure that—

- (a) an electronic copy of all the records is made within 24 hours of any alteration of the records; and
- (b) at least once in each week, an electronic copy of all the records is made and kept in a safe place at a location other than the premises where the computer program is operating; and
- (c) before any information is deleted from the computer records, a hard copy of the information is made and kept by the agent as part of the agent's records; and
- (d) an up-to-date electronic copy of the computer program is made and kept in a safe place at a location other than the premises where the computer program is operating.

30—Cash books

- (1) For the purposes of section 126(1)(c) of the Act, the detailed accounts of receipts and disbursements of trust money to be compiled by an agent must comply with the following requirements:
- (a) a cash receipts book must be kept in which the agent records the following information in respect of each receipt of trust money:
 - (i) the date and reference number of the receipt;
 - (ii) the name of the person from whom the money is received;
 - (iii) the name of the community corporation or reference to which the transaction relates;
 - (iv) brief particulars of the purpose of the receipt;
 - (v) the amount of the receipt;
 - (b) a cash payments book must be kept in which the agent records the following information in respect of each payment of trust money:
 - (i) the date and reference number of the cheque or electronic transfer of funds by which the payment was made;
 - (ii) the name of the payee;

- (iii) the community corporation's name or reference to which the transaction relates;
 - (iv) brief particulars of the purpose of the payment;
 - (v) the amount of the cheque or electronic transfer of funds.
- (2) However, an agent need not keep a cash receipts book or a cash payments book as required by subregulation (1) if the agent uses a computer program to record the information referred to in that subregulation in respect of each receipt or payment of trust money and the program—
 - (a) requires input in each field of a data entry screen intended to receive information in respect of a receipt or payment so that all of the information referred to in subregulation (1) is recorded in respect of each receipt and payment; and
 - (b) is capable, at any time, of producing—
 - (i) a report of the information in respect of receipts of trust money in the order in which they were received; and
 - (ii) a report of the information in respect of payments of trust money in the order in which they were made.
- (3) An agent who uses a computer program as referred to in subregulation (2) must ensure that—
 - (a) at the end of each month, hard copies of each of the following reports are produced:
 - (i) a report of the information in respect of receipts of trust money received during that month in the order in which they were received;
 - (ii) a report of the information in respect of payments of trust money made during that month in the order in which they were made; and
 - (b) those hard copies are kept as part of the agent's records.
- (4) The records of receipts and payments must be made by the agent in accordance with this regulation in the order in which they are received or made, each such record being made within 2 working days after the receipt or payment in question.
- (5) Subregulation (4) does not apply in relation to receipts or payments by way of electronic transfer of funds, a record of which must be made within 2 working days after the agent receives official confirmation that the transfer has occurred.

31—Separate trust ledger accounts

- (1) An agent must ensure that the agent's trust ledger accounts are kept separately—
 - (a) in respect of each of the agent's clients; and
 - (b) if the agent performs services for a corporation in respect of a number of transactions between different parties—in respect of each such transaction.
- (2) The agent must record in each of the separate accounts the following details:
 - (a) the name and address of the corporation to whom the accounts relate;

- (b) a brief description of the service provided and the transaction to which the accounts relate;
 - (c) in respect of each receipt or disbursement of trust money—
 - (i) the date and reference number of the receipt or disbursement;
 - (ii) the name of the person from whom the money is received or to whom the money is disbursed;
 - (iii) brief particulars of the purpose of the receipt or disbursement;
 - (iv) the amount received or disbursed.
- (3) The agent must ensure that any changes in the details referred to in subregulation (2)(a) or (b) are recorded in a manner that enables the changes and the order in which they occurred to be identified.
- (4) If the agent transfers money between any of the separate accounts, the agent must clearly record the transfer—
 - (a) in both accounts; and
 - (b) in a transfer journal,in sufficient detail that the transfer may be clearly understood.
- (5) The records of receipts, disbursements and transfers must be made by the agent in accordance with this regulation in the order in which the receipts, disbursements or transfers are received or made, each such record being made within 2 working days after the receipt, disbursement or transfer in question.
- (6) Subregulation (5) does not apply in relation to receipts or payments by way of electronic transfer of funds, a record of which must be made within 2 working days after the agent receives official confirmation that the transfer has occurred.
- (7) If an agent uses a computer program to keep trust ledger accounts or a transfer journal, the agent must ensure that—
 - (a) the program is incapable of—
 - (i) recording a transaction that would result in a debit balance in a trust ledger account unless a separate contemporaneous record of the transaction is also made so that, at any time, a hard copy may be produced of all such transactions in chronological order; and
 - (ii) deleting from its records the information relating to a trust ledger account unless—
 - (A) the balance of the account is zero; and
 - (B) a hard copy of all of the information required under this Division relating to the account has been produced; and
 - (iii) changing existing information relating to a transaction otherwise than by making a further entry showing a separate transaction to effect the change; and
 - (b) the program automatically inserts consecutive page numbers into any hard copy report produced by use of the program; and

- (c) the program requires input in each field of a data entry screen intended to receive information for the purposes of a trust ledger account or transfer journal so that the entry contains all of the information required by this regulation; and
- (d) hard copies of the trust ledger accounts and transfer journal are produced within 2 days of a request from the Minister or the agent's auditor.

32—Reconciliation statements

At the end of each month, reconciliation statements must be prepared—

- (a) reconciling the balance of the agent's cash books, or equivalent computer records, kept under regulation 30 with the balance of the agent's trust account; and
- (b) reconciling the balances of the ledgers comprised in the agent's trust ledger accounts with the balance of the agent's trust account,

(but the agent is not required to set out in a statement a list of individual balances, or the names of the corporations on whose behalf money is held).

33—Receipt of trust money

- (1) For the purposes of section 126(2)(a) of the Act, the receipt that an agent must make available to a person making a payment of trust money must—
 - (a) be legibly written on a form comprised in a series of consecutively pre-numbered duplicate receipt forms marked with the name of the agent and the words "Trust Account"; and
 - (b) contain the following information:
 - (i) —
 - (A) in the case of a payment made by electronic transfer of funds into an agent's trust account—the date on which the agent makes out the receipt;
 - (B) in any other case—the date of the payment;
 - (ii) the name of the person making the payment;
 - (iii) whether the payment is by cash, cheque, bank cheque or electronic transfer of funds into the agent's trust account and, if the payment is by cheque or bank cheque, the name of the drawer of the cheque;
 - (iv) the name of the corporation for whom the money is received;
 - (v) brief particulars of the purpose of the payment;
 - (vi) the amount of the payment.
- (2) An agent need not comply with subregulation (1)(a) if the agent uses a computer program to make out the receipt and the program—
 - (a) automatically produces in chronological sequence consecutively numbered receipts marked with the name of the agent and the words "Trust Account"; and

- (b) automatically makes a separate contemporaneous record of the receipt so that, at any time, a hard copy of the receipt may be produced; and
 - (c) requires input in each field of a data entry screen intended to receive information for the purposes of producing the receipt so that each receipt contains all of the information required by subregulation (1)(b).
- (3) An agent must make out a receipt in accordance with this regulation—
 - (a) in the case of a payment made by electronic transfer of funds into an agent's trust account—immediately the agent receives official confirmation that the payment has been made (whether that is by way of receipt by the agent of a statement from a financial institution or some other way, whichever occurs sooner); or
 - (b) in any other case—immediately on receipt of payment.

34—Payment of trust money

- (1) An agent must not make a payment of trust money in cash.
Maximum penalty: \$500.
- (2) When an agent makes a payment of trust money by cheque, the agent—
 - (a) must ensure that the cheque is marked with the name of the agent and the words "Trust Account"; and
 - (b) must—
 - (i) cause the cheque to be crossed and endorsed "Not negotiable"; or
 - (ii) obtain from the person receiving the cheque a receipt that complies with subregulation (4) and keep the receipt as part of the agent's records.

Maximum penalty: \$500.

- (3) When an agent makes a payment of trust money by cheque, the agent must prepare and keep as part of the agent's records a cheque stub or voucher containing the following information:
 - (a) the date and reference number of the cheque;
 - (b) the name of the payee;
 - (c) the client name or reference and brief particulars of the purpose of the payment;
 - (d) the amount of the cheque.
- (4) The receipt must be legible and contain the following information:
 - (a) the date and reference number of the cheque; and
 - (b) particulars identifying the trust account against which the cheque is drawn; and
 - (c) the name of the payee; and
 - (d) brief particulars of the purpose of the payment; and
 - (e) the amount of the cheque.

- (5) When an agent authorises the payment of trust money by electronic transfer of funds, the agent—
- (a) must prepare and keep as part of the agent's records the following information:
 - (i) the date and reference number of the payment;
 - (ii) the name of the payee;
 - (iii) the corporation name or reference and brief particulars of the purpose of the payment;
 - (iv) the name or style of the ADI account to which the payment is made, its number and the identifying numbers of the receiving ADI and its branch;
 - (v) the amount of the payment; and
 - (b) must, on receiving official written confirmation that the payment has been made, keep that confirmation as part of the agent's records.

35—Audit of trust accounts

- (1) For the purposes of section 127(1)(a) of the Act, the audit period in respect of which an agent must have the accounts and records audited is each financial year.
- (2) In carrying out an audit, the auditor must—
 - (a) make checks that will enable the auditor to give an opinion as to whether the agent has, during the period covered by the audit, complied with the Act and these regulations relating to the agent's accounts and records; and
 - (b) ascertain what trust accounts were kept by the agent during that period; and
 - (c) make a general test examination of any trust account kept by the agent and of the pass books and statements relating to any such account during that period; and
 - (d) make a comparison as to no fewer than 2 dates (1 to be the last day of the period of the audit and 1 other to be a date within that period selected by the auditor) between—
 - (i) the liabilities of the agent to the agent's clients as shown by the agent's trust ledger accounts and the records kept under these regulations; and
 - (ii) the aggregate of the balances standing to the credit of the agent's trust account; and
 - (e) ask for such information and explanations as the auditor may require for the purposes of this regulation.
- (3) For the purposes of section 127(1)(b) of the Act, the statement relating to the audit must be prepared by the auditor and must include all matters relating to the agent's accounts and records that should, in the auditor's opinion, be communicated to the community corporation and, in particular, deal with each of the following matters:
 - (a) whether the accounts and records appear to have been kept regularly and properly written up at all times;

- (b) whether the accounts and records have been ready for examination at the periods appointed by the auditor;
 - (c) whether the agent has complied with the auditor's requirements;
 - (d) whether, at any time during the period of the audit, the agent's trust account was overdrawn and, if so, the full explanation for that given by the agent;
 - (e) whether the agent has, or has had, any debit balances in his or her trust account and the explanation or reason for such a debit given by the agent;
 - (f) whether the auditor has received and examined the notice given to the auditor under regulation 36 and the result of that examination;
 - (g) if the agent uses a computer program to keep the agent's accounts and records, whether the program allows for the accounts and records to be conveniently and properly audited.
- (4) The auditor must attach to the auditor's statement a copy of the agent's notice delivered to the auditor under regulation 36(1).
- (5) The auditor must verify the statement by statutory declaration and give a signed copy of the statement to the agent.
- (6) If the auditor in the course of auditing the agent's accounts and records discovers—
- (a) that they are not kept in a manner that enables them to be properly audited; or
 - (b) a matter that appears to the auditor to involve dishonesty or a breach of the law by the agent; or
 - (c) a loss or deficiency of trust money or a failure to pay or account for trust money; or
 - (d) a failure to comply with the Act or these regulations,
- the auditor must, as soon as possible, give a report in respect of the discovery to the Minister and the agent concerned.
- Maximum penalty: \$500.
- (7) However, the auditor is not required to give a report to the Minister in respect of the discovery of a loss, deficiency or failure if the auditor is satisfied that—
- (a) bringing the discovery to the attention of the agent or community corporation will adequately deal with the matter; and
 - (b) the loss, deficiency or failure does not involve dishonesty or a breach of the law.
- (8) For the purposes of section 127(2)(b) of the Act, an agent must forward an audit statement within 2 months after the end of each audit period.

36—Agent's statement

- (1) An agent who is required to have accounts and records audited must, before the completion of the audit, certify—
- (a) under his or her hand; or
 - (b) in the case of a firm of agents—under the hands of not less than 2 partners of the firm; or

- (c) in the case of a body corporate agent—under the hands of not less than 2 directors of the body,

and deliver to the auditor a notice setting out in detail, as of the last day of the period to which the audit relates, particulars of—

- (d) the names of all corporations on whose behalf the agent is holding trust money and the amount of the credit of each such corporation; and
- (e) all negotiable or bearer securities or deposit receipts in the name of the agent which represent money drawn from the agent's trust account and which were held by the agent on that day; and
- (f) —
 - (i) the names of the trust accounts in which the balance of the agent's trust money is lodged and the balances on that date of those accounts; and
 - (ii) if the trust account balances are not in agreement with the balances of the agent's ledger accounts—a statement reconciling those balances.

Maximum penalty: \$500.

- (2) The notice must be verified by statutory declaration—
 - (a) of the agent; or
 - (b) in the case of a firm of agents—of not less than 2 partners of the firm; or
 - (c) in the case of a body corporate agent—of not less than 2 directors of the body.
- (3) The agent must give the auditor making the next succeeding audit of the agent's accounts and records—
 - (a) at the request of the auditor, a copy of the notice, together with a signed copy of the auditor's statement of the last preceding audit of the agent's accounts and records; or
 - (b) if the agent's accounts and records are being audited for the first time or, if for any other reason a copy of the notice cannot be produced for the purpose of the audit—before completion of the audit, a notice containing the same particulars as to money, negotiable or bearer securities and deposit receipts held on the first day of the period to which the audit relates.

Maximum penalty: \$500.

37—Certain persons may not audit accounts and records of agent

A person must not audit the accounts and records of an agent if the person—

- (a) is, or has been within 2 years, an employee or partner of the agent; or
- (b) is an employee of another agent actually carrying on business as an agent; or
- (c) is, himself or herself, an agent carrying on business as an agent.

Maximum penalty: \$500.

Part 4—Miscellaneous

38—By-laws of corporation—penalty notice

For the purposes of section 34(6)(c)(i) of the Act, the Form 11 of Schedule 1 is prescribed.

39—Holding of deposit and other contract moneys when lot is pre-sold (section 142A of Act)

- (1) For the purposes of section 142A(1), a provision of a contract of sale that provides for any consideration payable by the purchaser prior to the deposit of the plan to be held on trust by a specified legal practitioner, registered agent or registered conveyancer until the plan is deposited must—
 - (a) be printed in bold in a font size of not less than 14 points; and
 - (b) be specifically brought to the attention of the purchaser by the vendor; and
 - (c) be initialled by, or on behalf of, both the vendor and the purchaser.
- (2) If a contract for the sale of a lot in a proposed community scheme specifies a period for the purposes of section 142A(4)(a) of the Act, that provision of the contract must—
 - (a) be printed in bold in a font size of not less than 14 points; and
 - (b) be specifically brought to the attention of the purchaser by the vendor; and
 - (c) be initialled by, or on behalf of, both the vendor and the purchaser.

40—Indemnity fund under *Land Agents Act 1994* (section 155A of Act)

For the purposes of section 155A(c) of the Act, the following advisory services and education programs provided by the Legal Services Commission are prescribed:

- (a) a specialist community and strata title advice service;
- (b) an educational program relating to the provisions contained in the *Statutes Amendment (Community and Strata Titles) Act 2012*.

Schedule 1—Forms

Form 1

sections 14(4)(h), 52(4)(f)(ii), 58(3)(e) and 60(3)(f) of Act

Certificate of licensed surveyor

I, *[insert name and address]*, a licensed surveyor under the *Survey Act 1992* certify that—

- (a) I am uncertain about the location of that part of the service infrastructure shown between the points marked > and < on the plan; and
- (b) this community plan has been correctly prepared in accordance with the *Community Titles Act 1996*.

Date:

Signed:

Form 2

sections 14(4)(i), 21(2)(b), 52(4)(g), 58(3)(f), 60(3)(g), 65(d)(ii) and 67(2)(f)(ii) of Act

Certificate of land valuer

I, *[insert name and address]*, being a land valuer within the meaning of the *Land Valuers Act 1994* certify that this Schedule is correct for the purposes of the *Community Titles Act 1996*.

Date:

Signed:

Note—

The certificate must be endorsed on the Schedule of lot entitlements.

Form 3

section 52(4)(h) of Act

Certificate of land valuer

I, *[insert name and address]*, being a land valuer within the meaning of the *Land Valuers Act 1994* certify that the application *[insert details identifying the application]* for the amendment of deposited community plan No *[insert number of community plan]* does not affect the relative value of the lots into which the plan as amended divides the community parcel.

Date:

Signed:

Form 4

section 31(2) of Act

Certification of scheme description as amended

I, *[insert name and address]*, being an officer of Community Corporation No *[insert number of corporation]* Incorporated certify that—

- (a) in accordance with section 31 of the *Community Titles Act 1996*, Community Corporation No *[insert number of corporation]* has by unanimous resolution at a duly convened meeting of the corporation held at *[insert address of location of meeting]* on *[insert date of meeting]* amended Scheme Description No *[insert number of scheme description]* and a true copy of the scheme description as amended is attached to this certificate; and
- (b) the persons whose consents are required by section 32 of the *Community Titles Act 1996* have consented to the amendment.

Date:

Signed:

Note—

The copy of the scheme description attached to the certificate must be endorsed "*This is the copy of the scheme description referred to in the attached certificate.*" and signed by the officer certifying the copy.

Form 5

section 39(5) of Act

Certification of copy of by-laws as varied and resolution

I, *[insert name and address]*, being an officer of Community Corporation No *[insert number of corporation]* Incorporated certify that—

- (a) the copy of the by-laws attached to this certificate is a true copy of the by-laws as varied by special/unanimous *[strike out whichever is not applicable]* resolution of the corporation on *[insert date of resolution]*; and
- (b) the copy of the resolution attached to this certificate is a true copy of the resolution referred to in paragraph (a).

Date:

Signed:

Note—

The copy of the by-laws attached to a certificate must be endorsed "*This is the copy of the by-laws referred to in the attached certificate.*" and signed by the officer certifying the copy.

The copy of the resolution attached to the certificate must be endorsed "*This is the copy of the resolution of the corporation referred to in the attached certificate.*" and signed by the officer certifying the copy.

Form 6

section 50(10) of Act

Certification of copy of development contract as varied

I, *[insert name and address]*, being an officer of Community Corporation No *[insert number of corporation]* Incorporated certify that the copy of the development contract attached to this certificate is a true copy of the contract as varied pursuant to section 50 of the *Community Titles Act 1996* by agreement made on *[insert date of resolution]* between the developer and the corporation.

Date:

Signed:

Note—

The copy of the contract attached to the certificate must be endorsed "*This is the copy of the development contract referred to in the attached certificate.*" and signed by the officer certifying the copy.

Form 7

section 50(10) of Act

Certification of copy of agreement to terminate development contract

I, *[insert name and address]*, being an officer of Community Corporation No *[insert number of corporation]* Incorporated certify that the copy of the agreement to terminate a development contract attached to this certificate is a true copy of the agreement entered into pursuant to section 50 of the *Community Titles Act 1996* on *[insert date of resolution]* between the developer and the corporation.

Date:

Signed:

Note—

The copy of the agreement attached to the certificate must be endorsed "*This is the copy of the agreement to terminate a development contract referred to in the attached certificate.*" and signed by the officer certifying the copy.

Form 8

clause 2(2) of Schedule of Act

Certification of copy of resolution of strata corporation that the *Community Titles Act 1996* will apply to, and in relation to, the strata scheme

I, *[insert name and address]*, being an officer of Community Corporation No *[insert number of corporation]* Incorporated certify that the copy of the resolution attached to this certificate is a true copy of the resolution by which the corporation decided that the *Community Titles Act 1996* and not the *Strata Titles Act 1988* will apply to, and in relation to, the corporation and the strata scheme.

Date:

Signed:

Note—

The copy of the resolution attached to the certificate must be endorsed "*This is the copy of the resolution of the corporation referred to in the attached certificate.*" and signed by the officer certifying the copy.

Form 9

section 154(2) of Act

Notice if whereabouts of certain persons unknown

To *[insert name and last address known to the Registrar-General of each person to whom notice is given]*

I/We, *[insert name and address of each person giving notice]*, give you notice that I/we intend to make/have made *[strike out whichever is not applicable]* an application to the Registrar-General under *[insert reference to provision of Act]* of the *Community Titles Act 1996* *[insert description of subject matter of application]* in respect of the land comprised in Certificate of Title Register Book Volume *[insert Volume number]* Folio *[insert Folio number]*.

If you do not consent to the Registrar-General granting the application, you must lodge a written objection with the Registrar-General.

I/We are required by section 154(2) of the *Community Titles Act 1996* to—

- (a) post this notice to you; and
- (b) publish a copy of this notice in a newspaper circulating generally throughout the State; and
- (c) if the subject matter of the application relates to or involves an encroachment—leave a copy of this notice in a conspicuous place on or near the land over which the encroachment has occurred.

If 28 days have passed since I/we complied with paragraphs (a), (b) and (c) and you have not lodged an objection to the application with the Registrar-General before he or she grants the application, the Registrar-General may grant the application without your consent. After consent has been granted it will be too late for you to lodge an objection.

Date:

Signed: *[signature of each person giving notice]*

Form 10

sections 30(1)(ia), 31(3)(ab), 34(2)(e), 39(5a), 47(2)(ka), 50(7)(a) of Act

Certificate as to preparation of scheme description, by-laws or development contracts

Certified correctly prepared in accordance with the requirements of the *Community Titles Act 1996* by the person who prepared the document/an officer of the community corporation *[strike out whichever is not applicable]*.

Date:

Name:

Address:

Signed:

Note—

The certificate must be endorsed on the relevant document.

Form 11

section 34(6)(c)(i) of Act

Penalty notice

To *[insert name and unit number of the person to whom notice is given]*

The *[insert name of the community corporation giving notice]* gives you notice that you have contravened or failed to comply with *[specify the by-law or article that has been contravened or not complied with]* by *[set out the details of the contravention or non-compliance]*.

The penalty of *[specify the amount of the penalty]* is payable to the corporation by you not later than *[specify the date for payment]*.

If you do not pay the penalty as required by this notice, the penalty is recoverable from you by the corporation as a debt. If this notice is served on you as the owner of a community lot, the penalty may be recovered by the corporation under section 114 of the *Community Titles Act 1996* (and interest will be payable on the penalty amount in the same way as if it were such a contribution).

Under section 34(6) of the Act you are entitled to apply to the Magistrates Court for revocation of this notice. The application must be made within 60 days after service of this notice. If you make such an application, the penalty specified in this notice is not payable unless the application is withdrawn or otherwise discontinued by you, or is dismissed or refused by the Court (and, in such a case, the penalty will be payable on the date on which the application is so withdrawn, discontinued, dismissed or refused or on the date for payment specified in the notice, whichever occurs later).

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of these regulations (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation revoked by principal regulations

The *Community Titles Regulations 2011* revoked the following:

Community Titles Regulations 1996

Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2011	202	<i>Gazette 25.8.2011 p3638</i>	1.9.2011: r 2
2012	135	<i>Gazette 31.5.2012 p2496</i>	1.7.2012: r 2
2013	107	<i>Gazette 6.6.2013 p2241</i>	1.7.2013: r 2
2013	182	<i>Gazette 18.7.2013 p3076</i>	18.7.2013 except rr 4—15, new rr 38 & 39 (as inserted by r 16) & 17—28.10.2013: r 2
2013	243	<i>Gazette 24.10.2013 p4093</i>	28.10.2013 immediately after 182/2013 r 16: r 2
2014	163	<i>Gazette 19.6.2014 p2718</i>	1.7.2014: r 2
2015	42	<i>Gazette 23.4.2015 p1603</i>	27.4.2015: r 2
2015	138	<i>Gazette 18.6.2015 p2750</i>	1.7.2015: r 2
2016	157	<i>Gazette 23.6.2016 p2419</i>	1.7.2016: r 2
2017	62	<i>Gazette 23.5.2017 p1742</i>	1.7.2017: r 2
2018	61	<i>Gazette 31.5.2018 p2077</i>	1.7.2018: r 2
2019	41	<i>Gazette 23.5.2019 p1361</i>	1.7.2019: r 2
2020	143	<i>Gazette 4.6.2020 p2987</i>	1.7.2020: r 2

Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
r 2	omitted under <i>Legislation Revision and Publication Act 2002</i>	1.7.2011

	inserted by 182/2013 r 4	28.10.2013
<i>r 3</i>	<i>deleted by 182/2013 r 5</i>	28.10.2013
Pt 2		
r 8		
r 8(1)	varied by 143/2020 r 4	1.7.2020
<i>r 13A</i>	inserted by 182/2013 r 6	28.10.2013
Pt 3		
<i>r 14</i>	substituted by 182/2013 r 7	28.10.2013
<i>r 14A</i>	inserted by 182/2013 r 7	28.10.2013
<i>r 15</i>	varied by 182/2013 r 8	28.10.2013
<i>r 16</i>	substituted by 182/2013 r 9	28.10.2013
<i>rr 16A—16C</i>	inserted by 182/2013 r 9	28.10.2013
<i>r 17</i>	varied by 182/2013 r 10	28.10.2013
<i>r 18A</i>	inserted by 182/2013 r 11	28.10.2013
<i>r 24</i>	substituted by 182/2013 r 12	28.10.2013
<i>r 25</i>		
<i>r 25(1)</i>	varied by 182/2013 r 13	28.10.2013
<i>r 26A</i>	inserted by 182/2013 r 14	28.10.2013
<i>r 35</i>		
<i>r 35(8)</i>	varied by 182/2013 r 15	28.10.2013
Pt 4	inserted by 182/2013 r 16	18.7.2013 except rr 38 & 39—28.10.2013
<i>r 39</i>	substituted by 243/2013 r 4	28.10.2013
Sch 1		
Form 11	inserted by 182/2013 r 17	28.10.2013
<i>Sch 2</i>	<i>substituted by 135/2012 r 4</i>	<i>1.7.2012</i>
	<i>substituted by 107/2013 r 4</i>	<i>1.7.2013</i>
	<i>substituted by 163/2014 r 4</i>	<i>1.7.2014</i>
	<i>varied by 42/2015 r 4(1), (2)</i>	<i>27.4.2015</i>
	<i>substituted by 138/2015 r 4</i>	<i>1.7.2015</i>
	<i>substituted by 157/2016 r 4</i>	<i>1.7.2016</i>
	<i>substituted by 62/2017 r 4</i>	<i>1.7.2017</i>
	<i>substituted by 61/2018 r 4</i>	<i>1.7.2018</i>
	<i>substituted by 41/2019 r 4</i>	<i>1.7.2019</i>
	<i>deleted by 143/2020 r 5</i>	<i>1.7.2020</i>
<i>Sch 3</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.7.2011</i>

Historical versions

1.7.2012
1.7.2013
18.7.2013
28.10.2013

1.7.2014
27.4.2015
1.7.2015
1.7.2016
1.7.2017
1.7.2018
1.7.2019