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ATTACHMENT 1 – REIWA PROPOSED FORMS ................................................................ 23
REIWA is Western Australia’s real estate institute, the peak body for the real estate profession in the state. We exist to make the selling, leasing and buying of property as simple and safe as possible for all Western Australians.

We are a member-owned organisation representing over 1,100 real estate agencies and over 90 per cent of agents in WA.

We represent the real estate industry in WA and liaise with the Australian and Western Australian Governments on issues that impact our members. REIWA is a key part of the broader WA property and construction industry.

REIWA exists to help everyone win in WA real estate.

INTRODUCTION

REIWA welcomes the State Government’s reform agenda for the Strata Titles Act. Strata titles schemes are a significant part of the WA property landscape. REIWA members deal in strata scheme transactions on a daily basis whether as an agent selling a strata property, as a property manager for an owner of a strata lot, or as a manager of a strata scheme.

It’s important that any reform agenda of this size is well considered by all stakeholders to assist State Government in making good decisions for both consumers of strata properties and schemes and the property industry as a whole.

REIWA represents over 90 percent of WA real estate professionals. In our submission we have focussed on the two areas which most affect our members; vendor disclosure and management of strata schemes.

REIWA looks forward to continue to work with the State Government on this important reform agenda.

TENURE REFORM

REIWA agrees that all of the proposed reforms will bring positive benefits to developers and that the tenure reforms will bring alternative options to the buyers of strata properties.

The key concern for REIWA is how the community title schemes are going to be effectively managed. The shared ownership of assets and often the shared responsibility for supply of utilities will result in the management of these schemes being extremely difficult. It certainly will result in an opportunity for a strata manager to develop the necessary skills and charge a premium for their management services of a complex scheme. REIWA suggests that many of the management issues will not be known until the schemes come into operation and the developers have terminated their association with the schemes. It is conceivable that some buyers and their strata managers are going to be left with an administrative mess that has to be resolved.
VENDOR DISCLOSURE

Introduction
REIWA recommends that in part V of the Strata Titles Act 1985 (STA) that the term “vendor” should be changed to “seller” and “purchaser” should be changed to “buyer”. The standard contract used in Western Australia refers to the “seller” and “buyer” rather than “vendor” and “purchaser”. For consistency it is would be less confusing for prospective buyers if the terms matched.

Seller disclosure is an important element of any aspect of buying a strata or survey strata property for prospective buyers. The Strata Title Act Reform Consultation Paper (STA Reform) highlights the importance of educating prospective buyers on what they are buying when entering into a contract of sale for a strata or survey strata property. It also focusses on making disclosure information more consumer friendly. REIWA agrees in principle that ensuring prospective buyers have the right information at the time of contract is important and that adequate disclosure, in a consumable format is an important aspect of buying a strata or survey strata property.

REIWA member feedback
“Disclosure in principle is a good thing as it will assist prospective buyers in understanding their obligations as an owner in a strata lot. The extent of disclosure is the real issue.”

“If the information is available then it should be disclosed to prospective buyers, if it isn’t readily available it shouldn’t be mandatory to provide it.”

“What if there are multiple prospective buyers of a strata lot, who bears the cost of providing all disclosure information to all buyers?”

The critical policy issues that need to be considered here and that apply to vendor disclosure includes:
- Who is responsible for providing the disclosure information?
- What disclosure information should be provided to prospective buyers of strata properties, and what information should be mandatory?
- What is the timing of providing that information?
- What contract termination provisions are required, if any?
These issues are discussed in turn and then REIWA’s response to each proposal of the STA Reform are outlined.

Responsibility of disclosure
REIWA’s recommendation is that section 69 of the STA should not be changed. The obligation to prepare and give the notifiable information remains the seller’s responsibility.

How the seller obtains the information is not a concern for the STA to address. However, Landgate should be aware that in the majority of cases, the seller calls for assistance
because they have lost the documents, previously given to them, that provide the details of the levies, budgets, AGM minutes, bank account balances for example.

In practice the selling agent, upon appointment will request the current information from the seller. The seller, not being aware of the current information will refer the selling agent to the strata manager. The strata manager only acts on instructions from the strata council. The strata manager, being a commercial enterprise will charge a fee to the seller for the preparation of the information. The strata manager will have three choices to either:

- Decline to provide the information
- Charge for the collection of the information and not prepare the disclosure statement or
- Charge for the collection of the information and prepare the disclosure statement.

While the strata manager and the selling agent may have assisted in this process, they are merely relaying the information. The end result of the additional information that the seller will be required to provide is that the strata manager is going to be asked to provide additional services and this will require additional resources. It is reasonable to expect that the strata manager will charge for the resources and that the cost will be passed onto the seller who requests the information.

It is important to note that currently, REIWA members indicate that for strata property sales, they already endeavour to provide the budget and the draft AGM minutes to prospective buyers. However, often the information is unavailable and this is especially the case with self-managed strata companies.

**REIWA member feedback**

“It is too difficult for real estate agents to get all the information proposed in the disclosure documents.”

“This will be onerous on both real estate agents and strata managers. It should be the seller’s responsibility not the real estate agent or strata manager to provide the strata disclosure information.”

“The strata manager should not be involved in this process. The seller should be responsible for providing the information and the real estate agent should inform the seller of what is required to be disclosed.”

**Required disclosure information – current and proposed**

Under the current system, real estate agents provide Form 28 and Form 29, which contains generic and specific information to prospective buyers, it includes disclosure of:

- The strata plan
- The unit entitlement
- The registered standard and non-standard by-laws
- The requirements under survey-strata and strata properties.

If the seller is the original proprietor then information as to pecuniary interests in agreements, estimated strata company receipts and expenditure, administrative fund, reserve fund, and
any proposed lease, licence exclusive use or special privilege that have been granted or are proposed to be granted.

Whilst the current system is not broken, REIWA does agree with the broader principle of providing disclosure information to prospective buyers that is in an easily consumable format. REIWA certainly agrees that the seller should be informing the prospective buyer about the levies.

Under the STA Reform, there are two main overarching proposals in relation to what disclosure information is required on top of what currently exists. The two main areas for consideration are:

- An increase in the type of required information for disclosure and
- Combining the current two forms (Form 28 and 29) and then creating four new disclosure forms.

The STA Reform proposes a whole new range of information to form part of the disclosure to prospective buyers. As previously outlined, REIWA supports the principle to improve disclosure information to prospective buyers, but this needs to be balanced against, what is appropriate to receive as a prospective buyer and what is in fact readily available. In addition, whether some items of disclosure information is mandatory needs to be considered, especially in light of what is readily available.

REIWA is concerned that in many instances the budget and the draft minutes of an annual general meeting (AGM) or EGM will not be readily available. The feedback from many REIWA members is that they currently endeavour to make this information available however it is commonly unavailable and that this is especially the case with self-managed strata companies.

REIWA’s view is that the budget and the draft minutes of an AGM or EGM should not be compulsory to disclose. Rather the prospective buyer should be made aware that the information is not available. In the end, the lack of availability of information may also be a trigger of concern for the prospective buyer. REIWA would anticipate that over time buyers will come to expect the information and will question why it is not available and then consider the implications of the information not being available – for example, is the strata scheme well managed? Again the onus of disclosure should remain with the seller.

If information that is not readily available is made to be compulsory to disclose as proposed through the STA Reform, this will raise an issue around potential grounds for termination of a contract by the buyer. This concerns REIWA considerably.

For example, if it became compulsory to disclose the budget and AGM minutes then REIWA would have to assume that if the information is not provided, that would then present the buyer with an opportunity to terminate the contract at any time prior to settlement. This is not a satisfactory outcome when the information is not readily available. REIWA cautions Landgate in this area, as the proposal to make items compulsory to disclose has the potential to impact the way real estate transactions are conducted in two ways by: delaying the provision of information and by creating an early termination opportunity.
REIWA recommends that only certain proposed information inclusions be made compulsory as outlined in Table 1. If certain information is made compulsory then perhaps there could be a formal notice to the buyer that the information is not available and to provide the buyer with a specific time frame to terminate the contract. The right to terminate should not extend out to date of settlement.

Another major concern commonly expressed by REIWA members is that the length of the proposed disclosure statements will result in prospective buyers not reading the information. This would completely detract from the point of the policy in terms of educating and making prospective buyers more informed. This is often the experience currently under the Residential Tenancies Act 1987 where tenants do not read through the new prescribed lease document because it is unwieldy. REIWA suggests more thought is given to the length of disclosure statements to ensure the original intent of the consumer protection policy is not thwarted by too lengthy a disclosure statement. It is important that the prospective buyer has the information, but of equal importance is the way in which the information is presented.

REIWA’s view, through its extensive experience of drafting forms for real estate transactions, is that the key items of disclosure are set out on one page – the front page. This would be followed up with an explanation of that information and where it is set out in the following pages of the disclosure. By doing this, prospective buyers would be presented with a clear and easy to read front page that highlights the key information with tick boxes. This will give the buyer the opportunity to question the information as it will be clearly laid out and guides them to the relevant attachments. The prospective buyer would then be in a better position to seek an explanation from the person providing the information.

The current proposed disclosure statement as contained within the STA Reform is not adequate in this regard and not simple to digest. **REIWA has proposed an alternative layout of the front of the form which is included in Attachment 1. REIWA recommends that the proposed new forms be designed in a way that is very easy for prospective buyers to understand and that the length be considered. REIWA recommends to Landgate its alternative front page to the disclosure form.**

Table 1 – REIWA responses to proposed new information inclusions for disclosure

<table>
<thead>
<tr>
<th>Established schemes</th>
<th>Original proprietor (Developer)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Landgate proposed inclusions</td>
<td>REIWA response</td>
</tr>
<tr>
<td>1. The strata plan (New! To include prescribed features).</td>
<td>N/A</td>
</tr>
<tr>
<td>2. The unit entitlement.</td>
<td>Already included in the strata plan.</td>
</tr>
<tr>
<td>3. The by-laws applicable to the scheme.</td>
<td>Already included.</td>
</tr>
<tr>
<td>Established schemes</td>
<td>REIWA response</td>
</tr>
<tr>
<td>---------------------</td>
<td>----------------</td>
</tr>
<tr>
<td>Landgate proposed inclusions</td>
<td>REIWA response</td>
</tr>
<tr>
<td>4. <strong>New!</strong> The levies.</td>
<td>Yes – this should be included.</td>
</tr>
<tr>
<td>5. <strong>New!</strong> The amount held in administrative and/or reserve funds (if any).</td>
<td>Yes – but not compulsory as once the information is disclosed it will be out-of-date as the balance of an administration fund can significantly vary over a few days. As to a reserve funds it is of greater importance to know whether a reserve fund is in place.</td>
</tr>
<tr>
<td>6. <strong>New!</strong> Whether or not there has been any sale, leasing or licensing of the common property.</td>
<td>No - This item should not be compulsory to provide, can be very difficult to get hold of this information.</td>
</tr>
<tr>
<td>7. <strong>New!</strong> The most recent budget for the scheme (if any).</td>
<td>Yes – this should be included but not compulsory.</td>
</tr>
<tr>
<td>8. <strong>New!</strong> A copy of the most recent AGM (and any subsequent EGM) minutes.</td>
<td>Yes – this should be included but not compulsory. If notice of a general meeting has been given to the seller then that notice and the agenda could disclosed to the buyer.</td>
</tr>
<tr>
<td>9. <strong>New!</strong> A copy of the developer disclosure document where there is development</td>
<td>Yes – only as a check box on the form as this</td>
</tr>
</tbody>
</table>
From Table 1 it is REIWA’s position that some of the proposed information for disclosure is not required in detail, at all or can be addressed by a tick box approach. By ensuring only the most relevant information is disclosed will ensure not only the length of disclosure documents are contained, but also that the most important information for prospective buyers is provided.

<table>
<thead>
<tr>
<th>Established schemes</th>
<th>Original proprietor (Developer)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Landgate proposed inclusions</strong></td>
<td><strong>REIWA response</strong></td>
</tr>
<tr>
<td>yet to be completed [LINK].</td>
<td>information is already available in the by-laws and the management statement which are attached to the existing disclosure documents.</td>
</tr>
<tr>
<td>10. <strong>New!</strong> Whether the strata company is responsible for insuring the common property.</td>
<td>Yes – but only as a check box on the form. The information is already required under the Act.</td>
</tr>
<tr>
<td>11. <strong>New!</strong> The date of currency of the disclosed information.</td>
<td>All the information will have different currency of date. The most recent can be provided.</td>
</tr>
<tr>
<td>12. <strong>New!</strong> The purchaser may request information about the strata manager contract.</td>
<td>No – this should only be provided to the prospective buyer once they are an owner. The fees of the strata manager would be disclosed in the budget.</td>
</tr>
<tr>
<td>13. <strong>New!</strong> Where a lot is sold off-the-plan (prior to registration) disclosure of planning approvals (subdivision and development) and any review of those approvals.</td>
<td></td>
</tr>
</tbody>
</table>
Making disclosure more consumer friendly

Combine general and specific disclosure information

The next major proposal relevant to disclosure is the proposed change to the type and number of disclosure forms. The STA Reform proposes to amalgamate the existing Form 28 and Form 29. **REIWA supports the amalgamation of Form 28 and Form 29 into a single disclosure form to make the form more consumable to prospective buyers.**

<table>
<thead>
<tr>
<th>Proposal number</th>
<th>REIWA position</th>
</tr>
</thead>
<tbody>
<tr>
<td>112</td>
<td>Support the amalgamation of both forms.</td>
</tr>
</tbody>
</table>

The STA Reform proposes creating four individual disclosure forms for each different type of sale of strata property. The proposals cover the four possible combinations of strata and survey strata and whether or not the seller is an original or non-original proprietor. Proposals 113(a) to (d) outline the four different forms.

REIWA believes that four forms are not necessary in this instance. REIWA prefers to see only two disclosure forms – one for original proprietor and one for non-original proprietor. Whilst the intent may be to make it simpler for prospective buyers and real estate agents to identify which type of sale is being considered through four forms, REIWA’s view is that two disclosure forms with a tick box on the front to distinguish between strata or survey strata is clear enough. This will minimise the risk of an incorrect form being used by private sellers where they are not being assisted by a real estate agent and it provides a clear indication to the prospective buyer as to what type of strata they are buying.

**REIWA recommends that proposal 113 does not proceed. Rather only two disclosure forms be created for original or non-original owners with the distinction for type of strata denoted with a tick box.** Refer to attachment 1 for REIWA's proposed disclosure form front page.

<table>
<thead>
<tr>
<th>Proposal number</th>
<th>REIWA position</th>
</tr>
</thead>
<tbody>
<tr>
<td>113</td>
<td>Do not support the creation of four disclosure forms.</td>
</tr>
</tbody>
</table>

REIWA agrees with the STA Reform proposal to move key information currently contained in the attachment to the existing forms into the actual proposed disclosure form (proposal 114).
<table>
<thead>
<tr>
<th>Proposal number</th>
<th>REIWA position</th>
</tr>
</thead>
<tbody>
<tr>
<td>114</td>
<td>Support.</td>
</tr>
</tbody>
</table>

**That some of the information currently found in the attachments to the disclosure form be incorporated in a basic way into the body of the form:**
- the unit entitlement of the lot
- the aggregate (total) unit entitlement for the scheme
- the number of lots in the scheme.

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**Supply of information by the strata company**

The STA Reform in proposal 115-116 aims to provide prospective buyers with an avenue to apply for access to additional information about the strata property by applying to the strata company. Specifically, it seeks to include an application form for prospective buyers to apply to the strata company for additional information outside of what is already provided in the disclosure statement.

**REIWA recommends that the proposed application (proposal 115) should not be included in the disclosure documents.** This will only increase the length of the documentation and could create confusion with the information that is already provided. REIWA suggests that information on how to apply for additional information and any fees associated with doing so be included in the disclosure, but the checklist and application form should not be provided in the disclosure documents.

Current practice is that sellers would normally only authorise releasing additional information as outlined in section 43 of the Act after a contract for sale has become unconditional or after settlement. REIWA also believes that sellers would have privacy concerns about providing the details of other strata owners and their tenants to a prospective buyer prior to contract date.

**REIWA is also concerned that the additional information request could lead to the contact details of strata managers being disclosed on the disclosure form.** It is REIWA’s view that strata manager details should not be provided. Strata managers will not appreciate being contacted by a stream of potential buyers. Any information provided by a strata company will attract a fee as this is a commercial transaction. It is important to note that the strata manager is only answerable to the Council of Owners and not prospective buyers.

It is timely to remember at this point that the responsibility for providing any additional information should rest with the seller and involving strata managers will lead to an increase in their compliance costs. **REIWA recommends that any additional information that is applied for by the prospective buyer should be directed to the seller who then passes it on.**

Proposals 115-116 raise a greater question of who bears the costs for obtaining additional information about the strata property from the strata manager. It is REIWA’s view that any additional information requests to the strata manager must be a fee-for-service. That is, prospective buyers or sellers seeking additional information must pay a commercial fee for that service. Any fees should be determined by the strata manager and in no circumstance be regulated.
REIWA members have already raised concerns about the amount of information that sellers and prospective buyers may be requesting as a result of these proposals. This will add considerable compliance costs on strata managers and the cost-benefit of these proposals needs to be considered. Particularly, given the State Government’s approach to reducing the regulatory burden on business.

<table>
<thead>
<tr>
<th>Proposal number</th>
<th>REIWA position</th>
</tr>
</thead>
<tbody>
<tr>
<td>115</td>
<td>Do not support (outlined above).</td>
</tr>
<tr>
<td>116</td>
<td>Support but not to be included in the disclosure statement (see above).</td>
</tr>
</tbody>
</table>

**Electronic disclosure**

The STA Reform proposes to enable the use of electronic transactions. REIWA agrees with the right to give and serve documents electronically. Any such provision should confirm that the item is deemed to be received when it has been sent from the sender’s email account. Potentially, the sender can be any person or entity authorised by the seller.

Currently and in the proposed disclosure there is a provision for the prospective buyer to sign the document in recognition of receiving the information. It would be assumed that if there is a record that the information has been sent electronically, then there is no need for the disclosure to be signed.

<table>
<thead>
<tr>
<th>Proposal number</th>
<th>REIWA position</th>
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</thead>
<tbody>
<tr>
<td>117</td>
<td>Support.</td>
</tr>
</tbody>
</table>

**Disclosure incorporated into the contract of sale**

REIWA assumes that this proposal is only relevant if there is not any requirement to disclose the information prior to signing the contract. If that assumption is correct then the disclosed information should be in a prescribed format - as the suggested form submitted by REIWA.

<table>
<thead>
<tr>
<th>Proposal number</th>
<th>REIWA position</th>
</tr>
</thead>
<tbody>
<tr>
<td>118</td>
<td>Support.</td>
</tr>
</tbody>
</table>
Timing of the disclosure and termination of contract

A key element of the proposed vendor disclosure is the actual timing of the disclosure to prospective buyers. Currently, disclosure is provided to prospective buyers prior to the time when an offer is signed by the prospective buyer. The STA Reform is adopting the option to introduce a mandatory pre-contractual disclosure period, specifying a certain number of days prior to the buyer entering into a contract that the disclosure must be made, in this instance 24 hours.

REIWA’s view is that the current system should not be altered. That is, the disclosure (and the attached information) has to be given to prospective buyers prior to them entering into a contract.

There should be not be any prescribed period of time that the buyer must have possession of the information before they can enter into a contract.

REIWA is not aware of any complaints from prospective buyers that they wanted the information sooner. This is not a concern that is raised on REIWA’s Information Line which receives over 20,000 calls from the public each year.

Feedback from REIWA members confirms that introducing a 24 period will in fact be very difficult to implement and will have an adverse effect on prospective buyers. REIWA members have indicated that the proposed 24 hour requirement will be opposed by prospective buyers who will not understand why, after having received the disclosure have to then wait for 24 hours before they can make an offer. The adverse impact this has is that some prospective buyers will be concerned that they are going to miss out on being able to contract to buy the property because another person who has already been given the information prior to them is able to submit an offer before them. This can be particularly important with off-the-plan sales where there is much competition between buyers to secure lots that are deemed more desirable.

If such a system was implemented then it would create an administrative red tape procedure where the agent would need to record the exact time that the information was provided to the prospective buyer and the exact time that the buyer entered into the contract. It is easy to imagine a group of competing buyers having to queue up in order to receive the information and then having to queue up again in 24 hours in order to see if the negotiations with the first buyer in the queue succeed. What would happen if two sales representatives are handing out information and two people are given information at exactly the same time?

REIWA recommends that the current system of the timing to provide disclosure remains and no mandated time period be introduced.

REIWA does not support proposals 119 to 122.
<table>
<thead>
<tr>
<th>Proposal number</th>
<th>REIWA position</th>
</tr>
</thead>
<tbody>
<tr>
<td>119</td>
<td>Do not support</td>
</tr>
<tr>
<td>120</td>
<td>Do not support</td>
</tr>
<tr>
<td>121</td>
<td>If this is adopted then the termination right should be for a specific period. The buyer could receive a notice that would provide a date by which the buyer could terminate.</td>
</tr>
<tr>
<td>122</td>
<td>If this is adopted then the termination right should be for a specific period. The buyer could receive a notice that would provide a date by which the buyer could terminate.</td>
</tr>
</tbody>
</table>

**MANAGEMENT OF STRATA SCHEMES**

**CTAC changes in relation to management**

**Powers of the strata company**

REIWA supports those proposals put forth by the CTAC on the powers of the strata company.

**By-laws**

REIWA supports the proposals made by the CTAC for by-law provisions, with the exception of dogs in premises. REIWA’s view is that the provision for dogs in premises may be misused. For instance, a person with a hearing disability could say that a dog has been trained to bark
when the doorbell rings. Similarly, a person with a movement disability could say that a dog has been trained to bring items to the person upon command.

**Insurance**

REIWA does not agree to the proposal that states:

“A change will be made to specify that when a strata company is making further insurance arrangements under s55, they must do so by resolution in general meeting”.

The strata council of owners has been appointed to look after the best interests of the strata company and therefore they should be able to make decisions about adequate insurance. If the strata council determines that there is a lawful requirement to insure an event or that the strata company is exposed to other risks, then the strata council should not have to wait for a general meeting. The general meeting cannot override a lawful requirement that the strata company must fulfil. The next general meeting should ratify the strata council’s action or they could then pass a resolution to cancel the policy and be exposed to the identified risk.

**New proposals for management of strata schemes**

*Empower the strata company to appoint members to positions on the strata council*

REIWA does not support the proposals 134 and 135. The current system for the appointment of office bearers is functioning well and does not need to be changed. REIWA does support proposal 136 within the existing system.

Such a system could result in suitable people missing out because they have only nominated for a particular office bearer position. For example if two people nominated for secretary then only one person is elected. Does the person who was not elected then have to nominate for another unelected position?

This proposed system could become very complicated and could lead to dissatisfaction amongst lot owners. Strata managers have related to REIWA that often is difficult to have people nominate for council and they do not want any new system in place that will discourage people from becoming involved with the management of the strata scheme.

<table>
<thead>
<tr>
<th>Proposal number</th>
<th>REIWA position</th>
</tr>
</thead>
<tbody>
<tr>
<td>134</td>
<td>Not supported</td>
</tr>
<tr>
<td>135</td>
<td>Not supported</td>
</tr>
<tr>
<td>136</td>
<td>Support as per existing arrangements</td>
</tr>
</tbody>
</table>
Quorum

REIWA supports the two proposals and makes the recommendation that the time should be reduced from 30 minutes to 15 minutes, as in practice it can be difficult to keep people waiting for 30 minutes.

<table>
<thead>
<tr>
<th>Proposal number</th>
<th>REIWA position</th>
</tr>
</thead>
<tbody>
<tr>
<td>137</td>
<td>That those strata proprietors present half an hour after the appointed time of a general meeting can be deemed to constitute a quorum</td>
</tr>
<tr>
<td>138</td>
<td>If those present determine that it is appropriate, the meeting can still be reconvened in a week’s time</td>
</tr>
</tbody>
</table>

Audits, reserve funds, insurance and standards of financial reporting and controls

The STA Reform proposes a number of items to be added to the AGM agenda. REIWA members highlighted that these items were often already part of an AGM agenda and felt that the prescribing of these items into the Act would stifle the ability to run an efficient AGM, not to mention, it would weigh down the agenda itself. REIWA does not support the inclusion of various items on the AGM agenda as outlined in proposals 139-142.

REIWA understands that the intent to include these items in an AGM agenda is to ensure consumers (owners of the strata) can be assured that the issues of audits, funds, insurance and standards of financial reporting are taken seriously and addressed to ensure the strata scheme is well managed.

REIWA proposes a different solution that will still ensure consumer protection, in that these critical topics are addressed. REIWA recommends that the Act should be directed to address the powers, duties and functions that a strata council can perform. By outlining what and how the strata council is to conduct its business, this will ensure that consumers are adequately protected. Specifically, the Act could legislate in the following areas: preparing maintenance lists, budgets for current periods, budgets for 10 years into the future. It could also give consideration to the establishment of reserve funds to meet future expenditures, have audits performed on a regular basis, the desired standards of financial reporting, and insurance.

REIWA believes it is in the interests of consumers to have these duties and powers prescribed. In addition, there should be an express requirement on council members to act in the best interests of the strata owners and to emphasise the standard of conduct expected from office bearers of a council of owners. While such conduct is implied it would be useful to remind people on whose behalf they are acting.
<table>
<thead>
<tr>
<th>Proposal number</th>
<th>REIWA position</th>
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</thead>
<tbody>
<tr>
<td>139</td>
<td>That an audit of the strata company accounts be included on the agenda for discussion at every AGM. This will include consideration of the most appropriate checks and investigations an audit should contain, such as proper authorisation of payments. Not supported – require audits of all accounts</td>
</tr>
</tbody>
</table>

REIWA members have indicated that it would be appropriate for all strata schemes to have their accounts audited on an annual basis. This would certainly minimise the risk of any wrong doing and provide a high level of assurance to strata owners (consumers) that the strata scheme was being managed well.

The STA Reform also proposed that reserve fund forecasts discussion be held at the AGM. As outlined, REIWA does not support the proposal, rather REIWA proposes that all new strata schemes should have an adequate reserve fund. REIWA appreciates that this proposal would be difficult to implement retrospectively, but REIWA believes transitional arrangements could be considered as a way to introduce at the very least reserve fund forecasting.

If it is not possible for all schemes to have a reserve fund, then as a fall-back position, REIWA proposes that all new strata schemes be required to undertake a reserve fund forecast and create a reserve fund that will eventually be of sufficient size to meet the reserve forecast. This will ensure that future works can be adequately forecasted and paid for in areas such as future replacement, repairs and maintenance.

In relation to standards of financial reporting and controls, REIWA does not support this proposal in its current form. The proposal would be very difficult to implement and enforce. It also interferes with the daily management of the strata scheme for strata managers. The strata management contract outlines what financial control systems will operate for that scheme. REIWA understands that the software systems for strata management do not contain extensive financial reporting. Therefore, any change to the current requirements would mean that the software providers would have to upgrade their system.

REIWA understands that this proposal is aimed at providing some assurance to those schemes that are self-managed. REIWA believes it is more appropriate for these controls to be laid out in the powers of the strata council as outlined above.

<table>
<thead>
<tr>
<th>Proposal number</th>
<th>REIWA position</th>
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<tbody>
<tr>
<td>140</td>
<td>That a reserve fund forecast be on the agenda for discussion at every AGM. Not supported – rather require reserve fund forecasts and funds for new schemes</td>
</tr>
<tr>
<td>141</td>
<td>That insurance is on the agenda for discussion at every AGM. Not supported as outlined above</td>
</tr>
</tbody>
</table>
As indicated earlier, REIWA recommends that the preceding items must be included as part of the duties and powers of the council of owners. This will ensure that the items are considered as part of normal business and it will provide additional protections for strata owners.

**Electronically enable the STA**

The move to enable strata schemes to perform transactions in an electronic manner is a welcomed proposal. It will assist managed and self-managed schemes to operate more efficiently, reduce red tape for strata managers and brings the Act into the 21st century where so many transactions are now conducted electronically. REIWA supports the proposals 144 to 146.

**By-laws not to be unreasonable or oppressive**

By-laws are an important part of the operation and management of strata schemes. REIWA supports the proposal to ensure that by-laws are not created that are unreasonable or
oppressive. REIWA notes that it may be difficult to implement this proposal as it is a very subjective matter to determine what is unreasonable or oppressive. Guidelines may need to be considered.

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<tr>
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<tbody>
<tr>
<td>147</td>
<td>Support</td>
</tr>
</tbody>
</table>

Classification of by-laws

The STA Reform proposal to provide further guidance in the classification of new by-laws is a welcomed reform. Any additional guidance to ensure by-laws are correctly classified will benefit strata managers and consumers in self-managed strata schemes.

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<tbody>
<tr>
<td>148</td>
<td>Support</td>
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</tbody>
</table>

Information disclosure by strata managers

Any attempt to understand the strata management profession is a step in the right direction. With the absence of a regulatory framework it is difficult to understand the needs and issues facing strata managers and the profession as a whole. It also puts policy makers and government in a difficult position as they are not in an informed position.

REIWA’s view remains that strata managers should be licensed as is the case with real estate agents. Licensing can provide a robust regulatory environment that will ensure adequate protections for consumers, highlights the fiduciary responsibility of the profession and can ensure that there are adequate standards of the profession.

REIWA appreciates that this is unlikely that licensing will be achieved in the short term and therefore supports the proposal that strata managers be required to make regular information disclosures to Landgate. REIWA believes that any disclosure needs to be low in administrative burden and this should be subject to a cost-benefit analysis. REIWA supports these proposals.

<table>
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<tr>
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<tbody>
<tr>
<td>149</td>
<td>Support</td>
</tr>
<tr>
<td>150</td>
<td>Support</td>
</tr>
</tbody>
</table>
**Proposal number** | **REIWA position**
--- | ---
151 | Support

**Code of conduct for strata managers**

The STA Reform proposes to require strata managers to be held accountable by an industry code of conduct. REIWA members who act as strata managers are already subject to a statutory code of conduct and introducing a code of conduct would certainly level the playing field. However, at this point in time, without licensing of strata managers, REIWA does not support the development of a code of conduct. Licensing and an industry code of conduct go hand in hand. Currently, the property industry codes of conduct are under review, it would be premature to create a new code for strata managers when the existing codes for licensed property professions has not been resolved.

Alternatively, REIWA would agree for the Act to make a provision for a code in the STA Regulations. When a code is developed then it could be applied because it is already provided for in the Regulations.

**REIWA recommends that the Act be amended to state that the strata manager’s relationship with the strata company is a fiduciary relationship and that the strata company can apply to the State Administrative Tribunal for an order to terminate the management contract if the strata manager continues to breach their fiduciary obligations. The Act does not need to describe those fiduciary obligations.**

**Proposal number** | **REIWA position**
--- | ---
152 | Do not support at this stage – see above

**Grounds for termination of strata manager contract**

While REIWA is not opposed to a strata company being informed that it can terminate the management contract, the proposal in the STA Reform uses the term “unsatisfactory performance”. This is a very subjective term that could easily result in unnecessary disputes and could lead to wasting time at the State Administrative Tribunal.

**REIWA’s recommends that all strata management agreements be in writing and a provision should be included which contains a condition that addresses termination.**

REIWA already has an early termination clause in its strata management authority which has been authorised by the Australian Competition and Consumer Commission (ACCC) that should be used in this instance. The REIWA early termination clause states:

“That the Strata Company will, without affecting its rights at law, immediately terminate this Agreement by notice to the Agent if:

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**REIWA**
(a) the Agent breaches the Act or the Real Estate and Business Agents Act 1978 and fails to remedy the breach (if capable of remedy) within 14 days from being notified of the breach by the Strata Company;
(b) the Agent becomes insolvent or, being a natural person, is declared bankrupt or enters into an arrangement or compromise with creditors or, being a corporation, is wound up or is presented with a petition for its winding up or resolves to go into liquidation or voluntary administration or enters into a scheme of arrangement; or
(c) the Agent breaches this Agreement and fails to remedy the breach (if capable of remedy) within 14 days from being notified of the breach by the Strata Company.”

This clause gives guidance to the parties as to what steps need to be taken to terminate.

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</thead>
<tbody>
<tr>
<td>153</td>
<td>That the STA establish that unsatisfactory performance, or non-performance of duties by the strata manager, are grounds for termination of the contract by the strata company</td>
</tr>
</tbody>
</table>

**How a strata manager holds funds**

REIWA agrees with the STA Reform proposal for funds held by strata managers to be kept in a trust account that can be accounted for. This will provide reassurance to strata companies that funds are being held legitimately and in a secure manner. The practice of holding funds in trust accounts already exists in the real estate profession and is a good benchmark for strata management companies.

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<tbody>
<tr>
<td>154</td>
<td>That the STA establish that a strata manager holds money on behalf of the strata company on trust, and must be able to separately account for all monies held for each strata scheme they are managing</td>
</tr>
</tbody>
</table>

**DISPUTE RESOLUTION**

The STA Reform proposes a wide range of changes to the way in which dispute resolution will be conducted. The overarching proposal is that all disputes will be removed from the District Court and placed in the State Administrative Tribunal (SAT) jurisdiction. This move will make it easier for disputes to be heard, for decisions to be held accountable and to improve the accessibility and transparency of decisions. It will also, through ease of access reduce the regulatory burden in terms of application fees.
REIWA is supportive of the overarching move to make SAT the presiding jurisdiction for all strata management disputes. In addition, REIWA believes that the move to broaden SAT powers, streamline dispute resolution processes and simplify the process will be beneficial to consumers as well as the strata management industry.

REIWA supports all proposals made under this section of the STA Reform consultation paper.

**TERMINATION OF STRATA SCHEMES**

The STA Reform outlines a number of proposed changes to the way in which strata schemes can be terminated. Some of the reasons why schemes are considered for termination can include: land zonings changing and the land becoming more valuable for redevelopment with a higher density or the scheme may have become unworkable due to deteriorating buildings.

Currently, strata schemes can only be terminated by a unanimous vote by all owners within the scheme or the District Court can make a resolution to terminate. The STA Reform proposes to remove the jurisdiction for termination from the District Court to the SAT. REIWA is supportive of that move as it keeps all disputes consistently heard at the same jurisdiction and also ensures that matters related to strata are decided by a tribunal that has experience in this area.

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<tbody>
<tr>
<td>192</td>
<td>Jurisdiction for termination matters to be transferred from the District Court to SAT</td>
</tr>
<tr>
<td>193</td>
<td>SAT will apply principles in determining all decisions on ending schemes, including that ending the scheme is just and equitable, objections are unreasonable and that ending the scheme is necessary taking into account any factors that may be prescribed in regulations</td>
</tr>
</tbody>
</table>

Whilst promoting a policy environment that supports the development of infill land, REIWA is concerned that the proposed percentages for a majority vote (proposal 194 – 196) could have some adverse impacts on individual owners. Particularly, if the decision to terminate leaves owners without appropriate housing options.

REIWA believes that infill development can still proceed within the current policy framework for requiring unanimous support for termination of a scheme, and this has certainly been the feedback from REIWA members.

The STA Reform does highlight certain principles which SAT would be required to satisfy in any application for termination. REIWA agrees with these principles as set out on page 96 of the consultation paper. This includes:

A. SAT must be satisfied on the following main factors:
   - That ending the scheme is just and equitable
   - Objections are unreasonable
• That the scheme is necessary taking into account any factors that may be prescribed in regulations.

B. In making its decision SAT must also consider the following:
• The extent to which owners suffer adverse consequences if termination is ordered or not ordered
• The financial benefits and risks of the termination (and if applicable, any redevelopment)
• The financial benefits and risks of the termination not being proceeded with and the redevelopment not proceeding
• Whether there is some other order that could be made.

REIWA does acknowledge that there may be special circumstances, for example where there is a health and safety need to be addressed with a deteriorating building and for these situations SAT should be able to hear early termination proposals, but in line with the principles set out on page 96 of the consultation paper.

SUMMARY OF RECOMMENDATIONS

Vendor disclosure
Introduction
REIWA recommends that in part V of the Strata Titles Act 1985 (STA) that the term “vendor” should be changed to “seller” and “purchaser” should be changed to “buyer”. The standard contract used in Western Australia refers to the “seller” and “buyer” rather than “vendor” and “purchaser”. For consistency it is would be less confusing for prospective buyers if the terms matched.

Responsibility of disclosure
REIWA’s recommendation is that section 69 of the STA should not be changed. The obligation to prepare and give the notifiable information remains the seller’s responsibility.

Required disclosure information
REIWA recommends that only certain proposed information inclusions be made compulsory as outlined in Table 1 (page 5-8). If certain information is made compulsory then perhaps there could be a formal notice to the buyer that the information is not available and to provide the buyer with a specific time frame to terminate the contract. The right to terminate should not extend out to date of settlement.

REIWA has proposed an alternative layout of the front of the form which is included in Attachment 1. REIWA recommends that the proposed new forms be designed in a way that is very easy for prospective buyers to understand and that the length be considered. REIWA recommends to Landgate its alternative front page to the disclosure form (refer to Attachment 1).

REIWA supports the amalgamation of Form 28 and Form 29 into a single disclosure form to make the form more consumable to prospective buyers.
REIWA recommends that proposal 113 does not proceed. Rather only two disclosure forms be created for original or non-original owners with the distinction for type of strata denoted with a tick box. Refer to attachment 1 for REIWA’s proposed disclosure form front page.

Supply of information by the strata company
REIWA recommends that the proposed application (proposal 115) should not be included in the disclosure documents.

REIWA recommends that any additional information that is applied for by the prospective buyer should be directed to the seller who then passes it on.

Timing of the disclosure and termination of contract
REIWA recommends that the current system of the timing to provide disclosure remains and no mandated time period be introduced.

Management of strata schemes recommendations
Audits, reserve funds, insurance and standards of financial reporting and controls
REIWA supports the two proposals (137 and 138) and recommends that the time should be reduced from 30 minutes to 15 minutes, as in practice it can be difficult to keep people waiting for 30 minutes.

REIWA does not support the inclusion of various items on the AGM agenda as outlined in proposals 139-142. REIWA recommends that the Act should be directed to address the powers, duties and functions that a strata council can perform. By outlining what and how the strata council is to conduct its business, this will ensure that consumers are adequately protected.

Information disclosure by strata managers
REIWA recommends that strata managers should be licensed, however it is appreciated that this may not be achieved in the short term. Therefore REIWA supports the proposals for strata managers to make regular information disclosures to Landgate.

Code of conduct for strata managers
REIWA does not support the development of a code of conduct. Licensing and an industry code of conduct go hand in hand. Rather REIWA recommends that the Act be amended to state that the strata manager’s relationship with the strata company is a fiduciary relationship and that the strata company can apply to the State Administrative Tribunal for an order to terminate the management contract if the strata manager continues to breach their fiduciary obligations.

Grounds for termination of strata manager contract
REIWA’s recommends that all strata management agreements be in writing and a provision should be included which contains a condition that addresses termination.
ATTACHMENT 1 – REIWA PROPOSED FORMS

STRATA TITLES ACT 1985
Notifiable information disclosed by the Seller prior to the Buyer signing a contract

The Seller is the original proprietor

The lot is a * strata lot * strata survey lot being Lot ______ on Strata Plan No. __________

Name of Scheme (Building) __________

Street Address __________

Number of lots in the Building __________ This Lot’s Unit Entitlement __________ Total Unit Entitlement in the Building __________

Outstanding development on the scheme * Yes No

Strata Levy

The Building has a strata levy for an administration fund * Yes No

Current annual strata levy payable by this lot is $ ___________________ per year

Payable in instalments of $ ___________________ * annually/ half yearly/quarterly/ other __________

The Building has a separate reserve fund levy * Yes No

Current annual reserve fund levy payable by this lot is $ ___________________ per year

Payable in instalments of $ ___________________ * annually/ half yearly/quarterly __________

The following documents must be attached:

Strata Plan [including the schedule of unit entitlement] * Yes No

Registered By-Laws * Yes No

Information on buying strata and survey strata lots

The following documents may be attached:

A 12 month estimate of receipts and expenditure by the Strata Company [budget] * Yes No

Draft minutes for the most recent annual general meeting of the of the Strata Company * Yes No

Strata Development Statement * Applicable Not Applicable

Exclusive use:

If the strata company has granted any right of exclusive use, lease, license, or special privilege over the common property e.g. car parking bays or balconies, then the details can be found in the by-law and strata plan that is attached to this Disclosure.

*Delete where not applicable

Acknowledgement by Prospective Buyer of receiving the notifiable information ___________________________ Date __________/ ______/ ______

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STRATA TITLES ACT 1985

Notifiable information disclosed by the Seller prior to the Buyer signing a contract

The Seller is not the original proprietor

The lot is a * strata lot * strata survey lot being Lot __________ on Strata Plan No. __________

Name of Scheme (Building) ________________________________________________________________

Street Address _______________________________________________________________________

Number of lots in the Building __________ This Lot’s Unit Entitlement __________ Total Unit Entitlement in the Building __________

Outstanding development on the scheme * Yes No

Strata Levy

The Building has a strata levy for an administration fund * Yes No

Current annual strata levy payable by this lot is $ __________ per year

Payable in instalments of $ __________ annually/half yearly/quarterly/other.

The Building has a separate reserve fund levy * Yes No

Current annual reserve fund levy payable by this lot is $ __________ per year

Payable in instalments of $ __________ annually/half yearly/quarterly

The following documents must be attached:

Strata Plan [including the schedule of unit entitlement] * Yes No

Registered By-Laws * Yes No

Information on buying strata and survey strata lots

The following documents may be attached:

A 12 month estimate of receipts and expenditure by the Strata Company [budget] * Yes No

Draft minutes for the most recent annual general meeting of the of the Strata Company * Yes No

Strata Development Statement [Applicable] [Not Applicable]

Exclusive use:

If the strata company has granted any right of exclusive use, lease, license, or special privilege over the common property e.g. car parking bays or balconies, then the details can be found in the by-laws and strata plan that is attached to this Disclosure.

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