

A quick guide to unit title developments

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Introduction

This publication is for existing and intending unit owners and provides an overview of the changes to the law in the Unit Titles Act 2010. It includes important information about the rights and responsibilities of existing and intending unit owners and the powers and duties of bodies corporate under the Unit Titles Act 2010.

Unit titles are the most widely used form of multi-unit property ownership. They allow owners to privately own an area of land or part of a building and share common property with other unit owners.

This combination of individual and shared ownership of land and buildings, often in an intensive built environment, means owning a unit title involves a different set of rights and responsibilities than traditional house and land ownership.

In addition, unit title developments have a body corporate management structure to ensure decisions affecting the development can be made jointly by the unit owners. This can be challenging at first for anyone not used to communal ownership.

Unit Titles Act 2010

The Unit Titles Act 2010 covers how unit title developments are created and managed and, importantly, the rights of unit owners and how they can exercise those rights.

The Act came into force on 20 June 2011, repealing and replacing the existing Unit Titles Act 1972. It is administered by three Government agencies, which have different responsibilities:

Land Information New Zealand

Land Information New Zealand (LINZ) is responsible for recording the creation of unit title developments and subsequent changes to them, as well as providing access to these records. LINZ also manages Landonline, which provides land professionals with secure access to New Zealand's only authoritative titles register and digital cadastre.

For more information visit www.linz.govt.nz or call 0800 665 463.

Department of Building and Housing

The Department of Building and Housing provides advice, information, education and dispute resolution services to the unit titles sector.

The Department aims to help people participate with confidence in the building and housing market and resolve disputes in timely and cost-effective ways. For more information visit www.dbh.govt.nz or call 0800 864 884.

Ministry of Justice

The Tenancy Tribunal (supported by the Ministry of Justice) will hear unit title disputes between parties who are not able to reach agreement in mediation provided by the Department of Building and Housing. The Tribunal will hear disputes up to \$50,000.

Transition to the Unit Titles Act 2010

The Unit Titles Act 2010 came into force on 20 June 2010. Most of the provisions of the Act apply from that date, with the other provisions applying from the end of a 15 month transition period. The transition period started on 20 June 2011 and will end on 1 October 2012, giving bodies corporate time to prepare for the new maintenance requirements and new default body corporate operational rules contained in the Act.

An existing body corporate can opt-in to these new requirements at any stage before the transition period expires. A special resolution is required in order to opt-in (see page 11).

Existing body corporate rules

Body corporate rules made under the Unit Titles Act 1972 will continue to apply until 1 October 2012. However, many of the provisions in these existing rules will be overridden by the 2010 Act.

The default body corporate rules are currently set out in the schedules to the Unit Titles Act 1972. Under the 2010 Act, the default body corporate operational rules are instead set out in the Unit Titles Regulations 2011 (the Regulations). The new default rules are reduced in scope, as many matters previously governed by the rules are now set out in the 2010 Act or the Regulations.

Provisions in the 2010 Act and Regulations that override the corresponding provisions in existing body corporate rules include provisions relating to:

- the duties of owners and the body corporate;
- the operation of the committee; and
- meetings and voting.

This does not apply to rules covering the body corporate's maintenance obligations, which are also covered by the transition period (see below).

Bodies corporate should review their existing rules to determine which will apply during the transition period and which have been overridden by the 2010 Act or the Regulations.

New body corporate operational rules

The new default operational rules will apply from 1 October 2012. Bodies corporate will be able to revoke, amend or add to the default rules set out in the Regulations, and should use the transition period to prepare any changes to the new rules that they consider necessary. Bodies corporate may also wish to consider whether to opt into the new default rules earlier than 1 October 2012.

Changes cannot be made to any of the matters that were in the existing rules and are now set out in the 2010 Act or the Regulations.

For more information on the body corporate operational rules see Body Corporate Governance (page 10).

Maintenance requirements

Under the default body corporate rules in the 1972 Act, a body corporate is responsible for maintaining the common property as well as utilities serving the units. The 2010 Act expands the maintenance requirements for bodies corporate, but these new requirements will only apply to existing unit title developments from 1 October 2012. However, they can opt in to the new requirements earlier. This decision must be made through a special resolution.

On expiry of the transition period, a body corporate's responsibility for maintenance will cover the common property, as well as all building elements and infrastructure which serve more than one unit. Bodies corporate will also be required to set up a long-term maintenance plan and establish a fund for that plan.

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Unit Titles

What is a unit title development?

A unit title development is an area of land and buildings that has been subdivided into two or more units, such as apartments, and often

includes common property shared by the unit owners. Each unit owner in the development will own a principal unit, and may also own one or more accessory units.

Principal units

A unit owner's main unit is known as a principal unit. Some examples of a principal unit include an apartment, a set of offices, a retail store or a warehouse, depending on the type of development. A principal unit could be a car park, if the unit title development is a parking building. However, a car park will more often be an accessory unit.

Accessory units

Accessory units in the development are designed to be used with a principal unit, and must be owned by the owner of a principal unit. They may only be sold with the principal unit, or to the owner of another principal unit in the same development. Examples of accessory units include a car park, private garden, garage or storage space.

Common property

Common property includes parts of the unit title development that are not contained in a principal or accessory unit. Some examples of common property include access ways (such as lifts and shared driveways) and shared facilities (such as a mailbox area or swimming pool). Common property is owned by the body corporate on behalf of the unit owners.

Ownership interest in the development

If the body corporate agrees to sell part of the common property, or grant a lease or licence over part of it, the unit owners are entitled to receive any proceeds in proportion to their ownership interest in the development. Likewise, if the unit plan is cancelled and the unit title development reverts to a single block of land, the unit owners will share ownership of that block in proportion to their ownership interest.

For more information on ownership interest see "Ownership interest and utility interest" (page 15)

Unit plans

When a unit title is developed, the developer deposits a unit plan with LINZ. The unit plan shows the principal units as well as any accessory units and common property in the development. It is the formal record of all of the boundaries of the units and the common property.

Boundaries

The boundaries between units are generally set using structures such as walls or fences. Often, the boundary between a principal unit and its neighbour will be the mid-point of the wall or fence.

The boundary between a unit and common property is important – it defines the legal ownership and responsibilities of the unit owner and the body corporate.

Boundaries may be set in a variety of ways and, especially in the case of common property, may not be where they are expected to be.

Check the unit plan. This is the formal document showing legal boundaries.

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Information for unit owners

In the Unit Titles Act 2010 there is a balance between the right of unit owners to use their units and the right of other unit owners in the development to use their units and the common property without unreasonable interference. With communal living and shared ownership, it is sometimes necessary to make compromises.

Rights and responsibilities of unit owners

The owner of a unit title development is automatically a member of the body corporate and has a beneficial share of the common property.

Some of the key rights and responsibilities of unit owners, as outlined in sections 79 to 83 of the Act, include:

- the right to attend general meetings of the body corporate

- the right to quiet enjoyment of their unit, without interruption by other owners or occupiers
- the responsibility to follow the body corporate operational rules and the right to enforce them
- the right to have any dispute resolved
- the responsibility to pay all rates, taxes, charges, body corporate levies and other outgoings in respect of their unit
- the responsibility to repair and maintain their unit so that no damage is caused to other units or the common property
- the responsibility to comply with all laws and legal requirements relating to the use, occupation or enjoyment of the unit
- the responsibility to notify the body corporate of their intention to carry out any additions or structural alterations, before the commencement of the work
- the responsibility to not do anything that breaches or undermines any policy of insurance in the name of the body corporate.

Register of owners

The body corporate must keep and maintain a register of all unit owners in the development. A unit owner must inform the body corporate, in writing, of any change to the information held on the register that relates to their unit. The body corporate chairperson and committee may use the information on the register to inform owners about important body corporate matters, such as meetings.

If you have recently bought into a unit title development, make sure your name is on the register.

The Department has produced information sheets that are available on our website covering a range of topics that affect intending and existing unit owners. Information on a number of the topics covered in the following sections is available in more detail.

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Body Corporate

Collectively, all the unit owners in a unit title development make up the body corporate and every new unit owner automatically becomes a member of the body corporate.

The body corporate is responsible for a range of management, financial and administrative matters relating to the common property and the unit title development as a whole.

The body corporate is automatically created when a unit plan is deposited with LINZ and exists only for the purposes set out in the Unit Titles Act 2010. The body corporate name is the words 'Body Corporate Number' and the registered number of the unit plan (for example Body Corporate Number 123456).

Powers and duties

The body corporate has a number of powers and duties, which are outlined in section 84 of the Act.

Some of these include:

- to keep and maintain a register of all unit owners
- to ensure a full insurance policy is in force
- to manage and maintain common property, including building elements and infrastructure that affect more than one unit
- to comply with the body corporate operational rules
- to keep financial statements of common funds.

Body corporate manager

Often a body corporate manager is contracted to perform some of the services of the body corporate on behalf of the unit owners.

Companies that provide professional body corporate services typically offer the following services:

- arranging maintenance of common property
- organising facilities for meetings
- administering the body corporate's financial activities.

Appointing a body corporate manager does not in any way affect either the individual or collective property rights held by a unit owner.

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Body corporate governance

Body corporate committee

Unit title developments:

- with nine or less principal units **may** form a body corporate committee;
- with ten or more principal units **must** form a body corporate committee, unless the body corporate decides not to by special resolution.

A body corporate committee is a subset of the body corporate and is elected by the body corporate. The body corporate may delegate some of its duties and powers to a committee; particularly duties that relate to the administration and management of the development. The body corporate committee must report regularly to the body corporate on its activities.

Body corporate operational rules

The body corporate operational rules help the body corporate govern the unit title development. All unit owners, occupiers, tenants and the body corporate must follow the body corporate operational rules that apply to their development.

Under the 2010 Act, default operational rules are set out in the Regulations as follows:

An owner or occupier of a unit must not –

- (a) damage or deface the common property
- (b) leave rubbish or recycling material on the common property
- (c) create noise likely to interfere with the use or enjoyment of the unit title development by other owners or occupiers
- (d) park on the common property unless the body corporate has designated it for car parking, or the body corporate consents
- (e) interfere with the reasonable use or enjoyment of the common property by other owners or occupiers

An owner or occupier of a unit must dispose of rubbish hygienically and tidily.

From 1 October 2012, or earlier if a body corporate chooses to opt in, the default body corporate operational rules apply to all unit title developments, but bodies corporate are able to revoke, amend or add to the default rules to suit their development.

Unit owners should make sure they have the most up-to-date copy of the operational rules that apply to their development.

The Department has developed a guide to inform bodies corporate how they can tailor operational rules to suit the characteristics of their development, be it residential, commercial, mixed-use, industrial or layered.

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Meetings and voting

The body corporate must hold meetings at least annually. These meetings are an opportunity for unit owners to exercise their collective property rights. The body corporate will discuss issues of joint concern and unit owners will vote on a range of matters affecting the development.

Meetings of the body corporate are either annual general meetings or extraordinary general meetings.

Annual general meeting (AGM)

An AGM must be held once every calendar year, and not later than 15 months after the previous AGM.

The following matters are some examples of what may be discussed at the AGM:

- the financial statements for the year
- maintenance of the common property
- insurance
- other expenditure
- any service contracts.

The chairperson must call the AGM in accordance with the Regulations.

Extraordinary general meeting (EGM)

A body corporate can also hold an EGM. An EGM can be held at any time throughout the year to consider any matter relating to the unit title development. For example, the body corporate chairperson or committee might need to get agreement from the body corporate to undertake urgent repairs.

Resolutions

A motion may be decided on at either an AGM or an EGM of the body corporate by one of two types of resolution: an ordinary resolution or a special resolution. Resolutions can also be made without a general meeting. All resolutions must be recorded in writing.

Special resolution

Under the Act, a special resolution is required for decisions made by the body corporate which could have significant consequences for the unit owners, for example selling part of the common property, imposing levies on the unit owners or borrowing money. For a special resolution to pass, 75% of the eligible voters who vote on the resolution must vote in favour of the resolution.

Ordinary resolution

An ordinary resolution is used for all other decisions made by a body corporate at a general meeting, such as changes to the development's operational rules. For an ordinary resolution to pass, a majority of the eligible voters who vote on the resolution must vote in favour of the resolution

Resolutions without a general meeting

A resolution can be passed without a general meeting if it is signed by at least 50% of eligible voters for an ordinary resolution, or at least 75% of eligible voters for a special resolution. Notice of the resolution must be given to all eligible voters.

Voting

Before a general meeting of the body corporate can proceed, the members of the body corporate must make a quorum consisting of at least 25% of eligible voters. Unless the development only has one owner, a quorum must always be at least two members of the body corporate.

If a quorum is not reached, the meeting can proceed if the postal votes plus the people present at the meeting make up 25% of the voting power of the principal units.

Further provisions relating to quorums are set out in the Unit Titles Regulations 2011.

If a unit owner is not attending the meeting, they can be represented by another person, or vote by post.

To be eligible to vote on resolutions, a voter must be aged 16 years or older, and:

- recorded on the body corporate's register as the owner of a principal unit or the owner's authorised representative, or
- the nominee (for a company) or proxy of that registered owner or their representative; or
- a subsidiary body corporate representative.

A voter will not be entitled to vote if the body corporate levies for their unit are due and haven't been paid.

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Maintenance

The body corporate is responsible for maintaining the common property in the development as well as building elements and infrastructure that relate to or serve more than one unit. The body corporate may access any unit to carry out repairs and maintenance to common property, or to building elements and infrastructure which serve more than one unit. Access to units must be at reasonable times.

The body corporate levy may include an amount to cover the costs of repair and maintenance required to be carried out by the body corporate. The body corporate may also be able to recover the costs of repairs from owners in the following circumstances:

- where the repair or maintenance benefits some owners substantially more than other unit owners, the body corporate can recover the costs from the owners that benefit, or
- where the repair or maintenance is carried out on property contained in a unit the body corporate can recover the costs from the owner of that unit, or
- where an owner causes damage that necessitates the repair or maintenance work, the body corporate can recover the costs from that owner.

Long-term maintenance plan

The body corporate must establish and maintain a long-term maintenance plan, which covers at least 10 years. The plan must be updated at least once every 3 years.

The purpose of the long term maintenance plan is to:

- identify future maintenance requirements and estimate the cost of future maintenance
- support the establishment and management of a long-term maintenance fund (if there is one)
- provide a basis for levying contributions on unit owners
- provide ongoing guidance to the body corporate to assist it in making an annual maintenance decisions.

The plan must contain some minimum requirements, which are set out in the Unit Titles Regulations 2011.

The long-term maintenance plan is funded by the long-term maintenance fund (unless the body corporate resolves by special resolution not to have a long-term maintenance fund). More information on the long term maintenance fund is available on page 15.

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Financial management

The body corporate has a number of financial powers and responsibilities under the Unit Titles Act 2010. These include:

- levying contributions to cover general administration, maintenance and insurance
- levying contributions for any of the funds that the body corporate may have
- borrowing money
- investing money
- recovering money owed
- charging penalty interest
- paying the body corporate's expenses
- keeping financial records
- preparing annual financial statements.

Financial statements

The body corporate must keep accounting records, which detail all the financial transactions of the body corporate, and use these records to prepare a financial statement. The most recent financial statements must be sent with the notice calling the AGM.

The form and minimum content of financial statements are prescribed in the Unit Titles Regulations 2011.

The body corporate must arrange for the audit of its financial statements at the end of the financial year, unless it decides by special resolution this is not required.

Operating account

The body corporate must establish an operating account. The operating account is used to meet operational expenses that relate to:

- managing and governing the development (e.g. costs associated with holding meetings)
- providing services and amenities for the benefit of the development (e.g. central air conditioning or centrally metered water provision)
- statutory or regulatory compliance costs
- ground rental or licence fees relating to the underlying land
- maintenance costs for the development incurred at least once a year (e.g. pool cleaning or maintaining gardens).

The Unit Titles Regulations 2011 contain some restrictions on unbudgeted spending from the operating account.

Funds

The Unit Titles Act 2010 allows the body corporate to establish and maintain the following funds (in addition to the operating account) if it decides they are necessary:

- a long term maintenance fund
- one or more contingency funds
- a capital improvement fund.

The operating account and these funds can either be set up as separate bank accounts or as a single bank account, providing each fund is kept entirely separate and is able to be identified.

Long-term maintenance fund

The body corporate must establish and maintain a long-term maintenance fund, unless the body corporate decides not to by special resolution. This fund can only be used for expenditure that relates to the long-term maintenance plan. The body corporate must approve any spending on a single maintenance item if the spending exceeds the budgeted amount in the long-term maintenance plan by more than 10%.

Contingency funds

The body corporate may establish and maintain one or more contingency funds to provide for unbudgeted expenditure.

Capital improvement fund

The body corporate may also establish and maintain a capital improvement fund, for expenditure that adds to or upgrades the unit title development, if this is not already provided for in the long-term maintenance plan.

Contributions

From time to time, the body corporate will determine the contributions payable by unit owners. The contributions are used to maintain the various funds of the body corporate and to fund the operating account from which the body corporate's general expenses are paid.

The body corporate will determine the date on which fees must be paid and may charge interest on any unpaid amounts.

An owner's contribution to the amount levied by the body corporate is determined by either utility interest or ownership interest.

- For the operating account, the long-term maintenance fund and the optional contingency fund, each owner contributes according to their **utility interest**.
- For the optional capital improvement fund, each owner contributes according to their **ownership interest**.

Ownership interest and utility interest

Ownership interest is a number that reflects the relative value of each unit to the other units in the development. It must be set by a registered valuer.

Ownership interest is used to determine a range of matters including:

- the unit owner's beneficial interest in the common property
- the extent of each owner's liability if the body corporate is sued or sues someone else
- the unit owner's share in the underlying land if the unit plan is cancelled.

By default, the utility interest of a unit is the same as the ownership interest. The body corporate can decide to change the calculation of the utility interest from the relative values of the units to a different method of calculation. For example, the body corporate could decide it is fairer for all unit owners to contribute an equal amount and change their utility interests accordingly.

The utility interest is used to calculate the amount each owner contributes to the operating, long-term maintenance and contingency funds held by the body corporate, and other related matters.

Insurance

The body corporate is responsible for insuring all buildings and improvements to their full insurable value. If, however, the development is made up of stand-alone units, the body corporate may decide by special resolution that unit owners are responsible for insuring the buildings and improvements within their own unit. The body corporate will remain responsible for insuring the common property.

If the land and buildings cannot be insured for full replacement cover (for example, if the buildings are heritage buildings) the body corporate may take out indemnity cover.

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Buying and selling a unit

Buying and selling a unit in a unit title development is different to buying a traditional house and land because:

- there are additional rights and responsibilities to consider when you own a unit title
- there are often more people involved – both the other owners in the development and the body corporate as a whole
- there are ongoing financial commitments that are different to those associated with traditional home ownership.

Disclosure statements

When buying a unit in a unit title development, it is important for the buyer to make an informed decision, and for the seller to be aware of their disclosure responsibilities.

Under the Unit Titles Act 2010 sellers of unit titles are required to provide intending buyers with disclosure statements; these will provide potential buyers with information that can help inform their purchase decision.

The Act provides for three types of disclosure:

- **pre-contract disclosure statement** - which the seller provides before entering into an agreement for sale and purchase
- **pre-settlement disclosure statement** - which the seller provides after entering the agreement for sale and purchase but before settlement of the sale
- **additional disclosure** - which the seller provides on request of the buyer.

The Unit Titles Regulations 2011 prescribe the information that must be provided in each disclosure statement.

A default pre-contract disclosure statement template is available here www.dbh.govt.nz/unit-titles-templates.

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Dispute resolution

The Unit Titles Act 2010 provides for a fully integrated dispute resolution service for unit title disputes. This service is provided jointly by the Department of Building and Housing and the Ministry of Justice. Disputes may be heard by the Tenancy Tribunal, the District Court, or the High Court.

The dispute resolution process only applies to disputes occurring or continuing after the Unit Titles Act 2010 came into force on 20 June 2011. Any earlier disputes may need to be dealt with under the relevant law which applied at the time.

If a dispute under the previous Unit Titles Act 1972 is currently before the High Court, both parties can agree to transfer the dispute to the Tenancy Tribunal or District Court, if either of those courts would have jurisdiction under the Unit Titles Act 2010.

The Department's aim is to help people avoid and resolve disputes without needing to apply to the Tenancy Tribunal. Tools and information resources are available from the Department to help the unit title owners comply with the Act and its regulations.

Application

Where parties need further help reaching agreement or need an external party to make a decision they can apply to the Tenancy Tribunal for dispute resolution. The Department of Building and Housing receives these applications on behalf of the Tenancy Tribunal and identifies the most appropriate way to help them resolve the dispute.

Where possible the Department's trained mediators will try and help them to settle the dispute. Many cases can be settled by mediation.

If the dispute is not resolved by mediation, or if the type of dispute is more suitable for adjudication, then the matter will be referred to the Tenancy Tribunal for a hearing.

Mediation

Mediators do not make decisions - they facilitate discussions between the parties to a dispute, attempting to help parties reach an agreement.

If an agreement is reached, the mediator can formalise the agreement in an order that can be sealed by a Tenancy Adjudicator.

Adjudication

The Tenancy Tribunal is a formal forum for hearing and resolving unit titles disputes, up to \$50,000, but not disputes relating to the application of insurance money or the title of land.

The adjudicator will listen to the parties, hear witnesses, review any evidence presented and make a decision. The Tribunal is similar to a court and Tribunal orders are legally binding.

If the adjudicator is satisfied that the parties could settle the dispute by agreement, they can refer the case to mediation.

The Courts

The District Court has jurisdiction to hear disputes relating to the application of insurance money up to \$50,000 and other disputes between \$50,000 and \$200,000, but not disputes relating to the title of land.

The High Court has jurisdiction to hear disputes relating to the title of land, disputes relating to the application of insurance money in excess of \$50,000 and other disputes in excess of \$200,000.

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Glossary

Accessory unit – a unit designed for use with any principal unit (including a garage, parking space, or storage space).

Body corporate – an entity made up of all the unit owners in a unit title development.

Common property – land and facilities in a unit title development which are not contained in a principal unit or accessory unit, and are shared by the unit owners.

Eligible voter – a person who is over the age of 16 years and

- whose name is on the register of owners of principal units as the owner or representative of the owners of that unit; or
- who is the nominee of a company the name of which is on the register of owners of principal units as the representative of the owner; or
- who is a subsidiary body corporate representative.

Ownership interest – the interest assigned to a unit by a registered valuer based on the relative value of the unit in relation to each of the other units.

Principal unit – a unit designed for use as a place of residence or business or for any other use, and that is identified on a unit plan as a principal unit.

Unit plan – the plan of a unit title development that has been (or will be) deposited with Land Information New Zealand on subdivision.

Unit title development – an area of land and buildings that has been subdivided into two or more units, such as apartments, and often includes common property shared by the unit owners.

Utility interest – an interest used to calculate a unit's contribution to the operating account and long-term maintenance account.

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