

## Subdivided Property:

### Property subject to a Strata Scheme, an Owners Corporation or Body Corporate

Whether you are a buyer or seller if your property is subject to a subdivision there may be additional matters for you to take into consideration before you enter into the transaction.

#### What is a Subdivision of land?

Subdivision is the act of separating land into smaller pieces. Subdivision is increasingly common in today's society for both commercial and residential properties. Subdivision can occur vertically (for example a high-rise apartment complex) or horizontally (for example a strip of Villas).

Subdivision can be simple or very complex. A 2 lot subdivision is the simplest form of subdivision and it ranges all the way to community housing schemes which may cover entire suburbs. Individual lot owners own a small parcel of private land within the subdivision and share the common property with the other owners.

#### Common types of Subdivision

Property law is different in each state in Australia therefore there are variations to rules relating to the subdivision of property in each state or territory. For example, in Victoria and New South Wales the most common way to administer a subdivision of land today is through an Owners Corporation, whereas, in Queensland this is called a Body Corporate. There are also other ways to structure the subdivision of land which has been adopted in the past, for example, via Company Share Schemes and Associations.

#### What do I actually own in a strata scheme?

It is important to understand what type of property you are buying because the rights and obligations under each scheme may vary significantly. For example, where you buy into a Company Share Scheme you do not receive a certificate of title to the land itself at all, but you acquire shares in a corporation which owns the land.

There are also major differences in what you own depending on whether it is a house or a unit. In an apartment complex you may not own the exterior wall, roof or floor but rather the plans may specify that you only own the airspace between the ceiling and the floor. Therefore it is important to seek advice to understand what you are actually buying and how that affects your obligation to repair and maintain in the future.

#### What does an Owners Corporation or Body Corporate do?

An Owners Corporation or Body Corporate is a vehicle created by statute to administer the subdivision scheme and to maintain its common property.

The legislature allow an Owners Corporation or Body Corporate to make and impose rules which affect the way that people can act within a subdivision scheme, how decisions are made and how expenses are shared. An owner of a lot within the subdivision is a member of the relevant Owners Corporation or Body Corporate and cannot avoid the decisions made or obligations imposed by the majority.

Therefore it is important for people to be aware of the responsibilities and obligations which they have within a subdivision scheme and how their behavior impacts the enjoyment and satisfaction of others within the scheme.

These rules may range from the outward appearance of one's own lot to the way that a shared gym or swimming pool is to be used by owners and invitees.

## Do I need to pay levies?

Owners are required to pay levies to the Owners Corporation or Body Corporate on a periodic and a pro-rata basis in accordance with their lot liabilities listed in the plan of subdivision. This will be an ongoing expense for the life of the property and may cover administrative items (such as insurance and management fees) as well as repairs and maintenance.

The cost of strata levies should be taken into consideration when making a decision to purchase property. Purchasers should seek advice from our experienced strata lawyers if you seek guidance on your responsibility to pay levies.

## How does an Owners Corporation / Body Corporate make decision?

An Owners Corporation / Body Corporate is able to make a variety of different types of decision depending on nature of the decision. Day to day decisions may be delegated to the manager or committee, more important decision can only be made at an Annual General Meeting (AGM) after the correct notice is given to lot owners. The most important decisions are reserved for a Special Resolution (>75% voting in favour) or a unanimous resolution (100% voting in favour).

Therefore sometimes a decision will be made even if you are in the minority and voted against the decision or failed to vote.

## Important tips when buying subdivided property "off the plan"

When buying subdivided property off the plan it is important to seek detailed advice regarding the anticipated subdivision scheme. Developers have significant control over the ways that the subdivision is set up and how rights and obligations are imposed on individual lot owners.

Sometimes, the developer may require you to give proxies as part of the Contract of Sale therefore empowering the developer to make decisions on your behalf. Please remember that an off the plan contract is a very complex legal document and you should require additional guidance and advice if you are unsure about what your rights and obligations are.

## What disclosures can I request?

The law requires Vendors to provide disclosures when they are selling subdivided property. Please ensure that you read the disclosures carefully to understand how the scheme works and what your obligations are under the scheme. Specific advice regarding your strata scheme can be sought in addition to our ordinary conveyancing services if you wish to understand more.

## How do Owners Corporation / Body Corporate disputes affect you?

As a member of an Owners Corporation or Body Corporate you are able to raise disputes concerning fellow lot owners or the Owners Corporation itself. Sometimes, your Owners Corporation or Body Corporate may be involved in litigation and you may therefore be required to take part and fund any such litigation.

Litigation is often costly and time consuming and may demonstrate friction within the subdivision owners. Therefore, it is important to carefully research a property and understand the disclosures which are made available to you.

If you are considering buying or selling subdivided property and wish to obtain additional or specific legal advice, please [contact us](#) for a quote today.