

YOU AND YOUR PROPERTY

BY RESIDENTIAL PROPERTY LAWYER
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Ordinarily this column comments on the latest decisions of the New Zealand Courts. However, this issue focuses on the introduction of the Unit Titles Act 2010 (the "UTA 2010"). The UTA 2010 was introduced into Parliament last year and came into force on June 20, 2011.

The UTA 2010 seeks to resolve a number of historical issues with unit titles. It governs all aspects of the Body Corporate including the Body Corporate rules, management, maintenance, meeting procedures and voting rights. The UTA 2010 also introduces a new disclosure regime when selling a unit title property. This article focuses on the disclosure regime.

Historically it was perceived that buyers were not fully informed regarding the nature of unit title properties in general and the specifics of the particular unit being offered prior to committing to a purchase. The UTA 2010 seeks to redress this by introducing a three step process (one step being optional) which requires disclosure to be made by sellers:

- (a) before a contract is signed; and
- (b) immediately prior to settlement.

The third, optional stage, can be exercised by the buyer at their discretion. This additional disclosure is made in the period between an offer being made and the final disclosure being completed. The buyer has to meet the cost of this additional disclosure.

The UTA 2010 (at least insofar as it introduces disclosure statements) will be advantageous to buyers of unit title properties as they will be more informed about Body Corporates and the unit before they commit to making an offer for the unit. There are no penalties contained in the UTA 2010 for failing to provide a disclosure statement. Notwithstanding the absence of penalties, it is arguable that if disclosure is not made the buyer can cancel the agreement.

Pre-contract disclosure must include a statement regarding the weather-tightness

of the building and state whether or not there has been any history of proceedings being issued or a claim being made in respect of weather-tightness issues. It is likely statements to the effect that there have been claims in respect of weather-tightness (if the issues have not already been resolved) are likely to make unit title properties unsaleable. Certainly, such properties will sell for a significant discount to the price that would have been achieved if there were no weather-tightness issues.

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As mentioned earlier, a further disclosure statement must be provided immediately prior to settlement. Again, the contents of that disclosure (which vary slightly from the initial disclosure) do not allow a buyer to cancel the agreement. The second (or pre-settlement disclosure) must be accompanied by a certificate from the Body Corporate confirming all the information contained in the pre-settlement disclosure is correct. Failure to provide the pre-settlement disclosure and the certificate at least five days

prior to settlement entitles the buyer to defer settlement until the fifth working day after the certificate is provided. Further, in the event the disclosure and certificate are not provided, the buyer may, at their election, give 10 days' notice of their intention to cancel the agreement. The certificate can be withheld by the Body Corporate in the event there are any arrears in Body Corporate levies. This will be used by the Body Corporate as a mechanism for ensuring all unpaid levies are paid on settlement.

It is imperative all unit title owners understand their obligations pursuant to the legislation now and encourage their Body Corporate to put themselves in the best possible position to comply with the Act, particularly with respect to sale and purchase of units. Body Corporate owners should instruct the Body Corporate solicitors to review the Body Corporate's compliance with the new legislation.

Buyers of unit title properties should ensure they receive pre-contract disclosure and take legal advice prior to signing an agreement for the sale and purchase of a unit title property.

Sellers of unit title properties should ensure their disclosure statements are available prior to advertising their properties for sale.

“If you would like a copy of previous articles on property written by Michael email him on michael@homelegal.co.nz.”

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