

(Reprint No. 3)

SOUTH AUSTRALIA

STRATA TITLES REGULATIONS 1988

*These regulations are reprinted pursuant to the Subordinate Legislation Act 1978 and incorporate all amendments in force as at **1 July 1999**.*

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REGULATIONS UNDER THE STRATA TITLES ACT 1988

STRATA TITLES REGULATIONS 1988

being

No. 138 of 1988: *Gaz.* 21 July 1988, p. 460¹

as varied by

No. 155 of 1990: *Gaz.* 26 July 1990, p. 436²

No. 82 of 1991: *Gaz.* 20 June 1991, p. 1971³

No. 247 of 1993: *Gaz.* 27 October 1993, p. 2099⁴

No. 236 of 1996: *Gaz.* 31 October 1996, p. 1552⁵

No. 143 of 1999: *Gaz.* 1 July 1999, p. 55⁶

¹ Came into operation 1 September 1988: reg. 2.

² Came into operation 2 August 1990: reg. 2.

³ Came into operation 1 July 1991: reg. 2.

⁴ Came into operation 15 January 1994: reg. 2.

⁵ Came into operation 4 November 1996: reg. 2.

⁶ **Came into operation 1 July 1999: reg. 2.**

NOTE:

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the regulations see Appendix.

Citation

1. These regulations may be cited as the *Strata Titles Regulations 1988*.

Commencement

2. These regulations will come into operation on 1 September, 1988.

Interpretation

3. In these regulations—

"the Act" means the *Strata Titles Act 1988*.

Unit entitlement

4. For the purposes of section 6(3) of the Act, the aggregate unit entitlements of all units defined on a strata plan must be 10 000.

Application for deposit of strata plan

5. (1) The certificate of a licensed surveyor that must accompany an application for the deposit of a strata plan under section 7 of the Act must be in the form set out in the Schedule 1.

- (2) A strata plan must be prepared to one of the following scales:

1:100 1:125 1:150 1:200 1:250 1:300
1:400 1:500 1:750 1:800 1:1000, or
multiples of 10 thereof,

and the plan must have a bar scale of at least 100 millimetres.

- (3) For the purposes of section 7(6)(b)(ii) of the Act—

- (a) any part of—

- (i) a structure that sits on footings protruding beyond the boundaries of the site; or
- (ii) a roof wholly or partly supported by such a structure; or
- (iii) an attachment to such a structure or roof,

is an associated structure of a prescribed nature;

- (b) the prescribed distance is 0.20 metres, or such other distance as the Registrar-General may determine in a particular case.

Amendment of deposited strata plan

6. (1) The certificate of a licensed surveyor relating to the amendment of a deposited strata plan must be in the form set out in the Schedule 2.

- (2) For the purposes of section 12(3a)(d)(ii) of the Act—

- (a) any part of—

- (i) a structure that sits on footings protruding beyond the boundaries of the site; or
- (ii) a roof wholly or partly supported by such a structure; or

- (iii) an attachment to such a structure or roof,
is an associated structure of a prescribed nature;
- (b) the prescribed distance is 0.20 metres, or such other distance as the Registrar-General may determine in a particular case.

* * * * *

Procedure where the whereabouts of certain persons is unknown

8A. For the purposes of section 17A(2)(a) of the Act, the information that must be contained in a notice under that section is the information in the form set out in the Schedule 10.

Variation of articles

9. The copy of a resolution of a strata corporation under section 19(2) of the Act that is lodged with the Registrar-General under section 19(3) of the Act must be certified by an officer of the strata corporation in the manner set out in the Schedule 9.

Insurance

10. For the purposes of section 31(2) of the Act, the amount of \$5 000 000 is prescribed.

Record keeping

11. For the purposes of section 40 of the Act, the following periods are prescribed—

- (a) in relation to minute books—30 years;
- (b) in relation to accounting records—7 years;
- (c) in relation to any statements of account—7 years;
- (d) in relation to notices or orders served on the strata corporation—7 years;
- (e) in relation to correspondence—7 years;
- (f) in relation to notices of meetings—7 years;
- (g) in relation to the duplicate certificate of title for the common property of the strata corporation—the life of the strata corporation, subject to any requirements of the Registrar-General under the *Real Property Act 1886*;
- (h) in relation to documentary material received by the strata corporation under section 38(3)(b) or (c) of the Act—30 years.

Provision of information

12. (1) For the purposes of section 41(1)(c)(iii) of the Act, documentary material received by the strata corporation under section 38(3) of the Act is prescribed.

(2) For the purposes of section 41(2) of the Act, the following fees are prescribed:

- (a) where an application is made for all or any of the information referred to in section 41(1)(a)—
 - where the applicant is the owner of a unit—no fee;
 - in any other case—\$25 per application;

- (b) where an application is made for copies of all or any of the documentary material referred to in section 41(1)(b)—
 - where the applicant is the owner of a unit—\$5 per application;
 - in any other case—\$25 per application, plus an additional \$10 where the application is for, or includes a request for, a copy of current policies of insurance taken out by the strata corporation;
- (c) where an application is made to inspect all or any of the documentary material referred to in section 41(1)(c)—
 - where the applicant is the owner of a unit—no fee;
 - in any other case—\$5 per application.

(3) The strata corporation may, as it thinks fit, reduce or waive any fees under subregulation (2).

Authorisation of fees, costs and disbursements (s. 36D(b))

13. (1) An agent may withdraw money from a trust account held on behalf of a strata 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 three months), transfer the money to an account maintained by the agent for receipts other than trust money.

Maximum penalty: \$500.

Authorised trust accounts (s. 36E)

14. 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 36E of the Act.

Keeping of records

15. For the purposes of section 36G(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 receipt book (or some other form of record approved in writing by the Commissioner for Consumer Affairs on the application of the agent) 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; and
 - (ii) the name of the person from whom the money is received; and
 - (iii) the name of the strata corporation or reference to which the transaction relates; and

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- (iv) brief particulars of the purpose of the receipt; and
 - (v) the amount of the receipt;
- (b) a cash payments book (or some other form of record approved in writing by the Commissioner for Consumer Affairs on the application of the agent) 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 by which the payment was made; and
 - (ii) the name of the payee; and
 - (iii) the strata corporation's name or reference to which the transaction relates; and
 - (iv) brief particulars of the purpose of the payment; and
 - (v) the amount of the cheque;
- (c) trust ledger accounts must be kept separately—
- (i) in respect of each of the agent's clients; and
 - (ii) if the agent performs services for a corporation in respect of a number of transactions between different parties—in respect of each such transaction; and
- (d) each of the separate accounts must contain the following details:
- (i) the name and address of the corporation to whom the accounts relate;
 - (ii) a brief description of the service provided and the transaction to which the accounts relate;
 - (iii) in respect of each receipt or payment of trust money—
 - (A) the date and reference number of the receipt or the cheque by which the payment is made;
 - (B) the name of the person from whom the money is received or to whom the money is paid;
 - (C) brief particulars of the purpose of the receipt or payment;
 - (D) the amount received or paid;
- (e) if the agent transfers money between any of the separate accounts, the transfer must be clearly recorded—
- (i) in both accounts; and
 - (ii) in a transfer journal,
- in sufficient detail that the transfer may be clearly understood;

- (f) at the end of each month, reconciliation statements must be prepared—
 - (i) reconciling the balance of the agent's cash books (or other records approved under paragraph (a) or (b)) with the balance of the agent's trust account; and
 - (ii) reconciling the balances of the ledgers comprised in the agent's trust ledger accounts with the balance of the agent's trust account,

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

Receipt of trust money

16. For the purposes of section 36G(2)(a) of the Act, the receipt that an agent must make available to a person making a payment of trust money—

- (a) must—
 - (i) 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"; or
 - (ii) be in some other form approved in writing by the Commissioner for Consumer Affairs on the application of the agent; and
- (b) must contain the following information:
 - (i) the date of payment; and
 - (ii) the name of the person making the payment; and
 - (iii) whether the payment is by cash, cheque or bank cheque and, if the payment is by cheque or bank cheque, the name of the drawer of the cheque; and
 - (iv) the name of the corporation for whom the money is received; and
 - (v) brief particulars of the purpose of the payment; and
 - (vi) the amount of the payment.

Payment of trust money

17. (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 (3) and keep the receipt as part of the agent's records; and

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- (c) must prepare and keep as part of the agent's records a cheque stub or voucher containing the following information:
 - (i) the date and reference number of the cheque;
 - (ii) the name of the payee;
 - (iii) the client's name or reference and brief particulars of the purpose of the payment;
 - (iv) the amount of the cheque.

Maximum penalty: \$500.

- (3) 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.

Audit of trust accounts

18. (1) For the purposes of section 36H(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 two dates (one to be the last day of the period of the audit and one 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 36H(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 strata 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 19 and the result of that examination.

(4) The auditor must attach to the auditor's statement a copy of the agent's notice delivered to the auditor under regulation 19(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) For the purposes of section 36H(2)(b) of the Act, an agent must lodge an audit statement or declaration within two months after the end of each audit period.

Agent's statement

19. (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 two partners of the firm; or

- (c) in the case of a body corporate agent—under the hands of not less than two 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 two of the partners of the firm; or
- (c) in the case of a body corporate agent—of not less than two 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.

Certain persons may not audit accounts and records of agent

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

- (a) is, or has been within two 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.

SCHEDULE 1

Certificate of Licensed Surveyor

I,, a licensed surveyor under the *Surveyors Act 1975*, certify—

- (a) that this plan correctly delineates the boundaries of the land comprised in the plan and all units, unit subsidiaries, common property and other buildings shown on the plan; and
- (b) that this plan is correct for the purposes of the *Strata Titles Act 1988*, and regulations.

Dated this day of, 19

.....
Licensed Surveyor

SCHEDULE 2

Certificate of Licensed Surveyor Relating to the Amendment of a Deposited Strata Plan

I,, a licensed surveyor under the *Surveyors Act 1975*, certify that this plan correctly delineates the units, common property and buildings on the land comprised in the plan.

Dated this day of, 19

.....
Licensed Surveyor

* * * * *

SCHEDULE 9

Certificate Relating to the Amendment of the Articles of a Strata Corporation

Strata Corporation No. Incorporated

I, of, being an officer of the Strata Corporation No. Incorporated, certify that the attached resolution is a true and correct copy of a special resolution amending the articles of the corporation passed at a duly convened meeting of the corporation on the day of, 19

Dated the day of, 19

NOTE: This certificate must be accompanied by any new articles, or variations to existing articles, passed by the corporation pursuant to the special resolution

Strata Titles Regulations 1988

SCHEDULE 10

Strata Titles Act 1988

Section 17A(2)(a)

*Notice of Intention to Apply to Registrar-General to
Deposit Strata Plan or Amend Deposited Strata Plan*

To of
.....
(name of person to whom this notice is given) (address of person to whom this notice is given)

Re:
(description of the interest in land described below of the person to whom this notice is given)

* I/We of
.....
(name of each person giving this notice) (address of each person giving this notice)

hereby notify you that—

1. *I/We intend to make application to the Registrar-General under Division
of the *Strata Titles Act 1988* in respect of the land comprised in Certificate(s) of Title Register
Book Volume Folio
.....

2. Your consent to
.....
(give particulars of the application or related matter to which consent is required)

is required and hereby sought to enable *deposit/amendment of the Strata Plan for the land described above.

3. If you intend to refuse that consent and you fail to lodge an objection with the Registrar-General within 28 days from the date on which this notice is—

(a) posted to you;

or

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

** or

** (c) left on or near the land over which the encroachment has occurred,

whichever occurs last, section 17A of the *Strata Titles Act 1988* empowers the Registrar-General to proceed with the application to *deposit/amend the Strata Plan without your consent and your consent will, by law, be taken to have been given.

Dated this day of , 19

.....
.....
(Signature of person(s) giving notice)

(* strike out whichever is inapplicable)
(** strike out if no encroachment is involved)

APPENDIX

LEGISLATIVE HISTORY

(entries in bold type indicate amendments incorporated since the last reprint)

Regulation 5(3):	substituted by 155, 1990, reg. 3
Regulation 6:	redesignated as regulation 6(1) by 155, 1990, reg. 4
Regulation 6(2):	inserted by 155, 1990, reg. 4
Regulations 7 and 8:	revoked by 247, 1993, reg. 3
Regulation 8A:	inserted by 155, 1990, reg. 5
Regulation 11:	varied by 82, 1991, reg. 3
Regulation 12(2):	substituted by 82, 1991, reg. 4
Regulations 13 - 15:	inserted by 236, 1996, reg. 3
Regulation 16:	inserted by 236, 1996, reg. 3; varied by 143, 1999, reg. 3 (Sched. cl. 22)
Regulations 17 - 20:	inserted by 236, 1996, reg. 3
Schedules 3 - 8:	revoked by 247, 1993, reg. 4
Schedule 10:	inserted by 155, 1990, reg. 6