



Department of
Building and Housing

Te Tari Kaupapa Whare

Review of the Unit Titles Act 1972

Summary of Submissions

June 2005

TABLE OF CONTENTS

	Page	Questions
BACKGROUND.....	3	
EXECUTIVE SUMMARY.....	4	
ABBREVIATIONS USED.....	6	
PART 1: CREATION AND ADMINISTRATION OF UNIT TITLES	7	
<i>Physical dimensions of units</i>	7	1 - 4
<i>Boundaries</i>	10	5 - 10
<i>Staged developments</i>	12	11 - 13
<i>Access ways, easements and covenants</i>	14	14 - 15
<i>Minor changes to common property and to boundaries of units</i>	15	16 - 17
<i>Leasehold land</i>	15	18
PART 2: REQUIREMENT FOR BODIES CORPORATE, AND RULES OF BODIES CORPORATE	16	
<i>Bodies corporate and small developments</i>	16	19 - 20
<i>Bodies corporate – recognise different types</i>	16	22 - 25
<i>Body corporate democracy</i>	18	26 - 30
<i>Relief from the requirement of unanimity</i>	20	31
<i>Unit entitlements</i>	21	32 - 35
PART 3: DUTIES AND FUNCTIONS OF BODIES CORPORATE	23	
<i>Role of bodies corporate</i>	23	36 - 38
<i>Financial planning and reporting</i>	25	39 - 42
<i>Sinking funds</i>	26	43 - 47
<i>Insurance</i>	28	48
PART 4: BODY CORPORATE RELATIONSHIPS	28	
<i>Developers and initial purchasers of units</i>	28	49 - 51
<i>Developers and bodies corporate</i>	30	52 - 53
<i>Contracts made by the developer</i>	31	54 - 56
<i>Disclosure to subsequent purchasers</i>	32	57 - 60
<i>Relationship with body corporate managers and secretaries</i>	33	61 - 65
<i>Body corporate governance</i>	34	66 - 69
<i>Legal protection of body corporate committee members</i>	35	70
<i>Unit owners, bodies corporate and tenants</i>	35	71 - 76
PART 5: DISPUTE RESOLUTION	37	77 - 80
PART 6: FLAT-OWNING COMPANIES AND CROSS-LEASE SCHEMES	40	81 - 83
PART 7: FORM OF LEGISLATION	42	84

BACKGROUND

The Department of Building and Housing is undertaking a review of the Unit Titles Act 1972.

As part of this review a **Discussion Document on the Review Unit Titles Act 1972** was released for public consultation in November 2004. It can be viewed at <http://www.dbh.govt.nz/unit-titles-review/contents.html> The closing date for submissions was 31 March 2005. In addition, public consultation meetings were held in Auckland, Wellington and Christchurch during February 2005.

A total of 138 written submissions were received. They were of a high standard, substantive and were well informed.

Submitters represented a cross section of the sector including unit owners; bodies corporate; aligned professionals such as body corporate management companies, solicitors and surveyors; professional institutes such as New Zealand Law Society, New Institute of Surveyors, New Zealand Property Institute, Real Estate Institute of New Zealand, New Zealand Property Investors Federation and Property Council of New Zealand; as well as local authorities, regional councils and other government agencies.

This Summary of Submissions report is a summary of the submissions received during the public consultation period. It includes verbal submissions and comments made at the public consultation meetings. The report endeavours to reflect and summarise the wide range of views and comments made by submitters. Questions referred to are those asked in the Discussion Document. Not all submitters responded to every question.

This report does not necessarily reflect the views of the Department of Building and Housing and does not reflect official government policy.

The Department of Building and Housing would like to thank all submitters for their contributions.

EXECUTIVE SUMMARY

Creation and Administration of Unit Titles

The key issues raised with regard to boundaries and dimensions of units were the lack of clarity in definitions, the need for flexibility and the need for simplification of processes.

A significant majority of respondents supported allowing for the definition of a unit to expressly include partly or wholly open space in order to facilitate flexibility. The main provisos to this were clear rules around building alterations and the management of airspace. It was considered there would still be a need for staged development provisions.

Serious and complex problems had been experienced with regard to boundary definitions, mainly with regard to liability for maintenance and repair. There was general agreement that the body corporate ought to be responsible for undertaking work which affected the structural integrity of a building, and that the definition of common property affected their ability to do so.

There was general agreement that the process for making changes to common property and boundaries needs to be simplified.

Requirement for Bodies Corporate, and Rules of Bodies Corporate

There was a strong view that a range of body corporate models was needed to deal with issues arising from the diverse range of unit title developments. Many examples of types and uses of unit title developments were provided. The range of models used in Queensland was commonly referred to.

The requirement for unanimous decision making by a body corporate was seen as dependent on the type of decision being made, and the size, type and complexity of the development. There was a view that this needs to be balanced with the protection of fundamental property rights and the protection of minority interests.

There was a mixed response to the current basis for calculating unit entitlement, yet there were few alternatives suggested. There was a clear view that any system of levies based on who benefits needs to be underpinned by an accessible dispute resolution process.

Duties and Functions of Bodies Corporate

This section had the highest response rate from submitters. The majority of respondents felt that the functions of the body corporate are not well understood, and that a clear, general statement of purpose and function is needed. Issues with body corporate governance were flagged as numerous and serious. The name given to the body corporate did not seem to be a major issue.

There was strong support for bodies corporate to have greater financial accountability through the preparation of financial plans and budgets, and for common funds to be held in trust accounts. There was a lack of clarity identified around current provision for sinking funds, with support for a tailored, compulsory sinking fund regime. There was less support for the prescription of maintenance obligations, with guidelines being preferred.

Body Corporate Relationships

The majority of respondents supported increased information disclosure to potential purchasers and unit owners, by developers and bodies corporate. The key reasons were seen as consumer protection, so that parties could make informed purchasing and management decisions, and disclosure of any conflict of interest.

There is a need for clarity around the relationship between the body corporate and the body corporate secretary/manager, particularly if the role is contracted to a commercial firm. However, opinions were split regarding the need to regulate body corporate managers.

Tenants in unit title developments created potentially serious community living problems due to not being informed of their rights and obligations, and absentee landlords. A key issue was the extent to which bodies corporate have powers to enforce body corporate rules. There was a view that this needs to be balanced with provisions under the Residential Tenancies Act.

Dispute Resolution

There was general agreement that current dispute resolution provisions were expensive and slow. There was strong support for an alternative framework which was simpler, cheaper, faster and staffed by specialists. It was observed by some submitters that many disputes they experienced arose through lack of knowledge of the provisions of the Unit Titles Act 1972, and they could be resolved through more education.

Flat-Owning Companies and Cross-lease Schemes

Most respondents thought that the flat-owning company model was out-dated, but there was also some support for it.

There was almost unanimous agreement that no further cross-lease schemes should be created. However, there were reservations expressed regarding mandatory conversion of cross-lease schemes to unit titles.

Form of Legislation

The form of legislation was not seen as a major issue, with views evenly split between whether any new legislation should be in the form of one act or two.

ABBREVIATIONS USED

Annual General Meeting	AGM
Accessory Unit / Accessory Units	AU / AUs
Body Corporate Committee	BCC
Body Corporate Secretary	BCS
Body Corporate Manager	BCM
Cross Lease Schemes	CLS
Common Property	CP
Emergency General Meeting	EGM
Future Development Unit	FDU
Local Authority	LA
Law Commission	LC
Land Transfer Act	LTA
Open Space	OS
Property Law Act	PLA
Principal Unit / Principal Units	PU / PUs
Resource Management Act	RMA
Sinking Fund	SF
Territorial Authority	TA
Unit Entitlements	UE
Unit Owner / Unit Owners	UO / UOs
Unit Title / Unit Titles	UT / UTs
Unit Titles Act 1972 and its Amendments	UTA

Summary of Submissions

June 2005

PART 1: CREATION AND ADMINISTRATION OF UNIT TITLES

Physical dimensions of units

Question 1	Have you ever been involved in problems relating to boundary definition under the Unit Titles Act?
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Key Issues Raised

- Unclear boundary definitions create maintenance and responsibility issues.
- Inconsistencies in boundary definitions on plans.

Summary

A significant minority have been involved with problems relating to boundary definitions. Most of these respondents regarded it as a substantial issue that can cripple a community from further development or improvements. Others realised that problems would emerge and manifest themselves in the future, for example when the development needed redevelopment or the fences were rebuilt.

Problems commonly occurred in undefined wall cavities or on CP where the issue of ownership and responsibility was most obscure. Conflicts with design changes, car parking issues and deck construction also featured prominently.

Surveys are deemed inconsistent and information on the deposited plan deemed insufficient for a UT development.

The expense of defining and correcting boundary inconsistencies that are noted, detract UOs from completing maintenance while responsibility is determined.

Question 2

Do you agree with the Law Commission's recommendation that the definition of the term "unit" should expressly allow for units to be made up of partly, or wholly, open space? What are your reasons?

Key Issues Raised

- Flexibility for boundary definition.
- Flexibility for future alterations.
- Privacy.
- Aesthetics.

Summary

A significant majority said yes to both wholly and partly open space.

The main reason given was flexibility for owners, particularly to make extensions and redefine boundaries. This would reduce costs particularly for minor boundary changes. Other reasons given by a number of respondents were privacy, the enjoyment of air space and aesthetic value.

The provisos for legislating wholly and partly open space were to have a clear legal definition for minor building changes, and to provide for the management of air space.

A smaller group was against wholly open space legislation on the basis that the UT is an inseparable part of the whole, and may give rise to separation between title and body corporate management issues. Others said there may be difficulty in defining 3D complexes, and that the current definition is adequate.

A small group was unsure about the concepts of wholly and open space.

Question 3

If this change was made, would other issues need to be addressed, for example standard rules for minor alterations such as the addition of porches or conservatories?

Key Issues Raised

- Minimise adverse impact on common property.
- Clear specifications for permitted alterations.
- Negates need for rules on minor additions in smaller complexes.
- Standards and processes for alterations need to be developed.
- Flexibility for body corporate.

Summary

A common view is that alterations should have minimal adverse impacts on CP and neighbours, e.g. noise and privacy.

External alterations affect the overall appearance of the development and the extent of alterations allowed should be set out at commencement. Boundaries, rules and obligations should be clearly defined. Materials used and the design of the alterations should also be considered. UE should adjust accordingly if there is an increase in unit floor area/size.

There are conflicting views whether standard rules would be appropriate or not. Some agree that standard rules would be suitable for minor alterations and another view is that an architect should be consulted to ensure the overall appearance of the development is consistent.

Another conflicting view is whether the BCC can approve additions or not. Some suggested that the body corporate needs the power and the flexibility to approve alterations.

Differentiate between small and large development process for alterations.

Other concerns include:

- Is the air space owned by body corporate or UO?
- Can top storey UO sell off airspace?
- Should airspace be included within unit boundaries?

Question 4

What do you think would be the impact of your answers on unit owners, bodies corporate and on business owners?

Key Issues Raised

- Beneficial to all parties including the public and developers.
- Greater flexibility and scope for maintenance and alterations.
- Greater harmony arising from clearer title and boundary specifications.
- Simplified and less costly processes.
- Clearer understanding of responsibilities.

Summary

There was an almost unanimous agreement that changes would be beneficial to all parties including bodies corporate, UOs, purchasers, developers and the public.

There would be benefits to bodies corporate in terms of increased harmony and less conflict, arising from a number of factors including:

- Clearer definition of boundaries and OS;
- Distinction between titles and buildings;
- Simpler process for altering changes and resulting cost effectiveness;
- Minimised legal disputes.

Benefits to UOs and purchasers were seen as:

- Clearer purchasing processes;
- Greater right of redress;
- Recognition of resident rights.

Benefits to all parties, including developers and the public, in terms of simplified processes were seen to arise from:

- Greater scope and flexibility for maintenance and changes;
- Easier processes arising from elimination of the need to lodge new unit plans, set up new titles, and less complicated building plans;
- Clearer responsibilities, obligations and more relevant decision making;
- More certainty and awareness of roles.

The impact of business owners was seen to be neutral and their rights are not negatively affected.

Boundaries

Question 5 Have you ever experienced difficulties or problems relating to where the boundaries of units have been? If so, how serious a problem has it been?

Key Issues Raised

- Liability for maintenance and repair.

Summary

A range of experiences were encountered:

- Yes, serious and complex difficulties experienced. Issues included onus of liability for maintenance and repair between body corporate and UOs, and responsibility disputes for determining where unit boundary is;
- Yes, but not serious;
- No, but potentially serious during rebuild or refurbishment. Low frequency but high impact;
- No difficulties experienced.

Question 6 Should the Unit Titles Act control more strictly where the boundaries should be on a unit plan and what parts of a unit development are required to be common property? If so, describe how these could be provided for, for example by way of standardised formats for plans or minimum requirements.

Key Issues Raised

- Clarity and consistency of definitions and plans.
- Over prescription.

Summary

Many respondents agreed that the UTA could more strictly control the matter of boundaries. This would be done by standardised definitions of boundaries, units, standard formats and minimum requirements. Reasons given included that this would:

- Ensure better quality plans;
- Provide consistency in regard to boundary setting and definition of units;
- Give less discretion to surveyors and developers;
- Reduce confusion and legal argument;
- Provide clarity and more certainty to developers, UOs and bodies corporate.

It was noted that consideration needed to be given to the nature of the development, with different requirements for stand alone PUs.

Some respondents answered no. Reasons given included:

- There is currently a high standard of survey and current plans are adequate;
- This would be a gross interference of developer rights, and that market forces will correct problems;
- An overly prescriptive approach stifles imagination.

Question 7

How should exclusive use areas that effect the whole property be dealt with? For example, is there a case, particularly for large developments, for the individual unit title to include only the interior surface of the unit, and for all other structural elements to be common property?

Key Issues Raised

- Definition of CP.

Summary

Many respondents commented that interior walls should be part of the unit, while exterior walls should be CP. Reasons given included that it would make administration much easier, particularly for large or high rise developments. Some went into more detail, for example commenting that CP should include foundations, roofing, structural back-bone, water, waste, cabling and service delivery requirements to the point where they enter each unit. Others commented that flexibility needs to be retained rather than having fixed rules.

Some respondents disagreed that structural elements are CP, with one rejecting the notion. One said that it would curtail rights of private ownership and would be counter productive and infringing.

There was also a comment that the 1972 UTA can perfectly address issues with boundary walls in multi-level buildings, and that problems come from lack of understanding of the current Act.

Question 8

Are there other ways of addressing this issue, for example giving the body corporate a right to undertake work on units, as opposed to the common property, or requiring unit owners to repair defects within their own unit title if failure to do so could cause damage to the building? Please describe your proposal and how you think it would solve the problem.

Key Issues Raised

- Rights and powers of bodies corporate and UOs with regard to undertaking work on units.

Summary

There was general agreement in principle that body corporate rules should require UOs to be responsible for the repair of their unit defects, unless where they could structurally compromise the whole building, in which case the body corporate ought to be responsible. There was a range of approaches to this including:

- Have a requirement for UO to repair defects if defects could damage CP or adjoining units;
- Give powers to body corporate to require UOs to remedy maintenance problems that effect CP;
- A commonly held view was to allow the body corporate to do the maintenance and claim costs from defaulting UO;
- Body corporate to do structural work and repairs. UOs must realise that all units are interdependent, no matter nature of configuration;
- UOs not able to undertake structural work on unit;
- Allow body corporate to conduct internal works, for example electrical, water works etc, without express UO permission.

Questions 9 and 10

9. Have you ever experienced difficulties or problems relating to the ownership of utilities such as water pipes and electricity lines? If so, how serious a problem has it been? How could the problem be addressed?

10. What do you think would be the impact of your answers on unit owners, bodies corporate and on business owners?

Key Issues Raised

- Clarity around responsibility for maintenance of services and access to services.

Summary

Many respondents said they had not experienced problems. A few said they had, but they had been resolved.

Those who had experienced problems said they were frequent and serious. The main problems were around responsibility and liability for maintenance of services, and around access to services.

There was a need for any definition of CP to extend to infrastructure, and for clearer definitions of responsibilities regarding services.

The impact of this would be more certainty, and more clarity around process, costs and responsibilities.

Staged developments

Question 11

Do you agree the, if units can be comprised wholly of open space, the staged development provision of the Unit Titles Act are no longer required?

Key Issues Raised

- Approximately one third disagree believing that staged development provisions would still be required.
- Some respondents agreed that staged development provisions would no longer be required.
- Smaller numbers agree but with a proviso.
- Approximately one third had no comment.
- Interdependent nature of UTs must be recognised and resulting impact on CP and legislation.
- Staged developments required in large and complex developments.

Summary

Approximately one third disagree believing that staged development provisions would still be required. Reasons given included:

- They are needed for large developments;
- They are needed for multi-storey developments;
- Developer may wish to subdivide;
- Need to recognise interdependent nature of UT and effect on CP, and implications of the RMA.

Some respondents agreed that staged development provisions would no longer be required:

- Obviates need;
- Stops inappropriate development by requiring body corporate consent to further works.

- Smaller numbers agreed but with a proviso:
- Future developments highlighted on plan to ensure fair allocation of UE;
 - Need control by one body;
 - Consumer protection needed;
 - Bodies corporate need to be engaged at design phase of development;
 - Review of restriction to progressive re-subdivision of units vertically;
 - Defining future development in advance means minor variations will be costly and time consuming.

Approximately one third had no comment.

Question 12

Were that reform to be adopted, do you think unit owners require any special protections from the future development of “open spaces”? If you agree with the Law Commission that contractual provisions and the Resource Management Act (RMA) can protect unit owners from subsequent development, do you nevertheless think it would be a good idea to provide for statutory protection as a consumer protection measure?

Key Issues Raised

- Debate over degree of protection that RMA gives to UO.
- Requirement for full disclosures to potential UO.
- Particular protection for UO when OS is part of staged development.
- Impact of future minor developments – rights of developer or costs involved.

Summary

No further protection needed:

- Control and protection afforded under RMA and Building Act;
- Difficult to implement in practice that which affords adequate protection whether in district plans or statutory provisions;
- Must maintain rights of developer to make minor changes as permitted.

Further protection needed:

- RMA offers limited protection only;
- Results in clearer expectations for purchasers.

Statutory protection needed:

- Statutory protection required for UOs;
- Statutory protection for consumers should have priority;
- Protection by “available access to plans at Registrars office and vendor disclosure statements”;
- Strict protection for UO when OS included in staged development.
- Protection needed for reasons of proximity, design and privacy.

Question 13**What do you think would be the impact of your answers on unit owners, bodies corporate and on business owners?****Key Issues Raised**

- Certainty and protection for purchasers particularly in early stages.
- Positive marketing features of multi-unit developments.
- Possible negative impact on developers for minor changes needed.

Summary

The majority who responded saw positive outcomes for purchasers/potential OUs. This was in terms of certainty and protection for purchasers against unscrupulous developers, particularly in the early stages of development.

These factors, together with a greater understanding of the progressive nature of development amongst purchasers, were seen as positive marketing features.

Positive impacts were seen as greater dialogue between all parties and standard processes across developments.

A small minority saw negative impacts, for example increased confusion because “open space” would be difficult to define.

Access ways, easements and covenants

Questions 14 and 15**14. Have you ever experienced problems relating to access lots, easements or covenants under the Unit Titles Act?****15. In your view, should the Law Commission’s recommendations be adopted? If not, are there any other ways these problems could be addressed?****Key Issues Raised**

- Difficulties are experienced in creation of unit plans when site is served by jointly owner access lot.
- Problems when creating easements under current lack of provisions.

Summary

No major difficulties experienced with approximately 50% of respondents.

The other 50% of those who responded experienced difficulties. This was mainly in the areas of creating easements and setting out obligations and maintenance. The barrier commonly cited was inadequate provision in the UTA. Suggested solutions were providing more flexibility, and for a separate part in the Act for easements and covenants.

There was general agreement to allow for UTs on sites which are served by jointly owned access lot. It was suggested that heritage and other like covenants should be registered against title rather than treated as easements.

Minor changes to common property and to boundaries of units

Questions 16 and 17

16. In your view, is there any reason not to adopt these recommendations? Is there a better way of dealing with this issue?

17. If such an amendment is made, should the circumstances where the discretion may be applied be spelled out or should that be left to the district land registrar on a case-by-case basis?

Key Issues Raised

- Need for changes to be able to be made more easily.
- Concerns from increased flexibility.

Summary

It was generally agreed that minor changes to unit plans needed to be able to be made more easily and the process simplified. Clarifying the OS concept would partly address this.

There were split views regarding giving discretion to the District Land Registrar, Courts, bodies corporate or the proposed concept of a “Body Corporate Commissioner”.

Concerns arising from increased flexibility and discretion were:

- The definition of ‘minor’;
- Subsequent changes to UE;
- The integrity of the unit plans and recording of changes;
- Agreement by the body corporate;
- The need for certainty;
- The erosion of minority interests.

Leasehold land

Question 18

Have you experienced any issues relating to unit titles on leasehold land? Are the provisions in the Unit Titles Act adequate? If not, how could they be improved? Are there issues that arise in relation to bodies corporate on leasehold land?

Key Issues Raised

- Issues with ownership of improvements when ground lease expires.
- Increased operating expenses for bodies corporate when ground lease rent increases.

Summary

Issues raised included:

- Issues with ownership of improvements when ground lease expires;
- Current mechanism at lease expiry is cumbersome;
- Fairer balance between majority and minority interests needed for right of renewal or purchase of freehold by body corporate;
- Increased operating expenses for bodies corporate when ground lease rent increases;
- Need for clarification in Act.

PART 2: REQUIREMENT FOR BODIES CORPORATE, AND RULES OF BODIES CORPORATE

Bodies corporate and small developments

Question 19 - 21	19. Do you agree with the Law Commission's proposal? Please give your reasons.
	20. In what other situations should there no longer be a compulsory requirement for a body corporate?
	21. What do you think would be the impact of your answers on unit owners, bodies corporate and on business owners?

Key Issues Raised

- Current body corporate requirements are too burdensome for small developments.
- UOs of small developments still require structure and processes for managing CP and disputes.
- Need for body corporate depends on nature of development rather than size.
- Need for a range of body corporate models.

Summary

18. There was a group of respondents who thought that small developments could manage on an informal basis, and that a body corporate was not necessary. This would reduce costs. Others said there was a need for small developments to have a formal structure to make decisions and manage CP.

19, 20. Examples where a body corporate was not needed were given as stand alone units, when the whole development was owned by one person or when all unit owners agreed to this. However, there was a much stronger feeling that a body corporate was always necessary, as common management of CP was an integral part of UT tenure. It was suggested that different body corporate models were needed to accommodate small developments.

Bodies corporate – recognise different types

Question 22	Do you agree that the Unit Titles Act should be amended to provide for different models of bodies corporate depending on the size and/ or type of development?
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Key Issues Raised

- Majority agreed that flexibility is needed for different types of developments.
- Majority agreed that bodies corporate are enabled to change regulations.
- Those who disagreed still agreed that flexibility is required for mixed use developments.

Summary

The majority agreed, with many believing there needs to be a distinction between:

- Large and small developments;
- Multi-storey and single storeys;
- Mixed use developments;
- Use, rather than size.

The majority of those that agreed believe flexibility needs to apply to bodies corporate in terms of letting them change rules.

Equal numbers for and against use of Queensland Model as basis for flexibility. Those who said no prefer more devolved power to unit owners to decide on body corporate model.

The minority who said no to flexibility was on the proviso that different models apply according to usage rather than size, particularly for mixed use developments.

Question 23 If you do agree what do you think would be a sensible range of models? How should that range best be provided, for example by regulation or by “model” rules?

Key Issues Raised

- Majority agreed with a full range of models suggested.
- Ways to implement the model included model rules and regulations.

Summary

A range of models suggested included:

- Distinction made on number of UOs in complex;
- Low and high rise mixed use;
- Residential and mixed use residential;
- Commercial and retail;
- Townhouse terrace housing;
- Holiday accommodation and timeshare;
- Standalone and horizontal developments;
- Retirement homes and gated communities.

Suggestions of ways to implement the models included model rules, regulations and guidelines.

Approximately half of those who responded to this part of the question specifically recommended following the Queensland Model.

Question 24 In what ways does the model of bodies corporate need to be tailored depending on the type of development?

Key Issues Raised

- Devolve power to body corporate.
- Use Queensland or eclectic approach.
- Layered approach with core prescription and local flexibility.

Summary

Opinions were split evenly across suggestions for tailoring different models.

A significant proportion suggested that power be devolved to the body corporate to be able to structure rules that aligned with the original intention of the development.

A smaller number believed power or authority should be given to a statutory body, property manager or BCC.

The Queensland model was suggest as a model; with others suggesting an eclectic approach, i.e. choose the best from different models available.

A significant proportion of respondents suggested layered approaches, based on the principle of a core set of regulations or guidelines with site rules or addendums tailored to the uniqueness of the specific development, local needs and the NZ environment.

Question 25

Are special issues raised by the complexities of high-rise building themselves, as opposed to the “type” of development that may occupy such a building? If so, what issues do you see?

Key Issues Raised

- Management of asset management issues and operational issues.
- Not a UTA issue.

Summary

A significant majority of respondents agreed that special issues arose from high-rise. These include:

- Greater skills and knowledge required for complex asset management;
- Structural integrity and long term maintenance;
- Maintenance and management of common areas;
- Management of practical issues such as noise, visitors, security, health and safety;
- Unit boundary and jurisdiction issues;
- Social relationships;
- Unit management such as short stay tenants or absentee owners;
- Distribution of valuations across levels of the building, with lower levels usually less;
- Distribution and sharing of expenses, costs and unit levies.

Smaller numbers disagreed for the following reasons:

- Not an UTA issue - a RMA issue, or covered by rules of association;
- Size is irrelevant;
- Generally no, but different default rules for different developments.

Body corporate democracy

Question 26

Do you agree that the requirement for unanimity should be relaxed? If so, for what decisions, and what majority should replace the requirement for unanimity?

Key Issues Raised

- Unanimity is dependent on the type of decision being made, as well as the size, type and complexity of the development.
- Needs to protect fundamental property rights, and contingent interest in other units.

Summary

Most respondents agreed that unanimity should be required only for major items such as:

- Cancellation of unit plans;
- Architectural changes;
- Dissolution of body corporate;
- Redevelopment.

A common view among respondents was that the requirements for unanimity should be relaxed for:

- Operational decisions such as minor boundary changes;
- Low level maintenance, cleaning, general business operations;
- Practical reasons such as managing a time-share, wind-up of developments, absentee owners.

Respondents considered that a majority vote, rather than unanimity, should be required for decisions such as changes to compulsory rules, CP and expenditure. The majority vote suggested ranged from 75% to 90%, with 80% being quite popular.

It was noted that unanimity is dependent on the size of development, type and complexity. For example the unanimity requirement works well in small developments.

Approximately 20% of respondents disagreed that unanimity should be relaxed on the basis of protecting fundamental property rights and contingent interests in other units.

It was the view of a significant majority that if the unanimity principle is relaxed, then protection is needed for all legitimate interests, assets and security of all UOs.

Question 27

“Should reform go as far as “normalising” the required majorities, so that the majority would only have to come from those voting, rather than those entitled to vote?”

Key Issues Raised

- Protection of silent member rights;
- Apathy of members should not hold up majority;
- How to balance majority wishes with small number of disagreeing individuals.

Summary

A significant majority thought that the majority should be normalised for the reason that non-participant or apathetic members were no reason to hold up majority.

Approximately 40% disagreed that the majority should be normalised to protect UOs property rights.

The real issue is how to balance the majority view with a small number of disagreeing individuals.

Question 28

Would you agree to relaxing the unanimity requirement for all schemes, or do you think that the relaxation should be limited to, say large residential, commercial and “mixed” schemes? For those purposes, how would you define a “large residential scheme”?

Key Issues Raised

There were three main groups of opinions to this response:

- Relax unanimity for all developments.
- Maintain unanimity for all developments.
- Flexible approaches such as sliding scale or two-tiered approach.

Summary

There was an almost equal split into three main views:

- Relax unanimity for all developments;
- Maintain unanimity for all developments. This would protect all owners, especially elderly residents, and would prevent abuse of the system;
- Flexible approach to unanimity, for example a simple majority for design changes, 80% for body corporate rule changes and unanimity for redevelopments.

Questions 29 and 30

Do you think individual owners who vote against a proposal requiring a “super majority” should, in certain circumstances, be given a buy-out option, like that provided by the Companies Act?

Key Issues Raised

- Protection of minority rights and democratic rights.
- Dependent on situation.

Summary

Buyout option should not be provided due to:

- Protection of minority rights;
- Relief and “price of democracy” is through District Court;
- Not practical;
- Based on assumption of lowering property value.

Buyout options should be provided:

- In some situations;
- As possible solution similar also to Public Works Act;
- For super majority;
- Only in matters “equivalent to redevelopment”;
- Only if body corporate not forced to buy.

Relief from the requirement of unanimity

Question 31

If the need to obtain unanimous votes is retained, do you agree with the Law Commission that criteria should be provided to protect the minority? If yes, what criteria do you suggest? What do you think would be the impact of your suggestions on unit owners, bodies corporate and on business owners?

Key Issues Raised

- Protection of minority views through consideration, mediation or compensation.
- Varying comments regarding the retention of unanimity.

Summary

There was a mixed response to this question.

Some respondents view was that protection for the minority was necessary, with comments including:

- Use mediation or arbitration to consider views of minority;
- Minority proposal must have a reasoned argument for objection before being given consideration;
- Minority requires protection, especially in a two unit development with uneven UE;
- Minority requires protection, but not to point of preventing any changes at all;
- Minority view could be given compensation.

Others said that the currently single vote veto option is unjustified, and that there should be no protection for minority views which are frivolous or vexatious.

There were also varying comments about the retention of unanimity:

- Unanimity should still be retained in certain circumstances;
- Unanimity should not be retained. Instead have 80% at all times, then protection through mediation;
- Do not want to retain unanimity;
- Animosity or concern may be generated if unanimity is not retained.

Unit entitlements

Question 32	Do you think relative value is the right concept to be used to fix unit entitlements (UE), given the range of matters determined by unit entitlements? If yes, why do you support it?
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Key Issues Raised

- A range of arguments for and against the concept of relative value were given.

Summary

There was a mixed response to this question.

Some respondents thought relative value was the right concept. Comments included:

- It is fair as it reflects proportionality;
- Simple and straightforward;
- Has stood the test of time;
- Consistent between developments and consistent over time;
- Cannot think of another fair one;
- All alternatives have more problems;
- Is independent of UOs and developers;
- Size of units is almost always proportional to capital value, and larger units often use more services;
- Fair for apportionment of insurance only;
- Fine for setting voting rights, but should be user pays for services consumed;
- Relative value is not perfect, but it could be worse.

There were also many respondents who thought relative value was not the right concept because:

- It is not fair;
- It is not flexible;
- There are problems using it to calculate insurance;
- Values can change and valuer's opinions vary. Therefore there are easy opportunities for argument and litigation;
- Relative value changes over time;
- The system that a single unit has a single vote is fairer;
- It has no relevance to sharing costs or voting, but it does when determining shares in CP.

Question 33

Should there be a more flexible approach to these issues? For example, could body corporate rules be used to set entitlements in a way that better matches the benefits and costs of different aspects of unit developments? Would a better approach be to provide for some concept of a “fair and reasonable charge” set by the body corporate for the allocation of common costs, with individual owners having rights to object? Should there be provision for owners to enter into voluntary agreements to pay for certain expenses on the basis of who benefits, rather than unit entitlement?

Key Issues Raised

- Support for flexibility and apportionment of costs on the basis of who benefits.
- Two tier system suggested.
- Caution around concept of “fair and reasonable”.

Summary

There was major support for more flexibility and for bodies corporate to have more discretion, particularly in the area of allocation of expenses. However, it was also noted that flexibility would not work when the development was small as the body corporate is too personality dependent, and that a variable UE would be too difficult to administer.

There was also support for provision for levies to be apportioned on the basis of who benefits, or on equal division of payment per unit.

Several respondents suggested a two tier system, similar to Queensland. Use relative value for the division of ownership, plus equal division or fair apportionment for levies.

Some respondents supported the concept of “fair and reasonable”. However, most were cautious, saying it would be difficult to assess or would have to be considered carefully. Others were strongly against it saying that it is too subjective, there is too much possibility for argument, and that it is not transparent.

Arguments against voluntary agreements were that certainty is needed, and that it creates potential for conflict. Comments were made that voluntary agreements are already widespread.

Question 34

Whatever approach is adopted, should there be an obligation for bodies corporate to review the apportionment of rights and obligations over time?

Key Issues Raised

- Changes to relative value over time.
- Review mechanism to be simple and inexpensive.

Summary

Many respondents supported a review of the apportionment of rights and obligations because of changes to relative value over time. It was suggested that this be mandatory. A common suggestion was that the timeframe be every 3 - 5 years.

Several respondents commented that any review mechanism must be simple and inexpensive.

Some respondents did not agree. They thought a review should only be triggered by a major change or when the need arises.

Question 35

How should owners be protected from unreasonable changes, if the approach to these issues is made more flexible? The Unit Titles Act does currently provide some flexibility. In limited circumstances (work benefiting one or more units only, or work benefiting one or more units substantially more than other units) “other” unit holders may be excused from an obligation to contribute. It is not clear, however, how useful those provisions are in addressing this issue. Should the body corporate itself be given more discretion, subject to appropriate rights of objection?

Key Issues Raised

- Flexibility and discretion balanced with protection of rights.
- Need for dispute resolution process.

Summary

Some respondents’ view was that bodies corporate have enough discretion now, that charges should be determined independently, that rights should be protected by law not by the body corporate, or that resolution without dissent was needed to protect all UOs interests.

However, the majority view was that the body corporate be given some discretion, subject to relevant control and power of objection, which could be dealt with by an improved dispute resolution processes.

One respondent noted that a "flexibility with fairness is a worthy but challenging ambition".

PART 3: DUTIES AND FUNCTIONS OF BODIES CORPORATE

Role of bodies corporate

Question 36

Do you agree that the concept “body corporate” and the overall functions of a body corporate are not well understood? Please give reasons for your response.

Key Issues Raised

- Need for education programme.
- Range of industry stakeholders gives misleading advice.
- Elderly unit owners uniquely vulnerable.

Summary

This section of questions on duties and functions of bodies corporate had the highest response rate by submitters.

The majority of respondents’ view was that the functions of the body corporate are not well understood. Examples of reasons given included:

- New buyers are often unaware and uninformed;
- Purchasers are not advised of body corporate obligations;
- Legal profession and real estate industry give ignorant, apathetic and misleading advice;
- Lack of understanding by lawyers;
- Lawyer does not inform client or provide copy of UTA;
- Body corporate often does not have a copy of the UTA;
- The UTA itself is unclear, confusing and incomprehensible;

- Elderly UOs believe it is a freehold situation, or have very poor knowledge of the UTA and very vulnerable;
- Elderly people in retirement villages are often ignorant of body corporate functions;
- Understood in commercial or high rise developments, but not in small or standalone developments, or in timeshares.

A minority of respondents thought the functions of a body corporate are understood, for example due to the understanding exhibited by those who attend meetings.

Comments regarding how to improve understanding included:

- Solicitors or bodies corporate should provide the information for a fee;
- Good publicity helps. Bodies corporate are better understood in Auckland as a result of Auckland Regional Council publications;
- Education programme, and clearly defined UTA;
- Simpler version of UTA needed or simple introduction. Central government to provide booklet for all unit title dwellers.

Question 37

Would some other name be better? Do you like the approach “The ABC Community Corporation”, or do you have suggestions?

Key Issues Raised

- Majority view to retain the name “body corporate”.
- Many alternative names suggested.
- The problem goes beyond the name, and that education on the role is needed.

Summary

The majority view was that the name “body corporate” should stay the same.

The minority view was that an alternative name would be better, with suggestions including:

- X Owners Association or X Co-op;
- Incorporate name of complex with Body Corporate;
- Incorporate model selected e.g. Residential BC No. 12345;
- Building Committee;
- Body Corporate Management to convey authority;
- ABC Community Governance Entity;
- Community Corporation;
- “Community can lack authority” “Body Corporate is intimidating” connotations of big business;
- US system Board of Condominium No. X;
- Unit Owners Association 12345;
- Hurley Courts Owner’s Association 12345;
- Queensland Model “the Body Corporate for Seaview Community Titles Scheme 1234”;
- Owners Corporate – dispels confusion.

Some respondents said they were not bothered by the name.

Comments were made that the problem goes beyond the name, and that education on the role is needed.

Question 38

Is there a place in the Unit Titles Act for a general statement of the function of bodies corporate? If so, what matters might be included in that statement?

Key Issues Raised

- A general statement of function of bodies corporate is needed.
- The UTA itself may not be the best place for it.

Summary

The majority held the view that a general statement of the function of bodies corporate was needed within the UTA. It would clearly define and set out a statement of purpose and function, and define obligations and responsibilities of UOs and bodies corporate. It is necessary because a lay person and new buyer need to understand body corporate management and obligations. It was suggested that a similar concept to the Companies Act be used.

Other submitters thought that the UTA itself was not an appropriate place, as many people did not read the UTA, and that it was best dealt with by the Department of Building and Housing by publishing a 'plain English guide' on rights and duties of UOs.

Financial planning and reporting

Questions 39 - 42

39. Do you think there should be a specific requirement for bodies corporate to prepare financial plans and budgets? If so, what matters should be covered by such financial plans and budgets?

40. Should there be a requirement for common funds to be held in trust accounts? Please provide reasons.

41. Are the financial reporting provisions of the Unit Titles Act adequate? If not, how can they be improved?

42. What do you think would be the impact of your answers on unit owners, bodies corporate and on business owners?

Key Issues Raised

- Strong support for a requirement for bodies corporate to prepare financial plans and budgets.
- Requirements should be dependent on size and nature of development.
- Strong support for a requirement for common funds to be held in trust accounts.
- Implications for transparency and certainty.

Summary

39. The majority of respondents strongly agreed that there should be a specific requirement for bodies corporate to prepare financial plans and budgets as a means of meeting obligations to UOs and for keeping management and developers honest. Matters to be covered could include:

- Annual body corporate budget, income and expenditure, and debts;
- Annual levy and estimate for future, what the levy covers;
- Future maintenance plans and provision for these;
- Monthly expenses, unexpected and long term projects;
- Forecasts for up to 20years.

Requirements should be dependent on type and size of development, as they could impose undue costs on smaller developments.

Two respondents' view was that specific requirements are not required, and that guidelines and suggestions for financial plans and budgets are sufficient.

40. The large majority strongly supported a requirement for common funds to be held in trust accounts. Funds need to be audited and held separately from body corporate secretary funds or other body corporate clients' funds. There should be similar controls as for real estate agents and solicitors' funds as a mechanism to protect public funds. It was noted that this does sometimes happens with body corporate funds, and that time share developments currently do this.

A small minority of respondents view was that there was no need for this requirement. Reasons given were that it was too complex and that current accounting practices are adequate. There is a risk that being over prescriptive would prevent investment innovation of trust.

41. The general view was that the UTA is outdated and inadequate. A comparison was made with other statutes, rules and regulations concerning financial reporting mechanisms. It was noted that some bodies corporate do take their responsibilities seriously, but that specific requirements for financial reporting were needed. This particularly applies to commercial developments.

42. The impact of further financial reporting and planning requirements in legislation were given as transparency, certainty, accountability and clarity. There would also be increased time and costs involved.

Sinking funds

Questions 43 - 45

43. Do you think the Unit Titles Act adequately empowers a body corporate to establish a sinking fund?

44. Do you think the Unit Titles Act could be improved by providing a regime for instituting and maintaining sinking funds for capital works, whether or not it is compulsory to do so? If so, what features should be included in such a regime?

45. Do you think that the Unit Titles Act should require sinking funds to be established by all or some (for example large, complex unit developments) bodies corporate?

Key Issues Raised

- Lack of clarity around sinking funds in current UTA.
- Sinking funds regime needed to protect building value and spread costs over life of building.
- Strong support for a compulsory sinking fund regime, but with consideration for size and nature of development.

Summary

43. There was a mixed response to this question. Some respondents said the UTA allowed for the establishment of a sinking fund under s15, while others said it did not. The distinction was made between sinking funds for repairs and maintenance, and for capital expenditure. It was noted that while the UTA was not clear on this matter bodies corporate set them up anyway.

44. There was strong agreement that the provision of a sinking funds regime would improve the UTA. Many of those agreeing went further and said that the regime should be compulsory. Reasons given included:

- Protects building value and integrity in the long term;
- Spreads costs over life of development;
- Avoids unexpectedly large levy;
- Failure to provide sinking funds hides true cost to purchaser;
- Provides for mutual protection of collective interest;
- Make governance easier.

The comment was made that any regime should be dependent on size and nature of services in the development and that a sinking fund is unnecessary in small developments. Both the Queensland and Ontario models were quoted as good examples of a regime.

The minority of respondents said that such a regime was not necessary. One reason given was that good management should do this anyway.

45. Most respondents answered that all developments should be required to establish sinking funds.

Some respondents answered that only some should be required, depending on the size of the development. Others said that the requirement should depend not on size, but on the nature and infrastructure of the development, and the nature and value of assets within the CP.

A few respondents answered that a requirement for sinking funds would be too costly and burdensome.

Questions 46 - 47

46. Do you think the Unit Titles Act should go further and prescribe maintenance obligations, along with the requirement to establish a sinking fund for long-term planned maintenance?

47. Should claims against third parties for the repair or maintenance of common property be made only by the body corporate, or should individual owners also be entitled to make an individual claim against third parties for damage to, or diminution in the value of, their interest in the common property?

Key Issues Raised

- There is a need for maintenance requirements.
- Prescription is difficult, but guiding principles could be used.

Summary

46. There was a mixed response to this question.

Some respondents said yes, to ensure funds are available for ongoing maintenance. Obligations could be based on a long term maintenance plan prepared by an independent party.

Some respondents said that prescribing maintenance is not easy, and that guidelines or guiding principles should be used instead.

Some respondents said no. Reasons given were:

- That this concept was too prescriptive;
- That factors are too various to be adequately covered by compulsory requirements;
- That UOs need to maintain control;
- And, UOs are quite capable of identifying maintenance obligations.

47. The majority view was that only bodies corporate should have the right to claim. However, a few respondents thought that UOs should have the right too.

Insurance

Question 48 How should the current requirement for compulsory insurance be changed? Are there other issues relating to insurance that you think a review of the Unit Titles Act should take into account such as insurance during staged developments, or who is responsible for an insurance excess?

Key Issues Raised

- Current insurance requirements are adequate.
- UTA needs to clearly define who is responsible for excess.
- High risk use of some units.

Summary

Of those who responded there was agreement by the majority that the current provisions are adequate to sound, and that they remain unchanged.

Many respondents commented that the issue of who is responsible for payment of excess needs to be clearly defined. Approximately two thirds thought that the body corporate should pay the excess, while approximately one third thought that the UO, or those clearly responsible, should pay the excess.

The issue around high risk use was raised, and it was suggested that if the use of a unit was high risk, and generated a higher insurance premium, then that unit should pay for the higher premium.

Other views stated that:

- Staged developments require comprehensive insurance developed during construction, or at time of purchase;
- Other insurances, such as public and statutory liability, directors, and property damage, need to be considered;
- s38 of UTA needs rewording as it is currently difficult to make insurers comply;
- The insurance industry does not provide a policy which meets the requirements of the UTA.

PART 4: BODY CORPORATE RELATIONSHIPS

Developers and initial purchasers of units

Question 49 Do you think developers should be required to provide more information to purchasers of units? Please give reasons to support your comments.

Key Issues Raised

- Full information disclosure with future implications required for purchasers to protect and enable them to make informed decisions.
- Conflicting view that discretion is with developer.

Summary

The majority of respondents agreed that full information should be provided for the following reasons:

- Clarify requirements for purchasers to enable them to make informed decisions, particularly about financial obligations;
- Provides realistic consumer protection which current 10 year civil limitation does not provide, as in reality developers have “disappeared” by 10 years;
- In line with international consumer protection trend;
- Reduces purchaser risk and prevents future litigation by buyers.

The minority who disagreed did so for the following reasons:

- The discretion is with developer, as sale impacts on it;
- Not an issue unique to UTA. It is covered by other Acts or regulations e.g. Fair Trading Principles;
- Purchasers should take more responsibility and be more proactive.

Question 50

If you think developers should be required to provide more information, what topics should be covered, for example general information about unit titles and living in a unit title development, or specific information, such as estimates of future maintenance costs?

Key Issues Raised

- Detailed, specific and comprehensive information required.
- Estimates of future costs and obligations of purchasers required.
- Independent and verified assessments.
- Standardised, regulated information in form of guide books.

Summary

A full disclosure of estimated insurance costs, sinking funds, maintenance requirements, utility contracts, contractual and warranty arrangements, asset management plans and any developer allegiances. Should also provide details on living conditions and services offered.

Estimates of future costs should include estimates of future body corporate levies, projected sinking funds including expected costs, insurance and maintenance requirements.

Estimates of current and future purchaser obligation should be independent and verified. There needs to be a transparent process.

Standardised, regulated information should be available in guide book form. This enables first time purchasers and the elderly to make informed decisions.

All these suggestions contribute to helping purchasers, particularly first time and elderly, to make informed decisions when buying a UT.

A comment was made that this question assumes developers are competent to educate purchasers.

Question 51

Should the information be different depending on the size and type of the development?

Key Issues Raised

- Almost equal split between those who agreed and those who disagreed.
- Split between flexibility and customisation of information, and consistent message to all parties.
- A few suggestions made for implementation through regulations, or purchaser being proactive.

Summary

Those who agreed with the question believed flexibility and customisation is important. The key reasons include differences in information depending on size, scope and/or complexity, nature and density of development.

Others stated that distinctions need to be carefully looked at with certain types of developments requiring more specific information.

A minority suggested that developments with fewer than 3 - 6 units did not require as much rigour in information provided.

Those who disagreed with the question believed in consistent messages to all parties. The key reason was that a basic level of similar information should be provided across the board, as the principles are the same.

Developers and bodies corporate

Questions 52 and 53

52. Do you think there are good reasons to require a developer to provide certain information to the body corporate? Please state your reasons?

53. If so, is the list of information set out above a sensible one? Do you think any other types of documentation or information should be provided?

Key Issues Raised

- Agreement by majority that the developer ought to be required to provide information to body corporate so that development can be well maintained and managed in the long term.

Summary

All respondents, except for one, agreed that developers should be required to provide certain information to bodies corporate.

Provision of comprehensive information is essential so that the body corporate is fully informed, thus enabling the development to be well maintained and managed in the long term, in a cost-effective manner.

Suggestions for information to be provided included:

- Building plans and specifications;
- Fire system and fire evacuation details;
- Location and readings of service meters;
- Warranties;
- Lists of contractors and contracts entered into;
- Works and public liability insurance;
- Performance bonds;
- Waste management plan;
- Product catalogues;
- Schedule of finishes;
- Colour and brand of paint;
- All correspondence with TA;
- Resource consent, building consent, code compliance certificates and building warrant of fitness;
- Declarations of vendor or developer retaining an interest in development.

It was commented that the level of information provided is dependent on the size and complexity of the development.

It was noted that information may not be readily available for developers to give to bodies corporate at the time of the first AGM.

Contracts made by the developer

Questions 54 -
56

54. What, if any, problems have you experienced or know of in relation to long-term contracts entered into by the developer? How serious have these problems been?

55. Should such contracts be controlled, and if so, how?

56. What do you think would be the impact of your answers on unit owners, bodies corporate and on business owners?

Key Issues Raised

- Disclosure required of long term contracts and potential conflict of interest.
- Greater ability needed for body corporate to review contract terms.

Summary

Problems encountered with long term contracts include:

- Bodies corporate fixed into long term contracts for up to 20 years, with no control over terms;
- Contract terms can involve excessive fees or payments;
- No redress for underperforming contractors;
- Commonly, can give excessive control to BCM.

Commercial benefit to developer of long term contracts with associates or associated companies are not always disclosed. Conflict of interests issues arise.

Problems with developer not paying building contractors, with ongoing responsibility passed on to body corporate.

However:

Long term contracts can secure good rates over the long term, and provide certainty to unit purchasers. Further, the developer has the most knowledge on the development and can decide on best contract terms.

Suggestions for control of long term contracts include:

- All developer contracts reviewable by body corporate at first AGM, or after say 75% of units sold, or by statutory right.
- A common suggestion was to have an initial contract term of two to three years, reviewable by body corporate.
- Shorter term contracts mean that market rates apply.
- Contract terms should be able to be searched on a register.

A balance is needed between barriers to developers and rights of body corporate.

Transparent and robust processes needed. Purchasers need to be informed of current contracts.

Disclosure to subsequent purchasers

Questions 57 - 60

57. Do you think information disclosure to purchasers should be a requirement under the Unit Titles Act? Should the range of information provided to purchasers of unit titles be broadened?

58. If so, do you think the Queensland Community Management Statement provides a good model for New Zealand to follow? Please give reasons.

59. Do you have other suggestions to improve the information available to purchasers of unit titles?

60. What do you think would be the impact of your answers on unit owners, bodies corporate and on business owners?

Key Issues Raised

- Strong support for further information disclosure provisions.
- General support for the Queensland model.

Summary

Most respondents were in strong support of further information disclosure provisions. However, the minority thought that current s36 UTA provisions are adequate.

It was suggested that information disclosure requirements should consider size of development. Smaller developments should have less complex requirements. Proviso that statements provided are just estimates and should not be binding.

The Queensland requirements for disclosure of information to purchasers were generally well supported, and the majority of submitters agreed that it provides a good model.

The minority of responses submitted suggested that the Queensland model was too complex and would put too much burden on volunteers. It was noted that extra requirements would generate higher compliance costs and privacy of information issues.

Other suggestions regarding availability of information included:

- Submitting documents to Companies Office;
- Websites;
- Fine on agent if information is inaccurate;
- Improve provisions in sale and purchase agreement;
- Authorised search of body corporate books for a fee;
- Information of past goings on;
- Provide limited initial information, such as rules and levies, with further information, such as financial details, available on payment of a fee.

Relationship with body corporate managers and secretaries

Question 61 Should the Unit Titles Act provide a clearer statement of the relative roles of the body corporate, the body corporate committee (BCC) and contracted property managers?

Key Issues Raised

- Clarity of roles needed, particularly for large developments.

Summary

There was a strong view that the UTA is not clear enough on the roles of the body corporate, BCS, BCC and contracted BCMs. There is a need to establish clearly the role of governance vs. management. There was a view that BCMs should be restricted from using proxy voting, undertaking governance, chairing meetings and becoming members of committee. Due to a blurring of functions, there is a disparity of standards across NZ. It was noted that clarification of roles is more important for large developments. Also clarity needed of terminology used.

Others thought that the current situation was adequate, or that there is already too much bureaucracy.

Questions 62 and 63 62. Should the relationship between bodies corporate and body corporate managers be regulated, and if so, how?
63. Should occupational regulation of body corporate managers (BCMs) be introduced?

Key Issues Raised

- Support for the concept of regulation in principle.
- Assurances of consumer protection and professional standards.
- The NZ industry is not yet ready for regulation.

Summary

Opinions were split on the regulation of the relationship between bodies corporate and BCMs. Some argued that this would be overkill and self regulation works already. Others supported it for reasons of role definition, and for larger or complex developments which require a more professional approach.

The idea of occupational regulation is supported in principle. Reasons given include variability in experience and qualifications, consumer protection, and assurance of professional service particularly for large or complex developments.

There was a sense however that the NZ industry is a long way from a full licensing regime for BCMs. Variations suggested included registration; self-regulation; co-regulation; certification; protection of trust account funds; requirements for greater financial reporting; codes of conduct; professional association; disciplinary processes; and on-going training.

Others disagreed with occupational regulation and stated that the market will dictate behaviour of BCMs, and that they are regulated by contractual obligations.

Questions 64 and 65

64. Should the process whereby a body corporate contracts with a body corporate manager be regulated?

65. Should the content of contracts between bodies corporate and body corporate managers be regulated, and if so, how?

Key Issues Raised

- There are a range of provisions which could be made regarding contracts.
- Regulating contracts could limit their responsiveness to the market.

Summary

There was definite support for regulation of both the process for, and contents of, contracts between bodies corporate and BCMs. Suggestions included mandatory legislative requirements; key provisions; codes of conduct; outlines and guidelines.

There was a minority who did not support regulation as this could limit responsiveness to the market and body corporate needs, and others who favoured self regulation.

Body corporate governance

Questions 66 - 69

66. Have you experienced, or do you know of, any significant problems with body corporate governance structures in New Zealand? Please describe them and their magnitude.

67. Are the issues focused on by other jurisdictions (committees, body corporate managers, proxy voting) relevant in New Zealand?

68. Are there other issues relating to body corporate governance that should be reviewed?

69. What do you think would be the impact of your answers on unit owners, bodies corporate and on business owners?

Key Issues Raised

- Being able to deal with absent UOs.
- Process for electing BCC.
- Ensuring that BCC is competent.

Summary

This was flagged by one submitter as the most significant problem with the UTA. Others said the problems were numerous and serious.

Some specific issues raised include:

- Personal and commercial interests of BCS influencing body corporate matters and decisions;
- Outcomes of representative decision making; dealing with minority views; dealing with strong minded UOs who can have an influence over other people's money; pressure to vote;
- UOs inability to take personal action in relation to their interests in the development;
- Ability to deal with absentee UOs;
- Process for election of BCC; BCC untrained and lacking skills; BCC not paid; able or skilled UOs are usually too busy to take BCC office;
- Misunderstanding of scope of authority of BCC; lack of statement of management function, duties, powers and obligations of BCC;
- Governance structure too cumbersome for small developments.

Other comments included:

- BCMs should not be able to be elected to BCC, even if they are an owner. This would avoid conflict of interest;
- Possibility that democracy does not produce the best outcomes;
- The best bodies corporate are those with the most involvement by all UOs;
- It is difficult to legislate against self interest in decisions by BCC;
- Any new structure must be simple, transparent and easy to follow.

Legal protection of body corporate committee members

Question 70 Should body corporate committee members be provided legal protection when carrying out the duties of the body corporate? Should there be provision to allow body corporate committee members to be paid?

Key Issues Raised

- Legal and insurance protection dependent on BCC acting in good faith.
- Payment to BCC dependent on circumstances.

Summary

There was strong support for legal and insurance protection when BCC members act in good faith and with due care. It was seen as similar to a director's or trustee's role, thus similar liability and insurance protection would be appropriate. However, some submitters did not agree that there should be legal or insurance protection.

There was a mixed response to payment for BCC members. Some supported it while others didn't. Suggestions included payment for costs; payment on agreement by body corporate only; payment dependent on size of development and amount of work involved.

It was noted that payments can be made under current legislation by changing body corporate rules to allow for them.

Unit owners, bodies corporate and tenants

Questions 71 and 72 71. Do you think that the difficulties sometimes associated with involving tenants in unit title developments are serious? What do you think might be done to address these issues?

72. Would you agree, for example, that a unit owner leasing their unit should be obliged to provide tenants with a copy of the body corporate rules? Should body corporate rules – as a matter of law – be incorporated into the lease and bind tenants directly?

Key Issues Raised

- Issues with tenants in UT developments can be serious due to tenants not being informed of their rights and obligations, and distant landlords.
- The body corporate needs powers to enforce body corporate rules.
- Strong support for body corporate rules to be incorporated into tenancy agreements and leases.

Summary

71. Submitters' experience was that serious issues can arise because tenants are not informed of body corporate rules, and have no knowledge of rights and obligations under s37 of the UTA. Tenants are sometimes not interested in keeping property clean and tidy. Issues become more serious when there are a high proportion of tenants in a development.

Landlords are often distant or absent, and so responsibility falls on body corporate to manage or control tenant behaviour. This is currently difficult as there is no power for body corporate to take action against tenants, and there are no enforcement provisions. It is legally very difficult for a body corporate to do anything and body corporate rules can become meaningless.

There was a strong view by submitters that a body corporate needs power to act and take action against tenants. There needs to be a quick process where the body corporate can make a landlord and/or tenant liable, perhaps through Tenancy Services or the Tenancy Tribunal. One submitter suggested that the body corporate should be allowed to hold an additional bond from which reasonable deductions can be made for costs, such as false fire alarm calls and noise control.

One submitter's view was that ideally no unit should be leased in a UT development.

Another submitter said that there are few serious problems with commercial tenants since most commercial leases for UT premises include a requirement to comply with body corporate rules.

72. There was very strong support for a copy of the body corporate rules to be incorporated into tenancy or lease agreements as a matter of law. It was suggested that this will clarify responsibilities and will facilitate harmonious living.

Other submitters commented that:

- Landlords should be responsible for providing a copy and that it isn't a matter of law;
- Only an approved précis of body corporate rules, which apply to occupation rather than governance, should be given to tenants. The full rules are irrelevant and bulky for tenants;
- BCMs have a role in explaining rights and obligations to new tenants.

Questions 73 and 74

73. Is it appropriate that tenants in bodies corporate may have fewer rights than in other tenancies, if they are fully informed before agreeing to the tenancy?

74. If body corporate rules are to become binding on tenants by being incorporated in the lease, should body corporate rules be required to recognise the interests a tenant has in the operation of the body corporate and provide a mechanism for the body corporate to consult with, and take account of the interests of, tenants?

Key Issues Raised

- Consistency of behaviour of all residents promotes harmonious living.
- There is scope for tenants' interests to be recognised through communication and consultation, but UOs ought to make all binding decisions.

Summary

73. A few submitters answered no, stating that some body corporate rules could be excessively prohibitive. However, the majority agreed that it was appropriate. Reasons given were:

- It promoted consistent and harmonious living;
- Multi-dwelling units require better behaviour and controls;
- And, whether or not the resident was an owner was irrelevant.

74. The majority of submitters disagreed, some very strongly. Reasons were that it would cause conflict of interest between landlords and tenant, and that the relationship between tenant and UO, and UO and body corporate, needed to be kept separate.

Others agreed that body corporate rules should be required to recognise the interests of tenants in a range of ways, for example:

- Tenants should be kept informed and be consulted with, but UOs ought to make all binding decisions;
- A spokesman for tenants' interests could be established;
- Tenants are able to act as proxy voters for UOs;
- Commercial tenants could input into the budget process;
- Tenants should be able to deal with the body corporate directly, but not vote.

Questions 75 and 76

75. Are there other ways relationships between tenants, unit owners and bodies corporate could be improved?

76. Do you think these issues should be addressed through the Unit Titles Act, or the Residential Tenancies Act (RTA)?

Key Issues Raised

- More information, education and communication would help relationships.
- Legislation should be complementary.

Summary

75. It was suggested by submitters that relationships between tenants, UOs and the body corporate could be improved through education, information, plain language guidelines, newsletters and open communication channels. It would help if contact details for tenants and any rental manager are provided to BCM.

76. The majority view was that these issues should be addressed in both the UTA and the RTA, with both acts complementing one another. It was noted that commercial tenants are not be covered by the RTA.

PART 5: DISPUTE RESOLUTION

Question 77

Do you agree that a new framework is required for resolving disputes involving bodies corporate, unit owners and other parties?

Key Issues Raised

- Current system is expensive and slow.
- Strong amount of support for a new framework for resolving disputes.
- Disputes arising through lack of knowledge about UTA can be resolved through education rather than a new framework.

Summary

There was strong support for a new disputes resolution framework, with the majority of respondents agreeing that:

- High Court is prohibitively expensive and slow;
- A new framework is required for the resolving of minor disputes involving bodies corporate, UOs and other parties;
- Changes are needed to the current legal framework to allow for inexpensive dispute resolution;
- District Court able to hear all disputes involving UT with no limit on dollar value, with High Court only involved with points of law;
- A specific mechanism should exist to escalate claims to the High Court in a timely, efficient and structured manner;

– Legislation to encourage use of mediation before Court hearing.

The models of the Tenancy Tribunal, the Small Claims Tribunal and the Disputes Tribunal were mentioned.

The simpler, faster recovery of unpaid levies was mentioned as the most pressing need.

The minority commented that most disputes arise due to parties simply not being conversant with aspects of the UTA or body corporate rules. These can be addressed through more education rather than needing a new framework to resolve disputes.

Question 78

If so, what do you think the main elements of such a framework should be?

Key Issues Raised

- Specialist staff.
- Australian models, Tenancy Tribunal, Small Claims Tribunal and Disputes Tribunal as examples for framework.
- Simple and inexpensive.

Summary

Suggestions for models included:

- A three or four tiered system styled after the Australian strata legislation but with a strong emphasis on trained specialised staff;
- A Tenancy Tribunal/Small Claims Tribunal/Disputes Tribunal framework with specialist staff;
- Several respondents suggested adjudicators in tiered mediation/ tribunal should have a background in property law, property management or accounting;
- A specialist body that can't refuse to be involved;
- A tribunal specialising in legal and property management;
- Each level has the right to appeal;
- Enforceable debt recovery.

The majority of respondents expressed the need to keep the process simple, efficient, accountable and inexpensive with clear guidelines to escalate a claim or have a clear binding decision.

Question 79

Do you agree with the “self help” remedies proposed for bodies corporate by the Law Commission for recovery of levies? Would you extend these to include a power of sale?

Key Issues Raised

- General support for remedies, with more limited support for power of sale.

Summary

General support for remedies, with more limited support for power of sale.

Comments included:

- Scenario of body corporate withholding s36 certificates would quickly resolve payment;
- Power of sale is too draconian. Instead take monies owed at time of sale;
- No to power of sale. Instead address issue with s36 certificates, by imposing liability on first mortgages and imposing fee if levy is not paid;
- Use power of sale only once all other avenues have been exhausted;
- Generally support self recovery of levies by power of sale, subject to appeal;
- Yes, power of sale is justified.

Question 80

What do you think would be the impact of your answers on unit owners, bodies corporate and on business owners?

Key Issues Raised

- Lower costs, easier management and more clarity.

Summary

Some possible impacts were:

- Lower costs and easier financial administration, leading to improved confidence in the UT and cross lease framework for development of new projects;
- Easier levy collection;
- More understanding of the financial obligations of the body corporate;
- Development of better debt recovery mechanisms giving security to debt owed to the BCC;
- Clearer legislation with benefits for those who comply and who pay on time;
- UT lending should not carry more debt than other lending.

PART 6: FLAT-OWNING COMPANIES AND CROSS-LEASE SCHEMES

Question 81

Do you agree with the Law Commission that no further flat owning company schemes should be created? If not, why not?

Key Issues Raised

- Flat-owning company model is out-dated.
- Inability to provide mortgage security.
- Support of model by some respondents.

Summary

Most respondents were of the opinion that the flat owning company model was out-dated and this is reflected by the market. Reasons included:

- The Companies Act is not structured to deal with those in residential dwellings;
- There are many examples of flat owning companies being converted to UT with success;
- Inability of flat owner to provide mortgage security;
- Not marketable, since cannot provide mortgage security.

Some respondents had positive experiences with flat owning companies and supported the concept. Comments included:

- Feel that there is a place for flat owning companies in the future because company shares are a means by which general control over a building can be maintained. Bodies corporate do not always recognise maintenance concerns;
- Owner-occupier provisions are a good thing;
- Several shareholders, who also own UTs, prefer this structure. Transfer of ownership through share transfer is simpler and less costly than ownership of UT. Because of our experience, and because the Law Commission did not identify any significant issues with flat owning companies, we see no reason to convert ownership structure to UT;
- The few that still exist generally work well. There is increasing demand for this form of tenure.

**Questions 82 -
83**

82. Do you agree with the Law Commission that cross-lease schemes (CLS) are irredeemably flawed and that no further such schemes should be created? If not, why not?

83. If you do agree with the Law Commission on cross-lease schemes, do you agree with the Law Commission's proposals:

- to facilitate their conversion to unit titles
- to make such conversion mandatory?

If not, why not? What other solutions do you suggest?

**Key Issues
Raised**

- Almost unanimous support that no further schemes should be created.
- Wide support for conversion of CLS to UT.
- Costs of conversion.

Summary

82. Almost unanimous support that no further schemes should be created.

Reasons given included:

- Lack of machinery for governance, such as a body corporate, to administer enforcement provisions and maintenance;
- Purchasers are often unaware of cross-lease title until conflict arises;
- Housing and rental stock deteriorates quickly when CLS are in conflict;
- Not preferred security for lenders;
- Inferior form of ownership. General public has a poor understanding of CLS, despite schemes being in existence for a long time.

One submitter commented that while not necessarily irredeemably flawed, CLS are inflexible and this has led to well reported cases of deficiencies in titles. However many, and probably most, CLS exist with no problems. Further, there has been a reduction in numbers of CLS since 1991 RMA and relaxation of subdivision standards.

The few respondents who disagreed said there are benefits for both cross lease and flat owning companies, and that the simple two flat cross lease development works well as it is not burdened by the prescriptive administration requirements of a UT.

83. There was wide support for conversion of CLS to UT. There was some support for mandatory conversion, but there were also reservations expressed, including:

- Who would pay costs?
- A long time scale would be needed;
- Conversion details need to be explored further before preference tended;
- Possibly substituting one unsatisfactory form for another. Better done at later stage after given opportunity to judge new UTA;
- The need for a provision to convert to fee-simple title.

PART 7: FORM OF LEGISLATION

Question 84

Do you think having two separate acts is a sensible approach to adopt in New Zealand? What are your reasons?

Key Issues Raised

- Separation of matters.
- Simplicity.
- Interlinked issues.

Summary

There was an even split between those who supported one act and those who supported two.

Respondents who supported two acts felt that there would be more clarity if matters were separated and that it would be easier for the public to understand.

Those respondents who supported one act felt that it would keep the process and administration simple, and that land and unit issues are interlinked.

The option of one act with two parts was also suggested.