Unit Titles Act 2010

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Commencement see section 2

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Unit Titles Act 2010.

2 Commencement

This Act comes into force on a date to be appointed by the Governor-General by Order in Council.

Part 1
Preliminary provisions

3 Purpose

The purpose of this Act is to provide a legal framework for the ownership and management of land and associated buildings and facilities on a socially and economically sustainable basis by communities of individual owners and, in particular,—

(a) to allow for the subdivision of land and buildings into unit title developments comprising units that are owned in stratum estate in freehold or stratum estate in leasehold or licence by unit owners, and common property that is owned by the body corporate on behalf of the unit owners; and

(b) to create bodies corporate, which comprise all unit owners in a development, to operate and manage unit title developments; and

(c) to establish a flexible and responsive regime for the governance of unit title developments; and

(d) to protect the integrity of the development as a whole.

4 Overview

(1) This Act provides for the following matters:

Preliminary provisions

(a) Part 1 sets out the purpose of the Act and its application, and defines terms used in the Act:

Creation of unit title developments

(b) subparts 1 to 6 of Part 2 deal with the creation of unit title developments and related matters, in particular—

(i) land and buildings may be subdivided into a unit title development by the deposit of a unit plan by the Registrar-General of Land:

(ii) a unit title development consists of separate units and common property (the common property be-

ing the remainder of the land (or building) that is for the use of all the unit owners):

(iii) units are either principal units or accessory units:

(iv) principal units may be places of residence or business (for example, shops) or for other uses:

(v) accessory units are designed for use with a principal unit (for example, a garage or car parking space):

(vi) the legal title that is created in the units is a different estate from the legal title to the underlying land on which the development is built:

(vii) the bundle of legal rights applying to the unit is called a stratum estate:

(viii) a principal unit in a unit title development (for example, a building or part of a building) and its accessory unit may be further subdivided to create another unit title development (this creates a layered unit title development (*see* section 20 and the illustrations in examples 2 and 3 in Schedule 1)):

(ix) each unit is assigned an ownership interest and a utility interest and that is relevant to the calculation of many of the unit owner's rights under the Act:

(x) a unit title development may be created in stages, with successive plans deposited by the Registrar-General of Land as the development progresses:

Dealings with unit title developments

(c) subparts 7 to 11 of Part 2 concern dealings with various parts of the unit title development, in particular—

(i) principal units in a unit title development may be bought and sold individually:

(ii) accessory units are bought and sold with the principal units to which they relate (although they may be transferred between principal unit owners of the unit title development):

(iii) the common property is owned by the body corporate that administers the unit title development, and the unit owners have a beneficial interest:

(iv) the body corporate has the ability to deal with the common property in various ways, for example, selling or leasing it or creating easements and covenants affecting it:

(v) a unit owner has certain abilities to create easements and covenants relating to that unit:

Management structures and arrangements

(d) subpart 12 of Part 2 deals with management structures and arrangements in relation to unit title developments, in particular—

(i) each unit title development has a body corporate to administer it:

(ii) generally, the owners of units in a unit title development are the members of the body corporate:

(iii) the principal unit owners and others have certain rights and responsibilities (*see* sections 79 to 81), and the body corporate has certain powers and duties (*see* sections 84 to 87):

(iv) there are procedures for meetings of the body corporate and voting at those meetings:

(v) the body corporate has operational rules, which are the day-to-day rules of the unit title development:

Financial and property management

(e) subpart 13 of Part 2 deals with the financial and property management of the unit title development, in particular—

(i) the body corporate must have a long-term maintenance plan for the unit title development and must establish various funds to provide for the expenses involved in running the unit title development:

(ii) the body corporate has the power to levy the unit owners to establish and maintain the funds:

(iii) the body corporate must keep financial statements and must insure the unit title development:

Disclosure of information

(f) subpart 14 of Part 2 deals with disclosure of information in certain cases, in particular—

(i) the seller of a unit must disclose certain information about the unit title development to a buyer or prospective buyer of the unit:

(ii) the original owner of the unit title development (that is, the developer of it) must disclose certain information to the body corporate at the point where the original owner and any associates have sold sufficient units in the development that the original owner and any associates have ceased to have control of 75% of the votes of the body corporate:

Special provisions relating to leasehold land

(g) Part 3 sets out certain provisions that apply where the estate in the underlying land that the deposited unit plan of subdivision relates to is an estate as lessee or licensee:

Disputes

(h) subpart 1 of Part 4 relates to disputes, in particular—

(i) the Tenancy Tribunal is the dispute resolution body for unit title disputes below a certain monetary amount that do not relate to the title to land:

(ii) for disputes that involve higher monetary amounts, the District Court and the High Court have jurisdiction:

(iii) if a unit title dispute relates to the title of land, only the High Court has jurisdiction to hear it:

(iv) the persons who have standing to bring a case concerning a unit title dispute include principal unit owners or former owners, the body corporate, occupiers of principal units, and service contractors:

Cancellation of unit plans

(i) subpart 2 of Part 4 relates to the cancellation of unit plans, which, in general terms, involves the dissolution of the body corporate and the vesting of the interest in

the underlying elements of the unit title development in the owners of units:

Conversion of existing schemes

(j) subpart 3 of Part 4 deals with the procedure for converting a scheme owned by a flat or office owning company or held under a cross-lease arrangement into a unit title development:

Administration

(k) subpart 1 of Part 5 contains administrative provisions. The chief executive is responsible for the administration of the Act:

General provisions

(l) subparts 2 to 5 of Part 5 contain general provisions, including provisions providing for relief for members of the body corporate who represent the minority when voting at a body corporate meeting, and transitional provisions.

(2) This section is by way of explanation only. If a provision of this or any other Act is inconsistent with this section, the other provision prevails.

5 Interpretation

(1) In this Act, unless the context otherwise requires,—

access lot means a separate allotment that was created or currently exists to provide access to or from a unit title development (whether alone or together with other allotments outside the unit title development) and an existing road

accessory unit means a unit that is designed for use with any principal unit (including, without limitation, a garden, garage, car parking space, storage space, swimming pool, laundry, stairway, or passage) and that is shown on a unit plan as an accessory unit

administrator means an administrator appointed under section 141

agreement for sale and purchase has the meaning given to it in section 144

appropriate decision-maker means the Tribunal or the court that, if the matter were a dispute under subpart 1 of Part 4, would have jurisdiction over that dispute in accordance with that subpart

associate of the original owner means a person—

(a) who is controlled by the original owner or is subject to the original owner's direction or influence; or

(b) who is the original owner's agent, trustee, or representative, or acts in any way on behalf of the original owner; or

(c) who acts jointly or in concert with the original owner; or

(d) who participates in the business activities of the original owner as a consequence of any arrangement or understanding with the original owner; or

(e) who would come within any of paragraphs (a) to (d) if the reference to the original owner in any of those paragraphs were instead a reference to another associate of the original owner

base land—

(a) means the parcel of land that is subdivided into a unit title development under section 17 or 24; and

(b) includes an access lot, or share in an access lot, to which section 55 applies and any other land, or share in land, added to the common property under section 58 from time to time; and

(c) excludes any land, or share in land, sold under section 56; and

(d) in relation to a subsidiary unit title development, has the meaning given to it in section 19

body corporate means a body corporate of a unit title development created under section 75 on the deposit of a unit plan

body corporate committee means a committee established by a body corporate under section 112

body corporate operational rules, in relation to a particular body corporate, means the rules prescribed under section 217(i) as altered under section 105(1) on the deposit of the unit plan or amended from time to time by the body corporate under section 105(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), retaining walls, and any other walls or other features for the support of the building

buyer has the meaning given to it in section 144

car park means a space for parking a single motor vehicle

chairperson means the person appointed as chairperson of the body corporate in accordance with the regulations

chief executive means the chief executive of the department

common property means—

(a) all the land and associated fixtures that are part of the unit title development but are not contained in a principal unit, accessory unit, or future development unit; and

(b) in the case of a subsidiary unit title development, means that part of the principal unit subdivided to create the subsidiary unit title development that is not contained in a principal unit, accessory unit, or future development unit

complete unit plan means a plan described in section 25(3)

computer register has the meaning given to it by section 4 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002; and includes a certificate of title

control period has the meaning given to it in section 6

covenant means a positive covenant or a restrictive covenant within the meaning of section 4 of the Property Law Act 2007

department, in relation to a Part or subpart of this Act, means the department of State that, with the authority of the Prime Minister, is responsible for the administration of that Part or subpart

financial statements means the statement of financial position for the body corporate as at the end of the financial year, which

must include an income and expenditure statement for the relevant period

financial year means a period of 12 months ending on the date that is 12 months from the date the body corporate is established or any other 12-month period the body corporate may from time to time determine at its annual general meeting for the financial statements of the body corporate that are laid before it

funds means the operating account, the long-term maintenance fund, the optional contingency fund, and the optional capital improvement fund required by subpart 13 of Part 2

future development unit, in relation to a subdivision of land or a principal unit into units in stages, means a unit that is proposed to be developed or subdivided into 1 or more principal units (with or without accessory units or common property) at a later stage of the development, and that is shown on a stage unit plan as a future development unit

head body corporate means the body corporate of a head unit title development

head unit title development—

(a) means a unit title development created by a subdivision of land where at least 1 of its principal units is subdivided to create a subsidiary unit title development; and

(b) in relation to a particular subsidiary unit title development, means the head unit title development of the layered unit title development of which the subsidiary unit title development is a part

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

land means land within the meaning of the Land Transfer Act 1952

layered unit title development has the meaning given to it in section 19(1)

long-term financial and maintenance planning regime, in relation to a body corporate, means the body corporate's funds and the body corporate's long-term maintenance plan

long-term maintenance plan, in relation to a body corporate, means the body corporate's plan as required to be established and maintained by section 116

ordinary resolution means a resolution passed in accordance with section 97(4)

original owner means the person who is entitled to exercise 100% of the votes of the body corporate for a unit title development when the plan for the unit title development is deposited

owner, in relation to any unit,—

(a) means the person or persons for the time being registered as proprietor of the stratum estate in the unit under the Land Transfer Act 1952; and

(b) in sections 105, 124, 126, 127, and 163, includes a person in actual occupation of a unit under a binding and unconditional agreement for sale and purchase

ownership interest and **proposed ownership interest** means the interest assigned to a unit in accordance with section 38

parent body corporate means the body corporate of a parent unit title development

parent unit title development, in relation to a particular subsidiary unit title development, means the unit title development that contains the principal unit that was subdivided to create the subsidiary unit title development

principal unit has the meaning given to it in section 7

proceedings means proceedings relating to a unit title dispute

proposed accessory unit means a unit that is marked as an accessory unit in a future development unit on a stage unit plan

proposed ownership interest means the interest assigned to a proposed principal unit or proposed accessory unit in accordance with section 38

proposed principal unit is a unit that is marked as a principal unit in a future development unit on a stage unit plan

proposed unit development plan means the plan described in section 25(1)

redevelopment has the meaning given to it in section 8

registered valuer means a registered valuer within the meaning of the Valuers Act 1948

Registrar, in relation to any land, means the Registrar-General of Land as defined in the Land Transfer Act 1952

regulations means regulations in force under this Act

seller has the meaning given to it in section 144

service contract means a contract between a body corporate and another person (the **service contractor**) engaging the service contractor (other than as an employee of the body corporate) for a term of at least 1 year to supply services to the body corporate or to the unit owners

settlement date has the meaning given to it in section 144

special resolution means a resolution passed in accordance with section 98(4)

stage unit plan means a plan described in section 25(2)

stand-alone unit means that no part of any building in the unit is attached in any way to any building in any other unit or to any building in the common property

standard unit title development means a unit title development that is not part of a layered unit title development (illustrated in example 1 in Schedule 1)

stratum estate means a stratum estate within the meaning of sections 18 and 22

subsidiary body corporate means the body corporate of a subsidiary unit title development

subsidiary unit title development means a unit title development that is created by a subdivision of a principal unit in another unit title development

supplementary record sheet, in relation to any unit plan and body corporate, means the supplementary record sheet created by the Registrar under section 47 in relation to that unit plan and body corporate

to register means to register under the Land Transfer Act 1952

unit, in relation to any land, means a part of the land consisting of a space of any shape situated below, on, or above the surface of the land, or partly in one such situation and partly in another or others, all the dimensions of which are limited, and that is designed for separate ownership

unit plan means a plan that has been or is intended to be deposited under the Land Transfer Act 1952 in accordance with this Act, and includes—

(a) a proposed unit development plan:
(b) a stage unit plan:
(c) a complete unit plan:
(d) a unit plan amended in accordance with this Act:
(e) a plan that has been or is intended to be deposited in substitution for an existing unit plan

unit title development means the individual units and the common property comprising a stratum estate

utility interest means the interest assigned to a unit under sections 39 and 40.

(2) In this Act,—

(a) a reference to a subdivision of land means a subdivision of a parcel of land under subpart 1 of Part 2 to create a unit title development and (if it is done in stages) in accordance with subpart 3 of Part 2; and
(b) a reference to a subdivision of a principal unit means a subdivision of a principal unit and the whole accessory unit (if any) to create a subsidiary unit title development under subpart 2 of Part 2 and (if it is done in stages) in accordance with subpart 3 of Part 2.

6 Meaning of control period

(1) In this Act, **control period**, in relation to a unit title development, means the period beginning on the date that the unit plan is deposited creating the unit title development and ending on the date described in subsection (2).

(2) The date referred to in subsection (1) is the day after the last date on which, were a vote of the body corporate to be held, the original owner, or one or more associates of the original owner, or the original owner together with one or more associates of

the original owner would be entitled to exercise 75% or more of the votes of the body corporate when the following are taken into account:

(a) the—

(i) number of principal units owned by the original owner or an associate or associates of the original owner; or

(ii) share of the total ownership interest of all units as fixed under section 38(1) that is held by the original owner or an associate or associates of the original owner:

(b) the—

(i) number of principal units where the original owner, or an associate or associates of the original owner, hold proxies to vote; or

(ii) share of the total ownership interests of all units where the original owner, or an associate or associates of the original owner, hold proxies to vote:

(c) the—

(i) number of principal units in respect of which the owners of those units have a contractual obligation to the original owner, or an associate or associates of the original owner, to vote in a particular way; or

(ii) share of the total ownership interests in all units in respect of which the owners of units making up that share have a contractual obligation to the original owner, or an associate or associates of the original owner, to vote in a particular way.

(3) In subsection (2),—

(a) a reference to **proxies to vote** includes proxies to vote in all votes at any meeting or in respect of particular votes only; and

(b) a reference to a **contractual obligation to vote in a particular way** includes an obligation to vote in a particular way in all votes at any meeting or in respect of particular issues only.

7 Meaning of principal unit

(1) In this Act, **principal unit** means—

(a) a unit that is designed for use (whether in conjunction with any accessory unit or not) as a place of residence or business or for any other use of any nature, and that is shown on a unit plan as a principal unit; and

(b) either—

(i) contains a building or part of a building or is contained in a building (although the unit may or may not be bounded by the physical dimensions of the building); or

(ii) is a car park.

(2) Unless otherwise specified, a reference to a **principal unit** in this Act does not include a future development unit.

(3) A reference to a **principal unit** that is to be, or has been, subdivided to create a subsidiary unit title development includes a reference to any accessory unit subdivided with the principal unit (as described in section 20(2)).

8 Meaning of redevelopment

(1) In this Act, **redevelopment** means—

(a) the subdivision by sale, transfer, or partition into 2 or more new units (whether or not any new unit is on the same level as any other new unit) of—

(i) a unit or units shown on a deposited unit plan; or

(ii) a unit or units shown on a deposited unit plan and the whole or part of any stratum or strata formerly forming part of the common property shown on the deposited unit plan; or

(b) the enlargement of a unit shown on a deposited unit plan by the inclusion in the unit of any stratum that immediately touches upon that unit and was formerly part of the common property or part of another unit shown on the deposited plan; or

(c) the transfer into the common property of a unit or part of a unit; or

(d) the erection of 1 or more new units on the common property.

(2) Changes that are solely to those parts of a unit title development that are not completed to the extent necessary to obtain a certificate under section 32(2)(a) are not a redevelopment for the purposes of this Act.

9 Meaning of certain expressions in relation to layered unit title developments

(1) For the purposes of references in this Act to a unit title development in a layered unit title development being located between, or below, another unit title development, the following provisions apply:

(a) subsidiary unit title developments in a layered unit title development are directly related to one another if, were all those subsidiary unit title developments to be cancelled at the same time in accordance with section 181, the owners of all the units in those subsidiary unit title developments would have vested in them a share of the stratum estate in the same principal unit in the head unit title development:

(b) the relationships of "between" and "below" are used only in relation to unit title developments that are directly related to one another.

(2) The following example illustrates the use of the terms "between" and "below" in relation to a layered unit title development.

Example

If—

A is the head unit title development (a subdivision of the base land)

B is a subsidiary unit title development created by the subdivision of a unit in A

C is a subsidiary unit title development created by the subdivision of a unit in B

Then—

B is located between A and C

B is located below A

C is located below A and B.

(3) In example 3 in Schedule 1,—

(a) the pink unit title development is not directly related to either the yellow or the green unit title developments:
(b) the yellow unit title development is located between the green unit title development and the blue unit title development:
(c) the yellow unit title development is located below the blue unit title development:
(d) the green unit title development is located below the yellow unit title development and the blue unit title development.

10 Act binds the Crown

This Act binds the Crown.

11 Application of Act to retirement villages

The following sections of this Act do not apply to a unit title development that is a retirement village registered under the Retirement Villages Act 2003:

(a) section 74 (which relates to a scheme following destruction or damage):
(b) sections 79(g), 80(1)(a)(iv), 80(1)(j), 81(3), 81(4), 83(3), 105, 106, and 107 (which relate to body corporate operational rules):
(c) sections 115 to 120 (which relate to long-term maintenance plans, funds, and ancillary matters):
(d) sections 121 to 129 (which relate to contributions):
(e) section 132 (which relates to financial statements):
(f) section 133 (which relates to monitoring and reporting by the chief executive):
(g) sections 134 to 137 (which relate to insurance):
(h) section 138 (which relates to a body corporate's duty of repair and maintenance):
(i) sections 144 to 157 (which relate to disclosure of information):
(j) sections 171 to 176 (which relate to disputes):
(k) section 206 (which relates to the provision of records and documents):
(l) sections 210 to 216 (which relate to minority and majority relief).

12 Application of Act to timeshare resorts

In relation to timeshare resorts within the meaning of Schedule 2, the provisions of this Act apply as if they have been amended in the manner indicated in that schedule and subject to all other necessary modifications.

13 General relationship to Resource Management Act 1991

(1) Except as provided in this section and sections 28 and 29, nothing in this Act derogates from the provisions of the Resource Management Act 1991.

(2) Nothing in section 11 or Part 10 of the Resource Management Act 1991 applies to section 74, subparts 2 and 3 of Part 4, or section 204.

Compare: 1972 No 15 s 2A(1), (2)

14 Certain Acts not restricted

Nothing in this Act restricts the Land Act 1948 or Te Ture Whenua Maori Act 1993.

Compare: 1972 No 15 s 3(3)

15 Relationship with Public Works Act 1981

(1) Nothing in this Act restricts the Public Works Act 1981.

(2) Nothing in this Act requiring the consent of a body corporate or the making of any other resolution by the body corporate as a prerequisite to the doing of any thing applies in relation to the transfer of an estate or interest in land in a unit title development if the estate or interest in land is acquired by proclamation under the Public Works Act 1981.

(3) Subsection (4) applies if, in respect of the transfer of any estate or interest in land in a unit title development, this Act requires a new unit plan, or an amendment to a unit plan, to be deposited.

(4) If the body corporate requests in writing, the authority undertaking the public work must, at its own expense, prepare the new unit plan or amendment to a unit plan, as the case may be.

(5) The Registrar may do anything necessary to give effect to a proclamation under the Public Works Act 1981 that relates to a unit title development.

(6) In this section, a reference to the **land in a unit title development** includes any estate or interest in the base land.

Part 2
Unit title developments

Subpart 1—Subdivision of land to create unit title development

16 Subdivision of land to create unit title development

(1) The registered proprietor of a parcel of land of any of the following kinds may subdivide that land to create a unit title development:

(a) an estate in fee simple in a parcel of land under the Land Transfer Act 1952:

(b) an estate as lessee under a memorandum of lease registered under that Act in respect of a parcel of land:

(c) an estate as lessee or licensee under a lease or licence from the Crown registered under that Act in respect of a parcel of land.

(2) A parcel of land referred to in subsection (1) may be subdivided into—

(a) 2 or more principal units; and

(b) the number of accessory units (if any) as the registered proprietor may wish; and

(c) so much of the land as is not comprised in any unit (in this Act referred to as **common property**).

(3) Nothing in this section permits the subdivision in accordance with this Act of a parcel of land that is subleasehold land.

Compare: 1972 No 15 s 3(1)

17 Deposit of plan effects subdivision of land

(1) The subdivision of land to provide for units is effected by the deposit under the Land Transfer Act 1952 of a plan specifying the units in their relation to a building or buildings (if any) already erected on the land.

(2) An application to deposit the plan must be made in the prescribed form (if any) by the registered proprietor described in section 16(1).

Compare: 1972 No 15 s 4(1)

Stratum estate created when unit plan deposited

18 Stratum estate created in unit

The deposit of a unit plan creates in each principal unit and each accessory unit a stratum estate in freehold or a stratum estate in leasehold or licence, as the case may be, that comprises—

(a) the fee simple estate or, as the case may be, the estate as lessee or licensee in the unit determinable in accordance section 74 or subpart 2 of Part 4; and

(b) the beneficial interest in the fee simple estate or, as the case may be, the estate as lessee or licensee in the common property of the unit title development to which the owner of the unit is entitled under section 54(2); and

(c) the undivided share in the fee simple estate or, as the case may be, the estate as lessee or licensee in all the units to which the owner of the unit is contingently entitled under subpart 2 of Part 4.

Compare: 1972 No 15 s 4(2)

Subpart 2—Subdivision of principal unit to create unit title development: layered developments

19 Meaning of layered unit title development

(1) A **layered unit title development** is a grouping of unit title developments in which—

(a) there is 1 head unit title development; and

(b) there is at least 1 subsidiary unit title development.

(2) For the purpose of this Act, a reference to the **base land** in relation to a subsidiary unit title development means the land from which its head unit title development was subdivided.

(3) Examples 2 and 3 in Schedule 1 are diagrammatical illustrations of examples of layered unit title developments.

20 Subdivision of principal unit into subsidiary unit title development

(1) The owner of a principal unit may subdivide the principal unit in accordance with this Act to create a subsidiary unit title development.

(2) If a principal unit referred to in subsection (1) has an accessory unit and both units are included on the same computer register, both the principal unit and the whole accessory unit must be subdivided in accordance with this Act to create a single subsidiary unit title development.

(3) A principal unit referred to in subsection (1) may be subdivided into—

(a) 2 or more principal units; and

(b) the number of accessory units (if any) as the owner of the principal unit to be subdivided may wish; and

(c) so much of the principal unit as is not comprised in any new unit (in this Act referred to as **common property**).

(4) A subdivision referred to in subsection (1) may be done only if the body corporate for the unit title development has, by special resolution, agreed to allow the subdivision.

(5) Sections 212 to 216 (which provide for an objection process) apply to a resolution under this section.

21 Deposit of plan effects subdivision of principal unit

(1) The subdivision of a principal unit to create a subsidiary unit title development is effected by the deposit under the Land Transfer Act 1952 of a unit plan—

(a) identifying the principal unit to be subdivided; and

(b) specifying the principal units, accessory units (if any), and common property making up the subsidiary unit title development in their relation to the building or buildings (if any) already erected on the principal unit to be subdivided; and

(c) showing the relationship of the proposed subsidiary unit title development to each unit title development in a layered unit title development of which it would, after the subdivision, be a part.

(2) The application to deposit the plan must be made by the owner of the principal unit to be subdivided and be—

(a) in the prescribed form (if any); and

(b) accompanied by a copy of the resolution required by section 20(4).

(3) Despite section 216, in relation to an application under subsection (2), the certificate required by section 216 must be lodged with the Registrar by the person making the application to deposit the plan.

Stratum estate created when unit plan deposited

22 Deposit of plan effects subdivision of subsidiary unit title development

(1) The deposit of a unit plan for a subsidiary unit title development creates in each unit a stratum estate in freehold or a stratum estate in leasehold or licence, as the case may be, derived from the stratum estate in the principal unit subdivided to create the subsidiary unit title development.

(2) The stratum estate in each unit comprises—

(a) the fee simple estate or, as the case may be, the estate as lessee or licensee in the unit determinable in accordance with section 74 or subpart 2 of Part 4; and

(b) the beneficial interest in the fee simple estate or, as the case may be, the estate as lessee or licensee in the common property of the subsidiary unit title development, to which the owner of the unit is entitled under section 54(2); and

(c) the undivided share in the fee simple estate or, as the case may be, the estate as lessee or licensee in the principal unit subdivided to create the subsidiary unit title development, to which the owner of the unit is contingently entitled under subpart 2 of Part 4.

(3) The principal unit subdivided to create the subsidiary unit title development remains a principal unit in its unit title development.

Subpart 3—Creation of unit title development in stages

23 Subdivision may be done in stages

(1) A subdivision of a parcel of land under subpart 1 or a subdivision of a principal unit under subpart 2 may be done in stages in accordance with this subpart.

(2) Except as provided in this subpart or in any other provision of this Act, all of the provisions of this Act apply to a unit title development created in stages.

Compare: 1979 No 37 s 3

24 Deposit of plans in stages to create unit title development

(1) If land or a principal unit is to be subdivided in stages, this section and section 25 apply instead of sections 17(1) and 21(1)(b).

(2) Subdivision in stages is effected by the successive deposit under the Land Transfer Act 1952 of—

(a) a proposed unit development plan and a first stage unit plan together; and

(b) 1 or more further stage unit plans (if any); and

(c) a complete unit plan.

(3) In the case of subdivision of land, the applications to deposit the plans must be made by the registered proprietor described in section 16(1) in the prescribed form (if any).

(4) In the case of the subdivision of a principal unit to create a subsidiary unit title development, the applications to deposit the plans must be made by the owner of the principal unit to be subdivided in the prescribed form (if any).

25 Requirements for plans deposited in stages

(1) A proposed unit development plan required by section 24(2) must specify all the units and the whole of the common property proposed to comprise the unit title development when it is completed.

(2) A stage unit plan required by section 24(2) must specify—

(a) each unit and each part of the common property (if any) that has so far been completed to the extent necessary for the purposes of section 32(2)(a) at the date of the deposit of the plan; and

(b) the balance as 1 or more future development units.

(3) A complete unit plan required by section 24(2) must specify all the units and the whole of the common property comprising the development in relation to a building or buildings (if any) already erected on the land.

(4) Every stage unit plan (except the first) and the complete unit plan relating to a development must be deposited in substitution for the stage unit plan previously deposited in respect of that development.

(5) No stage unit plan and no complete unit plan may be deposited unless the certificate given under section 32(2)(a) includes a statement by the authorised officer of the territorial authority in whose district the land is situated that the plan is consistent with the relevant proposed unit development plan.

26 Grounds for principal administrative officer's refusal to give certificate in staged development

For the purposes of section 35(b) and (c), it is sufficient if every building and every other part of the whole development shown on a stage unit plan complies with the territorial authority's district plan requirements applied at the date on which approval of the proposed unit development plan under section 223 of the Resource Management Act 1991 was given, even if, because of subsequent changes to the requirements, any building or other part of the development no longer complies with all the requirements.

Compare: 1979 No 37 s 6(3)

27 Future development units

(1) The deposit of the first stage unit plan under section 24(2)(a) has the effect of creating in each future development unit a stratum estate in freehold or a stratum estate in leasehold or licence (as the case may be).

(2) Those estates are made up of—

(a) the fee simple estate or the estate as lessee or licensee (as the case may be) in the unit, which determines,—

(i) on the deposit of a unit plan that specifies as other than a future development unit, that part of the base land or principal unit (as the case may be) that formerly made up the future development unit; or

(ii) on the cancellation of a stage unit plan, in accordance with subpart 2 of Part 4, on which the unit is shown as a future development unit:

(b) the undivided share in the fee simple estate or the estate as lessee or licensee (as the case may be) in all the units to which the owner of the unit is contingently entitled by virtue of subpart 2 of Part 4.

Compare: 1979 No 37 s 8(1)

28 Application of Resource Management Act 1991 to staged development

(1) Nothing in section 11 or Part 10 of the Resource Management Act 1991 applies to the deposit of a stage unit plan or a complete unit plan except for—

(a) the requirement to obtain a certificate under section 224(c) of that Act (as modified by section 29 of this Act) unless a certificate under section 224(c) has already been obtained for the proposed unit development plan; and

(b) the requirement to comply with section 224(e) of that Act.

(2) Section 11 and Part 10 of the Resource Management Act 1991 apply to the deposit of a proposed unit development plan except for the requirement to obtain a certificate under section 224(c) of that Act if a certificate will be obtained for each stage unit plan and the complete unit plan in accordance with subsection (1).

(3) For the avoidance of doubt, the certificate required to be obtained under section 224(c) of the Resource Management Act 1991 may be provided for either—

(a) the proposed unit development plan; or

(b) each stage unit plan and the complete unit plan.

(4) The reference in section 224(c) of the Resource Management Act 1991 to a survey plan is, in respect of a staged unit plan or a complete unit plan, a reference to the proposed unit development plan to which the staged unit plan or complete unit plan relates.

Compare: 1972 No 15 s 2A

29 Stage unit plan or complete unit plan and certificate under section 224(c) of Resource Management Act 1991

(1) Unless a condition of the subdivision consent for a stage unit plan or a complete unit plan requires otherwise, a certificate issued by a territorial authority under section 224(c) of the Resource Management Act 1991 for a stage unit plan or a complete unit plan may certify that—

(a) the conditions specified in the subdivision consent that are relevant to that stage of the subdivision consent have been complied with to the satisfaction of the territorial authority; or

(b) in respect of conditions that have not been complied with,—

(i) the conditions specified in the subdivision consent are not relevant to that stage and therefore do not need to be complied with; or

(ii) if the conditions specified in the subdivision consent that are relevant to that stage of the subdivision consent have not been complied with, the provisions of section 224(c)(i), (ii), and (iii) of the Resource Management Act 1991 continue to apply.

(2) If subsection (1)(b)(ii) applies, a territorial authority may issue a certificate under section 224(c) of the Resource Management Act 1991.

30 Alteration of proposed unit development plan

(1) This section applies to any alteration to a proposed unit development plan other than one—

(a) required under section 57 or 59; or

(b) required in relation to a redevelopment under any of sections 65 to 71.

(2) The body corporate may, by special resolution, agree to make an application to deposit a substituted proposed unit development plan.

(3) The body corporate must apply to the Registrar for the deposit of a new proposed unit development plan in substitution for the existing proposed unit development plan.

(4) Sections 212 to 216 (which provide for an objection process) apply to a resolution under this section.

(5) Before making the application to deposit the new plan, the body corporate must (in addition to complying with section 213(1))—

(a) serve a copy of the draft application on—

(i) every unit owner; and

(ii) every other person who has a registered interest in any unit or a caveat or notice of claim entered on the register over any unit; and

(b) if the existing unit plan relates to a stratum estate in leasehold or licence, obtain the written consent of the lessor or licensor to the redevelopment.

(6) The new proposed unit development plan must—

(a) specify all the units and the whole of the common property proposed to comprise the unit title development; and

(b) in addition, show, to the satisfaction of the Registrar, the modifications to the unit plan being replaced.

(7) In addition to the provisions referred to in section 31(2)(a), sections 32(2)(a) and (b), and 35 to 37 apply in respect of a substituted proposed unit development plan.

(8) In addition to the matters required to be included in the certificate referred to in section 216, the body corporate must also certify that any consent under subsection (5)(b) has been given.

Subpart 4—Requirements relating to unit plans

31 Application of this subpart

(1) The whole of this subpart applies to a unit plan to be deposited under any of sections 17, 21, or 24 or subpart 3 of Part 4.

(2) In relation to any unit plan other than one referred to in subsection (1),—

(a) sections 32(2)(c), 33(3), and 34 apply; and

(b) provisions of this subpart other than those referred to in paragraph (a) apply if expressly provided elsewhere in this Part.

32 Restrictions on deposit of unit plans

(1) A unit plan for the subdivision of land must not be deposited—

(a) while the computer register to any land to which it relates is limited in any manner referred to in Part 12 of the Land Transfer Act 1952:

(b) while the land to which it relates is held in more than 1 computer register created under the Land Transfer Act 1952:

(c) unless the land to which it relates is the whole of the land in a computer register created under the Land Transfer Act 1952:

(d) unless the grantor of the lease or licence, if the land is held under a lease or licence, the registered owner of any mortgage, encumbrance, or charge affecting the land or any part of it, and every caveator whose caveat against the land was lodged with the Registrar before deposit of the plan, have consented in writing to its being deposited.

(2) A unit plan for the subdivision of land or for the subdivision of a principal unit must not be deposited—

(a) unless a certificate in the prescribed form has been given in writing by an authorised officer of the territorial authority in whose district the land is situated to the effect that—

(i) every building (if any) shown on the plan has been erected, and all other development work has been carried out, to the extent necessary to enable all the boundaries of every unit and the common property shown on the plan to be physically measured; and

(ii) every principal unit shown on the plan conforms to the definition of principal unit in section 7:

(b) unless a certificate in the prescribed form has been given in writing by a registered valuer showing the ownership interest or proposed ownership interest fixed under section 38 for each of the units on the plan:

(c) until it has been approved in accordance with section 9 of the Cadastral Survey Act 2002.

(3) In addition to the restrictions in subsection (2), a unit plan for the subdivision of a principal unit must not be deposited—

(a) unless the registered owner of any mortgage, encumbrance, or charge affecting the principal unit and every caveator whose caveat against the principal unit was lodged with the Registrar before deposit of the plan, have consented in writing to its being deposited:

(b) unless a certificate in the prescribed form has been given in writing by a registered valuer assessing the ownership interest of the principal unit being subdivided to create the subsidiary unit title development.

Compare: 1972 No 15 s 5

33 Further provisions relating to restrictions on deposit of unit plans

(1) Section 32(1)(b) and (c) do not prevent the deposit of a plan in any case where 1 computer register may properly be created for the land to which the plan relates.

(2) A consent for the purposes of section 32(1)(d) or (3)(a) may be given by an agent duly authorised in writing by the grantor, owner, or caveator.

(3) Approval in accordance with section 32(2)(c) has effect to make the plan the property of the Crown.

34 Unit plan must comply with survey requirements

A unit plan must comply with the provisions of rules made under section 49 of the Cadastral Survey Act 2002.

Compare: 1972 No 15 s 4(1)

35 Grounds for authorised officer's refusal to give certificate

An authorised officer of a territorial authority must not refuse to give a certificate in respect of any unit plan under section 32(2)(a) except on 1 or more of the following grounds:

(a) that any building shown on the plan has not been erected, or that any other development work has not been carried out, to the extent necessary to enable all the boundaries of every unit and the common property shown on the plan to be physically measured:

(b) that any building on the land has been erected in such a place in relation to any boundary, or to a height, so as to contravene the requirements of the territorial authority's district plan unless the contravention is authorised by the territorial authority:

(c) that any building or any other part of the whole development contravenes the requirements of the territorial authority's district plan in any other manner to such an extent that alterations are required that may affect the location or the boundaries of any unit or of any part of the common property shown on the plan unless the contravention is authorised by the territorial authority.

Compare: 1972 No 15 s 5A(1); 1979 No 37 s 6(3)

36 Territorial authority cannot require alterations once certificate given

(1) This section applies if—

(a) an authorised officer of a territorial authority has given a certificate in respect of any unit plan under section 32(2)(a); and

(b) that plan has been deposited.

(2) The territorial authority has no power to require any alteration to any building or any other part of the whole development that may affect the location or the boundaries of any unit or of any part of the common property shown on the plan.

(3) The territorial authority may otherwise pursue any remedies it may have (including the prosecution of any person) in respect of any non-compliance with the provision of its district plan or the requirements of the Resource Management Act 1991.

(4) Subsection (2) applies despite any enactment or rule of law to the contrary.

Compare: 1972 No 15 s 5A(2)

37 Protection of territorial authority, etc, from liability for issuing of certificate

No territorial authority, authorised officer of a territorial authority, member of a territorial authority, or employee or agent of a territorial authority, is subject to civil or criminal liability

in respect of the giving of a certificate under section 32(2)(a), unless the territorial authority or person has acted in bad faith.
Compare: 1972 No 15 s 5A(3)

Subpart 5—Ownership interest and utility interest

38 Ownership interest

(1) Before a unit plan is deposited under section 17(1), 21(1), or 24(2)(a),—

(a) every principal unit and every accessory unit must be assigned an ownership interest; and

(b) every proposed principal unit and every proposed accessory unit must be assigned a proposed ownership interest.

(2) The ownership interest or proposed ownership interest is fixed as follows:

(a) in the case of a unit plan deposited under section 17(1) or 21(1), the ownership interest is that fixed by a registered valuer on the basis of the relative value of the unit in relation to each of the other units and shown on any documentation required to be lodged with the unit plan:

(b) in the case of a stage unit plan or complete unit plan deposited under section 24(2), the ownership interest is that fixed by a registered valuer on the basis of the relative value of the unit in relation to each of the other units and shown on any documentation required to be lodged with the proposed unit development plan.

(3) The ownership interest is used to determine a range of matters, including, but not limited to,—

(a) the beneficial interest of the owner of the principal unit in the common property:

(b) the share of the owner of the principal unit in the value of any buildings, fixtures, and other improvements in relation to leasehold land:

(c) the voting rights of the owner of the principal unit when a poll is requested under section 99:

(d) the share of the owner of the principal unit in the underlying fee simple in the land on the cancellation of the unit plan:

(e) the extent of the obligation of the owner of the principal unit in respect of contributions levied by the body corporate under section 121 in respect of any capital improvement fund:

(f) the rights of the owner of the principal unit in relation to a distribution of any surplus money of a capital improvement fund under section 131:

(g) the extent of the obligation of the owner of the principal unit for payment of ground rental under section 87:

(h) the extent of the liability of the owner of the principal unit for damages and costs under section 142.

(4) The proposed ownership interest for a future development unit is the total of all the proposed ownership interests of the proposed principal units and proposed accessory units in the future development unit assigned under subsection (1)(b).

(5) The proposed ownership interest is used to determine the same range of matters described in subsection (3) in so far as they apply to an owner of a future development unit.

(6) Subject to sections 41 and 69(3), no change may be made in the ownership interest of any unit after the unit plan is deposited.

39 Utility interest (other than for future development units)

(1) Before a unit plan is deposited under section 17(1), 21(1), or 24(2)(a), every principal unit and every accessory unit must be assigned a utility interest.

(2) The utility interest is the same as the ownership interest fixed under section 38(2) unless otherwise shown on any documentation required to be lodged with the unit plan deposited under section 17(1), 21(1), or 24(2)(a) or reassessed under section 41.

(3) The utility interest is used to determine a range of matters including, but not limited to,—

(a) the extent of the obligation of the owner of the principal unit in respect of contributions levied by the body corporate under section 121 in respect of the long-term

maintenance fund, the optional contingency fund, and the operating account:

(b) the rights of the owner of the principal unit in relation to a distribution of any surplus money in the long-term maintenance fund, the optional contingency fund, or the operating account, or personal property of the body corporate under section 131.

40 Utility interest for future development unit

(1) As soon as a future development unit is in use as a place of residence or business or otherwise it must be assigned a deemed utility interest.

(2) The deemed utility interest is—

(a) the total of all the proposed ownership interests of the proposed principal units and proposed accessory units in the future development unit assigned under section 38; or

(b) an amount fixed by the body corporate by special resolution at a general meeting under section 41.

(3) The deemed utility interest is used to determine the extent of the future development unit's owner's obligations in respect of contributions relating to the funds levied by the body corporate under section 121.

41 Reassessment of ownership interest and utility interest

(1) The ownership interest or utility interest may be reassessed for each unit if the body corporate decides by special resolution at a general meeting to reassess the ownership interest or the utility interest, or both.

(2) If a unit plan is deposited for the subdivision of a unit to create a subsidiary unit title development, the ownership interest and utility interest for the principal unit that has been subdivided must be reassessed by the body corporate.

(3) A decision by the body corporate to reassess the ownership interest or the utility interest under subsection (1) may only be made if 36 months or more have elapsed since the deposit of the plan or the last reassessment of the ownership interest or the utility interest, as the case may be under subsection (1).

(4) A reassessment under subsection (1) takes effect on the earlier of—

(a) the date determined as part of the special resolution under subsection (1); or

(b) the date of reassessment.

(5) Any reassessment of—

(a) the ownership interest of a unit must be made by a registered valuer on the basis of the relative value of each of the units to each other:

(b) the utility interest may be made by the body corporate on a fair and equitable basis, having regard to the relevant benefits and the costs to units.

(6) If, as a result of a reassessment, a utility interest is to be assigned other than on the basis of the relative value of the unit in relation to each other unit, the body corporate must, by special resolution, approve the method of apportionment of the utility interest.

(7) Sections 212 to 216 (which provide for an objection process) apply to a resolution made in accordance with subsection (6).

(8) Any costs incurred in the reassessment must be paid for by the body corporate.

(9) In this section and section 42,—

(a) a reference to **ownership interest** includes any proposed ownership interest (of a future development unit); and

(b) a reference to **utility interest** includes any deemed utility interest of a future development unit.

42 Registrar to be notified of reassessment

(1) The body corporate must notify the Registrar in the prescribed form (if any) of any reassessment of the ownership interest or the utility interest under section 41.

(2) The Registrar must record any reassessment of the ownership interest or the utility interest.

Subpart 6—Computer registers, etc

43 Creation of computer registers where land subdivided to create unit title development

(1) On the deposit of a unit plan for the subdivision of land, the Registrar must—

(a) create a computer register in the name of the registered proprietor (and not the body corporate) of the base land, for the stratum estate in all of the units shown on the unit plan; and

(b) cancel the existing computer register for the base land; and

(c) in a case where the unit plan relates to an estate as lessee or licensee under a registered lease or licence of any land, note an appropriate memorial on the computer register for the leasehold or licence estate.

(2) Despite subsection (1)(a), the Registrar must, at the request of the registered proprietor, create a separate computer register for any principal unit or future development unit.

(3) A computer register created under subsection (2) may also include 1 or more accessory units.

Compare: 1972 No 15 s 8

44 Creation of computer register where principal unit subdivided to create subsidiary unit title development

(1) On the deposit of a unit plan for the subdivision of a principal unit, the Registrar must—

(a) create a computer register in the name of the owner of the principal unit that has been subdivided for the stratum estate in all of the units in the subsidiary unit title development; and

(b) cancel the existing computer register for the principal unit.

(2) Despite subsection (1)(a), the Registrar must, at the request of the owner of the principal unit that has been subdivided, create a separate computer register for any principal unit in the subsidiary unit title development.

(3) A computer register created under subsection (2) may include 1 or more accessory units.

45 No computer registers for base land, subdivided principal unit, or component parts of stratum estate

Despite section 95 of the Land Transfer Act 1952, no separate computer register may be created under that Act for—

(a) the fee simple estate or, as the case may be, the interest as lessee or licensee in the base land or any part of the base land; or

(b) the stratum estate in a principal unit that has been subdivided to create a subsidiary unit title development; or

(c) any component part of a stratum estate as described in sections 18 and 22(2).

Compare: 1972 No 15 s 4(4)

46 No computer register to be created for common property

No computer register may be created in respect of common property.

Compare: 1972 No 15 s 4(4)

47 Supplementary record sheets

On the deposit of a unit plan under subpart 1 or 2, or section 24(2)(a), the Registrar must set up a supplementary record sheet on which the Registrar must note—

(a) that the body corporate owns the common property; and

(b) that the owners of all the units are beneficially entitled to the common property as tenants in common in shares proportional to the ownership interest (or proposed ownership interest) in respect of their respective units; and

(c) appropriate memorials relating to—

(i) all instruments that are registered and that affect the whole or any part of the base land and the common property (independently of the units) to which the unit plan relates; and

(ii) all other matters that, in accordance with this Act, the regulations, and any other Act, have to be noted on the supplementary record sheet.

Compare: 1972 No 15 s 20(1), (2)

48 Noting of subsidiary unit title development

On the deposit of a unit plan for the subdivision of a principal unit under subpart 2 or section 24(2)(a), the Registrar must—

(a) note the subsidiary unit title development on the supplementary record sheet for each unit title development in the layered unit title development of which it is a part; and

(b) note on the relevant supplementary record sheet the ownership interest of the principal unit that was subdivided to create the subsidiary unit title development, reassessed as required by section 32(3)(b).

49 New unit plans

In any case where, under any of the provisions of section 30, 57, 59, or 68, a new unit plan is deposited under the Land Transfer Act 1952,—

(a) the plan deposited must be noted so as to show clearly that it is in substitution for the earlier plan:

(b) where any unit is described in any computer register or in any other instrument in respect of any land, the reference must be read as a reference to the plan for the time being deposited in respect of that land.

Compare: 1972 No 15 s 20(3), (4)(a)

Subpart 7—General provisions relating to dealings with unit title developments

50 Ways in which stratum estate and base land may be dealt with

On the creation of a stratum estate in a unit,—

(a) that stratum estate may devolve or be transferred, leased, mortgaged, or settled:

(b) except as provided in this or any other Act, the component parts of the stratum estate are not capable of devolving or being dealt with independently of the others:

(c) the fee simple estate or, as the case may be, the interest as lessee or licensee in the base land, or any part of the base land, is not capable of devolving or being dealt with except as provided in this or any other Act.

Compare: 1972 No 15 s 4(3)

51 Dealings with subsidiary unit title development

On the creation of a stratum estate in a unit in a subsidiary unit title development, the principal unit that was subdivided to create the development is not capable of devolving or being dealt with except as provided in this or any other Act.

52 Effect of transfer, lease, etc, of stratum estate

A transfer, lease, mortgage, or settlement of a stratum estate in a unit has the same effect as if the stratum estate were an estate in fee simple in land or an interest in land under a lease or licence, as the case may be.

Compare: 1972 No 15 s 4(3)

53 Independent dealings with accessory units restricted

(1) Except where it is transferred to the owner of a principal unit shown on the same unit plan, no accessory unit or any interest in it may be sold, leased, mortgaged, or otherwise disposed of or dealt with except as part of a sale, lease, mortgage, disposition, or other dealing that includes a principal unit or a corresponding interest in a principal unit.

(2) No computer register relating to an accessory unit may be created except as part of a computer register relating to a principal unit.

(3) No principal unit that is for the time being included in the same computer register as an accessory unit (not being a computer register created under section 200(1)(b)) and no interest in that principal unit may be sold, leased, mortgaged, or otherwise disposed of or dealt with except—

- (a) as part of a sale, lease, mortgage, disposition, or dealing that includes the accessory unit or a corresponding interest in the accessory unit, as the case may be; or
- (b) if there is a concurrent sale of the accessory unit in accordance with subsection (1).

(4) If an accessory unit is being transferred independently of a principal unit to a person who is the owner of a principal unit shown on the same unit plan, the instrument of transfer in respect of the accessory unit must contain a request to the Registrar for the accessory unit to be included in the computer register for the principal unit.

(5) On the registration of the instrument of transfer referred to in subsection (4), the accessory unit becomes subject to all mortgages and charges and other registered interests or caveats or notices of claim to which the principal unit is subject.

(6) If an accessory unit is for the time being included in the same computer register as a principal unit, the accessory unit must not be transferred apart from the principal unit while it remains subject to any mortgage, charge, other registered interest or caveat or notice of claim entered on the register.

(7) Despite anything to the contrary in the Land Transfer Act 1952, any purported sale, lease, mortgage, disposition, or dealing with any unit in contravention of subsection (1) or (3) is void.

(8) Nothing in subsection (7) affects the devolution of any unit on the death of the owner of the unit to the administrator of that owner.

Compare: 1972 No 15 s 10

Subpart 8—Ownership of, and dealings with, common property

54 Ownership of common property

(1) The common property is owned by the body corporate.

(2) The owners of all the units are beneficially entitled to the common property as tenants in common in shares proportional to the ownership interest (or proposed ownership interest) in respect of their respective units.

(3) Nothing in subsection (2) affects the interests among themselves of the owners of an individual unit.

55 Access lots

(1) This section applies if—

(a) the base land to which a unit plan relates has an access lot to or from it; and

(b) a share of the access lot is owned by the person who is, immediately before the unit plan is deposited, the registered proprietor of the base land.

(2) On the deposit of the unit plan, the access lot, or share of the access lot, owned by the registered proprietor of the base land becomes part of the common property.

56 Sale, lease, or licence of common property

(1) The body corporate may, after a special resolution to do so, grant a lease or licence over part of the common property.

(2) Before granting a lease or licence over part of the common property, a subsidiary body corporate must obtain the consent to the dealing by special resolution from—

- (a) the body corporate for its parent unit title development; and
- (b) the body corporate for any unit title development located between the subsidiary unit title development and its head unit title development; and
- (c) the body corporate for its head unit title development.

(3) A body corporate, other than a subsidiary body corporate, may, after a special resolution to do so, sell part of the common property.

(4) Sections 212 to 216 (which provide for an objection process) apply to a resolution under this section.

(5) In addition to the matters required to be included in the certificate referred to in section 216, the body corporate must also certify that the consents required under subsection (2) have been given.

(6) Unless the body corporate resolves otherwise, any proceeds obtained by the body corporate as a result of any sale, lease, or licence of or over the common property must be distributed to the unit owners.

(7) Proceeds distributed to the unit owners under subsection (6) must be distributed in shares proportional to what was, at the time of the sale, lease, or licence, their ownership interest (including any proposed ownership interest).

(8) Without limiting subsection (6), the body corporate may, with the consent of the owner of a principal unit, offset the payment to that owner against current or future levies payable in respect of that owner's principal unit.

(9) For the purposes of any sale of common property, the owner of a future development unit that is in use as a place of residence or business or otherwise, in whole or in part, is to be treated as a member of the body corporate.

57 Registration of transfers of common property

(1) The instrument of transfer of the whole or any part or parts of the common property must, when lodged for registration, be accompanied by a new unit plan in substitution for the existing unit plan.

(2) The requirements of subsection (1) are in addition to any plan that the Registrar may require to be deposited under section 167 of the Land Transfer Act 1952.

(3) If a unit plan referred to in this section includes a stage unit plan,—

(a) the reference to the unit plan includes both the stage unit plan and proposed unit development plan; and

(b) both plans must be prepared, approved, and deposited in accordance with this section.

(4) The new unit plan must show the effect of the transfer to the satisfaction of the Registrar.

(5) The Registrar must register any transfer to which subsection (1) refers by—

(a) noting a memorial of the transfer on the supplementary record sheet and any other appropriate record; and

(b) creating in the name of the transferee a computer register for the land transferred free from any incidental rights existing over the land under section 73.

(6) Nothing in this section restricts section 47.

Compare: 1972 No 15 s 18

58 Additions to common property

(1) An interest in land outside the base land may be transferred to the body corporate (other than a subsidiary body corporate) and included in the common property if—

(a) the body corporate has by special resolution resolved to acquire the interest in land; and

(b) the interest in land is transferred free from any registered mortgage, encumbrance, charge, lease, or sublease; and

(c) either—

(i) in a case where a stratum estate in freehold exists in the units shown on the plan, the transfer is of an estate in fee simple in the land to which it relates; or

(ii) in a case where a stratum estate in leasehold or licence exists in the units shown on the plan, the transfer is of an estate as lessee or licensee in the land to which it relates under a lease or licence from the grantor of the lease or licence of the base land.

(2) The lease or licence referred to in subsection (1)(c)(ii) must be a lease or licence for the same remaining period, on the same terms and conditions, and containing the same provisions as the current lease or licence of the base land.

(3) Sections 212 to 216 (which provide for an objection process) apply to a resolution under this section.

(4) For the purpose of this section, the owner of a future development unit that is in use as a place of residence or business or otherwise, in whole or in part, is to be treated as a member of the body corporate.

59 Registration of additions to common property

(1) Every instrument of transfer to which section 58 relates must, when lodged for registration, be accompanied by a new unit plan in substitution for the existing unit plan.

(2) If a unit plan referred to in this section includes a stage unit plan,—

(a) the reference to the unit plan includes both the stage unit plan and proposed unit development plan; and

(b) both plans must be prepared, approved, and deposited in accordance with this section.

(3) The new unit plan must show the effect of the transfer to the satisfaction of the Registrar.

(4) The registration of a transfer under this section has the effect of including the transferred land as part of the common property.

(5) The Registrar must register any transfer to which subsection (1) refers by—

(a) entering a memorial of the transfer on the relevant computer register; and

(b) noting a memorial of the transfer on the supplementary record sheet.

(6) The beneficial interest (under section 54(2)) in the land included as part of the common property pursuant to the transfer is deemed to be held by each unit owner—

(a) subject to the same terms, conditions, liabilities, and interests as those on or subject to which the owner held the unit immediately before the registration of the transfer; and

(b) subject to any instrument of mortgage, encumbrance, charge, lease, or sublease affecting the owner's unit as if the beneficial interest in the transferred land had been included in the instrument expressly.

(7) Nothing in this section restricts section 47.

Subpart 9—Easements and covenants

Existing easements and covenants affecting base land

60 Existing easements and covenants affecting base land

(1) The deposit of a unit plan has no effect on any easement or covenant to which the base land is subject or on any easement or covenant that is appurtenant to the base land.

(2) Despite section 67 of the Land Transfer Act 1952, the Registrar must require any easements and covenants referred to in subsection (1) to be recorded (by diagram, words, or otherwise) on the supplementary record sheet, and must not note them on any computer register created under section 43.

(3) If there is a layered unit title development on the base land, the supplementary record sheet referred to in subsection (2) is that for the head unit title development and any subsidiary unit title development affected by the easement.

Compare: 1972 No 15 s 7

61 Dealings with easements and covenants existing before deposit of unit plan

(1) The body corporate of a standard unit title development or the body corporate of a head unit title development may, after a special resolution to do so, vary, surrender, or assign any easement or vary or revoke any covenant to which section 60 applies.

(2) For the purpose of sections 90 to 90F of the Land Transfer Act 1952, if the body corporate enters into an instrument described in subsection (1), the body corporate must be treated as the registered proprietor of the base land.

Creation of new easements and covenants

62 Powers of body corporate in respect of easements and covenants over or for benefit of common property

(1) The body corporate may, after a special resolution to do so, over the whole or any part of the common property,—

(a) grant an easement in gross or for the benefit of any unit or any other land; or

(b) enter into a covenant for the benefit of any unit or any other land.

(2) The body corporate may, after a special resolution to do so, over any unit or any land that is not common property,—

(a) acquire an easement for the benefit of the common property; or

(b) enter into a covenant for the benefit of common property.

(3) The body corporate may, after a special resolution to do so, enter into a variation or surrender of—

(a) an easement or covenant over any unit or any land that is not common property for the benefit of the common property; or

(b) an easement or covenant over the common property for the benefit of any unit or any other land.

(4) Before dealing with common property under subsection (1), (2), or (3), a subsidiary body corporate must obtain the consent to the dealing by special resolution from—

(a) the body corporate for its parent unit title development; and

(b) the body corporate for any unit title development located between the subsidiary unit title development and its head unit title development; and

(c) the body corporate for its head unit title development.

(5) Sections 212 to 216 (which provide for an objection process) apply to a resolution under this section.

(6) In addition to the matters required to be included in the certificate referred to in section 216, the certificate must also certify that the consents required under subsection (4) have been given.

(7) Unless the body corporate resolves otherwise, any proceeds obtained by the body corporate as a result of any dealing with common property under subsections (1), (2), and (3) must be distributed to the unit owners.

(8) Proceeds distributed to the unit owners under subsection (7) must be distributed in shares proportional to what was, at the time of the dealing, their ownership interest (including any proposed ownership interest).

63 Ability of owner of unit in respect of easements and covenants

(1) The owner of a unit may, for the benefit of the unit,—

(a) acquire an easement over other land; or

(b) acquire the benefit of a covenant over other land.

(2) The owner of a unit may, for the benefit of other land,—

(a) grant an easement over the unit; or

(b) enter into a covenant over the unit.

(3) The owner of a unit may enter into a variation or surrender of—

(a) an easement or covenant over other land for the benefit of the unit; or

(b) an easement or covenant over the unit for the benefit of other land.

(4) Before any dealing with the unit under subsection (1), (2), or (3), the body corporate must, by special resolution, have con-

sented to the granting, acquiring, variation, or surrender of the easement or covenant.

(5) Before giving its consent in accordance with subsection (4), a subsidiary body corporate must obtain the consent by special resolution, and in writing, to the granting, acquiring, variation, or surrender of the easement or covenant from—

(a) the body corporate for its parent unit title development; and

(b) the body corporate for any unit title development located between the subsidiary unit title development and its head unit title development; and

(c) the body corporate for its head unit title development.

(6) An application to register an instrument to give effect to any of the matters in subsections (1), (2), or (3) must be accompanied by a certificate by the body corporate that the consent required under subsection (4) has been given.

(7) The certificate referred to in subsection (6) may be relied on by the Registrar as sufficient evidence of compliance with the matters set out in the certificate.

Subpart 10—Redevelopments

References to unit plan in relation to redevelopments

64 References to unit plan in relation to redevelopments

If a unit plan referred to in sections 65 to 71 includes a stage unit plan,—

(a) the reference to the unit plan includes both the stage unit plan and proposed unit development plan; and

(b) both plans, or amendments to both plans, as the case may be, must be prepared, approved, and deposited in accordance with the applicable provisions of sections 65 to 71.

Redevelopment requiring amendment to unit plan

65 Redevelopment requiring amendment to unit plan

(1) This section applies if a redevelopment consists solely of the adjustment of the boundary between 1 or more units shown on a unit plan but the adjustment does not materially affect—

(a) the common property; or

(b) the use, enjoyment, or ownership interest of any unit the boundary of which is not being adjusted.

(2) The owners of the units that will have their boundaries adjusted must, jointly, make an application to the Registrar for the deposit of an amendment to the unit plan.

(3) Sections 32(2)(a) and (c), 33(3), and 34 to 37 apply in respect of the deposit of the amendment to the unit plan under subsection (2).

(4) Before making the application to deposit the amendment to the unit plan the unit owners in subsection (2) must obtain a certificate from the body corporate that the redevelopment is of a kind described in subsection (1).

(5) The unit owners in subsection (2) must, for the purposes of obtaining the certificate referred to in subsection (4), provide sufficient written information to the body corporate to fully inform it of the nature of the redevelopment.

66 Requirements for amendment to unit plan under section 65

The amendment to the unit plan required by section 65 must—

(a) define the boundaries of the enlarged or reduced units; and

(b) show any enlarged or reduced unit marked with numbers or letters not already used on the unit plan; and

(c) specify which of the enlarged units and reduced units are principal units and which are accessory units; and

(d) comply with the provisions of rules made under section 49 of the Cadastral Survey Act 2002.

67 Deposit of amendment to unit plan

(1) The application to deposit the amendment to the unit plan required by section 65 must be in the prescribed form (if any) and be accompanied by—

- (a) the certificate described in section 65(4); and
- (b) a certificate from a registered valuer—
  - (i) determining the ownership interest of any enlarged or reduced unit; and
  - (ii) stating that the amendment to the unit plan does not affect the ownership interest of any unit the boundary of which is not being adjusted.

(2) The certificate referred to in subsection (1)(a) may be relied on by the Registrar as sufficient evidence of the matters set out in it.

(3) On the deposit of the amendment to the unit plan and the registration of any transfers or other instruments, the Registrar must—

- (a) cancel the existing computer registers for the units affected by the amended boundaries; and
- (b) create separate computer registers in accordance with the amendment to the unit plan for the units affected by the amended boundaries; and
- (c) enter a reference to the amended unit plan on the supplementary record sheet.

Redevelopment requiring new unit plan

68 Redevelopment requiring new unit plan

(1) This section applies to any redevelopment other than one to which section 65 applies.

(2) The body corporate must apply to the Registrar for the deposit of a new unit plan in substitution for the existing unit plan.

(3) Before making the application to deposit the new unit plan, the body corporate must—

- (a) ensure that all of the owners of the units materially affected by the redevelopment have consented in writing to the new unit plan; and

(b) if the existing unit plan relates to a stratum estate in leasehold or licence, obtain the written consent of the lessor or licensor to the redevelopment; and

(c) agree, by special resolution, to the new unit plan.

(4) For the purpose of this section, an owner of a future development unit that is in use as a place of residence or business or otherwise, in whole or in part, as a principal unit is to be treated as a member of the body corporate.

(5) Sections 212 to 216 (which provide for an objection process) apply to a resolution under this section.

Compare: 1972 No 15 s 44(1)

69 Requirements for new unit plan under section 68

(1) A new unit plan required under section 68 must specify the units and common property making up the unit title development and must, in addition,—

(a) define the boundaries of the new units or the enlarged or reduced units:

(b) show all new units and any enlarged or reduced units marked with numbers or letters not already used on the existing unit plan:

(c) specify which of the new units, enlarged units, and reduced units are principal units and which are accessory units.

(2) In addition to the provisions referred to in section 31(2)(a), sections 32(2)(a) and 35 to 37 apply in respect of a new plan.

(3) The application to deposit the plan must be accompanied by a certificate from a registered valuer—

(a) in the case of a subdivision into 2 or more new units, enlarged units, or reduced units, showing the ownership interest of the former unit or units included in the redevelopment apportioned among the new units; and

(b) in the case where a redevelopment involves the inclusion in a unit of part of the common property, the transfer into the common property of a unit or part of a unit, or the erection of 1 or more units on the common property, reassessing the ownership interests of all units in the unit title development.

(4) The valuer who reassesses the ownership interest under subsection (3)(b) must assign to every unit a new ownership interest on the basis of the relative value of the unit in relation to each other unit at the date on which the reassessment is made.

(5) Despite subsection (4), the registered valuer may, in his or her discretion, reassess the ownership interests at the same values as the current ownership interests in any case where the valuer considers that the redevelopment is of a relatively minor nature.

(6) In addition to the matters required to be included in the certificate referred to in section 216, the body corporate must also certify that the consents required under section 68(3)(a) and (b) have been given.

Compare: 1972 No 15 s 44(2), (3)

70 Reassessment of utility interests

(1) This section applies if, immediately before a redevelopment to which sections 68 and 69 relate, the utility interest of any unit was different to its ownership interest because the utility interest had been reassessed under section 41.

(2) The body corporate must—

(a) reassess the utility interest of the unit in accordance with the requirements of section 41; and

(b) notify the Registrar under section 42.

71 Deposit of new plan for redevelopment

On the deposit of the new unit plan and the registration of any necessary transfers or other instruments, the Registrar must—

(a) cancel the existing computer registers to the units affected by the redevelopment; and

(b) create separate computer registers in accordance with the new unit plan for the units affected by the redevelopment.

Compare: 1972 No 15 s 44(5)

Subpart 11—Miscellaneous provisions relating to creation of, and dealings with, unit title developments

72 Application of Land Transfer Act 1952 to stratum estates

Except as otherwise provided in this Act and subject to any necessary modifications, the provisions of the Land Transfer Act 1952 apply to every stratum estate in freehold and stratum estate in leasehold or licence and to every dealing with any instrument affecting any such estate.

Compare: 1972 No 15 s 4(6)

73 Incidental rights

(1) The common property and each unit on a unit plan has appurtenant to it the following rights over the base land to the extent necessary for the reasonable use and enjoyment of the common property or unit:

(a) rights of support, shelter, and protection; and

(b) rights for the passage or provision of water, sewerage, drainage, gas, electricity, oil, garbage, air, all telecommunications and electronic services, and all other services of any nature.

(2) The common property and each unit on a unit plan has appurtenant to it the following rights over the base land:

(a) a right to the full, free, and uninterrupted access and use of light to or for any windows, doors, or other apertures existing at the date of deposit of the plan and enjoyed at that date; and

(b) a right to maintain overhanging eaves existing at the date of deposit of the plan.

(3) The rights created by this section carry with them all ancillary rights and responsibilities necessary to make them effective as if they were easements.

(4) Nothing in this section affects any land other than the base land.

Compare: 1972 No 15 s 11

Scheme following destruction or damage

74 Scheme following destruction or damage

(1) This section applies if any building or other improvement comprised in any unit or on the base land is damaged or destroyed, but the unit plan is not cancelled.

(2) The High Court may, by order, settle a scheme on the application of—

(a) the body corporate; or

(b) if the unit title development is in a layered unit title development, the body corporate of the head unit title development or any subsidiary unit title development in that layered unit title development; or

(c) an administrator; or

(d) the owner or one of the owners of a unit; or

(e) a registered mortgagee of a unit.

(3) A scheme under subsection (2) may include provisions—

(a) for the reinstatement in whole or in part of the building or other improvement; or

(b) for the transfer of units to the body corporate so as to form part of the common property.

(4) If an order is made under subsection (3)(b), sections 58(1)(c) and 59 apply to the transfer, so far as applicable, but subject to any order of the High Court to the contrary.

(5) A notice of any application made under subsection (2) must be lodged with the Registrar who must enter on the supplementary record sheet a notification that the application has been made.

(6) On any application to the High Court under subsection (2), the following persons have the right to appear and be heard:

(a) any person having or claiming to have any estate or interest in any unit or in the whole or part of the base land; or

(b) any insurer who has effected insurance on the buildings or other improvements comprised in any unit or in the whole or part of the base land.

(7) In the exercise of its powers under subsections (2) and (3), the High Court may make any orders that it considers expedient or necessary for giving effect to the scheme, including orders—

(a) directing the application of any insurance money; or
(b) directing payment of money by or to the body corporate or by or to any person; or
(c) directing the deposit of an appropriate new unit plan; or
(d) imposing any terms and conditions that it thinks fit.

(8) The High Court may cancel, vary, modify, or discharge any order made by it under this section.

(9) The High Court may make any order for payment of costs that it thinks fit.

Compare: 1972 No 15 s 48

Subpart 12—Management structures and arrangements

Establishment and constitution of body corporate

75 Creation of body corporate

(1) When a unit plan is deposited under section 17 (and in the case of a staged development, when the first stage unit plan is deposited under section 24), a body corporate is created and is the body corporate for the unit title development created by the deposit of that unit plan.

(2) When a unit plan is deposited under section 21 (and in the case of a staged development, when the first stage unit plan is deposited under section 24), a subsidiary body corporate is created and is the body corporate for the subsidiary unit title development created by the deposit of that unit plan.

(3) The name of the body corporate for a unit plan is the words "Body Corporate Number" and the registered number of the unit plan.

76 Members of body corporate

(1) The members of a body corporate for a unit plan are the unit owners of all the units in the unit plan.

(2) Despite subsection (1), and except as provided in sections 56, 58, 68, 105(4), 121(3), 123, 170, and 190, the owner for the time being of a stratum estate in a future development unit is

not a member of the relevant body corporate created by section 75.

77 Core things body corporate may do

(1) A body corporate may do anything authorised by this Act or any other Act.

(2) A body corporate may do anything a natural person of full age and capacity may do except as provided for in this Act or any other Act.

78 Act must be for purpose of performing duties or exercising powers

A body corporate may do an act under section 77 only for the purpose of performing its duties or exercising its powers.

Rights and responsibilities

79 Rights of owners of principal units

An owner of a principal unit—

(a) has all the rights derived from being registered as the owner of the stratum estate in a unit under this Act:

(b) holds a share in the common property in accordance with section 54(2):

(c) is entitled as a body corporate member to exercise a vote in respect of his or her unit, subject to section 96 and any other requirements in the regulations:

(d) is entitled to have quiet enjoyment of his or her unit without interruption by other unit owners or occupiers, or the body corporate or its agents, except as authorised by this Act or the regulations:

(e) subject to section 80(1)(h) and (i), may make any alterations, additions, or improvements to his or her unit so long as these are within the unit boundary and do not materially affect any other unit or common property:

(f) has the right to have any dispute resolved in the manner set out in subpart 1 of Part 4:

(g) has the right to enforce the body corporate operational rules:

(h) has the right to attend the general meetings of the body corporate.

80 Responsibilities of owners of principal units

(1) An owner of a principal unit—

(a) must permit the body corporate (or its agents) to enter the unit at any time in an emergency and at all reasonable hours, and after giving reasonable notice, for any of the following purposes:

(i) to view the condition of the unit for the purpose of ascertaining compliance with the principal unit owners' or occupiers' obligations under this Act:

(ii) to maintain, repair, or renew any infrastructure for services and utilities that serve more than 1 unit and any building elements that affect more than 1 unit or the common property, or both:

(iii) to maintain, repair, or renew any common property:

(iv) to ensure the body corporate operational rules are being complied with:

(b) must do all things necessary to give effect to decisions of the body corporate:

(c) must consult with his or her mortgagee, if required to do so, before exercising a vote under section 97 or 98:

(d) must comply with all laws and legal requirements relating to the use, occupation, or enjoyment of the unit:

(e) must carry out, without delay, all work that may be ordered by a territorial authority or public body in respect of the unit to the satisfaction of that authority or body:

(f) must pay all rates, taxes, charges, body corporate levies, and other outgoings that are from time to time payable in respect of the unit:

(g) must repair and maintain the unit and keep it in good order to ensure that no damage or harm, whether physical, economic, or otherwise, is, or has the potential to be, caused to the common property, any building element, any infrastructure, or any other unit in the building:

(h) must notify the body corporate of his or her intention to carry out any additions or structural alterations before the commencement of any work:

(i) must not make any additions or structural alterations to the unit that materially affect any other unit or the common property without the written consent of the body corporate:

(j) must comply with the body corporate operational rules:

(k) must not do anything that breaches or in any way undermines any policy of insurance in the name of the body corporate.

(2) For the purpose of subsection (1), an owner of a future development unit that is in use as a place of residence or business or otherwise, in whole or in part, is to be treated as an owner of a principal unit.

(3) For the purposes of subsection (1)(a) and (i),—

(a) a subsidiary body corporate is to be treated as the unit owner of the principal unit that was subdivided to create the subsidiary unit title development; and

(b) a reference to a **unit** includes any unit in the subsidiary unit title development.

(4) Subsection (1)(b) does not affect the right of an owner to apply for minority relief under section 210 or to object to a designated resolution under sections 212 to 216.

81 Responsibilities of absent owner of unit who leases or licenses unit

(1) This section applies to owners of units who lease or license their unit, and who are absent from New Zealand for longer than 3 consecutive weeks.

(2) An owner of a unit to whom this section applies must—

(a) appoint a person in New Zealand to act as his or her agent unless the lease is in respect of a residential tenancy under the Residential Tenancies Act 1986 and an agent has already been appointed under that Act; and

(b) advise the body corporate of the agent's name, address for service, and contact details.

(3) A person appointed as an agent under subsection (2) or the Residential Tenancies Act 1986 has the power to enforce the body corporate operational rules.

(4) If an owner of a unit does not appoint an agent or the agent fails or refuses to enforce the body corporate operational rules, the body corporate may enforce those rules.

82 Requirements relating to consent by subsidiary body corporate to additions or structural alterations

(1) The subsidiary body corporate may only consent to additions or structural alterations under section 80(1)(i) to any principal unit in the subsidiary unit title development that materially affect any other unit in the parent unit title development or the common property of its parent unit title development if the subsidiary body corporate has obtained the written consent of—

(a) the body corporate for each unit title development located between it and its head unit title development; and

(b) the body corporate for its head unit title development.

(2) A parent body corporate or the head body corporate must not unreasonably withhold consent under subsection (1) and may not withhold consent unless the proposed addition or structural alteration changes the boundaries of the subsidiary unit title development or has a material impact on the use or amenities of the parent unit title development or head unit title development.

83 Rights and responsibilities of owners of principal units in subsidiary unit title developments

(1) This section applies to the owner of a principal unit in a subsidiary unit title development.

(2) The owner of the principal unit has the same rights relating to access and enjoyment of the common property of the following unit title developments as if the owner of the principal unit were the owner of a principal unit in that unit title development:

(a) the parent unit title development of the subsidiary unit title development:

(b) any other unit title development located between the subsidiary unit title development and its head unit title development:

(c) the head unit title development.

(3) The owner of the principal unit must comply with the body corporate operational rules of the following unit title developments in addition to the body corporate operational rules of the subsidiary unit title development:

(a) the parent unit title development of the subsidiary unit title development:

(b) any other unit title development located between the subsidiary unit title development and its head unit title development:

(c) the head unit title development.

Powers and duties of body corporate

84 Powers and duties of body corporate

(1) The body corporate has the powers and duties set out in—

(a) sections 38 to 42 (which relate to the fixing and reassessment of the ownership interest and the utility interest):

(b) section 81 (which permits the body corporate to act as an agent for the unit owners who lease or licence their principal unit and are absent for the purpose of enforcing the body corporate operational rules):

(c) section 85 (which requires the body corporate to keep and maintain a register of all the owners of principal units and accessory units on the plan):

(d) section 86 (which relates to the body corporate's power to sign documents on behalf of the owner):

(e) section 87 (which requires the payment of ground rental to a lessor):

(f) section 90 (which relates to the calling of general meetings):

(g) section 105(3) (which requires the body corporate to comply with the body corporate operational rules):

(h) section 108 (which is the general power of delegation):

(i) sections 115 and 117 to 120 (which relate to the establishment and maintenance of the funds):

(j) section 116 (which requires the body corporate to establish and maintain a long-term maintenance plan):

(k) section 121 (which relates to the raising of amounts for each fund and the imposition of levies on the unit owners to establish and maintain each fund):

(l) sections 130 and 131 (which relate to the spending, borrowing, and investing of money and the distribution of surplus money and property):

(m) section 132 (which relates to the keeping of accounting records and submission of its yearly financial statements to an independent auditor):

(n) section 135 (which relates to insurance of the buildings and other improvements on the land):

(o) section 136(4) (which relates to the application of insurance moneys in or towards reinstatement of the development):

(p) section 138 (which relates to repair and maintenance of the common property, assets designed for use in connection with the common property, infrastructure, and building elements and access for those purposes):

(q) section 206 (which relates to the provision of records and documents on request from a unit owner):

(r) any other provisions of this Act, any other Act, or the regulations that confer powers or duties on the body corporate and subject to any limitations to those powers and duties in this Act, any other Act, or the regulations.

(2) Except as expressly provided in this Act, the body corporate does not have any duties in respect of a future development unit that comprises part of the unit title development.

85 Register of unit owners

(1) A body corporate must keep and maintain a register of all owners of principal units and accessory units on the unit plan in accordance with the regulations.

(2) The 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 or her unit.

(3) Despite anything in this Act, where the owner of a principal unit transfers his or her unit to any other person, until the body corporate is notified in writing of the transfer,—

(a) that owner of the principal unit remains liable to the body corporate for all contributions levied by the body corporate under section 121 for his or her unit:

(b) the transferee is only entitled to exercise the voting rights for the unit at a general meeting with the consent of the other owners of principal units who are present at the meeting.

(4) Nothing in subsection (3)(a) restricts the right of the owner of the principal unit to recover any amounts from a transferee that the owner has paid in respect of contributions levied by the body corporate.

Compare: 1972 No 15 s 54

86 Power of body corporate to sign document

(1) A body corporate may serve an owner of a principal unit with a notice in the prescribed form requiring the owner to sign any document in order to carry out a resolution either passed by the body corporate or, if an objection has been made, confirmed by the court under section 215(4)(b).

(2) If the notice relates to a designated resolution, the notice may not be served until the time for making an objection under section 213 has passed.

(3) If the notice relates to a resolution for which an application for relief has been made under section 210, the notice may not be served until the time for making that application has passed.

(4) The body corporate may sign the document on behalf of the owner if the owner—

(a) fails to sign the document within 10 working days after being served with the notice; or

(b) refuses to sign the document.

(5) If the body corporate signs any document pursuant to subsection (3), the body corporate must certify in writing that it has complied with subsections (1) to (4) and give a copy of the certificate to the Registrar when lodging the document for registration.

(6) The Registrar may rely on the certificate.

87 Payment of ground rental by body corporate

(1) This section applies in relation to a unit development on leasehold land.

(2) The body corporate must pay the lessor the ground rental from any levies collected from the unit owners before making any other payments.

(3) For the purposes of subsection (2), in a layered unit title development the body corporate referred to in that subsection is the head body corporate.

Meetings and voting

88 Meetings

(1) All meetings of a body corporate are general meetings.

(2) A general meeting is either an annual general meeting or extraordinary general meeting.

Compare: 1972 No 15 Schedule 2 cl 15

89 Requirement for annual general meeting

(1) The first annual general meeting of a body corporate must be held as soon as practicable and in any event within 6 months after the date of the deposit of a unit plan or after the settlement date of the first sale of a unit, whichever is the later.

(2) At the first annual general meeting the body corporate must nominate and elect a chairperson in accordance with the regulations.

(3) Subsequent annual general meetings must be held once every calendar year and not later than 15 months after the previous annual general meeting.

Compare: 1972 No 15 Schedule 2 cl 14

90 Who may call general meetings

(1) An annual general meeting must be called by the chairperson in accordance with the regulations.

(2) An extraordinary general meeting of a body corporate—

(a) must be called by the chairperson in accordance with the regulations if a notice asking for an extraordinary general meeting to consider and decide motions proposed in the notice is—
  (i) signed by or for the unit owners of not less than 25% of the principal units; and
  (ii) given to the chairperson; or
(b) may be called at any other time by the chairperson or the body corporate committee in accordance with the regulations.

91 General meetings of parent body corporate or parent body corporate committee

(1) A parent body corporate or parent body corporate committee must give notice of any general meeting to each of its subsidiary bodies corporate in accordance with the regulations.

(2) The parent body corporate or parent body corporate committee must not vote on a resolution unless notice has been given.

(3) If the parent body corporate or parent body corporate committee fails to give notice in accordance with the regulations, the vote is void.

92 Representation of body corporate

(1) When the subsidiary body corporate receives notice of a general meeting of its parent body corporate, the chairperson of the subsidiary body corporate must call a general meeting and that meeting must be held before the parent body corporate's general meeting.

(2) When the subsidiary body corporate receives notice of a general meeting of its parent body corporate committee, the subsidiary body corporate committee, if there is one, or the chairperson of the subsidiary body corporate if there is no subsidiary body corporate committee, must call a general meeting and that meeting must be held before the parent body corporate committee's general meeting.

(3) At the meeting, the subsidiary body corporate or subsidiary body corporate committee, as the case may be, must consider

the matters on the agenda of its parent body corporate's or parent body corporate committee's general meeting.

(4) Any matter on the agenda relating to a motion to be decided by—

(a) ordinary resolution must first be decided by ordinary resolution at the meeting of the subsidiary body corporate or subsidiary body corporate committee, as the case may be:

(b) special resolution must first be decided by special resolution at the meeting of the subsidiary body corporate or subsidiary body corporate committee, as the case may be.

(5) If the ordinary resolution or special resolution—

(a) is passed, the subsidiary body corporate or subsidiary body corporate committee may direct its subsidiary body corporate representative to vote in favour of the motion at the parent body corporate or parent body corporate committee general meeting:

(b) fails, the subsidiary body corporate or subsidiary body corporate committee must direct its subsidiary body corporate representative to vote against the motion at the parent body corporate or parent body corporate committee general meeting.

(6) Despite subsection (5), a subsidiary body corporate or subsidiary body corporate committee may direct the subsidiary body corporate representative to abstain from voting on any matter on the agenda if,—

(a) in the case of a matter to be decided by ordinary resolution, it decides by ordinary resolution to abstain from voting on that matter; or

(b) in the case of a matter to be decided by special resolution, it decides by special resolution to abstain from voting on that matter.

93 Subsidiary body corporate representative

(1) A subsidiary body corporate must ensure that at all times there is a person (the **subsidiary body corporate representative**) appointed by it to represent it at meetings of its parent body corporate or its parent body corporate committee (if any) and

must give written notice of that appointment to its parent body corporate.

(2) The parent body corporate or parent body corporate committee is entitled to rely on that notice as conclusive evidence that the subsidiary body corporate representative named in the notice has authority to act on the subsidiary body corporate's behalf.

94 Duties of subsidiary body corporate representative

(1) The subsidiary body corporate representative may attend the general meetings of its parent body corporate or its parent body corporate committee, as the case may be.

(2) If the subsidiary body corporate representative attends a general meeting, it must represent its body corporate or its body corporate committee—

(a) in the way its body corporate or its body corporate committee directs; and

(b) subject to paragraph (a), in a way that is in the best interests of its body corporate or its body corporate committee.

(3) The subsidiary body corporate representative must abstain from voting on any matter to be decided by ordinary or special resolution at a general meeting if the body corporate has not given any directions to the subsidiary body corporate representative in relation to the matter.

(4) Any vote cast by a subsidiary body corporate representative is, in the absence of evidence to the contrary, to be treated as having been cast in accordance with subsection (2).

95 Quorum

(1) At a general meeting of a body corporate, the persons entitled to exercise the voting power in respect of not less than 25% of the principal units or their proxies constitute a quorum, provided that if the body corporate contains 2 or more members a quorum must be at least 2 members.

(2) Except as otherwise provided for in this Act and the regulations, no business may be transacted at a general meeting of the body corporate unless a quorum is present at the time.

96 Voting: eligibility

(1) A person eligible to vote at a general meeting of the body corporate (**eligible voter**) is a person who is of or over the age of 16 years and—

- (a) whose name is entered on the register of owners of principal units as—
  - (i) the owner of a principal unit; or
  - (ii) the representative of that owner; or
- (b) who is the nominee of a company the name of which is entered on the register of owners of principal units as the representative of the owner; or
- (c) who is a subsidiary body corporate representative.

(2) For subsection (1)(a)(ii), a person is a **representative of the owner of a principal unit** if—

- (a) the person is a guardian, trustee, receiver, or other representative of the owner, and is authorised to act on the owner's behalf; or
- (b) the person is authorised by law to administer, manage, or control the property of the owner.

(3) An eligible voter may not vote unless all body corporate levies and other amounts that are from time to time payable to the body corporate in respect of his or her unit have been paid.

(4) In the case of an eligible voter who is a subsidiary body corporate representative, the eligible voter may not vote unless all body corporate levies and other amounts that are from time to time payable to the body corporate by the subsidiary body corporate have been paid.

(5) An eligible voter whose interest in his or her unit is subject to a registered mortgage must, if required by that mortgage, obtain the consent of the mortgagee before exercising a vote.

(6) The payment of any body corporate levies and other amounts that are from time to time payable to the body corporate by the owner of a principal unit and that are disputed by the owner does not affect the right of that owner to dispute the payment if the sole purpose of making the payment was to exercise that owner's entitlement to vote.

(7) Nothing in this section prevents a mortgagee of a principal unit from—

(a) directing the owner to vote in a particular manner; or

(b) exercising a vote on behalf of the owner in accordance with the Property Law Act 2007 or in accordance with any provision to that effect in the mortgage.

(8) A mortgagee must give written notice to the body corporate if it intends to exercise a vote on behalf of the owner under subsection (7)(b).

Compare: 1972 No 15 s 41

97 Counting of votes for ordinary resolution subject to request for poll

(1) This section applies if a motion is to be decided by ordinary resolution, subject to a request for a poll, at a general meeting of a body corporate.

(2) One vote only may be exercised for each principal unit.

(3) A subsidiary body corporate representative has 1 vote for the principal unit that was subdivided to create the subsidiary unit title development.

(4) For a body corporate meeting to pass an ordinary resolution, a majority in number of the eligible voters who vote on the resolution must vote in favour of the resolution.

(5) An eligible voter whose interest in his or her unit is subject to a registered mortgage must, if required by that mortgage, obtain the consent of the mortgagee before exercising a vote.

(6) An ordinary resolution passed under this section is subject to a request for a poll under section 99 and the motion being confirmed by that poll.

98 Counting of votes for special resolution subject to request for poll

(1) This section applies if a motion is to be decided by special resolution, subject to a request for a poll, at a general meeting of a body corporate.

(2) One vote only may be exercised for each principal unit.

(3) A subsidiary body corporate representative has 1 vote for the principal unit that was subdivided to create the subsidiary unit title development.

(4) For a special resolution to pass, 75% of the eligible voters who vote on the resolution must vote in favour of the resolution.

(5) An eligible voter whose interest in his or her unit is subject to a registered mortgage must, if required by that mortgage, obtain the consent of the mortgagee before exercising a vote.

(6) A special resolution passed under this section is subject to a request for a poll under section 99 and the motion being confirmed by that poll.

99 Request for poll

(1) A poll may be requested by any eligible voter voting on a motion passed by ordinary resolution under section 97 or by special resolution under section 98.

(2) The eligible voter must request the poll in person at the meeting.

100 Counting of votes if poll requested

(1) This section applies if—

(a) a motion is passed by ordinary resolution or special resolution; and

(b) a poll is properly requested.

(2) One vote only may be exercised for each principal unit and only those who voted on the motion under section 97 or 98 are entitled to vote.

(3) For the motion to pass by ordinary resolution where a poll is requested, 50% of the ownership interest represented by those voting must vote in favour of the motion.

(4) For the motion to pass by special resolution where a poll is requested, 75% of the ownership interest represented by those voting must vote in favour of the motion.

(5) The result of any poll is the resolution of the general meeting.

101 How matters at general meeting of body corporate decided

(1) Any matters at a general meeting of a body corporate relating to an exercise of a duty or power that may not be delegated under section 108(2), or that have not been delegated to the

body corporate committee, must be decided by special resolution.

(2) Except as otherwise provided in this Act, all other matters to be decided by the body corporate at a general meeting must be decided by ordinary resolution.

(3) Any matter that is not on the agenda for a general meeting may be discussed at the meeting but, unless all the eligible voters are present at the meeting, no resolution may be voted on and made in respect of that matter except to include that matter on the agenda for a subsequent general meeting.

(4) Every resolution must be recorded in writing.

102 Voting: proxies

(1) An eligible voter may exercise the right to vote either by being present in person or by proxy.

(2) 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.

(3) A proxy must be appointed by notice in writing signed by the eligible voter.

(4) If there are 2 or more eligible voters who own 1 principal unit and they are jointly entitled to exercise 1 vote and wish to do so by proxy, that proxy must be jointly appointed by them and may be 1 of them.

Compare: 1972 No 15 Schedule 2 cl 26

103 Voting: postal

(1) An eligible voter or his or her proxy may exercise the right to vote at a body corporate meeting by casting a postal vote.

(2) Every postal vote must be in the prescribed form.

(3) A postal vote must be sent to the chairperson or to the person authorised by the chairperson to receive and count postal votes.

104 Passing of resolution without general meeting

(1) A resolution may be passed without a general meeting in accordance with this section.

(2) Notice of the resolution must be given to eligible voters in accordance with the regulations.

(3) A resolution in writing signed by not less than 50% of eligible voters in respect of an ordinary resolution or 75% of eligible voters in respect of a special resolution is as valid as if it had been passed at a meeting of those voters.

Body corporate operational rules

105 Body corporate operational rules

(1) The body corporate operational rules are the rules prescribed by regulations under section 217(i) (subject to any alterations that may be deposited with the unit plan) and apply to every body corporate.

(2) The body corporate may amend, revoke, or make additions to the body corporate operational rules at any time after the date the unit plan is deposited.

(3) All the rules referred to in this section are binding on—

(a) the body corporate; and

(b) the owners of principal units; and

(c) any person who occupies a principal unit; and

(d) any mortgagee who is in possession of a principal unit.

(4) For the purpose of subsection (3), **principal unit** includes a future development unit.

106 Amendments, revocations, and additions to body corporate operational rules

(1) Any amendment or addition to the body corporate operational rules must relate to—

(a) the control, management, administration, use, or enjoyment of the principal units, future development units, accessory units, or common property; or

(b) the regulation of the body corporate.

(2) No powers or duties may be conferred or imposed on the body corporate that are not incidental to the powers and duties conferred or imposed on the body corporate under this Act.

(3) Any amendment, revocation, or addition—

(a) must be made by ordinary resolution at a body corporate general meeting; and

(b) does not have effect until the body corporate has notified the Registrar in the prescribed form.

(4) Any amendment or addition that is inconsistent with any provision of this Act or any other enactment or rule of law is invalid.

107 Conflict between body corporate operational rules

(1) Subject to subsection (2), in the event of a conflict between—

(a) a subsidiary body corporate's operational rules and its parent body corporate's operational rules, the parent body corporate's operational rules prevail:

(b) a subsidiary body corporate's operational rules and its head body corporate's operational rules, the head body corporate's operational rules prevail.

(2) If a subsidiary body corporate has deposited alterations to the rules in accordance with section 105 that do not conflict with the operational rules of any of the bodies corporate listed in subsection (3), then those bodies corporate may not make or amend any of their rules that conflict with the subsidiary body corporate's operational rules unless the subsidiary body corporate agrees by ordinary resolution to the making or amendment of the rule.

(3) The bodies corporate are—

(a) the subsidiary body corporate's parent body corporate:

(b) any body corporate located between the subsidiary body corporate's parent body corporate and the head body corporate:

(c) the head body corporate.

Delegation

108 Delegation of duties and powers

(1) Except as provided in subsection (2), a body corporate may delegate any of its duties or powers, either generally or specifically, to the body corporate committee by special resolution and written notice.

(2) The body corporate must not delegate any of the powers or duties set out in—

(a) subsection (1) (which is the general power of delegation):
(b) section 41 (which provides for the reassessment of ownership interests and utility interests):
(c) section 105(3) (which requires the body corporate to comply with the body corporate operational rules):
(d) section 136(4) (which relates to the application of insurance monies in or towards reinstatement of the development).

109 Delegated duties and powers of body corporate committee

(1) A body corporate committee to which any duties or powers are delegated under section 108(1) may, unless the delegation provides otherwise, perform the duties and exercise the powers in the same manner, subject to the same restrictions, and with the same effect as if it were the body corporate.

(2) The body corporate committee must not delegate any of its delegated duties or powers.

(3) The body corporate committee, when purporting to perform a duty or exercise a power under a delegation,—
(a) is, in the absence of proof to the contrary, presumed to do so in accordance with the terms of that delegation; and
(b) must produce evidence of the body corporate committee's authority to do so, if reasonably requested.

110 Effect of delegation on body corporate

No delegation affects or prevents the performance of any duty or the exercise of any power by a body corporate, or affects the responsibility of the body corporate for the actions of the body corporate committee acting under the delegation.

111 Revocation of delegation

A delegation under section 108(1) may be revoked by special resolution and written notice to the body corporate committee.

Body corporate committees

112 Establishment of body corporate committee

(1) A body corporate of a unit title development of 9 or fewer principal units may form a body corporate committee.

(2) A body corporate of a unit title development of 10 or more principal units must form a body corporate committee unless the body corporate, by special resolution, decides not to form a body corporate committee.

113 Decision-making of body corporate committee

Any matters at a meeting of a body corporate committee must be decided by a simple majority of votes.

114 Body corporate committee to report to body corporate

A body corporate committee must report, as prescribed in the regulations, to the body corporate on the exercise of the duties or powers delegated to it by the body corporate under section 108(1).

Subpart 13—Financial and property management

Long-term maintenance plans, funds, and ancillary matters

115 Operating account

(1) A body corporate must establish and maintain an operating account for the purpose of meeting the expenses described in subsection (2).

(2) The expenses are—

(a) those relating to the management and governance of a unit title development:

(b) those relating to provision of services and amenities for the benefit of the unit title development:

(c) costs associated with statutory or regulatory compliance:

(d) any ground rental or licence fees relating to the base land:

(e) those incurred at least once a year relating to the maintenance of the unit title development.

(3) The body corporate must establish a current account at a bank and may, by special resolution, nominate a person or persons who may operate the account and specify the manner in which it may be operated.

116 Long-term maintenance plan

(1) A body corporate must establish and regularly maintain a long-term maintenance plan.

(2) A long-term maintenance plan must cover a period of at least 10 years from the date of the plan or the last review of the plan.

(3) The purpose of a long-term maintenance plan is to—

(a) identify future maintenance requirements and estimate the costs involved; and

(b) support the establishment and management of the funds; and

(c) provide a basis for the levying of owners of principal units; and

(d) provide ongoing guidance to the body corporate to assist it in making its annual maintenance decisions.

117 Long-term maintenance fund

(1) A body corporate must establish and maintain a long-term maintenance fund unless the body corporate, by special resolution, decides not to establish a long-term maintenance fund.

(2) The fund may only be applied towards spending relating to the long-term maintenance plan.

(3) The body corporate must, by special resolution, approve any amount to be spent on any 1 maintenance item if the amount exceeds the amount specified for that item in the long-term maintenance plan by more than 10%.

118 Optional contingency fund

A body corporate may establish and maintain 1 or more contingency funds to provide for unbudgeted expenditure.

119 Optional capital improvement fund

A body corporate may establish and maintain a capital improvement fund to provide for spending that adds to or upgrades the unit title development if that spending is not provided for in the long-term maintenance plan.

120 Separate bank accounts for each fund

The body corporate must establish, in accordance with any regulations, either—

(a) separate bank accounts for each of the funds; or

(b) a single bank account in which the respective funds are kept entirely separate and are able to be identified.

Contributions

121 Contributions to be levied on unit owners

(1) A body corporate may determine from time to time the amounts to be raised for each fund and impose levies on the owners of principal units to establish and maintain each fund.

(2) The levies must be calculated as follows:

(a) in the case of the operating account, long-term maintenance fund, and any contingency fund, in proportion to each unit owner's utility interest; and

(b) in the case of any capital improvement fund, in proportion to each unit owner's ownership interest.

(3) The owner of a future development unit is liable to pay contributions levied by the body corporate under this section from the date that the future development unit is first in use as a place of residence or business or otherwise and from that date that future development unit is to be treated as a principal unit for the purposes of this section.

(4) Any levies imposed by a subsidiary body corporate must be sufficient to pay any levies raised under subsection (1) by the head body corporate, its parent body corporate, or any other parent body corporate located between the subsidiary body corporate and its head body corporate.

122 Notice to body corporate of occupation of future development unit

(1) The owner of a future development unit must notify the body corporate when all or any part of it is in use as a place of residence or business or otherwise.

(2) The notice must—

(a) be in writing; and

(b) contain details of the building or part of the building that is in use as a place of residence or business or otherwise; and

(c) state the date of occupation.

(3) The notice must be given within 10 working days of the date of occupation.

(4) As soon as practicable after receiving the notice, the body corporate must send the owner a notice—

(a) advising the owner of the amount of any levies imposed under section 121; and

(b) setting out how those levies were calculated.

(5) Failure of the owner to give notice to the body corporate under subsection (1) does not prevent the body corporate from charging levies from the date of occupation.

123 Body corporate may enter into agreement with owner of future development unit for expenditure of money for mutual benefit

The body corporate may enter into an agreement with the owner of a future development unit for the undertaking of any work or the expenditure of any money for the mutual benefit of the body corporate and that owner.

Compare: 1979 No 37 s 9(3)

124 Recovery of levy

(1) A body corporate must fix the date on or before which payments of levies are due.

(2) The amount of any unpaid levy, together with any reasonable costs incurred in collecting the levy, is recoverable as a debt due to the body corporate by the person who was the unit owner at the time the levy became payable or by the person

who is the unit owner at the time the proceedings are instituted.

Compare: 1972 No 15 s 32

125 Recovery of metered charges

(1) If any amenity or service is supplied to the unit title development and the body corporate installs and maintains a meter recording the use of that amenity or service by any principal unit, the body corporate may charge the owner of that unit the cost of the usage as indicated on the meter.

(2) Any charge is recoverable from the owner of the principal unit as if it were a levy.

(3) The cost of the usage charged by the body corporate to the principal unit owner must be the same as that charged by the provider of the amenity or service.

126 Recovery of money expended for repairs and other work

(1) This section applies where the body corporate does any repair, work, or act that it is required or authorised to do, by or under this Act, or by or under any other Act, but the repair, work, or act—

- (a) is substantially for the benefit of 1 unit only; or
- (b) is substantially for the benefit of some of the units only; or
- (c) benefits 1 or more of the units substantially more than it benefits the others or other of them.

(2) Any expense incurred by the body corporate in doing the repair, work, or act is recoverable by it as a debt in any court of competent jurisdiction (less any amount already paid) in accordance with the following:

- (a) so far as the repair, work, or act benefits any unit by a distinct and ascertainable amount, the owner at the time when the expense was incurred and the owner at the time when the action is instituted are jointly and severally liable for the debt; or
- (b) so far as the amount of the debt is not met in accordance with the provisions of paragraph (a), it must be apportioned among the units that derive a substantial benefit from the repair, work, or act rateably according to the

utility interest of those units, and in the case of each of those units, the owner at the time when the expense was incurred and the owner at the time when the action is instituted are jointly and severally liable for the amount apportioned to that unit.

(3) Despite subsection (2)(b), if the court considers that it would be inequitable to apportion the amount of the debt in proportion to the utility interest of the unit owners referred to in that paragraph, it may apportion that amount in relation to those units in the shares as it thinks fit, having regard to the relative benefits to those units.

Compare: 1972 No 15 s 33

127 Recovery of money expended where person at fault

(1) This section applies if the body corporate does any repair, work, or act that it is required or authorised to do, by or under this Act, or by or under any other Act, and the repair, work, or act was rendered necessary by reason of any wilful or negligent act or omission on the part of, or any breach of the Act, the body corporate rules, or any regulations by, any unit owner or his or her tenant, lessee, licensee, or invitee.

(2) Any expense incurred by the body corporate in doing the repair, work, or act, together with any reasonable costs incurred in collecting the expense, is recoverable 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 became payable or by the person who is the unit owner at the time proceedings are instituted.

Compare: 1972 No 15 s 34

128 Interest on money owing to body corporate

(1) If a unit owner owes money to the body corporate under section 121, 124, 125, 126, or 127, interest accrues in respect of so much of the debt as remains unpaid.

(2) The amount of interest charged by a body corporate in relation to any unpaid debt must not exceed 10% per annum.

Compare: 1972 No 15 s 34A

129 Subsidiary body corporate owner of principal unit for purpose of contributions

(1) For the purpose of sections 121 to 128, a subsidiary body corporate is to be treated as the unit owner of the principal unit that was subdivided to create the subsidiary unit title development.

(2) In section 126 a reference to a **unit** includes a subsidiary unit title development.

(3) In section 127(1) the reference to a **unit owner** includes, in relation to a principal unit that is subdivided to create a subsidiary unit title development, a unit owner in the subsidiary unit title development.

Spending, borrowing, investing, and distributing money or property

130 Spending, borrowing, and investing money

(1) A body corporate may—

(a) spend or borrow money; and

(b) invest any money in any investment authorised by law for the investment of trust funds.

(2) The body corporate may not grant a mortgage or a charge or any encumbrance over the common property.

Compare: 1972 No 15 Schedule 2 cl 3(a), (b)

131 Distribution of surplus money or property

The body corporate may distribute money or personal property in its possession and surplus to its requirements among the unit owners in the same proportions in which the money was raised or the money which was used to pay for the property was raised.

Compare: 1972 No 15 s 15(3)

Auditing and monitoring

132 Financial statements

(1) A body corporate must keep accounting records that—

(a) correctly record and explain the transactions of the body corporate; and

(b) will at any time enable the financial position of the body corporate to be determined with reasonable accuracy; and

(c) will enable the financial statements of the body corporate to be readily and properly audited or reviewed.

(2) Within 2 months after the end of each financial year, the body corporate must—

(a) submit its financial statements to an independent auditor for auditing; or

(b) submit its financial statements to an accountant for review; or

(c) engage an accountant to undertake specific verification procedures as determined by the body corporate by special resolution at a general meeting.

(3) The financial statements must be in the prescribed form and contain the matters prescribed by regulations.

(4) The body corporate must pay any costs incurred under subsection (2).

(5) A copy of the financial statements for the most recent financial year must accompany the notice of the annual general meeting.

(6) The body corporate must comply with any reasonable request by a person appointed to undertake any of the functions described in subsection (2), that the body corporate answer questions or provide information within 20 working days after receiving the request.

(7) Any person appointed to undertake any of the functions described in subsection (2) must be a person who is qualified to act as an auditor for a company in accordance with section 199 of the Companies Act 1993.

(8) The body corporate may, at the annual general meeting, decide by special resolution that subsection (2) does not apply for a particular year.

133 Special powers of chief executive for monitoring and reporting on long-term financial and maintenance planning regime

(1) The purpose of this section is to enable the chief executive to monitor and report on the financial and maintenance planning regimes of bodies corporate.

(2) For the purpose of this section, a body corporate, on receiving written notice from the chief executive, must permit the chief executive access to—

(a) the unit title development; and

(b) all relevant information that is in the possession of the body corporate.

(3) Subsection (2) does not authorise the chief executive, or any person acting on behalf of the chief executive, to enter any principal unit without the unit occupier's permission.

(4) In this section, **relevant information** means any documents relating to the body corporate's long-term financial and maintenance planning regime.

(5) The chief executive must give reasonable notice to the body corporate of a request under this section.

Insurance

134 Insurance

(1) In this section and sections 135 to 137, unless the context otherwise requires,—

insurer means the provider of a principal insurance policy

mortgagee means a mortgagee who, by virtue of subsection (3), has an insurable interest in the property covered by a principal insurance policy

principal insurance policy, in relation to the units or common property shown on a unit plan, means the insurance policy effected by the relevant body corporate in accordance with section 135.

(2) This section and sections 135 to 137 apply despite any enactment, rule of law, or agreement to the contrary.

(3) The body corporate, every unit owner, and every person entitled as mortgagee, by virtue of a registrable mortgage of

any principal unit, have an insurable interest in the property covered by the principal insurance policy.

(4) For the purposes of subsection (3), in a layered unit title development—

(a) the body corporate referred to is the head body corporate; and

(b) a unit owner is a unit owner in any unit title development that is part of the layered title development.

(5) The body corporate must, by notice in writing, inform the insurer and keep the insurer informed of the name and address of every unit owner and mortgagee.

(6) Nothing in subsection (5) prevents a unit owner or mortgagee from giving notice to an insurer.

Compare: 1972 No 15 s 38(1)–(4)

135 Body corporate to insure all buildings, etc

(1) The body corporate must insure and keep insured all buildings and other improvements on the base land to their full insurable value.

(2) The body corporate must take out any other insurance it is required by law to take out and may take out additional insurance if it considers it practical to do so.

(3) The body corporate must, before the commencement of any work by the body corporate or the unit owner, notify its insurer of any additions or structural alterations to any units.

(4) For the purposes of this section, in a layered unit title development the body corporate referred to in this section is the head body corporate.

Compare: 1972 No 15 s 15(1)(b), (c)

136 Insurance: principal insurance policy

(1) A principal insurance policy remains in full force and effect until—

(a) the insurer serves on the body corporate or its insurance broker and any mortgagee of which the insurer has notice, a notice to the effect that the policy will lapse or be cancelled on the date specified in the notice, that date

not being earlier than 30 days after the date on which the notice is served; and

(b) the date specified in the notice.

(2) Despite subsection (1)(a), it is sufficient if the insurer sends the notice to the body corporate or mortgagee to the last address given to the insurer by the body corporate under section 134(5).

(3) If the insurer considers that a unit owner or mortgagee is in default under the principal insurance policy, the notice must specify the nature of the default and state that the lapsing or cancellation of the policy is conditional upon the default not being remedied before the date specified in the notice.

(4) Money paid by the insurer under the principal insurance policy must be applied in or towards reinstatement of the unit title development unless the body corporate decides otherwise by special resolution at a general meeting.

(5) Sections 212 to 216 apply to a decision made under subsection (4).

(6) If money is applied in or towards reinstatement, then a mortgagee is not entitled to demand that any part of the money be applied in or towards repayment of the mortgage debt.

(7) Nothing in this section limits or affects the rights of any person in or to the proceeds of the principal insurance policy under any of sections 74 and 177 to 189.

Compare: 1972 No 15 s 38(5)–(9)

137 Further provisions relating to insurance

(1) Nothing in section 84, 134, or 136 limits the right—

(a) of a unit owner to take out an insurance policy against destruction of or damage to the unit owner's unit:

(b) of a mortgagee of a unit to require the unit owner, as a condition of the loan, to effect a policy of insurance (a **mortgage redemption policy**) to indemnify the unit owner against liability to repay the whole or any part of the sum secured to the mortgagee in the event of the destruction or damage of the unit.

(2) Despite section 135(1),—

(a) if the principal and accessory units in the unit plan are stand-alone units, a body corporate may, by special resolution at a general meeting, require each unit owner to insure all the improvements within the boundaries of his or her unit (the body corporate remaining responsible for insuring all improvements within the common property boundaries):

(b) indemnity cover is permitted if full replacement cover is not available in the market.

(3) A payment made under a mortgage redemption policy by the insurer must be made to the mortgagees whose interests are noted on the policy in the order of the priority assigned to each mortgagee.

(4) No mortgage redemption policy is liable to be brought into contribution with any other insurance policy except another mortgage redemption policy taken out in respect of the same debt.

(5) This section applies despite any rule of law to the contrary.

Compare: 1972 No 15 s 39

Repair and maintenance

138 Body corporate duties of repair and maintenance

(1) The body corporate must manage, maintain, and keep in a good state of repair the common property and any assets owned by the body corporate or designed for use in connection with the common property.

(2) The body corporate must maintain, repair, or renew all building elements and all infrastructure that relate to or serve more than 1 unit.

(3) The body corporate may access at all reasonable hours any unit to enable it to carry out repairs and maintenance under this section.

(4) Any costs incurred by the body corporate that relate 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.

(5) For the purposes of this section,—

(a) a subsidiary body corporate is to be treated as the unit owner of the principal unit that was subdivided to create the subsidiary unit title development; and

(b) a reference in subsection (4) to a **principal unit** includes the common property and units of that subsidiary unit title development.

Review of service contracts

139 Original owner's obligation in relation to service contracts

(1) This section applies if a body corporate enters into a service contract for the unit title development before the date that the control period ends.

(2) The original owner and any associate of the original owner who is a member of the body corporate during the control period must exercise reasonable skill, care, and diligence and act in the best interests of the body corporate, as constituted after the date that the control period ends, in ensuring that—

(a) the terms of the service contract achieve a fair and reasonable balance between the interests of the service contractor and the body corporate as constituted after the date that the control period ends; and

(b) the terms are appropriate for the unit title development; and

(c) the powers able to be exercised, and functions required to be performed, by the service contractor under the service contract—

(i) are appropriate for the unit title development; and

(ii) do not adversely affect the body corporate's ability to carry out its functions.

140 Compensation for, or termination of, service contracts

(1) This section applies to a service contract—

(a) to which the body corporate of a unit title development is a party; and

(b) that was entered into before the date that the control period ended in relation to the unit title development concerned.

(2) The appropriate decision-maker may, on the application of the body corporate, require a person, or, as the case may be, persons, described in subsection (3) to pay compensation to the body corporate if it appears to the appropriate decision-maker that the body corporate has suffered loss or damage because that person has, or, as the case may be, those persons have, failed to comply with section 139.

(3) The persons referred to in subsection (2) are—

(a) the original owner:

(b) an associate of the original owner who was a member of the body corporate during the control period.

(4) An application under subsection (2) must be made within 3 years after that date that the control period ended.

(5) The appropriate decision-maker may, on an application made by the body corporate, make an order terminating the service contract if it appears to the appropriate decision-maker that the contract is harsh or unconscionable.

Appointment of administrator

141 Appointment of administrator

(1) The body corporate, a creditor of the body corporate, or any person having a registered interest in a unit, may apply to the High Court for the appointment of an administrator.

(2) In the case of a layered development,—

(a) a head body corporate or parent body corporate may apply to the High Court for the appointment of an administrator of any 1 of its subsidiaries:

(b) a subsidiary body corporate may apply to the High Court for the appointment of an administrator of its parent body corporate.

(3) The High Court may, in its discretion on cause shown, appoint an administrator for an indefinite period or for a fixed period on such terms and conditions as to remuneration or otherwise as it thinks fit.

(4) The remuneration and expenses of the administrator are to be met out of the operating account.

(5) The administrator, to the exclusion of the body corporate and the body corporate committee, has and may exercise the powers of the body corporate and the committee, and is subject to the duties of the body corporate and the committee, or such of those powers and duties as the High Court orders.

(6) The administrator may, in writing, delegate any of the powers vested in the administrator and may revoke any delegation at any time.

(7) The High Court may, in its discretion on the application of the administrator or any other person referred to in subsection (1), remove or replace the administrator.

(8) On any application made under this section the High Court may make any order for the payment of costs as it thinks fit.

(9) As soon as an administrator is appointed, the administrator must lodge with the Registrar a sealed copy of the order of the High Court making the appointment.

Compare: 1972 No 15 s 40

Liability

142 General liability in tort

(1) Despite any enactment or rule of law, this section and section 143 apply to the following proceedings if the proceedings are required to be taken against an owner of a principal unit or occupier of land or premises:

(a) proceedings under the Occupiers' Liability Act 1962; and

(b) proceedings in tort; and

(c) proceedings in respect of a breach of statutory duty.

(2) For the purposes of any proceedings to which this section and section 143 apply, the common property and each of the units are separate premises.

(3) In proceedings in respect of the common property, a body corporate may, in the circumstances described in subsection (4), join the following in the proceedings:

(a) an owner of a principal unit or former owner of a principal unit as a co-defendant; or

(b) its head body corporate, its parent body corporate, or its subsidiary bodies corporate.

(4) The circumstances are that the cause of action arose through the negligence or unauthorised act or omission of the owner or former owner or head body corporate, parent body corporate, or subsidiary body corporate, as the case may be.

(5) Any judgment awarded to the plaintiff may be entered against the body corporate, its head body corporate, its parent body corporate, its subsidiary body corporate, or the owner jointly and severally.

(6) The amount of any judgment, including costs, given jointly and severally under subsection (5), is recoverable as a debt by the body corporate from the unit owner against whom judgment is given in an action in any court of competent jurisdiction.

(7) For the purpose of this section, **principal unit** includes a future development unit.

Compare: 1972 No 15 s 14(1), (2), (3)

143 Body corporate as defendant in tort

(1) This section applies if a body corporate is the defendant in any proceedings referred to in section 142(1).

(2) The owners of principal units at the time judgment is entered are to be treated as having guaranteed to the plaintiff the payment by the body corporate of the full amount awarded under the judgment.

(3) However, any liability of an owner under subsection (2) is limited to an amount equal to that owner's ownership interest payable by the body corporate, in accordance with the judgment, less—

(a) the amount that the body corporate can recover under any insurance policy; and

(b) any amount paid by a unit owner against whom judgment is given under section 142(5) or is recovered from that unit owner under section 142(6) in proportion to that owner's ownership interest.

(4) Any amount recovered from a unit owner under section 142(6), after satisfaction of the judgment by the body cor-

porate, must (subject to any right of set-off) be refunded to that owner who has made a payment under subsection (3), in proportion to the amount of his or her payments.

(5) A unit owner who pays to the plaintiff any amount that the owner is liable to pay under this section is entitled to recover that amount as a debt from the body corporate but the body corporate may claim any amount due to it from that owner by way of set-off.

(6) For the purposes of this section, **principal unit** includes a future unit development unit.

Compare: 1972 No 15 s 14(4), (5)

Subpart 14—Disclosure of information

Disclosure of information by seller of unit

144 Interpretation

In this subpart,—

agreement for sale and purchase means a binding agreement for sale and purchase of a unit, whether or not the agreement is conditional or unconditional; and **agreement** has a corresponding meaning

buyer includes a prospective buyer

seller means the seller of a unit

settlement date means—

(a) the date on which the buyer pays to the seller the purchase price, or the balance of the purchase price, in exchange for the documents of title; or

(b) any other settlement date that may be specified in the agreement for sale and purchase.

145 Prohibition on contracting out

A provision in any agreement to exclude or limit the obligation to disclose under this subpart is of no effect.

146 Pre-contract disclosure to prospective buyer

(1) Before a buyer enters into an agreement for sale and purchase of a unit the seller must provide a disclosure statement (a **pre-contract disclosure statement**) to the buyer.

(2) The pre-contract disclosure statement must be in the prescribed form and contain the prescribed information.

147 Pre-settlement disclosure to buyer

(1) This section applies if a buyer and a seller have entered into an agreement for sale and purchase.

(2) No later than the fifth working day before the settlement date, the seller must provide a disclosure statement (a **pre-settlement disclosure statement**) to the buyer.

(3) The pre-settlement disclosure statement—

(a) must contain the prescribed information; and

(b) must contain or be accompanied by a certificate given by the body corporate certifying that the information in the statement is correct.

(4) A body corporate may withhold a certificate referred to in subsection (3)(b) if any debt that is due to the body corporate by the unit owner is unpaid.

148 Buyer may request additional disclosure

(1) A buyer may request an **additional disclosure statement**.

(2) The request may be made at any time before whichever of the following dates occurs first:

(a) the close of the fifth working day after the date that the agreement was entered into; or

(b) the close of the tenth working day before the settlement date.

(3) If a buyer makes a request in accordance with subsections (1) and (2), the seller must provide the additional disclosure statement to the buyer no later than the fifth working day after the date on which the request was made.

(4) The additional disclosure statement must contain the prescribed information.

(5) The buyer must pay to the seller all reasonable costs incurred by the seller in providing the additional disclosure statement, but the non-payment of these costs does not justify the seller withholding disclosure.

149 Buyer may delay settlement if disclosure late or not made

(1) This section applies if—

(a) the seller provides a pre-settlement disclosure statement or an additional disclosure statement on a date that is later than the fifth working day before the settlement date; or

(b) at the close of business on the last working day before the settlement date the seller has not provided a pre-settlement disclosure statement or, if one had been requested, an additional disclosure statement.

(2) The buyer may, by notice in writing, postpone the settlement date—

(a) in the case referred to in subsection (1)(a), until the fifth working day after the date on which the latest disclosure statement to be given was provided; or

(b) in the case referred to in subsection (1)(b), until the fifth working day after the date on which the disclosure statement is provided or, if more than 1 is required to be provided, the latest to be provided.

150 Seller must rectify inaccuracies in disclosure statement

(1) This section applies if, before the settlement date, the seller becomes aware that information contained in a disclosure statement given under any of sections 146, 147, and 148 or this section—

(a) was inaccurate when the disclosure statement was given; or

(b) has, since it was given, become inaccurate.

(2) The seller must, within 5 working days after the date on which this section begins to apply, or any longer period agreed between the buyer and the seller, give the buyer a statement correcting the inaccuracy.

(3) If a statement is given under subsection (2) within the period of 5 working days before the settlement date, the buyer may, by notice in writing, postpone the settlement date until the fifth working day after the date on which the statement under subsection (2) was provided.

151 Cancellation by buyer

(1) This section applies if—

(a) the seller does not provide the disclosure statements referred to in section 147 or 148 within the times prescribed in those sections; and

(b) the buyer does not postpone the settlement date under section 149(2).

(2) The buyer may, by giving 10 days' notice in writing to the seller, cancel the agreement for sale and purchase.

152 Further requirements concerning disclosure statements

A disclosure statement given under any of sections 146, 147, 148, and 150 must be dated and signed by the seller or a person authorised by the seller.

153 Buyer may rely on information

The buyer is entitled to rely on the information contained in a disclosure statement given under any of sections 146, 147, 148, and 150 as conclusive evidence of the accuracy of the matters described in that information.

Disclosure by original owner of unit title development to body corporate

154 Original owner to give notice when time for turn-over disclosure reached

Immediately after the date that the control period ends, the original owner must give notice to the body corporate that the control period has ended.

155 Body corporate must convene meeting when time for turn-over disclosure reached

The body corporate must hold a general meeting within 3 months from the date on which the original owner gives notice under section 154.

156 Turn-over disclosure by original owner to body corporate

(1) At the meeting required by section 155, the original owner must provide to the body corporate—

(a) a disclosure statement (a **turn-over disclosure statement**); and

(b) a statement setting out any interest that the original owner or an associate of the original owner has in any contract or arrangement made by the body corporate at any time up to and including the date of the turn-over disclosure statement.

(2) The turn-over disclosure statement must be in the prescribed form and contain the prescribed information.

157 Original owner must rectify inaccuracies in information provided under section 156

(1) This section applies if, at any time after the turn-over disclosure statement is provided, the original owner becomes aware that information provided under section 156 was inaccurate as at the date that the control period ended.

(2) The original owner must, within 5 working days after the date on which this section begins to apply, or any longer period agreed between the original owner and the body corporate, give the body corporate a statement correcting the inaccuracy.

(3) The body corporate is entitled to rely on the information contained in that statement as conclusive evidence of the accuracy of the matters described in that statement.

Part 3
Special provisions relating to leasehold land

158 Application of this Part

(1) If a deposited unit plan relates to an estate as lessee or licensee in any land, the provisions of this Part apply despite anything contained or implied in the lease or licence or any enactment or rule of law to the contrary.

(2) The provisions of this Act other than this Part in so far as they relate to an estate as lessee or licensee in any base land must be read subject to this Part.

(3) In this Part, **lease** includes a licence, and **lessor** and **lessee** have corresponding meanings.

Compare: 1972 No 15 s 21

159 Preservation of lessor's interest

(1) Neither the deposit of a unit plan to which this Part applies nor any dealing with any unit shown on any such unit plan to which this Part applies may be treated as a severance of the lessor's reversionary estate in the base land.

(2) Subject to this Part, the lessor may deal with the reversionary estate in the base land in all respects as if the unit plan had not been deposited.

Compare: 1972 No 15 s 22

160 Powers of body corporate in respect of lease

(1) Subject to this Part, on the deposit of a unit plan to which this Part applies and until the cancellation of the plan, the body corporate—

(a) is entitled to sue and be sued as if it were the lessee under the lease and had all rights, powers, and privileges belonging or appertaining to the lessee under the lease; and

(b) becomes subject to and liable for the same requirements and liabilities as those to which it would have been subject and liable if named in the lease originally as lessee of the base land.

(2) Despite subsection (1), the body corporate is not entitled to call for the creation of a computer register in respect of the leasehold estate.

(3) No cause of action in respect of any breach by the lessor of any covenant, agreement, or stipulation expressed or implied in the lease and on the part of the lessor to be performed or observed lies at the suit of an owner of any unit or the registered owner of any estate or interest in any unit.

(4) Subject to section 164, no cause of action in respect of any breach by the owner of any unit or the registered owner of any estate or interest in any unit of any covenant, agreement, or stipulation expressed or implied in the lease and on the lessee's part to be performed or observed lies at the suit of the lessor.

Compare: 1972 No 15 s 23

161 Dealing with stratum estate in leasehold

Except as provided in sections 30(5)(b) and 68(3), the lessor's consent is not required to any dealing with a stratum estate in leasehold.

Compare: 1972 No 15 s 24

162 Restrictions on surrenders and releases

(1) After the deposit of a unit plan to which this Part applies, and until the cancellation of the plan,—

- (a) no owner of a unit may surrender or agree to surrender the stratum estate in leasehold in that unit to the lessor, whether for valuable consideration or otherwise:
- (b) the lessor must not release or agree to release any unit or the common property or any part of the common property from the lease, whether for valuable consideration or otherwise:
- (c) subject to section 169, if the owner of a unit purchases or acquires (whether by operation of law or otherwise) the lessor's reversionary estate in the base land, that estate does not merge with the stratum estate in leasehold in that unit:
- (d) subject to section 169, if the lessor purchases or acquires the stratum estate in leasehold in any unit (whether by operation of law or otherwise) that estate does not merge with the lessor's reversionary estate.

(2) Any purported surrender or release in contravention of subsection (1)(a) or (b) is void and of no effect.

(3) Nothing in this section prohibits—

- (a) the body corporate from dealing with the estate as lessee in the common property as a whole or in any part or parts of the common property:
- (b) all the owners of all the units from surrendering or agreeing to surrender to the lessor the stratum estates in leasehold in all the units:
- (c) the lessor from releasing or agreeing to release all the units together with the whole of the common property from the lease.

Compare: 1972 No 15 s 25

163 Implied guarantee by unit owners

(1) Each owner for the time being of a unit to which this Part applies must be treated as having guaranteed to the lessor—

(a) the payment by the body corporate of the rent reserved under the lease on the days and in the manner prescribed in the lease; and

(b) the performance or observance by the body corporate of the covenants, agreements, and stipulations contained or implied in the lease to be performed or observed by the lease.

(2) Each owner for the time being of a unit in a subsidiary unit title development, and the subsidiary body corporate,—

(a) are bound by the covenants, agreements, and stipulations referred to in subsection (1)(b); and

(b) must be treated as having guaranteed to the lessor the performance or observance by the head body corporate of those covenants, agreements, and stipulations.

(3) The liability of each owner under the guarantees under subsections (1) and (2)—

(a) is limited to the proportion of the rent or other money payable as the ownership interest of that owner's unit bears to the aggregate ownership interest of all the units shown on the plan; and

(b) relates only to rent and other money due or accruing due while he or she is the owner of that unit.

(4) None of the following releases, exonerates, or in any way affects the liability of any owner under subsection (1) or (2):

(a) neglect or forbearance of the lessor in endeavouring to obtain payment of the rent or other money payable under the lease; or

(b) neglect to enforce the performance or observance of the covenants, agreements, or stipulations contained or implied in the lease by the body corporate; and

(c) time or other indulgence that may be given to the body corporate by the lessor.

(5) If the owner of a unit pays to the lessor any sum that he or she is liable to pay under this section, that owner is entitled to recover the sum from the body corporate as a debt in any court of competent jurisdiction.

(6) Nothing in subsection (5) prevents the body corporate from claiming any sum due to it from that owner under the provisions of this Act by way of set-off.

Compare: 1972 No 15 s 26

164 Exclusion of powers of forfeiture, re-entry, and distress

(1) After the deposit of a unit plan to which this Part applies, and until the cancellation of the plan, no right of forfeiture or re-entry (whether for non-payment of rent or otherwise) is exercisable by the lessor.

(2) If the owner of any unit becomes liable under section 163 to pay to the lessor any sum, the lessor may enforce payment of the sum in the same manner as he or she would have been able to if the sum had been rent in arrears from the date on which the liability of that owner to pay arose and that owner had been the lessee under the lease.

(3) Nothing in subsection (2) entitles, empowers, or authorises the lessor to forfeit or determine that owner's interest under the lease.

Compare: 1972 No 15 s 27

165 Lessor may apply for appointment of administrator or cancellation of unit plan

(1) This section applies if—

(a) rent is in arrears for the space of 1 month; or

(b) the body corporate has failed to perform or observe any of the covenants, agreements, or stipulations contained or implied in the lease to be performed or observed by the lessee.

(2) The lessor may—

(a) apply to the High Court for the appointment of an administrator, in which case section 141 applies with any necessary modifications; or

(b) apply to the High Court for the cancellation of the unit plan, in which case sections 187 and 188 apply with any necessary modifications.

(3) If, on an application made by the lessor under subsection (2)(b), the High Court makes a declaration authorising the

cancellation of the unit plan, then, if all conditions and directions imposed or given by the High Court have been complied with,—

(a) the lessor may, within 6 months after the date of the declaration, apply to the Registrar for the cancellation of the plan; and

(b) section 189 applies with any necessary modifications.

(4) No application may be made under subsection (2)(a) or (b) in respect of a failure described in subsection (1)(b) unless—

(a) the lessor serves on the body corporate and the bodies corporate described in section 187(2)(b) and (c) a notice—

(i) specifying the particular breach complained of; and

(ii) if the breach is capable of remedy, requiring the body corporate to make compensation in money for the breach; and

(b) the body corporate fails within a reasonable time to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money to the satisfaction of the lessor.

(5) If the lessor is applying to the High Court under subsection (2)(b) for the cancellation of the unit plan, the body corporate, and any subsidiary body corporate located below it in a layered unit title development, may apply to the High Court for relief.

(6) If the body corporate applies for relief under subsection (5), the High Court, having regard to the conduct of the parties and to all the circumstances of the case, may grant or refuse relief, as it thinks fit.

(7) If the High Court grants relief it may grant it on such terms (if any) as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future, as the High Court in the circumstances of each case thinks fit.

Compare: 1972 No 15 s 28

166 Expiry of lease

(1) Despite section 50(c), the term of the lease or any renewed or extended term is deemed not to have expired until the unit plan

has been cancelled or a certificate of expiry has been registered in accordance with subsection (3).

(2) On the cancellation of the unit plan the term of the lease is deemed to expire unless the lessor, in writing, has consented to the cancellation of the plan and agreed that the lease is to continue in force according to its tenor.

(3) Despite section 50(c), at any time after the date on which the lease or any extended or renewed term is by the relevant instrument expressed to expire, the following persons may lodge with the Registrar a certificate of expiry in the prescribed form:
- (a) the lessor; or
- (b) any persons who are together entitled to exercise more than 25% of the votes on an ordinary resolution of the body corporate.

(4) The person or persons intending to lodge a certificate under subsection (3) must give 14 days' notice in writing to the body corporate before lodging the certificate.

(5) The Registrar, on receiving the certificate, if the Registrar is satisfied that the term of the lease or any extended or renewed term has expired, and subject to the provisions of subsection (6), must—
- (a) cancel the unit plan; and
- (b) cancel the computer register for each of the units; and
- (c) enter a memorial to the effect that the lease has expired.

(6) If the body corporate has applied to the court for any relief under section 264 of the Property Law Act 2007, it may serve a copy of the application on the Registrar.

(7) If a copy of an application has been served on the Registrar under subsection (6), the Registrar must not register a certificate of expiry unless—
- (a) the High Court orders that it can be registered; or
- (b) the owners who are together entitled to exercise more than 25% of the votes on an ordinary resolution of the body corporate request the Registrar in writing to do so.

Compare: 1972 No 15 s 29

167 Renewal or expiry of lease and purchase of reversionary interest

(1) This section applies if the lease gives the lessee—

(a) a right of renewal or extension of the lease; or

(b) an option to purchase the reversionary estate in the base land.

(2) In the case of a right of renewal or extension of the lease, a special resolution of the body corporate is sufficient to approve the terms of the renewal or extension of the lease.

(3) In the case of an option to purchase the reversionary estate in the base land, the body corporate must agree, by special resolution, to the terms of the purchase.

Compare: 1972 No 15 s 30(1)

168 Entitlement of lessee to buildings, fixtures, etc

(1) This section applies if on the expiry of the lease the lessee is entitled under the lease to an amount equal to the value of the whole or any part of any buildings, fixtures, and other improvements on the base land.

(2) Despite section 160, the persons who were the owners of the units immediately before the expiry are entitled to receive that amount in shares proportionate to the ownership interest of their respective units.

(3) Despite subsection (2), if the High Court considers that it is inequitable to apportion the amount referred to in that subsection among the persons referred to in that subsection in those shares it may apportion that amount among them in shares proportionate to the relative values of the units.

Compare: 1972 No 15 s 30(2)

169 Merger

(1) This section applies if—

(a) the lessor has purchased or acquired (whether by operation of law or otherwise) the stratum estates in leasehold in all the units shown on the unit plan; or

(b) all the owners of all the units shown on the plan have purchased or acquired (whether by operation of law or

otherwise) the reversionary estate in the whole of the base land.

(2) In the case where the lessor has purchased or acquired the stratum estates in leasehold in all the units shown on the plan, those estates do not merge with the lessor's reversionary estate in the base land unless and until the lessor deposits with the Registrar a declaration that it is his or her intention that such a merger should occur.

(3) In the case where all the owners of all the units shown on the plan have purchased or acquired the reversionary estate in the whole of the base land, that estate does not merge with the stratum estates in leasehold in these units unless and until—

(a) that reversionary estate is purchased or acquired by those owners in shares proportional to the ownership interest of their respective units; and

(b) the registered owners deposit with the Registrar a declaration that it is their intention that a merger should occur.

(4) The effect of a merger is,—

(a) in any case where the lessor has purchased or acquired the stratum estates in leasehold in all of the units shown on the plan, to vest the stratum estate in freehold in each of the units in the lessor; or

(b) in any case where all the registered owners of the stratum estates in leasehold in all of the units shown on the plan have purchased or acquired the reversionary estate in the base land, to vest the stratum estate in freehold in each of the units in the person who immediately before the merger was the owner of that unit.

(5) On the deposit of any declaration under subsection (2) or (3)(b), the Registrar, if the Registrar is satisfied that the stratum estates in leasehold in all of the units shown on the plan have merged under the provisions of this section with the reversionary estate in the base land, must—

(a) note on the supplementary record sheet a memorial of the merger; and

(b) cancel the computer register in respect of the stratum estate in leasehold in each of the units and create a computer register in respect of the stratum estate in freehold

in each of the units to the person entitled to it in accordance with subsection (4); and

(c) note the effect of this section on the lease and any computer register created for it.

Compare: 1972 No 15 s 31

170 Owner of future development unit member of body corporate for purpose of this Part

The owner of a future development unit in a unit title development to which this Part applies is to be treated as a member of the body corporate for the purposes of the provisions of this Part, and those provisions apply as if—

(a) the unit were a principal unit; and

(b) the ownership interest of the unit were equivalent to the aggregate ownership interest of all the units into which it is proposed eventually to subdivide the future development unit, as shown on the proposed development plan.

Compare: 1979 No 37 s 9(5)

Part 4
Disputes, cancellation, and conversion

Subpart 1—Disputes

171 Jurisdiction of Tenancy Tribunals

(1) Except as provided in this section, a Tenancy Tribunal (a **Tribunal**) constituted under section 67 of the Residential Tenancies Act 1986 has jurisdiction to hear and determine all disputes arising between any persons of the kind listed in subsection (2) in relation to a unit title development (a **unit title dispute**).

(2) The persons mentioned in subsection (1) are—

(a) the owner of a principal unit or a former owner of a principal unit:

(b) a future development unit owner:

(c) an occupier of a future development unit:

(d) a body corporate:

(e) an administrator:

(f) a registered valuer:

(g) an occupier of a principal unit:
(h) a service contractor:
(i) a prospective buyer of a principal unit:
(j) an original owner:
(k) a lessor of base land:
(l) the chief executive.

(3) Any person listed in subsection (2) may, by notice in writing to the Tribunal, appoint an agent to act on his or her or its behalf in relation to a dispute.

(4) The Tribunal does not have jurisdiction—
(a) to make an order requiring any person or body to pay any sum, or to do any work to a value, or otherwise incur expenditure, in excess of $50,000; or
(b) to hear a dispute relating to the application of insurance money under section 136(4); or
(c) to hear any dispute relating to the title of land.

(5) Without limiting subsection (4)(c), a dispute relating to the title of land includes—
(a) a redevelopment:
(b) cancellation of a unit plan:
(c) conversion under subpart 3 of this Part.

(6) An order of the Tribunal that exceeds any restriction specified in subsection (4) is of no effect.

(7) Subsection (4)(a) does not prevent a party to a unit title dispute from abandoning as much of the claim as exceeds $50,000 in order to bring the claim within the jurisdiction of the Tribunal; and in any such case, an order of the Tribunal in relation to the claim operates to discharge any person against whom the claim is made and the subsequent order made from liability in respect of the amount abandoned.

(8) The Tribunal has jurisdiction to hear and determine any claim arising under any unit title dispute that is a claim for the balance, not exceeding $50,000, after a set-off or any counterclaim made by the other party to the dispute against the claimant arising out of the same dispute, being a counterclaim admitted by the claimant.

(9) A cause of action must not be divided into 2 or more claims for the purpose of bringing it within the jurisdiction of the Tribunal.

172 Jurisdiction of District Courts

(1) A District Court has jurisdiction to hear and determine a unit title dispute if the order sought requires any person or body to pay any sum, or to do any work to a value, or otherwise incur expenditure, in excess of $50,000 but not more than $200,000.

(2) In addition to the jurisdiction conferred under subsection (1), a District Court also has jurisdiction to hear and determine a unit title dispute relating to the application of insurance money under section 136(4) for amounts up to and including $50,000.

(3) A District Court does not have jurisdiction to hear any dispute relating to the title of land.

(4) Any provision of any agreement that purports to exclude or limit the jurisdiction of the District Court is of no effect.

173 Jurisdiction of High Court

(1) The High Court has jurisdiction to hear and determine any unit title dispute if—

(a) the order sought requires any person or body to pay any sum, or to do any work to a value, or otherwise incur expenditure, in excess of $200,000; or

(b) the dispute relates to the title of land.

(2) Any provision of any agreement that purports to exclude or limit the jurisdiction of the High Court is of no effect.

174 Exclusion of Tribunal's jurisdiction prohibited

(1) A provision in any agreement entered into by any of the persons listed in section 171(2) to exclude or limit the jurisdiction of the Tribunal or the right of any person to invoke that jurisdiction is of no effect.

(2) Without limiting the generality of subsection (1), the Tribunal has jurisdiction in respect of a dispute despite any agreement relating to the matter that provides for—

(a) the submission to arbitration of any dispute or difference; or

(b) the making of an award on the submission to be a condition precedent to any cause of action accruing to a party to the agreement.

(3) Subsection (2)(b) does not apply if a cause of action has accrued or is believed to have accrued to a person and that person has agreed to the settlement or compromise of the claim based on that cause of action.

175 Transfer of proceedings to District Court or High Court

(1) If any proceedings have been commenced before the Tribunal that the Tribunal has no jurisdiction to hear and determine, the Tribunal may, instead of striking out the proceedings, order that they be transferred to either the District Court or the High Court, depending on which court has jurisdiction to determine the dispute.

(2) Any proceedings transferred under subsection (1) are to be treated as having been commenced in the court to which the proceedings have been transferred and are to be dealt with by that court accordingly.

Compare: 1986 No 120 s 83

176 Certain provisions of Residential Tenancies Act 1986 to apply

(1) Part 3 of the Residential Tenancies Act 1986 applies with all necessary modifications in respect of the hearing and determination of a unit title dispute by a Tenancy Tribunal except the following sections:

(a) section 77 (which relates to the Tribunal's jurisdiction):

(b) section 106 (which relates to the enforcement of possession orders):

(c) section 109 (which relates to unlawful acts and claims for exemplary damages).

(2) Without limiting subsection (1), every reference in Part 3 of the Residential Tenancies Act 1986 to "this Act" is to be read as a reference to "the Unit Titles Act 2010".

Subpart 2—Cancellation of unit plans

Cancellation of unit plans by Registrar

177 Application by body corporate for cancellation of unit plan

(1) The body corporate for a unit title development may apply to the Registrar for the cancellation of the unit plan that relates to that unit title development.

(2) The application must be made in the prescribed form.

(3) Before making an application under subsection (1), the body corporate must agree by special resolution to the cancellation.

(4) Sections 212 to 216 (which provide for an objection process) apply to a resolution under this section.

(5) Before making the application for cancellation of the unit plan, the body corporate must (in addition to complying with section 213(1))—

(a) serve a copy of the draft application on—

(i) every unit owner; and

(ii) every person who has a registered interest in, or caveat or notice of claim entered on the register over, any unit or the common property; and

(b) if the unit title development is a stratum estate in leasehold, serve a copy of the resolution and the draft application on the lessor of the base land.

(6) In addition to the matters required to be included in the certificate required under section 216, the body corporate must also certify that—

(a) the documents required by subsection (5) to be served have been served on the persons specified in that subsection; and

(b) if an objection was made under section 213 and the High Court confirmed the resolution, the standard period for lodging any appeal in respect of the matter has expired or the outcome of any appeal or appeals is that the decision of the High Court to confirm the resolution is upheld; and

(c) all rates assessed in respect of the units and the common property have been paid.

(7) The application for cancellation of the unit plan must be accompanied by a certificate from a registered valuer reassessing the ownership interests and proposed ownership interests (if any) of all the units in the unit title development.

178 Restriction on cancellation of unit plan if subsidiary unit title development exists

No unit plan may be cancelled if a principal unit in the unit title development contains a subsidiary unit title development.

179 Cancellation of unit plan by Registrar

The cancellation of a unit plan is effected when the Registrar has entered the cancellation on the supplementary record sheet or any other appropriate record.

180 Effect of cancellation of unit plan—standard unit title development or head unit title development

(1) This section applies to a unit plan for a standard unit title development or a head unit title development.

(2) On the cancellation of the unit plan,—

(a) the following estates are merged and vested in the persons who were the owners of the units immediately before the cancellation in shares proportional to what was, at that time, their ownership interest:

(i) the fee simple estate, or (as the case may be) the estate as lessee or licensee, that was held by the body corporate in that part of the base land that immediately before the cancellation comprised common property; and

(ii) the fee simple estate, or (as the case may be) the estate as lessee or licensee, in that part of the base land that immediately before the cancellation comprised units:

(b) every easement or covenant to which section 60 applies continues:

(c) except as provided in paragraph (d), an easement or covenant of a kind referred to in section 62 continues:

(d) every easement or covenant over any unit and every easement or covenant appurtenant to a unit is cancelled.

(3) This section is subject to section 182.

181 Effect of cancellation of unit plan for subsidiary unit title development

(1) In this section, a reference to the **principal unit** means the principal unit that was subdivided to create the subsidiary unit title development, the plan for which is being cancelled.

(2) On the cancellation of the unit plan,—

(a) the following estates are merged and vested in the persons who were the owners of the units immediately before the cancellation in shares proportional to what was, at that time, their ownership interest:

(i) the fee simple estate, or (as the case may be) the estate as lessee or licensee, that was held by the subsidiary body corporate in that part of the principal unit that immediately before the cancellation comprised common property; and

(ii) the fee simple estate, or (as the case may be) the estate as lessee or licensee, in that part of the principal unit that immediately before the cancellation comprised units:

(b) except as provided in paragraph (c), an easement or covenant of a kind referred to in section 62 continues and must be registered against the computer register of the principal unit:

(c) every easement or covenant over any unit and every easement or covenant appurtenant to a unit is cancelled.

(3) This section is subject to section 182.

182 Effect of cancellation of stage unit plan

(1) If a stage unit plan for a standard unit title development or a head unit title development is cancelled, the estates described in section 180(2)(a)(i) and (ii) vest as described in subsection (3) of this section.

(2) If a stage unit plan for a subsidiary unit title development is cancelled, the estates described in section 181(2)(a)(i) and (ii) vest as described in subsection (3) of this section.

(3) The estates referred to in subsections (1) and (2) vest—

(a) as to 1 undivided share in each person who was the owner of a future development unit immediately before the cancellation of the plan; and

(b) as to 1 undivided share in all the persons who were the owners of the units (other than future development units) immediately before the cancellation of the plan.

(4) A share referred to in subsection (3)(a) is to be in the proportion that the total of all the proposed ownership interests of the proposed principal units and proposed accessory units in the future development unit, assessed as required by section 177(7), bears to the total ownership interests of the balance of the development.

(5) As between themselves, the persons who are entitled to 1 undivided share in the relevant estates under subsection (3)(b) are entitled in shares proportional to what was, immediately before the cancellation of the plan, their ownership interest.

183 Extinguishment of registered interests, etc

(1) This section applies if an application is made under section 177 and the Registrar has received a certificate from the body corporate that complies with the requirements of sections 177(6) and 216.

(2) Every registered interest in, or caveat or notice of claim entered on the register over, any unit or the common property is extinguished.

(3) Nothing in subsection (2) extinguishes an easement or covenant of a kind that will, under section 180(2)(b) or (c) or 181(2)(b), continue after cancellation of the unit plan.

(4) The Registrar must make the necessary entries on the register to give effect to the extinguishment under subsection (2).

184 Vesting of share where 2 or more owners of unit

(1) If 2 or more persons were the owners of any unit in a standard unit title development or head unit title development, whether as joint tenants or tenants in common, the share in the base land that vests in them under section 180 or 182, as between themselves, vests in them—

(a) as joint tenants, if the unit of which they were the owners immediately before the cancellation was then vested in them as joint tenants:

(b) as tenants in common in shares corresponding to the shares in which the unit of which they were the owners was vested in them immediately before the cancellation, if that unit was then vested in them as tenants in common.

(2) If 2 or more persons were the owners of any unit in a subsidiary unit title development, whether as joint tenants or tenants in common, the share in the principal unit that vests in them under section 181 or 182, as between themselves, vests in them—

(a) as joint tenants, if the unit of which they were the owners immediately before the cancellation was then vested in them as joint tenants:

(b) as tenants in common in shares corresponding to the shares in which the unit of which they were the owners was vested in them immediately before the cancellation, if that unit was then vested in them as tenants in common.

(3) If subsection (1) applies, the Registrar must create a computer register for the land in accordance with section 180(2) or 182.

(4) If subsection (2) applies, the Registrar must create a computer register for the principal unit in accordance with section 181 or 182.

185 Body corporate dissolved when unit plan cancelled

(1) On the cancellation of a unit plan, the body corporate is dissolved.

(2) Unless otherwise determined beforehand by the body corporate by special resolution,—

(a) the following funds of the body corporate must be distributed among the unit owners on the same basis on which levies were paid into those funds immediately before cancellation according to section 121:

(i) the capital improvement fund:

(ii) the long-term maintenance fund:

(iii) the optional contingency fund:

(iv) the operating account; and

(b) all other property and money (including insurance money received by the body corporate) must, subject to any right of set-off, be distributed among the unit owners according to their ownership interests immediately before the cancellation.

(3) Despite subsection (1), the body corporate must be treated as remaining in existence to the extent that any debt is owing by it and in respect of any action pending against it, and the liability of the persons who were the unit owners immediately before the cancellation continues accordingly.

186 Recording of cancellation of unit plan

(1) The Registrar must, on cancelling a unit plan, give notice to the territorial authority (as defined in the Local Government Act 2002) in whose district the base land is situated that the plan has been cancelled and the body corporate dissolved.

(2) The Registrar must also cancel the relevant supplementary record sheet.

(3) If a subsidiary unit title development is cancelled, the Registrar must note the cancellation on the supplementary record sheet for the parent unit title development.

Compare: 1972 No 15 s 45

Cancellation of unit plans by High Court

187 Application to High Court for order of cancellation of unit plan

(1) Any 1 or more of the following persons may apply to the High Court for the cancellation of the unit plan:

(a) the body corporate for the unit title development to which the unit plan relates, after a special resolution to do so; or

(b) an administrator; or

(c) 1 or more unit owners.

(2) The applicant must serve a notice of any application made under subsection (1) on—

(a) every unit owner; and

(b) if a principal unit in the unit title development is a subsidiary unit title development, the body corporate of that subsidiary unit title development; and
(c) if the unit title development is a subsidiary unit title development, the body corporate of its parent unit title development; and
(d) any person having an interest in any easement or covenant of a kind referred to in section 60 or 62; and
(e) every other person who has a registered interest in, or caveat or notice of claim entered on the register over, any unit, the common property, or the base land; and
(f) any insurer who has effected insurance on the buildings or other improvements comprised in any unit or on the base land or any part of the base land; and
(g) the Registrar.

(3) The Registrar must enter on the supplementary record sheet a notification that the application has been made.

(4) Any notification entered under subsection (3) must be cancelled by the Registrar if the applicant lodges a notice in the prescribed form with the Registrar that—
(a) the application to the High Court is not proceeding; or
(b) the High Court has refused to make the declaration sought.

188 Cancellation of unit plan by High Court

(1) The persons described in paragraphs (a) to (f) of section 187(2) have the right to appear and be heard.

(2) The High Court may authorise that the unit plan be cancelled if—
(a) the High Court is satisfied that it is just and equitable that the body corporate be dissolved and the plan cancelled having regard to—
(i) the rights and interests of any creditor of the body corporate; and
(ii) the rights and interests of every person who has any interest in any unit or in the base land or in any part of the base land; and

(b) no principal unit in the unit title development to which the plan relates contains a subsidiary unit title development.

(3) If the High Court makes a declaration authorising the cancellation of a unit plan under subsection (2), the High Court may by order impose any conditions and give any directions as it thinks fit, for the purpose of giving effect to the declaration, including—

(a) directions for the payment of money by or to the body corporate; or

(b) the distribution of the assets of the body corporate; or

(c) a direction to modify or extinguish, in whole or in part, any registered interest or caveat or notice of claim entered on the register in relation to any unit, the common property, or the base land.

(4) The High Court may, at any time before the unit plan is cancelled under section 189, vary or modify the terms of any declaration or order made by it under this section.

(5) The High Court may make any order for payment of costs as it thinks fit.

Compare: 1972 No 15 s 46

189 Cancellation of plan following decision of High Court

(1) This section applies if—

(a) the High Court has made a declaration under section 188 authorising the cancellation of a unit plan; and

(b) all conditions and directions imposed or given by the High Court have been complied with.

(2) Any applicant for the declaration or the applicant's successor in title may, within 6 months after the date of the declaration, apply to the Registrar for cancellation of the plan.

(3) The application must be in the prescribed form, and must be accompanied by or have lodged in support of it a copy of every declaration or order made by the High Court under section 188 in relation to the body corporate or unit plan.

(4) If an application is made in accordance with subsection (3), the Registrar must cancel the plan.

(5) The following provisions apply when an application is made to the Registrar under this section:

(a) a certificate must be given to the Registrar certifying as to the matters set out in paragraphs (a) to (c) of section 177(6), except to the extent that the High Court otherwise directs, either on that application or on any subsequent application:

(b) sections 177(7), 180, 181, 182, and 184, unless the High Court directs otherwise:

(c) sections 185 and 186.

Compare: 1972 No 15 s 47(4)

190 Owner of future development unit member of body corporate for purposes of sections 177 to 189

For the purposes of sections 177 to 189, an owner of a future development unit is to be treated as a member of the body corporate.

Compare: 1979 No 37 s 9

Subpart 3—Conversion of existing schemes

191 Application and interpretation of this subpart

(1) This Act applies, subject to this subpart, where an application to deposit a unit plan is contemplated in respect of an estate in land if—

(a) that estate is held by—

(i) a registered proprietor that is a flat or office owning company within the meaning of Part 7A of the Land Transfer Act 1952; or

(ii) registered proprietors each of whom holds that estate with the other registered proprietors as tenant in common and also as the proprietor of a leasehold interest in part of the land under a lease made between all the registered proprietors at the date of the lease as lessors and the registered proprietor (or a person through whom the registered proprietor claims) as lessee; and

(b) the boundaries of the principal units (as they would be according to the unit plan if it were deposited) are exactly the same as the boundaries under—

(i) the licences granted in connection with the ownership by the flat or office owning company; or

(ii) the lease described in paragraph (a)(ii).

(2) In this subpart, unless the context otherwise requires,—

company means a company to which subsection (1)(a)(i) applies

member, in relation to a company incorporated under Part 2 of the Companies Act 1993, means a shareholder as defined in section 96 of that Act and, in relation to any other company, means a member of, or shareholder in, the company

owners means a group of registered proprietors to whom subsection (1)(a)(ii) applies.

Compare: 1972 No 15 s 56

192 Conversion to be preceded by resolution or High Court order

Before an application is made in accordance with this subpart to deposit a unit plan,—

(a) there must be either a resolution of 75% of the members of the company or of the owners to subdivide its or their land in accordance with this Act, or an order of the High Court made under section 193; and

(b) notice of the intention to subdivide the land must have been given in accordance with section 195.

Compare: 1972 No 15 s 57

193 Application to High Court if special resolution not obtained

(1) If, at a meeting held for the purpose, the resolution required by section 192(a) is not obtained, but a majority of the members or owners are in favour of the resolution, any member of the company or any owner may apply to the High Court for an order that all necessary steps be taken in accordance with this subpart by the company or the owners to subdivide, in accordance with this Act and in the manner specified in the application to the High Court, the land specified in that application.

(2) Notice of the application must be given to any member of the company or owner who is not a party to the application and to

any other person having any registered interest in the land or shares affected by the application.

(3) Any person having or claiming to have an estate or interest in the land or in any part of the land to which the unit plan is intended to relate, or in the shares affected by the application, has the right to be heard in any proceedings before the High Court in respect of the application.

(4) The High Court may grant the application subject to any conditions that it thinks fit, or may decline the application.

Compare: 1972 No 15 s 58

194 Resolution or order to constitute sufficient authority for action by company or owners

A resolution by 75% of the members of an existing company or the owners to subdivide its or their land in accordance with this Act, or an order of the High Court made under section 193 that the land be subdivided, is sufficient authority for the company or the owners to do whatever may be required by this Act to accomplish that purpose without any further resolution of the company or the owners.

Compare: 1972 No 15 s 59

195 Notice of resolution or order

(1) As soon as practicable after the passing of the resolution or the making of an order, the company or owners (as the case may be) must cause the resolution or order to be notified—

- (a) to all persons, other than the members of the company or the owners, having a registered interest in any shares or assets of the company, or in any of the land intended to be included in the subdivision, or shown in the register to be entitled to such an interest; and
- (b) to the Registrar, who must at the same time be given by the company or the owners the particulars and things specified in subsection (2); and
- (c) in the case of a company, to the Registrar of Companies, who must at the same time be given by the company the particulars and things specified in subsection (2).

(2) The notice to the Registrar or the Registrar of Companies must be accompanied by—

(a) a sealed copy of the order in any case where an order has been made; and

(b) a list of the persons on whom notice has been served, together with advice of delivery or other evidence of proper service of the notice on all interested parties as the Registrar may require; and

(c) a description of the land intended to be included in the scheme sufficient for the Registrar to identify it in the Registrar's records.

(3) The notice must state that it is the intention of at least 75% of the members of the company or the owners or the High Court has made an order under section 193 that all necessary steps be taken by the members of the company or the owners to subdivide the whole of its or their land in accordance with this Act unless, not later than 1 month after the date on which the notice is given to the Registrar, a caveat in the prescribed form is lodged, by any person claiming an estate or interest in the land or shares, with the Registrar under the Land Transfer Act 1952 forbidding the subdivision.

(4) On receipt by the Registrar of notice of the resolution or order under this section, the Registrar must make an entry on each computer register in respect of the land concerned to the effect that the company or the owners have advertised an intention to subdivide the land in accordance with this Act.

Compare: 1972 No 15 s 60(1)–(3), (7)

196 Procedure where caveat lodged

(1) If a caveat has been lodged under section 195(3) and the caveator has not consented to the deposit of a unit plan for the purposes of section 197(2), the company or any owner may serve notice on the caveator requiring the caveator, within 3 months from the date of the service of the notice, either to consent to the plan or to apply to the High Court for an order directing that the caveat not be removed.

(2) If the caveator fails to apply to the High Court for an order within the 3-month period, and to consent, the caveator is to be treated as having consented to the unit plan.

(3) On application to the High Court by a caveator under this section, the High Court may—

(a) direct that the caveat not be removed; or

(b) direct that the caveat be removed either immediately or on compliance with any conditions as the High Court may specify.

(4) If the circumstances in which the order was made subsequently change before the caveat is removed, the company or any owner or the caveator may apply to the High Court for a variation of the order.

Compare: 1972 No 15 s 60(4)–(6)

197 Consents to deposit of plan

(1) Despite anything in section 32(1)(d), the consent of any person other than the company or a member of the company or an owner is not required to the deposit of the new unit plan if the Registrar is satisfied that every person, other than a member of the company or an owner, who has any registered estate or interest in the land in the scheme, or in any part of that land, and who does not sign the plan, has been given proper notice under section 195 and has not lodged a caveat under that section.

(2) If any person, having lodged a caveat pursuant to section 195, consents to the new unit plan, and the caveat is still in force at the time, the consent to the plan has the effect of removing the caveat, and the Registrar must mark the Registrar's records accordingly.

(3) No unit plan may be deposited unless every member of the company or the owner, or the owner's agent duly authorised in writing, and every person having security over any unit shown on the plan under any mortgage or charge to which section 198(2) relates consents to the deposit, but the Registrar may dispense with the consent if the Registrar—

(a) is satisfied that it would not be reasonable in any particular circumstances to insist on the consent to the deposit of the plan; and

(b) has no reason to believe that the plan does not correctly define the unit of that member or owner.

(4) If any person whose consent is required to the deposit of the new unit plan is dead or cannot be found or refuses to consent or does not consent within a reasonable time or if for any

reason it is impracticable to obtain the consent of that person, the High Court, on the application of any applicant under this subpart, may if it thinks fit consent on behalf of that person to the deposit of the plan.

Compare: 1972 No 15 s 62

198 Mortgages and charges to be discharged before deposit of unit plan

(1) No unit plan may be deposited under this subpart while the land to which it relates or any part of that land is subject to any mortgage or charge unless the mortgage or charge relates to no land shown on the plan other than a proposed unit or units in respect of which (under section 43(2)) the Registrar has been requested at the time when the plan is deposited to create a separate computer register.

(2) If a unit plan is deposited in accordance with subsection (1) while there is a mortgage or charge over the unit or units for which (under section 43(2)) the Registrar is requested to create a separate computer register, the deposit of the plan and the creation of the computer register does not affect the mortgage or charge; and if, on the creation of the separate computer register, the stratum estate in the unit or units is subject to the mortgage or charge, then the mortgage or charge must be notified on the computer register in a manner so as to preserve its priority.

Compare: 1972 No 15 s 63

199 Effect of deposit of unit plan

(1) On the deposit of a unit plan under this subpart, the stratum estate in each unit vests in the person who, immediately before the plan was deposited, was the holder of shares in the company entitling him or her to the exclusive occupation of that unit, or the lessee under a lease of that unit from the owners to himself or herself. The stratum estate may then devolve or be transferred, leased, mortgaged, settled, or otherwise dealt with as provided in this Act.

(2) On the deposit by a company of a unit plan, the company, if it is a company within the meaning of section 2 of the Compan-

ies Act 1993, is deemed to have been removed from the New Zealand register and that Act ceases to apply to it.

(3) On the deposit, whether by a company or by the owners, of a unit plan in accordance with this subpart,—

(a) every certificate relating to shares in the company, and every copy of every registered or unregistered lease or licence granted by the company to one of its members or granted by the owners to one of them, is of no further effect:

(b) except as otherwise provided in this section, all property, rights, powers, claims, and remedies belonging to the company, or to the owners as registered proprietors of the base land, immediately before the deposit of the plan, vests in the proprietors in accordance with this Act:

(c) all existing liabilities of the company (except liability to its members in respect of share capital), or of the proprietors as registered proprietors of the base land, whether certain or contingent, must be transferred to and be borne by the body corporate:

(d) except so far as they are altered or modified expressly or by necessary implication by reason of the deposit of the unit plan under this Act, the rights, interests, duties, obligations, and liabilities of the members of the company existing in relation to the company immediately before its dissolution continue in existence in relation to the body corporate and must not be otherwise affected or abated by the dissolution:

(e) all acts, matters, and things of a continuing nature made, done, or commenced by or on behalf of the company and immediately before its dissolution of any force or effect or capable of acquiring any force or effect are deemed to have been done or commenced by or on behalf of the body corporate:

(f) any reference to the company in any document or instrument must, if not inconsistent with the context or subject-matter, be read as a reference to the body corporate.

(4) Nothing in subsection (3)(c) affects a mortgage or charge to which section 198(2) relates.

Compare: 1972 No 15 s 64

200 Creation of computer register in respect of units

(1) On the deposit of the unit plan, the Registrar must—

(a) cancel the computer register to the base land; and

(b) create a computer register for the stratum estate to which the person who will be the owner of each principal unit is entitled in that unit and any accessory unit.

(2) Every computer register created under subsection (1) is deemed to be a computer register created under the Land Transfer Act 1952 and, subject to the provisions of this Act, the provisions of that Act apply accordingly.

(3) If the computer register created under subsection (1) relates to a unit in respect of which there was, before the plan was deposited, a registered lease or licence, the provisions of section 117(2) to (4) of the Land Transfer Act 1952 apply to the computer register for that unit as if it were a lease in substitution for a previously registered lease.

(4) The provisions of section 7(2) and (3) of the Joint Family Homes Act 1964 apply in every case where a computer register is created under subsection (1) in respect of a unit that was settled as a joint family home immediately before the deposit of the new unit plan relating to that unit.

Compare: 1972 No 15 s 65

Part 5
General provisions

Subpart 1—Administration

201 Chief executive responsible for administration of Act

The chief executive is responsible for the administration of this Act.

Compare: 1986 No 120 s 121

202 General functions and powers of chief executive

(1) For the purposes of this Act, the chief executive may perform and exercise the following functions and powers:

(a) the investigation of, and the conduct of research into, any matters generally affecting or that may affect unit titles, or any such matters arising in any particular case:

(b) the publication of reports, the dissemination of information, and the taking of such steps as the chief executive thinks proper for informing members of the public about the general operation of this Act and of the rights and obligations of bodies corporate, owners, managers, occupiers, and other persons with an interest in any unit title development:

(c) the giving of opinions and advice to persons on any provisions of this Act or of any other enactment or rule of law relating to unit title developments:

(d) the investigation, whether on the complaint of a party or not, of any alleged breach of this Act, and the taking of such action, whether involving legal proceedings, negotiation, or arbitration, as the chief executive thinks proper:

(e) the making of reports to the Minister on any matter relating to unit titles that the Minister may require, or that the chief executive thinks should be drawn to the attention of the Minister.

(2) Except as required by the Minister under subsection (1)(e), whether or not to perform or exercise any of the functions and powers specified in that subsection in any particular case is a matter for the chief executive's discretion, and in no circumstance is the chief executive obliged to perform or exercise any such function or power.

Compare: 1986 No 120 s 123

203 Immunities

No personal liability attaches to the chief executive or to any delegate of the chief executive for any act or omission by the chief executive or the delegate made in good faith and in the performance or exercise, or purported performance or exercise, of all or any of the functions or powers of the chief ex-

ecutive under this Act, or in the discharge, or purported discharge, of all or any of the chief executive's duties under this Act, but without prejudice to any liability that the Crown may incur for the acts or omissions of any employee or agent of the Crown.

Compare: 1986 No 120 s 125

Subpart 2—Miscellaneous

204 Joinder of actions

Where an application under section 74 or 187 is pending and an application under the other of those sections is made in respect of the same unit plan, the High Court may hear and determine the 2 applications together.

Compare: 1972 No 15 s 49

205 Service of documents

(1) Any notice or other document required or authorised by this Act to be served on or given to any person must be in writing and is sufficiently served or given if—

- (a) it is delivered to that person; or
- (b) it is left at that person's usual or last known place of residence or business or at an address specified for that purpose; or
- (c) it is posted in a letter addressed to that person by name at that place of abode or business or address; or
- (d) it is transmitted to the email address or facsimile number given by that person as an address for service.

(2) If the person is absent from New Zealand, the notice or other document may be served on or given to the person's agent in New Zealand.

(3) If the person is deceased, it may be served on or given to the person's personal representatives.

(4) If the person is not known, or is absent from New Zealand and has no known agent in New Zealand, or is deceased and has no personal representatives, the notice or other document must be served or given in a manner as may be directed by an order of the District Court.

(5) If any notice or other document is sent to any person by post, it is to be treated as having been delivered to the person on the fourth day after the day on which it was posted, and in proving the delivery it is sufficient to prove that the notice or other document was properly addressed and posted.

(6) A notice or other document sent by electronic means or by facsimile is to be treated as having been received on the working day immediately following the date on which it was transmitted; and in proving service it is sufficient to prove that the notice or other document was properly transmitted.

(7) Despite anything in the previous provisions of this section, the District Court may, in any case, make an order directing the manner in which any notice or other document is to be served or given or dispensing with the service or the giving of the service.

(8) This section does not apply to any other notices or other documents served or given in any proceedings in any court.

206 Provision of records and documents

(1) The body corporate must, on request from a unit owner, make copies of the following records and documents available for purchase by the unit owner:

- (a) the body corporate operational rules:
- (b) all current insurance policies held by the body corporate or its head body corporate in respect of the buildings and improvements on the base land:
- (c) the long-term maintenance plan:
- (d) any agendas or minutes of the body corporate:
- (e) the financial statements:
- (f) any other documents the owner of a principal unit is required to provide under subpart 14 of Part 2:
- (g) any other records or documents if the body corporate thinks it is reasonable in the circumstances to provide those records or documents.

(2) The copies must be made available within a reasonable time, and the body corporate may charge any reasonable costs incurred in providing the records and documents.

207 Powers of entry by local authority or public body

If a local authority, public body, or person authorised by it has a right under any Act to enter on any part of the base land, the authority, body, or person is entitled to enter on any other part of the base land to the extent necessary or expedient to enable the authority, body, or person to exercise its or his or her powers under that Act.

Compare: 1972 No 15 s 52

208 Requirement if consent requested

(1) If a provision in this Act requires a person to obtain the consent of another person to do a thing, a person whose consent is requested—

(a) must not unreasonably withhold consent; and

(b) must, within a reasonable time,—

(i) give the consent; or

(ii) notify the person requesting the consent that the consent is withheld.

(2) Subsection (1)(a) is subject to any provision of this or any other enactment setting out specific grounds on which consent may be withheld.

209 Distribution of proceeds in layered unit title development

(1) This section applies where this Act provides for the distribution to unit owners of proceeds obtained by a body corporate, or of body corporate funds (a **distribution of proceeds provision**).

(2) A subsidiary body corporate is to be treated as the unit owner of the principal unit that was subdivided to create the subsidiary unit title development.

(3) A subsidiary body corporate to which proceeds are distributed must deal with the proceeds in relation to any subsidiary unit title development below it according to the distribution of proceeds provision and subsection (2).

Subpart 3—Minority and majority relief

210 General relief for minority where resolution required

(1) In any case where this Act requires a resolution and the resolution is passed, any person who voted against the resolution may apply to the appropriate decision-maker for relief on the grounds that the effect of the resolution would be unjust or inequitable for the minority.

(2) An application for relief under subsection (1) must be made within 28 days of the passing of the resolution.

Compare: 1972 No 15 s 43

211 Relief in cases where special resolution required

(1) In any case where this Act requires a special resolution and the resolution is not passed but 65% of the eligible voters have voted in favour of the resolution, any eligible voter who voted in favour of the resolution may apply to the appropriate decision-maker to have the resolution confirmed on the grounds that the effect of the failure of the resolution to be passed would be unjust or inequitable on the majority.

(2) The appropriate decision-maker may make an order confirming the resolution, subject to any terms and conditions it sees fit, if it is satisfied that it is just and equitable to do so.

(3) If the appropriate decision-maker confirms the resolution, the body corporate may proceed to carry out the resolution subject to any terms and conditions imposed by the appropriate decision-maker under subsection (2).

212 Designated resolutions

For the purposes of this subpart, **designated resolution** means a resolution relating to—

(a) subdivision of a principal unit to create a subsidiary unit title development under section 20:

(b) depositing a substituted proposed unit development plan under section 30:

(c) approving the method of apportionment of a utility interest under section 41(6):

(d) sales, leases, or licences of common property under section 56:

(e) additions to common property under section 58:
(f) grants, variations, or surrenders of easements over common property under section 62:
(g) covenants over common property and the variation or surrender of such covenants under section 62:
(h) redevelopments requiring deposit of a new unit plan under section 68:
(i) application of insurance money for purposes other than reinstatement of the unit title development under section 136(4):
(j) purchases of reversionary interests in leasehold land under section 167(3):
(k) cancellation of unit plans under section 177.

213 Notices of designated resolutions

(1) After passing a designated resolution, the body corporate must serve a notice in the prescribed form on the following persons:
  (a) every unit owner; and
  (b) every person who has a registered interest in, or has a caveat or notice of claim entered on the register over, any unit; and
  (c) if the resolution is to cancel the unit title development,—
    (i) every person who has a registered interest in, or has a caveat or notice of claim entered on the register over, the whole or part of the common property; and
    (ii) any person who is the grantee of an unregistered lease or licence over the whole or part of the common property.

(2) The notice required to be served under subsection (1) is in addition to any other documents that are required to be served under this Act in relation to any particular matter.

(3) Any person served with a notice under subsection (1) may, within 28 days of being served with that notice, give written notice in the prescribed form (if any) to the body corporate of his or her objection to the designated resolution (a **notice of objection**).

(4) Despite subsection (3), no person may object under that subsection in respect of an easement or covenant of a kind that will, under section 180(2)(b) or (c) or 181(2)(b), continue after the cancellation of the unit plan.

(5) If a person served with a notice under subsection (1) has made an application for relief under section 210 or has filed an application to have a matter relating to the resolution heard and determined under subpart 1 of Part 4, he or she must, by written notice to the appropriate decision-maker, withdraw that application before giving a notice of objection under this section.

(6) A mortgagee or other person with a registered interest in, or caveat or notice of claim entered on the register over, all or part of a secured property is to be treated as having consented to a resolution if that mortgagee or other person does not object to the resolution or does not file an objection in time or made an objection but the appropriate decision-maker confirmed the resolution.

214 Requirements in relation to objections

(1) A notice of objection must state that the person objecting intends to apply to the appropriate decision-maker for relief.

(2) A person who has given a notice of objection under section 213(3) must also, within 28 days of being served with a notice under section 213(1), file with the appropriate decision-maker an application for relief in the prescribed form.

(3) A notice of objection is of no effect if—

(a) it is given to the body corporate after that time; or

(b) it is not filed with the appropriate decision-maker within that time.

215 Hearing if objection made

(1) The appropriate decision-maker must hear the objection as soon as practicable and may make any order it thinks fit, including without limitation any of the following orders:

(a) confirming the resolution:

(b) overturning the resolution:

(c) requiring the body corporate to pay compensation to the person making the objection:

(d) requiring the person making the objection to pay compensation to the body corporate:
(e) a work order:
(f) granting an injunction.

(2) The appropriate decision-maker must not make an order under subsection (1) unless it is satisfied that it is just and equitable to do so.

(3) An order may be subject to any terms or conditions that the appropriate decision-maker thinks fit.

(4) If the appropriate decision-maker—
(a) makes an order overturning the resolution, then the resolution is to be treated as not having been passed; or
(b) makes an order confirming the resolution, then the body corporate may proceed to carry out the resolution subject to any terms and conditions imposed by the appropriate decision-maker under subsection (3).

(5) In this section, a **work order** means an order to carry out any repairs to the unit title development or to rectify any deficiency in the performance of any services by doing the work or attending to the matters specified in the order.

216 Certificate required

(1) If no objection is made, or if after hearing any objection the appropriate decision-maker confirms the designated resolution, the body corporate must lodge a certificate (together with the other documents required to be lodged with the Registrar) that certifies—
(a) that the designated resolution of the body corporate relating to the matter has been passed; and
(b) that every person required to be served with the notice has been served; and
(c) that—
(i) no objection has been made; or
(ii) an objection was made but the person making the objection did not file the objection in court within the time prescribed in section 214(2); or
(iii) an objection was made but the appropriate decision-maker confirmed the resolution or con-

firmed the resolution subject to terms and conditions; and

(d) any other matter required to be certified under this Act or prescribed by regulation.

(2) The certificate referred to in subsection (1) may be relied on by the Registrar as sufficient evidence of compliance with the matters set out in the certificate.

Subpart 4—Regulations

217 Regulations

The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

(a) prescribing the form and content of, and anything required to accompany, any application to deposit a unit plan or an amendment to a unit plan or to cancel a unit plan:

(b) prescribing the form and content of financial statements to be provided by specified bodies corporate:

(c) prescribing for the regulation of the funds set up under sections 115, 117, 118, and 119:

(d) specifying the matters to be included in a body corporate committee report:

(e) specifying the information to be included in the register of unit owners:

(f) prescribing matters relating to the administration of a body corporate and a body corporate committee:

(g) specifying matters associated with the functions, powers, and duties of a body corporate and a body corporate committee:

(h) prescribing the manner and form of voting procedures and all other matters relating to voting:

(i) prescribing body corporate operational rules:

(j) prescribing requirements of a long-term maintenance plan and matters to be included in that plan:

(k) prescribing the form and content of disclosure statements required under this Act:

(l) prescribing the form and content of certificates:

(m) prescribing for matters relating to the computer register and requirements for depositing unit plans and amendments to unit plans with the Registrar:
(n) imposing fees and charges for anything authorised by this Act:
(o) prescribing the rate of interest payable on money owing to a body corporate:
(p) regulating the practice and conduct of business under this Act:
(q) prescribing forms for the purposes of this Act:
(r) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

Compare: 1972 No 15 s 55

Subpart 5—Repeals, transitional provisions, and consequential amendments

218 Unit Titles Act 1972 repealed

The Unit Titles Act 1972 (1972 No 15) is repealed.

219 Existing unit title developments

(1) In this subpart, an **existing unit title development** means the stratum estates to which a particular unit plan within the meaning of the Unit Titles Act 1972 relates where the unit plan—
(a) was deposited before the commencement of this Act; and
(b) has not been cancelled.

(2) An existing unit title development is a unit title development under this Act and the body corporate for the unit plan that relates to that unit title development is, for the purposes of this Act and for all other purposes, the body corporate for that unit title development.

220 Continuation of certain provisions of Unit Titles Act 1972

Despite the repeal of the Unit Titles Act 1972 by section 218 of this Act, section 37 and Schedules 2 and 3 of that Act continue to be in force until 15 months from the first day of the month following the date of commencement of this Act in respect

of an existing unit title development, unless a body corporate agrees under section 221 that sections 105 and 138 of this Act apply.

221 Application of sections 105, 106, 116, 117, and 138 to existing unit title developments

Nothing in sections 105, 106, 116, 117, and 138 applies to an existing unit title development until 15 months from the first day of the month following the date of commencement of this Act unless a body corporate agrees, by special resolution, that any or all of those provisions apply before that date.

222 Ownership interest

Every unit entitlement assigned under section 6 of the Unit Titles Act 1972 is deemed to be an ownership interest assigned under section 38 of this Act.

223 Ownership of common property

On the date on which this Act comes into force, the ownership of the common property of each existing unit title development referred to in section 219 is vested in the body corporate for that unit title development.

224 Transitional provision for supplementary record sheets

(1) This section applies to any supplementary record sheet set up in relation to a unit plan before the commencement of this Act in accordance with section 20 of the Unit Titles Act 1972.

(2) The matters required to be noted on a supplementary record sheet under section 47(a) and (b) of this Act are deemed to be noted on the supplementary record sheet.

225 Transitional provision for annual general meetings of bodies corporate for existing unit title developments

For the purposes of requirements relating to annual general meetings under section 89, the unit plan for a unit title development referred to in section 219 is deemed to have been deposited on the date of commencement of this Act.

226 Transitional provision for body corporate resolutions

A body corporate may do anything necessary to give effect to any resolution validly made under the Unit Titles Act 1972.

227 Transitional provision for proceedings under former Act

(1) Except as provided in subsection (2), any proceedings that were commenced, but not completed, before the date of commencement of this section must be continued and completed in all respects under the Unit Titles Act 1972 as if this Act had not been passed.

(2) If both parties agree, the proceedings may be transferred to the appropriate decision-maker.

(3) Any proceedings transferred under subsection (2)—

(a) are to be treated as having been commenced with the appropriate decision-maker to which the proceedings have been transferred and are to be dealt with by that decision-maker accordingly; and

(b) any interim decisions made before the transfer of the proceedings apply and any admissions made in relation to the evidence in those proceedings are deemed to be made in respect of the new proceedings.

228 Disclosure of information by seller of unit

(1) This section applies if, on the date of the commencement of this Act,—

(a) a buyer and seller have entered into an agreement for sale and purchase; and

(b) there are 5 working days, or less, before settlement date.

(2) Nothing in section 149 or 151 entitles the buyer to delay settlement or to cancel the sale and purchase agreement on the grounds that a pre-settlement disclosure statement described in section 147 was not provided by the seller to the buyer.

(3) Section 148 does not apply.

(4) Nothing in subsection (2) or (3)—

(a) prevents the seller agreeing to provide any disclosure of information to a buyer; or

(b) limits the obligations the seller may have incurred under section 36 of the Unit Titles Act 1972.

(5) In this section, expressions defined in section 144 have the meanings given to them by that section.

229 Review of service contracts

In respect of a contract entered into by a body corporate before the date on which this Act came into force,—

(a) section 140(2) does not apply:

(b) section 140(5) applies.

230 Principal units consisting of open spaces: deposit of unit plans

(1) This section applies if, on or after the date on which this Act came into force,—

(a) an application is made to deposit a unit plan under this Act where the subdivision consent in relation to the proposed subdivision—

(i) was given under the Resource Management Act 1991 before the date on which this Act came into force; and

(ii) as at the date on which the application is made, has not lapsed; or

(b) an application is made under section 69 to deposit a new unit plan in substitution for an existing unit plan, and the unit title development to which the unit plan relates is an existing unit title development referred to in section 219.

(2) Despite sections 7 and 32(2)(a)(ii),—

(a) if, before the date on which this Act came into force, the chief executive of a territorial authority gave a certificate under section 5(1)(g) of the Unit Titles Act 1972 in respect of the unit plan, that certificate may be accepted by the Registrar and a certificate under section 32(2)(a) of this Act is not required; and

(b) if, before the date on which this Act came into force, the chief executive of a territorial authority would have given a certificate under section 5(1)(g) of the Unit Titles Act 1972 in respect of the unit plan, an authorised officer of the territorial authority may give a certificate

under section 32(2)(a) of this Act and that certificate may be accepted by the Registrar.

231 Principal units consisting of open spaces: amendment to unit plan

(1) This section applies if, on or after the date on which this Act came into force,—

(a) an application is made under section 67 to deposit an amendment to a unit plan, and the unit title development to which the unit plan relates is an existing unit title development referred to in section 219; and

(b) any unit affected by the redevelopment to which the amendment to the unit plan relates was, before the redevelopment, a principal unit that would not have conformed to the description in section 7(1)(b)(i).

(2) The amendment to the unit plan may be deposited even though the unit referred to in subsection (1)(b) will, after the redevelopment, still not conform to the description in section 7(1)(b)(i).

232 Application of Interpretation Act 1999

Except as provided in this subpart, nothing limits the application of the Interpretation Act 1999.

233 Consequential amendments to other enactments

(1) The enactments specified in Schedule 3 are consequentially amended in the manner indicated in that schedule.

(2) The consequential amendments to sections 7, 22, 23, 24, and 25 of the Weathertight Homes Resolution Services Act 2006 set out in Part 1 of Schedule 3 do not apply until section 37 and Schedules 2 and 3 of the Unit Titles Act 1972 cease to be in force in relation to a body corporate by operation of sections 220 and 221.

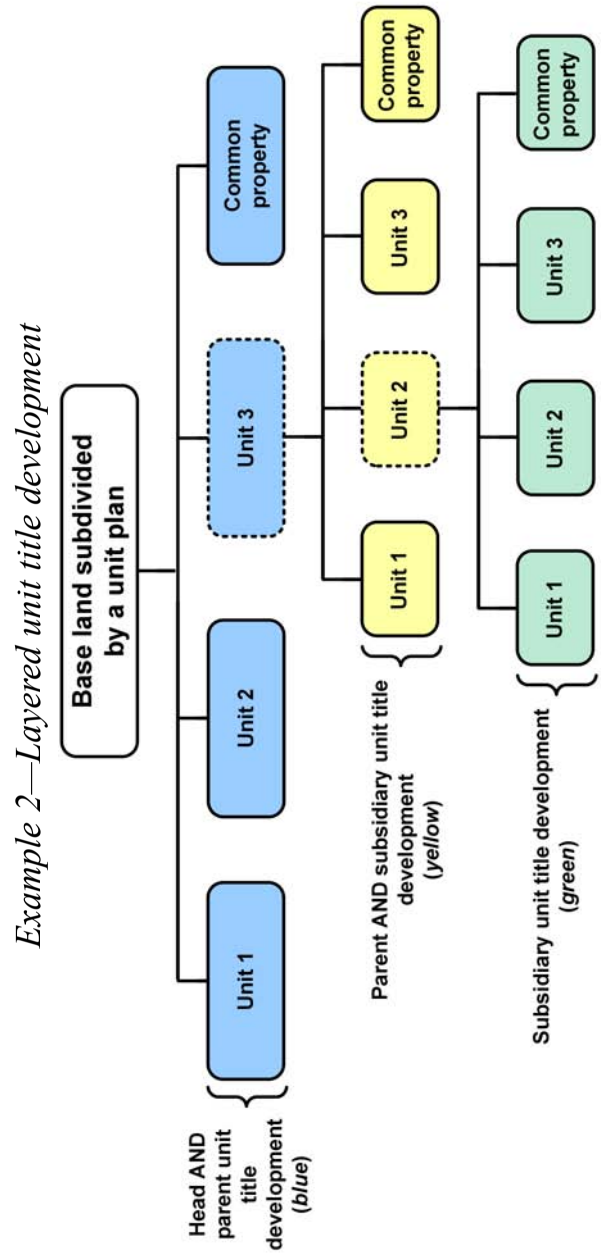
Schedule 1

ss 5(1), 9, 19(3)

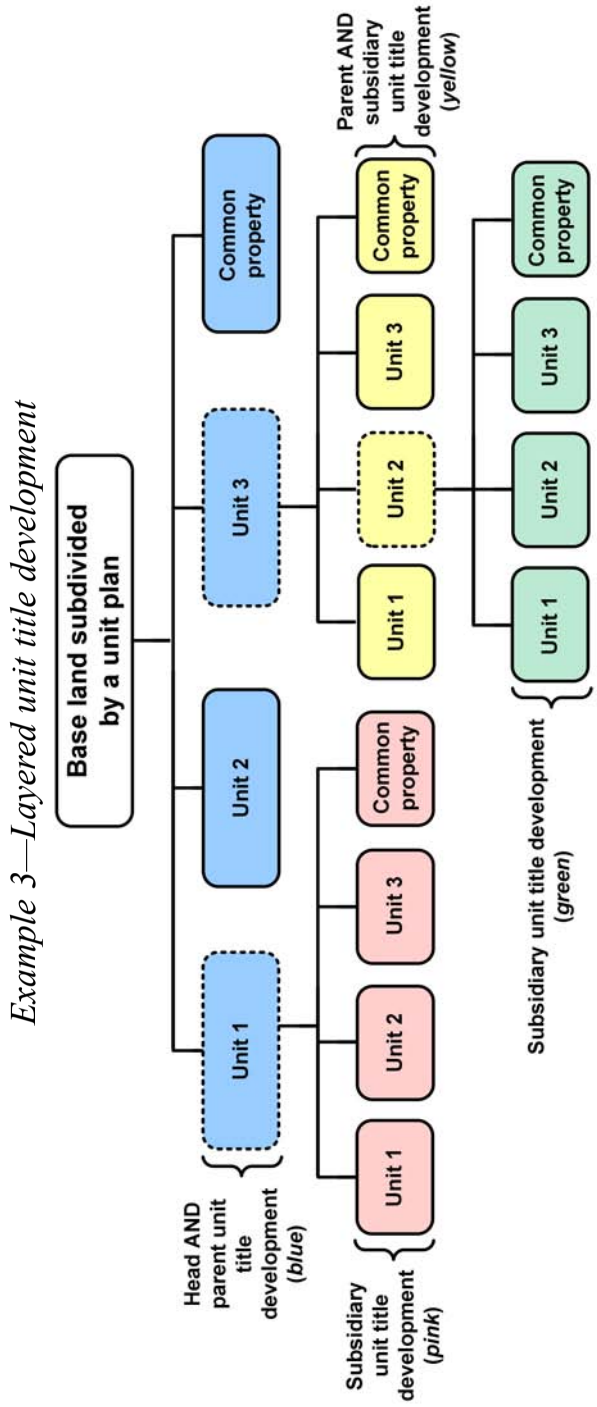
Illustrative examples of unit title developments

Example 1—Standard unit title development

Example 2—Layered unit title development



Example 3—Layered unit title development



Schedule 2

s 12

Modifications to this Act applicable to timeshare resorts

Section 5

Subsection (1): insert in their appropriate alphabetical order:

"**non-timeshare unit** means a principal unit in a timeshare resort that is not a timeshare unit

"**timeshare entitlement** means the stratum estate in fee simple or leasehold or both of a timeshare owner in a timeshare unit

"**timeshare owner**, in relation to a timeshare unit, means a person who is registered as proprietor of an undivided share in the stratum estate in the unit, but whose entitlement to occupy the unit is limited to a specified period in every calendar year or every second calendar year

"**timeshare resort** means a unit title development comprising, or including, a timeshare unit or timeshare units; and may include principal units that are not timeshare units

"**timeshare unit** means a unit owned, either wholly or as to a share, by a timeshare owner".

Section 65

Subsection (1)(b): omit "The owners of the units" and substitute "At least 75% of the timeshare owners of the timeshare units".

Subsection (2): omit "The owners of the units" and substitute "At least 75% of the timeshare owners of the timeshare units".

Subsection (4): omit "the unit owners" and substitute "at least 75% of the timeshare owners of the timeshare units".

Subsection (5): omit "The unit owners" and substitute "At least 75% of the timeshare owners of the timeshare units".

Section 68

Subsection (3)(a): omit "all of the owners of the units" and substitute "at least 75% of the timeshare owners of the timeshare units".

New section 84A

Insert after section 84:

"**84A Additional powers of body corporate of timeshare resort**

In addition to the powers and duties set out in section 84, the body corporate of a timeshare resort has the power to pay the following amounts:

"(a) rates, levies, and other amounts payable to a territorial authority in respect of timeshare units:

"(b) all costs associated with the maintenance, repair, and refurbishment of timeshare units and their contents:

"(c) all costs of capital replacement of, and improvement to,—

"(i) any part of the timeshare resort, its facilities, or services; and

"(ii) any part of the timeshare units or their contents."

Section 90

Omit this section and substitute the following section:

"**90 Who may call general meetings**

"(1) An annual general meeting of a body corporate must be called by the chairperson in accordance with the regulations."

"(2) An extraordinary general meeting of a body corporate—

"(a) must be called by the chairperson in accordance with the regulations if a notice asking for an extraordinary general meeting to consider and decide motions proposed in the notice is—

"(i) in the case of—

"(A) a timeshare resort comprising both timeshare units and principal units that are not timeshare units, signed by or for not less than 20% of the timeshare owners and signed by or for the unit owners of not less than 20% of the non-timeshare units; or

"(B) a timeshare resort comprising timeshare units only, signed by or for the timeshare unit owners of not less than 20% of the timeshare units; and

"(ii) given to the chairperson; or

Section 90—*continued*

"(b) may be called at any other time by the chairperson or the body corporate committee in accordance with the regulations."

Section 95

Omit and substitute:

"**95 Quorum**

"(1) At a general meeting of a body corporate, the timeshare owners of not less than 5% of the timeshare entitlements or their proxies constitute a quorum.

"(2) However, in the case of a timeshare resort comprising both timeshare units and non-timeshare units, the following constitutes a quorum:

"(a) the persons entitled to exercise not less than 25% of the votes able to be exercised in respect of the non-timeshare units or their proxies; and

"(b) the owners of not less than 5% of the timeshare entitlements or their proxies.

"(3) Except as otherwise provided for in this Act and the regulations, no business may be transacted at a general meeting of the body corporate unless a quorum is present at the time."

Section 97

Subsection (2): omit and substitute:

"(2) One vote only may be exercised for—

"(a) each timeshare entitlement; and

"(b) if a timeshare resort comprises both timeshare units and non-timeshare units, each timeshare entitlement or principal unit, as the case may be."

Section 98

Subsection (2): omit and substitute:

"(2) One vote only may be exercised for—

"(a) each timeshare entitlement; and

Section 98—*continued*

"(b) if a timeshare resort comprises both timeshare units and non-timeshare units, each timeshare entitlement or principal unit, as the case may be."

Section 99

Omit and substitute:

"**99 Request for a poll by owner of non-timeshare unit in timeshare resort**

"(1) This section and section 100 apply to a timeshare resort comprising both timeshare units and non-timeshare units.

"(2) A poll may be requested by any eligible voter who is an owner of a non-timeshare unit voting on a motion passed by ordinary resolution under section 97 or special resolution under section 98."

Section 100

Omit and substitute:

"**100 Counting of votes if poll requested**

"(1) This section applies if—

"(a) a motion is passed by ordinary resolution or special resolution; and

"(b) a poll is properly requested.

"(2) One vote only may be exercised for each timeshare entitlement and each non-timeshare unit and only those who voted on the motion under section 97 or 98 are entitled to vote.

"(3) For the motion to pass where a poll is requested,—

"(a) 50% of the ownership interest of the non-timeshare units and 50% of the interests of the timeshare units represented by those voting on a motion for an ordinary resolution must vote in favour of the motion; and

"(b) 75% of the ownership interest of the non-timeshare units and 75% of the interests of the timeshare units represented by those voting on a motion for special resolution must vote in favour of the motion.

"(4) The result of any poll is the resolution of the general meeting."

Section 102

Subsection (4): omit "1 principal unit" and substitute "1 timeshare entitlement".

Section 115(2)

Add:

"(f) any costs relating to rates, levies, and other amounts payable to a territorial authority in respect of timeshare units under section 84A(a)."

Section 117(2)

Omit and substitute:

"(2) The fund may only be applied towards spending relating to—

"(a) the long-term maintenance plan; or

"(b) costs associated with the maintenance, repair, and refurbishment of timeshare units and their contents referred to in section 84A(b)."

Section 119

Omit and substitute:

"**119 Capital improvement fund**

A body corporate of a timeshare resort must establish a capital improvement fund to provide for costs referred to in section 84A(c)."

Schedule 3

s 233

Consequential amendments to other enactments

Part 1
Public Acts

Electricity Act 1992 (1992 No 122)

Paragraph (c) of the definition of **property** in section 2(3): omit "Unit Titles Act 1972" and substitute "Unit Titles Act 2010".

Paragraph (a)(iii) of the definition of **specific agreement** in section 2(3): omit "Unit Titles Act 1972" and substitute "Unit Titles Act 2010".

Fire Service Act 1975 (1975 No 42)

The definition of **owner** in section 21B(4): omit "section 2 of the Unit Titles Act 1972" and substitute "section 5(1) of the Unit Titles Act 2010".

Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11)

Section 11(1): omit "Unit Titles Act 1972" and substitute "Unit Titles Act 2010".

Section 11(2): omit "Unit Titles Act 1972" in each place where it appears and substitute in each case "Unit Titles Act 2010".

Section 11(4): omit "section 20 of the Unit Titles Act 1972" in each place where it appears and substitute in each case "section 47 of the Unit Titles Act 2010".

Section 12(d): omit "section 20 of the Unit Titles Act 1972" and substitute "section 47 of the Unit Titles Act 2010".

Section 17(2): omit ", or the Unit Titles Act 1972,".

Section 17(3): omit ", or the Unit Titles Act 1972,".

Section 17(5): repeal.

Section 20(4): repeal.

Local Government Act 1974 (1974 No 66)

Section 346D(3)(b): omit "Unit Titles Act 1972" and substitute "Unit Titles Act 2010".

Part 1—*continued*

Ngai Tahu Claims Settlement Act 1998 (1998 No 97)

Attachment 4.4 Terms of Transfer (Clause 4.4.2) clause 7.1: omit "Unit Titles Act 1972" and substitute "Unit Titles Act 2010".

Attachment 5.5 Terms of Transfer (Clause 5.6.3) clause 7.1: omit "Unit Titles Act 1972" and substitute "Unit Titles Act 2010".

Attachment 6.4 Terms of Transfer (Clause 6.8.2) clause 7.1: omit "Unit Titles Act 1972" and substitute "Unit Titles Act 2010".

Property Law Act 1952 (1952 No 51)

Paragraph (d) of the definition of **lease** in section 104A(1): omit "Part 2 of the Unit Titles Act 1972" and substitute "Part 3 of the Unit Titles Act 2010".

Property Law Act 2007 (2007 No 91)

Clause 15(1) of Part 1 of Schedule 2: omit "Unit Titles Act 1972" and substitute "Unit Titles Act 2010".

Clause 15(1)(a) of Part 1 of Schedule 2: omit "Unit Titles Act 1972" and substitute "Unit Titles Act 2010".

Clause 15(1)(b) of Part 1 of Schedule 2: omit "Unit Titles Act 1972" and substitute "Unit Titles Act 2010".

Clause 15(1)(c) of Part 1 of Schedule 2: omit "section 39(1)(b) of the Unit Titles Act 1972" and substitute "section 137(1)(b) of the Unit Titles Act 2010".

Clause 15(1)(d) of Part 1 of Schedule 2: omit "Unit Titles Act 1972" and substitute "Unit Titles Act 2010".

Clause 15(2)(b) of Part 1 of Schedule 2: omit "section 40 of the Unit Titles Act 1972" and substitute "section 141 of the Unit Titles Act 2010".

Clause 15(3) of Part 1 of Schedule 2: omit "Unit Titles Act 1972" and substitute "Unit Titles Act 2010".

Clause 15(3) of Part 1 of Schedule 2: omit "unanimous vote" and substitute "special resolution".

Part 1—*continued*

Rating Valuations Act 1998 (1998 No 69)

Paragraph (b) of the definition of **certificate of title** in section 5A: omit "Unit Titles Act 1972" and substitute "Unit Titles Act 2010".

Residential Tenancies Act 1986 (1986 No 120)

Section 5(q): omit "Unit Titles Act 1972" and substitute "Unit Titles Act 2010".

Resource Management Act 1991 (1991 No 69)

Definition of **unit** in section 2(1): omit "section 2 of the Unit Titles Act 1972; and includes a future development unit as defined in section 2 of the Unit Titles Amendment Act 1979" and substitute "section 5(1) of the Unit Titles Act 2010; and includes a future development unit (also defined in section 5(1) of the Unit Titles Act 2010)".

Definition of **unit plan** in section 2(1): omit and substitute:

"**unit plan** has the same meaning as in section 5(1) of the Unit Titles Act 2010".

Section 224(e): omit "Unit Titles Act 1972 and the Unit Titles Amendment Act 1979" and substitute "Unit Titles Act 2010".

Section 226(1)(c): omit "Unit Titles Act 1972" and substitute "Unit Titles Act 2010".

Section 408(1)(a): omit "section 5(1)(g) of the Unit Titles Act 1972 or section 5(3)(c) of the Unit Titles Amendment Act 1979" and substitute "section 32(2)(a) of the Unit Titles Act 2010".

Retirement Villages Act 2003 (2003 No 112)

Section 6(4)(a): omit "Unit Titles Act 1972" and substitute "Unit Titles Act 2010".

Securities Act 1978 (1978 No 103)

Section 5(1)(b): omit "Unit Titles Act 1972" and substitute "Unit Titles Act 2010".

Part 1—*continued*

Weathertight Homes Resolution Services Act 2006 (2006 No 84)

Paragraph (c) of the definition of **representative** in section 8: omit "Unit Titles Act 1972" and substitute "Unit Titles Act 2010".

Definition of **unit title complex** in section 8: omit "Unit Titles Act 1972" and substitute "Unit Titles Act 2010".

Section 7(7): omit "the rules or constitution of a body corporate" and substitute "the Unit Titles Act 2010 or any body corporate operational rules made under that Act".

Section 7(8): omit.

Section 22(3): repeal and substitute:

"(3) In the case of a unit title complex, a claim cannot be brought under section 19 or 20 unless a resolution has been passed in accordance with the Unit Titles Act 2010 authorising the body corporate to take the actions stated in subsection (4)."

Section 22(6)(c): repeal.

Section 23(2), (3), and (4): repeal and substitute:

"(2) If the representative bringing a claim under section 19 or 20 is a body corporate, every administrative decision relating to the claim must be made in accordance with the Unit Titles Act 2010 or any body corporate operational rules made under that Act."

Section 23(7): repeal and substitute:

"(7) Subsection (6) overrides anything to the contrary in—

"(a) the constitution of a flat-owning or office-owning company; or

"(b) the lease of, or any licence relating to, any dwelling-house in a cross-lease complex."

Section 24(a) and (b): repeal and substitute:

"(a) any obligation of the body corporate or body corporate committee, procedural or otherwise, under any enactment other than this Act, or under any body corporate operational rules made under the Unit Titles Act 2010; or"

Section 25: repeal.

Part 2
Local Act

Auckland City Council (Newmarket Land Vesting) Act 1998 (1998 No 1 (L))

Section 3(4): omit "Unit Titles Act 1972" and substitute "Unit Titles Act 2010".

Section 3(5): omit "section 44 of the Unit Titles Act 1972" and substitute "section 68 of the Unit Titles Act 2010".

Part 3
Private Acts

Anglican Church Trusts Act 1981 (1981 No 5 (P))

Clause 3 of Schedule 2: omit "Unit Titles Act 1972" and substitute "Unit Titles Act 2010".

Clause 2 of Schedule 3: omit "Unit Titles Act 1972" in each place where it appears and substitute in each case "Unit Titles Act 2010".

Anglican (Diocese of Christchurch) Church Property Trust Act 2003 (2003 No 1 (P))

Clause 3 of Schedule 1: omit "Unit Titles Act 1972" and substitute "Unit Titles Act 2010".

Legislative history

29 May 2008	Introduction (Bill 212–1)
5 March 2009	First reading and referral to Social Services Committee
2 September 2009	Reported from Social Services Committee (Bill 212–2)
16 February 2010	Second reading
25 March 2010	Committee of the whole House (Bill 212–3)
30 March 2010	Third reading
19 April 2010	Royal assent

This Act is administered by the Ministry of Justice, Department of Building and Housing, and Land Information New Zealand.

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