

Guide to termination of community titles schemes in Western Australia

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Using this guide

This guide is produced by Landgate – the Western Australian Land Information Authority – to provide a summary of the process for terminating a community titles scheme.

Information is presented under the following sections to help you find the information that you are looking for:

- **Introduction to key concepts**
- **The different parties involved in the termination process**
- **Overview of the termination process**
- **Termination process requiring unanimous or majority termination resolution**
- **Single owner termination process**
- **Appendices 1 – 5: Additional information**

You can easily return to the contents page at any time by selecting the following button at the bottom of each page

You may find it helpful to have a copy of this guide with you if contacting Landgate for further information. Landgate’s webchat support service is especially useful if you like to keep reading while asking questions.

This guide is a summary of the law as at 30 June 2021 and should not be taken as a precise guide to the law on community titles or in any way regarded as legal advice.

For a more complete understanding of the law relating to terminations, you should refer to the:

- *Community Titles Act 2018* (the Act)
 - See part 11: Terminations
- *Community Titles Regulations 2021* (the Regulations)
 - See part 13: Termination proposals
 - See part 14: Termination by single owner
 - See part 16: Termination or amendment by compulsory acquisition

Both the Act and the Regulations are available at www.legislation.wa.gov.au.

In all matters, readers may wish to seek legal advice from an independent legal practitioner.

Understanding the notations

The below notation styles are included throughout this guide to help direct you to further information in a) the Act, b) the Regulations or c) both.

The Act

The guide includes notations such as [s145(3)] to let the reader know the text has summarised part of the Act. The 's' is short for 'section', which means the section can be found in the Act – in this case, at section 145, subsection (3).

The Regulations

The guide includes notations such as [r124(1)]. The 'r' is short for 'regulation', which means you should refer to the Regulations – in this case, at regulation 124, sub regulation (1).

Both the Act and Regulations

These combined notations present as [s145(3); r124(1)].

References to community titles forms approved by the Registrar of Titles

Landgate community titles forms approved by the Registrar of Titles are named in full within this guide to help you find them on our website: landgate.wa.gov.au (search under **Community Titles Forms**)

For more information

For more information regarding terminations, please refer to the following **Community Titles Policy and Procedure Guides** in the **Land Transactions Toolkit** on Landgate's website:

- CTS-12 Terminations, and
- CTS-13 Registration of Termination or Variation of Community Titles Schemes.

These guides provide information on terminations and registering terminations, outlining the forms approved by the Registrar of Titles required to be lodged with Landgate for the termination of a community titles scheme, and the accompanying documents that may be required.



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Glossary of terms

Act means the *Community Titles Act 2018*.

Full termination proposal means a document submitted by the Proponent to each community corporation in the community scheme that provides a detailed proposal to terminate one or more Schemes in the community scheme and includes:

- All material provided in the Outline of termination proposal.
- A detailed description of planning and development approvals.
- Stages and timeframes for progress of the proposal.
- A detailed description of the proposed terms of the contracts or relocation arrangements for lot owners.
- A termination infrastructure report.
- A termination valuation report.

Independent advocate means a person appointed by the community corporation for a Scheme to which a Full termination proposal is submitted, to provide an independent review and assessment of the Full termination proposal under section 146 of the Act. An independent advocate is independent of the community corporation and Proponent.

Outline of termination proposal means a document submitted by the Proponent to the community corporation for a Scheme proposed to be terminated and to community corporations of related Schemes that provides an outline of the proposal to terminate one or more Schemes in a community scheme and includes:

- An explanation of the reasons to terminate.
- An explanation of the process for and consequences of termination of a community titles scheme under the *Community Titles Act 2018* Part 11 Division 1.
- A general description of contracts to be offered to owners (e.g., amount of purchase price, replacement lot etc.) and what is proposed by way of subdivision for the land after the termination.
- An explanation of the anticipated planning and development approvals required.
- Stages and timelines for progress of the Outline of termination proposal if it proceeds.
- Details of the proposed arrangements for owners of lots in Schemes proposed to be terminated to access independent advice and representation, including details of the trust for funding the arrangements and the name and contact details of the trustee.
- If the proposal is to terminate a tier 2 Scheme, the proposal must include a proposal to terminate each tier 3 Scheme that belongs to the tier 2 Scheme.
- If the proposal is to terminate a tier 1 Scheme, the proposal must include a proposal to terminate each tier 2 Scheme that belongs to the tier 1 Scheme.

Planning Commission means the Western Australian Planning Commission.

Proponent means a lot owner in the community scheme or buyer of a lot in the community scheme or a body corporate formed by two or more such persons, who proposes to terminate one or more Schemes in the community scheme.

Registrar of Titles means the statutory officer responsible for maintaining the Land Titles Register under the *Transfer of Land Act 1893*.

Regulations means the *Community Titles Regulations 2021*.

SAT means the State Administrative Tribunal.

Scheme means community titles scheme.

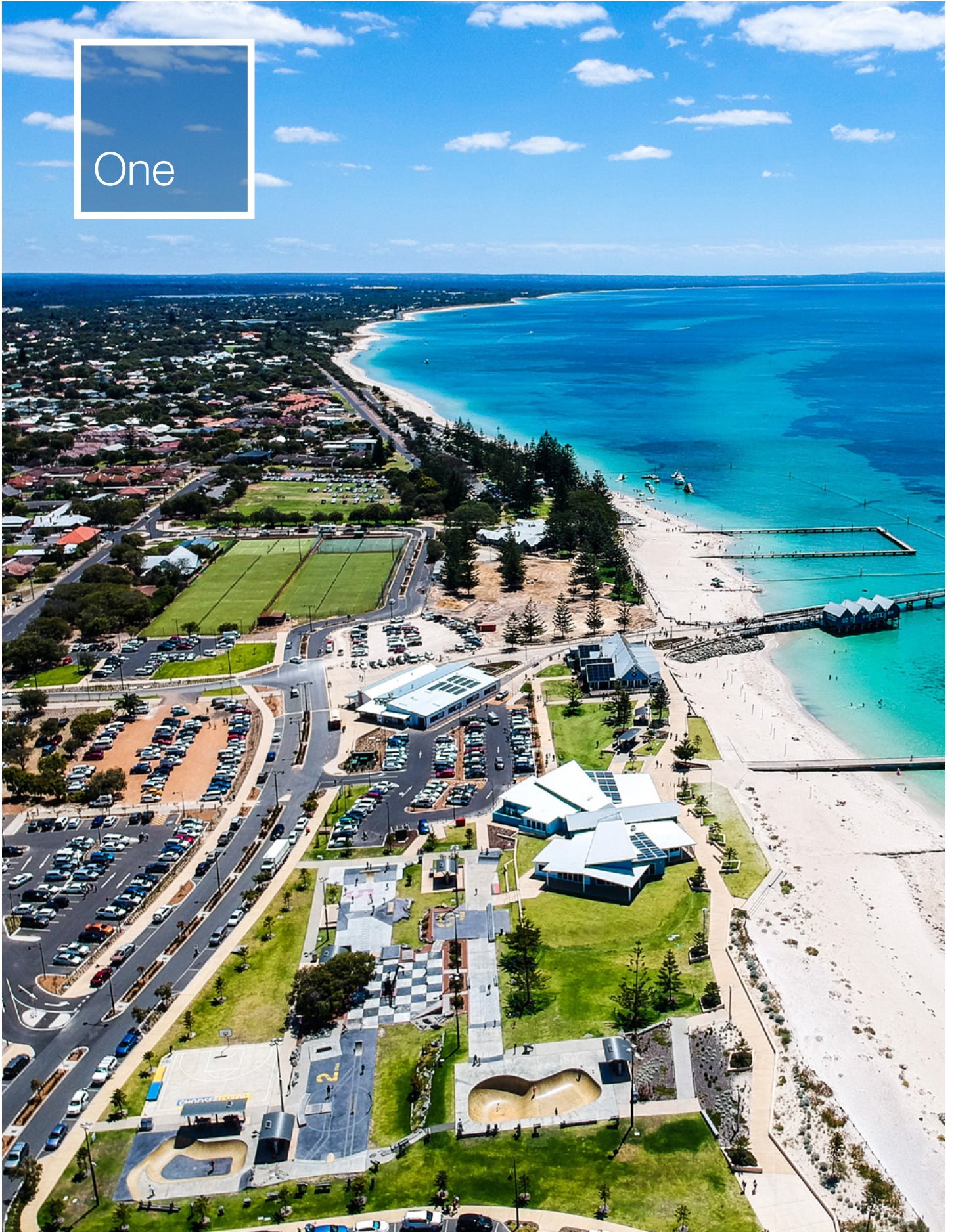
Tier 1 corporation means the community corporation for the tier 1 Scheme in a community scheme.

Tier 2 Scheme and tier 3 Scheme have the meanings in section 3(1) of the Act.

Tier parcel means the land subdivided by a Scheme.

Vulnerable person means a lot owner in a Scheme proposed to be terminated who is a natural person and is identified as being a person of a class in regulation 136.

One



1 - Introduction to key concepts

1.1 Community schemes in WA

A community scheme is a form of land subdivision in WA that enables a single parcel of freehold land to be subdivided into up to three tiers of Scheme called 'community titles schemes.'

It is the collective of each of the community titles schemes that together form a 'community scheme.' The title to land comprised in a lot in a community titles scheme, is called a 'community title.'

To help you gain a comprehensive understanding of community schemes, it is recommended that you review Landgate's [Guide to Community Titles](#) prior to reading this guide.

1.2 Difference between terminating a 'community titles scheme' and a 'community scheme'

Terminating a community titles scheme means to 'bring to an end' all the existing lots in that community titles scheme. When a tier 2 or tier 3 community titles scheme is terminated, the tier parcel (lots and common property), scheme documents and community corporation will cease to exist. If it is a tier 3 Scheme, the tier 3 parcel becomes a tier 2 lot in the tier 2 Scheme that the tier 3 Scheme belonged to, and if it is a tier 2 Scheme, the tier 2 parcel becomes a tier 1 lot in the tier 1 Scheme that the tier 2 Scheme belonged to.

Terminating the entire community scheme means to 'bring to an end' all the existing community titles schemes within the community scheme. This is achieved by terminating the tier 1 community titles scheme, upon which the following occurs:

- The community development statement for the community scheme ceases to have effect.
- The tier 1 parcel becomes a freehold parcel of land that is not subdivided by a community scheme.
- The tier 1 corporation will cease to exist.
- Owners of lots in the tier 1 Scheme become the owners of the freehold parcel of land as tenants in common, in shares in the same proportion as the relative unit entitlement of their tier 1 lots immediately before termination of the Scheme.

If it is proposed to terminate a tier 2 Scheme, the proposal must include a proposal to terminate each tier 3 Scheme that belongs to the tier 2 Scheme.

If it is proposed to terminate a tier 1 Scheme, the proposal must include a proposal to terminate each tier 2 Scheme that belongs to the tier 1 Scheme.

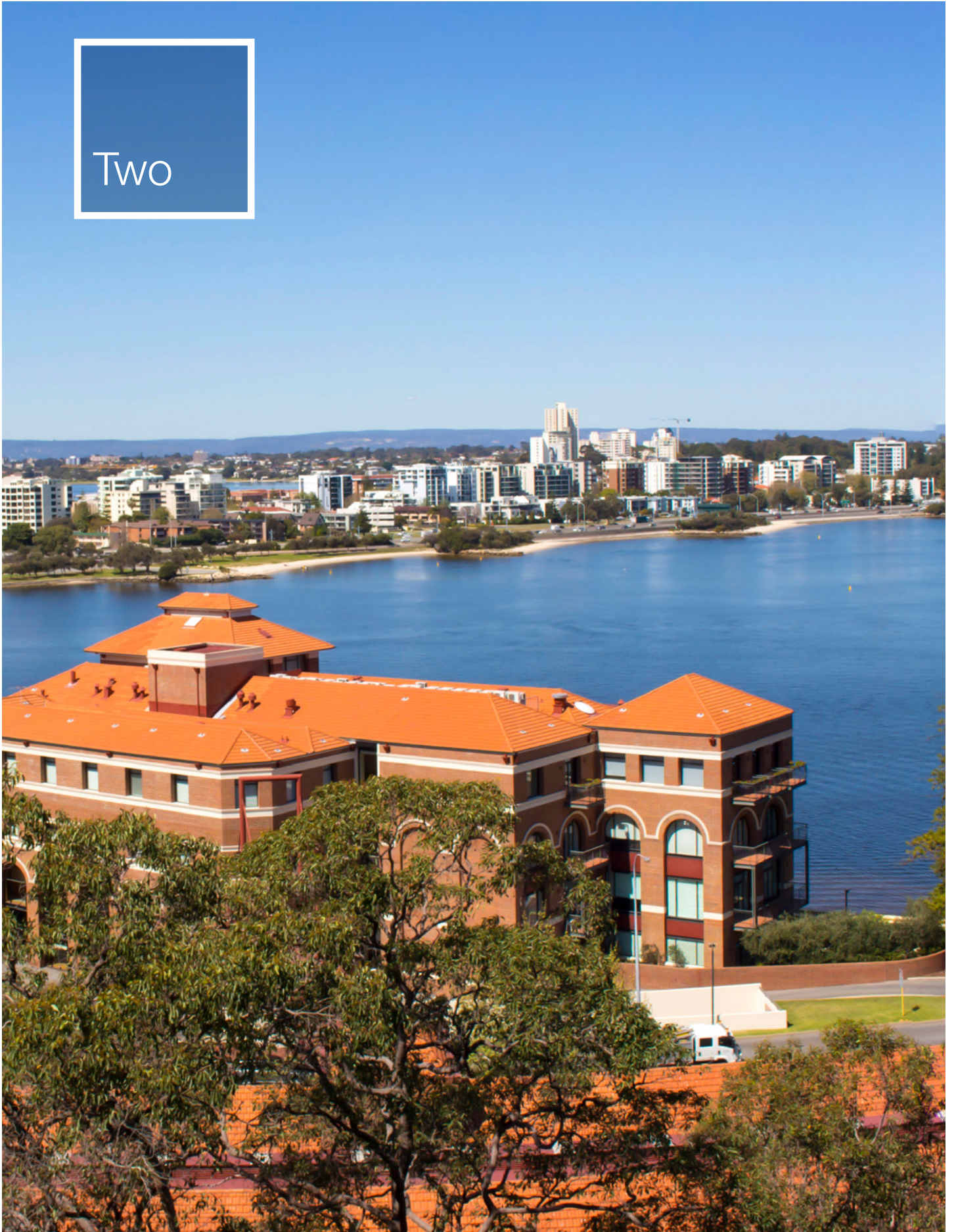
1.3 Potential reasons for terminating

The termination of a community titles scheme or community scheme might be required under various circumstances. It is anticipated that a likely reason for a Scheme to be terminated could be due to changes to zoning, density, and/or the property market.

The result of these changes could put into question for a developer whether the following as set out in the community development statement are still the best fit for the development:

- Planned land use.
- Lot configuration.
- Lot sizes.
- Allocation of common property, services, or facilities.
- Whether a third tier is required or an unnecessary overhead.
- Which type of community titles scheme is more appropriate – i.e., a community titles (land) scheme or a community titles (building) scheme.

Two



2 - The different parties involved in the termination process

The different parties involved in the termination process (and referred to throughout this guide) are outlined below.

2.1 The community corporations

A community corporation is the body corporate responsible for the overall running and management of a community titles scheme. A community corporation is automatically established when the scheme documents to create a community titles scheme are registered by the Registrar of Titles.

Each community titles scheme in a community scheme has its own community corporation, which is made up of the lot owners in the community titles scheme, as well as the community corporations (if any) of the community titles schemes that belong to it.

The Proponent is required to serve the necessary documentation relating to the Outline of termination proposal on the community corporation of each community titles scheme proposed to be terminated in the community scheme and on each related community corporation.

The main role of the community corporations is to act as the point of communication between the Proponent and lot owners affected by the termination proposal.

If the termination proposal proceeds to the Full termination proposal stage, the Full termination proposal must be served on every community corporation in the community scheme.

2.2 The Proponent

The Proponent is the person proposing that one or more community titles schemes in a community scheme be terminated, who can either be:

- The owner of a lot in the community scheme.
- A person who has a contractual right to purchase a lot in the community scheme.
- A body corporate formed by two or more such persons.

The role of the Proponent in the termination process is to put forward a workable termination proposal, which clearly sets out every aspect of what is proposed to happen. To meet this objective, the Proponent must meet the requirements of the Act and Regulations in serving on the community corporation key documentation explaining how the termination will proceed.

The Proponent has to meet various expenses to support the proposal, such as those expenses the community corporation(s) have incurred in addressing the termination, and the funding to be made available for all lot owners in schemes that are being terminated to respond to the proposal. This includes any expenses relating to the subdivision and development process, such as application fees.

2.3 Lot owners

An owner of a lot is the person registered as proprietor on the Certificate of Title for a particular lot in a community titles scheme.

It may be the case that a person is the owner of all the lots in a community titles scheme proposed to be terminated, or all of the lots in the community scheme proposed to be terminated.

2.4 Vulnerable persons

A vulnerable person is an individual with a diminished capacity to understand, cope with or respond to a termination proposal.

The person's vulnerability can be determined from a wide range of factors, such as age, illness, trauma, disability or financial disadvantage. These factors can have the potential to impair the person's ability to consider and make an informed decision in relation to a termination proposal.

Safeguards are built into the termination process to ensure that an owner (being an individual) in a Scheme proposed to be terminated who is identified as a vulnerable person, has access to additional funding for independent legal advice and representation or ancillary services to help put them in a position where they are not disadvantaged by their vulnerability. For example, this could include the services of an Auslan interpreter for a person who is hearing impaired.

There are two potential avenues for a person to be identified as a vulnerable person:

- The independent advocate identifies them as such, or
- The lot owner in question applies to the Proponent to be recognised as vulnerable, and the Proponent then recognises them as vulnerable.

The criteria for what constitutes vulnerability is outlined in **Appendix 2** of this guide.

2.5 The independent advocate

The independent advocate is a person who is independent of the community corporation and the Proponent of the termination proposal and has a role in considering the termination proposal and assisting vulnerable lot owners.

A person is classified as being independent of the referring community corporation and the Proponent of the termination proposal if the independent advocate, and each person employed or engaged by the independent advocate to assist in the performance of the independent advocate's functions is not:

- The Proponent or an associate of the Proponent.
- A member of a community corporation in the community scheme in which there is a community titles scheme proposed to be terminated.
- A scheme manager of a community corporation in the community scheme in which there is a community titles scheme proposed to be terminated, or an associate of that scheme manager.
- Directed or coerced by the Proponent, a member of the referring community corporation, or a member of the council of the referring community corporation.

An independent advocate is also required to hold the relevant qualifications specified in the Regulations. An independent advocate is required to either be:

- An Australian legal practitioner, or
- A person who provides any social services, as defined in the *Children and Community Services Act 2004*. This person must also hold a degree from an Australian university that is relevant to providing the social services.

Additionally, a person who is employed or engaged by an independent advocate must be of one of the classes listed below:

- A person who also holds the qualifications required by an independent advocate.
- A local legal practitioner.
- A person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession.
- A person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the psychology profession.
- An interpreter or Auslan interpreter.
- A financial counsellor.
- Any other person who the independent advocate believes has the relevant training or skills to assist in the performance of their functions. For example, a person who has completed training in disability awareness or in cultural and linguistic diversity.

2.6 The trustee

The trustee is the person engaged by the Proponent who is responsible for administering funds that are required to be held in a trust for lot owners in schemes proposed to be terminated for them to obtain independent legal advice or representation, or ancillary services in connection with the termination proposal.

The trustee must not be:

- The Proponent who established the trust or an associate of the Proponent.
- A member of the community corporation for a community titles scheme proposed to be terminated by the Proponent, or an associate of the member.
- A member of any community corporation in the community scheme in which one or more community titles schemes are proposed to be terminated by the Proponent, or an associate of the member.
- A scheme manager for any community corporation in a community scheme in which one or more community titles schemes are proposed to be terminated by the Proponent, or an associate of the scheme manager.

Further information regarding the trust is set out in [Appendix 3](#).

2.7 The independent vote counter

The independent vote counter is a person who is independent of the community corporations and the Proponent of the termination proposal who is appointed to tally and count the votes on the proposal.

The independent vote counter is required to:

- Make a record of each vote, noting the date of the vote and the lot for which it is cast.
- Give written notice to each community corporation in the community scheme as soon as reasonably practicable as to whether the termination resolution was passed and whether confirmation of the resolution by SAT is required.
- If confirmation of the termination resolution by SAT is required, provide the record of votes to the tier 1 community corporation as soon as reasonably practicable after the tier 1 community corporation requests the record of votes. The record of votes must be provided in a secure electronic format.

The independent vote counter may charge a tier 1 community corporation a reasonable amount for remuneration and expenses incurred by them in exercising their functions. 'Reasonable' is not defined in the Act, but the independent vote counter must be able to explain why they are charging these amounts.

2.8 The State Administrative Tribunal

The State Administrative Tribunal (SAT) in Western Australia is an independent body that makes and reviews a range of administrative decisions. These range from reviews of multi-million-dollar tax judgments and dog destruction orders to disciplinary proceedings, guardianship questions and town planning and compensation issues. SAT is given the role under the Act of making decisions in respect of most disputes between participants in Schemes and SAT has the role of confirming (or otherwise) a termination proposal which has been passed by a majority termination resolution.

SAT is not a court and therefore strict rules of evidence do not apply. SAT aims to make the correct or preferable decision based on the merits of each application.

A termination proposal passed by a majority vote can only proceed further if SAT confirms the termination resolution. SAT can only confirm the termination resolution if strict safeguards have been met. These safeguards include that the termination process must have been properly conducted and that no dissenting lot owner in a Scheme that is proposed to be terminated will be worse off.

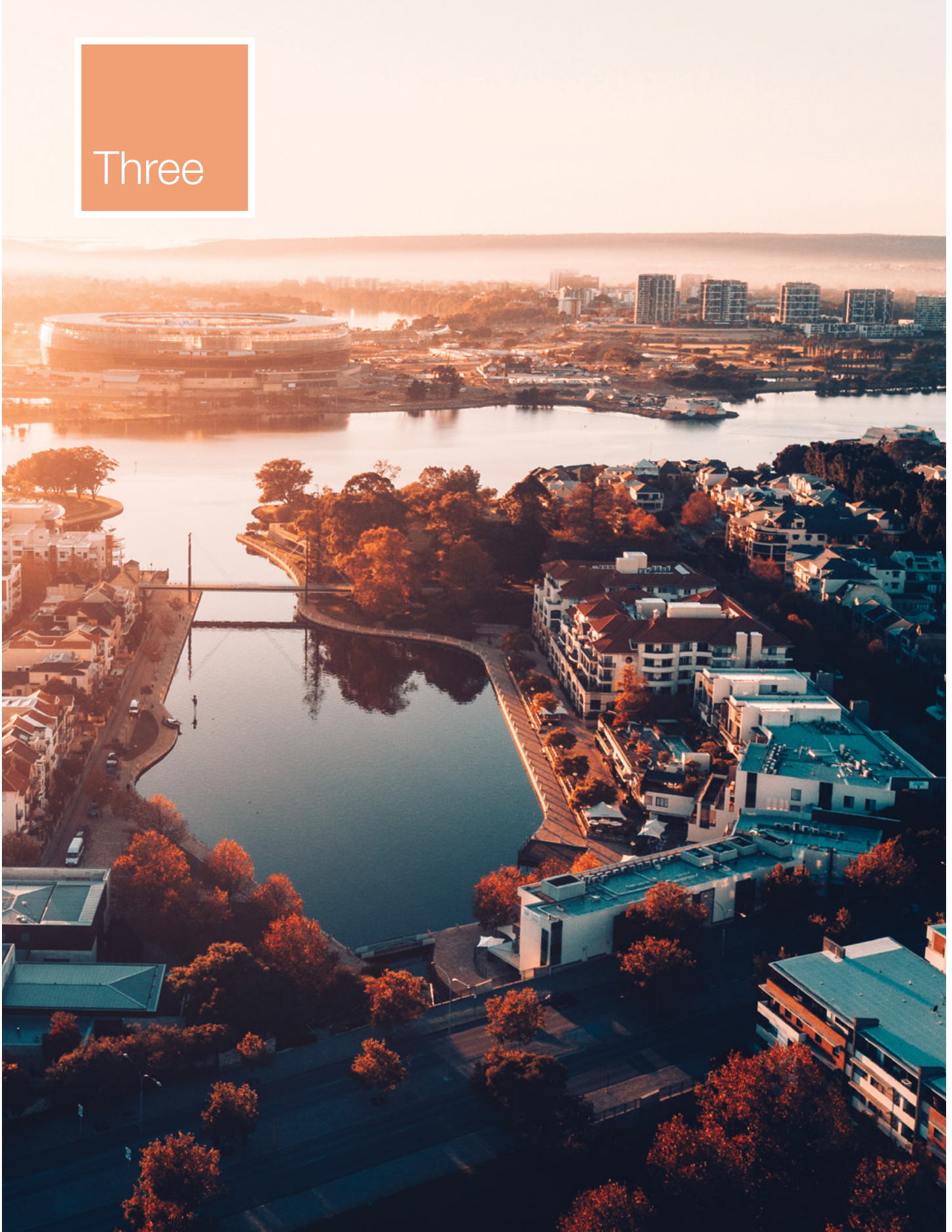
2.9 The Registrar of Titles

The Registrar of Titles at Landgate is an independent statutory officer, responsible for the administration and maintenance of WA's land titles register under the *Transfer of Land Act 1893* (Register).

The Registrar of Titles' role is to record a Notice of termination event in relation to the termination process in the Register. This is to help ensure anyone seeking to buy into a Scheme can find out if a termination process is underway and what stage the proposal is at.

If a termination process has commenced, ultimately the Registrar of Titles will record that it can go no further, that it has been withdrawn or that the community titles scheme or community scheme proposed to be terminated has in fact been terminated.

Three



3 - Overview of the termination process

The Act provides a complete and transparent process which must be followed to implement the termination of one or more community titles schemes in a community scheme.

Community titles schemes, or the community scheme as a whole, can be terminated:

- By a single owner, if that owner owns all the lots in the community scheme,
- If the termination resolution is passed unanimously, by the owners of all lots in the community scheme, or
- By a termination resolution passed by a majority of the owners of lots in the community scheme.

A termination resolution by majority requires both:

- A vote in favour by 75% of owners of lots in the community titles scheme and any related scheme, to be terminated, and
- A vote in favour by more than 50% of all lot owners in the entire community scheme.

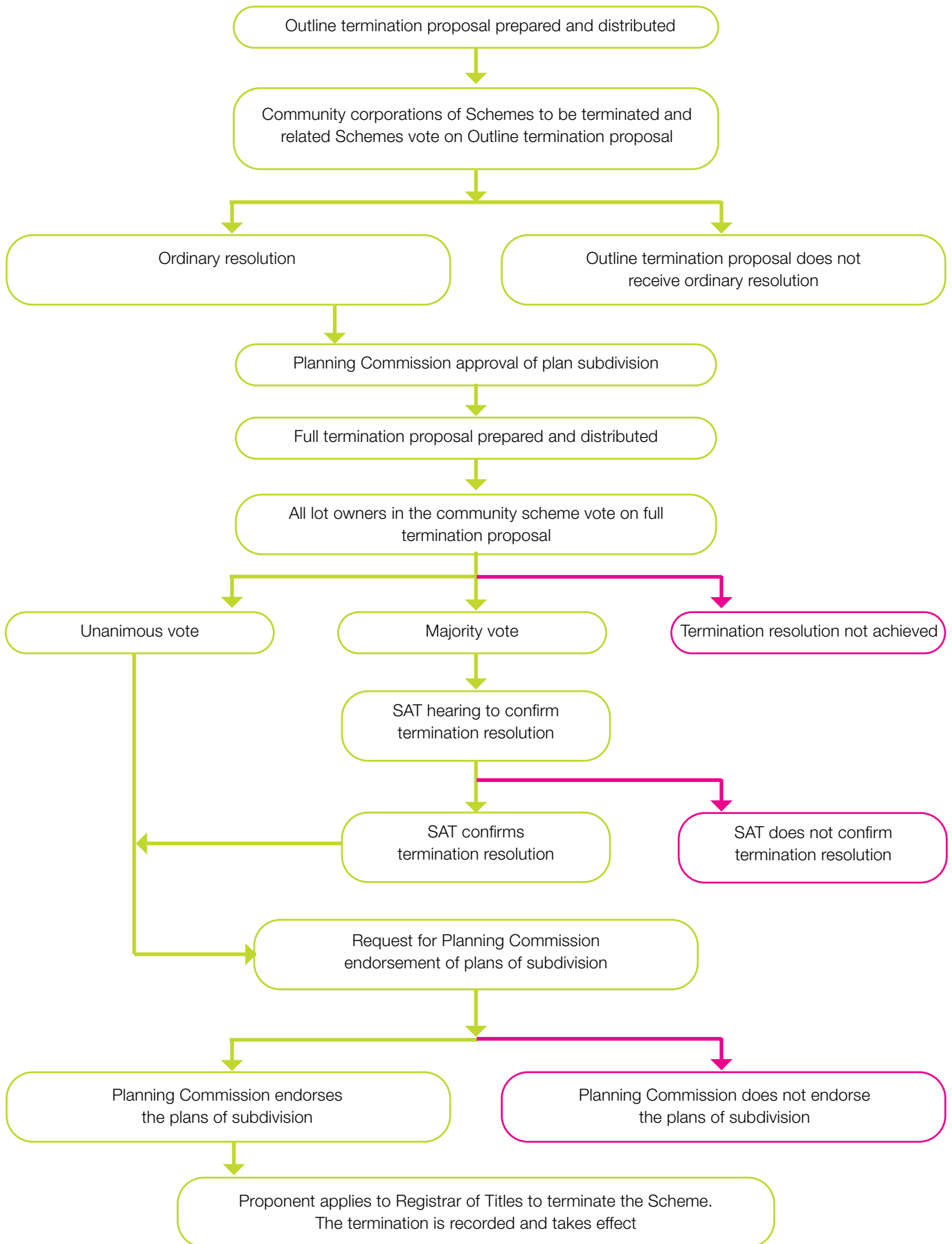
A termination resolution passed by a majority vote requires confirmation by SAT.

The vote to terminate a community titles scheme is taken on the basis that:

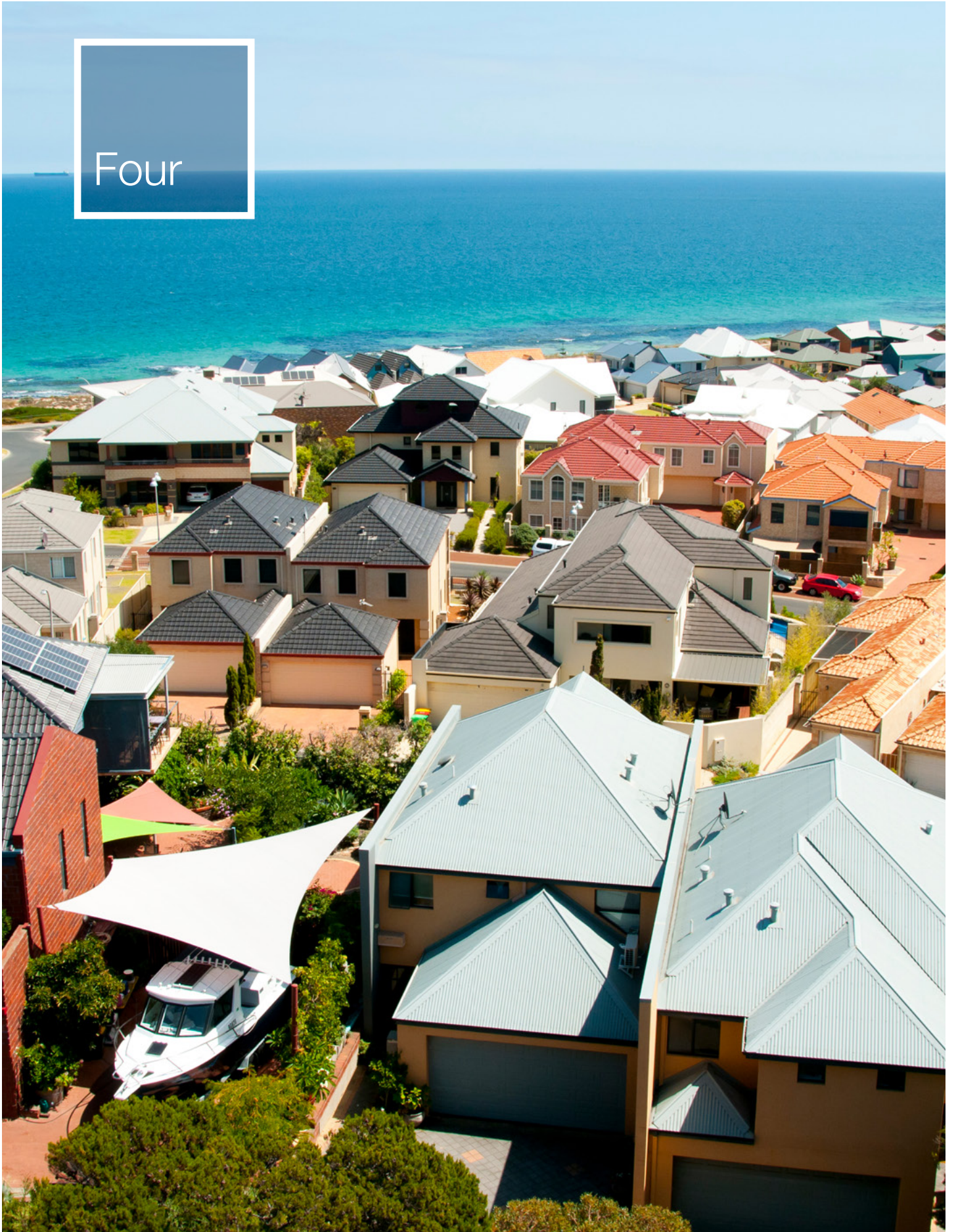
- One vote may be cast for each lot in the community scheme, and
- The value of each vote is one.

Note. These voting requirements are different to those of ordinary or special resolutions as they are not based on unit entitlement. For information regarding 'ordinary' and 'special' resolutions, it is recommended that you refer to Section 4 'Scheme decision-making' of **Landgate's Guide to Community Titles**.

The flowchart below sets out the outline of the termination process.



Four



4 - Termination process requiring unanimous or majority termination resolution

The process to terminate a community scheme, or one or more community titles schemes in the community scheme in circumstances where multiple lot owners are involved is outlined in this section.

4.1 The Proponent prepares the Outline of termination proposal

- **Sections 141 – 142 of the Act; Regulation 110**

The Proponent who wants to terminate one or more community titles schemes in a community scheme must prepare an outline of the termination proposal in the form approved by the Registrar of Titles, the **Outline of termination proposal**.

The following information is required to be included in the Outline of termination proposal:

- Name and address for service of Proponent.
- Identification of the community titles scheme or schemes proposed to be terminated.
- **Note.**
 - If the proposal is to terminate a tier 2 Scheme, the proposal must include a proposal to terminate each tier 3 Scheme that belongs to the tier 2 Scheme.
 - If the proposal is to terminate a tier 1 Scheme, the proposal must include a proposal to terminate each tier 2 Scheme that belongs to the tier 1 Scheme.
- An explanation of reasons for proposing termination.
- Proposals for contracts to be offered to owners of lots in a community titles scheme proposed to be terminated.
- What is proposed in terms of subdivision and development of the tier parcel of a community titles scheme or community scheme following termination of the Scheme.
- A description of the planning approvals that may be required and the extent to which those planning approvals may not comply with the community development statement that is in force.
- Indicate in general terms the stages and timeframes for progress of the proposal if it proceeds.
- An explanation of the termination process and consequences of terminating a community titles scheme in the form approved by the Registrar of Titles, **Annexure A - Explanation of the process for and consequences of termination of a community titles scheme under the Community Titles Act 2018 Part 11 Division 1.**
- The Proponent's arrangements for lot owners in the Schemes proposed to be terminated to have access to a trust fund for advisory and representation services in connection with the termination proposal.

Note. No funding is available for lot owners for advice on the Outline of termination proposal.

4.2 Distribution of the Outline of termination proposal

- **Section 141 of the Act**

The Proponent must submit the Outline of termination proposal to the community corporation of each community titles scheme proposed to be terminated in the community scheme and to each related community corporation.

A community titles scheme is related to each community titles scheme to which it belongs or that belongs to it and the community corporations of the related Schemes are related community corporations [s 13(6)].

The community corporations which are related to the community corporations of each community titles scheme proposed to be terminated are referred to as “interested community corporations.”

When an interested community corporation receives an Outline of termination proposal, it must serve the proposal on all owners and registered mortgagees in the Scheme within 14 days of receiving the proposal.

After serving owners and registered mortgagees with the Outline of termination proposal, the community corporation is required to give written notice of that fact to the Proponent.

Within 14 days after receiving an Outline of termination proposal, the tier 1 corporation must lodge a notice with the Registrar of Titles that the Outline of termination proposal has been received. This notice must be lodged in the form approved by the Registrar of Titles, the **Notice of termination event**. This action allows the notice to be recorded against the certificates of title for the lots and ensures those searching the title can see that a termination proposal is active.

Note. The Notice of termination event form is used on a number of occasions in the Act. These are listed in **Appendix 5**

Protection of community corporations from receiving too many proposals – refer to section 141(2) and (3) of the Act

A termination proposal cannot be submitted to the community corporation for a community titles scheme proposed to be terminated during a period:

- When the community corporation has passed an ordinary resolution in favour of another Outline of termination proposal and that proposal has not come to an end.
- When the community corporation has, by ordinary resolution, prohibited termination proposals from being submitted to it (for a maximum duration of 12 months).
- For which SAT has (on the application of the community corporation or a related community corporation) ordered that proposals are not to be submitted to the community corporation.

If an Outline of termination proposal cannot be submitted to a community corporation, it cannot be submitted to any related community corporation.

4.3 Vote on the Outline of termination proposal

- **Section 143 of the Act**

Interested community corporations have three months to consider the Outline of termination proposal.

A termination proposal can only proceed if each community corporation for a community titles scheme proposed to be terminated and each interested community corporation pass an ordinary resolution in support of considering a Full termination proposal.

An ordinary resolution is passed if the value of votes cast in favour of a proposed resolution is more than the value of the votes cast against the proposed resolution [s106(6)]. The value of the vote is the unit entitlement of the lot or tier parcel [s106(5)(b)].

If there are only two lots in a community titles scheme, an ordinary resolution on an Outline of termination proposal is taken to be passed if the vote attached to one of the lots is cast in favour of the resolution, regardless of the unit entitlement of the lot.

The Proponent has 12 months from the ordinary resolution(s) being passed to submit a Full termination proposal to every community corporation of a community titles scheme in the community scheme.

If the required resolution(s) are not obtained, the Outline of termination proposal comes to an end. The tier 1 community corporation must then lodge a notice with the Registrar of Titles that the Outline of termination proposal cannot proceed [s157(1)(a)]. The notice must be lodged in the form approved by the Registrar of Titles, the **Notice of termination event**.

4.4 Application to obtain planning approval of plan(s) of subdivision

- **Section 144 of the Act**

The Proponent can make an application under Part 10 of the *Planning and Development Act 2005* to the Planning Commission to approve one or more plans of subdivision for the termination proposal (that is, for one or more tier parcels to cease being subdivided by a community titles scheme).

It may also be necessary to apply for an amendment of the community development statement.

If a community titles scheme at a tier 2 or tier 3 level is proposed to be terminated, the subdivision application will show that the tier parcel will cease to be subdivided by a community titles scheme and become a single lot in the tier 1 or tier 2 Scheme that the tier 2 or tier 3 parcel belonged to.

The termination process can only proceed if the Planning Commission approves the plan(s) of subdivision.

4.5 Development of Full termination proposal

- **Sections 145 and 147 of the Act**

Once the Proponent has obtained approval of the plan(s) of subdivision from the Planning Commission, they can proceed with preparing a Full termination proposal in the form approved by the Registrar of Titles, **Full termination proposal**.

The Full termination proposal must be accompanied by the approved plan of subdivision for the proposal. The content of the Full termination proposal is extensive and must include the following information as set out in section 147 of the Act.

Content of Full termination proposal

The following is required to be included in the Full termination proposal:

- All materials required to be included in an Outline of termination proposal.
- A detailed description of what is proposed in terms of contracts to be offered to lot owners. This includes the following types of contracts and associated information.

Type of contract	Required information to be included
Contracts for sale and purchase of lots in a community titles scheme before termination of the Scheme	<ul style="list-style-type: none"> • The name and address of the buyer • The purchase price or a description of how the price is to be determined • The terms and conditions of the contracts for sale and purchase, including proposed settlement dates, or a description of how those terms and conditions are to be determined • Any deductions proposed to be made out of the purchase price or a description of how those deductions are to be determined
Contracts under which a lot owner in a community titles scheme proposed to be terminated acquires an interest in land in exchange for the lot	<ul style="list-style-type: none"> • The choices available to owners or the basis for determining those choices • The interests in land proposed to be acquired by the owners • Other terms and conditions of the exchange
Contracts under which the lot owner in a community titles scheme proposed to be terminated retains an interest in land following termination of the Scheme or is to acquire a right or option relating to an interest in the land following its subdivision or development	

- A detailed description of what is proposed to happen on termination with any mortgages, leases and other interests registered or recorded in the Register over the lots and common property in the Scheme.
- A detailed description of what is to happen on termination to the contractual rights of occupiers of lots or common property in the Scheme.
- A detailed description of what is proposed in terms of subdivision and development of the tier parcel following termination, including:
 - Plans for demolition.
 - Plans for subdivision, including by registration of community titles schemes or amendments of community titles schemes.
 - Architectural plans for development.
- A description of the planning approvals required for the proposed subdivision and development of the tier parcels, and the extent to which the proposal does not comply with any community development statement that is in force or any applicable planning scheme or interim development order under the *Planning and Development Act 2005*.
- A detailed indication of the stages and timeframes proposed for progress of the termination proposal, including expectations for when vacant possession of lots and common property will be required.
- A description of any proposals for the temporary relocation of owners of lots in a community titles scheme proposed to be terminated, including any payments proposed to be made to lot owners to enable them to arrange temporary relocation.
- A statement obtained from the community corporation for each community titles scheme proposed to be terminated of its current assets and liabilities, and any legal proceedings to which the community corporation is or proposes to become a party.
- A description of steps to be taken to wind up the community corporation for each community titles scheme proposed to be terminated, including steps for the realisation of assets and the discharge or transfer of liabilities for termination of the Scheme.
- A termination infrastructure report and a termination valuation report, in the relevant forms approved by the Registrar of Titles.

For information regarding the requirements under the Act and Regulations for a termination infrastructure report and termination valuation report, refer to [Appendix 1](#).

4.6 Distribution of Full termination proposal

- **Section 145 of the Act**

Once the Proponent has developed the Full termination proposal, they are required to submit the Full termination proposal to each community corporation in the community scheme.

Within 14 days of receiving the Full termination proposal, a community corporation must serve it on:

- Each owner, occupier, registered mortgagee, or caveator of a lot in its community titles scheme,
- Each person whose interest in a lot in the community titles scheme as a lessee, tenant or mortgagee is recorded in the scheme contacts register of the community corporation, and
- Each occupier of common property in its community titles scheme.

After serving the Full termination proposal on the above-mentioned parties, the community corporation must provide written notice of the date of service to the tier 1 community corporation. This written notice must be provided as soon as practicable.

The tier 1 community corporation is required to lodge a notice with the Registrar of Titles within 14 days of receiving the Full termination proposal. This notice must be lodged in the form approved by the Registrar of Titles, the **Notice of termination event**.

Note. If the Proponent would like to modify the Full termination proposal, the proposal must be submitted and served in the same manner as for the Full termination proposal. A modification cannot be submitted within 14 days before voting on the termination proposal opens.

Protection of community corporations from receiving too many proposals – refer to section 145(2) of the Act

A Full termination proposal cannot be submitted to a community corporation in the following circumstances:

- If it is more than 12 months since the Outline of termination proposal was approved by ordinary resolution.
- During any period that SAT has prohibited termination proposals being submitted to the community corporation, following application by the community corporation or a related community corporation.

4.7 Full termination proposal referred to independent advocate

- **Section 146 of the Act; Regulations 113 – 115**

Each community corporation that receives the Full termination proposal is required to refer the proposal for review and assessment to an independent advocate.

The independent advocate is required to review the Full termination proposal and provide an independent assessment of the proposal to the community corporation that they were appointed by.

4.7.1 Assessment of the Full termination proposal

The independent advocate's assessment of the Full termination proposal depends on whether the referring community corporation's community titles scheme is proposed to be terminated.

If the referring community corporation's community titles scheme is proposed to be terminated, the assessment is required to address whether:

- The proposal contains all of the information required under section 147 of the Act.
- The proposal appears feasible and fair to the lot owners in the community titles scheme.
- The arrangements for occupiers of the lots or common property in the community titles scheme are appropriate.

If the referring community corporation's community titles scheme is not proposed to be terminated, the assessment is required to address the above listed items, as well as the effect that the Full termination proposal will have on the lot owners in that community titles scheme.

The independent advocate is required to provide the referring community corporation with their assessment of the Full termination proposal with sufficient time to enable the community corporation to provide a copy of the assessment to affected people at least seven days prior to the date of the presentation.

Following receiving the assessment of the Full termination proposal, the referring community corporation is required to:

- Serve a copy of the assessment on the Proponent within seven days of receipt.
- Provide or offer to provide a copy of the assessment to relevant people within seven days of receipt, or at least seven days prior to the date of the presentation.
- Ensure a copy of the assessment is provided to relevant people upon request.

4.7.2 Presentation by independent advocate

The independent advocate is required to provide a presentation of their assessment of the Full termination proposal to each person that the community corporation served with the proposal. The presentation must be conducted at least seven days before the proposal is put to a vote.

To facilitate the presentation, the independent advocate is required to make arrangements with the referring community corporation to:

- Enable attendance and participation in the presentation by relevant people either via telephone or electronic means.
- Ensure the referring community corporation serves written notice of the presentation on the relevant people at least seven days prior to the date of the presentation. The notice is required to include:
 - The date, time and venue of the presentation.
 - The arrangements for attending and participating via telephone or electronic means.
 - Notification that a relevant person can provide a written request to the referring community corporation, that they require the assistance at the presentation of an Auslan interpreter. The written request must be provided at least three days prior to the date of the presentation.

The independent advocate must ensure that an Auslan interpreter assists with the presentation if this is requested by a relevant person. They must also arrange for an audio or audio-visual recording of the presentation to be made and provide this recording to the referring community corporation following the presentation.

4.7.3 Assessment of which owners are vulnerable owners

If the referring community corporation's community titles scheme is proposed to be terminated, the independent advocate must also endeavour to identify lot owners who are classified as a vulnerable person.

A vulnerable person is someone with a diminished capacity to understand, cope with or respond to the termination proposal process. For more information about who might be classified as a vulnerable person, refer to [Appendix 2](#).

The independent advocate must provide a list of owners who are vulnerable persons to the Proponent at least 14 days before the Full termination proposal is put to a vote. However, the independent advocate must not disclose to the Proponent the class of the vulnerable person or why they have identified lot owners as falling within a particular class of vulnerable person.

The Proponent ultimately determines who a vulnerable person is, either accepting or rejecting the recommendation of the independent advocate. A lot owner is entitled to dispute the Proponent's decision by making an application to SAT.

4.7.4 Access to funding and advisory services

All lot owners in a community titles scheme proposed to be terminated can access funding from the trust established by the Proponent for advisory services in connection with the Full termination proposal. For example, the funding can be used by lot owners to pay for legal advice or representation, expert reports (such as a valuation report for their lot) and expert advice on the taxation and financial implications of the termination.

Lot owners who are classified as vulnerable persons are also eligible to access additional funding for ancillary services.

Ancillary services include (without limitation):

- The services of an interpreter for a person who has difficulty reading or understanding English.
- The services of an Auslan interpreter for a person who is hearing impaired.
- Transportation services for a person who is mobility impaired.
- Additional representation services for a person who is not capable of making an informed decision in the termination proposal process (such as the appointment of a guardian or administrator).
- Disability assistance or support services for a person with a disability that enable the person to participate in the termination proposal process.
- Psychological support or counselling services that enable a person to participate in the termination proposal process.

The independent advocate has the following functions in relation to lot owners who are vulnerable persons:

- Advising on their entitlements and access to funding to respond to the Full termination proposal.
- Referring them to independent advisors such as a legal practitioner, to obtain advice or representation to respond to the Full termination proposal.
- Assisting in obtaining the funding provided by the Proponent to pay for the advice or representation.
- Representing them in SAT regarding disputes as to who is or is not a vulnerable person.

Note. Funding from the trust established by the Proponent is not available to lot owners in community titles schemes that will vote on the Full termination proposal but are not community titles schemes that are proposed to be terminated.

The referring community corporation must pay the remuneration of and reimburse the expenses of the independent advocate for their services and can charge the Proponent reasonable fees for the costs.

4.8 Consideration of Full termination proposal by community corporations

• Section 148 of the Act; Regulation 124

After a community corporation receives the Full termination proposal, it is entitled to call as many meetings as necessary to consider the proposal.

If the Proponent is a member of the community corporation, the members who are present at the meeting may, by ordinary resolution (for which no notice is required), require the Proponent to leave the meeting while the Full termination proposal is being discussed, or if the Proponent is not a member of the community corporation, to be absent for the entire meeting.

Community corporations and councils of community corporations in the community scheme can also convene joint meetings to consider the Full termination proposal.

The members of the community corporation who are served the Full termination proposal must be given a reasonable opportunity to make submissions to the Proponent and the community corporation.

The council of a community corporation may meet with the Proponent to discuss the Full termination proposal and is required to inform its members of those discussions and of any information provided by the Proponent. Additionally, the council may make recommendations to its members regarding the Full termination proposal.

4.9 Vote on the Full termination proposal

• Section 149 of the Act; Regulations 126 - 129

A Full termination proposal is required to be put to the vote of all the lot owners in the community scheme (not just the owners in the community titles schemes proposed to be terminated) and it can only proceed if a termination resolution is passed.

Except for a tier 1 community titles scheme, a community titles scheme proposed to be terminated cannot be terminated solely on the vote of its members.

The vote is taken as follows:

- One vote may be cast for each lot in the community scheme.
- The value of each vote is one (i.e. the unit entitlement of a lot is not relevant in a termination resolution).

4.9.1 Unanimous termination resolution

A termination resolution can be passed by a unanimous vote in favour of the termination proposal.

This means that the number of votes cast in favour of the termination proposal equals the number of lots in the community scheme.

In this case, the termination resolution is not required to be confirmed by SAT.

4.9.2 Majority termination resolution

A termination resolution can be passed by a majority vote in favour of the termination proposal, which is then confirmed by SAT.

The majority vote depends on which community titles schemes in the community scheme are being terminated, as set out below.

➤ **For proposals to terminate all the community titles schemes in the community scheme**

- If there are only two lots in the community scheme (i.e. only the tier 1 Scheme created), at least one vote is cast in favour of the termination proposal.
- If there are three lots in the community scheme, at least two votes are cast in favour of the termination proposal.
- If there are more than three lots in the community scheme, the number of votes cast in favour of the termination proposal is three quarters or more of the total number of lots in the community scheme.

➤ **For proposals to terminate one or more tier 2 Schemes (together with their related tier 3 Schemes)**

- If there are three lots in the community scheme, at least two votes are cast in favour of the termination proposal.
- If there are more than three lots in the community scheme:
 - For each tier 2 Scheme proposed to be terminated, the number of votes cast in favour of the termination proposal by the lot owners in the tier 2 Scheme and any related tier 3 Schemes, is three quarters or more of the total number of lots in those related Schemes, **and**
 - The number of votes cast in favour in respect of all lots in the community scheme, is half or more of the total number of lots in the community scheme.

➤ **For proposals to terminate one or more tier 3 Schemes**

- For each tier 3 Scheme proposed to be terminated, the number of votes cast in favour of the termination proposal in respect of lots in the tier 3 Scheme is three quarters or more of the total number of lots in the tier 3 Scheme, **and**
- The number of votes cast in favour of the termination proposal in respect of lots in the community scheme is half or more of the total number of lots in the community scheme.

4.9.3 Timing of vote and maximum number of votes permitted

A vote in favour of the Full termination proposal is only effective if it occurs between two and six months after the proposal was served (with a maximum window of four months).

A termination proposal may be modified, and a further vote taken. However, only a maximum of three votes can be held to accept or reject the Full termination proposal during the four-month period.

If the required vote is not obtained after the third vote, the termination process ceases.

Additionally, if the above timelines are not adhered to, the termination process cannot proceed any further [s 157].

4.9.4 Counting and outcome of the vote

A person who is independent of the community corporations and the Proponent (Independent vote counter) must be appointed to:

- Make a record of each vote, noting the date of the vote and the lot for which it is cast.
- Provide written notice to each community corporation in the community scheme as soon as reasonably practicable as to whether the termination resolution was passed and whether confirmation of the resolution by SAT is required.
- If confirmation of the termination resolution by SAT is required, provide the record of votes to the tier 1 community corporation as soon as reasonably practicable after the tier 1 community corporation requests the record of votes. The record of votes must be provided in a secure electronic format.

Note. After receiving the sealed record of votes, the tier 1 corporation must provide a copy to the trustee of the funding arrangements available for lot owners and lot owners who are vulnerable persons in the community titles schemes proposed to be terminated.

Further information regarding how the record of votes is handled is set out in [Appendix 4](#).

After a termination resolution is passed, the tier 1 community corporation is required to notify the Proponent of the outcome and notify the Registrar of Titles, including in each notice a statement of whether confirmation by SAT is required. This notice must be lodged in the form approved by the Registrar of Titles, the **Notice of termination event**.

4.10 Application to SAT for confirmation of majority termination resolution

- **Section 150 of the Act; Regulations 130 - 133**

A Full termination proposal passed by a majority vote can only proceed further if SAT confirms the termination resolution.

4.10.1 Application to SAT

To request confirmation of the termination proposal by SAT, the Proponent is required to make an application to SAT within 28 days after the close of voting on the termination proposal, or within an extension of that time given by SAT.

The application must be accompanied by:

- The Full termination proposal for the termination of the community titles schemes.
- All written submissions made to the Proponent about the termination proposal.
- Documentary or other evidence that the Proponent is a person entitled to propose the termination under the Act.
- The Outline of termination proposal.
- The approval of a plan of subdivision for the termination proposal provided under the *Planning and Development Act 2005*.
- Details of payments made to a community corporation by the Proponent for the community corporation to recover costs associated with the termination proposal.
- Details of any arrangements for independent advice and representation and payments made to lot owners and lot owners who are vulnerable persons under Division 6 Subdivision 3 of the Regulations.
- The list (if any) given to the Proponent by a relevant independent advocate, of lot owners identified by the relevant independent advocate as vulnerable persons.

Each community corporation in the community scheme will be entitled to a copy or notice of the Proponent's application to SAT, and is classified as a party to the proceedings before SAT.

A community corporation that receives notice of the Proponent's application must, within 14 days of receiving the notice serve it on:

- Each owner, occupier or registered mortgagee of a lot in its community titles scheme,
- Each occupier of the common property, and
- Each person who SAT requires the notice to be served on.

If the community titles scheme constitutes or includes a retirement village within the meaning of the *Retirement Villages Act 1992* (RVA), the community corporation served with notice of the application must serve the notice on the Commissioner within the meaning in the RVA.

The tier 1 corporation has a duty to provide the record of voting to SAT together with any community development statement in force for the community scheme.

All community corporations in the community scheme have a duty to provide to SAT:

- Minutes of all the community corporation and council meetings at which the Full termination proposal was considered.
- All written submissions made to the community corporation about the termination proposal.
- If the community titles scheme is proposed to be terminated, the scheme documents for the Scheme.

At proceedings of SAT on the application, each community corporation and person required to be served with notice of the application is entitled to appear and be heard or make written submissions on the application.

4.10.2 Matters that must be considered by SAT in determining whether to confirm the termination resolution

SAT must decide whether to confirm the termination resolution and make any ancillary orders. This decision can only be made by a judicial member individually or a judicial member in conjunction with other members.

To make an order confirming the termination resolution, SAT must be satisfied of the following matters:

- For a tier 2 Scheme, that each tier 3 Scheme that belongs to the tier 2 Scheme can be terminated.
- For a tier 1 Scheme, that each tier 2 Scheme that belongs to the tier 1 Scheme can be terminated.
- That the termination process was properly followed.
- That every lot owner in a Scheme proposed to be terminated who does not support that termination (objecting owner), will receive a fair market value, or a like for like exchange for their lot.
- That the termination proposal is otherwise just and equitable.

If SAT is not satisfied on all of these matters, it must make the decision not to confirm the termination resolution.

> Just and equitable consideration

SAT must be satisfied that the termination proposal is just and equitable, taking into account:

- The interests of:
 - Lot owners in the community scheme.
 - Occupiers of lots and common property in the community scheme.
 - Registered mortgagees of lots in the community scheme.
 - Any infrastructure owners (persons who own and operate infrastructure on common property in the community scheme).
 - Any other person with an estate or interest in, or right over, a lot or the common property in the community scheme that is registered or recorded in the Register.
- Evidence of any impropriety in the termination process including evidence of:
 - Proxy votes being exercised invalidly.
 - Votes being affected by undue influence.
 - False or misleading information in the Outline or Full termination proposal.
- The proportion of owner support for the termination proposal by numbers of lots and unit entitlements of lots and in terms of each community titles scheme to be terminated and across the community scheme.
- The termination infrastructure report and options that are reasonably available to address problems identified in the report, including the extent to which contributions would need to be increased to implement such an option.
- Any arrangements for lot owners in a community titles scheme to be terminated to buy back into the subdivided land following redevelopment.
- The benefits and detriments of the termination proposal proceeding or not proceeding for all those whose interest must be considered in terms of each community titles scheme terminated, each community titles scheme not terminated and across the entire community scheme.

> Fair market value consideration

In determining whether an objecting lot owner will receive a fair market value for their lot, SAT must be satisfied that:

- 1 The lot 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* (LAA) for taking of the lot without agreement.

In considering the amount of compensation that would be payable under the LAA, SAT may award an additional amount appropriate to compensate for the taking without agreement. However, this amount may not be more than 10% of the amount otherwise awarded or offered, unless SAT is satisfied that exceptional circumstances justify a higher amount.

AND

- 2 The lot owner will not be disadvantaged in terms of their financial position due to the termination of the community titles scheme.

In considering whether an objecting lot owner's financial position would be disadvantaged, SAT is required to consider the loss or damage (if any) sustained by the lot owner due to:

- Removal expenses.
- Disruption and reinstatement of a business.
- Liability for capital gains tax, goods and services tax or another tax or duty.
- Conveyancing and legal costs, as well as other costs associated with the creation or discharge of mortgages and other interests (including for the acquisition of a replacement property).

In determining whether an objecting lot owner will receive a like-for-like exchange for their lot, SAT must consider:

- Whether the value of what is offered in exchange is equivalent to the fair market value of the current lot.
- How the location, facilities and amenity of what is offered in exchange compares with the current lot, including if the lot is proposed to be incorporated into another community titles scheme in the community scheme without a change in ownership occurring.

4.10.3 Orders that SAT can make

SAT may:

- Confirm the majority termination resolution, in which case the termination process can proceed,
- Confirm the majority termination resolution subject to specific modifications of the termination proposal, or
- Decide not to confirm the termination resolution, in which case the termination process ceases.

> Confirmation subject to modifications of the termination proposal

In circumstances where SAT is not satisfied of the above matters but would be satisfied if specific modifications were made to the termination proposal, then SAT may confirm the termination proposal subject to the modifications being made.

The modifications may include a requirement for the Proponent to make a payment to a party to a lease or tenancy agreement over a lot or common property in a community titles scheme that will be terminated as a result of the termination of the community titles scheme.

Importantly, the modifications must not have the effect of being less advantageous to any lot owner than the termination proposal is without such modifications being made.

> Ancillary orders

SAT may make ancillary orders, including orders that facilitate an order confirming the termination resolution. These can include, but are not limited to, orders that require:

- An owner to execute a transfer of ownership of the lot.
- A person with an estate, interest in or right registered or recorded in the Register over a community titles scheme proposed to be terminated, to take necessary steps for the discharge, withdrawal or removal of those interests from the Register.
- An occupier of a lot or common property to vacate the lot or common property.
- A lease, license or tenancy to be terminated and the Proponent or lot owner to compensate the lessee, licensee or tenant in respect of that termination.

> Provide notice of the decision to the Registrar of Titles

As soon as practicable after receiving notice of SAT's decision, the community corporation must lodge a notice of the decision with the Registrar of Titles. The notification is required to be provided in the form approved by the Registrar of Titles, the **Notice of termination event**.

The community corporation must also give written notice of the decision to each person who is entitled to receive notice of the application.

4.11 Application to Planning Commission to endorse approval on the plan of survey

- **Section 151 of the Act**

If a termination proposal can proceed further, following a unanimous termination resolution being passed or confirmation of a majority termination resolution being provided by SAT, the Proponent can make an application to the Planning Commission to endorse approval on the plan of survey.

In circumstances where one or more but not all community titles schemes are proposed to be terminated, the Proponent can apply to the Planning Commission to approve a scheme plan or amendment of a scheme plan in accordance with the Act [Part 3 Division 3].

In circumstances where the tier 1 community titles scheme is proposed to be terminated, the Proponent can apply to the Planning Commission to approve a diagram or plan of survey under section 145 of the *Planning and Development Act 2005* so that the land in the tier 1 Scheme will cease being subdivided by a community scheme. The termination process cannot proceed without the Planning Commission's endorsed approval of the relevant plan(s).

4.12 Winding up of the community corporation

Before a community titles scheme is terminated, an application may be made to SAT for an order for directions about winding up the community corporation.

Such an application may be made by:

- The community corporation.
- A member of the community corporation.
- A registered mortgagee of a lot in the Scheme.
- A judgement creditor of the community corporation.

The directions SAT may order include, but are not limited to the following:

- The sale or disposition of property of the community corporation, including to whom and how proceeds must be disbursed.
- The discharge of the liabilities of the community corporation.
- The administration and functions of the community corporation.

If there are any inconsistencies regarding the steps specified in a termination proposal for winding up of the community corporation, and an order made by SAT under section 152 of the Act, then the SAT order will prevail [s 152(6)].

4.13 Application to the Registrar of Titles for registration of the termination

- **Sections 153 – 157 of the Act**

The Proponent may make an application for the termination of a community titles scheme to the Registrar of Titles within 12 months of:

- A unanimous termination resolution being passed, or
- SAT's confirmation of a majority termination resolution.

If the 12-month period elapses and the Proponent has not made an application to the Registrar of Titles, then the termination process ceases.

4.13.1 Requirements of the application

The application must be made in the appropriate form approved by the Registrar of Titles – i.e., one of the following forms:

- **Application for termination of community titles scheme – termination resolution requires confirmation by the State Administrative Tribunal, or**
- **Application for termination of community titles scheme – termination resolution under section 149(6).**

The application must be accompanied by:

- Evidence in the form approved by the Registrar of Titles that the requirements of the Act for the termination of the community titles scheme have been complied with.
- For any land that is to cease being subdivided by a community scheme, by any diagrams or plans of survey endorsed with the approval of the Planning Commission under the *Planning and Development Act 2005*.
- If applicable, a statement of how each item registered or recorded for the community titles scheme in the Register is to be dealt with and disposition statements, instruments or documents necessary for that purpose.
- The relevant fee – refer to Schedule 2 'Fees payable to Registrar of Titles' in the Regulations.

In circumstances where the tier 1 Scheme is not proposed to be terminated, an application must also be made under Part 5 Division 1 of the Act for the registration of one or more community titles schemes, or the amendment of one or more community titles schemes as appropriate.

Note. It is not necessary to make an application for registration of an amendment of a tier 2 Scheme as a consequence of the termination of one or more related tier 3 Schemes if the tier 2 Scheme is also proposed to be terminated.

4.13.2 Termination comes into effect upon registration

If an application for termination of a community titles scheme has been made to the Registrar of Titles in accordance with section 153 of the Act, the Registrar of Titles is required to:

- Cancel the registration of the community titles scheme, and
- Cancel the certificates of title for the lots in the community titles scheme.

A community titles scheme is terminated when cancellation of the registration of the community titles scheme is registered or recorded by the Registrar of Titles.

4.13.3 When the termination is not proceeding

There are a range of different events which may occur throughout the termination process which bring a termination proposal to an end.

The tier 1 community corporation is required to notify the Registrar of Titles that the termination proposal cannot proceed further in the following circumstances:

- The vote on the Outline of termination proposal does not pass the required ordinary resolution or does not occur within the three-month time period following service of the Outline of termination proposal on the interested community corporations.
- The vote on the Full termination proposal does not pass a termination resolution within the six-month time period following service of the Full termination proposal by the community corporations.
- An application for the termination of the community titles scheme has not been made to the Registrar of Titles within the 12-month time period following the passage of a termination resolution that does not require confirmation by SAT.
- In respect of a termination resolution passed that requires confirmation by SAT:
 - SAT decides not to confirm the termination resolution.
 - An application for termination of the community titles scheme has not been made to the Registrar of Titles within the 12-month time period following SAT confirming the termination resolution.

The tier 1 community corporation's notification must be provided in the form approved by the Registrar of Titles, the **Notice of termination event.**

The tier 1 community corporation must also give written notice that the termination proposal cannot proceed further to:

- The Proponent of the termination proposal, and
- Each member of the community corporation and each related community corporation.

Additionally, the Proponent may choose not to proceed with the termination at any time prior to the Registrar of Titles registering the termination. If the Proponent decides not to proceed with the proposal, they must withdraw the proposal by providing written notice as soon as reasonably practicable to the community corporations that the Full termination proposal or Outline of termination proposal was required to be submitted to.

A community corporation that receives written notice of withdrawal of a termination proposal from the Proponent is required to serve the notice on the following parties within 14 days of receiving the notice:

- Each member of the community corporation.
- If the Full termination proposal has been served by the community corporation, each occupier of a lot or common property in its community titles scheme other than a member of the community corporation.
- Each registered mortgagee of a lot in its community titles scheme.

A tier 1 community corporation that receives written notice of withdrawal of a termination proposal from the Proponent, is required to lodge notice of the proposal withdrawal with the Registrar of Titles within 14 days. This notification must be provided in the form approved by the Registrar of Titles, the **Notice of termination event.**

Five



5 - Single owner termination process

- **Section 161 of the Act; Regulations 156 - 165**

5.1 Single owner of all the lots in a community scheme

If all the lots in a community scheme are owned by the same person, the process to terminate the community scheme involves minimal steps.

The owner can make an application for termination of each community titles scheme in the community scheme if the following approvals are obtained under Part 10 of the *Planning and Development Act 2005*:

- A plan of subdivision for the termination of the community titles scheme has been approved by the Planning Commission (for the parcel to cease being subdivided by a community scheme), and
- A diagram or plan of survey has been endorsed by the Planning Commission with that approval.

Once these approvals are obtained, the owner can apply to the Registrar of Titles for termination of the community scheme. The application must be made in the form approved by the Registrar of Titles, **Application for termination of community scheme by single owner**.

5.2 Single owner of all lots in a community titles scheme

If all the lots in a community titles scheme proposed to be terminated are owned by the same person, but that person does not own all of the lots in the community scheme, the Act makes provision for the Regulations to modify particular requirements of the termination proposal process.

The modifications seek to streamline the termination proposal process, through for example, not requiring the community corporation for a single owner community titles scheme to submit the Full termination proposal to each owner of a lot in its Scheme or having to comply with the requirement of convening a general meeting to consider the proposal.

The modifications to the Act are set out in Part 14 Division 2 of the Regulations [r 158 – 163] and the modifications to the Regulations are set out in Part 14 Division 3 of the Regulations [r 164-165].

Appendix 1 | Reports in the Full termination proposal

- **Section 147 of the Act; Regulations 119 - 123**

The termination infrastructure report

The form approved by the Registrar of Titles, **Termination infrastructure report** is available on Landgate's website.

A termination infrastructure report is required to contain:

- A report from a structural engineer on the state and condition of each scheme building and infrastructure comprising common property, in each community titles scheme proposed to be terminated.
- A report from a building service contractor registered under section 18 of the *Building Services (Registration) Act 2011* about the work that would be needed to repair or replace scheme buildings and infrastructure, taking into account the report of the structural engineer.
- A report from a quantity surveyor estimating the cost to repair or replace the scheme buildings and infrastructure.

A person who prepares and certifies a termination infrastructure report cannot be the Proponent or an associate of the Proponent.

The termination valuation report

The form approved by the Registrar of Titles, **Termination valuation report** is available on Landgate's website.

The termination valuation report is required to contain a valuation report prepared and certified by a licensed valuer setting out a valuation of the market value of each lot in a community titles scheme proposed to be terminated.

The market value of a lot is to be determined using a sales comparison approach taking into account the following factors:

- Relevant recent sales history,
- The highest and best use of the lot, and
- The value attributable to the owner's interest in common property.

The termination valuation report must be current within a period of three months before submission of the Full termination proposal.

A person who prepares and certifies a termination valuation report must provide a copy of the report to the Valuer-General within 14 days after the day on which the report was completed.

A person who prepares and certifies a termination valuation report cannot be the Proponent or an associate of the Proponent.

Appendix 2 | Information about vulnerable persons

- **Regulations 135 – 140**

Definition of vulnerable person

A lot owner is a vulnerable person if the owner is an individual in a community titles scheme that is proposed to be terminated and is someone with a diminished capacity to understand, cope with or respond to the termination proposal.

The following lists include potential reasons for a person to be classified as vulnerable, however please note that they are not exhaustive.

A person's capacity to understand the termination proposal process can be diminished because:

- They have difficulty reading or understanding English (because a person is from a non-English speaking background).
- They have a visual impairment that results in difficulty reading written information.
- They have a hearing impairment that results in difficulty hearing oral discussions.
- They are illiterate.
- They are under 18 years of age.
- They have a cognitive impairment that results in difficulty with complex decision-making.
- They have a mental illness that affects understanding.

A person could have a diminished capacity to cope with a termination proposal because they have:

- An illness or disability that impacts on mobility.
- An abusive relationship or other personal circumstances that impact their ability to make an informed, independent decision in relation to a termination proposal.
- A mental illness or disorder, such as an anxiety disorder.
- Frailty, poor health or serious illness.
- Social isolation.
- A recent traumatic life event such as divorce or bereavement.

A person has diminished capacity to respond to the termination proposal process if:

- There are socioeconomic factors that impair their ability to access the professional advice or other services required to make an informed decision in the termination proposal process. This could be because of factors such as unemployment or dependency on a government pension, benefit or allowance.

Identification of vulnerable persons to the Proponent

The independent advocate must provide a list of owners that are classified as vulnerable persons to the Proponent, at least 14 days before the Full termination proposal is put to a vote. However, the independent advocate must not disclose to the Proponent the class of the vulnerable person or why they have identified certain lot owners as falling within a particular class of vulnerable person.

Lot owner's right to apply to be registered as a vulnerable person

At any time after notice of a Full termination proposal is served, a lot owner may apply directly to the Proponent to be recognised as a vulnerable person. If they do so, they must identify the class of vulnerable person within which they claim to fall but are not required to provide any evidence. The intention of this measure is to protect the privacy of the person concerned.

Proponent's decision about claim of vulnerability

If a lot owner is identified by the independent advocate as a vulnerable person or applies directly to the Proponent to be recognised as a vulnerable person, then the Proponent is required to decide whether to recognise or refuse to recognise the owner as a vulnerable person.

If the Proponent recognises a lot owner as a vulnerable person:

- The Proponent must serve notice in writing of their decision on the owner and the trustee.
Note. Where a lot owner is recognised as a vulnerable person as a result of applying directly to the Proponent, the notice served on the trustee must identify the class that the vulnerable person falls within.
- The trustee must treat the lot owner as a vulnerable person for the purposes of any claim for payment made against the trust.

If the Proponent refuses to recognise a lot owner as a vulnerable person, they must serve notice in writing of their decision on:

- The owner, and
- The independent advocate (if the owner was identified by the independent advocate as a vulnerable person).

If there is a dispute between the Proponent and a lot owner as to whether they should be recognised as a vulnerable person, the independent advocate may represent the owner in SAT proceedings. The independent advocate must respect privacy considerations.

Trustee's right to obtain information from independent advocate

To verify whether a vulnerable person is eligible for payment from the trust for a particular ancillary service, the trustee may request the independent advocate to disclose the class of vulnerable person that the lot owner falls within.

If the trustee requires this information, they must make a written request to the independent advocate. The independent advocate is obliged to comply with the request, however they must not disclose the reasons as to why the lot owner was identified as falling within the class of vulnerable person.

Funding for vulnerable owners

The Proponent must recognise lot owners as vulnerable before the additional funding is released for them. If the Proponent does recognise a person as vulnerable, they must let the trustee know, so that the additional funds can be released.

Appendix 3 | Information about the trust

- **Regulations 141 – 155**

The Proponent is required to establish a trust that provides payment to lot owners in a community titles scheme proposed to be terminated to enable the lot owners to obtain independent legal advice or representation, valuation advice or reports, or financial or taxation advice in connection with the termination proposal.

Note. If the Proponent is the owner of all the lots in all of the community titles schemes proposed to be terminated (but not all the lots in the community scheme), then the Proponent is not required to establish a trust [r 165].

The trust is required to be established before the day on which the Full termination proposal begins, this means, prior to when the Proponent serves the Full termination proposal on the community corporation(s).

If there is a dispute about the performance of the trustee, the affected lot owner can make an application to SAT for it to be resolved.

Reimbursement of lot owners for services incurred in connection with the termination process

The trustee is required to reimburse a lot owner in a community titles scheme proposed to be terminated for costs or expenses that are reasonably incurred by the lot owner in connection with obtaining the following services:

- Advisory services obtained during the Full termination proposal period.
- Representation services obtained during the SAT confirmation period (only if the lot owner did not cast a vote in favour the termination proposal).

Additionally, a lot owner who is recognised as a vulnerable person must be reimbursed for costs or expenses that they reasonably incur in connection with obtaining the following services:

- Ancillary services obtained during the Full termination proposal period.
- Ancillary services obtained during the SAT confirmation period (only if the lot owner did not cast a vote in favour of the termination proposal).

The total amount of money reimbursed to the lot owner must not exceed the guaranteed payment amount for the lot. The guaranteed payment amount for a lot is set out in regulation 146 and the amount depends upon whether the lot owner is recognised as a vulnerable person.

The trustee must not reimburse a lot owner for any cost or expense incurred in connection with obtaining one of the above listed services, if that service was obtained from the Proponent who established the trust or an associate of the Proponent.

Additionally, the trustee is not permitted to reimburse a lot owner for any cost or expense incurred in connection with a service, if the service was obtained after the day on which the community corporation served notice on the lot owner that the Proponent had withdrawn the termination proposal, or after the day on which the tier 1 community corporation provided written notice confirming the fact that a termination proposal could not proceed any further.

Claims for payment under the trust

To reimburse a lot owner, the trustee may require the lot owner to provide an invoice or other written evidence of the amount paid or payable in support of a claim for payment from the trust.

If the lot owner has provided an invoice or other written evidence of an amount payable to a service provider to the trustee at least seven days before the payment is due, then the trustee is required to ensure that the amount is paid either directly to the owner or the service provider before the due date.

The terms of the trust may specify:

- The procedure for claiming payments from the trust.
- The evidence of amount paid or payable that must be provided by the trustee.
- How claims will be paid.

Trust account and records

The funds held by the trustee under the trust must be kept in an authorised deposit-taking institution (ADI) trust account, and the name of the account must include the words “trust account” [r149].

The trustee is required to make and keep records of all amounts received into or paid from the trust account, as well as retain a copy of all claims for payment made against the trust.

These records must be provided to SAT by the trustee within seven days after receiving notice from the tier 1 community corporation that an application has been made to SAT for confirmation of a termination resolution.

The period of time trustee records are required to be retained for is set out in the Regulations [r 152].

Winding up of the trust

As the termination process comes to an end, further claims cannot be made from the trust. For example, a lot owner cannot make a claim for payment of a service more than three months after:

- The end of the period of the termination proposal process during which the service was obtained.
- The day on which the community corporation serves notice on lot owners that the Proponent has withdrawn the termination proposal.
- The day on which the tier 1 community corporation provides notice confirming that the termination proposal cannot proceed any further.

The trust must not be wound up until the trustee is satisfied that all persons entitled to make a claim for funding have no further claim to make and all outstanding claims for payment from the trust have been paid or resolved.

The trustee is entitled to be satisfied that a person will have no further claim for funding from the trust if:

- The person has confirmed in writing that they do not intend to make a further claim, or
- The time within which the person may make a claim for funding from the trust has expired.

After the trust is wound up, any remaining funds may be paid to the Proponent.

Appendix 4 | How the record of vote is handled

- **Regulations 128 – 129**

At the vote on the Full termination proposal, there are special arrangements put in place to try and avoid a situation where lot owners might be subject to undue influence to try to get them to change their vote.

The independent vote counter must make a record of each vote identifying which lot it was for, the date of the vote and a tally of the votes.

At the same time as providing each community corporation in the community scheme with written notice of whether the termination resolution was passed and whether confirmation by SAT is required, the independent vote counter must provide the record of votes for each community titles scheme.

If confirmation of the termination resolution by SAT is required, the independent vote counter must provide the record of votes to the tier 1 community corporation as soon as reasonably practicable after the tier 1 community corporation requests the record of votes. The record of votes must be provided in a secure electronic format, which is referred to in the Regulations as a “sealed record of votes.”

As soon as practicable after receiving the sealed record of votes, the tier 1 community corporation must provide a copy to the trustee. This is necessary as the trustee is required to know which objecting owners are permitted to access the additional funding for representation at SAT.

The tier 1 community corporation is not permitted to view or access the information contained in the sealed record of votes unless they are required to do so to enable it to exercise its functions in relation to the termination proposal or to comply with another law. Additionally, the tier 1 community corporation cannot disclose the information contained in the sealed record of votes to anyone, unless they have received SAT’s consent to do so.

Appendix 5 | Notification of termination events

At certain points in the termination process the tier 1 community corporation is required to notify the Registrar of Titles when certain events have occurred.

These events include:

- Receipt of an Outline of termination proposal [s 141(6)].
- Receipt of a Full termination proposal [s 145(5)].
- Notification of withdrawal of a termination proposal by the Proponent [s 156(3)].
- Termination proposal cannot proceed further [s 157(2)(a)].
- Termination resolution is passed [s 149(10)(a)].
- Notice of application made to SAT for confirmation of majority vote [s 150(7)].

In addition, a community corporation that receives notice of a SAT decision on an application to confirm a termination resolution must lodge a notice of the decision with the Registrar of Titles and give notice of the decision to each person who was entitled to receive notice of the application [s 150(24)].

The notification is required to be provided in the form approved by the Registrar of Titles, the **Notice of termination event**.

Disclaimer of liability

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