

New Unit Titles Act 2012

By John Wright,
MDS Law Associate (Property)

The Unit Titles Act 2010 and the Unit Titles Regulations 2011 came into force on 20 June 2011. The 2010 Act replaces the 1972 Act, save for certain features preserved under the transitional provisions.

The 1972 Act was designed with small residential developments in mind and did not adequately deal with large scale developments. The reforms created by the 2010 Act are designed to deal with the deficiencies of the 1972 Act.



What the new Act achieves:

- The vesting of common property in the Body Corporate and creating more flexibility around easements and covenants on common property
- The Body Corporate now having more responsibility for repairs beyond common property
- The requirement of a comprehensive disclosure regime
- The development of a disputes regime
- The strengthening of the governance regime
- The entrenching of Body Corporate rules in the new Act
- The introduction of layered developments
- The adoption of ownership and utility interests

What do the vendor and purchaser need to know?

Whether buying or selling, the new Act creates a number of changes that each party should be aware of.

New and comprehensive disclosure requirements are now imposed on the vendor. A purchaser will also need to know what duties and responsibilities are involved in being a Body Corporate member.

Disclosure

If you are selling, you must get your disclosure obligations correct. Non-compliance will complicate the sale and purchase process. Settlement of the sale may be deferred, or the contract can be cancelled (even after the contract has been confirmed).

There are three different disclosure statements a vendor must make available:

- A pre-contract disclosure statement
- A pre-settlement disclosure statement
- An additional disclosure statement (if requested by the purchaser)

In addition, if the vendor has been the developer of a unit title complex, a "turn over statement" (if requested by the purchaser) must be disclosed.

The Act and the Regulations set out in detail the information required for the various disclosures.

Vendors should, before they market their property, obtain the specified legal and financial information from the Body Corporate or from their solicitor. The vendor is expected to meet the costs of preparing the pre-contract and pre-settlement disclosure statements. The Act provides that the costs of "additional disclosure statements" should be met by the purchaser but that could be negotiable as part of the sale and purchase agreement. Estimates are that these costs could be in excess of \$400.00.

Governance – Should you be involved in the Body Corporate Committee?

Every Body Corporate is supposed to hold an Annual General Meeting in the period between 20 June and 20 December 2011. This is so, even if the 2011 AGM has already taken place.

The current Body Corporate rules remain in place until 30 September 2012 unless they are changed at an Annual or Extraordinary General Meeting prior to that date.

Every Body Corporate is required to elect a Body Corporate Chairperson, who must also be a Unit Owner. The duties and responsibilities are detailed and onerous. If you are contemplating such a position you should familiarise yourself thoroughly with the duties, responsibilities and risks of the office.

Bodies Corporate with 10 or more units must have a Body Corporate Committee unless voted otherwise at an AGM. Bodies Corporate with 9 or fewer Units may form a Body Corporate Committee but are not required to.

The Body Corporate initially becomes responsible for maintenance except in situations where only one Unit is affected. Notably, unless all Units are affected (and all owners have to contribute), the Body Corporate can recover expenses from only those Unit Owners whose Units required repair.

Every Body Corporate must formulate a Long Term Maintenance Plan to cover a period of at least 10 years, prior to 30th September 2012.

There is no longer a need for unanimous resolutions. A vote of 50% of those Units represented in person (or by proxy or postal vote) at an AGM is sufficient, except where a Special Resolution is required, which needs 75%.

A Special Resolution is required for an election not to have a Body Corporate Committee, and also (annually) where an audit or professional review of the Body Corporate's financial statements is not required.

Concluding Comments

The new regime under the 2010 Act creates many changes affecting vendors and purchasers. There are extensive changes to how future development of land controlled by a Body Corporate can be carried out, which may become very relevant in the re-emerging Christchurch CBD, and new procedures for calculating levies (which were previously based simply on "unit entitlement"). We have only touched briefly on what is a comprehensive reform of this area in the law.

If you would like to discuss information related to the article, please contact John Wright at MDS Law.



John Wright, ASSOCIATE

johnwright@mdslaw.co.nz
DDI: 03 371 0463
Mob: 021 743 899

John acts for a wide range of clients including property developers, corporate entities, real estate agencies, financial institutions, and retirement village owners.

His experience includes advising on property developments and property portfolio management, completing large and complicated subdivisions, advising on unit title developments, residential property sales and buying and selling commercial properties, motels, hotels, restaurants and bars.



Mark Abbot Partner, Property

markabbot@mdslaw.co.nz
DDI: 03 371 0482 Mob: 029 288 2810



Don McBeath Partner, Property

donmcbeath@mdslaw.co.nz
DDI: 03 371 0463 Mob: 021 743 899



Lindsay Lloyd Partner, Property

lindsaylloyd@mdslaw.co.nz
DDI: 03 371 0480 Mob: 029 298 7521



John Wright Associate, Property

johnwright@mdslaw.co.nz
DDI: 03 371 0463 Mob: 021 743 899



Sarah Fields Associate, Property

sarahfields@mdslaw.co.nz
DDI: 03 371 0488 Mob: 021 224 2961