

# Know your boundaries

Where your property starts and finishes is one of the first things you should know before buying a strata-title investment. **Shane McNally**

**A**ROUND Australia, commonsense plays a major role in defining common and private property but the experts urge investors to take nothing for granted. Understanding your rights and obligations, they say, could prevent a lot of heartache and expense at a later stage.

The states and territories vary in their strata-title laws and what is the rule of thumb in one state may not be the case in another. We've asked the various experts to explain.

## New South Wales

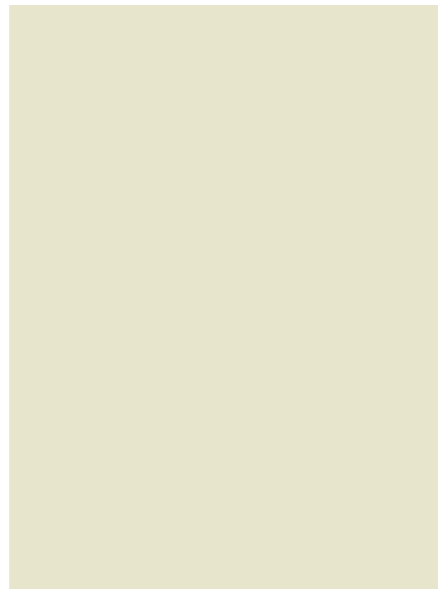
Wally Patterson from Dynamic Property Services advises buyers to study the registered strata plan. He says common property is any area of land or a building not included in a specific lot and that boundaries are generally formed by the upper surface of the floor, under surface of the ceiling and external boundary walls including doors and windows.

"The owners' corporation looks after the common property including all repairs, unless agreed by a special resolution," he adds. "This includes replacing and renewing common property."

Patterson says floors including ramps and stairways, external walls, wiring and pipes servicing more than one lot, the slab dividing two storeys and even balcony doors could and often do constitute common property.

## South Australia

Anna Edwards of the Community Titles Institute SA says there's great misunderstanding surrounding strata and community corporations. She's still surprised how often people "willingly commit to these purchases" without fully understanding what they're buying and advises them to read SA's two acts governing body corporate living – the *Strata Title Act of 1988* and the *Community Title Act of 1996*.



Edwards says, subject to any explicit statement to the contrary, a unit's boundaries are defined by the inner surface of the wall or fence, the upper surface of the floor and the under surface of the ceiling or roof.

Common property comprises:

- any land or space not within a unit;
- any pipe, cable, wire, duct or drain not for the exclusive use of a unit;
- any structure not for the exclusive use of a unit installed before the deposit of the strata plan;
- any structure installed by a strata corporation as part of common property;
- subject to any explicit statement to the contrary, a wall or fence;
- the area between a building that forms part of a unit and a subsidiary to that unit.

## Victoria

In Victoria, when a plan of subdivision is registered, designated common or shared property is created and a body corporate is deemed to exist.

Institute of Body Corporate Managers

president Andrew Dawson says the balance of property on the plan of subdivision is generally private property plus easements.

"So as to determine private or common property, an apartment owner makes reference to the relative plan of subdivision which is always in the contract of sale," he adds. "The plan of subdivision clearly defines private lots and common boundaries."

## Western Australia

Strata Titles Institute WA officer Suzie Oates urges buyers to carefully study the strata plan before committing to an investment.

"Definitely get a copy of the strata plan and the relative bylaws because something may be common property but they may be responsible for repairing and maintaining it," she adds. "The general rule is any area that everyone has access to or can use. So you'd have a common driveway, common walkway, lift, that sort of thing."

Oates warns, particularly with apartments, there may be some conjecture over which areas are common and private.

"In WA, we're finding more and more often that plans are different and there's no rule of thumb anymore. You really have to go back to your strata plan to see how the surveyors divvied it up."

## Tasmania

Tasmanian Office of the Recorder of Titles senior strata adjudicator Gary Peterson says common property varies from plan to plan. The strata plan therefore needs to be examined to determine the boundaries between lots and common property.

"Common property within a strata site is all the land which isn't part of a private lot," he says. "Common property also includes service infrastructure such as cables, wires, pipes, drains, ducts and plant and equipment which are used to

provide services to lots and common property. It also includes the land above and below the boundaries of lots, which could include land below the surface of the earth and above the roof line of the building as well as parts of buildings."

Peterson says apartment boundaries are often determined by the centre line of the walls, floors and ceiling of the building, with everything beyond the centre line constituting common property.

"In other cases the whole of the building may be a private lot," he adds.

## Queensland

Community Titles Institute of Queensland vice president Alan Buckle says too many strata investors get into trouble because they don't read the disclosure statement. He says defining common and private property isn't difficult if the buyer reads the information provided.

"When a body corporate is created, there can only be two types of property," he says. "One is the part the people buy as lots, which could be an apartment or an office. What's not in those boundaries on a survey plan is common property. That usually includes exterior grounds and the exterior façade of a building, including walls and doors. Exterior surfaces are usually common property and the responsibility of the body corporate."

Buckle says that, under Queensland legislation, a comprehensive disclosure statement contains a copy of the survey plan showing all lots and what comprises common property.

## The states and territories vary in their strata-title laws and what is the rule of thumb in one state may not be the case in another.

"In an apartment situation, the basement, foyer and rooftops are common property. The plans will show the boundaries and size of the lot and whether it's in parts such as a separate carpark. The disclosure statement carries a copy of the survey plan showing what you're buying in thick black lines."

## Northern Territory

In the NT, according to Lorelei Fong Lim of the Department of Justice, common property means part of a parcel not within a unit. Units and common property, she says, are defined in the registered Units Plan and clearly marked.

"As for apartments, owners would need to search the Unit Plan at a cost of \$15 from the Land Titles Office," she adds. "The outline of a unit is clearly shown in thick black lines and marked with the unit number and the common property is labeled as such. Generally any area not marked in a unit is the common property."

## Australian Capital Territory

Canberra Units Plan Services principal Peta

Ribbens says buyers should understand the difference between A and B class developments when investing in ACT strata property.

"It differs between two types of bodies corporate," she says. "There's the A-class development, which is high-rise blocks of units and the B-class or townhouse developments. The moment you've got someone living above you so that they take that airspace above you, it turns into an A-class because it's much simpler for repair and maintenance. But if nobody lives above you, even if you've got a two or three storey townhouse, it becomes a B-class because it's quite clear who's responsible for what."

Ribbens says A-class developments have clearly defined common property. This includes external areas such as windows, walls, roofs, common stairwells, corridors, gyms, spas, swimming pools, grounds and driveways. B-class or townhouse development common areas would be the main driveway and communal garden areas, including tennis court, swimming pool or letterbox banks. ■