

# Body Corporate Guide

An essential handbook for anyone who  
has anything to do with unit titles



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# CHAPTER 1

## THE NEW ACT IN A NUTSHELL

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### Summary of the Unit Titles Act 2010

The UTA2010 builds on the regime previously established by the 1972 Act, and in doing so it:

- entrenches requirements of management and governance that previously could be manipulated
- introduces a more equitable means of contributing to shared costs
- introduces sinking funds and contingency funds
- eases the requirements for changing a unit title structure
- introduces new opportunities for development
- imposes new disclosure requirements.

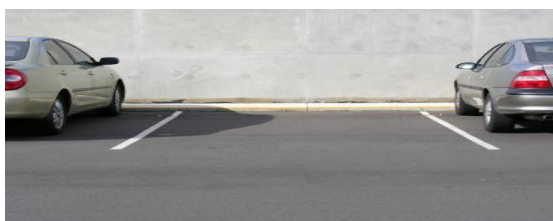
It creates a robust structure that can handle a range of scenarios, and is suitable for a small group of homes through to a mixed-use, multi-unit high-rise.

You'll need to know about the Act if you own or lease a unit title, if you sell them, trade them, develop them, fund them or manage them. You'll especially do well to turn your mind to the legislation within the first 12 months after it is introduced. If you don't, assumptions will be made and default situations outlined in the Act will prevail, even though they may be totally unsuitable to your situation.

### What is a unit title?

Under the 2010 Act, an owner acquires ownership of the unit itself, an interest in the common property and a contingent right to share in ownership of all of the units if the unit plan is ever cancelled.

An owner might own a future development unit (an area to be developed at a later stage), or a principal unit that is already established as an apartment, a shop, a commercial office, a site for a sign or a car park. They might also own an accessory unit that is supplementary to a principal unit, such as a storage area.



A car park can be a unit title

Generally a principal unit must be associated with a building. Car parks are the exception to that rule. All other principal units must be in a building or part of a building or contain a building.

The boundaries of the units, accessory units and common property are all defined on a unit plan lodged at Land Information New Zealand (LINZ).

Ownership can be further complicated by reference to a leasehold estate, a staged unit development or a layered development, each of which is examined in this book.

## Governance and management structure

This ownership structure is overlaid with governance and management obligations. Owners must abide by rules, some of which are established by statute and some of which are created specifically for each building complex.

Voting rights attach to ownership. In some instances an owner gets more voting rights if they own a unit of greater value but in most instances it's one vote per unit.

Owners of a principal unit automatically become members of a body corporate. No one else can be a member. No one can choose to join just because they would like to. The body corporate is a separate legal entity created when the unit plan is deposited with LINZ.

The body corporate owns the common property but the individual owners have a beneficial interest in it. The interest is held jointly as tenants in common and is calculated by the relative value of a unit in relation to the value of each of the other units.

An owner is obliged to contribute to maintenance costs, which may include a sinking fund and contingency funds. Contributions to some costs are based on ownership, while contributions to others are based on use.

The nature of the development (and how well the ownership and use are run) is not dependent only on the owners and occupiers, but is also significantly influenced by the roles of and interaction among the following:

- the body corporate secretary or body corporate manager
- the building manager
- the body corporate committee
- the body corporate chairperson.

## Ownership obligations

The statute sets out a range of responsibilities that attach to ownership. Some of these responsibilities can be managed by delegation while others require more specific input from the owner. A notable change from the earlier regime is the imposition of disclosure requirements on a sale. Disclosure obligations are especially imposed on those who develop unit titles.

The requirement to comply with body corporate rules remains, but the makeup of the rules differs from what owners will be used to. Also, unless a body corporate takes specific action to ensure otherwise, existing rules will fall away 15 months after the Act comes into force. They will be replaced with default

rules provided by regulation. Those default rules are not expected to cover issues peculiar to specific complexes, such as the requirements for a particular management arrangement to be in place.

## **Development**

The UTA2010 offers new opportunities for developers. It lowers thresholds to enable change and provides for the further subdivision of existing units in layered developments. In addition, it maintains the regime of staged developments using future development units, but tidies up some inconsistencies that were experienced with that regime.

The legislation limits the extent to which a developer can maintain on-going control and sets guidelines for the review of long-term service contracts.

In short, the UTA2010 creates more flexibility as to how unit-title developments are completed, but raises the bar in respect of management agreements that are initially put in place.

## **Transitional arrangements**

The UTA2010 will commence on 20 June 2011. Bodies corporate existing at that date will transition fully to the UTA2010 over a 15 month period.

Despite the 15-month timeframe, it will be important for bodies corporate to address issues promptly. An annual general meeting must be held within six months of the Act coming into effect and, to ensure all changes are completed within the requisite timeframe, a number of meaty issues will need to be dealt with at that meeting.

## **Cancellation**

The legislation deals with termination of unit titles both by agreement and through a decision of the Court.

More detailed information on all of these points can be found in the following pages of this book.

# ABOUT THE AUTHORS

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Debra Dorrington and Denise Marsden are both partners in Auckland CBD law firm AlexanderDorrington. Both specialise in property law and know the new Unit Titles Act 2010 inside and out. They give pragmatic legal advice to developers, owners, managers, bodies corporate, lessors and lessees – in fact anyone involved in property. Both authors are regular bloggers and presenters on property topics.



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