

## **Multiple Entities in Strata Buildings**

[Strata Plan of Subdivision](#), [Community Associations](#), [Neighbourhood Associations](#), [Precinct Associations](#), [Building Management Committees](#)  
[Building Management Statements](#), [Strata Management Statements](#)

The following is a brief summary of some situations encountered where an Owners Corporation occupies only a part of a building or occupies only one of a number of buildings in a development.

This working paper has been prepared with the aim of improving our own organisation's knowledge of some of the, perhaps unexpected, features of such developments.

It is assumed the reader has some familiarity with the relevant law and, for the sake of brevity, much of the "predictable" legislation, and the entire Strata Schemes (Leasehold Development) Act, is ignored.

Comment and corrections are welcome.

### **1. STRATA PLAN OF SUBDIVISION**

A single Owners Corporation can occupy multiple buildings and a single building may include a number of strata plans being subdivisions of the original strata plan.

This can occur through simple changes to the building or rearrangements of lots. ie. Subdivision of a single penthouse into two parts. The existing strata plan is not amended. A new plan is issued dealing only with the changed lots.

Subdivisions also occur in a staged development<sup>1</sup> where there is a registered Strata Development Contract and each stage of the development is a new strata plan occupying one or more lots in the head plan.

Title details for the unit being transferred may be in one of the subdivisions but the building/complex is managed under the head plan and there is no practical separation of the various plans. There is one Executive Committee, one set of by-laws, accounts etc.

As strata title registration numbers are issued in series, the head plan will always have the lowest number, further, all title details on the contract will refer to CP/SP not to any DP

Strata title subdivisions have no real bearing on building management but the various title details can confuse the casual observer who may think there is more than one entity.

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<sup>1</sup> Strata Schemes (Freehold Development) Act 1973 – Division 2A

## 2. COMMUNITIES

As is the case with Strata Schemes; Communities are created and managed under two, sometimes overlapping, Acts. The Community Land Development Act 1989 (CLDA) and the Community Land Management Act 1989 (CLM). The entities created in the CLDA are:

- Community Association
- Precinct Association
- Neighbourhood Association

The Community is at the top of the hierarchy and may consist of the proprietors of individual lots as well as Precincts, Neighbourhoods and Strata Plans. A Precinct may include individual lots, Neighbourhoods and Strata Plans. A Neighbourhood consists purely of the proprietors of individual lots.

Community Association title details will include a Deposited Plan number from DP270001, Precincts from DP280001 and Neighbourhoods from DP285001. There are a few hundred Communities and Neighbourhoods but the first Precinct, part of a Community in Tea Gardens, was only registered on 4<sup>th</sup> August 2003.

Lot 1 in an Association is always the common property.

If we think in terms of a Community Association being roughly the equivalent of a suburb, bound together by a shared interest / theme or location, we can place within that suburb houses, home units, businesses and community facilities. Some of the occupants may be direct members of the Association (ie houses) but others may be members of a smaller scheme such as a Strata Scheme for a block of units or a Neighbourhood Association for some other houses. Neighbourhoods are frequently used in large staged developments where each represents a stage of the development.

There are not yet any instances of all three levels appearing in a single development in NSW. Confusingly, Newington (the Olympic Village development) is a series of Community Associations and the management documents refer to Precincts but, in that instance, the word is being used for it's common meaning, not referring to legal entities under the Act.

Importantly, a house that is a direct member of the Community has a unit entitlement in the Community, can vote directly on Community affairs and be a member of the Executive Committee.

An identical house which is part of a subsidiary Neighbourhood Association may have an equivalent unit entitlement to the first house but only interacts with the Community through the Neighbourhood, and the Owner can only be elected to the Community Executive Committee as a representative of that Neighbourhood.

At a practical management level the CLM is broadly similar to the Strata Schemes Management Act (SSM). It is in the pre-registration phase that the most important differences arise.

The Strata Schemes Management Act 1996 (SSM) sets up a default set of by-laws which means that most Strata Schemes have very similar rules. The CLDA and CLM merely list sets of things for which by-laws must or may be made.

The reduced level of prescription arises because the Acts deal with a wider range of development types, including the sale of vacant lots, and they also specifically envisage the occupation of lots by classes of people with some particular common interest ie. golfers.

The SSM prohibits any by-law “capable of operating to prohibit or restrict the devolution of a lot or a transfer, lease, mortgage, or other dealing relating to a lot” or any by-law restricting children (except in retirement villages)<sup>2</sup>.

The CLDA and CLM merely prohibit by-laws “based on race or creed, or on ethnic or socio-economic grouping”, public housing and disability.

The Acts include but do not limit the powers to make by-laws;

- (a) limiting occupancy under the scheme to persons of a particular description, or
- (b) fixing the architectural, building or landscaping styles to be permitted, or
- (c) limiting the kind of materials that may be used in buildings and other structures, or
- (d) requiring that specified association property be used only for particular purposes, or
- (e) imposing any other kind of restriction.<sup>3</sup>

The CLDA also specifically includes the power to make by-laws relating to a business operated by the Association<sup>4</sup> DP270158 runs a vineyard/winery/wine retailing business – Kelman Vineyard. Among other things, lot owners receive a regular wine entitlement. (The tax situation is probably not ideal but that is another issue.)

Like an Owners Corporation, an Association is run by an Executive Committee which will either be elected from the body of lot owners or comprise a representative of each Owners Corporation or a combination of the two. An association with more than 3 members must decide at each Annual General Meeting how many members will comprise the Executive Committee.

There may be only one nominee per member (lot) the nominee must be a person and the committee may not exceed 9 members<sup>5</sup>.

The limit on numbers may make management sense but it seems to have the potential to cause problems when there are more than 9 subsidiary schemes. Individual owners within Strata Schemes or Neighbourhoods do not have direct representation on the Community Executive so they might be expected to rely on the person who is the representative for their building or street. One then must ask what happens when their building or street has no representation on the Committee.

The manager of Community Association DP270244 Pacific Lakes (Lake Munmorah) has sidestepped this problem in this new scheme of 16 Neighbourhoods, one single lot (kindergarten) and a three unit commercial Strata Scheme, by inviting nominees from the unrepresented Neighbourhoods to the Executive Committee meetings. It is a new development so the situation may change as the Association matures. Abbotsford Cove DP270127 has regular General Meetings rather than Executive Committee meetings.

As each entity within the Association is managed separately it is desirable to have an inspection of each set of records.

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<sup>2</sup> Strata Schemes Management Act 1996 - Sect 49

<sup>3</sup> Community Land Development Act 1989 - Schedule 3, Community Land Management Act 1989 - Sect 17

<sup>4</sup> Community Land Development Act, Schedule 3, Clause 3

<sup>5</sup> Community Land Management Act 1989 - Sect 28

### 3. PART BUILDING STRATA - STRATUM LOT

The development of large multiple use buildings created a need for a building management structure that is more flexible than that allowed in conventional strata title.

An excellent example is the Grace Bros building in the Sydney CBD. DP1009261 comprises three lots occupied by Grace Bros, the Merchant Court Hotel (levels 8 to 25) and SP61890 (levels 26 to 36).



Clearly the three sets of owners have vastly differing interests and in combination form a body that is not quite like any other and certainly not suitable for management by a “catch-all” piece of legislation such as the SSM.

While the stratum lot is created by legislation it is not governed by a single Act in the same way as Strata Schemes or the various Associations.

At it's simplest, a building might comprise two stratum lots managed under a contract between the two owners.

If that contract meets the Registrar General's requirements it may be registered on title as a Registered Building Management Statement.<sup>6</sup>

If one of those stratum lots is occupied by a Strata Scheme the Registrar-General is required to register a Strata Management Statement (SMS), which supersedes any existing Registered Building Management Statement, when the Strata Scheme is registered.<sup>7</sup>

The SMS combines both constitutional and building management issues.<sup>8</sup> For instance, it must contain clauses that create the Building Management Committee(BMC), describe it's functions,office bearers, membership, amendment and dispute procedures. Importantly the SMS may also regulate or prohibit trading activities and it may contain an architectural code for the building.

The SMS may be amended only if the amendment is supported by each stratum lot owner and by a Special Resolution for each Strata Scheme.

The committee is required to comprise a representative of each stratum lot. <sup>9</sup>

<sup>6</sup> Conveyancing Act 1919, SS 196D and Schedule 8A

<sup>7</sup> Strata Schemes (Freehold Development) Act 1973 - Sect 28R

<sup>8</sup> Strata Schemes (Freehold Development) Act 1973 - Schedule 1C

<sup>9</sup> Strata Schemes (Freehold Development) Act 1973 - Schedule 1C

The BMC is not a legal entity. It cannot sue or be sued. It cannot enter contracts but it can bind building occupiers to its decisions.

Insurance policies need to be taken out in the joint names of all the stratum lot owners. Lot owners that are not Strata Schemes do not have to meet the minimum insurance requirements of the SSM.<sup>10</sup> As it is likely that Building and Public Liability insurances will be covered by the shared insurance policies the Owners Corporation will need to ensure it takes out its own Voluntary Workers and Workers Compensation policies to meet minimum statutory requirements.

The division of expenses among the stratum lot owners is typically calculated by line item. In all cases we have seen the apportionment is presented on a spreadsheet form something like this example.

| Item                         | Lot 1<br>Retail | Lot 2<br>Hotel | Lot 3<br>Strata<br>Scheme |
|------------------------------|-----------------|----------------|---------------------------|
| Air Conditioning Maintenance | 30%             | 40%            | 30%                       |
| Lift maintenance Contract    | 0%              | 60%            | 40%                       |
| Swimming Pool                | 0%              | 50%            | 50%                       |
| Garbage Disposal             | 60%             | 30%            | 10%                       |
| Carpark                      | 5%              | 50%            | 45%                       |
| Insurance                    | 50%             | 25%            | 25%                       |

The apportionment of expenses brings us to the requirement that the SMS contain a dispute management procedure.

It is our experience that new complexes inevitably seem to have areas where one owner or another will be dissatisfied with the planned allocation of some expenses. The dispute management process will be tested.

The politics of a BMC can be challenging. Consider the situation of the Forum at St Leonards. That BMC comprises ten lots, three of which are strata schemes. While the individual owners within those strata schemes may feel they have a significant stake in the complex, they have only three votes. It is easy to imagine residential owners might have very different concerns to commercial owners when considering issues such as shared car parking or security arrangements.

An Owners Corporation representative on the BMC may be appointed by Special Resolution or a method prescribed in a by-law. The Special Resolution route contains the possibility that an unpopular representative might be able to cement himself into the position because of the difficulty in dislodging them. For this reason it is common for an Owners Corporation to have a by-law providing for the appointment to be made by the Executive Committee.<sup>11</sup>

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<sup>10</sup>Strata Schemes Management Act 1996 – Part 4

<sup>11</sup>Strata Schemes (Freehold Development) Act 1973 - Schedule 1c