

# Changes ahead for unit title developments: Unit Titles Act 2010

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The Unit Titles Act 2010 (**New Act**) has been passed into law. Its commencement date is some way off (now anticipated mid 2011) as regulations are still in the process of being drafted.

The New Act is intended to provide much more flexibility for the governance of unit title developments, to create a more effective statutory framework for the operation of today's huge variety of unit title developments and generally to protect the integrity of developments as a whole. Changes introduced include those relating to:

- decision-making
- dealing with common property
- unit entitlements
- information to be disclosed to purchasers
- long term maintenance plans
- dispute resolution

## Decision-making

Under the current legislation, the Unit Titles Act 1972 (**UTA 1972**), many body corporate decisions require the unanimous approval of all unit owners. (A body corporate (**BC**) is comprised of all the owners of the unit title development.) Thresholds for passing resolutions are lower under the New Act. Ordinary resolutions

can pass with a simple majority of eligible voters who vote.

Special resolutions will pass with 75% of the eligible voters who vote.

Each unit in the development is entitled to one vote. However, if a poll is demanded, votes are based on ownership interest (discussed further below).

The New Act provides avenues for relief against resolutions by either a minority or majority party. The minority relief provisions state that:

- if a unit owner voted against a resolution; and
- the effects of the BC decision would be unjust or inequitable to them

then that owner may seek relief (within 28 days of the resolution being passed).

The majority relief provisions relate to decisions requiring a special resolution (ie where 75% vote required). They provide:

- if a unit owner voted in favour of the resolution; and
- the resolution did not pass but achieved at least 65% votes in favour (that is, less than

the 75% required for a special resolution)

then that owner can apply for the resolution to be confirmed if the effect of the failure to pass a resolution would be unjust or inequitable to the majority.

While the voting thresholds are much lower, certain important decisions must be dealt with as a “designated resolution”. Examples of such important matters include selling, leasing or adding to the common property, granting or surrendering easements, redevelopments, subdivisions and cancelling the plan. After a designated resolution has been passed, the BC must notify certain persons of it (unit owners and persons having a registered interest in a unit, such as mortgagees, or a caveat over it). Those persons then have 28 days to lodge an objection with the BC and apply for relief against the passing of the resolution.

### **Dealing with the common property**

The New Act continues the BC’s existing obligation to maintain common property. However, it introduces new obligations on the BC to maintain “building elements” and “infrastructure” that relate to, or serve, more than 1 unit. “Building elements” are those affecting the structural integrity of the building, exterior aesthetics

and/or health and safety. “Infrastructure” is defined widely to encapsulate a huge variety of physical assets. This will give greater certainty as to who is responsible for repair and maintenance in situations such as those arising in “leaky building” cases.

The New Act also empowers the BC to sell, lease or licence all of the common property – currently this must be done by all the unit owners acting together. The sale, lease or licence must be authorised by a special resolution. Any funds raised must be distributed to the unit owners based on their ownership interest, unless the BC resolves otherwise.

### **Unit entitlements**

Currently there is inflexibility around changing unit entitlements (which determine, amongst other things, voting rights and how much owners are required to contribute towards BC costs). Under the New Act, unit entitlements will be replaced with “ownership interests” and “utility interests”.

Ownership interests will be similar to unit entitlements and calculated on the basis of the relative value of that unit to the other units. The ownership interest will dictate, amongst other things, each unit owner’s interest in the common property and underlying land, voting rights and certain BC. BCs may also adopt the new

“utility interest” concept. This may allocate a different proportion as provided by the “ownership interest” and will determine, amongst other things, the unit owners’ contribution to a long term maintenance fund. The default position is that the utility interest will be the same as the ownership interest. The utility interest may be calculated by any method the BC chooses, provided the method of apportioning the utility interest is approved by special resolution. For example, in a development with lifts, ground floor units might be assigned a lower utility interest than units on higher levels to reflect the extra benefit the higher levels receive from the lifts.

Under the New Act, the BC will have the power to review and change a unit owner’s unit entitlement by passing a special resolution at a general meeting. Such a resolution would be a “designated resolution” (referred to above) so the affected parties are able to object and make an application for the resolution to be set aside. If the resolution is passed, then the BC must notify the Registrar-General of Land of the changes, but it appears no new unit plan is required.

#### **Information to be disclosed to purchasers**

The New Act introduces a new disclosure. Owners who are selling will need to provide

disclosure statements both before an agreement is entered into and at least 5 working days prior to settlement. The purchaser may request further disclosure also. If the disclosure statements are not provided, the purchaser may postpone settlement until the fifth working day after disclosure is made. In certain circumstances, the purchaser may cancel the agreement. The BC also has to provide a certificate to accompanying the disclosure statement and has the power to withhold giving such certificate until all debts due by the owner to the BC are paid.

#### **Long term maintenance plans**

BCs will need to establish a long-term maintenance plan and fund (unless they opt out of this by special resolution). They may also establish an optional contingency fund and capital improvement fund and to levy unit owners to establish and maintain these funds. The long term maintenance plans must cover at least a 10 year period and identify future maintenance requirements and costs.

#### **Dispute resolution**

Under the UTA 1972 only the High Court has jurisdiction to hear cases under the Act. The New Act provides that disputes under \$50,000 (excluding claims about title or the application of insurance proceeds) can be referred to the Tenancy Tribunal. Claims between

\$50,000 to \$200,000 (excluding claims about title) can be dealt with in the District Court. The High Court will have jurisdiction for disputes above the \$200,000 threshold.

#### **Wait and see**

We are watching and waiting for the development of the proposed regulations and commencement of the New Act. There will be important decisions to be made by all BCs at that time. There will, however, be a transitional period of 15 months from the commencement of the New Act where the BC rules under the Unit Titles Act 1972 will continue to apply. This should allow sufficient time for new BC rules that are consistent with the New Act to be adopted.

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#### **Contact us**

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*This paper gives a general overview of the topics covered and is not intended to be relied upon as legal advice.*