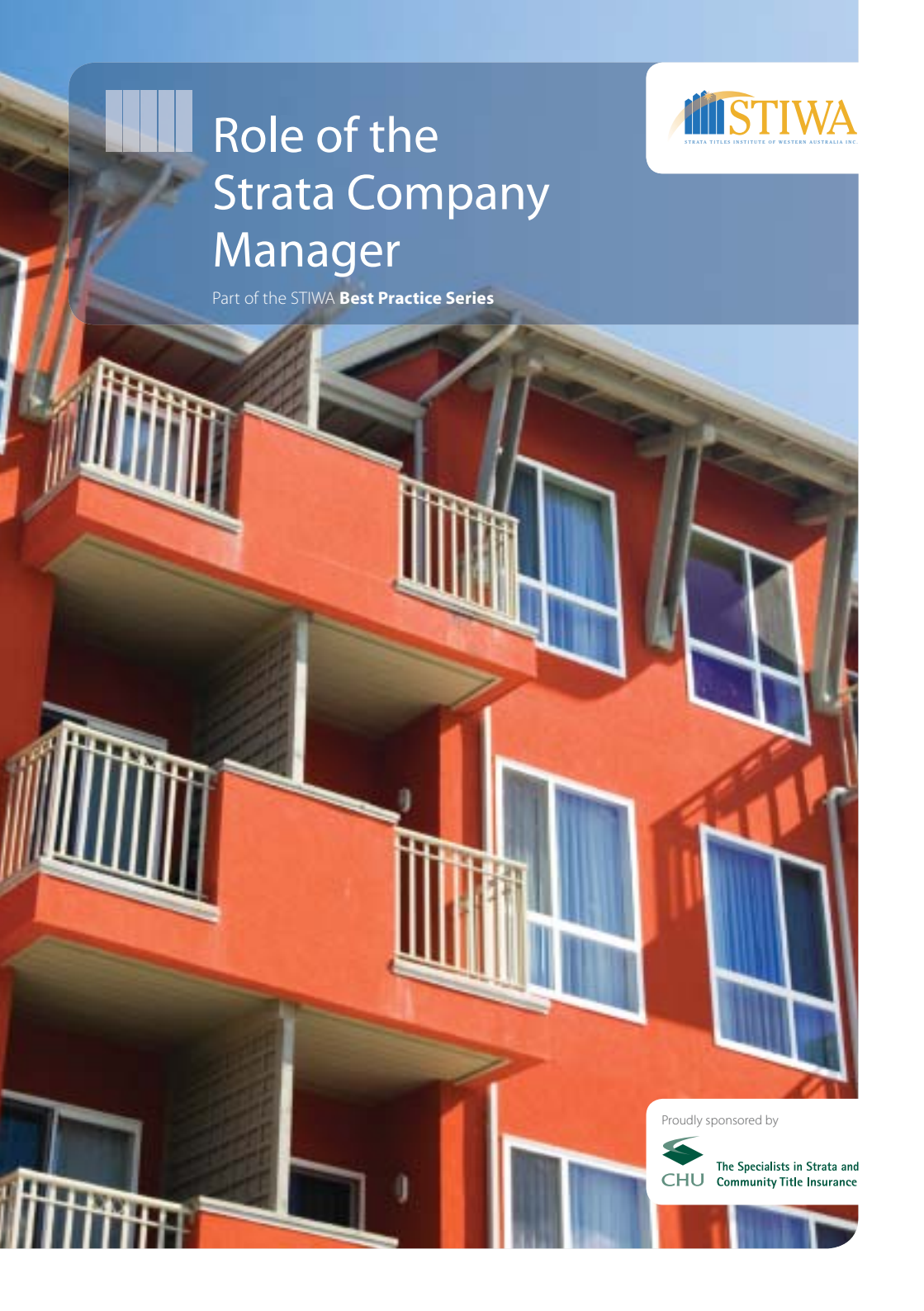




Role of the Strata Company Manager

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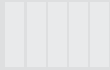


This booklet is one of three in the Best Practice Series dealing with the relationship between strata company managers and their client strata companies. You are encouraged to obtain and consider the contents of all three booklets.

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Role of the Strata Company Manager

Purpose of this booklet

This booklet provides interested parties with an explanation of the role of a professional strata company manager in assisting the strata company and, more particularly, its Council, to discharge and exercise its duties, powers and functions as provided for by the Strata Titles Act 1985 (WA) (**Act**) and the relevant by-laws. In this booklet, unless otherwise stated, a reference to by-laws is a reference to the by-laws contained in Schedule 1 & 2 to the Act.

In order to appreciate how the strata company manager provides assistance to the strata company it is first necessary to understand how a strata company is constituted, its organisational structure and the functions which require management.

2 lot schemes are exempt from certain requirements of the Act unless they wish to comply and 3-5 lot schemes are able to exempt themselves from those same requirements. [s36A & 36B] This booklet does not differentiate for those exemptions.

Reference should also be made to other booklets in this series "Appointment of a Strata Company Manager" and "Strata Company Financial Reports and Information". The Guides are available from the STIWA office or are free to download in PDF file format from the STIWA website at www.stiwa.com.au.



What is a strata company?

A strata company is a unique form of body corporate which is not subject to Corporations' Law but it is, nonetheless, a legal entity carrying on an enterprise and is subject to Australian tax laws. A strata company comes into being at the time of registration of a strata plan or a survey-strata plan by the Registrar of Titles.

The registered strata or survey-strata plan depicts the lots which are individually owned by lot proprietors. All lot proprietors are "members" of the strata company once their name is registered on their lot title. Lot proprietors are commonly referred to as "owners".

While there are similarities between owners and shareholders, there are also important differences. The most important of these is the mutual and unlimited liability for losses or debts of the strata company. This exposure should alert owners to the need for proper management of the functions of their strata company.



Organisational structure of a strata company

An owner's share of ownership in the strata company is determined by the unit entitlement attributed to their lot. Unit entitlement determines their voting rights, their undivided interest in any common property and, subject to any contrary by-law, the proportion of levied contributions payable by each owner.

The collective and democratic process of strata company management begins with the convening and conduct of general meetings of owners. Whether it is at the annual or an extraordinary general meeting the owners have the opportunity to raise matters of interest or concern which are capable of being resolved as management decisions.

At the annual general meeting the owners assess the past performance of their strata company, deal with issues which have arisen, change by-laws, approve policies which promote mutual benefits, and, establish future financial and management objectives which protect the owner's assets and interests.

At each annual general meeting the owners elect fellow owners to serve on the Council of the strata company until the next annual general meeting.

The Council performs the functions of the strata company pursuant to section 44 of the Act. The role of elected Councillors and company directors are similar in terms of their authority and accountability to owners. The Councillors have a duty of care which has important implications for the strata company and any appointed manager.



Functions of the strata company

Taking into account the duties of the original proprietor pursuant to section 49 of the Act, the management functions of the strata company can be divided into three main categories of procedural, administrative, and executive actions.

The procedural provisions of the Act and the relevant by-laws, deal with the election of the Council, the conduct of general meetings, a variety of statutory procedural duties and powers and the required resolutions. These are all matters which create a duty for a strata company to properly manage. These **procedural** actions can be managed by the Council but are more often delegated to a strata company manager.

The administration of the business of a strata company requires secretarial, financial and communication procedures which meet the requirements of the Act, the relevant by-laws, established policies and, all other laws. These **administrative** actions are a common reason for employing an independent strata company manager.



The **executive** duties of the strata company are largely determined by the provisions of sections 35, 35A, 36, & 43, the applicable insurance provisions of the Act, and the relevant by-laws.

In the simplest terms the strata company must:

- » Enforce its by-laws, including those of a procedural nature [s35]
- » Manage and control the common property for the benefit of all proprietors [s17 & 35]
- » Maintain the common and its personal property [s35]
- » Keep and maintain records and provide information [s35, 35A & 43]
- » Effect certain insurance [s35 & 53 to 59] and disclose foreseeable events
- » Keep and comply with certain notices and orders [s35]
- » Establish an administrative fund and levy contributions [s36]
- » Recover money in specific circumstances [s36(1)(d)]
- » Respond to proprietors' applications to it under sections 7 & 7A.
- » Convene and conduct general meetings in accordance with the Act and its by-laws
- » Control the use and safe keeping of the common seal in accordance with its by-laws

The strata company manager provides practical advice, implements decisions, or refers matters to other specialists which enables the Council, on behalf of the owners, to responsibly carry out the executive actions of the strata company.

The Act also provides the strata company with the power to manage its affairs in such a way as meets the needs of its owners (although it cannot avoid the executive duties discussed above).

Delegation of the strata company's functions

Management of the affairs of strata companies is influenced by the imperative duties and discretionary powers conferred by the Act, the relevant by-laws, decisions of general meetings and occasionally by external sources.

Subject to those influences the duly constituted Council is responsible for the performance of the duties of the strata company and these must be discharged, irrespective of the size, type, or use of the scheme. Their discharge requires care, diligence and well directed management action.

Conditional upon any direction or restriction imposed by a general meeting, the Council controls the exercise of the following discretionary powers of the strata company:

- » Establish a reserve fund and any levy of contributions [s36]
- » Recover unpaid monies from owners [s36]
- » Acquire or dispose of personal and common property [s37]
- » Borrow or invest money [s37]
- » Provide amenities or services to owners [s37]
- » Enter a lot or carry out work on a lot [s38 & 39]
- » Carry on a business or trading activity [s42]
- » Change of name and service address of the strata company [s40 & 41]
- » Make or amend by-laws [s42]
- » Grant special privilege or exclusive use in respect of common property [s42]
- » Employ a caretaker [By-laws]
- » Insure buildings in a single tier strata scheme [s52]
- » Insure in respect of optional risks [s55]
- » Fill a vacancy on the Council [By-laws]
- » Appoint a strata company manager [By-laws]

The exercise of these and any other of its powers requires a similar degree of care, diligence and well directed management action by the Council.



Pitfalls of self-management

The Council is elected at each annual general meeting and as membership changes so does the degree of continuity and knowledge. Members of the Council are often residents or occupiers of lots at the property and this can make it difficult for them to maintain objectivity and detachment from the day to day issues which arise in community living and working situations. If they are not usually present at the property it can be difficult for them to have a full appreciation of such issues.

While many strata companies are self-managed, and may be satisfied with the results, the obvious factors why this arrangement does not suit many others include:

- » Limited voluntary time an owner is willing and able to contribute
- » Lack of technical knowledge and experience in respect to the Act
- » Lack of opportunity to maintain a knowledge base of the legislation over time
- » Changes in membership result in loss of available experience and continuity
- » Limited individual cost saving to volunteer Council members
- » Internal conflict between owners
- » Limited access to competent contractors and service providers
- » Reluctance to confront fellow owners about behaviour or money matters
- » Limited availability of business and financial systems
- » Risk management and personal liability exposure

For these and other reasons, an increasing number of strata companies choose to appoint a professional strata company manager.

Management has been described as the “timely achievement of the objectives of the organisation.” The objectives of any strata company are to comply with the Act and to promote and protect the interests of the owners and others who occupy or visit the property. A professional manager accepts the authority, responsibility and accountability for the timely management of the affairs of the strata company in exchange for an agreed fee. The Council appoints and enters into a written management agreement with a firm which specialises in the management of strata companies. The appointed firm will nominate one of its staff members to personally provide the manager’s agreed services. It is the firm which is the strata company manager and in this booklet the term manager refers to the firm and not the firm’s individual staff members.

The underlying role of the manager is to assist the strata company to make and implement business decisions. Those decisions, when implemented, ensure that the duties of the strata company are performed and any discretionary powers are exercised in accordance with the Act, the relevant by-laws and any applicable resolutions of general meetings of the owners. The manager is contracted to and provides services to the strata company which is the manager’s client and the manager is accountable to the Council which makes the appointment on behalf of the strata company. As it is the Council which has the primary management responsibility, it is the Council which instructs, authorises and supervises the manager’s activities.

The manager provides a centralised point of communication and agreed secretarial, treasury, clerical and advisory services (as are within their knowledge and delegated power). They should have the ability to readily outsource specialist providers of goods and services when that is appropriate.

A professional manager should only act with the proper written authority of the strata company via its Council. That authority and any instruction should be clearly communicated and understood by all parties, including individual owners, who may potentially be affected by the appointment and the actions of the manager. The unfulfilled expectations of individual owners is a common cause of dissatisfaction in the management relationship. It will always be more efficient to react or respond to written communications. It is also important that the manager avoids acting when it is the Council that should act.

The manager should always be prepared to advise owners and others to seek independent advice.

Why appoint a manager?

The following is a summary of functions which may be wholly or partially delegated to a manager to assist the Council to discharge its functions on behalf of the owners collectively. The functions marked in **bold type** are those which must be performed by the strata company.

Management

- » Enforce the by-laws
- » Control and manage the use of the common property
- » Keep the common and any personal property of the company properly maintained
- » Implement resolutions of general meetings of the company
- » Comply with notices and orders in respect of the lots and common property
- » Comply with a requisition or application by one or more proprietors
- » Acquire or dispose of personal and common property
- » Carry out works where a proprietor has failed to comply with a requirement to do so
- » Carry out works to remedy certain structural defects
- » Gain entry to a lot after reasonable notice or, at any time in an emergency
- » Maintain any required employment records

Insurance

- » Arrange for insurance in compliance with the relevant section of the Act e.g. for the full replacement value of the building, including fixtures and improvements
- » Insure in respect of damage to property, death, or bodily injury for not less than \$5,000,000
- » Insure under the Workers' Compensation and Injury Management Act 1981
- » Insure against such other risks as the company may from time to time determine
- » Lodge claims under any insurance policy in the name of the company
- » Apply the proceeds of any claim to repair or replace the affected property
- » Obtain a valuation of the building replacement value as defined in section 53 of the Act
- » Ensure action is taken by a proprietor pursuant to section 54A of the Act
- » Insure as determined pursuant to the provisions of sections 55(4) of the Act
- » Recover money from a proprietor pursuant to section 55A of the Act

Records

- » Maintain a record of notices or orders served on the company
- » Maintain a record of minutes of general and Council meetings
- » Compile and maintain the roll of proprietors
- » Make records available for inspection pursuant to section 43 of the Act
- » Provide certificates and information pursuant to section 43 of the Act
- » Maintain current records of the company
- » Provide safe custody of the common seal of the company
- » Store and retain for the prescribed period all records required to be kept
- » Provide copies of documents pursuant to section 43 of the Act

Financial

- » Establish a sufficient fund for administrative expenses
- » Maintain proper books of account
- » Prepare an annual statement of accounts in respect of each financial year
- » Pay any insurance premiums and other financial obligations of the company
- » Notify each proprietor, or mortgagee in possession of a lot, of levied contributions
- » Record the amounts received against administrative fund obligations
- » Recover a proprietors debt to the company pursuant to section 36(1)(d) of the Act
- » Provide other financial information and reports as requested
- » Prepare a draft budget of estimated expenditure from the administrative fund for the ensuing year
- » Prepare a funding proposal for levying contributions in respect of the administrative fund for the ensuing year.
- » Comply with any restriction on the power to undertake expenditure in any one case
- » Notify all proprietors and first mortgagees of the purpose and amount of proposed unbudgeted expenditure as provided for in section 47(3) of the Act
- » Establish a reserve fund for contingent and other major expenses likely to arise in the future
- » Prepare a provision for likely future costs to be funded by the reserve fund
- » Notify each proprietor of levied contributions for the reserve fund
- » Record the amounts received against reserve fund obligations
- » Invest surplus money in either the administrative or reserve funds
- » Reduce the rate of simple interest payable on unpaid contributions
- » Require a security deposit for any sub-metered utilities

Meetings

- » Prepare and issue notices for the annual general meeting of the company
- » Distribute minutes of the annual general meeting of the company
- » Prepare and issue notices of extraordinary general meetings
- » Distribute minutes of extraordinary general and Council meetings
- » Prepare and issue notices of Council meetings

Communication with the Council

- » Refer all requisitions, applications, correspondence, inquiries, complaints and requests for information, other than those contemplated by section 43 of the Act, to the Council for its consideration and action
- » Maintain a register of incidents and relevant matters affecting the company and its common property and provide details of such incidents to the Council
- » Provide such general advice, information and assistance as is reasonable and within the manager's knowledge to the nominated strata company representative or the Council
- » Follow established and agreed procedures for obtaining authority and instructions from the Council or strata company representative and promptly comply with instructions received from the Council or strata company representative

Communication with proprietors and others

- » **Accept postal enquiries and information**
- » **Accept applications and requisitions from proprietors**
- » Receive telephone enquiries and information during office hours
- » Receive Email enquiries and information during office hours
- » Refer enquiries and information which require some action by the company to the Council or the strata company representative
- » Respond and provide information, not requiring action by the company, to the enquirer

Services which are infrequently required or arise from exceptional circumstances may only be provided by the manager on the authority or direction of the company in general meeting, the Council, or a nominated strata company representative and may not be included in any fixed agreed annual fee.

The strata company should avoid paying any fee for "agreed" services which have a built in contingency element or unnecessarily allow for undefined events or needs in a particular year.

As discussed below there will almost certainly be matters which are outside the scope of any agreement with the manager.

The extent to which those duties are discharged by outsourcing the necessary skills is a matter for each strata company and its Council to determine in consultation with the manager.

Matters outside the management relationship

The strata company manager is not appointed to arbitrarily make up or enforce rules or to dictate the actions of owners, the Council or of the strata company. The management agreement prevents action on a request, demand, or instruction of an individual lot owner.

There is often a mistaken expectation that the strata company manager will personally deal with complaints, give free legal and other advice, enforce by-laws, evict tenants, collect debts, convene and chair meetings, inspect buildings, handle insurance and behavioural matters, correct errors made by a previous manager and resolve disputes, all without first even seeking authority from the Council. The management firm is accountable to the Council which appoints them on behalf of the strata company and should not be expected to provide insurance, legal, tax, building construction or other specialist and professional advice to the strata company. It is often the case that the clients best interests require that the manager out sources specialist advice and assistance.

The incorrect expectation that the strata company manager will deal with “everything” is the cause of many complaints. Professional strata company managers take great care to avoid such misunderstandings as part of their risk management strategy.

Risk Management

All STIWA accredited strata company managers are required to have what is known as Professional Indemnity Insurance which provides security to the client in the event of error by the manager. These policies typically require that the manager does not undertake duties or provide services for which they are not qualified or lawfully able to provide.

All members of STIWA are required to abide by STIWA's Code of Ethics which among other things stipulates that they shall not accept or undertake professional responsibilities beyond their competence or authority.

A copy of that code is available at www.stiwa.com.au.

The Strata Titles Institute of Western Australia (STIWA) is the peak industry body for people and organisations working in the strata titles profession and associated industries in WA.

Our mission is:

“To be acknowledged as the foremost industry forum of professionals which establishes and mutually recognises members’ competency, integrity and practise standards, and promotes public confidence in the strata titles profession within Western Australia”.

Our members represent a wide range of industry sectors including strata company managers, surveyors, financial and insurance service providers, conveyancers, solicitors, real estate agents, property and strata title consultants.