



Submission on MBIE's proposed amendments to the Unit Titles Act 2010

December 2016

Name of submitter:

Organisation:

Contact address:

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MBIE officials can contact me if they have a question about the content of my submission

I wish to remain anonymous in any reporting or submission analysis

Making a submission

To make a submission, please fill out the submission form below, and send to UTAreview2016@mbie.govt.nz. Both Word documents and PDFs will be accepted.

Alternately, you can download the submission form and post it to:

Unit Titles Act Review
Construction and Housing Markets, BRM
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand

Consultation on the Unit Titles Act finishes on Friday 3 March 2017 at 5pm.
Thank you for your submission.

3. Overarching Reform Proposals

3.1 Potential size thresholds for more rigorous legislative requirements

We propose that the following legislative requirements apply to complexes with 10 units and over. The body corporate for complexes between 10 and 29 units, may, however, resolve against adopting any of these requirements by special resolution.

Bodies corporate must:

1

- report on the performance of delegated powers at the annual and any other general meeting;
- contract a body corporate manager to perform functions as specified in the UTA;
- have LTMPs signed by the body corporate chair and a qualified person;
- have a long term maintenance fund to finance the long term maintenance plan already required under the UTA; and
- have body corporate accounts and LTMFs audited annually.

Do you agree? If no, why?

Report on performance of delegated powers only if individual owners agree to it

Contract a body corporate manager by request of individual unit owner only as required, as it adds more costs, also if the unit owner is not content with a Body corporate manager (Property management) then individual owner can terminate contract at short notice and appoint another at their choice

Don't agree with LTMPs to be signed by body corporate but to be first signed by individual unit owners and then qualified person, as Unit owners may not agree with the plan aspects and unit owners also know their properties better than the Chair. Also it opens bias as lower entitlement owners try to leverage more costs from higher entitlement owners who may have been omitted in the decision planning process.

Do not agree with "Long term maintenance fund" as this will escalate costs for unit owners who are already struggling with levy costs payments. Needs to be more scrutiny and security with such a fund and if there are disputes by the Body Corporate over costs individual unit owners should be notified and don't want to see "Dipping by Corporate Manager" from fund especially without the unit owners aware to cover a costs in dispute. What happens to the interest on the fund does it get invested or returned to the owners, owners should have a choice here? What risk of loss? Believe it should be

short term as unit ownership 10-29 may not be as long term but more a transient term

No don't Agree to annual audit costs as it adds more cost to unit owners, if unit owner has any suspicions, a query about an audit could be requested at short notice "ad hoc" audit, and provided the cost is transparent and reasonable and there are no margin costs on top of the audit costs and its charges are in line with other comparable audit costs in the industry but if audits fail to deliver and pick up mistakes no matter how small or how long a period, all audit costs plus interest to be refunded immediately back to the owner

2 Do you consider that it is appropriate for complexes between 10 and 29 units to be able to opt out of the above proposed legislative requirements by special resolution? If no, why?

Yes can opt out

3.2 Improving Government Services to the UTA Sector

Please comment on :

- 3
- how government agencies might achieve a more joined up approach;
 - how we can improve the services we provide; and
 - whether you think a separate dedicated entity is warranted; and if yes, what functions and responsibilities would a dedicated unit titles entity deliver? Please list.

Improve services by appointing competent assessed personnel, having feedback questionnaire on each and every performance after receiving services. If not satisfactory can end the service

Currently there is the MBIE unit titles advice line service but needs improvement service delivery, quite often they (help staff) are not that helpful or available to talk, they need to be competent and helpful rather than reciting paragraphs from the Act and not really understanding it, perhaps a little more training on legal aspects of the Act, trained to know more about the rights and wrongs for individual cases and be able to point to past outcomes. Also a ticketed reference system similar to an IT helpdesk could be good as calls could be prioritised at the help desk like escalation times 1, 2, 3 etc. (1 for high priority) and performance could be graded and based on resolution

A dedicated entity is required to assist with individual unit owner concerns who feel they are being misrepresented or mistreated, for instance a body

corporate may be turning a blind eye on the issues and higher power entity such as an ombudsman or similar would be a great service.

The issue at present is it is too costly for the unit owner who may be a pensioner and cannot afford legal costs. Quite often matters go before adjudication and the adjudicator is an administrative clerk and knows nothing about the intricate property matters and makes a spur of the moment judgment which doesn't resolve underlying issues in a short court time hearing, when matters may have manifested over a long periods of time the adjudicator has no time or interest to look back and examine issues closely, hence unhappy outcomes. A separate entity someone very competent such as a Senior Registered Civil Engineer works outside the courts, is available at short notice by telephone could listen at a personal level and individuals concerns and have powers to act swiftly and accordingly, has unlimited access to resources they could prevent cases going forward to the high court, and perhaps mediate outside of courts and settle matters between parties. They could also delegate matters. They should also be given authority to be able re appeal a Tribunal outcome on grounds, if for instance the unit owner could prove injustice or mistreatment at adjudication hearing and believes the action taken was not in the best interest of the unit owner. For re appeals should be a statute of limitation of 7 years. So long as matters are resolved timely(to be defined, clarified) and not left aside as quite often the unit owner is charged daily escalating interest charges on a Levy debt which is in dispute. And this is especially detrimental to an elderly owner who has little defence and has limited income. Like to see an entity have power to immediately stop interest charging and debt collection charging by Body Corporate Property management companies whilst costs are in dispute and under investigation. At present when matters are in dispute Property Management companies don't stop the clock and robotically escalate charges when the unit owner is lumbered and anxious by this antic waiting for matters to be investigated or go before a tribunal or court hearing, it has to stop.

An

An Entity could also be given direct access authority to resolve property issues such as common ground and make decisions and changes to common ground ruling, i.e. work closely and directly with council management to resolve rather than allow defenceless unit owner to pay legal costs and take matters to a high court

4.1 Improving the Disclosure Regime

Proposal 1: Amalgamate the current requirements of the pre-contract, pre-settlement and additional disclosure statements into one step

4 Do you agree that the pre-contract, pre-settlement and additional disclosure step should be consolidated into one step? If no, why?

No, do not agree as it is only going to add more costs and cumbersome to manage

Proposal 2: Add further requirements in disclosure statements

5 Do you agree that these additional requirements should be included in disclosure statements? Do you consider any other requirements should be included?

Do not agree to additional requirements be included as it will be costly and cumbersome overhead to manage, only disclosure document agree to is the most recent Levy statement to the buyer, prior years is in the past documents and not relevant and too costly. A buyer at any stage can appoint a building/Structural investigation/report and lookup Council property file.

Do not agree to disclose whether or not the building has weather tightness issues for which a claim has not been made, or weather tightness issues that have been remediated without making a claim, or earthquake prone issues, a buyer can hire a Structural engineer and get building report on his own accord if there issues. A register may fail to be updated and it's only going to add more costs

(Past rants and squabbles with body corporates should be irrelevant to a new purchaser and should focus more on the physical asset rather than historical document banter, it is also detrimental for owner selling property, what happens if the body corporate changes several times?)

Agree to disclose name to unit owners but not buyers, address, email and contact telephone for the body corporate manager, but also believe that the Unit owners register be readily available which should have up to date contact details at all times or else penalty of the unit owners, do not agree that it should not be available due to privacy, I believe is an excuse for some property management companies not to disclose or make it really difficult to obtain as in the Order of the Tribunal case "Crockers vs. Tuxford" in which
s 9(2)(b)(ii) they are only protecting their business and pecuniary interest. At least providing unit owners in a title direct contact

details for a good reason, example owners may want to negotiate and decide mutually to dispose of their current Body Corporate Management company in favour of one that works best for them in terms of fee structures, availability of management or for whatever reason it may be and the best way forward is to contact owners directly, but as in the case Crockers vs. Tuxford tried to prevent detail sharing which is a real hindrance. The irony of privacy is that contact details are readily available on public domain, like Land Titles office, real estate marketing databases, only difference is that details may not be as up to date, this is where it will be the responsibility of the Body corporate Manager to keep up date register at all times in case of an emergency or face a penalty. The unit owner register could be emailed on demand or make available with a logon account at the Body Corporate management website. Agree to disclose to unit owners but not Buyers, financial statements and audit reports (or a statement that an audit for a particular year has not been carried out) going back 10 years and should be provided within reasonable time frames (reasonable to be defined) and at no cost, or perhaps suggest make it available online from the Body Corporate company at no cost, these items are sometimes required urgently and Body corporates make it a lengthy costly exercise. Good example today is with how Banks have streamlined their processes with ease online statements and are virtually paperless today

full disclosure at no cost to owner, all the costs ideally real proof of actual costs dealings between Vendors and Body Corporate/Property management companies on demand (certified copy of original receipts Invoices on demand) for instance from a wholesale insurance, 3rd party vendors, contractors, appointed by Body corporate management company ie purchases wholesale insurances for unit title however does not disclose the actual costs and then adds a margin to the cost and then produces a rehashed summarised body corporate statement to each unit owner not realising they are paying a hidden surcharge for insurances or valuation costs in the unit title.

Agree to disclose to unit owners but not buyers, notices and minutes of general and committee meetings and agendas, including all supporting documentation supplied to owners going back 10 years (with ability to redact 'in committee' items and should be readily available provided within reasonable time (To be defined, clarified) frames and at no cost, or perhaps suggest make it available online from the Body Corporate company

Section 206 Provision of records and documents

(1)The body corporate must, on request from a unit owner, make copies of the following records and documents available for purchase by unit owner

Disagree with "Purchase" as body corporate invent unreasonable costs, ideally there should be no cost they should be readily available much like online bank statements, should legislate the option all documents are stored on online at no cost to owner, access is via an account logon

- (a) The body corporate operational rules, rules should be compulsory supplied and freely available and they should be distributed by the Body Corporate manager regularly, quite often owners don't know about it until there's a problem and the body corporate starts to reiterate to the owner of their rights when the owner wasn't made aware of his rights because they didn't disclose it, Ideally recommend scrapping body corporate operational rules and implement more mainstream transparent legislation that will cover all, when body corporates have this option and this authority it opens up abuse for instance gearing unreasonable fee structures (there's no guidelines on what they can charge and is unreasonable compared to other body corporate management companies fee structures which vary significantly, it's for maximum profiteering for instance interest charging and debt collection rules to the disadvantage of the unit holder
 - (b) All current insurance policies held by the body corporate or its head body corporate in respect of the building and improvements on the base land: All insurance policy should be available on demand at no cost to the owner, they should also declare underwriter and wholesale insurance cost so owner know they not been charged margins etc., perhaps legislate so they can't add margins or any other fees on top
 - (c) The long term maintenance plan, should be available on demand at no cost to the owner
 - (d) Any agendas or minutes of the body corporate, should be available on demand at no cost
 - (e) The financial statements, available on demand at no cost
 - (f) Any documents the owner of a principal unit is required to provide under subpart 14 of part 2 - clarify what is meant by "certain information"
 - (g) Any other records or documents if the body corporate thinks it is reasonable in circumstances to provide those records and documents
This needs to change at the moment Body Corporate can refuse and make any number of excuses because it's not reasonable, in fact suggest scrapping this altogether, these documents might be require by unit titles lawyer for fraud investigation, and body corporate can refuse, they should not have say in this at all or have any control over it. They should provide all documents on demand at no cost (see sample case letter Appendix B)
- (2) The copies must be made available within a reasonable time, and body corporate may charge and reasonable costs incurred in providing the records and documents - this one is open to abuse by body corporate for charging owner more than they should as there's no clarification of reasonable. "Reasonable time" needs to be replaced by a quantity like suggest 24hours. And reasonable costs should be scrapped as it should be no cost to the owner, there should also be

absolutely no restrictions held by Body Corporates on what it thinks can govern, restrict and provide (see sample case letter Appendix B)

Proposal 3: Require a statutory warranty on all disclosure statements

6

Do you agree that bodies corporate should certify all disclosed information is complete and correct? If no, why?

No, if this is regarding a purchaser of unit, do not agree that body corporates should certify all disclosed information, this part is for parties conveyancing lawyers to complete its just time consuming and more levy costs

Yes if this applies to individual unit owners , the body corporate should certify all disclosed information, in the instance where the body corporate applies discretionary discounts on levy charges to certain unit owners and other don't get a discount for no valid reason, needs to be disclosed whats the reason? Discrimination? Conflict of interest?

4.2 Strengthening Body Corporate Governance

Proposal 1: Address conflicts of interest

- 7 We propose to add provisions to the UTA that address conflicts of interest that achieve similar aims to the provisions included in the Incorporated Societies Bill. Do you agree? If no, why?

Yes agree

Yes for instance conflicts of interest and, in the case where Body Corporate manager has a conflict of interest with unit owner and receives favourable reduced levy charges which are not disclosed to other unit owners. Other unit owners unknowingly pay proportionally more for Levy charges

Proposal 2: Increase reporting of delegated powers

- 8 We propose that bodies corporate of large sized complexes (30 and over) should report on the performance of their delegated powers at every general body corporate meeting? Do you agree? If no, why?

Yes agree, 30 and over should report

Proposal 3: Duties and responsibilities of body corporate committees

- 9 We propose including additional provisions on the duties and responsibilities of a body corporate committee similar to those included in the Queensland's Code of Conduct for committee members. Do you agree? If no, why?

Yes strongly agree here

Proposal 4: Limit the number of proxy votes an individual can hold

- 10 Do you consider that the risk of proxy farming is sufficiently high to warrant amendment of the UTA to limit the number of proxy votes one person can hold at a time? If yes, why?

Yes Don't agree to proxy farming, voting should be 1:1, the owner should always be clear about any vote and no motion be manipulated and hence

unfavourable outcomes, the electronic vote is the way forward

Proposal 5: Limit the impact of unfair service contracts

- 11 We propose to amend the UTA so that bodies corporate can vary the terms of or seek to release themselves from longer term contracts in certain circumstances. Do you agree? If no, why?

Yes agree

Proposal 6: Clarification of governance terms

- 12 Do you agree with the proposals made above as they relate to:
- Minority relief - no change warranted;
 - Alteration to units - sections 79 and 80 (i) to be amended if necessary to align with section 65;
 - Quorum - section 95 to be clarified; and
 - Resolutions - section 101 to be amended.
- If no, why?

Minority relief application time limit needs to change as the current 28 days is not satisfactory, as described above instance whereby unit owner never received a paper invite to AGM, committee meeting and was deprived of his rights. Also should add change that it is the full responsibility of the Body Corporate manager to do compulsory documented followups with unit owner, such as this case whereby the unit believe he was cheated out of his rights deliberately omitted, no followup, no paper trail, It should change to say 90 days

STRONGLY DISAGREE with section 96 of the UTA also states unit owners who have not paid their levies are not eligible to vote, that's like saying if you haven't paid your rates you not entitled to vote for local council or have a say about developments. Payment or non-payment should not exclude you to vote on important agenda that could affect your unit both materially and financially. ALL UNIT OWNERS ARE ENTITLED TO MAKE DECISIONS REGARDLESS!

Section 95, quorum disagree with word "entitled" as ambiguous in meaning entitled to vote but should be dwelling entitlement, like if you unit is proportionally larger then bigger entitlement weighting vote regardless if you paid your levy or not

Section 79c nobody should be excluded or disqualified just because they haven't paid

section 79(c), which provides a member of the body corporate is entitled to exercise a vote in respect of his or her unit, subject to section 96) don't agree, unit owner can vote regardless

Resolutions - agree

4.3 Professionalism in Body Corporate Management

Proposal 1: Status Quo and Self-Regulation

- 13 Do you agree that industry bodies such as those mentioned have the ability to increase professionalism and help address body corporate management issues? If no, why?

Yes agree to regulation of body corporates and professionalism and help address issues

Standards and good practice can only be a positive especially Body Corporate managers managing funds, so good practice is essential but it should be compulsory self-regulation a provided regulatory costs are not passed on to unit owners, hence higher levy costs

- 14 Do you support requiring body corporate managers to be members of a professional group and being subject to the codes of practice of the group? If no, why?

Yes definitely, provided memberships costs are not passed on to unit owners, hence higher levy costs

Proposal 2: Make contracting a body corporate manager a requirement for medium and large complexes

- 15 Do you support body corporate managers being mandatory for medium and large complexes? If no, why?

Yes agree mandatory

Proposal 3: Define body corporate managers in the UTA and introduce operational requirements in regulations

- 16 Do you support the functions of body corporate managers being set out in the UTA? If no, why?

Yes agree to support the functions of body corporate managers being set out in the UTA. Need to be clear about responsibilities

- 17 What functions, if any, do you think should be prohibited from being contracted to a body corporate manager?
-

None

18

Do you support the setting of additional requirements in regulation for body corporate managers? If no, why?

Yes agree to support the setting of additional requirements in regulation for body corporate managers

4.4 Ensuring Adequate Long Term Maintenance Plans

Proposal 1: Guarantee the credibility of the LTMP through body corporate committee and appropriately qualified signatories

19 Do you agree that an appropriately qualified person should be required to guarantee the accuracy and completeness of the LTMPs? If no, why not?

Yes agree, competent body, suggest senior Registered Civil Engineers will be ideal for this task

Perhaps ex council registered Engineers or Senior Civil Engineer from large Construction Company

In general Engineers are well trained and have a broad range of skills and knowledge about Building standards, construction design and services and going forward into the future as Building technology changes Engineers are well adapted to these new challenges

One thing that needs to be clarified about is the maintenance genuinely required and that it doesn't amount to say cosmetic work, there needs to be clear guidelines and distinction between "functional maintenance work" and "Insurance" and "aesthetic" and "warranty" these things need to be closely monitored by a qualified competent person such as a registered Civil Engineer as the case below highlights some of the fallacies with maintenance plan and what unit owners perceive. The reality is that unit owner makes a fraudulent claim knowing fore well he can't claim it as insurance costs but instead opts the avenue of claiming unproporinate costs from other unit owners

20 Do you agree that the body corporate chairperson, on behalf of the body corporate, should be required to sign LTMPs to guarantee accuracy (to the best of their knowledge)? If no, why?

No, all unit owners required to sign off as each unit owners knows his dwelling the best and must be aware of what is signed off

Proposal 2: Develop a new online template for LTMPs

21 Are there mandatory fields/information you consider should be included in the revised template? If so, please list.

Should remain open for constant improvements and suggestion

Perhaps more responsibilities of 3rd party contractors and vendors to be listed, suggest vendor costing column, number of vendor quotations

Suggest several columns here for Vendor company quotations and comparisons, this will show that the Body Corporate manager has made an effort in terms of best costing and due diligence in the best interest of unit owners

Suggest a column to explain clearly the classification of the maintenance work, e.g. "insurance claim", "aesthetic claim", "warranty claim", "maintenance claim" for example case units 5 in title block, the age of the roofs for units 1-5 are the same age, built at the same period. Owners 1-4 request to have maintenance on the roof units whilst unit 5 doesn't agree on the basis his roofline is not common. A maintenance contractor views the job at hand for the rooftops 1-4 and decides it's in the best interest to get resurfaced and falsely claims there are several broken tiles and condition is not so great, so he can get the work contract. The Body Corporate manager does not bother to do any due diligence and accepts the quotation, in reality he just couldn't be bothered doing a due diligence or source more quotations. In the meantime unit 5 calls upon the rooftop tile manufacturer representative whom discover the tiles of the same age are in remarkable condition and does not recommend any fix whatsoever and what's more the tiles from the manufacturer have a 50 year warranty, he suggests if you repaint the tiles the manufacturer does not recommend it and will void warranty. The age of the units is 40 years. On closer investigation it's revealed that the intentions of unit owner 1-4 were false, i.e. not maintenance work but rather "cosmetic" and unit owner 2 was in a hurry to sell his unit and to make a quick capital gain. The Body Corporate manager should have realised this situation and investigated why it was not an initial insurance claim. Instead units 1-4 claimed entitlement costs and leveraged more costs from unit 5 because unit 5 was proportionally larger unit. This is an example of fraud and incompetence of the Body Corporate manager's responsibilities. There needs to be strict guidelines to distinguish between claims real functional maintenance, insurance claim, and cosmetic claim and a clause for severe penalty for fraud, under no circumstance should a unit owner/s extort costs from other owners for false work?

Proposal 3: Extend the timeframe of LTMPs to 30 years

22 Do you agree that 30 years is an appropriate timeframe for LTMPs for medium (unless they resolve not to) and large complexes? If no, what threshold or timeframe do you consider appropriate?

No 30 years is too long and provided its not costly to evaluate years ahead and hence more levy costs, foreseeable, suggest 10 years

Proposal 4: Require body corporates to review their LTMPs every three years

23 Do you agree that LTMPs for medium and large complexes should be reviewed every three years? If no, what threshold or timeframe do you consider appropriate?

Review every 10 years provided its not costly to evaluate years ahead, hence more levy costs to owners, but if regular changes occur then should updated accurately and timely responsibility with the Body Corporate manager

Proposal 5: Require large bodies corporate to have a LTMF

24 We propose that medium sized bodies corporate comprising 10-29 units are required to establish and maintain a LTMF (unless they resolve not to by special resolution). Large complexes comprising 30 units and over units would be required to have and maintain a LTMF. Do you agree? If no, why?

Yes agree

Proposal 6: Require bodies corporate LTMFs to be annually audited

25 We propose that the LTMFs of medium and large bodies corporate are audited annually. Do you agree?

Don't agree as it adds more costs to the owner, audit as "ad hoc" basis if owner has any suspicion about it they could request audit when required as required

4.5 Accessibility of the Disputes Resolution Regime

Proposal 1: Fee settings

26 Do you support the proposed fee level for the dispute resolution service? If no, why?

No do not agree should be reduced for pensioners as they are on limited incomes, quite often owners have to pay for other parties body corporate lawyer to attend as well and often they do not participate or do anything in hearings, more unnecessary cost to owner. It's too costly for a pensioner to go to Tribunal

27

Would you consider using mediation if the above option was adopted? If no, why?

No, mediation should be scrapped, quite often the owner in dispute is taken for a costly exercise by the other party whom fore well know they just not prepared to mediate no matter what and mitigate any losses or alleviate costs no matter how small or large to the owner and this attitude can be harassment, instead owner has to pay legal cost such as the other parties lawyer to attend who does nothing which is ridiculous.

A unit owner in dispute especially a pensioner should not have to pay at his expense for the other party's lawyer to simply attend a hearing and do nothing, change law so each party has to pay for their own lawyers to attend, this appears to be an unfair procedure, whereby a well funded Body Corporate Management company sends a representative Body Corporate lawyer to a mediation /tribunal/court hearing and charges all costs by the hour back to the unit owner (such as example of a defenceless pensioner) whom did not ask or invite a body corporate lawyer to attend. And this unfairness also applies to disputed costs in a levy outside of hearings, the body corporates simply adds legal costs to the unit owners next statement/invoices

Mediation should happen outside Tribunals hence saving costs and time, it's usually a good indicator if parties don't want to come to an agreement outside, then should threaten court action and then see what happens, here is an example of the steps 1)Set out in legislation a windows timeframes dates/time e.g. 2-4 weeks outside of Tribunals and courts 2)Within this window period, parties must do everything they can to try to resolve matters, whether its lawyers vs. lawyers or individual stakeholders, parties must work together no matter what the differences are, parties will have plenty time and opportunity to come to mutual agreement 3)If after the timeframe e.g. 2-4weeks parties don't come to a mutual agreement then it's the courts 4)There must be full documentation evidence of the process like a transcript to show parties have made every reasonable effort to mediate outside suggest a MBIE mediation template (Drafted by lawyers/Ministry of Justice Officials) with guidelines, to become available on the MBIE website. 5)Once the mediation Template and transcript records are complete they could be submitted online to the Justice department for final approval and can accept(i.e. signoff mutual successful outcome) or deject it on the basis that mediation failed and perhaps revisit the steps and process which was

not acceptable, perhaps grant more time or suggest corrective steps or remediation .

Proposal 2: Revise the name of the Tenancy Tribunal (preferred proposal)

28 Do you agree that the name of the Tenancy Tribunal should be changed to the 'Tenancy and Unit Titles Tribunal' to reflect its jurisdiction over unit title disputes? If no, why?

TENUTT - Tenancy and unit titles tribunal

UTTT - Unit titles and tenancy tribunal

- Appendix A

Proposal Suggestions

Body Corporate Manager

Currently Body Corporates appoint a Body Corporate manager and it's not that the unit owners disagree with Body Corporates, most often the main issues are conflicts with Body Corporate Management from Property Management companies, whom are appointed not by an individual unit owner but collectively by unit owners.

As discussed with ^{s 9(2)(a)} suggest the Act should allow an individual unit owner to choose without reason or appoint his or her own Body Corporate manager/Property manager.

This would allow a more harmonious environment and better operation, and allow fee structures, and Body Corporate management companies to be more competitive and honest in the market place.

At present Body Corporate management companies are locking in unhappy unit owners long term and enforcing fee structures which they feel really uncomfortable with, in the case of an elderly pensioner whereby annual Levy costs are proportionally high compared other Property management companies, and the levies are high in ratio to annual Pension amounts, and they are sacrificing other living costs.

Individual unit owners currently have no say. If for instance a unit owner is not content with the current Body Corporate fee structures and firmly believes they are unrealistic compared to other Body Corporate management company market rates and if for other reasons such as the owner is unhappy with the body corporate manager's conduct? In regards to conduct suggest some important issues here 1) Failing to respond timely needs to be clarified and defined in the Act, what is "timely" suggest quantity of time 2) It's important that communications are

responded to and followed up timely, suggest mandatory receipt system as with some email systems which allow this and mandatory follow-ups by body corporate managers, with receipting and time stamp. So if conduct is not satisfactory is e.g. lacks communication, untimely, dishonest, says one thing and does another, fails to respond or act timely, is disorganised and for personal reasons relationships are sour between a Body Corporate Manager, then an implemented receipting/time stamp/dairy reference will be good benchmark for future performance issues . The unit owner has a choice

Suggestion

- 1) A sole unit owner without reason bypass any vote from any other unit owners or Body corporate involvement, an individual sole unit owner has the right to cancel at his or her own discretion, terminate all ties with the Body Corporate company/Property manager by writing to the parent Body Corporate Management company and within 7 days (e.g. by email or by Registered mail receipt date) be released from contractual obligations and arrangements with the current Body Corporate property Management company.
- 2) The unit owner will have a choice to appoint his or her own new independent Body Corporate manager within a certain timeframe which must be notifiable to the MBIE administration registrar or else the unit owner will face a deadline and penalties if they fail to appoint another Property management company to takeover unit owner's portfolio.

I believe this will be an overall win win situation and believe this may be the way forward, it might actually reduce costs long term and be beneficial, and the number of complaints and Tribunal cases might also reduce.

An individual owner could almost have his or her own personal manager whom is comfortable with dealings and could still be supportive for the owner in annual meetings such as AGMs, at Body Corporate committee meetings and report back to the owner. There will also be more openness, fairness , honesty (in

case of conflicts of interest) and more eyes and scrutiny in meetings, because there will be more than one Body Corporate manager from different Body Corporate management/Property management companies.

Common ground

An area designated on Council Plan is deemed common Ground but serves no useful benefit to other unit owners in a Body Corporate. Consider the following

Units 1-10 in block, last unit has an adjacent area, but has never served as common ground in say 40 years in the history of the development in this case the sole unit 10 owner can bypass without any vote by a Body Corporate to have this issue resolved promptly by perhaps simply filling out a form request and submitting form online to Council Planning who will have authority to approve and change and correct the record and then submit record to update notify Body Corporate Manager. There would be no requirement to pursue this issue of common ground with the Body corporate or a high court

Unit Title Entitlement Calculator

Suggest a calculator algorithm be available on the MBIE website for stakeholders so can quantitatively and accurately calculate their entitlements.

Take for instance a case whereby a Body Corporate manager calculated insurance premiums per unit owner base on Council plan and the premiums were not disclosed to all unit owners in the title and the unit owner did not challenge the entitlement ratio because perhaps he was illiterate or not aware. Scenario of say 5 unit in a title, discovered that over the year's insurance premiums and allocation was incorrect. Calculation for insurance premiums were based on Council plan. Over time one of the unit owners decides to build an extension on top of their ground level unit dwelling, this was achieved without council approval, perhaps back then it didn't need approval, and council plan

remains unchanged, however the property manager is oblivious to this and mis calculates individual entitlements based on council plans. So over long period unit owners were paying a lot more than they should be with, exception of extension unit owner who was paying a reduced premium/levy charges, if mistakes like this are discovered there needs to be more accountability and penalties imposed and recredits plus interest for whatever period should be back tracked to the unit owner/s.

The calculator page should show a drawing of a cube and you should be able to click highlight what is common to adjacent units like walls roofline etc. as well as common ground features like driveway fences drains, and then pass through a series of flow diagram questions like do you only share one eight of one wall and a driveway, then based on the information which could be verified by an entity there's not a lot of common features involved based on this information come up with an accurate percentage entitlement.

Suggest the algorithm could be designed in collaboration with Local Council, Quantity surveyors and Government valuer for detailed assessment for all stakeholders

Here is an example, obviously there would be more details like council plan number, actual dimensions, building materials perhaps, standards etc. that could be entered to get an accurate % and detail.

Here's example. 2 unit title, unit 2 is calculated as below

Feature	Common	% Common	%
Building			
Wall1	Yes	12.5	
Wall2	No	0	
Wall3	No	0	
Wall4	No	0	
Wall5	No	0	
Wall6	No	0	
Roof	No	0	
Gutter	No	0	
Total		12.5	
Common ground			
Driveway	Yes	20	

Drain	Yes	20	
Carport	No	0	
Fence	Yes	20	
Common ground	No	0	
Total		60	
Summary Total % Building commonality			12.5
Summary Total % Common ground commonality			60

and from the information derived one could look up % ranges (MBIE guidelines) to verify entitlement claims etc and a host of other criteria.

Suggestion

Unit Title entitlement calculator for stakeholders

If common ground serves no benefit to unit owners then a sole unit has option to correct record by submitting a form online and have council amend land title plan and update the Body corporate of any changes

Property Access

Doesn't appear to be anything constructive in the Act, and it's really important

Take for instance the following case whereby an elderly person lives in a unit less than 10 in block and his unit10 happens to be the last one in the block, however shares a common driveway access, in fact that is his main and only access. The concern here is abusive blockages and use of the driveway by unit owners 1-9. These units some may be rented out and the owner is quite often unaware or just doesn't care about it

The unit owner has difficulty accessing his own property, he has no vehicle, he relies upon Taxi service for his groceries and he has

to squeeze past parked cars whilst juggling heavy groceries and he is frail and has osteoarthritis and osteoporosis he has a medical alert so also depends upon the St Johns ambulance service to gain full access.

However if for instance he suffers a stroke or heart attack, he presses the medical alarm and St Johns ambulance is on its way. However on arrival the ambulance driver doesn't get to the owner in time because there are vehicles parked in the driveway, the ambulance driver eventually gets to the owner but it's too late by a matter of seconds.

Imagine if this got in the newspapers, is the Body Corporate liable for death of a person, who's responsible?

This is one example of life and death situation but there must be numerous other unreported cases of access violation issues, it would also be a serious concern to block a main access way for emergency purposes such as Earthquake, Fire and flood. Access to common ground is also included for instance overgrown tree branch, someone hits their head and goes into a coma for instance is also a health and safety breach. Going forward this will be issues in future with the number of high rise unit titles in development.

Suggestion

There needs to a special clause in the act about access violation, in the case example above, the last unit owner will always be granted right of way.

The last unit owner will have authority to have blockages removed such as vehicles removed at other unit owners expense and be able to report registration back to Police (whom will be trained about the aspects of special clause and have authority to resolve issues immediately), police could even issue warnings to repeat offenders and even issue penalty demerit points and if the MBIE is contacted it will be a high priority request to resolve issues in coordination with the police. Abusive Tenants or owners that refuse to comply with access ways could also be a notifiable offence, clause, outline responsibilities and punishment.

Perhaps access ways are notifiable and MBIE keeps a register of major access ways, entry and exit points for unit titles. In the Act suggest there will be severe penalties even a prison sentence because if access is blocked it can be life and death. Suggest prison sentence as this will ensure complacency issues are met with management and they should also be responsible and accountable at all times.

Item delivery

There's been issues in the past where Body Corporate Manager claim to send important documents to unit owner. Documents such as Proxy forms, AGM meetings, minutes, important statements. There's been issues and concerns. Take for instance a case with unit owner claims he has never received any invitation notification about upcoming committee meetings, and agenda passes without his aware, and is deprived of his minority relief right, because the timeframe has elapsed. But he receives demand letter for any debt outstanding and levy invoices no problem. When contacting the Property manager for an explanation its always same excuse "We have sent it to you in the post" end of story, and it's hard to prove!

Suggestion

- 1) Stakeholders should have a choice to have either paper trail or online service. Online service going forward is probably more realistic. Some Property management companies don't agree to this and blatantly send out paper statements to street address much to the harassment of the unit owner, including important documents unregistered mail, there's no way to confirm delivery dates and reliability. As in the example described the reason became obvious the property manager always sends paper so he could charge an extra letterbox postal fee of \$250. And if the unit owner changes address to a Postal box and notifies the Body corporate manager it's going to cost an additional \$250.

2) Needs to be more accountability for item delivery, if it's really important documents it should be sent by registered post at no cost to the unit owner, best option is online service at no cost. Also suggest email receipt system must be mandatory.

Tribunal decisions

There's been issues in the past where Tribunal decisions are unfavourable outcomes for unit owners. Unit owners should have further options to escalate an Order further to say an ombudsman or an entity with minimal costs to the owner, an entity could allow ease for re appeals say statute limitation of 7 years if an owner can prove an injustice.

