

The Unit Titles Act 2010

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LAWYERS

Overview

- **Unit Titles Act 2010 – what does it mean for:**
 - Agents
 - Building Consultants
 - Developers
 - Planners
 - Property Managers
 - Surveyors
 - Valuers

These slides are in summary form for presentation purposes and should not be relied on as legal advice.

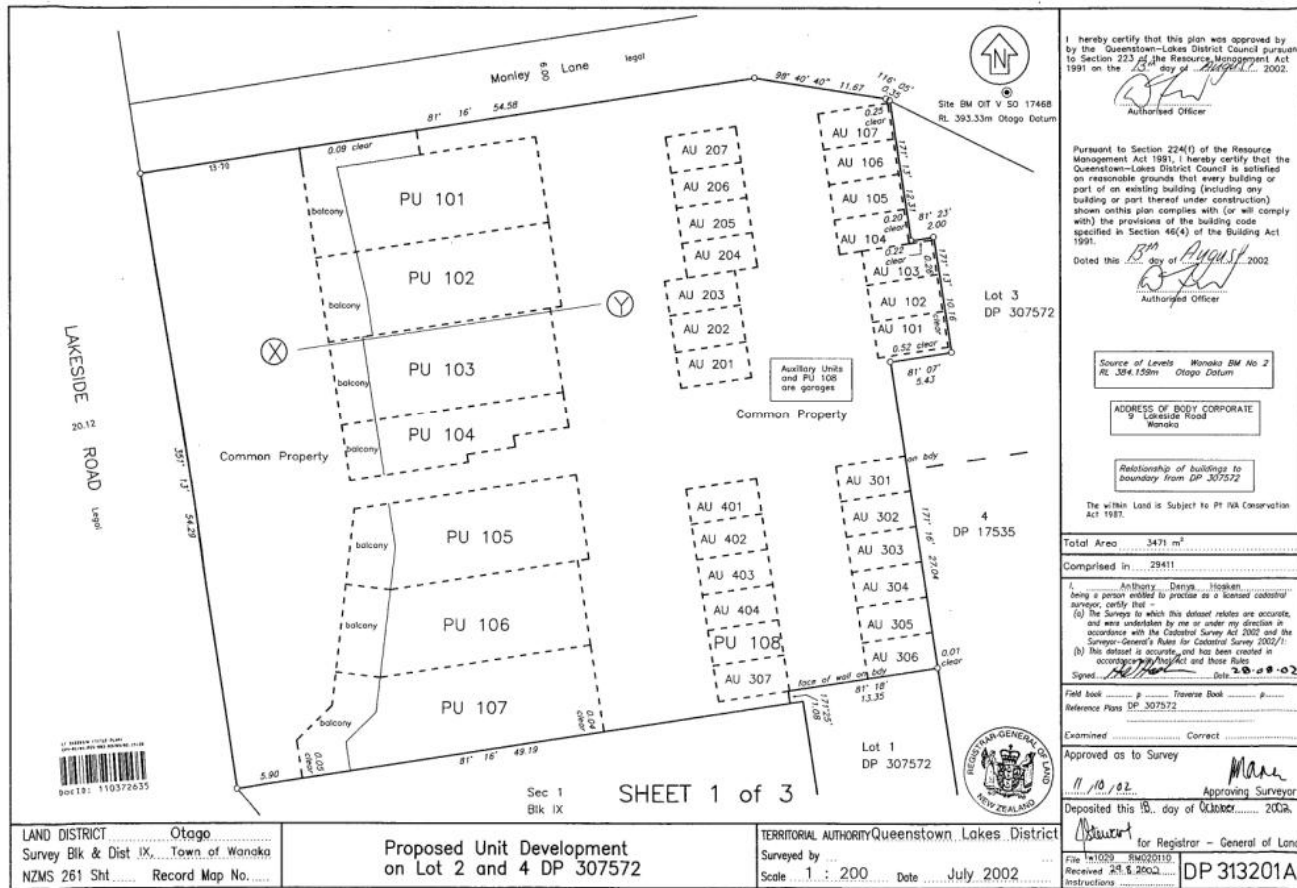
What are unit titles about?



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What are unit titles about?



Agents

- Pre-contract disclosure
- “Form 18”
 - Levies and period
 - Maintenance planned for the following year
 - Balance of each fund
 - Whether unit or common property subject to Weathertight Homes claim or other proceedings relating to leaks
 - Explanation of various matters (unit ownership, unit plan, easements, LIM)
 - How to obtain further information
 - Cost of additional disclosure statement

Disclosure

Pre-contract disclosure	Additional disclosure	Pre-settlement disclosure
Compulsory	Optional	Compulsory
To prospective buyers	If requested by buyer within 5 working days*	No later than 5 working days before settlement
Before agreement is signed	Provide within 5 working days of date of request	Certified correct by body corporate
By seller – seller pays	By seller – buyer pays	By seller – seller pays
Agent – Body Corporate Manager - Lawyer	Body Corporate Manager - Lawyer	Body Corporate Manager - Lawyer

Disclosure

- Issues for pre-contract disclosure
 - Who is responsible?
 - Seller vs agent vs lawyer
 - What if there is no professional body corp manager?
 - Starting early
 - If pre-contract disclosure is required now, other disclosure will be required later
 - Mortgagee sales
 - “Off the plans” sales

Building Consultants

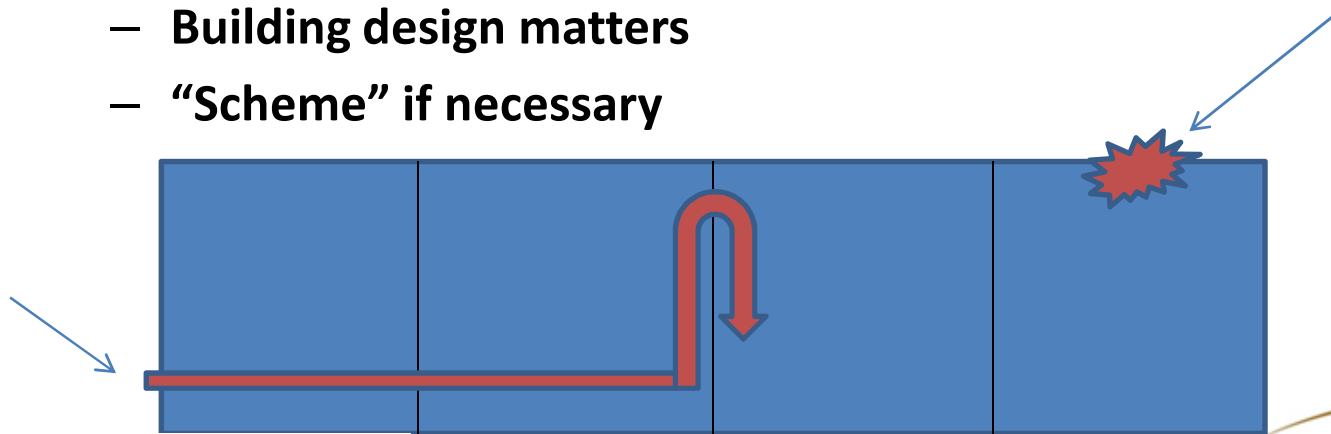
- Long-term maintenance plan
 - Not required in first 15 months
 - Must be updated every 3 years
- To cover
 - Common property, building elements, and infrastructure
 - Items not being maintained
 - Period of plan – and age and life expectancy of items
 - Costs of maintenance
 - If there is a long-term maintenance fund, what is the fund to be applied to
 - Who has prepared the plan

Building Consultants

- Long-term maintenance fund
 - Required, unless body corp decides otherwise by special resn
- Building elements
 - Matters necessary to structural integrity, exterior aesthetics, or health and safety
 - Roof, balconies, decks, foundations, walls, cladding, support
- Infrastructure
 - Pipes, wires, ducts, gutters, cables, etc for services

Building Consultants

- Maintenance
 - Body corp must repair and maintain **building elements** and **infrastructure** (hole in roof, hole in external wall, leaky pipe) that serve more than 1 unit
 - BC may recover
 - from unit owner if “contained in a unit”
 - from those who substantially benefit from work
 - **Building design matters**
 - **“Scheme” if necessary**



Developers

- **“Turn-over” disclosure**
 - When developer/associates no longer control 75% of votes, must call meeting of body corp
 - As-built plans and specifications
 - Assets and liabilities of body corp
 - Details of code compliance cert, compliance schedules, and building WOF
 - Recommended maintenance schedules
 - Resource consent/heritage obligations
 - Warranties and guarantees for construction products
 - Maintenance and service contracts
- **Service contracts (management rights)**
 - May be challenged
 - Compensation order or termination order

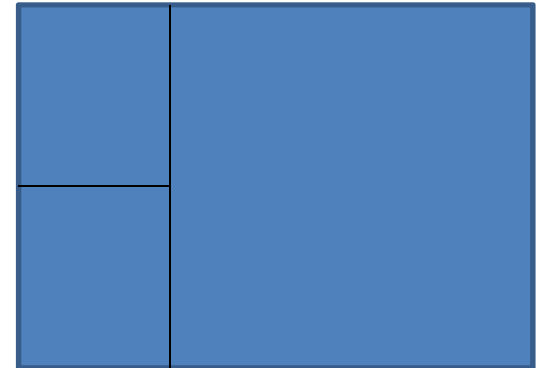
Developers

- **Redevelopments**

- Easier to shift a boundary between units - just consent of relevant unit owners and amended unit plan
- If redevelopment “materially affects” other units or common property, then:
 - Special resolution required (75%) – was unanimous under UTA 1972
 - New unit plan required

- **Layered Developments**

- Can subdivide a principal unit



Developers

- **Back to basics**
 - Units harder to sell – disclosure obligations
 - Do you really want a unit title development?
 - Is a cross-lease or fee simple a better option?
- **But**
 - More options for redevelopment



Planners

- **Back to basics**
 - Units harder to sell – disclosure obligations
 - Does the developer really want a unit title development?
 - Is a cross-lease or fee simple a better option?
- **But**
 - More options for redevelopment



Planners

- **Incidental rights**

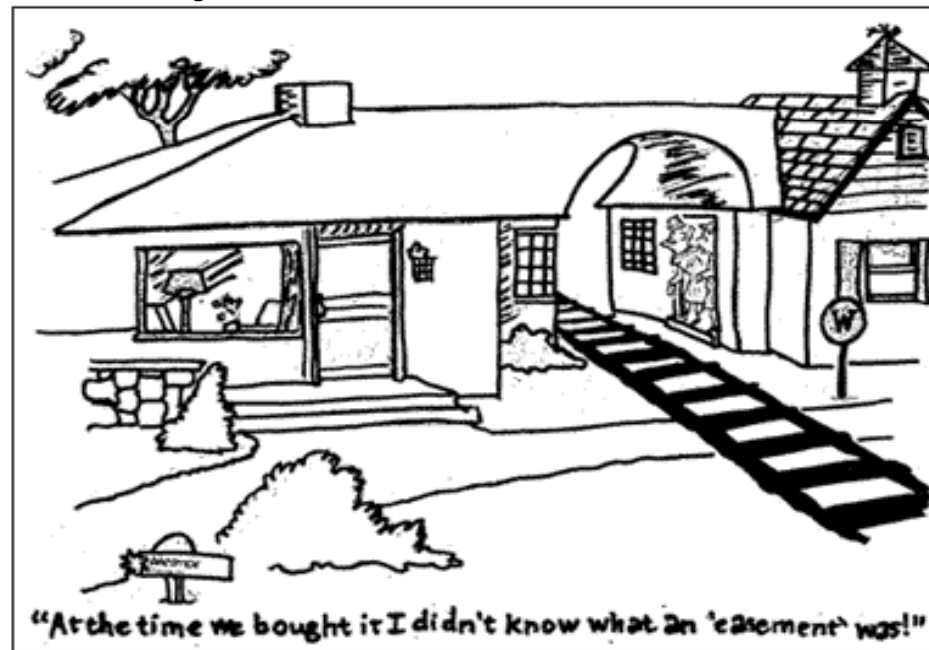
- Rights to support, shelter, protection, water, sewerage, drainage, gas, electricity, garbage, air, telecoms...
- Effective as if they were easements
- Rights and responsibilities

- **Infrastructure**

- The body corp is to maintain infrastructure that serves more than 1 unit
- “Statutory obligation”

Planners

- Talk to the developer about desired outcome
- Talk to the surveyor about the unit plan
- Talk to the lawyer about the rules



Property Managers

- **Role**
 - No body corp secretary under 2010 Act
 - But greater role in disclosure
 - Pre-contract disclosure
 - Additional disclosure
 - Pre-settlement disclosure
 - Disclosure needs to be paid for
 - “Everyone” needs a professional manager, but this is now a contractual role

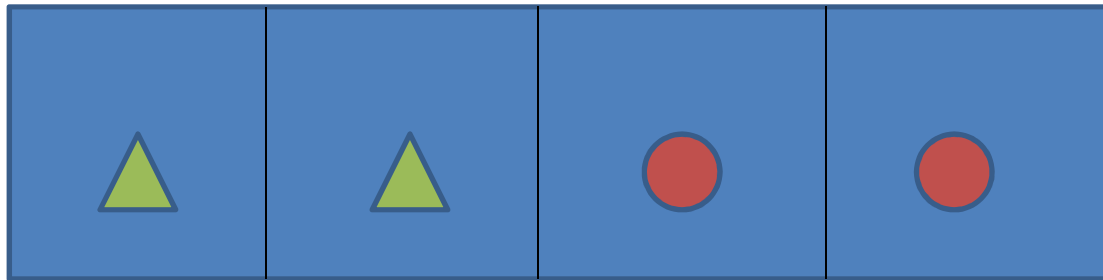
Property Managers

- **Meetings**
 - Hold AGM within 6 months
 - Notice of intention + notice of AGM
 - Existing body corp rules disappear after 15 months
 - Maximum period, can opt-in earlier
 - Operational rules need to be re-drafted/re-passed
 - Issues over which rules apply to meetings
 - Recommendation: follow 2010 Act for all meetings
 - Elect a chairperson (but who will want to be one?)
 - Duties include calling meetings, signing documents, preparing minutes of meetings, arranging financial statements
 - Elect body corp committee and make delegations

Property Managers

- **Meetings**

- Meetings have a 2-stage voting process:
 - First stage – one vote per unit
 - Poll may be called if motion passes
 - Second stage – voting based on ownership interest
- Is this a special resolution or an ordinary resolution?
- Resolution without meeting
 - S 104(3) – 50% of eligible voters can pass resolution in writing without meeting



Property Managers

- **Levies**
 - Ownership interest and utility interest
 - Responsibility for maintenance costs
- **Insurance**
 - “Stand alone” units can be required to have separate insurance
- **Financial statements**
 - Audited, reviewed, or verified by an accountant each year, unless special resn otherwise
- **Rules**
 - Opt-in to operational rules (minimalist)

Property Managers

- Dispute resolution
- Role of Tenancy Tribunal and cost



Surveyors

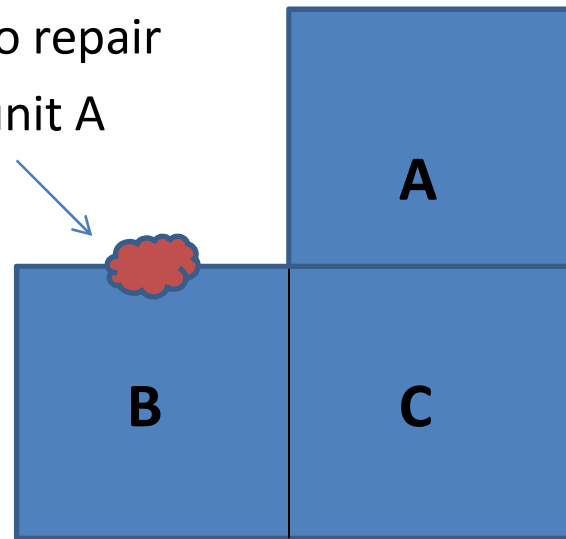
- **Boundaries Matter**

- Under 1972 Act, body corp could repair exterior/roof if common property, but not if part of a unit
- Under 2010 Act, body corp can repair exterior/roof as it is a “building element” (as long as it serves more than 1 unit)
- **BUT**
- If the building element is “contained in a unit”, the body corp may require the unit owner to pay
- If the repair benefits some (but not all) units, the body corp may require those who benefit to pay

Surveyors

- **Boundaries Matter**

- “Who repairs” and “who pays” depend entirely on where the unit boundaries are marked on the unit plan
- Example: Leak
- Deck of unit A/ Roof of unit B
- Body corp (A, B & C) is to repair
- May be “contained in” unit A
- “Serves” unit B
- Who benefits?
- Who pays?



Surveyors

- **Section 32(2) certificate**
- **“Principal unit”**
 - contains a building, or part of a building, or contained in a building; or
 - a car park (single motor vehicle only)
- **Redevelopments**
 - Boundary adjustment – just need amended unit plan
 - If materially affects other units or common property, need special resolution and new unit plan
- **FDU – will be levied once “in use”**
- **Alterations within unit boundary**
- ~~Layered Developments~~

Valuers

- **Reassessment of ownership interest**
 - Now special resolution, not unanimous
 - Easier to reassess, but less important?
 - “One vote per unit” may matter more than ownership interest
- **Valuation factors**
 - Value of long-term maintenance fund
 - Contingency fund or capital improvements fund?
 - Whether there is a professional manager
 - Disclosure that will be required when unit sells
 - Is this a layered or staged development?
 - Enforceability of management contract?

Valuers

- **Rules**

- An existing rule may protect a valuable use right
 - Example 1: Exclusive use of deck on common property
 - Example 2: Exclusive right to certain business within a development
- These existing rules will disappear after 15 months (max)

Operating Account	Long-term maintenance fund
Compulsory – levy based on utility interest	Compulsory (unless special resn otherwise) – levy based on utility interest
Capital Improvements fund	Contingency fund
Optional – levy based on ownership interest	Optional – levy based on utility interest

Buyers, sellers, owners

- Disclosure
- Will anyone want to buy a unit title?
- Does the body corporate function?
- Are owners active members of the body corporate?
- Who will want to be a chairperson?

Summary of Jobs and Issues

- Agents
 - Pre-contract disclosure
- Building consultants
 - Long-term maintenance plan
 - Infrastructure and building elements
- Developers
 - More options for development
 - More disclosure
- Planners
 - Incidental rights
 - Statutory responsibilities

Summary of Jobs and Issues

- Property managers
 - Role now contractual
 - Disclosure
 - Hold new AGM
 - Help sort out long-term maintenance plan and rules
 - Bank and audit requirements
- Surveyors
 - Boundaries matter
 - More options for development
- Valuers
 - Valuation factors
 - Rules

McCaw Lewis has special expertise in unit titles:

- *Thomas Gibbons, the presenter of the seminar, is the author of “Unit Titles Law and Practice”, to be published in August 2011. He has consulted to the Department of Building and Housing and Tenancy Tribunal on the new Act, and his work in this area has included subdivisions, transactions, and opinions.*
- *John Neverman leads the McCaw Lewis property team. He is a former District Land Registrar who has significant expertise in property law, including residential, commercial and industrial transactions and developments, and specialist advice on body corporate issues.*
- *Shannan Bennett is a resource management and property lawyer. Her practice includes work on transactions, subdivisions and opinions, and she manages the firm’s unit title transactions.*

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