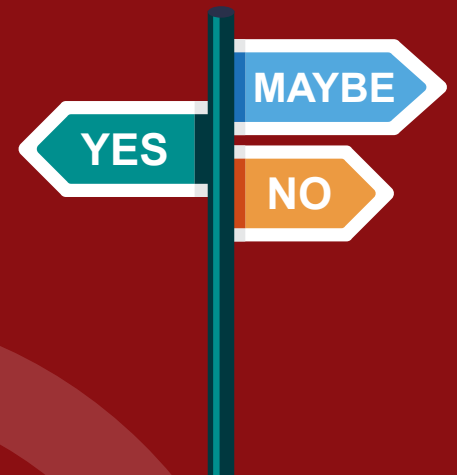


# Resolving disputes

## Five step approach to resolving a dispute

### Common strata disputes



## Five step approach to resolving a dispute

### Step 1 | Understand the dispute

It is important that you first understand the nature of your dispute before approaching the other party involved or the strata company. To help you check your facts and consider exactly how the dispute arose, it is recommended that you: ask yourself, “how did the dispute arise?”

- Write a list of the events leading up to the dispute and highlight the key points, including details of the issues you would like to be resolved.
- Check the *Strata Titles Act 1985* (STA) and your scheme’s by-laws to clearly understand what they say about the matter in dispute.

If you do not have a copy of the by-laws for your strata titles scheme, you should request a copy from your strata company in the first instance.

If you are unable to ascertain the by-laws for your scheme, by-laws that have been registered at Landgate can be ordered online on our website through our Certificate of Title/associated documents page.

To help you locate the by-laws for your scheme, the scheme by-law document number is endorsed on the last page of the strata/survey-strata plan.

## Step

## 2

### Talk to the other party involved

Many strata disputes arise due to misunderstandings. By talking to the other party involved, it may help to clarify the issue and resolve the dispute before it needs to be progressed further. If you don't feel comfortable directly approaching the other party, consider bringing a support person with you such as a family member or friend, or expressing your concerns in writing.

Some points to remember when dealing with the other party include:

- Remain calm, polite, and professional in your spoken or written communications. Avoid using abusive or emotional language or laying blame.
- Carefully plan out what you are going to say so that you can present your concerns as clearly as possible.
- Try to remain objective and understand the other party's position.

Many strata titles schemes will also have their own internal processes for resolving disputes that occur between lot owners and residents, the strata company/strata council, the strata manager and/or third parties. Internal processes for resolving disputes within your scheme may be set out in your scheme's by-laws or other rules the strata company has made.

## Step

## 3

### Approach the strata company/strata council

Many issues can be considered and decided upon by a resolution of the strata company.

You can raise your issue with the strata company/strata council. You can submit a written request to any member of the council, for the matter to be listed on the agenda for consideration at the next council meeting or general meeting of the strata company.

The strata company and strata council have a duty to act in the best interests of the lot owners. Additionally, the STA requires a strata company to have the objective of achieving outcomes that are not:

- unfairly prejudicial to or discriminatory against an owner or occupier, or
- oppressive or unreasonable.



## Step

## 4

### Consider alternative dispute resolution methods

If you have not been able to resolve the issue by talking to the other party involved, or through raising the issue with the strata company/strata council, mediation is commonly considered to be a useful method to resolve strata disputes.

Mediation is an informal negotiation process whereby an unbiased and independent third party (the mediator) assists those involved in the dispute to achieve their own settlement.

If you need assistance with accessing a mediation service in WA, the Citizens Advice Bureau of WA may be able to provide information.

Their contact details are:

Tel: +61 (0)8 9221 5711

Web: [cabwa.com.au](http://cabwa.com.au)

## Step

## 5

### Apply to the State Administrative Tribunal

Where attempts to resolve the dispute informally have been unsuccessful, a formal process for dispute resolution is available via the State Administrative Tribunal (SAT).

SAT is the one-stop-shop for strata disputes in Western Australia, with an exception being the recovery of unpaid levies which are dealt with through the court system.

It is an independent body that makes and reviews a range of administrative decisions. SAT's approach is informal, flexible, and transparent. It is not a court, and strict rules of evidence do not apply to proceedings.

## Statutory powers of SAT

The SAT has the statutory powers to efficiently resolve strata disputes between participants in a strata titles scheme, such as:

- a strata company
- a lot owner
- an occupier of a lot in the scheme
- an owner of a leasehold scheme
- an administrator of a strata company
- the mortgagee of a lot
- a member of the strata council
- an officer of the strata company.

## Examples of disputes the SAT might review

- The owner of sustainability or utility infrastructure that has been installed on the common property (through a contract with the strata company) and the strata company, about the matter connected with a common property (utility and sustainability infrastructure) easement.
- The scheme developer and a strata company about matters involving the first AGM, key documents of the scheme, disclosure of remuneration and other benefits.
- The strata company and a designated person about the giving of contact information, inspection of material and the giving of certificates.
- A strata manager, or former strata manager, and the strata company about matters involving the authorised functions of a strata manager or the strata management contract.
- A buyer or prospective buyer of a lot in a scheme and the seller of a lot about the giving of information to the buyer before or after the contract, the exercise of avoidance rights under the STA and other matters covered in the 'Protection of buyers' part of the STA.

- An occupier of a lot in the scheme and the owner of the lot or the proponent about a proposal to terminate a strata titles scheme.

## How to apply to SAT

Applications can be made to SAT by visiting their website: [sat.justice.wa.gov.au](http://sat.justice.wa.gov.au).

Keep in mind that depending on the type of application you are making, there may be a time limit for applying to SAT. Check the STA to see if there is a time limit for your dispute. Other information can be found on the SAT website.

## SAT's procedures

Once SAT accepts your application, you will be required to give a copy of the application and all the documents which you submit with it to each respondent named in your application.

The next step is usually a directions hearing to decide how to move forward.

## SAT decisions database

It's also worth noting that the SAT website provides access to a decisions database, which contains the outcome of decisions made by SAT. This database includes decisions made pursuant to the STA.

You may wish to check through the database for decisions that may be similar to a current dispute in your strata titles scheme, as the documented decision may assist in your dispute resolution process.

The decision database can also be found at [sat.justice.wa.gov.au](http://sat.justice.wa.gov.au).

## ► Common strata disputes

The below information sets out some common issues experienced within strata titles schemes and practical steps to help you reach a resolution.

Disclaimer: These examples serve as a guide only and do not constitute legal advice.

### **Breach of by-laws** For example, unauthorised parking, excess noise, nuisance.



#### **1. Understand the issue**

Check the STA and your scheme's by-laws to ensure that there is a by-law which prohibits the resident from undertaking the particular action. For example, if the resident is parking on common property, is there a by-law which prohibits this from occurring?



#### **2. Talk about the issue**

Raise the issue with the person who is responsible for the breach and/or advise the strata company or strata council. The strata company can give a written notice to a person alleged to have contravened the scheme by-laws.



#### **3. Apply to SAT**

If the conduct continues, the strata company can make an application to SAT for an order to enforce a by-law, including an order to pay a penalty.

### **Damage to a lot** For example, by water.



#### **1. Understand the issue**

Check and compile your facts on how the water damage occurred and the extent of the damage – that is, does the water damage only affect your lot, another owner's lot, or common property? This is important to determine whether you are personally responsible to repair the damage, or whether it is the responsibility of the strata company.



#### **2. Talk about this issue**

Raise the issue with the strata company, strata council, or the strata manager. Check to see if your scheme has an internal dispute resolution process set out in the by-laws.



#### **3. Approach the strata council**

Raise the matter with the strata council. It may be appropriate for the issue to be included on the agenda of the next council meeting or general meeting of the strata company for consideration. The request must be in writing.



#### **4. Mediation**

If the issue is not resolved by resolution of the strata company, consider using mediation to reach an agreed outcome.



#### **5. Apply to SAT**

If the issue remains unresolved, apply to SAT for a determination.

## Common property requires repair



### 1. Understand the issue

Check and compile your facts on the common property that requires repair – that is, what is the extent of the damage/what needs repairing?



### 2. Talk about the issue

Raise the issue with the strata company, strata council, or the strata manager. Check to see if your scheme has an internal dispute resolution process set out in the by-laws or rules (if any).



### 3. Approach the strata council

Raise the matter with the strata council. It may be appropriate for the issue to be included on the agenda of the next council meeting or general meeting of the strata company for consideration. The request must be in writing.



### 4. Mediation

If the issue is not resolved by resolution of the strata company, consider using mediation to reach an agreed outcome.



### 5. Apply to SAT

If the issue remains unresolved, apply to SAT for a determination.

## Obtaining exclusive use of common property



### 1. Understand the issue

Check the STA and your scheme's by-laws to determine whether there are any by-laws which prohibit exclusive use of common property being requested.



### 2. Talk about the issue

Raise your request with the strata company/strata council.



### 3. Apply in writing to the strata company to create an exclusive use by-law

Exclusive use by-laws are governance by-laws which require a resolution of the strata company to be passed. In schemes of two lots, a unanimous resolution is required, and in all other schemes, a resolution without dissent is required.



### 4. Mediation

If you do not obtain the required resolution of the strata company to pass the exclusive use by-law, and wish to progress the denied request, consider using mediation to reach an agreed outcome.



### 5. Apply to SAT

If the issue remains unresolved, apply to SAT for a determination. SAT is empowered to resolve disputes regarding a resolution or decision of the strata company/ strata council including its validity.

## Disagreeing with a decision made by the strata company/ strata council



### 1. Understand the issue

Check and compile your facts – that is, what was decided by the strata company/strata council and what are your concerns with this decision. Check the STA to understand what duties the strata company/council has to fulfil.



### 2. Talk about the issue

Raise the issue with the strata company, strata council, or the strata manager. Check to see if your scheme has an internal dispute resolution process set out in the by-laws or rules (if any).



### 3. Approach the strata council

Raise the matter with the strata council. It may be appropriate for the issue to be included on the agenda of the next council meeting or general meeting of the strata company for consideration. The request must be in writing.



### 4. Mediation

If the issue is not resolved by resolution of the strata company, consider using mediation to reach an agreed outcome.



### 5. Apply to SAT

If the issue remains unresolved, apply to SAT for a determination. SAT is empowered to resolve disputes regarding a resolution or decision of the strata company/ strata council, including its validity.

## Dissatisfied with strata manager



### 1. Understand the issue

Check and compile your facts to understand what the strata manager has or hasn't done and compare it with the STA to understand the duties of strata managers. Understand that the strata manager is engaged by the strata company, so ultimately it is the strata company that must decide if any action is to be taken.



### 2. Talk about the issue

Raise the issue with the strata company or strata council, explaining your reasons for being concerned. The strata manager is engaged by the strata company, so ultimately it is the strata company that must decide if any action is to be taken.



### 3. Next steps

Under some circumstances it is possible for the strata company to terminate the strata management contract - for example, if the strata manager has been dishonest or not followed the STA. Refer to the STA to see the full process for terminating the contract or refer to 'The role of strata managers' section in this guide. Note that the strata manager has the right to apply to SAT for a review of the decision to terminate the contract.