

A blurred background image of a business meeting. Several people in professional attire are gathered around a table. One person is holding a smartphone, another is holding a tablet displaying a document. There are coffee cups on the table. The overall tone is professional and collaborative.

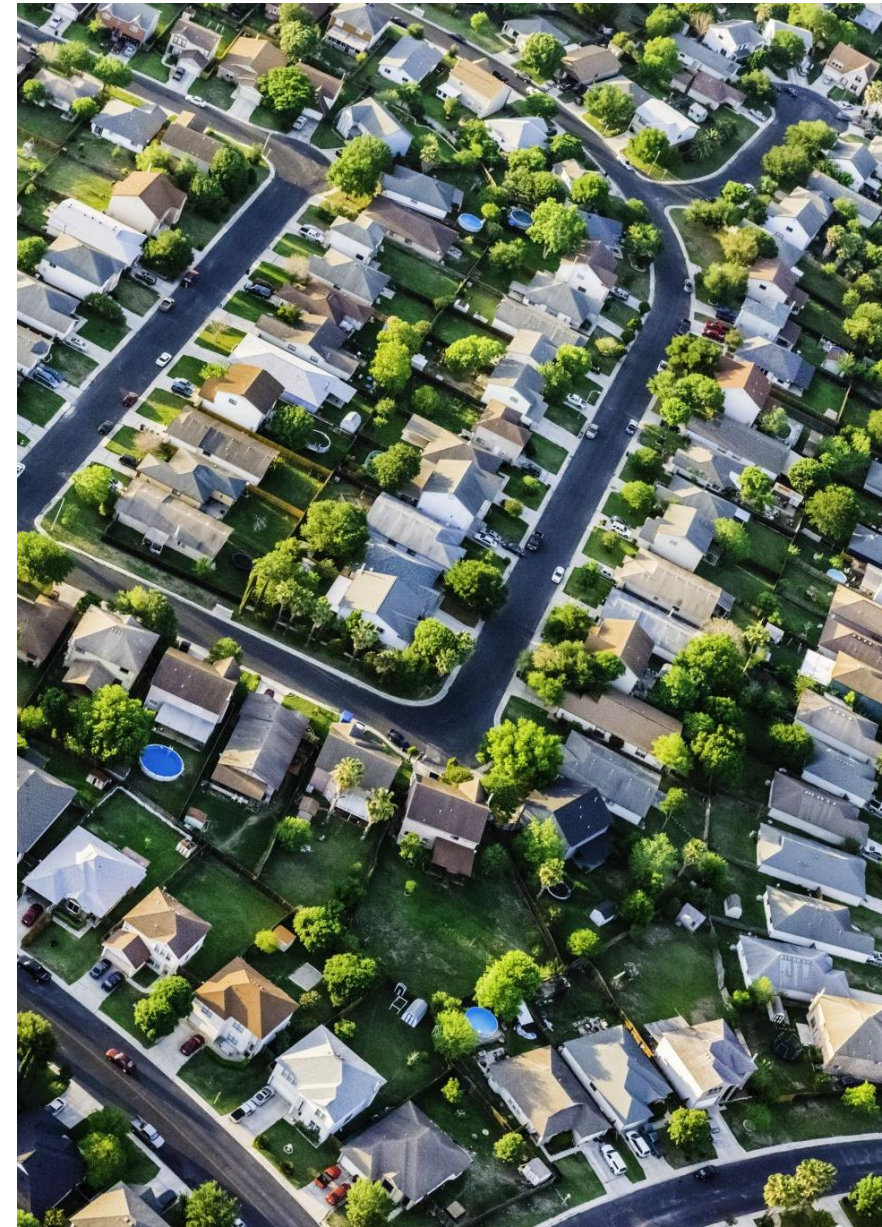
Shared Communities Legislation

PREPARING
LAND
DEVELOPERS

Shared Community Legislation

Why this statute?

- For decades subdivision developments have gone without any formal legislation to help govern the use of common facilities after the developer had completed and left the area.
- Many voluntary Associations were created by the resident and owners in those communities.
- Mona Heights Citizens Assoc in 1960, managed the several parks, community centre and recreational grounds. That association organized an Annual Christmas Fair and Miss Mona Beauty Competition and it sponsored the Real Mona Football team



LAND OWNERSHIP, 9 categories

Resident owners who live in their premises,

Those who rent / lease their premises,

Absentee owners who rarely ever visit the premises,

Diaspora owners that have inherited,

Diaspora owners that only visit once a year

INTERIM LAND CONTROL

Trustee
owners for
deceased
former
owners,

Mortgagees
in possession
pending
foreclosure.

Squatters
in adverse
possession

Air B & B and
short term
renters



Specific ownership agendas

Each type of owner has specific agendas based on the dictates of their ownership and it is evident that the absentee owners take little or no interest in the general state of the community

- **Resident owners-most interested in the community**
- **Those who lease to tenants, are only interested when it suits them**
- **Absentee owners, hardly interested in the community**



Ownership attitudes

- Each type of owner has specific agendas based on the dictates of their ownership and it is evident that while the resident owner tends to get involved the absentee owners take little or no interest in the general state of the community.
- **The shared community spaces legislation is aimed at requiring all owners of land in a community with shared spaces to act responsibly rather than indifferently. It will impose obligations on owners of whatever type to co-operate in maintaining the common infrastructure of the community**



What will the Legislation govern and who is the Regulator?

The land affected will be the common areas of the development shown on the plan of the subdivision.

Those spaces can be as simple as;

- the private access roadways and common parking areas in gated communities
- the recreational spaces built up with pools or outdoor buildings
- the simple open ground spaces which are designated common areas
- the undeveloped natural spaces reserved for indigenous fauna and flora and coastal land
- The regulatory agency will be the Real Estate Board which also now constitutes the Commission of Strata Corporations

The authority and enforcement powers will be somewhat similar to the Strata regulatory process.



Legally different.

Strata or apartment ownership has a governing law with very detailed management framework that operates from inception

This is unlike Subdivisions of land which were not specifically regulated except by the Towns & Communities Act and the restrictive covenants on the titles which people tended to ignore .

What is the difference?

- Subdivision management relates to real land, actual ground
- Strata management relates to a building with several levels
- The legislation will affect actual ground land that has spaces reserved for shared use.
- It is intended to be part of the suite of the Registration of Titles statutes to ensure that it binds the land and causes subdivision land owners to be subject to the controls which are similar to those that affect strata premises

Registration



- The developer will be required to register with the Registrar of Titles and the Real Estate Board a Plan showing the community spaces. Registration will be mandatory for new developments and voluntary for existing subdivision developments.
- This can apply both to new developments as well as existing s and it will cover both residential and commercial developments.
- For a new development Plan registration will be done before the subdivision splinter titles are issued
- What is crucial is that all land developers doing a subdivision which has a common area space shall have to register themselves with the Real Estate Board if there is any intention to sell or lease the lots.
- For emphasis again it will not matter if the subdivision is residential or commercial.

Registration will require detailed information



The registration process will require detailed information of;

1. the title to the land,
2. the name of the proposed subdivision development,
3. confirmation of consultation with the local municipality and compliance with the subdivision conditions for the community spaces
4. waste management arrangements made with the NSWMA
5. the proposed by-laws for the community
6. a draft budget of the community expenses
7. the rights and obligations of the intended owners
8. the common individual services to be provided
9. the shared cost services to be provided
10. reservations for easement, rights of way etc



BY LAWS and PLANNING REQUIREMENTS

The By Laws that are to be proposed have to be realistic and must anticipate the problems that will affect the control and use of shared community spaces.

The developer must anticipate some of these potential planning problems are;

- Having a clear channel of owner and resident communication
- Proper funding for upkeep.
- Having a place to store maintenance equipment
- Standards for cleanliness and upkeep.
- Standards for trash management
- Clearly defined boundaries for the common areas.
- Having an office space or a covered meeting area
- Having outdoor water supply and energy sources
- Transferring title to the open spaces.

The Details



Having a clear channel of owner and resident communication.



It may be as simple as a WhatsApp group or shared email address or as sophisticated as a website with restricted access control. The developer will have to initiate the communication channel as only they will have the critical information of the new owners telephone numbers and email addresses.



Proper funding for upkeep.



Funding for upkeep is always difficult if it is left to be voluntary so there will have to be written into the by laws some levy system or a method to enforce collection from the delinquent owners. If there is none the statute will step in to assist. Developers would do well to set up an account to collect initial contributions paid by each new lot buyer as part of their closing costs.



Having a place to store maintenance equipment.



Simple as it seems a lot of developers overlook the importance of having a common storage area for maintenance tools and equipment like a lawnmower. The design and of the subdivision will have to include construction of a secure and convenient storage area.

More Details



Standards for cleanliness and upkeep. Regular cutting, leaf raking and watering with harvested rainwater can make a huge difference to the presentation of a development and how the residents treat the space.



Standards for trash management. More detailed consideration will have to be given to the size and location of the trash deposit area and its design to prevent animals rummaging in the garbage. Good design and placement helps to improve the community waste management



Clearly defined boundaries for the common areas. The common development practice is to leave open spaces unfenced and that always leads to encroachment by residents using it to park immobile vehicles. Some even capture the space by fencing it to deny others access



Having an office space or a covered meeting area; The owners will have to keep records and residents will have to meet so it is best to create the information storage and meeting area as part of the development



Having outdoor water supply and energy sources . A common area water and electricity metered supply will be required



Transferring title to the open spaces. The remaining lands on the parent title which have the common spaces may not remain in the name of the developer, must be transferred to the community association



Implementation



Architects and Land Surveyors who lay out the subdivision will have to ensure that the design avoids that only a few lots have exclusive access to common area



Bulk metering water supply and electricity for common area use, pools, landscaping, hydrants will have to be registered in the name of the community association



Mortgage lenders must release the title for common areas and discharge their mortgage to allow the transfer to the community association



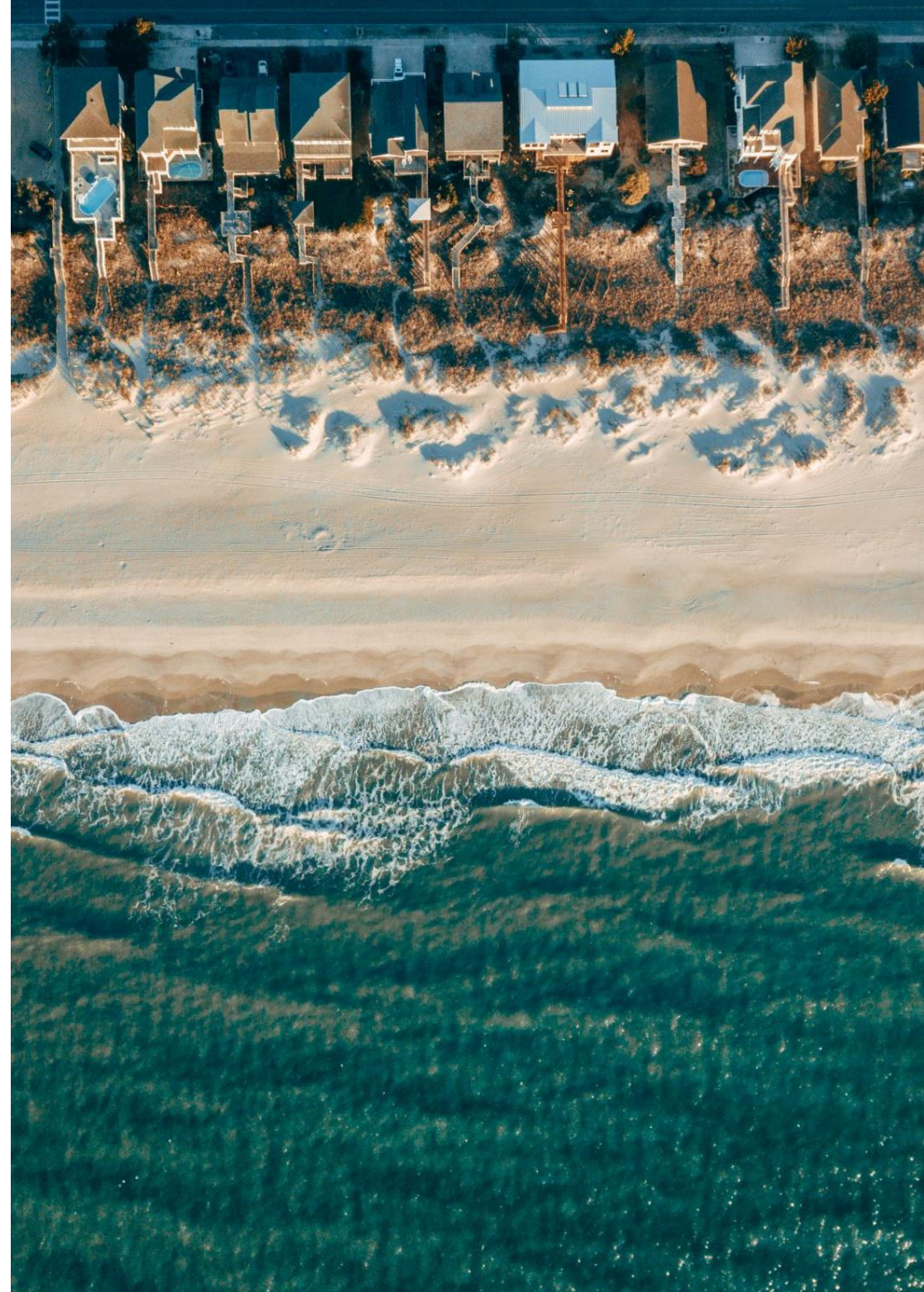
**Developers
Attorneys must ensure that the surrender document for the splinter titles refer to the community spaces and ascribe a share to each lot in the ration of the number of lots**



Attorneys and mortgagees for the Purchasers of each lot must check the splinter title and the Transfer document to ensure that the proportionate share in the common area is clearly stated and match on both title & transfer

• Coastal shared spaces

- Coastal shared spaces whether beachfront or for boating access will require special attention
- All seashore use must have a Beach Control Authority Licence obtained from NEPA/NRCA-Section4, Beach Control Act.
- A beachfront management agreement will be essential.





Compliance and enforcement

A statutory corporation will be created by registration of the Plan showing the community spaces.

Failure to register the development will be a prosecutable offence with a substantial fine of several hundred thousand dollars

A registration certificate will be issued for the development and it will have a renewal interval to ensure compliance

HANDOVER

- The Developer will be required to register the Shared Community with the REB within a year of the plan being lodged at the titles office but in any event before the first transfer of any lot in the subdivision.
- An interim Executive committee will have to be appointed by the Developer

