STR-06 Modifications to an Existing Strata/Survey-Strata Scheme

Version 1 – 05/10/2017

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1 General

A registered strata/survey-strata scheme may be modified by the lodgement of any of the applications particularised in the following paragraphs. On a re-subdivision or consolidation, the new survey and certificate sheets are bound with the original plan and the details on the original plan are amended to reflect the change.

Other applications are recorded by endorsing a memorandum of the nature of the application on the schedules contained in the strata/survey-strata plan. The strata/survey-strata plan then shows the current state of the Register and also the complete history of activities on the plan from its original registration.

2 Change of Name

A Strata Company may by special resolution (or unanimous resolution in the case of a two-lot scheme) and with the approval of the Registrar of Titles, change the name of the scheme. The change takes effect from the registration of the change at Landgate.

Registration is achieved by an application from the Strata Company (in its old name) on a Form A5 accompanied by a certificate in the manner of Notice of change of name of scheme and change of address for service of notices form from the ST GR. Alternatively, the Form 17 certificate can be reproduced on the inside of a document Cover Sheet.

The duplicate certificates of title (if any) for the strata lots are not required to be lodged with the
application.

The common seal used on an application of this kind should show the old name of the Strata Company.

3 Change of Address for Service of Notices

For strata/survey-strata plans registered after the 14th April 1996, the address for service of notices to a Strata Company is the address of the parcel that is shown on the strata/survey-strata plan at the time of lodgement.

For strata plans registered prior to the 14th April 1996, the address for service of notices to the strata company was shown on the plan at the time of registration.

The address for service of notices may be changed by lodging on a Cover Sheet, a Certificate of Change of Address, set out in the manner of Notification of change of address for services of notices form from the ST GR at Landgate. A notation of the change of address will be endorsed on the strata/survey-strata plan in its Schedule of Dealings.

4 Re-Allocation of Unit Entitlement on a Strata/Survey-Strata Plan

The unit entitlement on:

- A strata plan should be a reflection of the capital value of the lot as a proportion of the total capital value of all the lots.

- A survey-strata plan should be a reflection of the site value of the lot as a proportion of the total site value of all the lots.

The meaning of the terms capital value and site value referred to above, are contained in the Valuation of Land Act 1978.

Where any unit entitlement becomes more than 5% out of proportion to the relative value of the lot, the strata company can, if it has passed a resolution without dissent (or a unanimous resolution in the case of a two-lot scheme), apply to rectify the matter by registering a new schedule of unit entitlement.

The application by the Strata Company on a Blank Instrument form (Form B2), should be accompanied by all of the following:

- A certificate from the Strata Company in the manner of Form 11 from the ST GR.

- The written consent of any person or corporation (other than the registered proprietor) with a registered interest in a lot affected by the change of unit entitlement.

A caveator is deemed to have a registered interest in this instance (s.15(5) of the STA as amended).

- A certificate from a licensed valuer, substantially in the manner of Form 3 from the Strata Title
General Regulations 1996.

The duplicate certificates of title (if any) if the strata titles were created and registered under the Strata Titles Act 1966 (see STR-01 Strata).

Upon the registration of an amended schedule of unit entitlement, the amended share of a proprietor in the common property shall by operation of law, be deemed to be subject to any pre-existing encumbrances registered or caveats lodged against their lot.

A proprietor of a lot, or a Strata Company, may apply to the State Administrative Tribunal (SAT) to have the unit entitlement on a strata/survey-strata plan amended. The amendments are effected by registering the Order of the SAT at Landgate.

5 Re-Subdivision of Strata/Survey-Strata Plans

Strata/survey-strata lots and common property/common property lots or a combination of both, may by a unanimous resolution of the Strata Company be re-subdivided by lodging an amended strata/survey-strata plan (called a strata/survey-strata plan of re-subdivision).

The plan sheets containing the amendments and the appropriate consents should be lodged by the surveyor at Landgate.

Note: A strata plan may only be re-subdivided by a strata plan of re-subdivision and a survey-strata plan may only be re-subdivided by a survey-strata plan of re-subdivision.

5.1 Registration

An application to register the plan of re-subdivision is required. This is an Application for re-subdivision by strata company form (Form 20), as set out in the ST GR, which may be typed on a Blank Instrument form or Cover Sheet.

The application and any transfers required to give effect to the re-subdivision may be lodged simultaneously with the new plan or at any time thereafter.

A separate Certificate of the Strata company form, is not required, as the certification by the strata company to the transfer or acquisition of common property is set out in the application to register the re-subdivision.

The portion being transferred to enlarge an existing lot must be free of encumbrances and caveats and therefore they will need to be removed as to the extent necessary.

A disposition statement may be filed with the application to register a strata/survey-strata plan of re-subdivision (see STR-02 Lodgement and Registration of New Strats/Survey-Strata Plans). If a disposition statement is filed, the transfers required to give effect to the re-subdivision are unnecessary and the partial removal of encumbrances and caveats will not be required.

Where a strata/survey-strata lot has been enlarged or diminished by the process of re-subdivision, any encumbrances and caveats affecting the lot will, automatically by operation of law, be adjusted to the new dimensions of the lot.
The duplicate certificates of title (if any) for the land affected by the re-subdivision must be produced.

5.2 Consents

Unless the plan of re-subdivision sufficiently complies with what is disclosed in a registered Management Statement or By-law incorporating a plan of re-subdivision and change of unit entitlement, the following consents are required:

- The written consent of every person who has a registered interest (other than the registered proprietor) or is a caveator in any lot proposed to be affected by the re-subdivision.

- The written consent of every person who has a registered interest (other than the registered proprietor) or is a caveator in any lot that will have a change in its unit entitlement due to the re-subdivision.

The above mentioned consents can be endorsed on the application or in a letter attached to it. Consents given by letter must clearly describe the nature of the consent:

"Re-subdivision of lot 10 on Strata Plan . . . . . . . to include common property as depicted on plan of re-subdivision signed by survey or on. . . . . . . . . ."

or

"The alteration of the unit entitlement of lot . . . . . on Strata Plan . . . . . . from 3/5 to 4/5."

Note: While a plan of re-subdivision can be lodged in accordance with the terms of a registered management statement, it is not possible to file a management statement with a strata/survey-strata plan of re-subdivision.

6 Consolidation of Two or More Strata/Survey-Strata Lots

The consolidation of strata/survey-strata lots (not being all the lots) is permitted by s.9 of the STA as amended.

Consolidation of two or more lots is achieved by:

- Lodging a strata plan of consolidation endorsed with:

- a certificate of the Local Government (Certificate of Local Government form of the ST GR)

and

- unless exempt, the consent of the Western Australian Planning Commission (Form 26 ST GR).

or

- Lodging a survey-strata plan of consolidation endorsed with the consent of the Western Australian Planning Commission.

and
- Lodging a Application for New or Balance Title by the registered proprietor of the lots accompanied by:

- a letter or an endorsement on the document stating the full name, address and facsimile machine number of the Local Government, Water and Sewerage Authorities to which the Registrar of Titles is required to deliver a copy of the amended strata/survey-strata plan

- the relevant duplicate certificates of title (if any)

and

- the written consent of any person or corporation who has a registered interest in the new lot.

The following office practice should be noted:

- Any encumbrances on lots so consolidated will be brought forward on to the title. Where the encumbrance is a mortgage previously over only one of the consolidated lots it will be brought forward as to portion only of the new lot. Mortgagees may have difficulty in exercising their power of sale in such circumstances. Where each original lot was encumbered by a different mortgage a similar problem will arise.

- The endorsement of a mortgagee’s consent to the consolidation will be taken as an acknowledgment of, and consent to, the new state of the Register.

- A caveat lodged by virtue of an unregistered TLA document must be withdrawn before the application for consolidation is lodged.

and

- The unit entitlement for the new lot is the sum of the unit entitlement of the old lots.

Note: Common property cannot be incorporated into a consolidation of two or more strata lots.

7 Addition, Variation or Removal of Restriction as to Use

A strata/survey-strata plan that is lodged for registration may create a legally binding restriction as to the use to which the parcel or part of the parcel may be put. This is achieved by an endorsement on the plan that delineates the area or space affected and that makes specific reference to s.6 (1) of the STA as amended.

Where a strata/survey-strata plan has been registered without any restriction as to use, the plan may be amended to restrict the use to which the parcel or part of the parcel may be put.

A restriction that has been endorsed on a registered strata/survey-strata plan may be varied or removed.

The addition, variation or removal of a restriction requires a resolution without dissent (or a unanimous resolution in the case of a two-lot scheme) from the Strata Company and it will take effect from the date of registration of the resolution at Landgate. Registration is achieved by the lodgement of an application form that is accompanied by:

- a certificate from the Strata Company in the manner of Form 19 from the ST GR (with a sketch attached, if necessary, to define the portion of the parcel affected by the addition or variation of a
- the written consent of the Local Government to the resolution (not required for survey-strata plans) and

- unless exempted, the written consent of the Western Australian Planning Commission to the resolution.

Note: A restriction as to use may be included in a management statement (see STR-02 Lodgement and Registration of New Strata/Survey-Strata Plans). A restriction may limit the use of strata/survey-strata lots by requiring that each lot is to be occupied only, or predominantly by retired persons and their spouse (see s.6A of the STA as amended).

8 Also see

- SUB-01 Subdivision
- STR-01 Strata/Survey-Strata Plans
- SAT-01 State Administrative Tribunal