

Drawing the line - understanding the Unit Titles Act

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The buoyant property market means that, once again, new apartment buildings are selling straight off the plans. Some of these apartment buildings are becoming increasingly sophisticated in their design, construction and in the services they offer. Recently, there have been a few reported developments that will have electric cars available for use by the owners or occupiers. These developments reflect the growing maturity of the New Zealand house buying public. However, this increasing sophistication poses a real issue for the New Zealand property market.

The Unit Titles Act 2010 (the Act) was a complete rewrite of the strata title legislation and introduced much needed detail around repairs, maintenance and funding of body corporates. It also introduced a system of disclosure for purchasers to assist their understanding of owning a strata title property. The Act recognises that people need to understand what they are buying, how they contribute to the upkeep of the building and what responsibilities they have as part of the body corporate.

Despite the provisions of the Act, recent court cases suggest owners still have a poor understanding of what they are buying. These cases highlight a lack of understanding about how body corporates make decisions and how individual owners interact with the body corporate committee.

It's easy to argue that the disclosure system under the Act could be bolstered to ensure that purchasers have a better understanding of what they are buying. However, it is difficult to see that an increased disclosure regime would have any effect on purchasers who do not show enough interest to inform themselves currently.

The answer probably lies in encouraging more interest from purchasers as well as more concentrated efforts from the industry itself. All developers should strive to ensure that the information provided is as complete as possible and that body corporate budgets are realistic from the outset. The proposed unit plans should be accurate and all building elements should be carefully considered by surveyors in terms of future responsibility for repairs.

The industry participant that can ensure a good level of understanding is the purchaser's lawyer. They have a perfect opportunity to spend appropriate time to properly advise purchasers on their investment. This means reviewing the plans and identifying potential areas of future repair disputes, checking the proposed body corporate operational rules to check that they are practical and generally ensuring that the framework of the development is legally sound. That would go a long way to helping purchasers properly understand the implications of their investment.

Questions to ask when buying apartments:

- Is my liability as an owner clear from the information provided?
- How much will my levies be and are they realistic given the complexity of the building as a whole?
- How difficult will it be to manage the building?
- Is it a mixed use building where owners will have different aspirations and drivers?
- Is it a layered development with numerous body corporates?

This article was written by Daniel Kelleher, partner in our property team, for the National Business Review (NBR) on 24 July 2015.

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