

South Australia

## **Strata Titles Regulations 2003**

under the *Strata Titles Act 1988*

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## **Part 1—Preliminary**

### **1—Short title**

These regulations may be cited as the *Strata Titles Regulations 2003*.

### **2—Commencement**

These regulations will come into operation on 7 April 2003.

#### **Note—**

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in this regulation.

### **3—Interpretation**

In these regulations, unless the contrary intention appears—

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

## **Part 2—Division of land by strata plan**

### **4—Unit entitlement**

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.

### **5—Application for deposit of strata plan**

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

### **6—Amendment of deposited strata plan**

- (1) The certificate of a licensed surveyor relating to the amendment of a deposited strata plan must be in the form set out in 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; and
  - (b) the prescribed distance is 0.20 metres, or such other distance as the Registrar-General may determine in a particular case.

### **7—Procedure where the whereabouts of certain persons is unknown**

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 Schedule 3.

## **Part 3—The strata corporation**

### **8—Variation of articles**

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 Schedule 4.

### **9—Insurance**

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

## 10—Record keeping

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.

## 11—Provision of information

- (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) Subject to subregulation (3), the following fees are prescribed for the purposes of section 41(2) of the Act:
  - (a) if an application is made for all or any of the information referred to in section 41(1)(a)—
    - (i) if the applicant is the owner of a unit—no fee;
    - (ii) in any other case—\$25 per application;
  - (b) if an application is made for copies of all or any of the documentary material referred to in section 41(1)(b)—
    - (i) if the applicant is the owner of a unit—\$5 per application;
    - (ii) in any other case—\$25 per application, plus an additional \$10 if the application is for, or includes a request for, a copy of current policies of insurance taken out by the strata corporation;
  - (c) if an application is made to inspect all or any of the documentary material referred to in section 41(1)(c)—
    - (i) if the applicant is the owner of a unit—no fee;
    - (ii) in any other case—\$5 per application.
- (3) If GST is payable in relation to goods, services or other things supplied in response to an application referred to in subregulation (2), 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 (2).
- (4) The strata corporation may, as it thinks fit, reduce or waive any fees under subregulation (2).

(5) 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.

## **Part 4—Agent's trust accounts**

### **12—Authorisation of fees, costs and disbursements (section 36D(b))**

- (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 3 months), transfer the money to an account maintained by the agent for receipts other than trust money.

Maximum penalty: \$500.

### **13—Authorised trust accounts (section 36E)**

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.

### **14—General duty with respect to electronic records**

If an agent uses a computer program to keep records under section 36G of the Act, 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.

## **15—Cash books**

- (1) 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 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 strata 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 strata 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.

## **16—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 Part 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.

### **17—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 15 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).

### **18—Receipt of trust money**

- (1) 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 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 the payment.

### **19—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's 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;
  - (b) particulars identifying the trust account against which the cheque is drawn;
  - (c) the name of the payee;
  - (d) brief particulars of the purpose of the payment;
  - (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.

## **20—Audit of trust accounts**

- (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 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 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 21 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 21(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 strata 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 36H(2)(b) of the Act, an agent must lodge an audit statement or declaration within 2 months after the end of each audit period.

## **21—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 of the 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.

## 22—Certain persons may not audit accounts and records of agents

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.

## Schedule 1—Certificate of licensed surveyor

I,....., a licensed surveyor under the *Survey Act 1992*, 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 ....., 20.....  
.....

Licensed Surveyor

## Schedule 2—Certificate of licensed surveyor relating to the amendment of a deposited strata plan

I,....., a licensed surveyor under the *Survey Act 1992*, certify that this plan correctly delineates the units, common property and buildings on the land comprised in the plan.

Dated this ..... day of ....., 20.....  
.....

Licensed Surveyor

### Schedule 3—Notice of intention to apply to Registrar-General to deposit strata plan or amend deposited strata plan

(Section 17A(2)(a))

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 ....., 20 .....  
.....  
.....

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

*(\* strike out whichever is inapplicable)*

*\*\* strike out if no encroachment is involved)*

**Schedule 4—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 ....., 20 .....

Dated the..... day of ....., 20 .....

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

**Schedule 5—Revocation of *Strata Titles Regulations 1988* (Gazette 21.7.1998 p 460) as varied**

The *Strata Titles Regulations 1988* (Gazette 21.7.1988 p460), as varied, are revoked.

**Made by the Governor**

with the advice and consent of the Executive Council  
on 20 February 2003

No 15 of 2003

AGO 0007/03 CS