

Strata Titles - Australia's Least Known Export Product!

Strata titles was first introduced in NSW in 1961 to replace a range of apartment 'ownership' schemes which arose during the post-war housing crisis in the 1950-60's, the main one being the 'company title' scheme.

The NSW strata titles system spread rapidly throughout Australia. Queensland enacted the same legislation in 1965, Western Australia in 1966, Victoria in 1967, South Australia in 1969, with Tasmania, the Australian Capital Territory and the Northern Territory following in the 1970's.

The spread of strata titles overseas is interesting in that it occurred in both common law countries (where the legal system is based on English common law, or case law) and civil law countries (where the legal system is based on the old Roman codified system of laws). Common law countries which followed (either partially or totally) the New South Wales approach were led by New Zealand in 1972 and followed by Singapore, Malaysia, India, South Africa, Canada (British Columbia and partially in Alberta and Ontario), Fiji, Vanuatu and the Solomon Islands.

Then in 2002 the ultimate conquest occurred when the mother country, England, introduced "commonhold". (They could not call it strata titles, because that would be an admission of learning from one of their former colonies and too embarrassing!)

In most civil law jurisdictions, the ownership of apartments is regulated by very brief provisions in the codified Civil Law. In practice, those provisions do not operate very well. This has resulted in many civil law countries introducing a codified form of strata titles law (although they do have a variety of names, such as condominiums, unit titles, hereditary title, jointly owned property, sectional titles, etc.).

Many of these laws are based on the 1961 New South Wales legislation. Civil law jurisdictions which have a form of "strata" law include the Philippines, Indonesia, Macau, the United Arab Emirates (Dubai and Abu Dhabi), Brazil and Saudi Arabia.

European countries have generally persevered with their Civil Code provisions, although most have repealed the very general articles and replaced them with a more comprehensive regulatory system for apartment ownership. France attempted to codify apartment ownership laws as far back as 1938 but it was not until 1965 when it introduced more comprehensive laws. Belgium made the first serious move in 1994 with first-generation laws, which were then replaced by even more comprehensive second-generation laws in 2010. Italy followed, with its first-generation laws being adopted in 2013. While it might be an exaggeration to say that these European laws are based on the 1961 NSW legislation, they clearly bear a resemblance which suggests that the NSW legislation probably influenced their drafting.

Although the extent to which the 1961 New South Wales legislation influenced the drafting of laws in other countries, particularly European countries, is debatable, there is no doubt that the 1961 law was a "benchmark" for the development of condominium and strata laws throughout the world. It is one of the best examples of the export of Australian legislation.

This article was contributed by Gary Bugden OAM, Principal - Bugden Allen Lawyers and Professor of Strata and Community Titles - Bond University.