

# **Body Corporate Administration Ltd**

## **Notes from Unit Titles Act 2010**

### **Annual General Meetings ("AGM") (ss88-104)**

1. First AGM meeting of a BC must be held as soon as practicable and within 6 months after the date of the deposit of the unit plan OR after the settlement date of the first sale of a unit.
2. Once the Act does commence existing bodies corporate will be obliged to hold an AGM within 6 months after the date of enforcement.
3. Subsequent AGM's must be held once every calendar year and not later than 15 months after the previous AGM.

### ***Quorum (s95)***

4. The persons entitled to exercise voting power in respect of not less than 25% of the principal units or their proxies constitute a quorum.
5. No business may be transacted at a general meeting of the BC unless a quorum is present.
6. An eligible voter may not vote unless all body corporate levies and other amounts that are from time to time payable in respect of his or her unit have been paid.  
Ordinary Resolution = A Majority  
Special Resolution = 75%

### ***Proxies (s102)***

7. An eligible voter may exercise the right to vote either by being present or by proxy.
8. A proxy for an eligible voter is entitled to attend and be heard at a body corporate meeting as if the proxy were the eligible voter.

### ***Passing of Resolutions without General Meeting (s104)***

9. Notice to be given to eligible voters in accordance with regulations.
10. As valid as if it had been passed at a meeting of those voters.

### **Body Corporate Committee's (ss112-114)**

1. BC of 9 units or fewer MAY form a BC committee
2. BC of 10 units or more MUST form a BC committee (unless the BC, by special resolution resolves not to)
3. Decisions made by simple majority

### **Body Corporate Rules (ss105-107)**

1. For existing body corporates, the provisions of the old Act as to the body corporate rules can continue in force for a period of 15 months after which the new Act comes into force – but the BC can pass a resolution that the operational rules in the new Act should apply.
2. May amend, revoke or make additions to these rules subject to similar conditions under the old act e.g. Must relate to the control, management, administration, use or enjoyment of the unit development or the regulation of the body corporate AND must be incidental to the powers and duties conferred or imposed on the body corporate.

### **Financial & Property Management (ss 115-120) :**

1. A BC must establish and maintain an operating account for expenses relating to;

- (a) management and governance of a unit title development;
- (b) provision of services and amenities;
- (c) costs associated with statutory or regulatory compliance
- (d) ground rental or license fees
- (e) anything incurred at least once a year relating to the maintenance

2. A BC must establish and maintain a Long Term Maintenance Plan to cover a period of at least 10 years. The BC must also establish and maintain a Long-Term Maintenance Fund unless the body corporate, by special resolution, decides not to establish the fund. The BC must, by special resolution, approve any amount to be spent on any one 1 (one) maintenance item if the amount exceeds the amount specified for the item in the Long-Term Maintenance Plan by 10%.

3. A BC may establish and maintain 1 (one) or more contingency fund (-s) to provide for unbudgeted expenditure.

4. A BC may establish and maintain a capital improvement fund to provide for spending that adds or upgrades the unit title development ( if not provided for in the Long Term Maintenance Plan)

5. The BC must keep accounting records.

6. Within 2 months after the end of the financial year, the BC must submit its financial statements to an independent auditor for auditing or submit its financial statements to an accountant for review or engage an accountant to undertake specific verification procedures as determined by the BC by special resolution at a general meeting.

### **Contributions**

1. Owner of FDU's are liable to pay contributions levied by the BC, from the date that the FDU is first in use as a place of residence or business or otherwise.
2. The BC must fix the date on or before which payments of levies are due.
3. Amount of any unpaid levies together with any reasonable costs incurred in collecting the levy, is recoverable as a debt due to the BC by the person who was the unit owner at the time the levy became payable or by the person.
4. S127 – Recovery of money where person at fault;
5. S128 – Interest on money owing to the BC.

### **Ownership Interest and Utility Interest (S38 UTA)**

1. Every principal unit and accessory unit must be assigned an ownership interest – akin to unit entitlement and is based on the relative value of the unit holder's unit as against the value of all the other unit holders' units – so for existing body corporates, this will be the same as the current unit entitlement calculations.
2. Over and above ownership interest, there is the introduction of utility interest. By default, this is the same as the ownership interest; however there is a provision for the BC, by special resolution, to change the default position. The Registrar- General must be notified of any change in assessment.
3. The BC could then assess the utility interest on a fair and equitable basis having regard to the relevant benefits and costs to units. E.g. altering the utility interest of the ground floor proprietors, so that they are effectively excused from contributing to lift maintenance on the basis that they receive no benefit from operation of the lift.
4. This is something that could be considered at the first AGM.

### **Disputes**

1. Tenancy Tribunal will now have jurisdiction to hear and determine all disputes arising between any person in relation to a unit title development. Except for claims:
  - In excess of \$50,000;
  - To hear a dispute relation to the application of insurance under s136(4);
  - To hear any dispute relating to the title of land.
2. For any of the above exceptions, the District Court or the High Court will have jurisdiction in the normal way.

### **Disclosure of Information (ss 144 – 153)**

1. No later than the fifth working day before the settlement date, the seller must provide a disclosure statement (a pre-settlement disclosure
2. The pre-settlement disclosure statement must contain or be accompanied by a certificate given by the body corporate certify the information in the statement is correct (s147 (3)).
3. A BC may withhold a certificate if any debt that is due to the body corporate by the unit owner is unpaid.
4. The buyer is entitled to reply on the information contained in disclosure statement.

### **Common Property (ss 54 - 59)**

1. The common property will be owned by the body corporate (s54).
2. The body corporate may, after a special resolution to do so, grant a lease or licence over part of the common property (s56(3))
3. A body corporate, may after special resolution, sell part of the common property (s56(3))
4. A body corporate may buy land and add to the common property (s 58) by special resolution – the transfer must, when lodged for registration, be accompanied by a new unit plan in substitution for the existing unit plan
5. The interest in the land included as part of the common property is subject to mortgage, encumbrance, charge, lease, or sublease affecting the owners unit as if the beneficial interest in the transferred land had been included in the instrument expressly.

### **Responsibilities of the body corporate (ss 84 - 87)**

1. Body Corporate must keep and maintain a register of all owners of principal units and accessory units in accordance with the regulations
2. Owner of a principal unit must notify the body corporate in writing of any changes to the information held in the register that relates to his/her unit (s85(2))
3. Power to sign documents in order to carry out a resolution (s86).

### **Repairs and maintenance:**

4. Body corporate to manage, maintain and keep in a state of good repair the common property (s138)
5. The body corporate must maintain, repair, or renew all building elements and all infrastructures that relates to or serves more than 1 unit (s 138(2))

***Building elements*** – includes the external and internal components of any part of a building or land on a unit plan that are necessary to the structural integrity of the building, the exterior aesthetics of the building, or the health and safety of persons who occupy or use the building and including, without limitation, the roof, balconies, decks, cladding systems, foundations systems (including all horizontal slab structures between adjoining units or underneath the lowest level of the building.)

***'Infrastructure'*** includes pipes, wires, ducts, conduits, gutters, watercourses, cables, channels, flues, conducting, or transmission equipment necessary for the provision of

water, sewerage, drainage, stormwater removal, gas, electricity, oil, shelter, protection from fire, security, rubbish collection, air, telephone connection, internet access, radio reception, television reception, or any other services or utilities to or from a unit or to or from the common property.

6. **HOWEVER, PLEASE NOTE** : “Any costs incurred by the Body Corporate that relates to repairs to building elements and infrastructure contained in a principal unit are recoverable by the Body Corporate from the owner of that unit as a debt due to the Body Corporate (less any amount already paid) by the person who was the unit owner at the time the expense was incurred or by the person who is the unit owner at the time the proceedings are instituted.” (s138 (4))

### **Rights/Responsibilities of Owners**

1. Now only have to notify the body corporate of intentions to carry out additions or structural alterations before commencement (s80(h)) UNLESS they materially affect any other unit, or common property – in which case they require written consent from the body corporate.
2. Owners who lease or licence their unit and who are overseas (for longer than 3 weeks) have to appoint a person in NZ to act as their representative.

### **Insurance (ss134 – 137)**

1. Usual Requirement that the body corporate insure the UTD.
2. Unit owners may also take an insurance policy against destructions of or damage to the Unit owner’s unit (s137(1)(a)), and may still take out a mortgage redemption policy.

### **Further Comments**

1. Separate bodies corporate within one development will be able to set up where there are multiple uses of a building. For example car park building, shopping complex and apartments in one building – each can have a body corporate to manage their interest. Each of those bodies corporate would be members of the head body corporate responsible for overall management of the development.