

## Protection for Purchasers of Home Units

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### Terms of Reference

In 1972, the Committee was asked to consider whether the sale of home units should be subject to Part III of the *Sale of Land Act 1970* (WA) or any other appropriate legislation.

### Background of Reference

The project was referred to the Committee as a result of an incident known as “the Whatley Crescent case”. The incident involved a proprietary company engaged in a commercial endeavour to construct home units upon a parcel of land owned by the company but mortgaged to secure advances for the construction of the building. The company’s advertising brochures invited people to purchase home units in the building; however the purchase was not offered on typical terms. By agreeing to purchase a specified home unit, the purchaser automatically applied for a group of shares in the company and agreed to be bound by its memorandum and articles of association. Some purchasers paid, to the land agent acting on behalf of the company, the full amount owing under their agreements while others only paid deposits. The land agent paid this money to the company at its request. When the company subsequently defaulted in payment of the mortgage, the mortgagee sought to invoke its right to sell the land and building, leaving purchasers inadequately protected.

### Nature and Extent of Consultation

The Committee issued a working paper in June 1972 which featured discussion of the area of law in the context of the Whatley Crescent case. Comments upon the working paper were received from the Developers Institute of Australia (Western Australian Division), the Master Builders’ Association of Western Australia, the Law Society of Western Australia, the Associated Banks in Western Australia and other representative and commercial bodies involved in the building trade. The Commission submitted its final report in March 1973.<sup>1</sup>

### Recommendations

After consideration of the issues and submissions, the Commission recommended that legislation be enacted to extend the provisions of Part III of the *Sale of Land Act 1970* (WA) to strata lots.<sup>2</sup>

### Legislative or Other Action Undertaken

The *Acts Amendment (Strata Titles) Act 1985* gave full effect to the Commission’s recommendations.

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1 Law Reform Commission of Western Australia, Project No 1(III), *Protection for Purchasers of Home Units* (1973). The Committee was formally reconstituted as the Law Reform Commission of Western Australia on 19 January 1973.

2 The Commission later recommended that legislation be enacted to prohibit or restrict company and ‘tenancy in common’ type home unit arrangements (extended to include the sale of two or more strata lots) in its report on the *Strata Titles Act*, Project No 56 (1982).