

Unit Titles and Body Corporates

In terms of legal jargon, the phrases “**unit title**” and “**body corporate**” register pretty high on the “what-on-earth-does-that-mean” scale. Yes, they may get bandied around a lot in the context of apartment living and office spaces, but does anyone actually know a unit title is? What a body corporate is? How these terms might be relevant to you if you’re a property owner or looking to be a property owner? We find there’s (understandably) a bit of confusion out there about unit titles and body corporates, so we’ve put together a general guide to help break it down.

A little note to start with: As is the case with many areas of the law, we’re well aware that there are almost limitless scenarios that can arise from applying the law to one’s personal circumstances. Unfortunately, we can’t hope to cover all the different intricacies in one guide, but, if you’re looking for specific advice on this topic, or a little more information on any of the points we touch on, give us a call and we would be happy to help.

Breaking down the different types of property in New Zealand – aka “**estates**”

In very brief terms, there are different types of property in New Zealand that are referred to in the legal world as “estates”. Your legal relationship with the property and the structure of your ownership will depend on what kind of estate you buy. The most common (and well known) estate in New Zealand is the freehold estate. Other ones you might have heard of include cross lease estates and leasehold estates.

In the 1960’s, a new type of estate was created, technically called a stratum estate, but generally referred to as a “unit title”. Basically, a unit title is another type of property that you can buy, and it relates to specific units in an apartment building or office building that has many other units in it. The law had to create a new estate to deal with the fact that more and more people were building apartment blocks and office buildings but the existing legal estates didn’t make ownership of these kinds of properties very easy or efficient.

If you buy a unit title, the “unit” part refers to a “principal unit” and/or an “accessory unit”:

- A **principal unit** is the main unit, the place where you live or work, like an apartment or an office.
- An **accessory unit** is a unit designed to come with the principal unit, such as a parking space or storage unit.

Another important term is the unit title estate system is “**common property**” - being any property in a unit title development that is not a principal unit or an accessory unit. This usually refers to gardens, hallways, driveways, swimming pools, lifts or entrances.

Righto, but how does unit title ownership actually work?

Let's say you're looking to buy an apartment in a fancy apartment building in downtown Auckland. There are 20 apartments in the building, a huge lobby, a gym and a beautiful outdoor garden. You really like the penthouse apartment, which your real estate agent tells you comes with two carparks downstairs in the basement and a storage locker on the first floor. Your lawyer tells you that, if you buy the penthouse apartment, you're buying a unit title. You say "sure" but secretly you wonder, "what does that actually mean?"

Your lawyer will explain that, if you buy the penthouse apartment, you would have bought a unit title estate within a unit title development (which is the entire apartment building). That means that you'll own the penthouse, which is the principal unit, as it is where you'll be living. You'll also own the two carparks and the storage locker, which are the accessory units. In addition, you will also have an ownership stake in all of the common property of the apartment building which includes the lobby, gym, hallways, lifts and garden, for example. Everyone who owns an apartment in the building owns a share of the common property too.

An interesting part of a unit title estate is that when you buy your apartment, you will be given a specific "**ownership interest**", which is basically a figure that represents your ownership percentage in terms of the whole development. A valuer will set the ownership interest based on the apartment that you own, relative to the other units in the building. As the owner of the penthouse, it's likely your ownership interest will be higher than the person who owns the tiny studio apartment on the ground floor.

A related concept is your "**utility interest**", which is, in most cases, the same as your ownership interest. This determines how much you will pay, compared to other unit owners, to help maintain the entire apartment complex. We'll talk more about how these are relevant later on when we look at what your responsibilities are as a unit owner.

You can already see that this is a bit of a different ownership scenario to the one that would exist if you were buying, let's say, a house on a quarter acre block in a suburb of Auckland. The differences get even bigger when we start talking about body corporates and the administration that is involved with purchasing a unit title estate.

How do "body corporates" come into it?

Every unit title development, just like the apartment building we talked about above, has what is called a "body corporate", which is a company that was established when the development was created. The body corporate consists of every person who owns a unit in the development. Therefore, if you own a unit, you'll be part of the body corporate (whether you want to be or not!).

The body corporate controls the use and management of the units and common property and must act according to the relevant laws, like the Unit Titles Act 2010. It's not just a redundant legal structure either. The body corporate for a development is actually responsible for doing a *lot* of work under the relevant laws to manage the development. As you can imagine in a shared living situation, someone has to run the place and keep it in order and under control. For example, it must:

<ul style="list-style-type: none"> • Create a register of all the owners in the development and keep this updated with their information and contact details 	<ul style="list-style-type: none"> • Maintain and repair the common areas as well as any common infrastructure
<ul style="list-style-type: none"> • Creating specific rules for the development that all unit owners must comply with 	<ul style="list-style-type: none"> • Organise insurance for the building
<ul style="list-style-type: none"> • Hold an annual general meeting to discuss important things that affect the development 	<ul style="list-style-type: none"> • Create and manage a long term maintenance plan for the property and units
<ul style="list-style-type: none"> • Make sure the body corporate rules are followed by all the unit owners 	<ul style="list-style-type: none"> • Account for annual payments from owners to fund the operation of the body corporate
<ul style="list-style-type: none"> • Do administration like giving unit owners important updates and information about the development 	<ul style="list-style-type: none"> • Keep clear and accurate financial statements of body corporate funds

In reality, the body corporate must elect a committee of people to manage this hard work, as well as a chairperson to oversee the committee. It is also relatively common for the committee to outsource some of the day to day administration of the body corporate to a professional company who is in the business of managing body corporate affairs.

Being a unit owner – What you need to know

We already mentioned above that owning a unit under this system is a bit different to owning a freestanding house on a quarter acre block. The differences can be divided into different categories: general, financial, social and administrative. To consider what it means to own a unit title property, we'll take a look at each category below.

General:

- **Follow the rules:** As a unit owner, make sure you have the most recent body corporate rules handy and have a general understanding of what they say so you can avoid any breaches. The Unit Titles Act says that you have a responsibility to comply with the body corporate rules and all other laws relating to the use, occupation or enjoyment of the unit.
- **Maintain your property:** You have a legal responsibility to maintain your unit so that it doesn't cause damage or harm to any other units or common property. Depending on your specific body corporate rules, there are likely other requirements you need to comply with in terms of maintenance and upkeep.

Financial:

- **Pay your dues:** As a unit owner, you have a legal responsibility to pay all rates, taxes, charges, body corporate levies and other outgoings that the body corporate sets. What these costs add up to depends on lots of things, like the kind of building you live in, your utility interest (which we talked about earlier) and the decisions of the body corporate.
- **Specific costs:** Depending on the circumstances, if repairs or maintenance benefit some owners much more than others, the owners who get the benefit may need to pay more.

Also, if you cause damage that needs to be repaired, the body corporate may make you pay for those repairs.

- **Sale of common property:** If the body corporate decides to sell any of the common property, you are entitled to receive some of the proceeds. Just how much depends on your ownership interest.
- **Liability:** If the body corporate is sued, you'll have to chip in on the liability owed. How much you have to pay will depend on your ownership interest.

Administrative

- **Being involved in decisions:** You have a right to be involved in making decisions that affect the development you live in. How this works is that the body corporate must hold at least one meeting a year where issues are discussed and put to a vote. All unit owners must be given plenty of notice of the meeting, and all are invited to attend. At this meeting, it is common to go over financial reports, budgets, maintenance plans, insurance, general expenditure, and any other issues of importance.
- **Making decisions:** Decisions are made by passing a "resolution" at one of the body corporate meetings. For ordinary decisions of the body corporate, a majority of the unit owners must vote in favour of the resolution. For decisions that are very important and have serious consequences for the development, 75% of the unit owners must vote in favour of the resolution. There are rules around voting and casting your vote that can become important in the case of any controversial decisions.

Social

- **Being respectful:** If you're the owner of a unit in an apartment building, you have no doubt already considered the fact that you'll be living in relatively close quarters to your neighbours. We've all heard the horror stories - your next door neighbours blasting loud music through thin walls at three in the morning, the upstairs neighbour walking around in high heels from five in the morning while you're trying to sleep in and that inconsiderate neighbour who always parks in your spot.

Apartment living does require a bit of give and take, as well as mutual respect between neighbours in order to minimise the likelihood of these horror stories. The law builds on this common sense understanding, turning it into a right and a responsibility of unit owners. The Unit Titles Act 2010 says that if you own a unit, you have a right to "quiet enjoyment" of your unit without interruption from other owners. As an owner, you also have a responsibility to give the other unit owners their quiet enjoyment too.

Buying and Selling a Unit Title Property

It's a different kettle of fish to buy or sell a unit title property than it is to buy or sell other types of property estates. Why's that? Well, as you know from our discussion above:

- There are many more interested parties involved in the transaction, including the other owners in the development and the body corporate as a whole.
- As a prospective unit owner, you need to be aware of what you're buying into, in terms of the body corporate structure, its long term plans, the state of its financial affairs, your

rights and responsibilities and, perhaps most importantly, your ongoing financial obligations.

To address these different circumstances, the law has created and imposed an entire regime based on disclosure that applies throughout the buying and selling process. Under the Unit Titles Act 2010, sellers must give prospective buyers “disclosure statements” with lots of information about the unit title property in question. There are three types of disclosure statements that are relevant:

- **Pre-contract disclosure statement:** To be given to the buyer before any sale and purchase agreement is signed.
- **Pre-settlement disclosure statement:** To be given to the buyer after a sale and purchase agreement has been signed, but before the settlement day.
- **Additional disclosure statement:** To be given to the buyer if requested.

For each statement there are specific deadlines that must be met in order to be compliant with the Unit Titles Act 2010. The statements must also contain certain prescribed information that help the buyer be more informed about the investment they are making. Whether you're a buyer or seller, it's important to talk to your lawyer about the disclosure regime. If you're a seller, you'll need to work together with the body corporate and your lawyer to gather all the required information.

Have a question about a unit titles or body corporates? Or perhaps you just fancy a chat about how this information applies to your situation? If so, we would love to help. You can give us a call or send us an email for more information.

Phone: +64 9 486 6827 | Email: info@kevinmcdonald.co.nz | Website: kevinmcdonald.co.nz

The information contained in this guide does not constitute legal advice, nor is it intended as a substitute for personalised legal advice. The information is provided as background information only. Kevin McDonald & Associates assumes no liability for any losses suffered by any person relying directly or indirectly on information in this guide.