

Strata Titles 50 Years On

By Gary Bugden

Before the introduction of Strata Titles in Australia, apartments were sold using a range of possible structures, including:

- Company titles
- Tenancy in common titles
- Co-operative titles.

None of these forms of title were really accepted by Banks and other financiers as adequate security for a housing loan because -

- (a) in the case of tenancy in common titles, they were vulnerable to a Supreme Court order for partition (i.e. compulsory sale); and
- (b) in the case of company titles and co-operative titles, there was no “real estate” over which the financier could take security.

In addition, in all cases there were insurance issues that made it difficult for the financier to access insurance claim proceeds in the event of a building destruction.

The lack of finance made it difficult for real estate developers to build and market large residential buildings. Around 1960 Lend Lease made representations to the then New South Wales Government for legislation that facilitated flat ownership. In support of these representations they engaged a Sydney barrister, Mr Rae Else-Mitchell (later Mr Justice Else-Mitchell of the New South Wales Supreme Court), to draft a strata titles law. This draft formed the basis of the *Conveyancing (Strata Titles) Act 1961* which was passed by the Parliament and received Royal assent on 27 March 1961. The preamble stated -

An Act to facilitate the subdivision of land in strata and the disposition of titles thereto; to amend the Conveyancing Act, 1919, the Local Government Act, 1919, the Land Tax Management Act, 1956, and certain other Acts, in certain respects; and for purposes connected therewith.

Because strata titles were to be an “add-on” to the Torrens system of title (which had been adopted in New South Wales in 1900) the 1961 Act grafted this new form of titles to that system. The Act took up 36 pages of the 1961 statute book and comprised 29 sections and 2 Schedules.

As the years passed deficiencies became evident in this new form of title, not the least because developments were becoming larger, more complex and diverse. The 1961 Act was reviewed in the early 1970's and on 18 October 1973 the *Strata Titles Act 1973* received Royal assent, although its commencement was delayed until a date to be gazetted. That date did not occur until after the 1973 Act was amended by the *Strata Titles (Amendment) Act 1974*. This new era of strata titles commenced on 1 October 1974.

The changes to the size, complexity and diversity of projects continued and the 1973 Act was regularly amended and eventually followed by legislation to facilitate leasehold strata titles and community titles. Although the 1973 Act still exists today, it bears little resemblance to the original enactment.

The changes introduced in October 1974 were profound. They inspired me and my mother to start what was the first specialised strata management company, Residential Unit Management Pty Ltd, in 1973. At the time there were a number of firms engaged in strata management, but they were accounting practices and real estate agencies that offered the service in conjunction with their core business offerings. Residential Unit Management, or “RUM” as it became known, never did anything but strata management and consulting.

RUM priced its services at \$55.00 a unit for full management and \$35.00 a unit for secretarial services and this included a computerised accounting service using a data processing agency (private computers being virtually non-existent at the time). We also offered a “conversion service” to assist self managed buildings to convert to the new requirements. To promote the new business:

- The company, in conjunction with the Real Estate Institute of New South Wales, ran a Strata Titles Management course at the Sebel Town House Hotel at Potts Point on 24 October 1974, as per the attached program.
- I authored a series of articles for local newspapers, one of the earlier ones (dated January 15, 1974) of which is attached.

Those activities eventually led to two significant events in the history of the strata industry. One was the first edition of my first book, *Strata Title Management Practice in New South Wales* (published by CCH Australia in 1975), which eventually led to 3 more books and 3 loose-leaf services on the legal and management aspects of strata titles in New South Wales and Queensland. The other was a meeting I convened at the Sebel Town House that was attended by a number of people who had an interest in professional strata management. At that meeting the Institute of Strata Title Management was conceived, although the birth did not occur for some time later.

Another significant event for the industry occurred in 1981 when licensing for strata managing agents was introduced. Attached is a article that appeared in the Sydney Morning Herald on September 5, 1981.

The list goes on, but time is a limit to further ponderings on this occasion. Let us simply note that today strata titles is conquering the world. The list of jurisdictions that have adopted this statutory system of apartment ownership and management is constantly growing. There is no doubt that it is the world’s benchmark for regulation of apartment living. And, significantly, it was “**Made in New South Wales**”.

New South Wales



ANNO VICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

CONVEYANCING (STRATA TITLES) ACT.

Act No. 17, 1961.

Elizabeth II,
No. 17, 1961

An Act to facilitate the subdivision of land in strata and the disposition of titles thereto; to amend the Conveyancing Act, 1919, the Local Government Act, 1919, the Land Tax Management Act, 1956, and certain other Acts, in certain respects; and for purposes connected therewith. [Assented to, 27th March, 1961.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title
and com-
mencement.

1. (1) This Act may be cited as the "Conveyancing (Strata Titles) Act, 1961".

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2.

STRATA TITLES ACT.

New South Wales



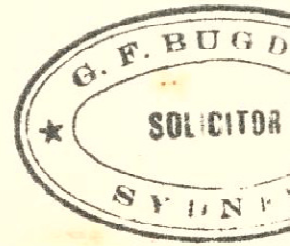
ANNO VICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

Act No. 68, 1973.

An Act to facilitate the subdivision of land into strata and the disposition of titles thereto; to amend the Real Property Act, 1900, the Conveyancing Act, 1919, the Local Government Act, 1919, the Land Tax Management Act, 1956, and certain other Acts in certain respects; to repeal the Conveyancing (Strata Titles) Act, 1961, and certain other Acts; and for purposes connected therewith. [Assented to. 18th October, 1973.]

BF



NOTES OF LECTURES
DELIVERED TO A
STRATA TITLE
MANAGEMENT COURSE

(Held at the Sebel Town House Function
Centre on Thursday, 24th October, 1974)

Presented by

THE REAL ESTATE INSTITUTE OF NEW SOUTH WALES

in association with

RESIDENTIAL UNIT MANAGEMENT PTY. LTD.

(Home Unit Management Consultants)

VENUE

THURSDAY 24TH OCTOBER, 1974

8.00 a.m. to 6.00 p.m.

(With optional "Forum" from 7.30 p.m. to 9.30 p.m.)

THE SEBEL TOWN HOUSE FUNCTION CENTRE

23 Elizabeth Bay Road, Elizabeth Bay

(Car parking available at \$1.00)

PROGRAMME

*Chairman: Mr. W. N. Pickering, F.R.E.I., R.E.I.V.
(Aust.), Q.R.V., Councillor R.E.I. Property Management
Division.*

7.30 - 8.00 a.m. REGISTRATION

8.00 - 10 a.m. FIRST SESSION

Topics: INTRODUCTION TO STRATA
SCHEMES.

*Mr. D. Collins, Deputy of the Strata
Titles Commissioner.*

MANAGING AGENTS THEIR
APPOINTMENT AND
FUNCTION.

*Mr. G. F. Bagden, Solicitor and Director of
Residential Unit Management Pty. Ltd.*

10.00 - 10.30 a.m. MORNING TEA

10.30 - 12.30 p.m. SECOND SESSION

Topic: MANAGING FOR THE
DEVELOPER.

*Mr. F. Ellis, Solicitor with Stephen,
Jacques and Stephen.*

BODY CORPORATE INSUR-
ANCES AND THE MANAGING
AGENTS BOND.

Speaker to be advised.

12.30 - 1.30 p.m. LUNCH

1.30 - 3.30 p.m. THIRD SESSION

Topics: BODY CORPORATE AND
COUNCIL MEETINGS.

Mr. G. F. Bugden.

BY-LAWS AND DISPUTES

Mr. D. Collins.

3.30 - 4.00 p.m. AFTERNOON TEA

4.00 - 6.00 p.m. FOURTH SESSION

Topics: THE BUDGET, LEVIES AND
THE THREE FUNDS.

Mr. G. F. Bugden.

ACCOUNTING BOOKS,
RECORDS AND STATE-
MENTS.

*Mr. R. G. Kretzler, Deputy Manager,
Investment Division, Bank of New South
Wales.*

7.30 - 9.30 p.m. OPEN FORUM (Optional)

*A panel of speakers will be available to
answer questions and lead discussions on
various matters arising from the course.*



STRATA TITLE MANAGEMENT COURSE

24TH OCTOBER, 1974

*A practical course of lectures on all aspects of
Strata Title Home Unit Management designed to
assist those persons involved, or about to
become involved, in this field.*

*An important feature of the course will be the
provision of detailed precedents of forms,
resolutions and procedures (as well as complete
lecture notes) to those attending.*

Presented by

THE REAL ESTATE INSTITUTE
OF NEW SOUTH WALES

In association with

RESIDENTIAL UNIT MANAGEMENT
PTY. LTD.

(Home Unit Management Consultants)

This is the first of a series of articles written for this newspaper by GARY F. BUGDEN to assist home unit owners in understanding the recent changes to Strata Title legislation.

THE NEW STRATA TITLES ACT...

In 1961 the New South Wales Government introduced legislation that provided, in simple terms, for the subdivision of a building into a number of units or lots, each of which had a separate title.

The nature of the title enabled the lot to be transferred as simply and effectively as a piece of land could be transferred.

This system of subdivision is known as "Strata Title" and it has almost entirely replaced the previous system of "Company Title" home units.

The legislation is known as the Conveyancing (Strata Titles) Act 1961 and this was the first legislation of its kind to be attempted by any government.

Success came almost immediately when the Act gained the confidence of lending institutions and the principles were adopted by all Australian States and some overseas countries.

After 12 years experience under the 1961 Act the Government has now passed the Strata Titles Act 1973 which replaces the old 1961 Act and introduces a number of entirely new provisions.

To quote the Attorney-General's Department, it introduces "a code for living in close community designed to embody the

preparation of title deeds for the common property.

The common property title deed is an entirely new invention and it is this deed that will be endorsed with particulars of amendments to the by-laws.

Apart from technical alterations, which are numerous in themselves, the new Act contains a number of new provisions that will affect home unit living generally.

A Strata Titles Commissioner and a Strata Titles Board will be set up to settle disputes and rectify complaints.

A number of offences have been created and additional responsibilities have been placed on the Council of the Body Corporate, particularly in relation to meetings.

Unit owners

Unit owners will have more effective influence over the affairs of the Body Corporate and greater responsibilities will be imposed on tenants and occupiers of units.

It was originally intended that a managing agent would have to be a solicitor, accountant or estate agent before being allowed to hold office, but these provisions were eventually deleted.

A complete new set of by-laws are introduced.

These are more detailed than the old by-laws and the procedure for their amendment is more difficult.

Any amendment of the by-laws must also be recorded by the Registrar-General before it is effective.

In addition, the new Act imposes new but necessary duties on home unit developers relating to the handing over of control after the sale of units has commenced.

The developer must also hand over certain documents, plans and records and failure to do any of these things carries heavy penalties.

As with the old Act, there is nothing that prevents unit owners from attending to their own

New Restaurant For Surry Hills

The Sydney City Council has given its approval to an application for the use of the ground floor of premises at 143-145 Devonshire Street, at the corner of Clisdell Street and Butt Street, Surry Hills, as a licensed restaurant between the hours of 11 a.m. and 6 p.m. Mondays to Fridays inclusive.

It has also given its approval to the use of the first floor as an accountant's office between the hours of 9 a.m. and 5 p.m. on Mondays to Fridays inclusive, and 11 a.m. and 4 p.m. on Saturdays.

This will involve the carrying out of alterations, including the extension of the basement, ground and upper floor over the whole of the site, the installation of toilet and kitchen facilities

to be carried out on Sundays or public holidays.

- No dancing is to be conducted on the premises.
- No entertainment and/or music is to be provided on the premises.
- No amusement and/or poker machines are to be installed on the premises.
- The side boundary walls are to be treated to the satisfaction of the city planner.

Further conditions set down are of a technical nature relating to loading bays, markings, heights, car parking spaces, etc.

REAL ESTATE SECTION

Electrical Work Plan

Permission has been given by Randwick Council for use of an existing building in Runic Lane, known as 7a Hannan Street, Maroubra for manufacture of electrical elements.

Conditions include:

- The submission of a formal building application accompanied by plans and specifications of any structural alterations that may be carried out.
- Machinery installed being sound-proofed to the satisfaction of the chief health and building inspector.
- The existing structure being maintained in

ties at ground floor level, the installation of toilet facilities on the first floor and general repairs and renovations.

There would also be provision for two "off-street" car parking spaces and one "off street" loading bay on part of the basement level.

The remainder of the basement would be used as a cellar in conjunction with the proposed use of the ground floor as a licensed restaurant.

This approval, however, is subject to a number of

If you're a strata managing agent, where's your licence?

By GARY BUGDEN*

THE licence deadline is looming for people who professionally manage strata title bodies corporate.

Under changes to strata titles legislation managing agents must be licensed under the Auctioneers and Agents' Act by October 1. Failure to comply will result in stiff penalties.

The new licences have been available since July 1 through the Council of Auctioneers and Agents, the controlling body for NSW real estate agents, auctioneers and certain other agents.

In the past, this type of management has been carried out by real estate and specialist non-licensed and auctioneers agents.

After October 1 all such persons - irrespective of their qualifications - must be licensed as a strata managing agent otherwise they will be unable to continue managing their bodies corporate.

a body corporate with certain particulars of his trust account and the financial transactions relevant to it. In addition, the agent will be required to furnish detailed financial statements to the body corporate every three months (or six months where individual trust accounts are kept).

Failure to comply with these new rules attracts heavy penalties and the agent may risk loss of his licence.

At the end of a strata managing agent's term of appointment the right of the body corporate to have its books and records returned to it has been reinforced by a \$2,000 penalty. This includes copies of all accounting records relating to the body corporate's funds.

These copies, when combined with the financial statements mentioned

