

# Management contracts

## 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.

### Body corporate management contracts

New requirements will apply to contracts with professional body corporate managers (also known as 'strata managers') made or renewed after 28 October 2013.

All body corporate management contracts with a paid professional manager entered into or renewed after the changes must be in writing.

The contracts must specify:

- the term of the contract;
- the functions or powers to be delegated by the corporation to the manager (e.g. the services to be provided by the manager);
- the fees payable to the manager, or the basis on which such fees are to be calculated;
- the corporation's termination rights (see also '**Termination of long term contracts**');
- that the manager is insured as required by the legislation (see separate fact sheet - **Insurances**) and undertakes to maintain that insurance throughout the life of the contract; and
- that each member of the corporation has the right at any time during business hours to inspect the records of the corporation in the possession or control of the manager, and how inspection can be arranged.

Managers must ensure that a copy of the proposed contract and a required explanatory pamphlet are available for inspection by any owner at least five clear days before the date a vote is to be taken to appoint a body corporate manager.

The agenda for an AGM at which it is proposed to vote to appoint a manager must include the text of the resolution to enter into the contract and set out where and when the contract and pamphlet can be viewed or obtained by owners.



The required explanatory pamphlet must set out:

- the role of the manager; and
- set out the rights of the corporation and its members, including the rights to:
  - inspect records held by the manager;
  - revoke the delegation of a particular function;
  - appoint the manager as a proxy and to revoke that appointment;
  - be told of any payment or benefit that the manager receives from another trader for placing the corporation's business;
  - terminate the contract in certain circumstances; and
  - apply to the Magistrates Court for resolution of a dispute.

## **Termination of long term contracts**

A corporation will be able to terminate a body corporate management agreement that is for a period of over 12 months (taken to include any renewal period at the option of the manager) after the contract has run for 12 months.

The corporation must give at least 28 days' notice of termination, although the notice period can be less if agreed in the contract. This will provide protection for corporations that inherit long-term management contracts entered into by developers during the period whilst they retain control of a new development.

## **Contracts made by the developer**

There are examples of new developments where a developer will enter into agreements, often long-term agreements, with service providers that benefit the developer to the detriment of the community corporation.

The legislation will be amended to state that where a corporation intends, during the period whilst the developer retains control, to appoint a body corporate manager or enter into other contracts for services, the developer must exercise reasonable skill, care and diligence and act in the best interests of the community corporation (as it will be constituted after the developer control period ends).