

South Australia

## **Strata Titles Variation Regulations 2013**

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 Variation Regulations 2013*.

#### **2—Commencement**

- (1) Subject to subregulation (2), these regulations will come into operation on 18 July 2013.
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- (2) The following regulations will come into operation on 28 October 2013:
- (a) regulations 4 to 10 (inclusive);
  - (b) regulation 11 (other than regulation 24 to be inserted in the *Strata Titles Regulations 2003*);
  - (c) regulation 12.

### **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 *Strata Titles Regulations 2003***

### **4—Insertion of regulation 2**

After regulation 1 insert:

#### **2—Interpretation**

- (1) In these regulations—  
*Act* means the *Strata Titles Act 1988*.
- (2) For the purposes of paragraph (a)(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.

### **5—Revocation of regulation 3**

Regulation 3—delete the regulation

### **6—Insertion of regulation 6A**

After regulation 6 insert:

#### **6A—Application to ERD Court to amend or cancel a strata plan**

For the purposes of sections 13(3b) and 17(4b) of the Act, in determining an application to amend or cancel a strata plan, the ERD Court must have regard to the following matters:

- (a) whether there is evidence that any unit holders object to the amendment or cancellation and, if so, how many unit holders object to it;
- (b) whether there are to be any adverse consequences to unit holders 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 unit holders 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—Insertion of regulation 7A**

After the heading to Part 3 insert:

### **7A—Articles of strata corporation—penalty notice**

For the purposes of section 19(3b)(c)(i) of the Act, the form set out in Schedule 1 is prescribed.

## **8—Insertion of regulations 8A, 8B and 8C**

After regulation 8 insert:

### **8A—Interest on arrears of contributions by unit holders**

A strata corporation, when fixing interest payable by a unit holder 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.

### **8B—Body corporate managers**

- (1) For the purposes of section 27B(2)(b) of the Act, a body corporate manager must provide the strata 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 27B(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 27B(3)(f) of the Act, a contract between a body corporate manager and a strata 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 unit holder of the strata corporation to inspect, at any time during ordinary business hours, the records of the strata 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 27B(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 strata 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.

### **8C—Return of records and trust money when delegations revoked**

- (1) For the purposes of section 27D(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 27D(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 27D(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.

## **9—Substitution of regulation 9**

Regulation 9—delete the regulation and substitute:

### **9—Other insurance by strata corporation**

- (1) For the purposes of section 31(2) of the Act, insurance cover for liability in tort must be for at least \$10 000 000.
- (2) For the purposes of section 31(2a) of the Act—
  - (a) a policy of fidelity guarantee insurance must insure a strata 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) strata corporations with no administrative or sinking funds are not required to maintain fidelity guarantee insurance.

### **9A—Agenda at annual general meetings**

For the purposes of section 33(4b)(c)(v) of the Act, the agenda for an 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 3A 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 27B 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 8B(4), can be viewed or obtained by members of the corporation; and
- (f) proposed controls on expenditure by delegates of the corporation.

## **9B—Procedure at meetings**

- (1) For the purposes of section 33(9) 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 33(10) 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 33(11) of the Act, a unit holder may attend and vote at a meeting by means of remote communication—
  - (a) if—
    - (i) the articles of the corporation make provision for attendance and voting at meetings by unit holders by means of remote communication; and
    - (ii) the unit holder complies with any applicable requirements specified in those articles; or

- (b) if—
  - (i) the unit holder 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 unit holder's attendance and voting at the meeting by remote communication; and
  - (iii) the unit holder complies with any requirements of the secretary in relation to the request referred to in subparagraph (i).

### **9C—Statement of expenditure etc**

- (1) For the purposes of section 33A(1)(a) of the Act, the prescribed period is—
  - (a) in the case of a strata corporation consisting of at least 7 but not more than 20 strata units—3 years; or
  - (b) in the case of a strata corporation consisting of more than 20 strata units—5 years.
- (2) For the purposes of section 33A(2) of the Act, new information must be prepared for the purposes of section 33A(1)(a) 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 33A(1)(a) and (2) of the Act:
  - (a) strata corporations consisting of 6 or less strata units;
  - (b) strata corporations that have buildings and other improvements on its common property insured for a sum not exceeding \$100 000.

### **10—Variation of regulation 20—Audit of trust accounts**

Regulation 20(8)—delete "lodge" and substitute:

forward

## 11—Insertion of Part 5

After Part 4 insert:

### **Part 5—Miscellaneous**

#### **23—Register of unit holders**

For the purposes of section 39A(2) of the Act, the period for which a strata corporation must keep a record of information used to compile the register of unit holders is at least 7 years.

#### **24—Indemnity fund under *Land Agents Act 1994***

For the purposes of section 50A(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*.

#### **25—Functions of secretary and treasurer of strata corporation**

- (1) The secretary of a strata 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 unit holders and other officers of the corporation—see section 33 of the Act.

- (2) The treasurer of a strata corporation has the following functions:
  - (a) to notify unit holders 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—see section 23 of the Act.

**12—Insertion of Schedule 1**

Before Schedule 2 insert:

**Schedule 1—Penalty notice**

(Section 19(3b)(c))

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

The *[insert name of the strata 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 a unit holder, the penalty may be recovered by the corporation under section 27 of the *Strata Titles Act 1988* (and interest will be payable on the penalty amount in the same way as if it were such a contribution).

Under section 19(3b)(e) 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 183 of 2013

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