

COMMENTARY on the December 2016 REVIEW OF THE UNIT TITLES ACT

Comments from ^{s 9(2)(a)}

15th February 2017

A. General -

1. Good to see this review undertaken and thanks to ^{s 9(2)(a)} and others who have promoted this review.
2. The Objectives -*Ref 2.2 of Review Document* – are a good framework for critiquing the current legislation UTA 2010. There could have been more emphasis on education particularly aimed at the general public, who are the majority of Owners and occupants.
3. Responsibility for running of the legislation is too diverse – MBIE, LINZ and MoJ. There must be only one department administrating the UTA, even if there are others who assist. One point of contact only.
4. Stakeholders – developers need to be included as the majority of unit title properties were and will be set up by developers.
5. Size Thresholds - *Ref 3.1* – I think this is a good idea for placing the ‘simpler’ developments under a less stringent regime of compliance (thereby lower costs). The numerical break down needs to be kept under review as complexity is not just about numbers as multi storey say 6-storey building with retail and residential could be more complex than a single storey industrial development with 40 units (eg storage facility). ‘Medium’ size should be enlarged to max 50 units.

B. Disclosure – Ref 4.1

1. Requirements for Disclosure should encompass all stakeholders eg Owners, tenants, investors, not just Purchasers.
2. There should be a guideline for standardisation of Disclosure – to include AGM and Committee meeting minutes, financial reports, and audit reports also the LTMP and LTMF schedules. Customise the formats. Timing for provision of information . Penalties and enforcement for non- disclosure.
3. Direct who should be responsible for keeping and providing required information. Who keeps all the records applicable to each Body Corporate the BC Manager, Chairperson? Online website similar to Companies Office.
4. Purchaser’s right to cancel , should the Vendor be given a time limit to rectify whatever is amiss or to negotiate a price adjustment?
5. New Builds – should have a progressive time to provide detail as not all the design detail is resolved at the time the units are sold off the plans. However some minimums could be specified eg room sizes, outline specifications, draft UT plans and budgets, exclusions, etc.
6. Existing Buildings – require provision of LIM reports; all assessments regarding weathertightness, seismic status, any disputes in progress or pending, Health & Safety and financial audits (Why 7 years for financials?)
7. Statutory Warranty – seems over the top and likely to scare off prospective BC managers, Committee members and Chairpersons. Tenancy Tribunal not ideal as they do not have the relevant skill sets.

8. Insert an obligation on BC and Committees to provide all information requested under a Due Diligence within a specific timeframe.
9. Amalgamation of Current 3 steps of Disclosure – change to two steps (i) basic confirmation at entering into Agreement for S&P – who is BC manager and Committee, BNC minutes, current levy budgets and LTMF (ii) a Due Diligence stage prior to unconditional for all further queries – minimum of 5 working days to lodge request

C. Governance - Ref 4.2

1. Objective – add in requirement for 'operational' governance.
2. Distinguish between roles of BC Managers and Building Managers *Ref 4.3*.
3. Reporting on Performance for larger BCs – needs more information on what this means – will it be at an additional cost? Generally 'Small' BCs could opt out of this as more likely to be run by Members(ex-gratis) than by professionals.
4. Conflicts of Interest – all BC Managers, Building Managers and Committee Members should be operating under a declaration of conflict of interest regime similar to the Companies Act
5. Limiting Proxy votes – how does this work with Companies or Societies that own Units? Not fail to exclude members voting rights if they genuinely cannot attend – maybe the BC Manager is a better person to hold proxies rather than the Chairperson.
6. Quorum for voting – does this include Proxy votes held? What happens if Proxies held exceeds permitted threshold?
7. Bulk Supply of services – eg insurance, power, water, internet, rubbish etc who is liable tenants or owners for non payment? Owners to be advised of defaults immediately. Are these supply contracts limited to the BC Manager or can 3rd parties contract direct?
8. Licensing of BC Managers through SCANZ a good idea. Definitely need to qualify companies and people who become BC Managers viz lawyers and R E agents. 'Small' BC should have ability to opt out of professional 3rd party BC managers
9. Operational Rules – the modal set in the UTA too limited . Basic requirements for Rules could be specified. Suggest there should be a BC Operational Manual which includes roles of key parties (Managers, Committee Members,etc) ; conduct of meetings AGM, SGM and Committees; guidelines for meetings and resolutions, etc
10. Manager Contracts – set of standard requirements or guidelines could be set up for both the BC Manager and for the Building Manager's contract with BCs. Ability to review unfair contracts – currently any dispute with a total value of

\$50,000+ (which could be a 5 year \$11k per annum supply contract) has to be before the High Court, which is too lengthy and too costly to persue.

11. Bank Accounts – separate bank accounts for each BC and for the various Funds (Contingency, LTMP etc) all to be clearly identified and reported on regularly by the manager to the Committee eg quarterly.

12. Change of BC manager – requirement for all bank accounts , funds and documents to be transferred to new BC manage with in a specific time.

13. No 3rd party/independent BC manager eg self managed – how will funds and documents be managed? Limited to only ‘small’ developments (smaller than 10 or less?

14. Audits – all BC funds and accounts should be regularly audited and not just part of a bulk audit. What is the standard for the audit , I am not an accountant but some level of tracking the monies and security is a must.

15. Liability of Chairs and Committee Members – there should be clarity around the responsibilities of officers but qualified to a level of ‘reasonableness’, similar to Companies Act.

D. LTMP - Ref 4.4

1. Term of LTMP - estimating for events beyond 20 years seem impractical. A 10 year plan is more reasonable with detailed work items if it flags likely longer term events(eg replacement of elevators) for the future. The 10 year plan has to be rolled over every 3 years.

2. Proportionate funding – more clearly define where operating costs should be apportioned between those benefiting c.f with those who do not eg ground floor occupiers in a building with elevators not serving the ground floor.

3. Common property costs – more clearly defining the apportionment of costs relating to common property that may only effect specific units.

4. Provide a Template for LTMP items and costings.

5. Audit of the LTMP – to be updated every year for inflation, reviewed every 3 years for content/scope and audited as required by Owners.

6. LTME – Most BC Levy Budgets provide for a Repairs and Maintenance allowance for the coming year, which generally works well. For the medium and long term R& M the LTMP should apply. There are often separate funds set up for specific replacements or larger repairs (eg replace roof or reseal driveways). Committees need to have requirements clarified and the ability to adjust the LTMP and the Funds (cashflow)to accommodate unexpected events or changes to timeframes . Clarify that there is the ability to raise Special Levies to cover cash shortfalls or unexpected

events. All funds to have clearly identified bank accounts or have all long term funds held by a government body similar to Tenancy Bonds.

E. Disputes Resolution Ref 4.5 –

1. Encourage more resolution by Mediation – using specialists with experience in the particular matter in dispute eg technical construction issues by Building Surveyor or qualified Mediator.

2 Tenancy Services to be restricted to disputes under the Residential Tenancy legislation.

OTHER POINTS:-

In England the Law Society have very comprehensive Leasehold enquiry forms that need to be completed prior to parties entering into binding contract for sale and purchase – something similar could be used in NZ.

Consideration could be given to including limitation of number of occupants in a Unit, particularly residential ones. Inclusion in the Operational Rules ?

The rising use of Air BnB in residential units presents a number of issue – insurance, fire code, security, etc should some provisions be included in the revision?

Education – Given that the number of homes and businesses that now and will in the future own or tenant property by way of unit title subdivisions there is a serious need to provide a more comprehensive and effective education about Unit Titles and Body Corporates. It would appear that many new owners of UT properties have no idea of the concept of common ownership and how BCs work, This is where the competent BC Manager really makes a difference, but that is rather like an ambulance arriving after the accident.