

Ownership and Other Interests in Land

To understand what rights you have in relation to your property or apartment and what rights you have in relation to your neighbour, it is important to first find out what is the nature of the title to your property. It may be important to know what your neighbour's rights are and whether they are the 'owner', a 'tenant', a fellow strata title unit holder etc.

The law relating to property and title is fairly complicated but the following summary provides an overview of the some of the main kinds of titles.

FREEHOLD

If the interest in your land is freehold, it means you are the 'owner' of the land and any buildings on it. You can own the land under either **old system** or **Torrens** title.

LEASEHOLD

A lease or tenancy is an interest in land given by a landowner to another person for a fixed period of time. As a tenant your rights are governed by a lease agreement with the 'lessor' (the landlord). As a tenant you have a right to be the exclusive occupant of the property.

The *Residential Tenancies Act 1987* (NSW) sets out the rights and responsibilities of tenants and landlords. The Act also covers the powers of the Consumer, Trader and Tenancy Tribunal in dealing with disputes between landlords and tenants.

The owner may also impose obligations on the tenant under the terms of a lease. For example, a landlord can require that no pets be kept on the property. It is important to carefully read the terms of the lease to see what your rights and obligations are in relation to the property.

In relation to dealings with neighbours, there are some things a tenant needs permission from the owner to do. For example, a tenant needs permission from the landlord to consent to an access order to enter land.

The Tenants Union NSW can help with information in relation to tenants' rights and responsibilities.

THE TORRENS SYSTEM

The English system of real property law and conveyancing, although adopted by the Australian colonies, was not entirely suited to the conditions of the new settlement. English land law was complex and establishing title often involved tracing title back through a chain of events and documents.¹ If one document was deficient in some way, then there would be a defect in title. This means that title was only as strong as the weakest document in the chain of title.

Sir Robert Torrens, who emigrated to South Australia in 1840, recognised the problems with the old system of title and its obvious unsuitability to Australia, and devised a new system of registration.

Torrens' proposals included a single document evidencing title to each parcel of land – the 'certificate of title'. All transactions affecting the land would be recorded on this document. This document would be held by the Registrar-General and would be available for public inspection, with a copy given to the landowner.

The legislation implementing Torrens' reform proposals, the *Real Property Act 1858* (SA), came into operation in South Australia on 1 July 1858. It was slowly taken up by other states and introduced into New South Wales by the *Real Property Act 1862* (NSW). This was replaced by the *Real Property Act 1900* (NSW).

Today, most land is held under Torrens title although there is still some land subject to the old system of land title.

If you purchase old system title, however, it is automatically converted to 'qualified' Torrens title. This conversion occurs without charge to either buyer or seller.

1. P Butt *Land Law*.

COMPANY TITLE

Another form of home unit ownership is company title, which involves ownership of shares in a company that owns the land and building. This is an older form of unit ownership than strata title. Under company title, a unit owner does not own land, only shares in the company. Instead of holding a title deed, they have a share certificate as evidence of ownership. A person's right to sell or transfer the shareholding is subject to the approval of the company, which can be withheld. This can be an advantage to other shareholders, as it gives them some control over who their neighbours will be.

Rules concerning the occupation of and the right to lease the flat may be made by a majority vote of the company's shareholders.

HOT TIP

Common property means all of the areas of the strata plan that do not form part of a lot, for example: stairways, passages, driveways, carpark and all external and boundary walls.

STRATA TITLE

A strata title is the most common title associated with apartments and town houses and is evidence of ownership of a unit, which is called a 'lot', in a strata plan. A strata plan divides a building and its associated land into lots, each of which has a strata title, and usually common property.

Strata schemes are governed by the *Strata Schemes Management Act 1996* (NSW). The registered owners of all the lots in the strata plan form the 'owners corporation' which has powers and responsibilities to administer the building and care for common property.

By-laws are the rules and regulations, which define the powers and obligations of the owners corporation and lot owners. It is an obligation of each unit owner to comply with the by-laws and, in particular, to behave in a manner which will not offend other residents or interfere with their peaceful enjoyment of that

property. Additional obligations include not carrying out alterations to the lot without consent from the owners corporation and local authority when that consent is required by law. Some by-laws place restrictions on the behaviour of residents, for instance not allowing them to keep pets. Within some limits the owners corporation can alter add or delete by-laws.

The *Strata Schemes Management Act* sets out a process for resolving disputes between occupants of strata schemes, or between the owners corporation and an occupant. If discussion with each other does not work, you need to attempt to resolve the dispute via mediation before a dispute can go to the Strata Schemes Adjudicator. If mediation fails, you can apply to the Adjudicator for an order. Adjudicators are Members of the Consumer, Trader and Tenancy Tribunal.

If you are unhappy with the decision of an Adjudicator you can appeal the decision within 21 days to the Consumer, Trader and Tenancy Tribunal (CTTT). The CTTT can either dismiss the case if it considers the Adjudicator's order appropriate or it can make a different order.

HOT TIP

Curtilage is the area of land occupied by a dwelling and its yard and outbuildings, actually enclosed or considered to be enclosed.

COMMUNITY TITLE

This form of land ownership is similar to strata title. Community title is regulated by the *Community Land Management Act 1989* (NSW) and the related regulations. Under this legislation, large parcels of land can now be developed with a common theme. The developer acquires the land and provides for the roads and amenities, which may include a children's playground or a tennis court.

The land is divided into small lots or into neighbourhoods and the community assumes responsibility for looking after the parcel once the development is completed. Individual lot owners are responsible for the care and maintenance of their own homes and the curtilage around it.

Under legislation, a number of associations are formed to administer the developed areas of the projects as these occur. These associations can make by-laws which govern the rights and obligations of each proprietor in the Community Title Scheme.

The by-laws for a scheme may relate to the control or preservation of the essence or theme of the development under the scheme by:

- limiting occupancy under the scheme to persons of a particular description
- fixing the architectural, building or landscaping styles permitted
- limiting the kind of materials that may be used in buildings and other structures
- requiring that specified association property be used only for particular purposes
- imposing any other kind of restriction.

The community titles legislation also sets out dispute resolution procedures. These involve mediation, adjudication and any appeals are taken to the Consumer, Trader and Tenancy Tribunal.

CO-OWNERSHIP

Where two or more people simultaneously share the same interest in property they can do so either as **joint tenants** or **tenants in common**.

Joint tenancy

A joint tenancy is a common way for people to share an interest in property. Joint tenants possess a right of survivorship. This means that the interest of a deceased joint tenant passes to the surviving joint tenant(s).

To create a joint tenancy four 'unities' must be present:

1. Unity of Time: all the joint owners must acquire their interest in the property at the same time.
2. Unity of Title: all the joint owners must acquire their interest from the same transaction.
3. Unity of Interest: all the joint owners interests must be identical in nature, extent and duration.
4. Unity of Possession: each joint owner has equal right to possession of the entire property.

Tenancy in common

Tenants in common own distinct shares in one property. Such shares may be of unequal proportion. Each tenant has an equal right to possession of the whole property, but not a right to exclusive possession of a particular part. A tenant in common may deal with their respective shares as they wish and this will affect the tenancy of the other co-tenants.

WHO IS THE OWNER OF THE LAND?

To find out who is the owner of a property, you can make a search at the Department of Lands Head Office in Sydney. The Department of Lands keeps ownership records for all the property in New South Wales. You can also search the website: www.lands.nsw.gov.au. There is a fee to make a search.

The search will also show whether the owners are joint tenants or tenants in common. It will also show the name of anyone else with a registered interest in the property, such as a mortgage or a lease.

The local council will also have a record of the owner as a ratepayer.