



13 February 2023

HUD2023-001506

s 9(2)(a)

Dear s 9(2)(a)

Thank you for your email of 26 December 2022 setting out your views and prior correspondence regarding the question of whether a body corporate can enforce its body corporate rules under the Unit Titles Act 2010 (the Unit Titles Act). You have noted that the government's unit titles webpage states "a body corporate can enforce the body corporate rules" but that the Unit Titles Act does not expressly provide for this right of enforcement.

I have reviewed your letter and attachments, including your prior correspondence with the Ministry of Business, Innovation and Employment (MBIE).

Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development (HUD) agrees with the advice previously provided to you by MBIE. That is, that while the Unit Titles Act itself does not explicitly refer to a body corporate's ability to enforce the operational rules, when reading the provisions of the Unit Titles Act together and considering that Act's purpose, as is required by section 10 of the Legislation Act 2019, it is evident that the body corporate can enforce its operating rules either by dealing directly with the unit owner, or by making an application for dispute resolution to the Tenancy Tribunal.

This view is supported by both the scheme of the Act, and by the acceptance of the Tenancy and Tribunal and the courts of jurisdiction in enforcement cases by bodies corporate. This reflects section 171 of the Unit Titles Act which provides for the Tenancy Tribunal to hear unit titles disputes including from bodies corporate. In such a case, the Tribunal can order any party to do or refrain from doing anything that would constitute a breach of obligation under a body corporate's rules. Tenancy Tribunal decisions can of course be appealed through the courts.

In HUD's view, the unit titles website accurately reflects the current state of the law, as reflected in the decisions of the Tenancy Tribunal and the courts. Were a higher court to consider the issue you have raised and opine that such jurisdiction did not exist, obviously HUD and MBIE would revisit the website content.

As you may be aware, a review of the Unit Titles Act was initiated in 2016 and this review recommended changes to improve the unit titles regime. The Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Act 2022 (the Amendment Act) aims to improve body corporate governance, give greater transparency to owners and strengthen the rules around the duties and expectations of body corporates. The Amendment Act was passed into law on 9 May 2022. The majority of the provisions in the Amendment Act will come into force in two stages, in May 2023 and May 2024.

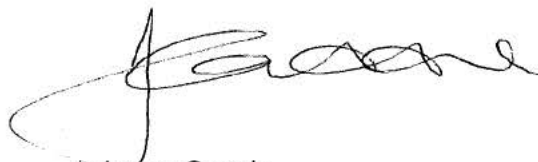
The Amendment Act introduces a duty upon all body corporate committee members to comply with a code of conduct.¹ The code of conduct requires members to act honestly and fairly and act in the best interests of the body corporate. Larger body corporates are required to appoint a manager who is responsible for regulatory compliance services for the body corporate. Additionally, body corporate managers must comply with a new code of conduct for body corporate managers.² Managers are independent, and part of their role is to act for the body corporate as a whole and to help enforce its rules.

The Amendment Act provides for regulation making powers and regulations are in the process of being developed to support some of the changes in the Amendment Act. HUD intends to consult the public on these proposals in 2023. You can find more information about the Amendment Act at www.hud.govt.nz/news/changes-to-the-unit-titles-act/

I trust this information is helpful.

HUD has dealt with your letter as a request for information under the Official Information Act 1983. You have the right to seek an investigation and review of my response by the Ombudsman, in accordance with section 28(3) of that Act. The relevant details can be found on the Ombudsman's website at: www.ombudsman.parliament.nz.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jenny Cassie', written in a cursive style.

Jenny Cassie
Head of Legal and Chief Legal Advisor

¹ Code of conduct for body corporate committee members at schedule 2, Amendment Act (New Schedule 1A inserted in Unit Titles Regulations 2011)

² Code of conduct for body corporate managers at schedule 3 of the Amendment Act (new schedule 1B inserted in Unit Titles Regulations 2011)