Unit Title updates

The Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Act (UTAA) came into force on 9 May 2023.

While the UTAA makes some general changes to body corporate management, the more material and practical changes relate to the disclosure regime. Specifically, the UTAA requires a wider range of information to be provided to purchasers in the pre-contract disclosure statements (**PCDS**) and pre-settlement disclosure statements (**PSDS**).

The additional information to be disclosed in the PCDS includes:

- financial statements;
- a copy of the long-term maintenance plan;
- any audit reports for the previous three years, along with general meeting minutes and committee meeting minutes during this period; and
- whether the body corporate or body corporate committee has actual knowledge of any known defects, including weather tightness issues, earthquake-prone issues and any other significant defects in the land or the unit title development that may require remediation.

The additional information to be disclosed in the PSDS includes:

- details of the body corporate manager; and
- details around insurances.

The UTAA also provides various delay and cancellation rights to the purchaser where a complete and accurate PCDS / PSDS is not provided five working days before the settlement date. The process to be followed in such circumstances is as follows:

- where the PCDS is not provided within the required timeframe, the purchaser can elect to:
  - delay settlement to the fifth working day after a complete and accurate PCDS is provided; or
  - cancel the agreement where the vendor does not provide the complete and accurate PDCS within 10 working days of the purchaser giving the vendor notice of its intention to cancel;
- where an incomplete or inaccurate PCDS is provided or where the vendor fails to provide a PCDS at all, the purchaser may delay settlement by five working days until a complete and accurate PCDS is provided (provided that the purchaser notifies the vendor that the PCDS is complete and accurate).

The process a purchaser can follow where a PSDS is not provided within the required timeframe is as follows:

- the purchaser can elect to:
  - delay settlement until the fifth working day after the date the vendor provides a complete and accurate PSDS; or
  - notify the vendor of the purchaser's intent to cancel the agreement. The vendor then has 10 working days to provide a PSDS. If the vendor:
    - provides a PSDS within the required timeframe, then the purchaser cannot cancel the agreement;
    - does not provide a PSDS within the required timeframe, then the purchaser can either cancel the agreement or proceed with the agreement, with settlement being five working days after they advise the vendor that they wish to proceed.

The UTAA has also resulted in changes to the widely used Auckland District Law Society / Real Estate Institute of New Zealand template agreement for sale

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Unit Title updates
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and purchase of real estate (**SPA**). Specifically, there are four key changes to the SPA that relates to the UTAA:

- the vendor warranty which states that the information contained in the PCDS is complete and correct (contained in clause 8.2(1) of the SPA) is now limited to the extent required by the Unit Titles Act (**UTA**);
- an additional obligation is placed on the vendor to provide a certificate of insurance and a PSDS not less than five working days before the settlement date (clause 8.3);
- the vendor warrants that the other than contributions to the operating account, long-term maintenance fund, contingency fund or capital improvements fund that are shown on the PSDS, there are no other amounts owing by the vendor under the UTA (clause 8.4); and
- the SPA and UTA are tied together by expressly confirming that if the purchaser elects to settle where the vendor has failed to complete the PSDS, the purchaser waives their delay and cancellation rights under the UTA or otherwise.

Want to know more?

If you have any questions about Unit Titles, please contact our Property team.

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