

South Australia

Community Titles Variation Regulations 2013

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 Variation Regulations 2013*.

2—Commencement

- (1) Subject to subregulation (2), these regulations will come into operation on 18 July 2013.
- (2) The following regulations will come into operation on 28 October 2013:
 - (a) regulations 4 to 15 (inclusive);
 - (b) regulation 16 (other than regulation 40 to be inserted in the *Community Titles Regulations 2011*);
 - (c) regulation 17.

3—Variation provisions

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

Part 2—Variation of *Community Titles Regulations 2011*

4—Insertion of regulation 2

After regulation 1 insert:

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.

5—Revocation of regulation 3

Regulation 3—delete the regulation

6—Insertion of regulation 13A

After regulation 13 insert:

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.

7—Substitution of regulation 14

Regulation 14—delete the regulation and substitute:

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.

8—Variation of regulation 15—Matters to be addressed at first statutory general meeting

Regulation 15—after "first" insert:

statutory

9—Substitution of regulation 16

Regulation 16—delete the regulation and substitute:

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.

10—Variation of regulation 17—Proof of insurance

Regulation 17—delete "the community corporation with"

11—Insertion of regulation 18A

After regulation 18 insert:

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.

12—Substitution of regulation 24

Regulation 24—delete the regulation and substitute:

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.

13—Variation of regulation 25—Fee for provision of information

Regulation 25(1)—after paragraph (a) insert:

- (ab) in the case of an application for the documentary material referred to in section 139(1a)—\$25 per application;

14—Insertion of regulation 26A

After regulation 26 insert:

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.

15—Variation of regulation 35—Audit of trust accounts

Regulation 35(8)—delete "lodge an audit statement or declaration" and substitute:
forward an audit statement

16—Insertion of Part 4

After Part 3 insert:

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)

For the purposes of section 142A(4)(a) of the Act, the period specified in the contract must not exceed a period of 2 years after the date of the contract.

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*.

17—Variation of Schedule 1—Forms

After Form 10 insert:

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).

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 these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 18 July 2013

No 182 of 2013

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