

Unit Titles Amendment Bill

Government Bill

As reported from the Government
Administration Committee

Commentary

Recommendation

The Government Administration Committee has examined the Unit Titles Amendment Bill, and recommends that it be passed with the amendments shown.

Introduction

The clauses of this bill formerly constituted Part 27 of the Statutes Amendment Bill. Amendments made by statutes amendment bills should be minor, technical, and non-controversial changes to existing legislation. We consider that the amendments to the Unit Titles Act 2010 proposed in Part 27 of the Statutes Amendment Bill as introduced, are minor and technical, but there are so many of them that we consider their cumulative effect would be more than minor. We resolved therefore to divide the Statutes Amendment Bill, so that Part 27 became a separate bill to be known as the Unit Titles Amendment Bill.

We recommend a number of amendments to the latter bill, which we set out below.

Amendments to the Unit Titles Act 2010

We recommend replacing the definition of the term “access lot” which is amended by clause 143, with a clearer and more precise one. We also recommend a minor consequential amendment to clause 146, which seeks to amend section 55 of the Unit Titles Act.

We recommend amending clause 150, which seeks to replace section 89(1), requiring a body corporate to hold an annual general meeting. Our amendment would clarify that a development that predates the Unit Titles Act 2010 cannot seek to avoid this obligation by waiting until a unit is sold after the 2010 Act came into force.

We recommend amending clause 154, which seeks to replace section 138 of the Act. We recommend that the words “and maintenance” be added to section 138(4) of the Act, to improve the consistency of section 138, which requires bodies corporate to repair and maintain common property.

We recommend two amendments to clause 157, which seeks to amend section 148 of the Act, so that if a buyer requested some, but not all, of the prescribed information when requesting an additional disclosure, the person supplying the information would need to provide only the information requested. We consider that these amendments would improve the consistency of this provision throughout section 148.

Appendix

Committee process

The Statutes Amendment Bill, from which this bill was divided, was referred to the committee on 11 December 2012. The closing date for submissions on the bill as introduced was 15 February 2013. We received and considered seven submissions from interested groups and individuals. We did not hear oral submissions. On 8 May 2013 the committee resolved to divide the Statutes Amendment Bill.

We received advice from the Ministry of Justice and the Ministry of Business, Innovation and Employment.

Committee membership

Hon Ruth Dyson (Chairperson)

Chris Auchinvole

Kanwaljit Singh Bakshi

Hon Trevor Mallard

Eric Roy

Holly Walker

Unit Titles Amendment Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Chester Borrows

Unit Titles Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Unit Titles Amendment Act **2013**.

2 Commencement

The following provisions of this Act come into force on the 5 day after the date on which it receives the Royal assent.

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142 Principal Act

This Part amends the Unit Titles Act 2010 (the **principal Act**).

143 Section 5 amended (Interpretation)

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In section 5(1), replace the definition of **access lot** with:

~~“access lot means a separate allotment in a subdivision that was created to provide access between—~~

“(a) any or all of the other allotments of the subdivision; and

“(b) an existing road

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“access lot means a separate allotment that was created or currently exists to provide access between an existing road and—

“(a) a unit title development; or

“(b) a unit in a unit title development”.

- 144 Section 30 amended (Alteration of proposed unit development plan)** 5
 In section 30(1)(b), replace “any of sections 65 to 71” with “subpart 10 of this Part”.
- 145 Section 39 amended (Utility interest (other than for future development units))** 10
 Replace section 39(2) with:
 “(2) The utility interest for a principal unit or accessory unit is the same as the ownership interest fixed under section 38(2), unless the utility interest—
 “(a) is fair and equitable, having regard to the relevant benefits and the costs to units, and is shown on documentation required to be lodged with the unit plan deposited under section 17(1), 21(1), or 24(2)(a); or
 “(b) has been reassessed under section 41.”
- 146 Section 55 replaced amended (Access lots)** 20
 † Replace section 55 with:
“55 Access lots form part of common property
 “(1) This section applies where the registered proprietor of a parcel of land that is to be subdivided to create a unit title development owns a share in an access lot relating to that parcel of land. 25
 “(2) If this section applies, on the deposit of the unit plan, the proprietor’s share in the access lot becomes part of the common property.”
 Replace section 55(1)(a) with: 30
 “(a) the base land to which a unit plan relates has an access lot associated with it; and”.

- 147 Section 56 amended (Sale, lease, or licence of common property)**
- (1) In section 56(1) and (2), after “lease or licence over”, insert “the whole or any”.
- (2) In section 56(3), after “sell”, insert “the whole or any”. 5
- 148 Section 60 amended (Existing easements and covenants affecting base land)**
- In section 60(3), after “by the easement”, insert “or covenant”.
- 149 Section 86 amended (Power of body corporate to sign document)** 10
- In section 86(5), replace “pursuant to subsection (3)” with “pursuant to subsection (4)”.
- 150 Section 89 amended (Requirement for annual general meeting)**
- Replace section 89(1) with: 15
- “(1) The first annual general meeting of a body corporate must be held as soon as practicable, and in any event within 6 months after the ~~later~~ earlier of the following dates:
- “(a) the date of the deposit of the unit plan: 20
- “(b) the date of the settlement of the first sale of a unit.”
- 151 Section 100 amended (Counting of votes if poll requested)**
- In section 100(3), replace “50%” with “a majority”.
- 152 Section 104 amended (Passing of resolution without general meeting)**
- In section 104(3), replace “not less than 50% of eligible voters in respect of an ordinary resolution or 75% of eligible voters in respect of a special resolution” with “a majority of eligible voters in respect of an ordinary resolution, and not less than 75% of eligible voters in respect of a special resolution,”. 25

- 153 Section 127 amended (Recovery of money expended where person at fault)**
In section 127(1), replace “body corporate rules” with “body corporate operational rules”.
- 154 Section 138 amended (Body corporate duties of repair and maintenance)** 5
- (1) Replace section 138(1) and (2) with:
“(1) The body corporate must repair and maintain—
“(a) the common property; and
“(b) any assets designed for use in connection with the com- 10
mon property; and
“(c) any other assets owned by the body corporate; and
“(d) any building elements and infrastructure that relate to
or serve more than 1 unit.”
- (1A) In section 138(4), after “repairs to”, insert “or maintenance 15
of”.
- (2) In section 138(5)(b), after “development”, insert “; and”.
- (3) After section 138(5)(b), insert:
“(c) the duty to repair and maintain includes (without limi-
tation) a duty to manage (for the purpose of repair and 20
maintenance), to keep in a good state of repair, and to
renew where necessary.”
- 155 Section 144 amended (Interpretation)**
In section 144, insert in its appropriate alphabetical order:
“**contain**, in relation to information or any certificate to be 25
contained in any disclosure statement, includes attaching the
information or certificate to, or in any other way incorporating
it so it forms part of, the disclosure statement”.
- 156 Section 147 amended (Pre-settlement disclosure to buyer)**
In section 147(3)(b), delete “or be accompanied by”. 30
- 157 Section 148 amended (Buyer may request additional disclosure)**
- (1AA) In section 148(1), after “statement”, insert “or may request
some, but not all, of the information required to be in an ad-

ditional disclosure statement (specific prescribed information)”.

- (1) In section 148(4), after “prescribed information”, insert “or, if the buyer has requested only specific prescribed information, the specific prescribed information requested”. 5
- (2) In section 148(5), after “statement”, insert “or specific prescribed information”.

158 Section 166 amended (Expiry of lease)

- (1) In section 166(1), replace “Despite section 50(c), the term” with “The term”. 10
- (2) In section 166(3), replace “Despite section 50(c), at any time” with “At any time”.
- (3) In section 166(5), replace “The Registrar, on receiving the certificate, if the Registrar is satisfied that the term of the lease or any extended or renewed term has expired, and subject to the provisions of subsection (6), must—” with “On receiving a certificate of expiry, if the Registrar is satisfied that the term of the lease or any extended or renewed term has expired, he or she must—”. 15
- (4) Replace section 166(7) with: 20
- “(7) If the Registrar is served with a copy of an application under subsection (6), the Registrar may not take any action referred to in subsection (5) unless or until the Registrar is satisfied that the application for relief has been withdrawn or refused.”

159 Section 171 amended (Jurisdiction of Tenancy Tribunals) 25

- (1) After section 171(1), insert:
- “(1A) To avoid doubt, and without limiting subsection (1), a unit title dispute may relate to a claim for unpaid levies.”
- (2) After section 171(3), insert:
- “(3A) Without limiting the provisions of the Residential Tenancies Act 1986 that apply to a Tenancy Tribunal by virtue of section 176 of this Act, a Tenancy Tribunal may, in relation to a unit title dispute within its jurisdiction under this section, do any of the following: 30
- “(a) order any party to do anything necessary to remedy a breach by that party of an obligation arising under this 35

Act, the body corporate operational rules, or any agreement that is binding on the party and relevant to the unit title dispute:

- “(b) order any party to refrain from doing anything that would constitute a breach of an obligation arising under this Act, the body corporate operational rules, or any agreement that is binding on the party and relevant to the unit title dispute: 5
- “(c) make any supplementary orders of a consequential or ancillary nature necessary to exercise or perfect the exercise of any of its jurisdiction.” 10

160 Section 173 amended (Jurisdiction of High Court)

After section 173(1), insert:

- “(1A) In addition to the jurisdiction conferred under subsection (1), the High Court also has jurisdiction to hear and determine a unit title dispute relating to the application of insurance money under section 136(4) for amounts in excess of \$50,000.” 15

161 Section 210 amended (General relief for minority where resolution required)

After section 210(1), insert: 20

- “(1A) Subsection (1) does not apply if the resolution is a designated resolution.”

162 Section 211 amended (Relief in cases where special resolution required)

After section 211(1), insert: 25

- “(1A) An application for relief under subsection (1) must be made within 28 days of the close of voting on the resolution. (However, this subclause does not apply if the close of voting was before this subsection comes into force.)”

163 Section 213 amended (Notices of designated resolutions) 30

In section 213(5), delete “has made an application for relief under section 210 or”.

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