STR-02 Lodgement and Registration of New Strata/Survey-Strata Plans

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1 General

A new strata/survey-strata plan (Plan) is lodged electronically by the surveyor at Landgate, supported by a pre-allocated plan number and payment of the prescribed fees (see Search and lodgement fees) and is deemed SUBJECT TO EXAMINATION. After the Plan has been examined to ensure that it is in accordance with the various Acts, and Regulations, the legal status is changed to EXAMINED. The Plan remains EXAMINED until all forms are lodged with the plan.

When a Plan requiring WAPC approval is sent to the WAPC for approval, the legal status is changed to EXAMINED AND SENT TO WAPC. When the Plan returns from WAPC, the legal status is changed to IN ORDER FOR DEALINGS.

When the Plan is put In Order For Dealings, it may be subject to certain actions or conditions. These actions or conditions must be addressed before or simultaneously with the application to register the strata plan.

Examples of things that may be required are the amalgamation of lots to form the Strata land parcel or the modification of restrictive covenants to permit multiple dwellings or subdivision by a strata/survey-strata plan.

Note: Some strata plans do not need to go to the WAPC for approval. In these cases, the legal status of the Plan will go from SUBJECT TO EXAMINATION through to IN ORDER FOR DEALINGS.

The proprietor of the parcel may apply to register the strata/survey-strata plan when the legal status of the plan is shown as IN ORDER FOR DEALINGS. The form to be used is a Application to Register Strata / Survey-Strata Plan form.
An application to register the strata/survey-strata plan (Form A8) may require other forms and additional documents necessary for registration. Such a form may be a new Form 3 where the original has lapsed after 2 years. Additional documents may include a Management Statement, Application to modify a Restrictive Covenant, Application to vary or discharge an Easement. All specific pre-requisites to register a plan will be noted on the strata/survey-strata plan. However, this should be used as a guide only as other requirements may still need to be met.

Plans lodged prior to 1/7/2016 may also require other forms to be lodged with the Plan, such as the Form 3 and 26 of the STGR, Building Act 2011 Forms BA 12 and 16.

Where a Form 3 is required as part of the Plan, Landgate will only accept an “interactive” PDF (i.e. file that has form fields and a digital signature). Landgate will accept a “scanned” signed copy of the BA 12 or BA 16 and Certificate of grant approval by Western Australian Planning Commission to Strata Plan Form lodged as a PDF file. These forms are to be lodged electronically via NLR-P or the ePlan Lodgement application on the MyLandgate Survey Channel.

The land description used should be that shown on the title for the original land parcel and all the proprietors, if more than one, must join in and sign the application.

The existing duplicate certificate of title (if any) must be produced for cancellation.

Note: Subject to the Act, a certificate given by a licensed valuer for the purpose of the Act is valid for a period of 2 years. If the licensed valuer's certificate (Form 3) has lapsed a new certificate must be produced.

In relation to encumbrances currently affecting the parcel, the following should be noted:

- mortgages, charges, leases and caveats of the whole of the land in the parcel will be brought forward and shown on the title for the lots on the plan

- mortgages, charges and leases of part of the land in the parcel should be removed before the registration of the strata/survey-strata plan can be completed (subject to STR-07, which is where a previously registered strata plan is terminated immediately followed by a new strata/survey-strata plan);

- caveats as to a portion of the parcel should be withdrawn unless it can be shown that the land affected by the caveat can be defined

- restrictive covenants are brought forward only on the strata/survey-strata plan

and

- easements will be treated in the following manner:

- Easements over common property and common property lots are brought forward on to the strata/survey-strata plan only.

- Easements affecting part lots outside the building on a strata plan, or a lot or lots on a survey-strata plan will be brought forward on to the plan and shown as an encumbrance on the relevant titles.

- An easement which affects a building on a strata plan must be removed or varied to the extent necessary to free the building from its encumbrance unless the nature of the easement is not inconsistent with the restriction as to use of the part of the strata lot encumbered.

- Encroachment easements (if any) referred to in the licensed surveyors’ certificate on the strata
plan must be lodged for registration before the application for registration of the strata plan (see Chapter 2 below).

Concurrently with the registration of the strata/survey-strata plan, separate titles are prepared for each lot on it in the name of the applicant. No titles are created and registered for common property in strata plans or for common property lots in survey-strata plans.

Note: A disposition statement may be filed with an application to register a strata/survey-strata plan. A management statement (if indicated on the plan) may be filed at any time up to the lodgement of the application to register the strata/survey-strata plan (see section 6.4.7 of the Land Titles Practice Manual.)

2 Easements in Respect of Encroachments (including Easements of Support)

Section 22 of the STA provides that where part of a strata development, such as a roof, wall or building foundation is built upon an adjacent lot, an appropriate easement for that part of the roof, wall or foundation must be put in place before registration of the strata plan may proceed.

One of the appropriate easements is an easement of support for the building erected on the dominant tenement by that portion of roof, wall or foundation of the said building erected upon the servient tenement. This type of easement recognises that that portion of the roof, wall or foundation belongs to the owner of the servient tenement.

A simple model of such an easement is set out in LT RPM Model Form Examples - Example 10 of this manual. Persons considering using the model should examine it carefully to ensure that it is the type of easement required and that it satisfies all their needs. They should obtain legal advice before using the model.

It may be more appropriate to effect a subdivision which adds that part of the adjacent lot subject to the encroachment to the parcel.

Easements in respect of encroachments must be executed and dated prior to the date of the licensed surveyor’s certificate (s.22 (1) (c) (iii) of the STA) and must be lodged for registration before the application for registration of the strata plan.

In the case of an easement for support from part of a wall or building on the servient tenement, the easement document must be lodged with, but preceding the application for registration of the strata plan.

3 Effect of Registration

When a strata/survey-strata plan has been registered the lots on it may devolve, be transferred, mortgaged, leased or otherwise dealt with in the same manner or form as land under the provisions of the TLA.

Each lot on the strata/survey-strata plan is burdened by and has the benefit of implied easements
of support, the provision of services, such as water and electricity, rights of shelter from those parts of any building capable of affording shelter, access for maintenance to certain buildings and all other reasonable ancillary rights to make easements effective (s.11 to 13 of the STA as amended).

The common property and common property lots are held by the proprietors of the lots as tenants in common, in shares proportional to the unit entitlement of their lots.

The proprietors of the lots on a strata/survey-strata plan, upon registration of the plan, become a strata company by the name of:

the Owners of (name of the scheme) Strata/Survey-Strata Plan (registered number).

This company is not subject to the Corporations Law 2001 but derives its authority from the STA.

The strata company is a convenient means of providing for administration and for the proprietors to deal with others by use of a common name.

4 Conversion of Share (Purple) Titles to Strata Titles

A purple title is a title for an undivided share in the whole of a parcel of land. This term stems from the past practice of colouring the sketch on the title purple to distinguish them from green titles. They were used for issuing share titles for high rise buildings prior to the Strata Titles Act 1966 being implemented.

Their biggest failing is that the title is for a share in the whole of the property, not for a specific part. Lenders were reluctant to advance money to purchasers, as their security could not be tied to an identifiable part of the property.

With the introduction of the STA, a title could be issued for a defined part of a parcel such as a lot in a building. This has resulted in the decline of purple titles. Share (purple) titles are still used occasionally for tenancy titles, particularly in rural areas.

When persons contemplate the conversion of property held in undivided shares to strata titles, all the tenants in common should be in agreement.

In the case of a strata plan, the proprietors should commence their enquiries at the Local Government to ensure that the building or buildings are suitable to be subdivided into lots under the STA. Approval of the WAPC is also required unless exempt. (see Regulation 15 in the STG).

In the case of a survey-strata plan, an application should be made to the WAPC. The WAPC will refer this application to the local government and any relevant public authorities and government departments before granting conditional approval.

Having received the above mentioned approval(s), a Licensed Land Surveyor should be approached to prepare the strata/survey-strata plan in accordance with the Act and regulations and lodge it with Landgate.

An Application Form A8 is required to register the strata/survey-strata plan and to create and register the titles for the lots in the strata/survey strata scheme. This can be lodged when the legal status of the plan is IN ORDER FOR DEALINGS (unless lodged under the “Lot Sync” process. All the proprietors of the lots must sign the application.
5 Disposition Statements for Tenancies in Common

The STA as amended makes provision for a disposition statement to be filed with an application to register a strata/survey-strata plan.

The purpose of the disposition statement is to:

- instruct the Registrar to create for each proprietor a title to the lot to which that proprietor is beneficially entitled without the need for the lodgement of transfers

and

- indicate what strata/survey-strata lots or common property will be affected by pre-existing encumbrances (if any) that are to be brought forward.

No additional Landgate registration fees are required for filing a disposition statement but it must be stamped at the Office of State Revenue (Stamp Duties Division).

Regulation 20 of the ST GR sets out an abbreviated procedure for the conversion of tenancies in common.

The disposition statement should be set out in the manner of disposition on subdivision statement of the ST GR. It must be signed by the applicant (the registered proprietors of the parcel) and it requires the written consent of encumbrancers and caveators whose interest is being brought forward onto the various strata/survey-strata lots and common property.

The above mentioned consents can be endorsed in the appropriate section of the disposition statement or in a letter attached to it. Consents given by letter must clearly describe the nature of the consent.

A sample disposition statement is set out in LTRPM Model Form Examples - Example 9.

Note:

The disposition statement cannot be used to:

- Partition ownership of the lots created on the plan other than between the proprietors of the land the subject of the plan.

- Totally remove an encumbrance or an entire interest in an encumbrance.

- Re-allocate any encumbrance to any lot if the encumbrance was not previously registered over a part of the land now comprised in the lot.

In these circumstances, appropriate documents must be lodged.

6 Disposition Statements for Plans of Re-Subdivision
Section 8B of the STA as amended makes provision for a disposition statement to be filed with an application to register a strata/survey-strata plan of re-subdivision.

6.1 The purpose of the disposition statement

The purpose of the disposition statement is to effect boundary changes to lots and common property without the need for transfers of the portions involved or the partial removal of encumbrances. No additional Landgate registration fees are required for filing a disposition statement but it must be stamped at the Office of State Revenue (Stamp Duties Division).

Regulation 21 of the STGR sets out the abbreviated procedure for a plan of re-subdivision through the use of a disposition statement.

A disposition statement must meet all the below requirements:

- Set out in the manner of Disposition on re-subdivision Form of the STGR.

- Signed by the Strata Company and the registered proprietors of the lots which are directly affected by the plan of re-subdivision.

- Consented to by the encumbrancers and caveators of the lots which are directly affected by the plan of re-subdivision.

The above mentioned consents can be endorsed in the appropriate section of the disposition statement or in a letter attached to it. Consents given by letter must clearly describe the nature of the consent as follows:

“Re-subdivision of lot 10 on Strata Plan . . . . . . to include common property as depicted on plan of re-subdivision signed by surveyor on . . . . . . . ”

If consent is given by a separate letter, the letter may also contain consents to re-allocation of unit entitlement.

6.2 The disposition statement cannot be used to:

- partition ownership of the lots created on the plan of re-subdivision between the proprietors of the lot being subdivided as tenants in common to separate ownership of different lots

- totally remove an encumbrance or an entire interest in an encumbrance;

- re-allocate any encumbrance (e.g. mortgage, charge or caveat) to any other lot over which it was not previously registered

or

- change any person having a registered interest in an encumbrance (e.g. mortgage, lease or easement) or the proprietor the subject of a caveat (including the strata company).

In these circumstances appropriate documents must be lodged.
7 Management Statements

The purpose of a management statement is to establish the by-laws and to provide developers with a method of registering matters pertaining to a proposed strata/survey-strata scheme at the time the scheme is being established (see schedule 2A of the STA as amended). Some of these matters are as follows:

- theme of the strata development
- disclosure of staged developments
- plot ratio and open space requirements
- management of common property
- additional by-laws
- a restriction as to use
- internal and external fencing;
- insurance of common property;
- carrying on of any business or trading activity by the strata company

and

- resolution of disputes

7.1 Lodgement and Registration

At the time a strata/survey-strata plan is lodged, it must indicate whether or not a management statement is to be filed. The management statement should be lodged simultaneously with lodgement of the Application to Register Strata / Survey-Strata Plan form.

A management statement must be in the manner of Management Statement form in the ST GR and can be in the form of a deed attached to a Cover Sheet or typed on a Blank Instrument Form with Additional Sheets if required.

A management statement must:

- be signed by the registered proprietor(s) of the parcel

and

- have the written consent of each person who has a registered interest in, or is a caveator of, the parcel.

Any staged development or future plan of re-subdivision contained in a management statement must comply with the prescribed requirements of regulation 37 of the ST GR.

A management statement has no effect until the strata/survey strata plan is registered.

7.2 Searching Management Statements
A search of the registered strata/survey-strata plan will indicate the management statement document number which can then be searched as a separate document.

8 Strata Company

8.1 General Information

After the completion of the registration process, there are various obligations under the STA that require implementation by the original proprietor. The following paragraphs briefly outline some of these requirements but Part IV of the STA sets out the management obligations in detail.

On registration of the Strata/Survey-Strata Plan, the strata company comes into existence. Within 3 months of registration the original proprietor of the parcel is required to call the first annual general meeting of the strata company. At this meeting the strata council is elected, levies raised if needed, insurance decisions resolved and other matters associated with the scheme agreed to. The original proprietor must deliver all plans, specifications, certificates, books of account and other documents relating to the scheme.

8.2 Annual General Meetings

In two lot schemes there is no statutory requirement for annual general meetings (AGM). However, the first AGM must be held. In 3 to 5 lot schemes, a by-law may be passed and registered on the plan exempting the strata company from having to conduct further AGMs. In all other schemes AGMs must be held and on occasions extraordinary meetings may be necessary.

Every scheme of whatever size, should keep minuted records of all decisions affecting the scheme. These records may be required for disclosure to prospective purchasers under s.69 of the STA.

Note: The STA does not permit a title to be issued in the name of the strata company; rather it is issued in the name of all of the registered proprietors as tenants in common. However, in most cases the Strata Company can act as the transferor or as the party to a specific action.

8.3 Powers and Duties of the Strata Company

The duties of the proprietors and the strata company are set out in the body of the STA as amended and in the by-laws contained in the Schedules to that Act.

In general, it is the responsibility of the company to manage the common property, enforce the by-laws and attend to insurance matters (s.35 to 37 of the STA).

9 Also see

-SUB-01 Subdivision