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Dennis has many years experience with Property transactions and will sort out any problems you may have.



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Jeanette works with Dennis and is experienced in Conveyancing and property matters

UNIT TITLES ACT 2010

Law North Limited

Winter 2011

On 20 June 2011, the Unit Titles Act 2010 came into effect. This legislation repeals and replaces the Unit Titles Act 1972. The Act affects all unit titles and body corporates established under the Unit Titles Act 1972 as well as new unit titles developments to be established under the new Act.

The new legislation will require certain changes to existing body corporate rules and management over the next 14 months and the owners of all unit titles will need to be aware of the changes that will occur.

The Unit Titles Act 2010 has an immediate effect on the obligations of sellers of unit titles from **20 June 2011**. This will also have an immediate effect on the obligations of real estate agents who market unit titles and produce agreements for the sale and purchase of unit titles.

1. By Section 146 of the Unit Titles Act, a seller of a unit title must provide to the buyer a pre-contract disclosure statement in the prescribed form prior to the contract being entered into. Regulation 33 and Form 18 of the Regulations provide the form and content to be included in the pre-contract disclosure statement.

The term "buyer" is defined in the Act as "... includes a prospective buyer". The term "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. The obligations to provide this pre-contract disclosure will apply where a prospective buyer is considering the purchase of a unit and also to a binding option to purchase.

A pre-contract disclosure statement must be signed by the seller or by a person authorised by the seller and given to the buyer prior to signing an agreement for sale and purchase.

It would be advisable for real estate agents to require from the seller when listing a unit title property for sale, a completed and signed pre-contract disclosure statement conforming to the requirements of the Act and Regulations.

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The Unit Titles Act 2010 provides for a number of changes to the structure and governance of body corporates in the future. If you would like any further information regarding the new Act, please contact Dennis McBrearty at Law North Limited; Ph: 09 407 7099; Email djm@lawnorth.co.nz

2. Section 147 of the Act provides that if a buyer and a seller have entered into an agreement for sale and purchase then no later than the fifth working day before the settlement date the seller must provide a pre-settlement disclosure statement to the buyer. This statement must contain the prescribed information – see Regulation 34 – and must contain or be accompanied by a certificate given by the body corporate certifying that the information in the statement is correct.
3. Section 148 of the Act provides that the buyer may request additional disclosure from the seller. The request for an additional disclosure statement must be made by the purchaser at any time before whichever of the following dates occurs first:

The close of the fifth working day after the date that the agreement was entered into; or

The close of the tenth working day before the settlement date.

If the buyer makes a request for an additional disclosure statement, the seller must provide the statement no later than the fifth working day after the date on which the request was made.

Regulation 35 provides the prescribed information required to be given in the additional disclosure statement. The reasonable cost of preparation of this statement must be met by the purchaser.

It will be important to ensure when drafting an agreement for sale and purchase of a unit title that sufficient time is allowed for the issue of the additional disclosure statement and pre-settlement disclosure statement before the settlement date. If a vendor does not provide the pre-settlement or additional disclosure statement within the prescribed timeframes, the purchaser will have the option to either defer settlement until the disclosure statement is received, or alternatively cancel the agreement and obtain a refund of any moneys paid.

The Regulation does not prescribe any consequence or penalty for a vendor failing to provide a pre-contract disclosure statement. It has however been suggested that the contract may be an illegal contract and therefore void from the outset.

As you will see it will be important for all land agents to guide both sellers and purchasers through the statutory disclosure process now required for the sale and purchase of unit titles. Non compliance may result in an agreement being cancelled or settlement being delayed. Such situations may have consequences not only for the parties but also for your agency.

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