



STRATA TITLES (RESOLUTION OF DISPUTES) AMENDMENT ACT 1991

No. 78 of 1991

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ANNO QUADRAGESIMO

ELIZABETHAE II REGINAE

A.D. 1991

No. 78 of 1991

An Act to amend the Strata Titles Act 1988.

[Assented to 12 December 1991]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Strata Titles (Resolution of Disputes) Amendment Act 1991*.

(2) The *Strata Titles Act 1988* is referred to in this Act as “the principal Act”.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Nature of strata plan and requirements with which it must conform

3. Section 5 of the principal Act is amended by striking out from subsection (7) “A wall” and substituting “Subject to any explicit statement to the contrary in the strata plan, a wall”.

Binding character of the articles

4. Section 20 of the principal Act is amended by striking out subsection (3).

Restriction of payment by strata corporation to its members

5. Section 22 of the principal Act is amended by striking out the penalty at the foot of subsection (1).

Officers of strata corporation

6. Section 23 of the principal Act is amended by striking out subsection (5) and substituting the following subsection:

(5) A strata corporation must not allow any of the above offices to remain vacant for more than six months.

Alterations and additions

7. Section 29 of the principal Act is amended by striking out subsections (3), (4) and (5).

Right of unit holders to satisfy themselves as to insurance

8. Section 32 of the principal Act is amended by striking out the penalty at the foot of subsection (1).

Holding of general meetings

9. Section 33 of the principal Act is amended by striking out the penalty at the foot of subsection (4).

Insertion of Part IIIA

10. The following Part is inserted after section 41 of the principal Act:

PART IIIA**RESOLUTION OF DISPUTES****Resolution of disputes, etc.**

41a. (1) An application may be made under this section—

- (a) if a strata corporation or a member of a strata corporation claims that a breach of this Act or of the articles of the corporation has occurred;
- (b) if a member of a strata corporation claims to have been prejudiced, as occupier of a strata unit, by the wrongful act or default of the strata corporation, of the management committee of the strata corporation, or of some other member of the strata corporation;
- (c) if a member of a strata corporation claims that a decision of the strata corporation or of the management committee of the strata corporation is unreasonable, oppressive or unjust;

or

(d) if a dispute arises—

- (i) between a strata corporation and a member of the corporation;

or

- (ii) between two or more members of a strata corporation,

in relation to any aspect of the occupation or use of a strata unit.

(2) Subject to this section, an application should be made to a local court and dealt with by that court within its small claims jurisdiction and the provisions of the *Local and District Criminal Courts Act 1926* will apply, with such modifications as may be necessary for the purpose or as may be prescribed, in relation to the application as if the proceedings were based on a small claim.

(3) A person may, with leave of the District Court, bring an application under this section in the District Court.

(4) The District Court may, on the application of a party to proceedings under this section that have been commenced in a local court, order that the proceedings be transferred to the District Court (and such an order will have effect according to its terms).

(5) Proceedings should not be commenced in, or transferred to, the District Court under subsections (3) or (4) unless the District Court considers that it is appropriate for the court to deal with the matter by reason of the complexity or significance of the matter.

(6) A court may, on its own initiative or on an application by a party to the proceedings—

(a) transfer an application under this section to the Supreme Court on the ground that the application raises a matter of general importance;

or

(b) state a question of law for the opinion of the Supreme Court.

(7) A court, in hearing and determining an application under this section, should act according to equity, good conscience and the substantial merits of the case, without regard to technicalities and legal forms, and is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit.

(8) A member of a strata corporation duly appointed by the corporation for the purpose may represent the corporation in any proceedings under this section.

(9) A court may, in respect of an application under this section—

(a) attempt to achieve settlement of the proceedings by agreement between the parties;

(b) require a party to provide reports or other information for the purposes of the proceedings;

(c) order that a party take such action as in the opinion of the court necessary to remedy any default, or to resolve any dispute, and is specified in the order;

(d) order that a party refrain from any further action of a kind specified in the order;

(e) by order—

(i) alter the articles of the corporation;

(ii) vary or reverse any decision of the corporation, or of the management committee of the corporation;

(f) give judgment on any monetary claim;

(g) make orders as to costs;

(h) make any incidental or ancillary orders.

(10) A court should not make an order to alter the articles of a corporation unless—

(a) the corporation is a party to the proceedings or the court is satisfied that the corporation has been given a reasonable opportunity to become a party to the proceedings;

(b) if it appears to the court that the alteration could adversely affect a member of the corporation who is not a party to the proceedings, the court is satisfied that the member has been notified of the possibility that such

an order could be made and given a reasonable opportunity to make submissions to the court in relation to the matter;

and

(c) in any event, the court is satisfied that the order is essential to achieving a fair and equitable resolution of the matters in dispute.

(11) Where an application is made under this section and the court is satisfied that an interim order is justified by the urgency of the case, the court may make an interim order to safeguard the position of any person pending its final resolution.

(12) An interim order—

(a) has effect for such period as the court may determine and specifies in the order, and may be renewed by the court from time to time;

(b) may be made or renewed whether or not notice of the application has been given to a respondent;

and

(c) unless sooner revoked, ceases to have effect on the determination or resolution of an application under this section.

(13) A person who fails to comply with an order under this section is guilty of an offence.

Penalty: Division 7 fine.

(14) The power to make an order under this section includes the power to vary or revoke an order.

(15) A court may decline to proceed with an application under this section if it considers that it would be more appropriate for proceedings to be taken in another court or tribunal constituted by law.

(16) This section does not limit or derogate from any civil remedy at law or in equity.

(17) Rules of Court may be made dealing with any matter necessary or expedient for the effective and efficient operation of this section.

(18) The rules for a particular court will be made in the same manner as ordinary rules are made for that court.

(19) In this section—

“member” in relation to a strata corporation includes any person who is bound to comply with the articles of the corporation:

“small claim” means a small claim within the meaning of the *Local and District Criminal Courts Act 1926*.

Service

11. Section 49 of the principal Act is amended—

(a) by striking out subsection (2) and substituting the following subsection:

(2) A strata corporation must keep—

(a) a letter box, with the name of the corporation clearly shown on it, for postal delivery to the site;

or

(b) where there is no postal delivery to the site, a post office box.;

and

(b) by striking out from paragraph *(b)* of subsection (3) "site" and substituting "corporation".

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor