

By-laws and articles

**Changes to community and strata titles legislation
To take effect from 28 October 2013**

Introduction

The *Statutes Amendment (Community and Strata Titles) Act 2012* will change the laws (the *Community Titles Act 1996* and the *Strata Titles Act 1988*) governing community and strata titles in South Australia, to take effect from **28 October 2013**.

The changes to the community and strata titles laws are designed to improve protections for consumers who buy into or own units in strata and community titled developments. In doing so, they introduce further rights for owners and further obligations for body corporate managers as well as, in some cases, further obligations for community and strata corporations.

The following fact sheet is one in a series of fact sheets that have been prepared to explain the effects of these impending law changes and what they mean for owners and community and strata corporations and for body corporate managers.

Penalty notices for breach

Currently, community corporation by laws are able to impose a penalty of up to \$500 for breach of a by-law. The changes will enable strata corporation articles to do this also for breaches of the articles and provide that both community and strata corporations may impose a higher maximum fine of \$2,000 where the scheme includes only non-residential lots.

Both community and strata corporations will be able to issue a notice requiring an owner or occupier to comply with a by-law within a specified time and warning that if this is not done, a penalty will be incurred. If satisfactory action is not taken, the corporation can issue a notice requiring payment of the penalty. The recipient can apply to the Magistrates Court within 60 days for an order that no penalty is payable but otherwise the amount is recoverable as a debt due to the corporation. An unpaid penalty will also be recoverable by the corporation on the sale of the unit, in the same way as unpaid levies.

The prescribed **penalty notice forms** for breaches of strata articles and community by laws are set out in the legislation and are available to download with the Fact Sheets.

The Court is empowered to revoke a penalty notice if satisfied that the breach was trifling in the circumstances.

By-laws re assistance and therapeutic animals

As a result of a separate enactment, the community and strata titles legislation will also, from 28 October 2013, prohibit articles or by-laws that prevent an occupier who has a disability from keeping an assistance animal or therapeutic animal as defined in the *Equal Opportunity Act 1984*. This is a broader class of animals than guide dogs and would, for example, include a certified autism assistance dog.



Challenging unfair articles or by-laws

An owner of a community titled lot is entitled to apply to the Magistrates Court to challenge a by-law that reduces the value of the lot or unfairly discriminates against the owner. The application must be made within three months of the date this happens or of the date on which the owner should reasonably have found it out. Currently, an application can be made only by a person who is an owner at the time the by-law is made. That is because a person should not be able to complain of a by-law that already existed when he or she bought the unit.

It is common, however, for lots in new community schemes to be bought off-the-plan. In that case, the buyer does not become the owner for some time after the contract is made. Under the changes, a person who has signed a contract to buy a lot will have the same rights as an owner to challenge a by-law made or amended after the date of contract that reduces the value of a lot or unfairly discriminates against the person.

The *Strata Titles Act* does not currently provide an equivalent right to an owner or purchaser of a strata unit if the articles are amended in a way that reduces the value of the unit or unfairly discriminates against that owner. The changes will provide the same rights for strata titles.