

STP-18 Adverse Possession and Strata Titles

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1 Adverse Possession and Strata Titles

Land under the Transfer of Land Act 1893 (TLA) may be made the subject of an Application for Title by Possession (also known as an Adverse Possession claim) see section 222 of the TLA. Generally speaking the Applicant must be able to show adverse possession of the claimed land for a period of 30 years (refer to Land Titles Registration Policy and Procedure Guide: [TYP-04 Bringing Land under the Transfer of Land Act 1893](#) Section 2).

The first strata plan was registered on 2 May 1968 and some strata schemes have been in place for more than forty years. This means situations may arise more frequently where an application for title by adverse possession involves land in a strata/survey-strata scheme.

When a strata company passes an “exclusive use” by-law, it must be with the consent of the owners or a majority of the owners and in circumstances where the strata company is acting on behalf of all owners in passing the by-laws. This means the use of exclusive areas is by consent (and not adverse) and the limitation period for adverse possession does not begin to run.

All Applications for Title by Possession are at the discretion of the Commissioner of Titles.

If an application is successful, the Applicant will be entitled to become the registered proprietor of the land subject to the Application for Title by Possession.

1.1 Categories

An Application for Title by Possession involving strata titles schemes will usually fall into one of the following categories

1.1.1 Type A - Freehold/Strata

Where the Applicant's lot is freehold land and the land being claimed is the whole or part of a strata/survey-strata lot or common property (see [Example 56](#)).

1.1.2 Type B - Strata/Freehold

Where the Applicant's lot/land is the whole or part of a strata/survey-strata lot or common property and the land being claimed is freehold land.

1.1.3 Type C - Strata (scheme A)/Strata (scheme B)

Where the Applicant's land (strata/survey-strata lot or common property) is within a strata/survey-strata scheme (Scheme A) and the land being claimed (whole or part of a strata/survey-strata lot or common property) is within an abutting strata/survey-strata scheme (Scheme B).

1.1.4 Type D - Strata (same scheme)

Where the Applicant's lot and the land being claimed are within the same strata/survey-strata scheme.

1.2 Requirements for replacement plans after successful claims involving land in a strata titles scheme

If there is a successful Application for Title by Possession involving land in a strata titles scheme, then, generally speaking, the successful applicant will be required to provide the following plans (the Commissioner of Titles has some discretion in relation to these requirements)

- Types A, B & C
 - A redefinition deposited plans showing the outcome of the new lots created i.e. a new Freehold Lot for the extended land parcel (Applicant's land plus the claimed land) and a new Freehold Lot for the diminished land parcel (balance of the lot minus the claimed land).
 - A new location plan (for strata plans) or sketch plan (for survey-strata plans).
 - A new floor plan (for strata plans) or Sketch plan (for survey-strata). If common property only has been affected a new floor plan may not be required.
- Type D
 - A new location plan (for strata plans) or Sketch plan (for survey-strata).
 - A new floor plan (for Strata plans) where the strata lot has been affected. If common property only has been affected a new floor plan may not be required.

In addition, the Commissioner of Titles may require a new schedule of unit entitlements for Types A, B, C & D.

Lodgement fees apply for the redefinition DP and replacement strata plans.