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

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

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.

THIS SUBMISSION IS FROM s 9(2)(a)

BODY CORP COMMITTEE.

s 9(2)(a)

KEY ISSUES

For large apartment buildings we consider the following are essential

- Live in Building Manager
- Professional Body Corporate Management system in place
- Regular meetings of an owners committee occurs, with recorded minutes available.
- Annual or special meetings, be chaired by the Management Body Corporate representative with the elected Chairman of the Body Corp Committee alongside.
- At the Annual meeting, apart from a formal agenda and recorded minutes, a written report from both the Building Manager and the elected Chairman on the year's activities must be tabled.
- An important element for any apartment complex is the collection of owner's levies, with appropriate processes in place, and penalties available to address this situation.
- Noise transference issues, both internal to the building and external noise are significant apartment issues, and processes and systems in place to address these factors including penalties need to be in place. This issue is not to be underestimated, there has to be systems in place to address noisy occupants, non-compliance of owners.
- The Body Corp Committee is delegated various tasks, with significant projects requiring majority owners approval. There is always creative tension between allowing the Body Corporate committee to take action to rectify issues or problems, and seeking special meetings of owners for approval. This area is important, at times problematic, and any pending legislation must be careful to avoid delaying appropriate action. While retaining the individual owners' rights, *"The greater good, of the "community of Interest"*, must prevail.

SUMMARY

We are an experienced, well run Body Corporate with excellent support and participation from our owners. We have good systems and processes in place, which work well for us. We are concerned about some of the proposed changes being over restrictive. We prefer guidelines to legislation/regulations.

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?

Support

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?

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. Body Corporates are primarily volunteers and this requirement is too onerous and unfair. The Consequence could be significant. Disclosure information is primarily from the management services body put in place by the Body Corporate.

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?

Agree

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?

At every Annual General Body Corporate meeting, there should be written reports from the Building Manager (if such a position exists) and the Body Corporate Chairman on the year's activities. This process has worked well for this Body Corporate

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?

Agree in principle. Guidelines should set out the procedural options, available to a Body Corporate committee following a declaration of a conflict of interest. This Body Corporate has a written code of conduct in place, which works for us. Self-regulation with guidelines is our preferred option

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?

No

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

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?

Yes

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?

We support the principle of industry bodies, if formally Incorporated or similar. We are cautious of lone wolf, or bodies of disaffected people, claiming to represent Body Corporates. In a similar manner, we are cautious of government bodies with no experience of living in apartment complexes, preparing legislation or regulations without considerable input from experienced Body Corp operatives. Body Corporate Committees and management must be able to make necessary decisions quickly and responsibly for the benefit of residents, without being restricted by legislative red tape.

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?

Support the principle, but it must be a Local product, e.g. New Zealand organisation.

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?

Support in principle. We see for large complexes a building manager, a Body Corporate Committee meeting six weekly, written minutes etc., and the employment of a Body Corporate Management service providing admin/levy collections as necessary. The grey areas would be in those apartments on the edge of being large enough to employ such services e.g. 10 units. But a committee with an appointed Chairperson, written records, meeting on a regular basis is the bare minimum.

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?

In principle support, but functions must be flexible enough to avoid inertia, and comprehensive enough to cover all reasonable requirements. Guidelines might be better than prescriptive regulation!

17

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

Nil

18

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

See comment above. Guidelines might be the better approach

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?

No. As long as the Plan is prepared by an outside source, and agreed to by the Body Corporate Committee.

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?

The use of the word "Guarantee" is too strong, and sets the bar to an onerous level. To the best of their knowledge is sufficient.

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.

Revised template is sufficient. Cautious of mandatory requirements

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?

30 years is too long. A requirement to review every 5 years, with a 15 year life of plan maximum.

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?

We suggest 5 yearly

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

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?

No. A review mechanism bi-ennially and a 5 year review are suggested.

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?

Yes

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

Yes

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?

Yes
