



Department of
Building and Housing
Te Tari Kaupapa Whare

Options for Change

Review of the Unit Titles Act 1972

Discussion Document, May 2006



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Disclaimer

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1 From the Minister

The Unit Titles Act was created in 1972, mainly to deal with small blocks of flats in the suburbs. Today we live in a very different world. Unit title developments range from inner-city high-rise apartment buildings, to complex retail and commercial properties, to highly specialised industrial parks. People tell me that the Act, as it stands, is not flexible enough for this fast-changing environment, and problems have arisen as a result. As the trend towards living and working in intensive, multi-unit developments continues, more and more New Zealanders will be affected by these issues.

Since late 2003, the government has been engaged in a conversation with agencies, groups and individuals, and carrying out research, toward improving the law around multi-unit developments. The aim is to update the Unit Titles Act to make it more flexible, more straightforward and better suited to the changing environment we live in.

This discussion document – *Options for Change* – is the next step in the review of the Unit Titles Act. It sets out a possible direction for change, based on feedback and submissions on the previous discussion document, *Review of the Unit Titles Act 1972*, released in November 2004.

We now need to know what you think about the options for change and how you think they might affect you. It is important that we hear from people who are involved with unit title property on a day-to-day basis, either in their personal or professional lives. It is important that you let us know if you think the specific proposals might go too far, or might not go far enough.

Your submissions will help shape decisions about the future of the Act by informing the development of the final proposals for change that will be put to the government.

I would like to thank all of you who have contributed to the review so far, and now invite your further input into the next stage of the review.



Hon Clayton Cosgrove, MP
Minister for Building Issues



2 How to make a submission

You can make a written submission to answer the questions in this discussion document, or to tell us what you think about the proposals. You can use the submission form on pages 27–34, or you can just write to us.

Where possible, please refer to the proposal numbers (eg, P1, P2) and question numbers (eg, Q1, Q2) we have used in this discussion document.

Your submission will become publicly available information. For this reason, you need to tell us if your comments are commercially sensitive or if you don't want the public to see some or all of your submission. We will use the Official Information Act 1982 and the Privacy Act 1993 when we consider your request.

We need to get your submission by Friday 2 June 2006.

You can post or hand deliver your submission to:

Unit Titles Act Review
Department of Building and Housing
Level 6
86 Customhouse Quay
PO Box 10-729
Wellington

Or you can email it to:

utareview@dbh.govt.nz

You can find this discussion document on the Department of Building and Housing website at **www.dbh.govt.nz**

You can phone **0800 83 62 62 (freephone)** if you have any questions, or to ask us to send you a hard copy of this discussion document.

3 About the Unit Titles Act 1972

What is the Unit Titles Act?

The Unit Titles Act 1972 covers a type of property ownership, known as a **unit title**. Developments with this type of ownership usually have more than one owner, and are typically apartment blocks, townhouses, office blocks and industrial or retail buildings.

Each person or group that holds ownership in a **unit title development** is known as a **unit owner**. A unit owner owns a defined part of the building, such as an apartment, and also shares ownership of **common property** with all the other unit owners. Common property is often areas such as lifts, lobbies or driveways.

Together, all the unit owners in a unit title development make up a body corporate. The **body corporate** has responsibility for maintaining and managing the common property, and for managing the development as a whole.

The Act covers:

- the creation, ownership and management of unit title property
- the setting up, powers and responsibilities of bodies corporate.

We have defined the words in **bold** in the glossary (pages 35–36).

Why review the Act?

The Act is no longer working well.

The rapid increase in the number and types of unit title developments, particularly in the Auckland region, has raised many issues not covered by the Act. For example, many parts of the Act were designed for small residential blocks, and so do not work well for large-scale multi-unit developments. Work carried out by the Law Commission and the Auckland Regional Council, in consultation with unit owners and the building industry, has shown that the Act needs major change.

The proposals will help with the complex relationships created by unit title developments. Unit owners, bodies corporate, tenants, developers and councils need to be able to work together successfully on things such as financial management, information disclosure, consumer protection, staged developments and dispute resolution.

4 The review and consultation so far

In November 2003 the government announced a review of the Unit Titles Act 1972. Since then we have carried out research and analysis, studied the laws of other countries, hired experts to advise us and consulted with industry groups and with the public.

The review is being done by the Department of Building and Housing. The Ministry of Justice and Land Information New Zealand (LINZ), who jointly administer the Act, are closely involved in the review.

The review is linked to other laws and regulations which are administered by these and other government agencies, such as the:

- Land Transfer Act 1952
- Property Law Act 1952
- Weathertight Homes Resolution Services Act 2002
- Residential Tenancies Act 1986
- Building Act 2004
- Retirement Villages Act 2003
- Resource Management Act 1991.

First discussion document, November 2004

On 15 November 2004 we released a discussion document entitled *Review of the Unit Titles Act 1972* for public consultation, because we wanted to find out exactly what the main problems were with the Act. You can find this discussion document on our website at www.dbh.govt.nz under 'Unit Titles Review'.

We held public consultation meetings in Auckland, Wellington and Christchurch in February 2005 and met with professional bodies.

Submissions on the 2004 discussion document

The closing date for submissions on the first discussion document was 31 March 2005. We received 138 submissions from a good cross-section of those involved with unit title developments.

Submitters included:

- unit owners
- bodies corporate
- aligned professionals, such as body corporate management companies, solicitors and surveyors
- professional institutes such as the New Zealand Law Society, the New Zealand Institute of Surveyors, the Property Institute of New Zealand, the New Zealand Property Investors' Federation and the Property Council of New Zealand
- local authorities, regional councils and other government agencies.

The main problems identified

We have analysed the submissions, done more research and policy development, looked at what happens overseas and studied the feedback from consultation meetings. We think the main problems for the unit title sector are:

- the Act doesn't have a clear purpose, its provisions are not clear and it is inflexible
- there is not enough transparency and accountability in the way unit title developments are governed and managed
- disclosure provisions are not adequate
- buyers and owners of units are not well informed
- there are barriers to workable community living and working environments
- the dispute resolution processes aren't appropriate.

This discussion document

We have met regularly with industry experts, and with a representative group from across the sector, to hear their views and to help us develop draft proposals to address the issues. We have now developed this second discussion document which contains draft proposals for changes to the Act. We invite you to make a written submission on these proposals.

Once your submissions have been considered, we will develop final proposals. The proposals will then go to the government for approval. If they are approved they will form the basis of new legislation for unit title developments.

5 Proposals

5.1 WIDENING THE PURPOSE OF THE ACT

The proposal in this section covers the purpose and principles of the new Act.

Every Act includes a purpose statement that tells you about its purpose and scope. There are also supporting principles that outline the aims of the Act and how it will achieve them.

The purpose and principles are important. They make the intention of the Act clear and they guide decision-makers and the courts in interpreting individual clauses and words in other parts of the Act.

Issues

The purpose statement in the current Act is narrow. It concentrates on title and ownership and does not include the concepts of community, participation and informed decision-making.

It is proposed that:

P1

The purpose of the Act will be to provide a legal framework for communities of individuals to own and manage land, buildings and facilities in a socially and economically sustainable way. This will be done by:

- allowing land to be subdivided into unit title developments made up of units owned by unit owners and common property owned by those unit owners as **tenants in common**
- creating bodies corporate, made up of unit owners, to operate and manage unit title developments
- establishing a flexible system that will:
 - encourage unit owners to take part in body corporate matters
 - help unit owners and bodies corporate to work well together
 - make sure that bodies corporate, unit owners and buyers have access to enough information to make informed, fair and effective decisions
 - make sure that bodies corporate plan and provide for future maintenance and repairs
 - provide an efficient and effective process for solving disputes.

Effect of proposal

It will be easier to understand what the Act aims to do and how it should be applied.

Questions

Q1

Do you agree with the proposal on the purpose of the Act? If you do, is there anything else we should cover? If you disagree, please explain why.

5.2 MAKING TITLE AND SURVEY MATTERS CLEAR

The current Act is unclear on many important points to do with definitions and responsibilities. This has led to inconsistencies and disputes.

The proposals in this section cover:

- (a) the definition of a principal unit
- (b) common property and how it is defined
- (c) easier rules for staged developments
- (d) easier rules for creating easements and covenants
- (e) better management of leasehold land.

(a) Definition of principal unit

Issues

Under the Act a **principal unit** is a unit designed for living or working in, with or without an **accessory unit**.

Many people have a view that the Act doesn't allow a unit title to be issued if the unit title doesn't have a building in it. They believe this because other provisions in the Act and the Resource Management Act 1991 have been interpreted in this way. However, the Unit Titles Act actually allows the definition of a principal unit to be interpreted in four different ways. These are that a unit:

- is defined and bounded by the physical dimensions of a building (ie, there is no open space, because the outer surfaces of the building and the boundaries of the unit are the same)
- contains a building but is larger than the building, so that there is space between the outer surfaces of the building and the boundaries of the unit
- is totally open space, but there is a plan for a building
- is totally open space, and there is no plan for a building of any sort.

Although some units are currently made up entirely of open space (as in the fourth definition), we think this interpretation should be removed.

It is proposed that:	
P2	A principal unit must either contain a building or define plans for a building, but the dimensions of the unit may or may not be the same as the physical dimensions of the building.
P3	An accessory unit supports an associated principal unit and can't have an independent certificate of title. It can't be transferred or sold outside the unit development but it can be transferred or sold to owners of other principal units in the same unit title development.
P4	An accessory unit can be entirely open space. A statement of future development (see P12–P13) will protect unit owners and potential buyers.

Effect of proposals

Developers, surveyors, lawyers and councils will be clear about the definition of a principal unit. They will know that it must include a building or plans for a building.

Unit owners won't have to ask the body corporate if they want to make alterations and additions to buildings inside their unit boundary. However, they will still have to obey body corporate rules and any other relevant building and construction laws and regulations.

Unit owners and buyers will have more information about developments planned for the future. This will protect them and the value of their units.

Everyone will be following the same rules.

Questions	
Q2	Do you agree with the proposals for principal and accessory units? If you do, is there anything else we should consider? If you disagree, please explain why.
Q3	Should completely open space principal units be allowed? If you think they should, please explain why.
Q4	What are the advantages and disadvantages of the proposals for you?

(b) Concept of common property

Issues

People are often unsure about the exact boundary between units and common property.

This can lead to complex and expensive arguments that are usually about who will arrange and pay for repairs or maintenance.

It is possible to put a lot of detailed survey information and notations on **unit plans** but we decided not to propose this. It could make unit plans more expensive without providing a complete solution in all cases.

It is proposed that:	
P5	The body corporate will be responsible for all repairs, maintenance and management of common property. This will include deciding what repairs and maintenance are needed, getting them done and paying for them.
P6	The definition of common property will be: <ul style="list-style-type: none"> • everything that is not contained in a unit as defined by survey (which determines ownership) • infrastructure for services and utilities¹ that service more than one unit • all building elements² that affect the structural integrity of structures within more than one unit • building elements within a unit that affect the structural integrity of structures within another unit.
P7	This definition will mean that the body corporate will have responsibility for repairs and maintenance of some infrastructure and building elements that will be located within a unit and are owned by a unit owner.
P8	The default survey definition of a unit boundary will be the centre point of the walls, floors and ceilings, as covered by the Surveyor-General's Rules, unless clearly indicated otherwise on the unit survey plan.

Effect of proposals

Boundary definitions and responsibility for repairs, maintenance and management will be clear.

A more expensive prescriptive approach to boundary definition, which may be of limited use, will not be needed.

There won't be so many boundary disputes.

The new definition of common property will recognise and reinforce that unit dwellers are part of a community and should share the cost of anything that benefits the whole community.

Unit owners will have sole responsibility for their standalone buildings, but must keep any body corporate rules about, for example, design, colour or standards of maintenance.

Questions
Q5
Do you agree with the proposals for the extended definition of common property? If you do, is there anything else we should consider? If you disagree, please explain why.
Q6
Will the proposed definition of common property remove the existing confusion about who is responsible for maintenance? If you don't think it will, please explain why.
Q7
What are the advantages and disadvantages of the proposals for you?
Q8
Will the proposals have any financial implications for you? If so, please explain, giving as much information as you can.

¹ Examples of infrastructure for services and utilities include pipes, wires and conduits for water, wastewater, stormwater, electricity, telecommunications and air-conditioning.

² Building elements are things such as roof, exterior cladding systems and foundations.

(c) Staged development provisions and changes to plans

Issues

The Unit Titles Amendment Act 1979 allows for the subdivision of land into units in stages over time.

Owners of land must deposit **stage unit plans** with LINZ that show which units and parts of the common property have been completed and which are **future development units**. A complete plan must be deposited when the development is finished.

Once a plan is deposited it can't be changed in any way, so any boundary changes need a new plan. At present, boundary changes need the consent of every unit owner, owners of future development units, mortgagees and other people having a registered interest in a unit including **caveators**. This requirement for 100 percent agreement is inflexible, is often difficult to obtain, and the process can be difficult to manage.

Where there isn't 100 percent agreement on an issue, but there is a majority opinion, the High Court can rule that there is no need for **unanimity**. However, this process takes time and is expensive.

It is proposed that:	
P9	Plans must be deposited with LINZ as each stage of the development is completed.
P10	Minor boundary changes between adjoining units can be made if they are agreed to by the unit owners. They will not need consent from other unit owners in the development unless the changes affect their enjoyment of their unit or any part of the common property.
P11	Non-minor unit and common property boundary changes will be allowed if there is a '75/75 percent vote'. This is defined as agreement by 75 percent of the principal unit owners who vote AND, if requested by any unit owner, 75 percent of the unit entitlement represented by those who vote.

P12	Developers must provide a ' statement of future development '. This will explain the size of the building envelope , how many units are planned, what the units will be used for, and how owners will be affected by the rest of the development. Potential buyers will get the statement of future development under the disclosure proposals (see P69).
P13	Developers will be allowed to build the units they have included in the statement of future development. If they want to make any changes, they will need a 75/75 percent vote.
P14	If the developer controls 75 percent or more of the body corporate votes, any change to the deposited plan will require a 75/75 percent vote by the other owners.

Effect of proposals

It will be easier to make boundary changes.

The statement of future development will give unit owners and buyers important information about the final form of the development. It will also let the developer go ahead with each stage without needing unanimous body corporate agreement each time.

The developer may respond to market conditions and deviate from the statement of future development if 75 percent of the owners agree.

If there is a dispute, unit owners and developers will be able to use the proposed dispute resolution process.

Questions	
Q9	Do you agree with the proposals for staged developments? If you do, is there anything else we should consider? If you disagree, please explain why.
Q10	What are the advantages and disadvantages of the proposals for you?
Q11	Will the proposals have any financial implications for you? If so, please explain, giving as much information as you can.

(d) Easements, covenants and access lots

Issues

The Act does not completely cover matters relating to **easements** and **covenants** and it is too prohibitive.

For example, the Act says that a unit development can only occur when all the land is held, or could be held, in a single title. If the land is not on a public road, access can't be obtained through shared ownership of an access lot with other owners whose land is not part of the proposed unit development.

It is proposed that:
P15
All existing easements and all covenants ³ over or in favour of the underlying reversionary interest will survive the deposit of a unit plan.
P16
Once a unit plan is deposited, all existing easements and covenants over or in favour of the underlying reversionary interest can be surrendered, and varied. In addition easements in gross over the underlying reversionary interest can be assigned.
P17
Once a unit plan is deposited, new easements and covenants can be created over or in favour of the common property or units, but not the underlying reversionary interest.
P18
On cancellation of the unit plan, easements and covenants over or in favour of: <ul style="list-style-type: none"> • the underlying reversionary interest may either survive, or be cancelled • common property may either survive, or be cancelled • units must be cancelled
P19
Easements can be created in favour of common property or units, over land that is outside the unit development.
P20
Shared ownership of access lots with other owners whose land is not part of the unit development will be allowed.

P21
Easements and covenants over the common property will require a 75/75 percent vote to enable their creation, surrender, variation or assignment, and easements and covenants over the underlying reversionary interest will require a 75/75 percent vote to be surrendered or varied.
P22
Easements and covenants that affect units will require the consent of the unit owner as well as a 75/75 percent vote to be created, surrendered, varied or assigned.

Effect of proposals

It will be easier to create and deal with easements, covenants and shared ownership of access lots.

Questions
Q12
Do you agree with the proposals for easements, covenants and access lots? If you do, is there anything else we should consider? If you disagree, please explain why.
Q13
What are the advantages and disadvantages of the proposals for you?
Q14
Will the proposals have any financial implications for you? If so, please explain, giving as much information as you can.

A '75/75 percent vote' is defined as agreement by 75 percent of the principal unit owners who vote AND, if requested by any unit owner, 75 percent of the unit entitlement represented by those who vote.

³ Covenants include land covenants under the Property Law Act 1952 and other statutory covenants for example the Historic Places Act 1993, the Queen Elizabeth the Second National Trust Act 1977 and the Reserves Act 1977.

(e) Leasehold land

Issues

We have not found any major problems with unit title developments on leasehold land. However, they can be difficult and time-consuming to deal with and can have many parties involved. They would be easier to manage if the body corporate, the **ground lessor** and unit owners were all clear about their roles, powers and responsibilities.

Unit owners also need to know that the body corporate will make important decisions about rights of renewal or purchase when the ground lease ends.

It is proposed that:

P23

Unit title developments can be created on leasehold land.

P24

Body corporate rules for leasehold developments must be detailed and specific with regard to the relative rights and responsibilities of the body corporate, lessors and unit owners.

P25

Disclosure will be improved so that prospective owners understand leasehold tenure and the likely costs of the ground rent (see P69).

Effect of proposals

Everyone who is part of a unit title development on leasehold land will understand their own responsibilities. This will make everything work more smoothly.

Questions

Q15

Do you agree with the proposals for leasehold land? If you do, is there anything else we should consider? If you disagree, please explain why.

Q16

What are the advantages and disadvantages of the proposals for you?

(f) Cross-lease properties and flat-owning companies

Issues

We haven't found any major problems with **cross-lease properties** and **flat-owning companies**.

Flat-owning companies were originally used to develop medium- and high-density housing before the Act was passed. Cross-lease properties were developed in response to restrictive subdivision rules by local authorities. However, over the years local authorities have updated rules for subdivision, to allow for medium- and high- density development. Although existing cross-lease properties and flat-owning companies are still popular, it is now rare for new ones to be created.

Under the Act, flat-owning companies and cross-lease schemes can be changed to unit title ownership. It doesn't seem necessary to do anything else about this type of property ownership.

It is proposed that:

P26

No changes will be made to cross-lease properties and flat-owning companies.

Effect of proposal

Market demand will continue to drive the supply and popularity of cross-lease properties and flat-owning companies.

Questions

Q17

Do you agree with the proposal for cross-lease properties and flat-owning companies? If you disagree, please explain why.

5.3 TREATING EXPENSES FAIRLY

Many people feel that the share of insurance premiums and body corporate expenses that owners of some units pay is unfair and that a better system is needed.

The proposals in this section cover:

- (a) how unit entitlement will be worked out
- (b) how insurance premiums will be divided.

(a) Unit entitlement

Issues

The Act is not very flexible about the concept of **unit entitlement**. Unit entitlement determines the proportion of body corporate expenses that an individual unit owner pays. Unit entitlement is based on the relative value of a unit. This usually works well, but sometimes results in unfair situations.

It is proposed that:	
P27	The concept of unit entitlement will have two parts.
P28	The first part will define a unit owner's share of the property and weighted voting rights . The first part will be based on relative value.
P29	The second part will be for calculating: <ul style="list-style-type: none"> • how much a unit owner pays the body corporate for managing and maintaining the common property • the unit owner's share of any surplus money that is distributed. The second part will be based on how much a unit owner uses the shared facilities and services. ⁴ Either the owners will need to agree on this or the body corporate will vote on it. The default position will be unit owner's share based on relative value. The dispute resolution process will protect minority unit owners and anyone affected by voluntary agreements.
P30	The body corporate can vote to review the unit entitlement calculation at any time. The part of the unit entitlement calculation that is based on relative value can only be determined by a registered valuer. Anyone who disagrees with the review can go through the dispute resolution process.

⁴ Examples are cleaning for common areas and lift maintenance.

Effect of proposals

An owner's share of expenses will be more closely tied in with their use of the facilities.

There should be fewer disputes because bodies corporate will be able to reassess unit entitlements from time to time to make sure expenses are being shared fairly.

Questions
Q18
Do you agree with the proposals for unit entitlements? If you do, is there anything else we should consider? If you disagree, please explain why.
Q19
What are the advantages and disadvantages of the proposals for you?
Q20
Will the proposals have any financial implications for you? If so, please explain, giving as much information as you can.

(b) Insurance

Issues

The Act is not flexible about insurance premiums. The share that an individual unit owner pays is based on relative value, and so an owner of a unit with a high-risk use, for example a radiator repair workshop, may not pay a higher share of the premium or any excess.

All unit developments must have full replacement insurance, but this isn't always possible. This means that some bodies corporate and unit owners are disobeying the law.

We have defined the words in **bold** in the glossary (pages 35–36).

It is proposed that:

P31

The share of insurance premiums and excess will be based on individual circumstances. For example, the owner of a unit with a higher-risk use will pay a higher share of the premium and any excess. This will be included in the second part of the unit entitlement.

P32

Indemnity insurance cover will be allowed if full replacement insurance is not available, for example for heritage buildings.

Effect of proposals

Body corporate administration will be much more flexible. Each body corporate will be able to make its own insurance choices. The sharing of insurance premiums will be fairer.

Flexible insurance requirements will help bodies corporate to be more realistic, efficient and cost-effective.

Questions

Q21

Do you agree with the proposals for insurance? If you do, is there anything else we should consider? If you disagree, please explain why.

Q22

What are the advantages and disadvantages of the proposals for you?

Q23

Will the proposals have any financial implications for you? If so, please explain, giving as much information as you can.

5.4 CLARIFYING RULES AND RESPONSIBILITIES FOR MANAGEMENT AND DECISION-MAKING

The Act needs to give more freedom to bodies corporate to run their developments. It also needs to explain more clearly what a body corporate must do and can choose to do.

The proposals in this section cover:

- (a) the powers and duties of a body corporate
- (b) how a body corporate will make decisions
- (c) operational rules.

(a) Powers and duties

Issues

The Act only states the powers and duties of the body corporate in general terms. There is not enough specific help for body corporate members to understand what they should do and the minimum acceptable standards they must work to.

The Act doesn't clearly define roles, responsibilities and relationships. The different roles of the body corporate committee, the body corporate secretary, the building manager and professional body corporate managers, for example, are often not well defined and understood. Unit owners and tenants may not know much about how the body corporate works, and may not be sure about who is doing what, how well they are doing it, and who they are responsible to.

The uncertainty can make relationships difficult, particularly relationships among tenants, absentee landlords, the body corporate and professional body corporate managers.

When clarifying roles and responsibilities, it is important to achieve a balance between flexibility between individual unit developments and the need for minimum standards of management and administration across all unit developments.

It is proposed that:

P33

There will be a new structure for body corporate governance, as shown in Figure 1 (overleaf).

P34

The purpose and functions of the body corporate will be clearly stated (see P1) so that unit owners understand everyone's roles and responsibilities.

P35

The Act will clearly set out the powers and duties of the body corporate and will include information about:

- maintenance and management of common property
- disclosure
- record-keeping
- insurance
- establishment of a long-term maintenance plan (see P59)
- establishment of a long-term maintenance fund (see P56).

P36

The Act will distinguish between relationships among unit owners, the body corporate, the body corporate committee, and employees or contractors.

P37

Decision-making processes will be more flexible. The body corporate may delegate some or all of its property, administrative, management or contractual powers and duties to the body corporate committee. The body corporate may also decide which decisions it wants to vote on as a whole, and which decisions it would let the body corporate committee make. For example, the body corporate committee could make decisions within financial limits approved by the body corporate. The body corporate would then be bound by these decisions. There will be some decisions that the body corporate as a whole must vote on and that can't be delegated.

P38

The body corporate committee can appoint one or more of its members to carry out some of its powers and duties.

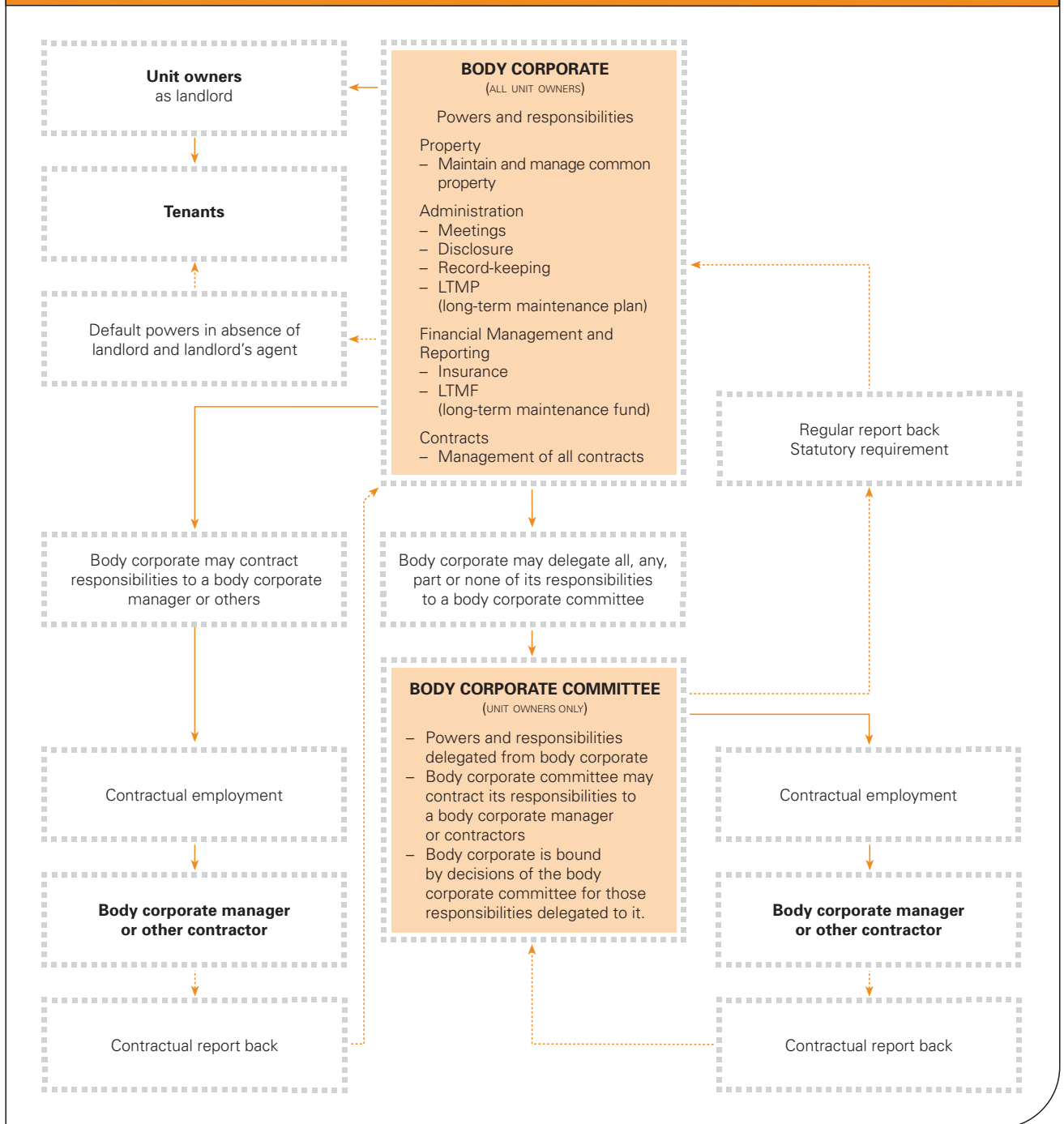
P39

The body corporate committee may employ others, on behalf of the body corporate, to carry out administration and financial management functions. For example, a professional body corporate manager could be appointed through an employment contract and, in turn, could hire, for example, a building manager, accountant, gardener and other staff.

P40

Anyone engaged through an employment contract will be responsible to the body corporate committee, which will in turn be responsible to the body corporate. A contractor will not, simply because of a contract, be a member of the body corporate committee.

FIGURE 1: PROPOSAL FOR BODY CORPORATE GOVERNANCE



It is proposed that:	
P41	The body corporate or its committee may employ unit owners. The employee would have to disclose any potential conflict of interest.
P42	The body corporate committee must report regularly to the body corporate on its activities. There must be enough detail to give all owners a clear and accurate picture of what is happening. The report must also tell owners about anything the body corporate may need to vote on in a general meeting.
P43	<i>Tenants</i> Every tenancy agreement will include the body corporate rules, and every tenant must be informed about their obligations. The current <i>Review of the Residential Tenancies Act 1986</i> will also look at this requirement.
P44	An absent or unavailable landlord must appoint a New Zealand-based agent who is responsible for enforcing the terms of the tenancy. The agent must make sure tenants follow body corporate rules and will deal with other owners' complaints about tenants. The agent's contact details should be given to the body corporate. If both the landlord and agent are absent or unavailable, the body corporate will be able to act as the landlord's agent. The current <i>Review of the Residential Tenancies Act 1986</i> will also look at this requirement.
P45	The body corporate can use the proposed dispute resolution process if the landlord or the appointed agent cannot get a tenant to follow the body corporate rules.

Effect of proposals

There will be less confusion if the roles, responsibilities and relationships of the people who operate and manage unit title developments are made clearer.

It will be easier for unit owners to make informed decisions about how their chosen living or working environment is managed.

The reporting requirements will make it easier for owners to see how their levies are being spent and to take part in body corporate matters.

Giving tenants more information should help landlords and/or the body corporate to manage tenants better.

Questions	
Q24	Do you agree with the proposals for governance and managing tenants? If you do, is there anything else we should consider? If you disagree, please explain why.
Q25	What are the advantages and disadvantages of the proposals for you?
Q26	Will the proposals have any financial implications for you? If so, please explain giving as much information as you can.

(b) Voting

Issues

Decision-making can be slow and difficult. The body corporate has to unanimously agree to any changes to buildings, boundaries and common property. It also has to approve unanimously any changes to its Second Schedule rules. The High Court can allow a body corporate to go ahead with less than a 100 percent vote, but it is expensive and time-consuming to apply to the High Court.

It is proposed that:	
P46	A '75/75 percent vote' will replace the requirement for unanimous agreement. This is defined as agreement by 75 percent of the principal unit owners who vote AND, if requested by any unit owner, 75 percent of the unit entitlement represented by those who vote.
P47	A specialist tribunal will be set up and the powers of the District Court widened to help resolve problems.
P48	Things that can't be changed by a vote will be included in the main body of the Act. Some of this, such as fundamental ideas about the powers and duties of bodies corporate, is currently in the Second Schedule which may change as a result of this consultation.

P49
<p>The Act will define the areas the whole body corporate must vote on. For example:</p> <ul style="list-style-type: none"> • <i>property and title</i> – anything to do with land, title, title boundaries, unit plans, common property or the underlying fee simple estate • <i>financial management</i> – approval of annual budgets, expenditure and levies; the long-term maintenance plan and fund • <i>legal</i> – approval for the body corporate to take, defend or settle legal actions, for example, matters dealt with by the Weathertight Homes Resolution Service • <i>contract management</i> – decisions to review a contract for services.
P50
<p>Operational decisions such as swimming pool hours, pets and noise restrictions will need support from at least 51 percent of the principal unit owners who vote. A 51 percent vote is enough to operate the body corporate effectively and it means that apathetic or unaffected unit owners won't hold up decisions.</p>
P51
<p>A body corporate can call a general meeting at any time if at least 20 percent of those entitled to vote ask for one.</p>

Effect of proposals

Moving to a voting base of those who actually vote, rather than those who are entitled to vote, will address the issues of unit owners who are apathetic, unaffected or do not participate by choice. Unit owners who do not vote will no longer have the ability to affect or hold up the decision-making process for those who do.

People will be able to use the dispute resolution process if they have a problem (see P78).

Questions
Q27
<p>Do you agree with the proposals on voting? If you do, is there anything else we should consider? If you disagree, please explain why.</p>
Q28
<p>What are the advantages and disadvantages of the proposals for you?</p>

(c) Flexibility for body corporate operational rules

Issues

There are now many more kinds of development than were anticipated in 1972. Unit titles are now used not only for small residential developments, but also for large, mixed-use developments, residential, commercial and industrial uses, marinas, car parks, **gated communities**, farm parks and shopping malls, to name a few.

This means a 'one size fits all' approach to body corporate rules and procedures is not appropriate now.

It is proposed that:
P52
<p>Operational rules will be flexible. They can be tailored to individual unit developments to suit size, value, design, use, the mix of occupants and the type of common property. For example, in a small residential development they might cover only resident and visitor parking, while in a commercial development they might cover customer and delivery parking, hours of business, permitted uses and signage.</p>
P53
<p>There will be a small set of 'core provisions'. These will be rules about fundamental property rights and significant management decisions that will apply to all unit title developments.</p>

Effect of proposals

Each individual unit title development can have the operational rules it needs to work best.

At the same time, all unit title developments will have the same compulsory rules about property rights, financial management, and powers and duties of the body corporate.

Questions
Q29
<p>Do you agree with the proposals on flexibility for body corporate operational rules? If you do, is there anything else we should consider? If you disagree, please explain why.</p>
Q30
<p>What are the advantages and disadvantages of the proposals for you?</p>

5.5 FAIRER FINANCIAL AND ASSET MANAGEMENT

The body corporate is responsible for the maintenance and management of common property in the unit development. The way in which the body corporate handles this responsibility affects all unit owners, their enjoyment of their property and the value of their asset. This differs from individual owners of fee simple property whose decisions about their property do not directly affect anyone else.

A unit title development is an asset that must be well managed and maintained as a whole to keep its value. It is clear that this is not always the case. A unit title development differs from individual properties held in fee simple title, as the financial and asset management decisions of one unit owner can directly affect all the other owners.

The proposals in this section cover:

- (a) long-term maintenance plans and funds
- (b) professional standards for body corporate managers.

(a) Long-term financial and maintenance planning

Issues

The Act covers the setting up of maintenance and capital funds by the body corporate. However, it does not cover a supporting financial planning and reporting system for the establishment, use and management of such funds.

Bodies corporate who have not planned ahead often respond to large or unexpected capital or maintenance expenses by raising large, one-off levies. This can put a lot of pressure on the unit owners at the time because they happen to be the owners when something expensive needs to be done. By planning and budgeting for future costs, unit owners would contribute more evenly over time, and over the life of the development.

It is proposed that:
P54
<p>There will be two compulsory funds and further optional funds. Money in these funds will be held in a trust account, which will be audited and reported on regularly. The accounts are:</p> <ul style="list-style-type: none"> • a compulsory operating account • a compulsory long-term maintenance fund • an optional contingency fund • an optional improvement fund.
P55
<p><i>Operating Account</i> The body corporate must have an operating account to pay for:</p> <ul style="list-style-type: none"> • professional services such as secretarial, accounting and legal • governance and technical reports that are required by law • regular maintenance such as lawn-mowing, cleaning, lift service contracts and air-conditioning service contracts.
P56
<p><i>Long-term Maintenance Fund</i> The body corporate must have a long-term maintenance fund to pay for items in the long-term maintenance plan.</p>
P57
<p><i>Contingency Fund</i> The body corporate can choose to have a contingency fund to pay for items it has not budgeted for, such as unexpected maintenance or legal costs.</p>
P58
<p><i>Improvement Fund</i> The body corporate can choose to have an improvement fund to pay for work that upgrades the property. The work should improve the development rather than merely maintain it. Examples are shops and tourist buildings that need to be attractive and contemporary to draw in customers.</p>
P59
<p><i>Long-term Maintenance Plan</i> To support the setting up and management of the funds, a unit development must have a long-term maintenance plan. The purpose of the long-term maintenance plan will be to identify and plan for future maintenance needs, and to estimate how much it is likely to cost. The scope of the plan will depend on the size and complexity of the development. For example, very small and standalone developments will have simpler plans than a large 150-unit development. The plan will cover things like:</p> <ul style="list-style-type: none"> • exterior painting • repairs to the exterior of the building • work on the structure of the building and the foundations • maintenance or replacement of major infrastructure such as water, wastewater and stormwater pipes, collection and treatment devices, electricity and telecommunications cables, air-conditioning, fire detection and protection, lifts and stairs.

Effect of proposals

Bodies corporate will be able to manage both short- and long-term maintenance of their properties more responsibly, and for the long-term good of the development as a whole.

Owners' interests and the value of their investment will be protected.

The cost of long-term maintenance will be spread more evenly over time and owners will not face large, one-off levies.

Questions

Q31

Do you agree with the proposals for funds and long-term management plans? Is there anything else we should consider? If you disagree, please explain why.

Q32

What are the advantages and disadvantages of the proposals for you?

Q33

Will the proposals have any financial implications for you? If so, please explain, giving as much information as you can.

We have defined the words in **bold** in the glossary (pages 35–36).

(b) Supporting body corporate managers

Issue

We have heard that there are varying levels of competency among body corporate managers.

It is proposed that:

P60

Encourage self-regulation of the body corporate management profession by professional institutes and bodies.

Effect of proposal

Self-regulation by professional bodies will improve the performance and accountability of body corporate management so that it won't be necessary to introduce any form of occupational regulation. This will keep costs down for the profession and their clients.

Questions

Q34

Do you agree with the proposal for body corporate managers? If you do, is there anything else we should consider? If you disagree, please explain why.

Q35

What are the advantages and disadvantages of the proposal for you?

5.6 IMPROVING INFORMATION AND EDUCATION SERVICES

Unit title developments are different from other properties, and people need to understand these differences.

The proposals in this section cover the role of a central government agency in offering information and access to information.

Issues

Many people who buy a unit title property don't know much about the body corporate, their relationship to it and their rights and responsibilities as a unit owner.

Some owners don't seem to know that they should try to get involved in body corporate affairs. They don't realise they need to get involved if they want to have a say in what happens.

Some problems are probably caused by a lack of understanding rather than by the nature and structure of unit title developments themselves.

At present, no one is responsible for giving information and general advice to people who are thinking of buying a unit title property, people involved with unit developments or to the general public.

It is proposed that:	
P61	A central government agency will be responsible for providing information and helping people find information they need. This proposal is subject to government approval and funding.
P62	The agency will help inform people about living and working in a unit title development and the rights, responsibilities and relationships involved. They will help make sure prospective buyers have access to information from developers, solicitors, real estate agents and local authorities.
P63	The agency will be the first tier in the proposed dispute resolution process (see P78–P79).

P64	The agency will work with others in the sector. It will monitor what's happening, what trends are developing and whether the laws and regulations are working.
P65	The agency will monitor and enforce the compulsory disclosure rules proposed (see P67–P77). It will hold a public register of bodies corporate.
P66	The agency will produce a 'plain English' guide to the new unit titles legislation. It will form part of a comprehensive and coordinated education programme to support the introduction of the new Act.

Effect of proposals

Information will be produced and distributed by a central agency.

People will know more about unit title developments. It will help people make informed choices. It will also help prevent misunderstandings and disputes.

The plain English guide to the new Act will help unit owners and bodies corporate to understand 'the big picture' and carry out their functions and duties.

Unit owners will understand how they can take part in the body corporate's work.

Questions	
Q36	Do you agree with the proposals for information and education services? If you do, is there anything else we should consider? If you disagree, please explain why.

5.7 IMPROVING DISCLOSURE INFORMATION

Unit title developments are different from other properties, and people need certain information so they can make good decisions.

The proposals in this section cover:

- what owners and buyers must be told
- what the developer must tell the body corporate
- the body corporate’s right to review contracts
- the penalties for not disclosing information.

Issues

There is no comprehensive set of compulsory disclosure requirements and this contributes to the issue of poorly informed consumers. The Act currently contains two basic disclosure requirements made up of:

- section 36 certificates of **proprietor** liability, which give information about any money the unit owner still owes, repair contracts, or lawsuits that haven’t been settled
- limited reporting from bodies corporate to unit owners, such as the requirement to give unit owners a copy of the audited accounts (rule 12 of the Second Schedule).

Because the disclosure requirements don’t cover enough information, it is difficult for people to find out what they need to know. This causes problems for everyone. Unit owners and buyers can’t make informed decisions. Bodies corporate can’t manage and maintain the property effectively. It is also hard to identify conflicts of interest.

It is proposed that:
P67
Sellers, through their solicitors, must give buyers a standard information statement. The content of the statement will be set by the Act. The statement must contain general information about buying a unit title property to help make sure buyers understand unit titles and the role and significance of the body corporate.
P68
Sellers must give buyers information specific to the unit title they are intending to buy, including: <ul style="list-style-type: none"> • a copy of the relevant unit plan • a copy of the relevant certificate of title • the individual unit entitlement of this unit • the current annual body corporate levies for this unit • other information currently contained in section 36 certificates • details about any other liabilities and responsibilities of the owner of this unit.
P69
Sellers must give buyers information about the development as a whole, including: <ul style="list-style-type: none"> • the body corporate rules • contact details for the body corporate and body corporate committee (if applicable) • key details of contracts between the body corporate and third parties for the administration and maintenance of the development • details of the long-term management plan • balances of any funds or accounts operated by the body corporate • insurance cover • statement of future development, if applicable (see P12) • details of ground lease if applicable • details about any other liabilities and responsibilities of unit owners.
P70
Developers must give the body corporate all contracts and other information it needs to maintain and manage the development. They must do this within a reasonable time after handing over ownership and control to a new body corporate. The information will include: <ul style="list-style-type: none"> • all building plans and specifications • recommended maintenance schedules • asset schedules • warranty and guarantee details • copies of all existing and proposed maintenance and service contracts, including contractors’ contact details.

P71
Developers must tell the body corporate if they have entered into contracts or made arrangements on behalf of the body corporate with companies or individuals that the developers are associated with. The body corporate can then identify any real or potential conflicts of interest the developer may have.
P72
A new body corporate will be able to review any contracts the developer entered into when acting as the original body corporate. This will include contracts for body corporate managers. If a review is to take place, it must take place no later than 12 months after the new body corporate's first annual general meeting.
P73
The body corporate must regularly remind all unit owners they have the right to inspect and take copies of all information about the management and maintenance of the development.
P74
An agreement for sale and purchase can be cancelled if a seller doesn't comply with the compulsory disclosure requirements before the date of settlement.
P75
If a buyer loses money because a seller isn't truthful or doesn't give all available information before settlement, the buyer can seek compensation from the seller.
P76
Developers must compensate a body corporate if it loses money because the developers haven't complied with their disclosure obligations. Bodies corporate will be liable to unit owners in the same way.
P77
It will be an offence for anyone to purposely: <ul style="list-style-type: none"> • not comply with a disclosure requirement • give false or misleading information. There will be a fine for these offences.

Effect of proposals

Buyers will understand the type of property title they are buying, including the role of the body corporate. They will be able to make more informed decisions, which may help prevent disputes in the future. They will have a basis for deciding whether the body corporate rules and contracts suit them, and whether they can afford to pay the ongoing costs.

Bodies corporate will be able to identify and review contracts entered into by developers that they might want to change.

Unit owners will be able to get an accurate understanding about the state of their development. They may be encouraged to take an active part in the decisions made by the body corporate.

Questions
Q37
Do you agree with the proposals for disclosure provisions? If you do, is there anything else we should consider? If you disagree, please explain why.
Q38
What are the advantages and disadvantages of the proposals for you?
Q39
Will the proposals have any financial implications for you? If so, please explain giving as much information as you can.

5.8 CREATING A BETTER WAY TO RESOLVE DISPUTES

The current Act does not offer a satisfactory procedure for resolving disputes.

The proposals in this section cover a four-tier dispute resolution procedure.

Issues

There are many different kinds of disputes over unit title developments. Some of them are minor and are easily solved, while others involve large amounts of money or are very difficult to sort out.

They can be disagreements between the body corporate and unit owners, disagreements between neighbours, or serious arguments about the future of the whole development.

As we said in section 5.7, there is a lack of compulsory and comprehensive disclosure. At present, developers and bodies corporate don't have to tell prospective owners much about their obligations or how they can be part of a unit title community. As a result, misunderstandings about rights, responsibilities and expectations can cause disagreements and bad feeling.

Tenants often have no idea about their obligations to other occupiers and the body corporate. Bodies corporate often have trouble contacting landlords to get them to enforce the terms of the tenancy. Neighbours can get very upset when tenants don't follow the rules.

Currently, anyone with a problem generally has to go to the High Court. Owners who can't get unanimous agreement for a proposal also have to go to the High Court. This takes time and it is expensive.

There is no accessible, affordable dispute resolution process that satisfactorily deals with different types of disputes. There is also no straightforward way of making people follow the body corporate rules.

It is proposed that:	
P78	A central government agency with existing dispute resolution capability will expand its services to include a dispute resolution service for unit title matters. This proposal will depend on government approvals and funding.
P79	The first tier of the dispute resolution service will be education and information about the Act. The central government agency will be responsible for providing this. This is expected to help people to make more informed decisions and prevent disputes starting.
P80	The second tier of the proposed dispute resolution service will be a mediation service. This will be provided by a central government agency with existing mediation services.
P81	Where appropriate, anyone who asks for mediation will need to show that they have tried to resolve the dispute themselves. They must show that a letter saying what the problem is and what action needs to be taken, or a 'notice to remedy', has been given to the other party. They must also be able to show that the other party has failed or refused to comply voluntarily with the requirements in the letter.
P82	The third tier of the proposed dispute resolution service will be an adjudication service by a tribunal. An existing adjudication tribunal, such as the Tenancy Tribunal, will provide the service. It will not deal with title issues, but it will deal with everything else, unless the dispute involves more money than it is allowed to rule on.
P83	Settlements agreed to by mediation, which have been approved as an order by the tribunal, and orders made by the tribunal, will be enforced in the same way as District Court orders.
P84	The fourth tier of the proposed service will be a District Court hearing. The District Court will replace the High Court as the court of first instance unless a dispute is about title or the amount involved is more than the District Court can rule on. These cases will go direct to the High Court.
P85	The District Court will hear any matters transferred up from the lower tribunal. It will also hear appeals on decisions made by the lower tribunal.
P86	The High Court's role will be limited. It will only hear title disputes, high value disputes and appeals on District Court decisions.

How the process will work

Depending on available government funding and all necessary approvals, the dispute resolution service could look like this.

Tier One – Information and advice

The central government agency offers information and advice through publications, online and through an 0800 freephone number. These services will encourage the people involved to make informed choices and to take all reasonable steps to resolve the dispute themselves.

If the dispute is not resolved at this point, it moves into the formal dispute resolution process.

Tiers Two and Three – Mediation and adjudication

A case administrator assesses the application and sends it either to mediation or straight to the tribunal for adjudication.

The decision on where the case goes will depend on:

- how complex it is
- how much money is involved
- whether it is likely to set a legal precedent
- what the parties want
- how they feel about the case.

If mediation has been chosen, this takes place.

If mediation wasn't chosen or doesn't work the case is sent to the tribunal.

The tribunal uses the factors listed above to decide whether it will hear the case itself or send it to the District Court or to the High Court.

The tribunal adjudicates or the case goes to the District Court.

Tier Four – District Court

The District Court hears the case and gives a decision. This is the end of the process, unless there is an appeal to the High Court against the District Court decision.

Effect of proposals

It will be easy for owners and occupiers of unit title developments to get information and advice. They will know much more about their rights and responsibilities. This means that some disputes will be prevented and that people will be able to resolve more disputes themselves.

The tiered dispute resolution process will be easier to use, cheaper and faster than in the current Act.

As a result, many types of dispute that were not resolved because it was difficult and expensive to go to the High Court may now be worked through effectively.

Settlements agreed to by mediation, which have been approved as an order by the tribunal, and orders made by the tribunal, will be enforced in the same way as District Court orders. This will keep costs down because existing enforcement processes can be used and it won't be necessary to set up a new structure.

Essentially, the proposals will make the High Court the final, rather than the first, step in the dispute resolution process for many claims and applications.

Questions

Q40

Do you agree with the proposals for dispute resolution?
If you do, is there anything else we should consider?
If you disagree, please explain why.

Q41

What are the advantages and disadvantages of the proposals for you?

Q42

Will the proposals have any financial implications for you?
If so, please explain giving as much information as you can.

Q43

What is the best way to fund the proposed unit title dispute resolution service?

5.9 SMOOTHING THE TRANSITION TO THE NEW ACT

We recognise that there could be problems if we don't provide an adequate lead-in time to the new Act, particularly for existing developments. For example, a compulsory long-term maintenance plan and fund may mean changes to body corporate levies, which owners would not have anticipated when they bought their units. They need time to plan for this.

After the lead-in time, we intend all provisions of the new Act to apply to all existing and new unit title developments from the **commencement date** which is when the new Act comes into force. There will be exceptions for certain matters which will have special transitional provisions.

The proposals in this section cover:

- a lead-in time for the new Act
- special transitional provisions.

It is proposed that:
P87
The unit titles industry will be given enough time to prepare for the requirements of the new Act. There will be a lead-in time of at least 6 months from the date the Act is passed to the commencement date.
P88
All provisions of the new Act will apply to all unit title developments where a unit plan is deposited on or after the commencement date.
P89
All provisions of the new Act will apply to all unit title developments that legally existed before the commencement date, subject to the following proposals for special transitional provisions (see P90–P95).
P90
Disclosure by the initial developer to the body corporate must be completed as far as is reasonably practicable.

P91
Implementing the compulsory long-term maintenance plan and fund will be linked to a unit development's existing financial year planning and reporting cycle.
P92
If the long-term maintenance plan and fund are not made compulsory for existing schemes, existing bodies corporate will be able to opt in on a 75/75 percent vote.
P93
An existing unit development may apply to the proposed dispute resolution tribunal to be exempt from the compulsory long-term management fund or maintenance plan where: <ul style="list-style-type: none"> • it will be uneconomic to maintain the unit development for more than 5 years, and • there is a 75/75 percent vote to demolish the unit development after 5 years, and • a structural engineer certifies that maintaining the unit development for more than 5 years is unsound or uneconomic.
P94
A body corporate that wants to review a contract the developer entered into before the start of the new Act may apply to the proposed dispute resolution tribunal. This must be within 2 years of the new Act coming into force. Applicants must show that: <ul style="list-style-type: none"> • the developer has entered into such a contract with an associated party, and • the contract provides such an unfair benefit to one party that it is reasonable to believe that it would not have been entered into during ordinary 'arm's-length' commercial negotiations.
P95
Staged developments which began before the commencement date of the new Act will have the current voting requirements of unanimous agreement. They will be able to opt into the new provisions with a 75/75 percent vote, if the developer chooses to prepare and file a statement of future development.

Effect of proposals

The transitional proposals will provide a simple, certain and fair lead-in to the new Act. We want the transitional proposals to strike the right balance between existing rights and expectations, and giving everyone the full benefits of the new law as quickly as possible.

Questions
Q44
Do you agree with the proposed transitional provisions? If you do, is there anything else we should consider? If you disagree, please explain why.
Q45
What are the advantages and disadvantages of the proposals for you?
Q46
Will the proposals have any financial implications for you? If so, please explain giving as much information as you can.

6 Submissions

You can make a written submission to answer the questions in this discussion document, or to tell us what you think about the proposals. You can use the submission form on pages 27–34, or you can just write to us.

Where possible, please refer to the proposal numbers (eg, P1, P2) and question numbers (eg, Q1, Q2) we have used in this discussion document.

Your submission will become publicly available information. For this reason, you need to tell us if your comments are commercially sensitive or if you don't want the public to see some or all of your submission. We will use the Official Information Act 1982 and the Privacy Act 1993 when we consider your request.

**We need to get your submission by Friday
2 June 2006.**

You can post or hand deliver your submission to:

Unit Titles Act Review
Department of Building and Housing
Level 6
86 Customhouse Quay
PO Box 10-729
Wellington

Or you can email it to:

utareview@dbh.govt.nz

You can find this discussion document on the Department of Building and Housing website at **www.dbh.govt.nz**

You can phone **0800 83 62 62 (freephone)** if you have any questions, or to ask us to send you a hard copy of this discussion document.

REVIEW OF THE UNIT TITLES ACT 1972 SUBMISSION FORM

Name

Position

Organisation

Contact details

Please tick if you are happy for us to contact you about your submission.

This submission form is intended to help you make a submission on draft proposals for making changes to the Unit Titles Act 1972. Please fill out the questions that are relevant to you. You can also send additional feedback if you choose.

Please return this form by **Friday 2 June 2006**.

We want to get your responses on as much of the document as possible, but understand some areas may be of more interest to you than others. You can make submissions on part or all of the discussion document. Thank you for your contribution.

QUESTION

WIDENING THE PURPOSE OF THE ACT

1 Do you agree with the proposal on the purpose of the Act? If you do, is there anything else we should cover? If you disagree, please explain why.

MAKING TITLE AND SURVEY MATTERS CLEAR

2 Do you agree with the proposals for principal and accessory units? If you do, is there anything else we should consider? If you disagree, please explain why.

3 Should completely open space principal units be allowed? If you think they should, please explain why.

4 What are the advantages and disadvantages of the proposals for you?

QUESTION

MAKING TITLE AND SURVEY MATTERS CLEAR (continued)

5 Do you agree with the proposals for the extended definition of common property? If you do, is there anything else we should consider? If you disagree, please explain why.

6 Will the proposed definition of common property remove the existing confusion about who is responsible for maintenance? If you don't think it will, please explain why.

7 What are the advantages and disadvantages of the proposals for you?

8 Will the proposals have any financial implications for you? If so, please explain giving as much information as you can.

9 Do you agree with the proposals for staged developments? If you do, is there anything else we should consider? If you disagree, please explain why.

10 What are the advantages and disadvantages of the proposals for you?

11 Will the proposals have any financial implications for you? If so, please explain, giving as much information as you can.

QUESTION

MAKING TITLE AND SURVEY MATTERS CLEAR (continued)

12 Do you agree with the proposals for easements, covenants and access lots? If you do, is there anything else we should consider? If you disagree, please explain why.

13 What are the advantages and disadvantages of the proposals for you?

14 Will the proposals have any financial implications for you? If so, please explain, giving as much information as you can.

15 Do you agree with the proposals for leasehold land? If you do, is there anything else we should consider? If you disagree, please explain why.

16 What are the advantages and disadvantages of the proposals for you?

17 Do you agree with the proposal for cross-lease properties and flat-owning companies? If you disagree, please explain why.

QUESTION

TREATING EXPENSES FAIRLY

18 Do you agree with the proposals for unit entitlements? If you do, is there anything else we should consider? If you disagree, please explain why.

19 What are the advantages and disadvantages of the proposals for you?

20 Will the proposals have any financial implications for you? If so, please explain, giving as much information as you can.

21 Do you agree with the proposals for insurance? If you do, is there anything else we should consider? If you disagree, please explain why.

22 What are the advantages and disadvantages of the proposals for you?

23 Will the proposals have any financial implications for you? If so, please explain, giving as much information as you can.



QUESTION

CLARIFYING RULES AND RESPONSIBILITIES FOR MANAGEMENT AND DECISION-MAKING

24 Do you agree with the proposals for governance and managing tenants? If you do, is there anything else we should consider? If you disagree, please explain why.

25 What are the advantages and disadvantages of the proposals for you?

26 Will the proposals have any financial implications for you? If so, please explain giving as much information as you can.

27 Do you agree with the proposals on voting? If you do, is there anything else we should consider? If you disagree, please explain why.

28 What are the advantages and disadvantages of the proposals for you?

29 Do you agree with the proposals on flexibility for body corporate operational rules? If you do, is there anything else we should consider? If you disagree, please explain why.

QUESTION

CLARIFYING RULES AND RESPONSIBILITIES FOR MANAGEMENT AND DECISION-MAKING (continued)

30 What are the advantages and disadvantages of the proposals for you?

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FAIRER FINANCIAL AND ASSET MANAGEMENT

31 Do you agree with the proposals for funds and long-term management plans? Is there anything else we should consider? If you disagree, please explain why.

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32 What are the advantages and disadvantages of the proposals for you?

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33 Will the proposals have any financial implications for you? If so, please explain, giving as much information as you can.

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34 Do you agree with the proposal for body corporate managers? If you do, is there anything else we should consider? If you disagree, please explain why.

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35 What are the advantages and disadvantages of the proposal for you?

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QUESTION

IMPROVING INFORMATION AND EDUCATION SERVICES

36 Do you agree with the proposals for information and education services? If you do, is there anything else we should consider? If you disagree, please explain why.

IMPROVING DISCLOSURE INFORMATION

37 Do you agree with the proposals for disclosure provisions? If you do, is there anything else we should consider? If you disagree, please explain why.

38 What are the advantages and disadvantages of the proposals for you?

39 Will the proposals have any financial implications for you? If so, please explain, giving as much information as you can.

40 Do you agree with the proposals for dispute resolution? If you do, is there anything else we should consider? If you disagree, please explain why.

41 What are the advantages and disadvantages of the proposals for you?

QUESTION

IMPROVING DISCLOSURE INFORMATION (continued)

42 Will the proposals have any financial implications for you? If so, please explain, giving as much information as you can.

43 What is the best way to fund the proposed unit title dispute resolution service?

SMOOTHING THE TRANSITION TO THE NEW ACT

44 Do you agree with the proposed transitional provisions? If you do, is there anything else we should consider? If you disagree, please explain why.

45 What are the advantages and disadvantages of the proposals for you?

46 Will the proposals have any financial implications for you? If so, please explain giving as much information as you can.



7 Glossary

You need to know how we define the words we use in this document. The meanings given are not legal or technical definitions. They are a guide to the meaning of words used in the context of this document. If a definition uses a word in *italics*, you will also find the word in this glossary.

Accessory unit means a unit that is designed for use with any *principal unit*, such as a garage, car parking space, storage space or swimming pool, and that is shown on a *unit plan* as an accessory unit.

Building envelope means the three-dimensional area that a building occupies.

Body corporate is made up of all the *unit owners* in a *unit title development*, has collective ownership of the common areas of the property, known as *common property*, and has responsibility for a range of management and administrative functions relating to the *unit title development*.

Caveat is a notice placed on a property's title that prevents the owner from registering transactions, such as sales or mortgages, against the title.

Caveator means a person who issues a *caveat*.

Commencement date means the date when the provisions of a new Act come into force. It can be several months after the Act is passed by Parliament.

Common property means property that is not in any *principal* or *accessory unit*.

Compulsory disclosure means a legal requirement for a person(s) or *body corporate* to give specific information to someone else.

Court of first instance means the Court you are required to go to first.

Covenant is an arrangement that says parties must or must not do a specified thing.

Cross-lease property is a type of shared property ownership where each person owns their property in two ways. Each has an undivided equal share in the *fee simple* as one of the *tenants in common* with the other owners. Each also has their own lease (commonly for 999 years) issued by all the owners, which entitles them to exclusive occupation of their property.

Defined by survey means a land surveyor must have used their technical expertise to define where the specific boundaries of a unit are located.

Disclosure refers to providing for information to be available to other parties, or the public, when required by the new Act.

Easement means a right enjoyed by a person over another person's property, for example a right-of-way.

Fee simple is when a property owner has the most extensive rights of use and enjoyment of land that our legal system allows.

Flat-owning company means a company that owns all the land and buildings in a property such as an apartment block. It sells shares in the company and issues a Licence to Occupy for individual apartments. Rights and obligations of occupiers are spelt out in a constitution.

Future development unit means a *unit title* which is to be subdivided at a later date.

Gated community means a neighbourhood, often surrounded by a barrier, that is only open to residents and their visitors.

Ground lessee means a person or body who leases vacant land from the owner.

Ground lessor means a person or body who owns vacant land and is leasing it to another person or body.

Lessee means the person or body that is leasing property from the owner of the property.

Lessor means a person or body who owns the property and is leasing it to another person or body.

Notice to Remedy means a letter saying what the problem is and what action needs to be taken to fix it.

Opt in means an existing development can choose to do something that isn't compulsory for them under the Act.

Positive covenant means a *covenant* that obliges a party to do a particular thing.

Principal unit means a unit that is designed for living or working in, with or without an associated *accessory unit*.

Proprietor means the person(s) registered at present as the *unit owner*.

Relative value means the current market value of a unit compared to other units in the *unit title development*.

Restricted covenant means a *covenant* that obliges a party to avoid or refrain from doing a particular thing.

Stage unit plans show units and *common property* that have been completed so far.

Statement of future development means a statement the developer provides that tells *unit owners* and buyers about future plans for the development. It will include information about the size of the *building envelope(s)*, how many units are planned, and what they will be used for. It will also show how planned developments might affect existing *unit owners'* enjoyment of the property.

Tenants in common is a type of shared property ownership where joint owners of the same property have a specified share in the property that may or not be equal. If one of the owners dies, their share in the property passes to whoever they leave it to in their will, rather than to the other owners.

Tenure means the type or nature of the ownership of a property.

Unanimity means 100 percent agreement on a resolution that is passed at a general meeting of the *body corporate*.

Underlying reversionary interest means an interest in something that will return to the original owner when a specified event occurs. In this case, once the *unit plan* has been cancelled, the *tenure* of the land will return to the original *fee simple* or leasehold interest.

Unit entitlement means the share of the property and associated voting rights that come with ownership of a unit.

Unit owner means the person or body who owns a unit within a *unit title development*. This term is used in place of *proprietor*.

Unit plan means a plan that has been or is intended to be deposited under the Land Transfer Act 1952 to create a subdivision of land.

Unit title is a form of shared property ownership where individual *unit owners* own a defined part of a building development such as an apartment, known as a unit. They also have shared ownership, as *tenants in common*, of common areas such as lifts, lobbies or driveways, known as *common property*.

Unit title development means a property which is held in *unit title* ownership.

Weighted voting rights means voting rights proportionate to *unit entitlement*.

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