



Additional Information

Termination of Schemes

12 August 2019,
Version: 00001

Safeguards for the termination of schemes

The first strata schemes in Western Australia were created in 1968. Scheme buildings are ageing, and many are costing owners large amounts in maintenance. Therefore, termination and redevelopment of a strata scheme will become increasingly common. To protect the assets held by all strata owners, the process for terminating a strata scheme is changing.

The new majority termination process will:

- introduce safeguards for owners
- introduce a termination process that is transparent, reasonable and requires a vote, and
- require a full procedural and fairness review by the State Administrative Tribunal (the Tribunal) to consider all owners' views.

The current law

Under the *Strata Titles Act 1985* (the Act) there are three ways a strata scheme can be terminated:

1. all owners vote to terminate (a unanimous resolution)
2. one owner or one mortgagee can apply to the District Court for an order to terminate a scheme (under section 31 of the Act)
3. one owner can apply to the District Court for an order (under section 51 of the Act) deeming that a resolution to terminate is unanimous, provided that:
 - a special resolution was reached, and
 - the person applying was part of the majority who voted to terminate.

Currently the Act does not provide adequate safeguards for owners in relation to the termination of a scheme as:

- there is no requirement for a proposal to be prepared or even given to other owners before launching the District Court action
- there is no requirement for a vote before applying to the District Court under section 31 of the Act
- there is no additional assistance or safeguards for vulnerable owners to help them in responding to a termination resolution or District Court action and
- the Act provides no guidance to the District Court on how it should assess a termination application.

Overview of the reforms

The majority termination process is more than just a vote. There is a complete, transparent process that must be followed.

If the vote produces the required majority, but is not unanimous, the termination proposal must undergo a fairness and procedure review by the Tribunal. A majority termination proposal **cannot** proceed without an order from the Tribunal.

The Tribunal can order that a scheme be terminated under a majority vote only if it is satisfied of three key things:

- the termination process was properly followed, and
- every owner who objects to the termination will get at least fair market value for their lot (eg: apartment or unit), and
- the proposal to terminate is just and equitable.

The revised Act will provide extensive guidance to assist the Tribunal in deciding whether the proposal is just and equitable. All owners will have access to funding to respond to a full proposal and vulnerable owners will have access to additional funding and assistance to respond to the termination proposal.

The termination proposal process

If an owner or a person who has a contract to buy a lot within a scheme wishes to terminate a strata scheme, that person must follow a three-part process to terminate the scheme.

Part A – The proposal

1. prepare outline termination proposal
2. distribute to owners and mortgagees
3. vote on outline proposal
4. obtain planning approval
5. prepare full proposal

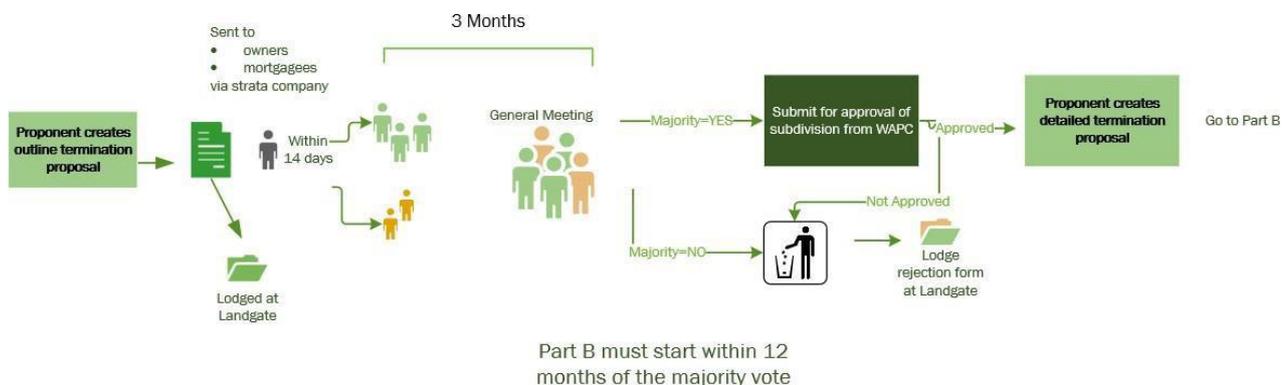
Part B – The vote

6. distribute the full proposal to all parties
7. vote on the full proposal and if the required vote is not attained the proposal goes no further

Part C – The fairness and procedure review

8. Apply for a Tribunal review. 9 apply to the Western Australian Planning Commission to endorse the plan of survey
9. Apply to the Registrar to register the termination.

Part A – The proposal



Step 1. Prepare outline termination proposal

An owner or a person who has a contract to buy a lot within a scheme (the proponent) who wants to terminate the scheme must prepare an outline of the termination proposal telling owners:

- what each owner is being offered for their lot, and
- what is proposed for the termination, for example: is the termination aimed at redeveloping the land, are owners getting a replacement lot or going to be paid money for their lot, etc.

Step 2. Distribute to owners and mortgagees

The outline proposal can then be submitted to the strata company which serves it on all owners and mortgagees within 14 days. The strata company must lodge a notification with the Registrar so that the Registrar can record that a termination proposal is current for the scheme (this is to ensure that people who search can see if the scheme is considering a termination proposal).

The Act specifies the information that needs to be in the outline proposal.

Step 3. Vote on outline proposal

All owners and mortgagees have three months to consider the outline proposal, after which time the strata company will hold a general meeting. If an ordinary resolution (a simple majority vote) is passed in favour of the outline proposal, the proponent can proceed to the next step.

If the strata company does not pass an ordinary resolution in favour of the outline proposal, the termination proposal comes to an end and the Registrar is notified.

Safeguard to protect strata companies from receiving too many proposals

A termination proposal cannot be submitted to a strata company:

1. during a period where the strata company has passed an ordinary resolution in favour of an outline proposal and that proposal has not come to an end
2. during a period not exceeding 12 months where the strata company has, by ordinary resolution, prohibited termination proposals from being submitted to it, or
3. during a period for which the Tribunal has (on the application of the strata company) ordered that proposals are not to be submitted to the strata company.

Step 4. Obtain planning approval

Planning approval is required because when a scheme terminates, all the lots and common property become a single lot. This is regarded as a form of subdivision which requires approval from the Western Australian Planning Commission (WAPC).

A termination proposal cannot proceed further if WAPC does not approve a plan of subdivision.

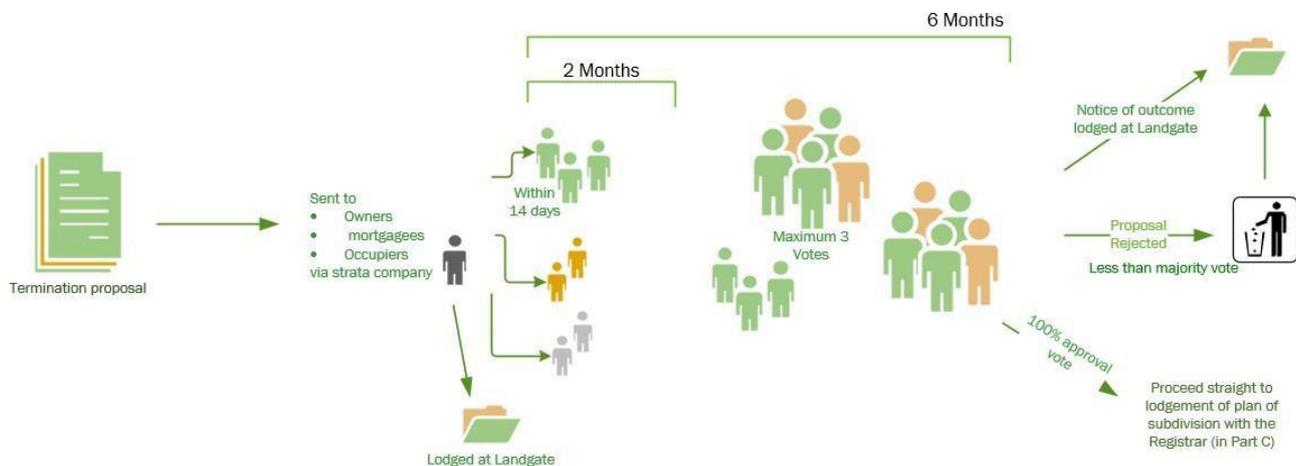
Step 5. Prepare full proposal

The proponent prepares a full (detailed) termination proposal which must contain:

- The approved plan of subdivision for the proposal
- Specifics of what each owner is being offered for their lot, including:
 - how much money the proponent is offering
 - whether the owner is being offered a replacement lot in a new scheme to be built on the current site or
 - whether the owner is being offered a replacement lot in a scheme nearby (in the same neighbourhood)
 - terms and conditions of any contracts of sale before termination
- details of what is proposed to happen with any mortgages and leases over the lots
- details of how the strata company's assets and liabilities will be finalised if the scheme is terminated
- an infrastructure report (paid for by the proponent) containing:
 - a report from a structural engineer on the condition of each building in the scheme
 - a report from a person specified in the regulations about the work that would be needed to repair or replace the buildings and infrastructure
 - a report from a quantity surveyor estimating the cost to repair or replace the buildings and infrastructure
 - a valuation report (paid for by the proponent) prepared by a licensed valuer stating the market value of each lot
- any other information required by the regulations.

The proponent must serve the full proposal on the strata company within 12 months of the date when the majority vote for the outline proposal was obtained.

Part B – The vote



Step 6. Distribute the full proposal to all parties

The strata company must serve the full proposal on:

- every lot owner
- every registered mortgagee of a lot in the scheme, and
- every occupier of a lot in the scheme.

No decision may be made on the termination until two months have passed, enabling detailed consideration of the proposal.

Independent Advocate Safeguard

1. The strata company must refer the full proposal to an independent advocate (the regulations will specify who can be an independent advocate)
2. The independent advocate will:
 - a. review the full proposal and provide the strata company with an independent assessment of the full proposal
 - b. arrange a briefing session (conducted on a multisensory basis to cater for people with disabilities) for owners and occupiers to deliver the independent assessment of the full proposal
 - c. assess which owners in the scheme are vulnerable owners who should receive additional funding to respond to the proposal
 - d. advise vulnerable owners of their entitlement to additional funding
 - e. refer the vulnerable owners to specialist advisers (lawyers, etc) who vulnerable owners can see to obtain advice and or representation
 - f. assist vulnerable owners in obtaining the funding provided by the proponent to pay for the advice and or representation
 - g. represent vulnerable owners in the Tribunal if the proponent disagrees about who is or is not a vulnerable owner entitled to the additional funding to ensure vulnerable owners have access to funding to pay for expert advice and legal representation.
3. The strata company will be required to pay the independent advocate for the services listed above.
4. The strata company can charge the proponent reasonable fees to cover the strata company's cost of the independent advocate's services.

Step 7. Vote on the full proposal

Multiple meetings may be held to understand and negotiate with the proponent on the termination proposal. The strata council may meet with the proponent to clarify and provide further information to the affected people and all people who were served the full proposal can make submissions to the proponent and the strata company. If required, more than one general meeting of the strata company may be held.

A vote in favour of the termination proposal is only effective if it happens between two and six months after the proposal was served; a maximum four-month window. Only three votes are permitted. The vote must be conducted by way of a secret ballot so that owners cannot be coerced.

Unanimous vote

If the vote to terminate is unanimous there is no need for a Tribunal review. The process continues at step 9.

Schemes with 2, 3 or 4 lots can only terminate by unanimous resolution

Majority vote

If the vote is not unanimous but the required percentage of owners vote in favour, the proponent can apply to the Tribunal to undertake a fairness and procedure review (step 8).

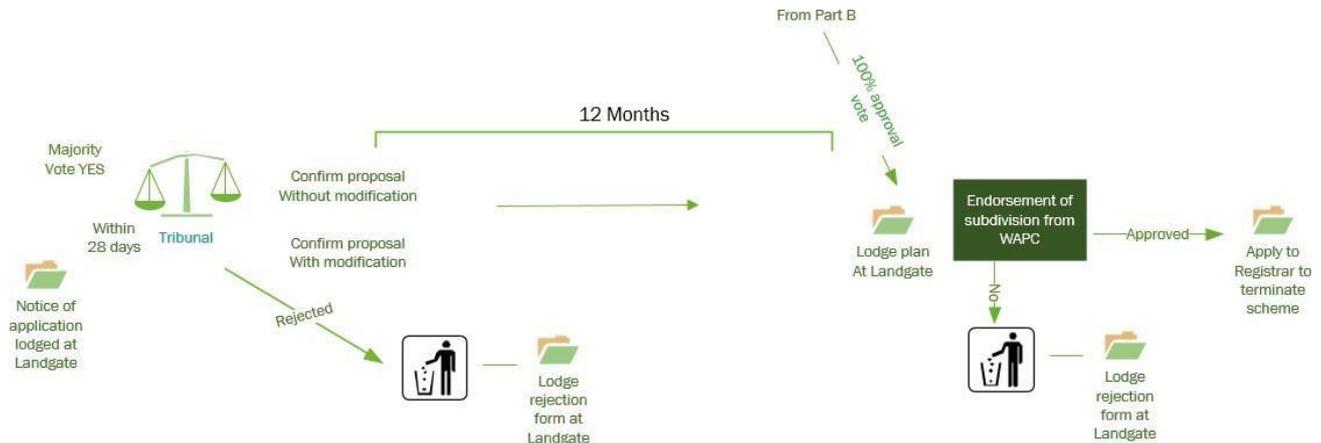
The majority vote required before a proponent can apply to the Tribunal is
for schemes of five or more lots, the owners of at least 80 per cent of lots vote in favour.

Required vote not attained

If the required majority vote is not obtained or a scheme of less than 5 lots does not obtain a unanimous resolution, the termination proposal comes to an end.

Part C – The review

(Schemes of 5 or more lots)



Step 8. Apply for a Tribunal review

If the detailed proposal attains the required majority vote (but not 100 per cent) the proponent must apply to the Tribunal for a fairness and procedure review. This review will be conducted by a judicial member or a judicial member and other members of the Tribunal.

Tribunal safeguard

A termination proposal can proceed further only if the Tribunal confirms the termination resolution.

The Tribunal cannot give an order confirming the termination resolution unless it is satisfied of three key things:

1. the termination process was properly followed
2. every owner who does not support the termination will receive fair market value for their lot or a like for like exchange for the lot, and
3. the proposal to terminate is otherwise just and equitable.

If the Tribunal is not satisfied of all three points, the Tribunal will not confirm the termination and the termination proposal comes to an end.

Just and equitable

The Act will provide extensive guidance to assist the Tribunal to decide whether the proposal is just and equitable.

The Tribunal **must** consider:

- the interests of owners of lots in the scheme
- the interests of occupiers of lots in the scheme
- the interests of registered mortgagees and any other person with a registered estate, interest or right over a lot or the common property in the scheme
- evidence of any impropriety in the termination process including evidence of proxy votes being exercised improperly and evidence of false or misleading information in the outline or full

termination proposal

- the proportion of owner support for the termination by number of lots and unit entitlement
- the termination infrastructure report and options readily available to address problems identified in the report,
- any arrangement for the owner of a lot in the strata scheme to buy back into the subdivided land following redevelopment and
- the benefits and detriments of the termination proposal proceeding or not proceeding for owners, occupiers, registered mortgagees and all people with a registered estate, interest or right over a lot or the common property.

In the Tribunal proceedings, the Tribunal can hear from:

- an owner of a lot in the scheme
- an occupier (including a tenant) of a lot in the scheme, and
- a registered mortgagee and other people who have a registered interest in a lot or the common property.

Fair market value and compensation safeguards

In deciding whether each owner who objects will receive fair market value for the lot or a like for like exchange for the lot, the Tribunal must be satisfied that:

1. the owner will receive an amount that is at least the amount of compensation that would be required to be paid by an acquiring authority under the *Land Administration Act 1997* for taking of the lot without agreement and
2. the owner will not be disadvantaged in terms of the owner's financial position as a result of the termination of the strata titles scheme.

In considering the amount of compensation that would be payable under the *Land Administration Act 1997*, the Tribunal may also award an additional amount appropriate to compensate for the taking without agreement (but it may not be more than 10 per cent of the amount otherwise awarded or offered unless the Tribunal is satisfied that exceptional circumstances justify a higher amount).

Without limitation, the Tribunal must consider the loss or damage, if any, sustained by the owner by reason of any of the following:

- removal expenses
- disruption and reinstatement of a business
- liability for capital gains tax, goods and services tax or other tax or duty, and
- conveyancing and legal costs and other costs associated with the creation or discharge of mortgages and other interests, including for the acquisition of a replacement property.

If the objecting owner is being offered a like-for-like replacement lot, the Tribunal must consider:

- whether the value of the replacement lot is equivalent to the fair market value of the current lot
- how the location, facilities and amenity of the replacement lot compares with the current lot.

The Tribunal can modify the termination proposal to:

- ensure each objecting owner receives fair market value, and
- ensure that lessees will be properly compensated by the proponent, if the termination goes ahead.

Orders

The Tribunal will have the power to make orders when reviewing a termination proposal which include:

- confirming the termination resolution so that the proponent can proceed with the termination process
- not confirming the termination resolution
- orders that are required to give effect to the termination proposal, such as to complete a transfer of a lot or vacate a lot. For example, if the termination proposal sets out that after termination, the land will be collectively sold to a developer, the Tribunal can order that every lot owner transfer their lot

on the terms set out in the termination proposal

- ordering the discharge of a mortgage on such terms as the Tribunal sees fit
- ordering the termination of a lease on termination of the scheme and ordering compensation be paid to the tenant for the termination of the lease
- verifying that an owner is vulnerable and may have access to the funds available for vulnerable owners provided for within the termination proposal, to seek advice and advocacy in relation to the termination proposal.

Step 9. Apply to WAPC to endorse the plan of survey

If the Tribunal confirms the termination proposal (or the termination proposal is supported by a unanimous resolution), the proponent can apply to WAPC to endorse the plan of survey required to register the termination.

If the plan of survey is not endorsed, the termination proposal comes to an end.

Step 10. Apply to the Registrar to register the termination

The termination of the scheme will take effect on registration of the termination by the Registrar of Titles.

A proponent can apply to the Registrar of Titles to terminate the scheme if the proponent has obtained a WAPC endorsed plan of survey and taken steps to wind up the strata company.

The application must be made within 12 months of the Tribunal confirming the termination resolution or within 12 months of obtaining a unanimous resolution in favour of the termination proposal.

Note: The proponent can withdraw their proposal at any time before registration of the termination.

All owners will have access to funds to respond to the termination proposal

The person seeking to terminate a strata scheme (proponent) must provide funding to all owners in the scheme to pay for advisory services such as

- legal advice on the termination proposal
- expert reports including obtaining a valuation report for their lot
- expert advice on the taxation and financial implications of the termination proposal.

The Regulations will:

- specify what amount needs to be set aside for every owner and
- specify what the owner can use that money for.

Owners who vote against the termination proposal can receive an amount for representation in the Tribunal that will be specified in the Regulations.

Vulnerable owners will be given additional protection

The proponent must also provide additional funding to vulnerable owners to respond to the proposal. Vulnerable owners can then use that funding to:

- The Regulations will:
- define who is a vulnerable owner
- specify what amount needs to be set aside for each vulnerable owner by way of advisory services and ancillary services (to be defined in the Regulations) and what amount needs to be set aside for vulnerable owners who vote against the proposal for representation and ancillary services

If there is a dispute between the proponent and an owner about whether the owner is a vulnerable person either party can apply to the Tribunal to resolve the dispute.

Expenses associated with a proposed termination

The proponent will have to cover the expenses of many activities linked with a termination, including preparing the outline and full termination proposal, making the planning applications and paying for the infrastructure and valuation reports. If the strata company needs to do things during the termination process (such as serve notices on the owners or registered mortgagees) the strata company can charge the proponent the reasonable costs of the strata company's activities, such as serving notices on owners and the expenses of the independent advocate.

The Tribunal will hear termination matters

Under the current Act, strata scheme termination applications must be heard in the District Court. The reforms will mean that the Tribunal will hear applications to terminate under the new majority termination process.

If a party to a termination proceeding is not satisfied with the Tribunal's order to confirm or not confirm a termination resolution, that person may apply to the f Supreme Court for leave to appeal the Tribunal's decision.

Discharging the strata company's liabilities

An application to the Registrar of Titles to terminate a scheme can be made (among other requirements) so long as the strata company's assets and liabilities have been properly dealt with in accordance with the termination proposal or an order of the Tribunal.

Meeting and vote of the strata company

The meeting of the strata company where owners vote on a termination proposal must be properly called and conducted. An independent person is appointed to tally and count the votes. There must be minutes kept of any general meeting or meeting of the council to discuss the termination proposal.

There will be one vote cast per lot. Owners who have not paid levies (unfinancial owners) will still have a vote.

Who is entitled to vote?

Only lot owners can vote. Registered mortgagees won't be able to vote on the termination proposal, but they will be able to speak at the meeting. Registered mortgagees can also have their views heard at the Tribunal if the termination proposal achieves the majority vote and the proponent applies to the Tribunal to confirm the termination resolution.

Strata company notice obligations

The strata company must:

- serve a notice on every lot owner and registered mortgagee of the outline termination proposal
- serve a notice on every owner, every registered mortgagee and every occupier when the strata company receives a full termination proposal
- serve a notice on every owner, every registered mortgagee and every occupier if the termination proposal is to be reviewed by the Tribunal.
- lodge a notification with the Registrar of Titles noting that:
 - the strata company has received an outline termination proposal or a full termination proposal (including a modified proposal)
 - the strata company has a termination resolution whether by unanimous vote or majority vote
 - the strata company has received notice of the proponent's application to the Tribunal for confirmation of the termination resolution
 - notice of the Tribunal's decision on an application to confirm the termination resolution

This will ensure every lot owner, registered mortgagee and anyone searching the scheme is aware of the status of a termination proposal.

Termination of a leasehold scheme

A leasehold scheme may:

- terminate at the end of the expiry day for the scheme (when all strata leases expire at the same time)
- be terminated before the expiry day of the scheme or
- have the original expiry date postponed.

Termination of a leasehold scheme will happen automatically when the scheme and all the strata leases simultaneously expire. Termination before the expiry day of the scheme or postponement of expiry of a scheme will always require consent from the strata company and the owner of the leasehold scheme (lessor under the strata leases). More information about how the expiry day for a leasehold scheme can be postponed is set out in the leasehold strata section.

Expiry of a leasehold scheme

Every leasehold scheme will automatically be terminated when all the strata leases simultaneously expire at the end of the expiry day of the scheme. This doesn't require the strata company to vote or have the termination reviewed by the Tribunal. Certain documents will be lodged with the Registrar of Titles to show the leasehold scheme has been terminated because the strata leases and the leasehold scheme have expired.

Termination proposal process

The same process outlined in Steps 1 -10 for a freehold scheme applies to leasehold schemes except that the consent of the owner of the leasehold scheme (the lessor under the strata leases) is required for an outline termination proposal or full termination proposal to proceed.

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Disclaimer

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