

# Leasehold strata schemes: an introduction

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The amendments to the *Strata Titles Act 1985* (WA) will see a new form of land ownership, leasehold strata schemes, introduced to Western Australia. Leasehold strata will operate under the same framework as existing strata and survey-strata schemes. However, they contain some key differences that may be relevant to developers and prospective buyers.

## What are leasehold strata schemes?

A leasehold scheme is a new type of strata scheme in which all lots in the scheme are subject to a fixed-term lease of between 20 and 99 years. People will be able to buy and own long-term leases of lots within the strata scheme, and easily sell their lease without consent of the landlord. The fixed term of leasehold schemes make it ideal for organisations to retain ownership of the land while preparing it for development.

## How do they differ from current freehold strata title schemes?

The major point of difference is that each lot and common property will be subject to a registered strata lease. These strata leases are not the same as freehold strata schemes where the lots are owned by individuals. The effect of a strata lease is that the person who buys a strata lease effectively becomes a long-term tenant where ownership will be limited to the length of the lease. Freehold strata title schemes have no such limitation.

The lease of every lot in a leasehold scheme will expire on the same date, and each lot owner will have a certificate of title for the leasehold interest in the lot.

## Key Points

- Leasehold schemes are a form of land ownership where lots in a strata scheme are owned for a fixed period between 20 and 99 years
- When the fixed period ends, ownership of the lots returns to the leasehold scheme owner

## Leasehold scheme rights and responsibilities

The **owner of a lot** in a leasehold scheme:

- is the individual in possession of the lot under a strata lease (the lessee);
- is registered on the certificate of title for the lot as the proprietor of the relevant strata leasehold estate in the lot;
- is responsible for payment of rates and taxes;
- must comply with the by-laws of the scheme and the terms of their strata lease; and
- does not need the consent of the owner of the scheme to sell, transfer or dispose of their lot, or mortgage the lease in the leasehold scheme, except in circumstances outlined by the regulations.

The **owner of a leasehold scheme**:

- is the lessor under a strata lease;
- is the registered proprietor of the parcel;
- is entitled to possession of the lot upon the expiry or termination of the scheme;
- has limited rights of re-entry; and
- is not responsible for the maintenance of the lot.

Strata companies are responsible for managing leasehold strata. Lessees are members of the strata company and may decide how the strata scheme will be managed in accordance with the by-laws of the scheme.

## Why are leasehold schemes useful?

The creation of leasehold strata schemes will potentially give landowners and developers more flexibility when designing housing. On the one hand, land can be released to provide a certain type of housing. On the other hand, the original owner does not lose the land forever.

This flexibility might encourage organisations into the property market that might not otherwise permit development of land that they own. There may be institutions such as churches and universities or other foundations, which are not permitted under their constitution to sell or transfer land. Such institutions might not also want to create a multi-dwelling development and act as landlord over all the dwellings.

Leasehold schemes can also potentially be used as an alternative form of tenure for retirement villages.

This new form of ownership could encourage government agencies to develop land where there is a strategic desire to maintain long term control.

Finally, leasehold certificates of title could simplify financing because they will be recognised by lending bodies, providing mortgagees with the protection of a power of sale.

This will help those who are prepared to be very long-term tenants and need finance to secure the property they wish to reside in or do business from.

## Impact on existing strata schemes

The new provisions will not affect existing strata schemes as those schemes are not leasehold schemes.

## When will leasehold schemes come into effect?

The legislative amendments that introduce leasehold schemes into Western Australian law are expected to come into effect at the end of 2019. Those amendments will be accompanied by a range of regulations to assist in the operation of the Act as a whole.

## Conclusion

Leasehold schemes will provide an alternative form of land ownership and development whereby lots within a strata scheme are owned for a fixed term. This advancement in property law will increase development opportunities and provide greater choice for buyers, all of which may serve to benefit the community as a whole.

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