Owning a community titled lot

Who owns what, the Corporation, and the community plan.

This booklet describes South Australian law as it stood at the date of printing. It is general information, not legal advice for your group.

Living in a community titled group has many benefits, and they're best realised when all lot owners in your Corporation are well informed and co-operate — that makes for goodwill and good decisions. The following notes may help you understand the benefits and responsibilities of buying, owning and living in a community lot.

SOUTH AUSTRALIAN LAW

Two types of community title

There are community plans and community strata plans. Both divide land to create lots and common property, in a similar way to strata titles. Each plan must divide the land to create at least two community lots and common property.

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PLAN TYPES

Primary community plan

In a primary community plan, each building sits on its own lot. The owners hold title to the land under the lot and the sky above, unlike strata titles, and are responsible for the maintenance and insurance of their own buildings. Where buildings share a common party wall, the owners of each building are jointly responsible for its maintenance. A shared driveway, for example, would typically be common property rather than part of any one lot.

A SHARED INTEREST

The common property

The common property is typically the shared driveway and any land not within a lot. The Corporation is responsible for maintaining it. In plain terms, common property is the parts of the community parcel that are not part of a lot, the shared service infrastructure other than services that serve only one lot or that belong to a public authority, and, in a community strata plan, the parts of the building that are not part of a lot.

Community Titles Act 1996 (SA) s 28.

Primary community plan

A primary community plan: each building on its own lot, overlaid on the aerial view.

PLAN TYPES

Community strata plan

In a community strata plan, lot boundaries are defined by parts of the building, much as they are in a strata title. There must be at least one lot situated above another, unless the plan was previously a strata plan under the Strata Titles Act 1988 and was converted to the Community Titles Act 1996 by resolution. Here the structure itself is common property, so the Corporation maintains and insures it, much like a strata titled group. The internal walls and lot subsidiaries are the owner's to maintain.

GOVERNANCE

What the Corporation maintains

The Corporation maintains the common property, which includes land not within a lot and infrastructure such as driveways, water, sewer and electricity that does not serve a single lot. In a community strata plan it also includes the external walls and floors, the foundations, the roof and the space within it, and the gutters and eaves. It does not include the owner's fixtures and fittings, such as kitchens and bathrooms.

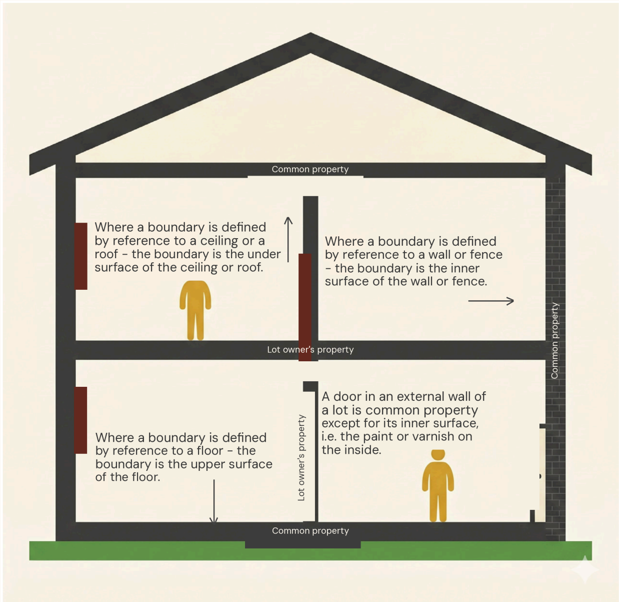
A community strata plan: lot boundaries defined by parts of the building.

Where your lot ends

Which rules apply depends on the kind of plan your group is in. In a community strata plan, lot boundaries are defined by parts of the building, and section 19 of the Community Titles Act 1996 sets out the following principles.

- ✓ Where a boundary is defined by reference to a wall or fence — the boundary is the inner surface of the wall or fence.
- ✓ Where a boundary is defined by reference to a floor — the boundary is the upper surface of the floor.
- ✓ Where a boundary is defined by reference to a ceiling or roof — the boundary is the under surface of the ceiling or roof.

A door in an external wall is common property, except for its inner surface, being the paint or varnish on the inside. In a primary community plan your lot is a surveyed parcel of land. Its boundaries are survey lines on the ground rather than surfaces of a building, and you own the land, the building on it and the space above.



Community Titles Act 1996 (SA) s 19(4).

Meetings and voting

Meetings. The annual general meeting of a primary community corporation must be held within three months after the start of each financial year. For a secondary or tertiary corporation it is six months — a firmer deadline than many groups realise. The Corporation must appoint a presiding officer, treasurer and secretary by ordinary resolution, and they must be members of the Corporation. In a scheme of ten lots or fewer, one person may hold two or all three offices; above ten lots, one person may hold two. Minutes must be kept and maintained.

The management committee. A Corporation may establish a management committee, but is not obliged to. Where one exists it must include the presiding officer, treasurer and secretary. It has full power to transact the business of the Corporation, subject to the by-laws and to any limit the Corporation imposes, and it cannot do anything requiring a special or unanimous resolution. If your group wants a dollar ceiling on committee spending, it must set one — the Act does not.

Community Titles Act 1996 (SA) s 92.

GOVERNANCE

Voting

Where any lot in the scheme is used or intended to be used mainly for residential purposes, each lot has one vote, however many people own it. In a wholly non-residential scheme the by-laws may prescribe a different number, and changing that number takes a unanimous resolution. A vote may be exercised by proxy.

BUYING INTO A COMMUNITY TITLE

Before you sign a contract, **understand the operations and finances of the Corporation.**

This information must be supplied to a prospective buyer by the Corporation, through the selling agent, broker or conveyancer. Engage your own conveyancer or lawyer to act on your behalf, rather than relying on advice from the vendor's or developer's.

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YOUR FINANCES

Financial management

A community corporation must establish both an administrative fund and a sinking fund — a requirement, not a matter of preference. Non-recurrent expenditure comes out of the sinking fund and everything else out of the administrative fund. All lot owners contribute to both.

- ✓ Administrative fund. Ongoing costs such as grounds maintenance, common cleaning, communal lighting, insurance and management fees.
- ✓ Sinking fund. Sometimes called a reserve fund, for future capital expenditure such as driveway repairs or replacing common property fixtures and fittings.

CONTRIBUTIONS

Lot entitlement

Each lot is assigned a lot entitlement, shown on the community plan. A lot's entitlement bears the same proportion to the total of all lot entitlements as the value of that lot bears to the total value of all lots, within a tolerance of plus or minus ten per cent. It's used to work out each owner's share of contributions to the funds, unless owners agree otherwise.

Community Titles Act 1996 (SA) ss 20, 116.

Animals and alterations

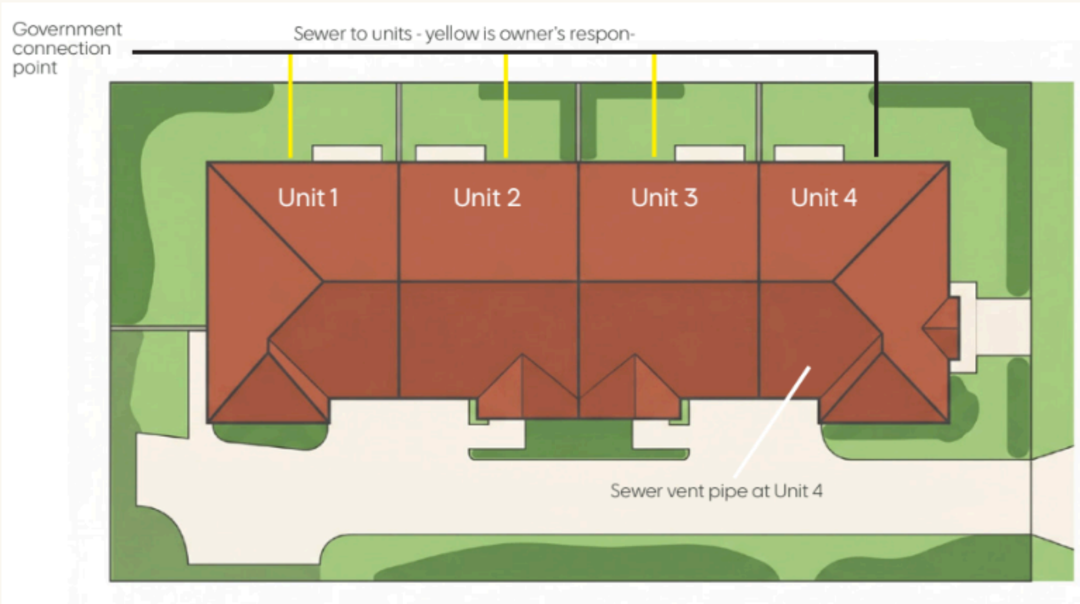
Animals. Keeping an animal in a community lot is usually governed by your group's by-laws. In many groups you need the Corporation's consent, and where a management committee exists it may handle these approvals. By-laws vary between groups, so check the ones that apply to yours.

Alterations and additions. Before starting building or structural work, or altering the external appearance of your lot, check your by-laws and speak to your manager or the Corporation. In a community strata plan, work affecting common property such as external walls, the roof or the structure generally needs Corporation approval. In a primary community plan you have more autonomy over your own building, though shared and party wall elements still require agreement. Work that commonly needs approval includes pergolas, air conditioners, sheds, awnings and satellite dishes.

Where work affects the common property or lot boundaries, a higher bar applies. A unanimous resolution is typically required, and boundary changes are recorded by amending the community plan.

Who owns what: plumbing

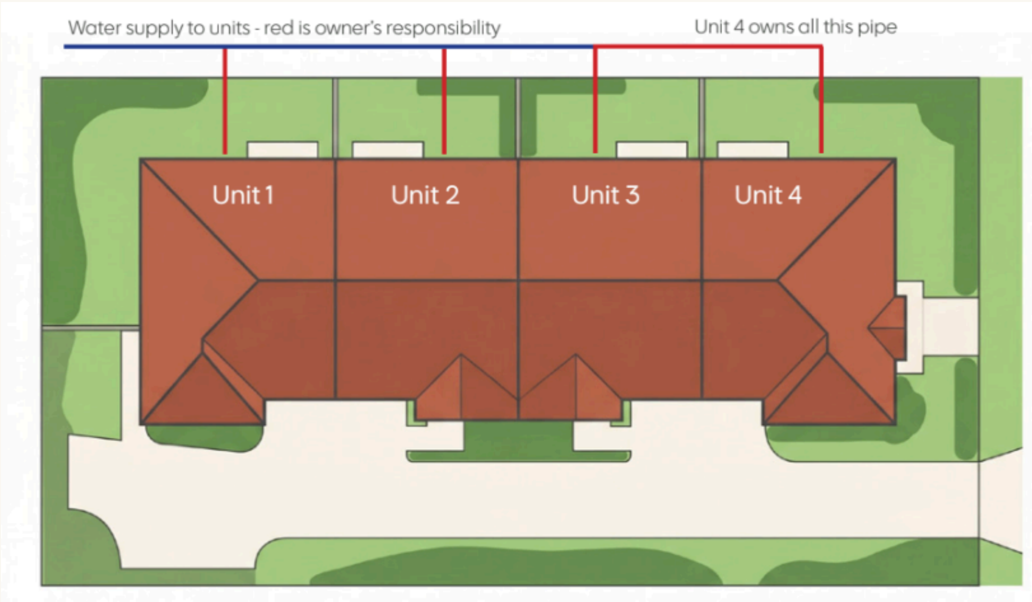
Sewers. Services that don't serve a single lot are the Corporation's common property, including sewerage disposal. Where a sewer vent pipe serves more than one lot, the shared branch is common property; a branch serving a single lot is that owner's to maintain.



Sewer runs: owner-maintained branches versus Corporation common property. The diagram labels units; the same division applies lot by lot.

Water

Water. Your Corporation is responsible for water pipes until they serve a single lot — beyond that point, maintaining the pipe is the owner's responsibility.



Water supply: where Corporation responsibility ends and the owner's begins. Labelled by unit; the same division applies lot by lot.

WHAT COMES WITH YOUR LOT

Lot subsidiaries

A lot subsidiary — a carport, garage, porch, balcony, garden or yard, used for a purpose ancillary to the lot — is shown on the community plan. It may not be physically attached to the building, but it's treated as part of your lot. Subsidiaries can only be used for the purpose for which they were created, and their character must not be altered without the appropriate planning and Corporation approval.

BEFORE YOU BUY

Important things to consider

Lot ownership offers benefits, but it doesn't suit everyone. Before you buy, think carefully about what's involved — you'll be living in close proximity to others, possibly sharing walls and some facilities. It suits owners who value a sense of community, those who spend little time at home, and those buying an investment to rent.

Every group of lots, however big or small, has a Corporation — a legal entity like a company. All owners are automatically members of their Corporation and are bound by its rules, the by-laws.

In a community strata lot, your Corporation is responsible for the maintenance and repair of the common areas, including the buildings and shared gardens. In a community titled lot that is not a strata lot, you are responsible for the maintenance and insurance of your lot and all buildings on it.

> GET ADVICE
>
> Engage a conveyancer or lawyer to act on your behalf. **Don't accept advice from the vendor's or developer's conveyancer without checking with your own.**

Buying into a community title

If you're thinking of buying a community titled lot, we strongly recommend that you understand the operations and finances of the Corporation before you sign a contract. This information must be supplied to a prospective buyer by the Corporation, through the selling agent, broker or conveyancer, within five business days of the application. The search provides:

- ✓ Meeting minutes — committee and general — from the last two years.
- ✓ The state of the finances for both the Corporation and the lot for sale: money in the bank, liabilities, and levies owing now or known to fall due.
- ✓ The current set of by-laws and policies, such as approvals for pets, air conditioners and pergolas.

Also look for a scheme description. One isn't required where the plan creates no more than six community lots, creates no development lot, and all lots are intended for residential use. Above that, there should be one.

Community Titles Act 1996 (SA) s 139.

By-laws

There is no standard set of community by-laws. Unlike strata Articles, your by-laws are the ones filed with your community plan when it was deposited, as varied since, so they are specific to your scheme from the outset. Get a copy and read it — all owners are bound by your by-laws.

The by-laws may address some common concerns for a community titled group, such as: a lot owner must keep the lot and yard in good repair, and keep it in a clean and tidy condition.

A person bound by the by-laws:

- ✓ must not obstruct the lawful use of the common property, must not use it in a way that unreasonably interferes with others' use and enjoyment, must not make undue noise in or about any lot or the common property, and must not interfere with others' enjoyment of their rights.
- ✓ must not use the lot, or permit it to be used, for any unlawful purpose.
- ✓ must not park in a space allocated to others or on common property where parking is not authorised, and must take reasonable steps to ensure visitors do the same.
- ✓ must not, without the Corporation's consent, damage or interfere with any lawn, garden, tree, shrub, plant or flower on the common property, or use any part of the common property as a private garden.
- ✓ must not, without the Corporation's consent, use or store any explosive or dangerous substance on the lot or the common property.
- ✓ must maintain an adequately covered garbage receptacle within the lot or on a designated part of the common property, and comply with all council by-laws on garbage disposal.

Very small schemes

If your scheme has no more than two lots, its by-laws may exempt the Corporation from holding annual general meetings after the first, from keeping accounting records and having them audited, from establishing administrative and sinking funds, and from maintaining a register of owners. Check whether yours take up any of it, because it changes what your Corporation must do.

Don't have a copy of your group's by-laws? Ask your secretary or body corporate manager for a current set.

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LEARN MORE ONLINE

Further reading

For more detail on any of these topics, see the Acacia Collective Help Centre.

Unit titles explained, strata and community.
acaciacollective.com.au/help/unit-titles-explained

By-laws explained, community corporations.
acaciacollective.com.au/help/by-laws-explained

Community title management committees.
acaciacollective.com.au/help/community-title-governance

Administration and sinking funds.
acaciacollective.com.au/help/admin-and-sinking-funds

Resolving disputes.
acaciacollective.com.au/help/disputes

LEGAL GUIDE TO COMMUNITY TITLED GROUPS

lsc.sa.gov.au/resources/CommunityTitlesBooklet.pdf

Still stuck? Ask Canopy, our online assistant, at any hour. Whenever you'd rather talk it through, you can always speak to a real person.

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A place to call home

Your lot, and the community around it.

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