

Safeguards for the termination of schemes

The first strata schemes in Western Australia were created in 1968. Scheme buildings are aging, and many are costing owners large amounts in maintenance. Therefore, termination of a strata scheme will become increasingly common. To protect the assets held by all strata owners, Landgate is revising the process of terminating a strata scheme.

The new majority termination process will:

- introduce safeguards for owners
- introduce a termination process that is transparent, reasonable and requires a vote, and
- require a full procedural and fairness review by the State Administrative Tribunal (SAT) to consider all owners' views.

The current law

Under the *Strata Titles Act 1985* (the Act) there are three ways a strata scheme can be terminated:

1. all owners vote to terminate (a unanimous resolution)
2. one owner or one mortgagee can apply to the District Court for an order to terminate a scheme (under section 31 of the Act).
3. one owner can apply to the District Court for an order (under section 51 of the Act) deeming that a resolution to terminate is unanimous, provided that:
 - a special resolution was reached and
 - the person applying was part of the majority who voted to terminate

Currently the Act does not provide adequate safeguards for owners in relation to the termination of a scheme as:

- there is no requirement for a detailed proposal be prepared or even given to other owners before launching the District Court action;
- there is no requirement for a vote before applying to the District Court;
- there is no additional assistance or safeguards for vulnerable owners to help them in responding to the District Court action; and
- the Act provides no guidance to the District Court on how it should assess a termination application.

Overview of the reformed law

The majority termination process is more than just a vote. There is a whole, transparent process that must be followed.

If the vote produces the required majority, but is not unanimous, the termination proposal must undergo a fairness and procedure review by SAT. A majority termination proposal **cannot** proceed without an order from SAT.

SAT can order that a scheme be terminated under a majority vote only if it is satisfied of three key things:

- the termination process was properly followed, and
- every owner who objects to the termination will get at least fair market value for their lot (eg: apartment or unit), and
- the proposal to terminate is just and equitable.

The revised Act will provide extensive guidance to assist SAT in deciding whether the proposal is just and equitable and vulnerable owners will have access to funding for assistance to respond to the termination proposal.

On implementation, Landgate will provide a telephone and online service to:

- answer general questions about strata and offer guidance to people dealing with strata issues
- help prepare those affected by the reforms

The termination proposal process

If a person or group wishes to terminate a strata scheme, there is a three-part process, A, B and C, each with steps that must be followed:

Part A – The proposal

1. prepare outline proposal
2. vote on outline proposal
3. obtain initial planning approval
4. prepare detailed proposal

Part B – The vote

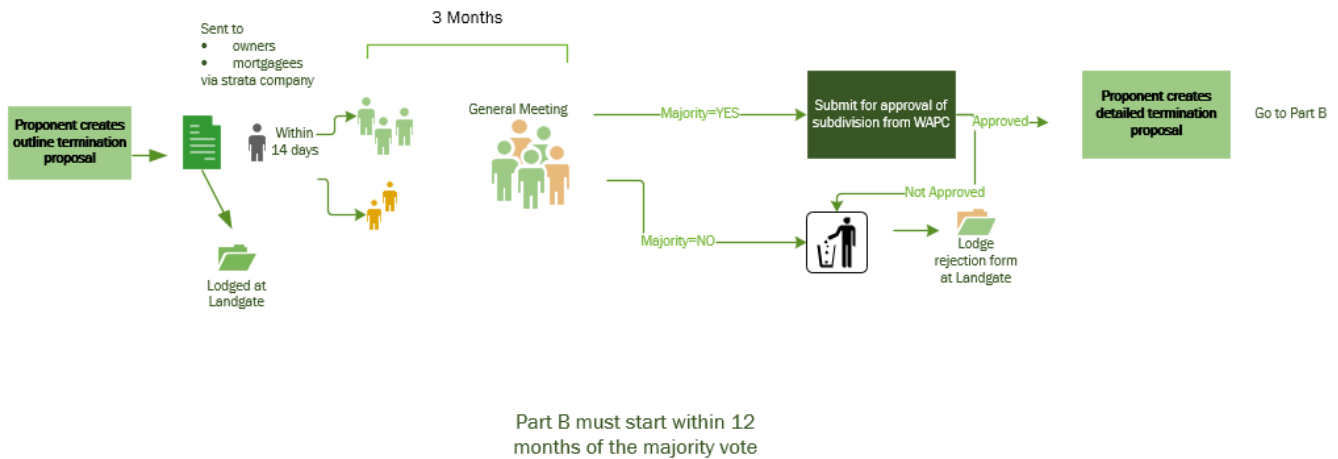
5. distribute the detailed proposal to all parties
6. vote on the detailed proposal

Part C – SAT Review

7. apply for a SAT review where applicable
8. request the WAPC endorse the plan of survey
9. apply to the Registrar to register the termination.

A detailed description of the steps in each part of the process follows.

Part A – The proposal



1 Prepare outline proposal

A person or group (the proponent) who wants to terminate the scheme must prepare an outline of the termination proposal telling owners:

- what each owner is being offered for their lot, and
- what is proposed for the termination. For example: is the termination aimed at redeveloping the land, are owners getting a replacement lot or going to be paid money for their lot, etc.)

The outline proposal must then be provided to the strata company which will distribute it to all owners and mortgagees within 14 days. The strata company must lodge a notification with the Registrar so that the Registrar can record the outline proposal on the scheme plan (this is to ensure people who search the scheme plan can see if the scheme is considering a termination outline proposal).

Note: The regulations will specify the exact information that needs to be in the outline proposal.

2 Vote on outline proposal

All owners and mortgagees have three months to consider the outline proposal, after which time the strata company will hold a general meeting. If an ordinary resolution is passed in favour of the outline proposal, the proponent can proceed to the next step.

If the strata company does not pass an ordinary resolution in favour of the outline proposal, the termination proposal comes to an end.

Note: For a two-lot scheme, 1 lot must vote in favour of the outline proposal before the proponent can move to the next step.

3 Obtain initial planning approval

Planning approval is required because when a scheme terminates, all the lots and common property become a single lot. This is regarded as a form of subdivision which requires approval from the West Australian Planning Commission (WAPC).

If the initial subdivision gets WAPC approval, the proponent will prepare a detailed termination proposal.

If the WAPC does not approve the initial subdivision the termination proposal process comes to an end.

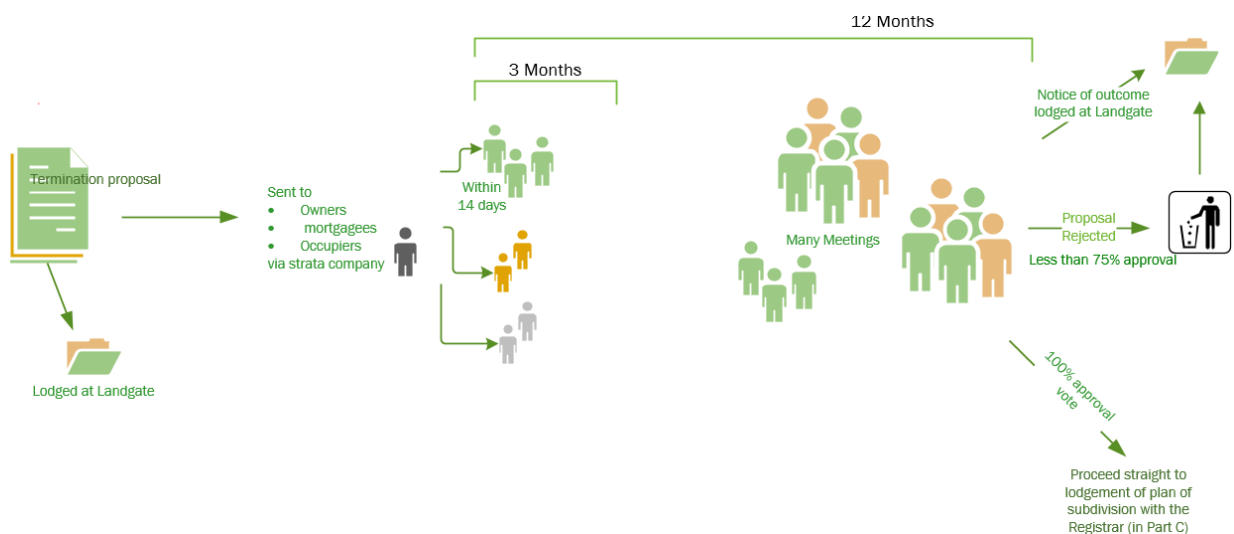
4 Prepare detailed proposal

The proponent prepares a detailed termination proposal which must contain:

- specifics of what each owner is being offered for their lot, including:
 - how much money the proponent is offering
 - whether the owner is being offered a replacement lot in a new scheme to be built on the current site, or
 - whether the owner is being offered a replacement lot in a scheme nearby (in the same neighbourhood)
- details of what is proposed to happen with any mortgages and leases over the lots
- details of how the strata company’s assets and liabilities will be finalised if the scheme is terminated
- an infrastructure report (paid for by the proponent) containing:
 - a report from a structural engineer on the condition of each building in the scheme
 - a report from a quantity surveyor estimating the cost to repair or replace scheme buildings, and
 - a valuation report (paid for by the proponent) prepared by a licensed valuer stating the market value of each lot
- any other information required by the regulations.

The proponent serves the detailed proposal on the strata company within 12 months of the date of the majority vote in step 2.

Part B – The vote



5 Distribute the detailed proposal to all parties

The strata company must give the detailed proposal to:

- every lot owner
- every registered mortgagee of a lot in the scheme, and
- every occupier of a lot in the scheme.

No decision may be made on the termination until three months have passed, enabling detailed consideration of the proposal.

6 Vote on the detailed proposal

Multiple meetings may be held to understand and negotiate the termination proposal. The strata council may meet with the proponent to clarify and provide further information to the affected people and all people who were served the full proposal can make submissions to the proponent and the strata company. If required, more than one general meeting of the strata company may be held.

A vote in favour of the termination proposal is only effective if it happens between three and twelve months after the proposal was served; a maximum nine-month window.

6.1 Unanimous vote

If the vote to terminate is unanimous there is no need for a SAT review. The process continues at step 8.

6.2 Majority vote

If the vote is not unanimous but the required majority of owners vote in favour, the proponent can apply to SAT to undertake a fairness and procedure review (step 7).

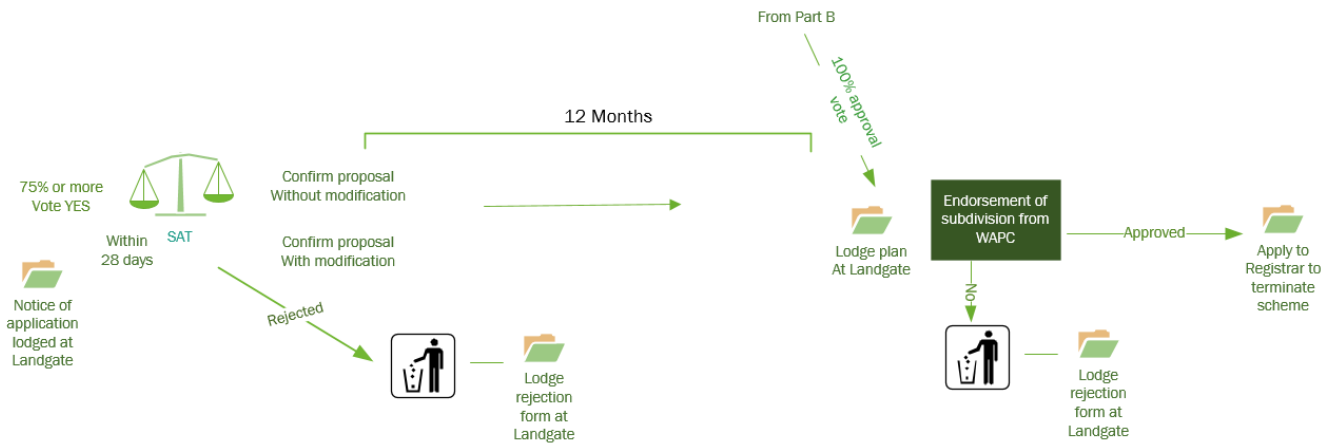
The majority vote required to ratify a termination proposal before a SAT review is:

- for schemes of four or more lots, 75 per cent of lot owners must vote in favour
- for three-lot schemes, owners of at least two lots must vote in favour.
- for two-lot schemes, one lot owner must vote in favour.

6.3 Required vote not attained

If the required majority vote is not attained, the termination proposal comes to an end.

Part C - SAT review



7 Apply for a SAT review

If the detailed proposal attains the required majority vote (but not 100 per cent) the proponent must apply to SAT for a fairness and procedure review.

7.1 Just and equitable

The Act will provide extensive guidance to assist SAT to decide whether the proposal is just and equitable.

SAT **must** consider:

- the interests of owners of lots in the scheme
- the interests of occupiers of lots in the scheme
- the interests of registered mortgagees of lots in the scheme
- evidence of any impropriety in the termination process including evidence of proxy votes being exercised improperly and evidence of false or misleading information in the outline or detailed termination proposal
- the proportion of owner support for the termination by number of lots and unit entitlement
- the proportion of support in favour of terminating in terms of number of lots and unit entitlement
- the infrastructure termination report and how much it would cost to repair buildings in the scheme
- the benefits and detriments of the termination proposal proceeding or not proceeding for owners, occupiers and registered mortgagees

At proceedings, SAT will hear from:

- an owner of a lot in the scheme
- an occupier (including a tenant) of a lot in the scheme
- a registered mortgagee

7.2 Compensation

In deciding compensation for each owner who objects to the proposal, SAT must consider:

- whether the offer represents fair market value for their lot (at least the open market price)
- whether there is other money that the objecting owner should be paid

- what the full costs of terminating the scheme are for that owner, including discharging a mortgage, taxes, duty and other charges
- that the proponent must also pay owners their removal expenses if the owner will incur expenses to remove items from the lot because of the termination, and
- whether a strata owner is running a business on their lot, as the proponent must pay compensation for losses to the business caused by relocating because of the termination.

If the objecting owner is being offered a like-for-like replacement lot, SAT must consider:

- whether the value of the replacement lot is equivalent to the fair market value of the current lot and
- how the location, facilities and amenity of the replacement lot compares with the current lot.

SAT can modify the termination proposal to:

- ensure each objecting owner receives fair market value, and
- ensure that lessees will be properly compensated by the proponent, if the termination goes ahead.

7.3 Orders

SAT will have the power to make orders when reviewing a termination proposal which include:

- for the scheme to be terminated according to the detailed termination proposal
- that the scheme should not be terminated
- orders that are required to give effect to the termination proposal, such as to complete a transfer of a lot or vacate a lot. If the termination proposal sets out that after termination, the land will be collectively sold to a developer, SAT can order that every lot owner transfer their lot on the terms set out in the termination proposal (the owner will still receive the required fair market value compensation, or, if they took up the offer, a like-for-like replacement lot)
- ordering the discharge of a mortgage on such terms as SAT sees fit
- verifying that an owner is vulnerable and may have access to the funds provided for within the termination proposal, to seek advice and advocacy in relation to the termination proposal.

SAT can order that the termination of a scheme proceed only if it is satisfied that:

- the termination process was properly followed
- every owner will get fair market value for their lot (eg: apartment)
- the proposal to terminate is just and equitable

If SAT is not satisfied on all three points the proposal to terminate can be rejected.

8 Request WAPC endorse the plan of survey

If SAT orders that the majority termination can proceed, the proponent then needs to request the WAPC endorse the plan of survey required to register the termination.

If the plan of survey is not endorsed, the termination proposal comes to an end.

9 Apply to the Registrar to register the termination

The termination of the scheme will take effect on registration of the termination with Landgate. The registration of the termination will only occur if:

- the detailed termination proposal is passed by the required number of votes
- SAT orders that the detailed termination proposal may proceed
- the WAPC endorsed the plan of survey showing how the scheme will terminate and
- the proponent lodges all the other documents required with the Registrar of Titles.

Note: The proponent can withdraw their proposal at any time before registration of the termination.

Safeguards for vulnerable owners

Vulnerable owners will be given additional protection

The person seeking to terminate a strata scheme must provide funding to vulnerable owners to respond to the proposal. Vulnerable owners can then use that funding to:

- pay for legal advice on the termination proposal.
- pay for expert reports including obtaining a valuation report for their lot.
- pay for expert advice on the taxation and financial implications of the termination.

The Regulations will:

- define who is a vulnerable owner
- specify what amount needs to be set aside for each vulnerable owner and
- specify what the vulnerable proprietor can use that money for.

If there is an argument about who is a vulnerable owner, SAT will decide.

Expenses associated with a proposed termination

The proponent will have to cover the expenses of many activities linked with a termination, including preparing the outline and detailed termination proposal, making the planning applications and paying for the infrastructure and valuation reports. If the strata company needs to do things during the termination process (such as serve notices on the owners or registered mortgagees) the strata company can require the proponent to pay certain expenses arising from a termination, such as serving notices on owners.

Jurisdiction of the State Administrative Tribunal

SAT will hear termination matters

Under the Act being reviewed, strata scheme termination applications must be heard in the District Court. Reforms will mean that SAT will hear:

- applications to terminate under the new majority termination process. SAT will review every majority termination proposal.
- disputes arising from a termination

If a party to a termination proceeding is not satisfied with SAT's order to terminate or not terminate a scheme, that person may apply to the Court of Appeal (Supreme Court) to appeal the decision.

Discharging the strata company's liabilities

The reforms will provide that for majority or unanimous termination:

- the assets of the strata company are to be distributed, and
- the liabilities of the strata company must be discharged.

Meeting and vote of the strata company

The meeting of the strata company where owners vote on a termination proposal must be properly called and conducted. There must be minutes kept of any general meeting or meeting of the council to discuss the termination proposal.

There will be one vote cast per lot. Owners who have not paid levies (unfinancial owners) will still have a vote.

Who is entitled to vote?

Only lot owners can vote. Registered mortgagees won't be able to vote on the termination proposal, but they will be able to speak at the meeting. Registered mortgagees can also have their views heard at SAT if the termination proposal is approved by the strata company.

If a termination proposal fails

Where a termination proposal has expired or been rejected, no termination proposal may be served on the strata company for six months. In addition, the strata company may apply to SAT for an order extending the period during which termination proposals cannot be served on the strata company. This will give some schemes the ability to focus on running the scheme rather than responding to a termination proposal.

If the termination proposal attains the required vote

The strata company must:

- serve a notice on every lot owner and registered mortgagee of the outline proposal
- serve a notice on every owner, every registered mortgagee and every occupier when the strata company receives a detailed proposal
- serve a notice on every owner, every registered mortgagee and every occupier if the termination proposal is to be reviewed by SAT.
- lodge a notification with the Registrar of Titles noting that:
 - the strata company has received an outline proposal or a detailed proposal, and
 - the strata company has passed a detailed proposal, or
 - SAT has approved a termination proposal

This will ensure every lot owner, registered mortgagee and anyone searching the title records for the scheme is aware of the status of the termination proposal.

Termination of a leasehold scheme

A leasehold scheme may:

- expire at the end of the scheme (when all strata leases expire at the same time)
- be terminated before the end of the scheme
- be converted into a freehold strata title scheme, or
- be extended past the original expiry date.

The expiry of a leasehold scheme will happen automatically when the scheme and all the strata leases simultaneously expire. Termination, conversion or extension of a scheme will always require consent from the strata company and the lessor. More information about how a leasehold scheme can be converted or extended is set out in the [leasehold strata](#) section.

Expiry of a leasehold scheme

Every leasehold scheme will automatically be terminated when all the strata leases simultaneously expire. This doesn't require the strata company to vote or have the termination reviewed by SAT. Certain documents will be lodged at Landgate to show the leasehold scheme has been terminated because the strata leases have expired.

Unanimous termination

A leasehold scheme can be terminated before the expiry date if the leasehold lot owners unanimously consent to the termination. The also requires the lessor to consent to the termination before it can proceed.

The unanimous termination process for freehold schemes will apply to leasehold schemes (with the consent of the lessor required for the outline and the detailed termination proposal).

Majority termination

A leasehold scheme can also use the majority termination process. The same steps must be followed as for other strata or survey-strata schemes. However, the lessor (freehold landowner) must consent to the outline proposal and the detailed termination proposal. The owners of the lots will also receive fair compensation for their interest in their lot, if the scheme is terminated before the expiry of their strata leases. The majority termination of a leasehold scheme will ensure both the rights of the lot owners and the lessor are protected:

- Fair market value for each owner of a lot in a leasehold scheme who objects is decided by assessing the fair market price for a lot within the leasehold scheme, considering the remaining time left to run on the strata lease for that lot
- SAT will consider the rights of owners, registered mortgagees, occupiers and the lessor before ordering the termination.

Disclaimer

These web pages have been prepared for the purposes of informing stakeholders and the community on the nature and scope of the proposed reforms to the legislation relating to strata title. Legislation is subject to government consideration and Parliamentary processes. Every effort has been made to ensure that the information presented in these web pages is accurate at the time of publication. Because these web pages avoid the use of legal language, information about the law may have been summarised or expressed in general statements. This information should not be relied upon as a substitute for professional legal advice or reference to the actual legislation. The contents of these web pages should not be relied on as a guide for current or future legislation relating to strata title in Western Australia or in relation to current or future subdivision or development proposals, commercial transactions or dealings in strata title.