

STRATA TITLES. By A. F. Rath, F. J. Grimes and J. E. Moore. [Sydney: The Law Book Co. of Australasia Pty. Ltd. 1962. xvi + 124 pp. incl. 8 pp. indexes. £2 16s. Od.]

One of the problems of an increasing population in any city is the demand for domestic and professional accomodation. This demand has been met to some extent by the provision of houses and flats for rental. In areas where land available for building purposes is scarce, the tendency is to build upwards and thus utilise more of the air space over a defined area of land. This means that more and more people will be living in flats.

The trend since the last war has been towards the ownership, rather than the rental, of flats. Such ownership can be achieved in three ways. First, a long lease may be granted to the tenant. The lease may be for the period of 99, 999, or 9999 years (as is common in Singapore) at a substantial premium and a nominal rent. Up to now this has been the most convenient and popular way of "owning" a flat. By means of suitable covenants inserted in the lease and by the provision of a right of re-entry, the tenant can be controlled in the use of his flat and the common parts of the building. Undesirable tenants can be avoided by the covenant against assignment without the lessor's consent. There are, however, difficulties. The lease may not provide for unforeseen eventualities. The tenant may die, go bankrupt or leave the country, leaving the flat in a state of disrepair affecting other flats in the building. The use of garages or parking spaces, the control of water supply etc., can cause much friction among the tenants. Further, the developer, or builder, may not wish to be the landlord.

Secondly, a company may be floated to acquire the freehold of the whole building. Shares may be allotted to the occupiers who thereby obtain the right to occupy specified parts of the building. Under this scheme the builder or developer is relieved

of his many responsibilities as landlord. Maintenance and repairs to the common parts of the building and its roof and foundations can be effected by the company. However, here too there are difficulties. The shareholder is not the owner of the flat and he cannot therefore sue for trespass, ejection etc. He has merely a contractual right and not a proprietary right with regard to the flat. Further, his contractual right may be altered should seventy-five percent of the other shareholders so decide.

The third scheme is for the 'owners' of the flats in a building to own the freehold of the building as tenants in common in equal or unequal shares. Under this scheme the owners enter into agreements with one another whereby each one of them is allowed exclusive possession of a specified portion of the building in return for surrendering his occupational right in respect of the other portions. This scheme too may suffer from many difficulties. One owner may sell his share in the building to a purchaser and omit to obtain an agreement from him to forego his occupational right of other parts of the building. Similarly, one such tenant in common may die and his successor may not wish to comply with the agreement. Further, mortgagees may not consider the interest of such an owner to be a sound investment.

In the State of New South Wales of Australia a bold step has been taken by the State legislature in passing the Conveyancing (Strata Titles) Act, 1961. The Act was intended "to facilitate the subdivision of land in strata and the disposition of titles thereto"; that is to say, to provide conclusive titles under the Torrens system of registration of title to various parts of a building, whether to be occupied as domestic flats or for business purposes. It also attempts to provide a formula for the guidance of each of the proprietors for close community living.

The whole scheme centres on the "strata plan" which shows the subdivided lots in a building. A lot boundary is defined by its physical features, i.e. where the floor, wall, or ceiling is actually built and not by mathematical and survey information. There is thus no fear of encroachment by one person on another's lot. On this plan is endorsed the "unit entitlement" of each lot which is an assessment of the estimated value of each unit in proportion to the total value of the building. Except for the provision that such unit entitlements must be expressed in whole numbers there is no indication in the Act to show how those numbers should be arrived at. The subdivider can exercise an arbitrary discretion in allotting a high or a low unit entitlement to any part or parts of the building. As the unit entitlement of each of the proprietors of the lots determines his voting rights in the body corporate, his share in the common property of the building and his share in the contributions towards all outgoings such as insurance and repairs, this is perhaps a flaw in the Act.

On the registration of this strata plan, certificates of title are issued for each lot and its share of the common property, and a body corporate comes into being. This is a statutory body comprising all lot proprietors of the building and acts as an agent to administer all their common interests. It is the controlling body which manages the building. By-laws set forth in the First and Second Schedules to the Act immediately come into force and remain in force until they are amended as to the First Schedule by the unanimous resolution passed at a duly convened meeting of the body corporate and as to the Second Schedule by a majority vote. These Schedules regulate the rights and obligations of the proprietors of each of the lots and thus attempt to formulate a code for close and harmonious living among neighbours.

The Act also provides automatically for the existence of implied easements of support, shelter, and services, i.e. the right for the passage of water, gas, electricity, etc. In this way the Act relieves the anxiety of the flat 'owner' in his most troublesome problem and deals successfully with one of the most technical and difficult parts of property law — the running of covenants.

All in all this Act has provided new conveyancing machinery and novel rules for the acquisition of the freehold of parts of a building to meet the ever-increasing demands of the city dweller. Interested parties will therefore find very little help from the standard works on property. The authors of this book, Mr. A. F. Rath, one of Her Majesty's Counsel, Mr. P. J. Grimes, Examiner of Titles (New South Wales),

and Mr. J. E. Moore, Legal Officer of the Land Titles Office (New South Wales), are to be congratulated on bringing out this excellent handbook which explains in detail the law and the practice under the Act. It is an essentially practical manual. It includes a practice section of 23 pages to guide the administrator, solicitor, surveyor, estate agent and the potential flat owner. The authors are well qualified to write on this subject. Mr. Rath and Mr. Grimes were members of the committee which was responsible for the drafting of the Conveyancing (Strata Titles) Act; Mr. Grimes and Mr. Moore, both of the New South Wales Land Titles Office, are actively concerned with the practical administration of the Act. The notes are clear, with helpful cross references, and the book as a whole is attractively produced. I recommend this book to potential law reformers, law students, members of the legal profession, surveyors, estate agents, and the general public.

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