

WHO IS YOUR BODY CORPORATE?... MY BODY WHO?

What is a body Corporate and what role does it play in the buying and selling of Unit Titles?

As our population has increased, so has the demand for units. The Unit Title Act 1972 governs the rights and duties of the individual unit owners and the communal body to which they all belong - the Body Corporate. Owing to the increasing demand for units there is now an even greater need to understand the role the Body Corporate plays in the sale and purchase of a unit.

A Body Corporate's duties involve largely carrying out the duties imposed on it by the rules of the Body Corporate, insuring the building and establishing and maintaining a fund for the payment of insurance premiums, rent, repairs and administration expenses and levying the unit owners for these amounts. It is also necessary for the Body Corporate to keep the common areas in a good state of repair by controlling, managing, administering the common property and doing everything, which is within reason to enforce the rules of the Body Corporate.

Often a specialist company will act as secretary for a large body corporate and ensure that the necessary duties are performed. However where there is no specialist company employed and the body corporate consists of three or less units then all members are obliged to perform the necessary duties. The Body Corporate is also required to appoint a secretary who is able to perform tasks like issuing of a Section 36 Certificate.

1. Section 36 Certificate

This certificate simply shows any levy that has been made by the Body Corporate on a unit owner and shows the amount that has been paid by the unit owner and any further amounts that are recoverable by the Body Corporate under the Act. This Certificate is also important in that it shows whether the Body Corporate has performed or entered into any contract to effect repairs under which the proprietor is liable for payment of.

The Body Corporate can also issue a Section 36 Certificate in respect of any unit and it is essential that one be obtained by the vendor prior to settlement and forwarded to the purchaser. It should also be noted that borrowers are obliged to provide lenders with a copy of a Section 36 certificate in order to satisfy the lending institutions requirements.

2. What if there is no Body Corporate to issue a Section 36 Certificate?

If there is no active body corporate or secretary to issue a Section 36 Certificate then the vendor has three options in order to satisfy the requirement of issuing a Section 36 Certificate prior to settlement:

- (a) The vendor could authorise their solicitor as their agent, to give a warranty as to the matters required to be settlement in the Certificate; or
- (b) the Certificate could be prepared and the Body Corporate seal affixed to it in the presence of two or more unit owners; or as a last option
- (c) letters from unit owners as to payment and other relevant matters could be sufficient.

3. Insurance

Obviously insurance plays a crucial part in purchasing a property and therefore the Unit Titles Act contemplates three types of insurance that may be taken out by the unit owner.

The first is a principal insurance policy and under this the Body Corporate must insure all buildings and improvements on the land for replacement value. Under this policy if a claim is received the insurance proceeds must be used in reinstating the damaged buildings unless a unanimous resolution is passed resolving otherwise.

Under this policy a mortgagee can not claim the proceeds but the Body Corporate does have a duty to keep the insurance company informed by notice in writing of all the unit owners and the mortgagees.

The second type of policy is a mortgage redemption policy which allows in the event of a unit being destroyed or damaged the mortgagee to receive payment of the money owing under the mortgage. Therefore the unit owner is indemnified against the liability to repay the mortgage.

The third type of policy is an owners insurance policy which is where the unit owner will organise their insurance over the property and this is usually only done where there is doubt by the unit owners as to the Body Corporate being to perform its proper duty.

4. Requisitions

Problems have arisen where there have been alterations or additions made to a building which have extended beyond the principal or accessory unit's boundary. In this situation there is specific right to requisition the vendor to cure the defect in the title if the agreement has been drawn up using the Real Estate Institute - Auckland District Law Society standard agreement.

Under clause 5.3 the vendor is required to effect the deposit of a redevelopment plan or a new unit plan which correctly outlines the principal and the accessory units and therefore effects the issue of a new certificate of title.

Therefore it is particularly important when purchasing a unit to view the unit plan to ascertain that it is in accordance with what is being purchased. It is also crucial that purchasers be aware that the time limit for requisitioning is 15 working days from the date of the agreement.

5. Vendors Warranties and Undertakings

Clause 7.1 of the standard agreement ensures that the vendor of a Unit Title makes several warranties. The first is that all the levies have been paid in full to the Body Corporate and that there are no amounts owing by the vendor. The vendor will also warrant that they are not aware of any changes in the Body Corporate rules or that the Body Corporate has not granted any lease, licence, easement or special privilege over the common property.

Finally the vendor must also issue to the purchaser a Section 36 Certificate no less than five working days before. If the Certificate is not forwarded to the purchaser prior to this time period then the purchaser has the right to delay settlement until the fifth working day after they have obtained a copy of the Certificate.

These are some of the basic matters that will be encountered when purchasing or selling a Unit Title and in order to effect a smooth settlement it is advised that you consult your solicitor to ensure that there no other outstanding matters that could disrupt settlement.