**In this document the following terms are used:**

***Act***means the *Community Titles Act 2018*

***Full 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 Scheme 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 proposal is submitted, who is independent of the community corporation and Proponent, to provide an independent review and assessment of the Full proposal under section 146 the Act

***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
* this 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 2 or more such persons, who proposes to terminate one or more Schemes in the community scheme

***Registrar of Titles* (RoT)** 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

This document sets out in general terms 4 stages (A-D) and 10 steps involved in terminating a Scheme under Part 11 Division 1 of the Act.

**A – The proposal**

| **Steps** | **Process** | **Consequences** | **Voting requirements** |
| --- | --- | --- | --- |
| 1 - Prepare the Outline of termination proposal | The Proponent prepares an Outline of termination proposal.  | The Proponent can withdraw from the termination process at any time before registration occurs at Step 10.   When lot owners receive the Outline of termination proposal, they may wish to seek their own advice about the proposal at their cost. The Proponent is not required to make funding arrangements for advice and representation in respect of the Outline of termination proposal. |  |
| 2 – Distribute the Outline of termination proposal  | The Proponent submits the Outline of termination proposal to the community corporation of each Scheme proposed to be terminated in a community scheme and to each related community corporation.  A community corporation to which the Outline of termination proposal is submitted must serve it on the owners and registered mortgagees of lots in the Scheme within 14 days of being given the proposal. | The tier 1 corporation lodges a notice with the RoT that the Outline of termination proposal has been received. This action allows the notice to be recorded against certificates of title for the lots and ensures those searching the title can see a termination proposal is active. |  |
| 3 – Vote on the Outline of termination proposal | Owners and registered mortgagees of lots if relevant, have 3 months to consider the Outline of termination proposal.   The community corporation can pass an ordinary resolution in support of considering a Full proposal within 3 months of receiving the Outline of termination proposal.    | Safeguard provisions to prevent too many proposals being submitted to owners are triggered. (See section 141(2) of the Act for details)  The termination proposal can proceed if the ordinary resolution(s) are passed.  If the required resolution(s) are not obtained the Outline of termination proposal comes to an end. The tier 1 corporation must notify the RoT that the Outline of termination proposal cannot proceed. (See section 157(1)(a) of the Act)The Proponent has 12 months from the ordinary resolution(s) being passed to submit a Full proposal to every community corporation of a Scheme in the community scheme.  | Ordinary resolution must be passed in favour of considering a Full proposal by each community corporation for a Scheme proposed to be terminated and by each related community corporation.Under section 106(6) of the Act 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. Under section 106(5)(b) of the Act, the value of the vote is the unit entitlement of the lot or tier parcel.For a 2-lot Scheme, an ordinary resolution on an Outline of termination proposal is taken to be passed if the vote attached to 1 of the lots is cast in favour of the resolution (regardless of the unit entitlement of the lot). |
| 4 – Obtain planning approval | The Proponent applies to the Planning Commission to approve one or more plans of subdivision for the termination proposal (that is for 1 or more tier parcels to cease being subdivided by a Scheme).  | The process can only proceed if the Planning Commission approves the plan(s) of subdivision.   |  |
| 5 – Develop Full proposal | The Proponent develops a Full proposal.  A Full proposal is extensive (see section 147 of the Act).  The Proponent must establish the trust for the funding arrangements for owners of lots in a Scheme proposed to be terminated and Vulnerable persons **before** submitting the Full proposal.  The Proponent submits the Full proposal to **all** the community corporations for Schemes in the community scheme.  | If 12 months elapses from the ordinary resolution(s) on the Outline of termination proposal and the Proponent has not submitted the Full proposal to all the community corporations in the community scheme, then the termination process ceases.  The Proponent cannot submit a Full proposal during any period that the SAT has prohibited termination proposals being submitted to the community corporation for a Scheme, on application by the community corporation for that Scheme.If the trust is not established and the SAT later reviews a termination resolution, the SAT may not confirm the resolution.   |  |

**B – The vote**

| **Steps** | **Process** | **Consequences** | **Voting requirements** |
| --- | --- | --- | --- |
| 6 – Distribute Full proposal | A community corporation in receipt of a Full proposal has 14 days to serve it on:* owners, occupiers, registered mortgagees and caveators of lots in its Scheme;
* a person whose interest in a lot as a lessee, tenant or mortgagee is recorded in the scheme contacts register of the community corporation; and
* occupiers of common property in its Scheme.

 The tier 1 corporation must notify the RoT that it has received a Full proposal.  A community corporation in receipt of a Full proposal must appoint an Independent Advocate and provide the Full proposal to the Independent Advocate.  The Independent Advocate reviews the Full proposal, provides an independent assessment of the proposal to the community corporation that appointed the Advocate and gives a presentation on the Full proposal to persons the community corporation served with the Full proposal.  The Independent Advocate’s assessment depends on whether the appointing community corporation’s Scheme is proposed to be terminated.If the Scheme is proposed to be terminated, the Independent Advocate’s assessment must address the following matters:* 1. whether the Full proposal contains all the information required under section 147 of the Act;
	2. whether the Full proposal appears feasible and fair to the owners of lots in the Scheme; and
	3. whether the arrangements for occupiers of lots or common property in the Scheme are appropriate.

If the appointing community corporation’s Scheme is proposed to be terminated, the Independent Advocate must endeavour to identify owners classified as Vulnerable persons in accordance with Regulation 136 and advises the Proponent. All owners in Schemes proposed to be terminated can access funding from the Trust established by the Proponent for advisory services in connection with the Full proposal and owners in such Schemes classified as Vulnerable persons can access ancillary services as well. If the Scheme is not proposed to be terminated, the Independent Advocate’s assessment must address whether the Full proposal contains all the information required under section 147 of the Act and the effect that the Full proposal will have on the owners of lots in the Scheme.Funding from the trust established by the Proponent is not available to owners in Schemes that will vote on the Full proposal but are not Schemes that are being terminated. A community corporation can call as many meetings as necessary to consider the Full proposal. If the Proponent is a member of the community corporation, the members present at a meeting may, by ordinary resolution for which no notice is required, require the Proponent to leave the meeting while the Full proposal is being discussed or, if the Proponent is not a member, to be absent for the whole meeting.The council of a community corporation may discuss the Full proposal with the Proponent, inform its members of those discussions and any information provided by the Proponent and make recommendations to the members on the Full proposal.Community corporations and councils of community corporations in the community scheme can convene joint meetings to consider the Full proposal. | * The Proponent makes the decision on who a Vulnerable person is, either accepting or rejecting the recommendation of the Independent Advocate.

 * An owner can dispute the Proponent’s decision concerning vulnerable status by making an application to the SAT.
 |  |
| 7 – Vote on the Full proposal | The Regulations provide for the tier 1 corporation to arrange a vote by secret ballot on the Full proposal, including giving written notice to all owners of lots in the community scheme.  The Full proposal must be put to the vote of the owners of all lots in the community scheme. Except for a tier 1 Scheme, a Scheme proposed to be terminated cannot be terminated solely on the vote of its members.A termination resolution on the Full proposal is only effective if the voting period opens at least 2 months after, and closes not more than 6 months after, service of the Full proposal by the community corporations. A maximum of three votes can be held to accept or reject the Full proposal.  The tier 1 corporation is also responsible for appointing a person independent of the community corporations for the community scheme and Proponent to count the votes on the termination resolution. The independent vote counter cannot be a scheme manager of any community corporation in the community scheme or an associate of such scheme manager.The vote is on the basis of 1 vote for each lot and the value of a vote is 1 (i.e. unit entitlement of a lot is not relevant in a termination resolution).In the record of votes, the independent vote counter must identify the lot for which the vote is cast, the Scheme to which the lot belongs, the date the vote for the lot was cast and the tally of the votes. | The termination process can only proceed if the termination resolution is passed by the vote of all owners in the community scheme (see section 149(6) of the Act) or in accordance with section 149(7) of the Act (Majority termination resolution). If Majority termination resolution is obtained, the termination process can only proceed if the Proponent obtains confirmation of that termination resolution by the SAT. If the required vote is not obtained after the third vote, the termination process ceases.  If the timelines are not adhered to, the termination process cannot proceed. (See section 157 of the Act for details.)  The independent vote counter must give written notice to each community corporation in the community scheme of whether the termination resolution was passed and whether confirmation by the SAT is required.The tier 1 corporation must notify the RoT and the Proponent after a termination resolution is passed. The notice must include a statement of whether confirmation by the SAT is required.The SAT cannot make an order that a termination resolution is taken to be passed.If confirmation of the termination resolution by the SAT is required, the independent vote counter must provide the record of votes to the tier 1 corporation in a sealed or electronic format on request of the tier 1 corporation after the tier 1 corporation receives notice that the Proponent has applied to the SAT for confirmation of the termination resolution.After receipt of the sealed record of votes, the tier 1 corporation must give a copy to the trustee of the funding arrangements for owners and Vulnerable persons in Schemes to be terminated. | A termination resolution is passed if the number of votes cast in favour of the Full proposal equals the number of lots in the community scheme (unanimous vote) – in this case the Proponent can proceed directly to step 9.**Voting on termination resolution subject to confirmation by the SAT (s.149(7) of the Act)****Full proposal to terminate all Schemes in community scheme:**

|  |  |
| --- | --- |
| **No. of lots in community scheme** | **No. of lots in community scheme vote in favour** |
| 2 | 1 |
| 3 | 2 |
| >3 | ¾ or more |

**Full proposal for termination of 1 or more tier 2 schemes (together with their related tier 3 schemes):**

|  |  |  |
| --- | --- | --- |
| **No. of lots in community scheme** | **No. of lots in tier 2 scheme and related tier 3 schemes** | **No. of lots in community scheme vote in favour** |
| 3 | n/a | 2 |
| >3  | ¾ or more of the total number of lots in the tier 2 scheme andrelated tier 3 schemes  | AND ½ or more of all lots in the community scheme |

**Full proposal for termination of 1 or more tier 3 schemes:**

|  |  |
| --- | --- |
| **No. of lots in tier 3 scheme vote in favour** | **No. of lots in community scheme vote in favour** |
| ¾ or more of the lots in the tier 3 scheme | AND ½ or more of all lots in the community scheme |

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**C – The Review**

|  |  |  |  |
| --- | --- | --- | --- |
| **Steps** | **Process** | **Consequences** | **Voting requirements** |
| 8 – Apply to the SAT for confirmation of Majority termination resolution  | If a termination resolution is a Majority termination resolution, the Proponent can apply to the SAT for confirmation of the termination resolution within 28 days of the resolution or such longer period the SAT permits.  The SAT can only confirm a termination resolution if:1. for a tier 2 scheme, each tier 3 scheme that belongs to the tier 2 scheme can be terminated; and
2. for a tier 1 scheme, each tier 2 scheme that belongs to the tier 1 scheme can be terminated; and
3. the process required by Part 11 Division 1 has been complied with; and
4. under the Full proposal the owner of a lot in a Scheme that is proposed to be terminated who does not support the Full proposal will receive fair market value for the lot or a like for like exchange for the lot.

 The SAT’s powers are exercisable only by a judicial member (or by the SAT constituted of a judicial member and other members). Owners in a Scheme proposed to be terminated in the Full proposal, who voted against the termination resolution, are entitled to funding from the Trust established by the Proponent for representation in the SAT. Owners classified as Vulnerable persons in such Scheme(s) who voted against the termination resolution are also entitled to funding for ancillary services.   | If the SAT confirms the Majority termination resolution, the termination process can proceed.  If the SAT decides not to confirm the Majority termination resolution the termination process ceases.   A community corporation must notify the RoT of the SAT’s decision as soon as practicable after being given notice of the decision and notify persons who were entitled to receive notice of the application to the SAT.  |  |

**D – The Close-out**

| **Steps** | **Process** | **Consequences** | **Voting requirements** |
| --- | --- | --- | --- |
| 9 - Apply to Planning Commission to endorse approval on the plan of survey  | Once either : * unanimous vote is achieved at Step 7; or
* the SAT confirms the Majority termination resolution at Step 8

the Proponent can apply to the Planning Commission: 1. to approve a scheme plan or amendment of scheme plan in accordance with Part 3 Division 3 of the Act (when 1 or more but not all Schemes in the community scheme are proposed to be terminated); or
2. to approve a diagram or plan of survey under the *Planning and Development Act 2005* section 145 so that the land in the tier 1 Scheme will cease being subdivided by a community scheme.

 A community corporation for a Scheme that is to be terminated takes steps to wind up the community corporation (e.g. discharge of liabilities, sale or disposal of property of the community corporation) and may apply to the SAT for an order for directions about winding up.  | The process cannot proceed without the Planning Commission’s endorsed approval of the relevant plan(s).   |  |
| 10 – Apply to the RoT to register the termination | Within 12 months of the: * unanimous vote being achieved at Step 7; or
* the SAT confirming the Majority termination resolution at Step 8

the Proponent must lodge the relevant Application for termination of a community titles scheme with the RoT.   The application for termination must satisfy the requirements in section 153 of the Act.  | If the 12 months elapses and the Proponent has not applied to the RoT, then the termination process ceases.Termination takes effect upon registration. Owners of lots in the Scheme immediately before termination become owners of the land as tenants in common in shares proportional to the unit entitlements that attached to their lots in the Scheme.If a community corporation fails to discharge its liabilities, then owners may be pursued for its debts. |  |