STR-07 Variation or Termination of a Strata Scheme

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1 Variation upon Damage or Destruction (Section 28 of the STA)

Where a building is damaged or destroyed, the Supreme Court may, on application by either of the Strata Company, a unit owner or a registered mortgagee of a lot, make an Order varying the existing scheme. On receipt of an application form with the Order, the Registrar of Titles will make the appropriate amendments on the strata plan. Should a strata lot be cancelled the appropriate duplicate certificate of title (if any) must be produced.

For a variation upon resumption (now called Taking) of part of the land in the parcel, see s.29 and s.29B of the STA as amended.

2 Termination by Unanimous Resolution (Section 30 of the STA)

The registered proprietors may resolve by unanimous resolution that the strata scheme be terminated.

Where the parcel is not to be transferred, an application form signed by the Strata Company is required and must be supported by:

- a notification of termination of a scheme (Notification of termination of a scheme form of the ST GR) and

- the (unencumbered) duplicate certificate of titles (if any) for the strata lots.

Landgate will endorse the termination details on the strata plan and a title will be created and registered for the parcel, in the name of all the proprietors as tenants in common in the undivided shares proportional to the unit entitlements of their respective lots.
Where the whole of the parcel is to be transferred, the lot proprietors may by unanimous resolution direct the Strata Company to execute the transfer. The transfer is prepared in the name of the strata company as the transferor and must be supported by:

- a notification of termination of a scheme (Notification of termination of a scheme form of the ST GR)
- a certificate of the strata company (Certificate of the strata company form of the ST GR)

and

- the (unencumbered) duplicate certificate of titles (if any) for the strata lots.

Upon registration of the transfer, the strata plan is endorsed as terminated and a new title is created and registered in the name of the transferee.

The requirement that titles be unencumbered may be waived if the notification of termination of a scheme is accompanied by written consents that clearly acknowledge that any mortgagee’s powers of sale would be, or other encumbrancer’s rights may be, ineffective and requesting the Registrar of Titles to register the notification despite that fact.

The consents are to be witnessed by a solicitor, who is to state in writing on the consent that he/she acts for the mortgagee/encumbrancer and has advised the mortgagee/encumbrancer as to the effect of the termination of the strata scheme on the mortgagee’s/encumbrancer’s powers.

One of the effects of termination would be that when a strata scheme is terminated, a mortgagee of a strata lot would be unable to exercise power of sale over the land the subject of the mortgage as the land would then be only an undefined part of the parcel held by all registered proprietors of the parcel.

3 Termination for the Purpose of Creating a New Strata/Survey-Strata Scheme – where Encumbrances on Lots are to be Carried Forward

In such cases, a solicitor’s statement endorsed on consents will not be necessary, provided that the notification for termination of a strata plan is:

- Accompanied by:

- written consent by mortgagees and other encumbrances that clearly acknowledge that any mortgagee’s power of sale would be, or other encumbrancer’s rights may be, ineffective following termination of the strata plan until registration of a new strata/survey-strata plan

- written requests by mortgagees and other encumbrancers that the Registrar of Titles register the termination of the strata scheme notwithstanding that fact, provided that it is immediately followed by registration of a strata/survey-strata plan (specified) providing for encumbrances (specified) to be registered against a lot (specified) on the new a strata/survey-strata plan

and

- a disposition statement providing that what were formerly encumbrances against individual lots on the former strata plan (then encumbrances against the title for the parcel on termination of the strata plan) become encumbrances against individual lots on the new strata/survey-strata plan.
- Immediately followed by, as part of the same dealing, an application for registration of the new strata/survey-strata plan which is accompanies by a disposition statement that complies with the request

The other requirements outlined above in section 2 are to be followed.

4 Termination by the Taking of the Whole of the Parcel (Section 29C of the STA)

The Minister may in a Taking Order declare that the strata scheme is terminated.

The Registrar of Titles will register the land in the parcel in the name of the State of Western Australia or other authority in which it has vested under the Taking Order.

5 Termination by Order of District Court (Section 31 of the STA)

The District Court may make an order terminating a strata scheme.

If an Order is made terminating the scheme, the strata company must register the Order by the lodgement of an application form signed by the strata company that is supported by:

- the Order of the District Court

and

- the (unencumbered) duplicate certificate of titles (if any) for the strata lots.

Landgate will endorse the termination details on the strata plan and a title will be created and registered for the parcel, in the name of all the proprietors as tenants in common in the undivided shares proportional to the unit entitlements of their respective lots.

Where the whole or part of the parcel is to be transferred, the requirements as outlined above in section 2 are to be followed.

6 Also see

- SUB-01 Subdivision

- STR-01 Strata/Survey-Strata Plans