

What you need to know





Ministry of Business, Innovation and Employment (MBIE) Hīkina Whakatutuki – Lifting to make successful

MBIE develops and delivers policy, services, advice and regulation to support economic growth and the prosperity and wellbeing of New Zealanders.

MORE INFORMATION

Information, examples and answers to your questions about the topics covered here can be found on our website: www.mbie.govt.nz.

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First things first – about unit title properties

What is a unit title?

Unit title owners own a defined part of a building, such as an apartment, and share common areas such as lifts, lobbies or driveways with other owners. Residential unit title properties are typically apartment blocks and townhouses. Commercial and industrial types include office blocks, industrial or retail complexes, and shopping malls. This combination of individual and shared ownership of land and buildings means owning a unit title property involves a different set of rights and responsibilities than free-standing house and land ownership.

What is a body corporate?

When you purchase a unit, you automatically become a member of the body corporate. All unit owners in a unit title property make up the body corporate, and they must hold an annual general meeting, or AGM, once a year to discuss body corporate matters.

What is a body corporate committee?

A body corporate committee is a group elected by members of the body corporate. All committee members must be unit owners. Committee members that are not 'natural persons' (for example, a company) will be able to nominate a director, employee or class of employee to act on their behalf.

The Unit Titles Act 2010 (the Act) provides that any duties or powers of the body corporate can be delegated to a body corporate committee, except for certain specified matters. A body corporate cannot delegate a matter to the committee if the Act requires it to be decided by special resolution.

Not all unit title properties have a committee. If there are more than 9 units, the body corporate must form a committee. It can choose not to, but this must be confirmed by special resolution.

A property with 9 units or less doesn't need a committee. It can decide to set one up by ordinary resolution.

Who is the body corporate chairperson?

A chairperson must be elected by the body corporate at the AGM. The chairperson of the body corporate will also be the chairperson of the body corporate committee, unless the body corporate decides that the committee chairperson will be elected by the committee.

A candidate for chairperson or a committee member will need to be a unit owner and have no overdue body corporate levies.

The duties of the body corporate chairperson include:

- › chairing meetings, preparing agendas and keeping records of minutes
- › keeping financial accounts and records
- › signing documents on behalf of the body corporate
- › maintaining a register of unit owners.

The chairperson can be removed by the body corporate through ordinary resolution at an extraordinary general meeting (EGM). Another chairperson must be elected at the same meeting.

There is more information regarding the role of the chairperson and their duties on the Unit Titles Services website www.unittitles.govt.nz

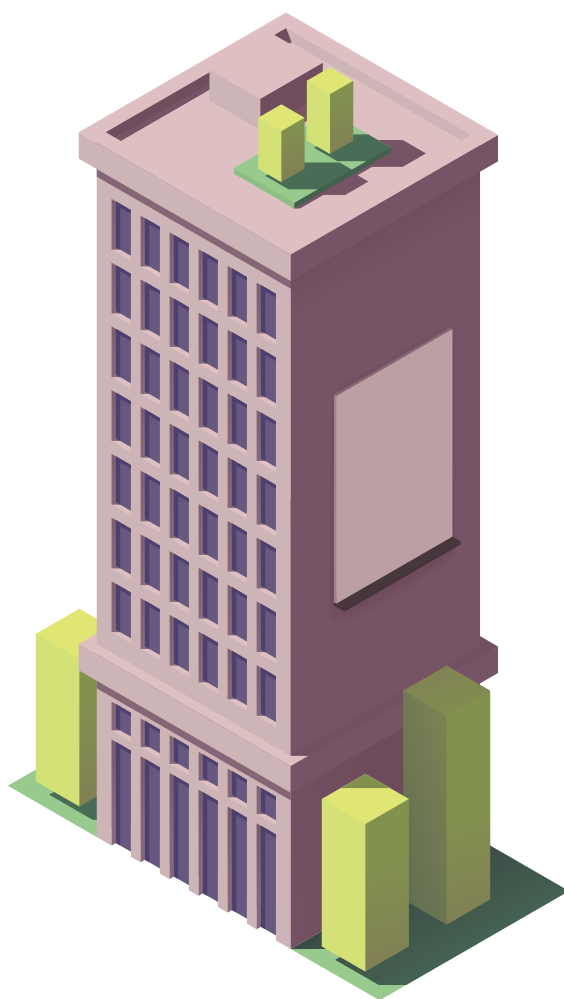
What is the Unit Titles Act?

The Unit Titles Act 2010 (the Act) is the law that governs all unit title properties and sets out the rules and regulations so they can be managed effectively. (Unit Titles Regulations 2011)

The Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Act became law on 9 May 2022. Supporting regulations were developed in 3 stages, and are now all in force.

These amendments aim to provide greater protections for people who buy or own unit title properties, by:

- › requiring a wider range of information to be provided to prospective buyers and providing additional rights to buyers if these requirements are not met
- › strengthening governance arrangements in relation to a body corporate
- › raising standards for body corporate managers
- › ensuring adequate planning of long-term maintenance projects
- › introducing new dispute resolution rules and fees
- › allow for greater flexibility in relation to utility interests and charges to unit owners
- › giving new powers to the regulator (the Ministry of Business, Innovation and Employment).



Multiple utility interest and ownership interests

The developer can assign a single utility interest or assign multiple utility interests that relate to a particular service or amenity. Some interests can be assigned to some units only, for example, an amenity that is only used by particular units, such as a private courtyard. Utility interests are used to calculate the share of body corporate levies paid by each unit.

The body corporate can also decide to reassess the utility interest by special resolution. The reassessment can assign a single or multiple utility interests.

The ownership interest of your property is your share of the value of the whole property complex.

It is set by a registered valuer when the unit plan is deposited with Land Information New Zealand (LINZ) and can be expressed as a percentage. Utility interest is used to calculate how much you contribute to the operational costs of the body corporate. Unless otherwise noted with unit plan documentation, utility interest is the same number as the ownership interest. It may differ from ownership interest if the body corporate agrees that operational costs should be shared in a different proportion to ownership interest.

Before you buy

Buying a unit title property means sharing common property with other people, and will involve different obligations to other purchases of land. It's important you know what you are committing to.

There are various types of disclosure documents which provide you with the information you need to make an informed decision before you buy.

Pre-contract disclosure statement

A seller is required to provide a pre-contract disclosure statement before entering into an agreement for sale and purchase. This includes, for example, financial statements, maintenance, weather tightness and related information, and body corporate general meeting minutes for the last 3 years.

A different set of details will be required if the pre-contract disclosure statement relates to an 'off-the-plans' sale. (Many pre-contract details are not available at the off-the-plans stage.)

A buyer can request more information than is required by the statement. However, the seller is under no obligation to provide that additional disclosure.

Pre-settlement disclosure statement

A seller must provide a pre-settlement disclosure statement after the sale and purchase agreement is entered into, and before settlement. The pre-settlement disclosure statement must be provided at least 5 working days before the settlement date.

The pre-settlement disclosure statement for off-the-plans sales must include this information, where possible. Some of the details in the pre-settlement disclosure statement may not be available for new off-the-plans units.

The seller of an off-the-plans unit will need to include some information in the pre-settlement disclosure statement that would otherwise be included in the pre-contract disclosure statement.

Ability to cancel an agreement or delay settlement – pre-contract disclosure

The buyer may be able to delay settlement, or cancel the sale and purchase agreement, if the pre-contract disclosure statement is late, not provided, is incomplete or inaccurate.

If an incomplete or inaccurate pre-contract disclosure statement is provided before the agreement is entered into, the buyer may be able to cancel the agreement in some circumstances.

Ability to cancel an agreement or delay settlement – pre-settlement disclosure

The buyer may be able to delay settlement, or cancel the sale and purchase agreement, if the pre-settlement disclosure statement is late, not provided, is incomplete or inaccurate. If a seller has not provided a complete and accurate pre-settlement disclosure statement 5 working days before settlement, the buyer can delay settlement until 5 working days after an accurate and complete statement is provided.

The buyer must give the seller an opportunity to correct the pre-settlement disclosure statement. If the amended pre-settlement statement is complete and accurate, the buyer cannot cancel the agreement under this provision.

For further information on the pre-contract disclosure statement and the pre-settlement disclosure statement (existing units and off-the-plans) including templates, please go to the Unit Titles Services website:

- › www.unittitles.govt.nz/
- › www.unittitles.govt.nz/forms-and-resources/

Your rights and responsibilities as a unit owner

All unit owners, occupiers and tenants need to follow the body corporate's operational rules, so that the property runs smoothly.

An owner's rights include:

- › attending body corporate general meetings
- › having a vote on matters affecting your unit or common areas, providing your levy payments are up to date.
- › standing for election as chairperson or committee member
- › having access to and a share in the common property
- › having quiet enjoyment of your unit without interruption by other unit owners or occupiers
- › access to a dispute resolution process.

An owner's responsibilities include:

- › paying levies set by the body corporate to fund the operation and maintenance of the property
- › complying with body corporate operational rules
- › complying with legal requirements relating to use of your unit
- › maintaining and repairing your privately-owned area so that no damage is caused to other units
- › notifying the body corporate of your intention to carry out additions.

If the additions affect any other unit or common property, you will also need written consent from the body corporate and any affected owners.

Tip: Make sure you have a copy of the unit plan. This is the official document showing legal boundaries, and you can get this through a title search at Land Information New Zealand (LINZ).



Body corporate responsibilities

The body corporate is responsible for managing administration, finance and unit maintenance relating to the unit title development.

Information responsibilities

A body corporate committee must produce an agenda for its meetings, keep written records of its meetings, record its decisions and report back to the body corporate as specified by the regulations. Matters must be decided by a voting majority.

A body corporate committee must provide minutes of its meetings to all unit owners, within 1 month of each meeting. Minutes can be provided electronically, but an owner can request a physical copy.

Information in the minutes may be removed if:

- › disclosing the information would be a breach of the Privacy Act 2020 or any other law
- › the information is subject to legal professional privilege
- › confidentiality of the information must be protected on grounds of commercial sensitivity.

Financial responsibilities

The body corporate has financial powers and responsibilities under the Unit Titles Act. These include:

- › collecting levies from owners
- › borrowing and investing money
- › paying the body corporate's expenses
- › keeping records and preparing financial statements.

The body corporate must hold a principal insurance policy. This policy covers all buildings and improvements. In some cases, unit owners will hold their own property insurance for their units.

Financial statements

The body corporate must record all of its financial transactions. These records are used to prepare the annual financial statements.

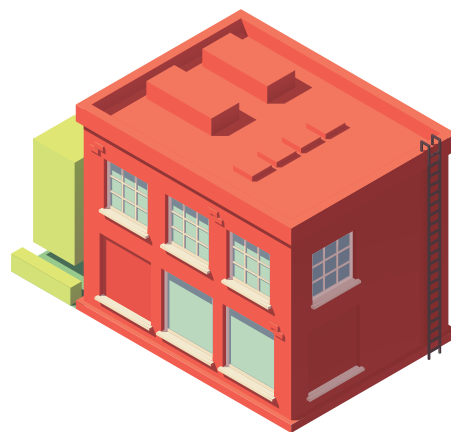
The body corporate must have the financial statements audited. This happens at the end of the financial year. The body corporate can decide not to do this by special resolution.

Maintenance responsibilities

The body corporate maintains:

- › the common property
- › assets owned by the body corporate
- › assets used in connection with the common property
- › parts of the building that serve more than one unit.

The body corporate can access units to carry out repairs and maintenance. They can access at any time as long as it's within reasonable hours.



Body corporate managers

The Act requires that body corporate managers comply with the code of conduct to meet prescribed ethical and professional standards.

Read the new code of conduct for body corporate managers — www.legislation.govt.nz/act/public/2022/0019/latest/LMS368100.html

Bodies corporate of large unit title developments, where there are 10 or more principal units, must engage one or more body corporate managers. A body corporate can opt out of this requirement by special resolution. A body corporate manager is a person who is employed by a body corporate to provide services outlined below. Companies that provide professional body corporate services can be contracted to carry out these services as well:

- › record keeping and other administrative services
- › financial services, such as handling money of the body corporate or its members
- › regulatory compliance services on behalf of the body corporate
- › the making or preparing of statutory disclosures.

Body corporate managers must perform the functions that:

- › the body corporate has lawfully authorised the manager to perform; and
- › that are specified in a written agreement that sets out the manager's terms of engagement.

Even if the manager is contracted to perform the tasks of operating the body corporate, responsibility remains with the chairperson or committee. Appointing a body corporate manager does not in any way affect your rights as a unit owner.

Demonstrating compliance

The Regulator can ask bodies corporate or body corporate managers to provide information and to demonstrate compliance with the Unit Titles Act.

Bodies corporate and body corporate managers are required to keep certain documents relating to financial, maintenance, governance, and operational matters.

You can find out more about the responsibilities of bodies corporate and body corporate managers on the Unit Titles Services website: www.unittitles.govt.nz



Operational rules

There are default operational rules that apply to all unit title properties, and which apply if a body corporate doesn't have its own operational rules. These default rules are that you, or anyone occupying your unit, must not:

- › damage or deface common property
- › leave rubbish or recycling material on the common property
- › create noise likely to interfere with the use or enjoyment of the unit title development by other owners or occupiers
- › park on the common property unless the body corporate has designated it for car parking, or the body corporate consents
- › interfere with the reasonable use or enjoyment of the common property by other owners or occupiers.

These default rules can be changed, removed or added to by an ordinary resolution at an AGM or EGM. They then need to be recorded at LINZ before they take effect.

You can get a copy of the default operational rules for unit title properties from the body corporate chairperson, or through LINZ.

Insurance

The body corporate must hold a principal insurance policy covering all buildings and improvements.

The body corporate must insure and keep insured the unit title property to its full insurable value, and must let the insurer know if any additions or structural alterations are undertaken.

Ask your body corporate chair about the insurance arrangements for your complex and ask for a copy of any insurance documents. It's a good idea to have contents insurance as the body corporate insurance does not cover your own belongings. In some cases, unit owners will hold their own property insurance for their units.

If the unit owner is renting out their unit, an insurance statement must be included in all new tenancy agreements.

If you need advice about your own circumstances, please contact your lawyer.



Levies and maintenance

The body corporate pays for any maintenance or repairs it carries out through levies on unit owners.

Levies cover all regular costs for common areas such as insurance, cleaning, gardening, fees for any contracted professionals, and ongoing maintenance.

If there are unexpected expenses and insufficient funds available, unit owners will be levied in proportion with their ownership interests.

A budget for the coming year is usually established at the AGM. The body corporate will determine the date on which you must pay your fees and may charge you interest on any unpaid amounts.

Long-term maintenance plans

The body corporate must establish and maintain a long-term maintenance plan (LTM plan), which covers at least 10 years. Large unit title developments (10 or more units) will require a LTM plan covering a period of at least 30 years from the date of the plan's commencement or last review, and have their plan reviewed every 3 years.

The LTM plan helps to:

- › identify future maintenance requirements and estimate the costs involved
- › support the establishment and management of long-term maintenance funds
- › provide a basis for levying unit owners
- › provide ongoing guidance to the body corporate to assist it in making its annual maintenance decisions.

Long-term maintenance plans for large unit title developments

The body corporate must, unless it decides by special resolution not to do so, consult with building or other professionals, where necessary or appropriate.

A long-term maintenance plan identifies the future maintenance needs of the whole unit title property, and estimates the cost, determining your contributions. Planned maintenance might include major maintenance of lifts, heating, ventilation and air conditioning, repainting the exterior, major roofing or cladding repairs, or resealing common driveways and parking areas.

The long-term maintenance fund

The long-term maintenance plan is funded by the long-term maintenance fund (unless the body corporate resolves not to have a long-term maintenance fund by special resolution).

Most of the time, all owners share the cost of repairing and maintaining common property through the body corporate levy. However, the body corporate may choose to recover the costs of repairs from you:

- › where the repair or maintenance benefits you substantially more than other unit owners
- › where the repair or maintenance is carried out on property contained in your unit
- › if you caused damage which necessitates the repair or maintenance work.

The body corporate may set up other contingency or capital improvement funds for emergencies and unforeseen expenses, such as weather-tightness or earthquake resilience issues.

To view the long-term maintenance plans for large unit title developments and small unit title developments, please visit the Unit Titles Services website:
www.unittitles.govt.nz/forms-and-resources

If things go wrong

How you can find a solution yourself

If you have a unit title dispute, such as a disagreement with the body corporate or another unit owner, there are some straightforward things you can do first:

- › Talk to the other parties involved and see if a solution can be found.
- › Check the body corporate rules – this will help you understand how the body corporate is meant to operate.

You can also consider the following options:

■ Mediation

Mediation lets you discuss the problem with a mediator present. The mediator will support the discussion and help those involved to reach an agreement. If an agreement is reached, it can be made formal in a mediator's order. This order is binding and outlines what will happen if someone breaks it.

Examples of issues that could be handled by mediation include:

- › someone not following the body corporate operational rules
- › disputes with other unit owners on parking, noise or rubbish.

You can apply for mediation through the Tenancy Tribunal.

■ Tenancy Tribunal

You can apply to the Tenancy Tribunal for mediation or adjudication if you have a dispute with your unit title property about an amount less than \$100,000.

The costs for applying to the Tenancy Tribunal are \$250 for mediation and \$500 total where the dispute requires adjudication.

This means if a \$250 fee has been paid and the dispute is then referred to adjudication, a further fee payable of \$250 is required. The total fee that is payable for the application will not exceed \$500.

You may need to attend a hearing if your issue is about:

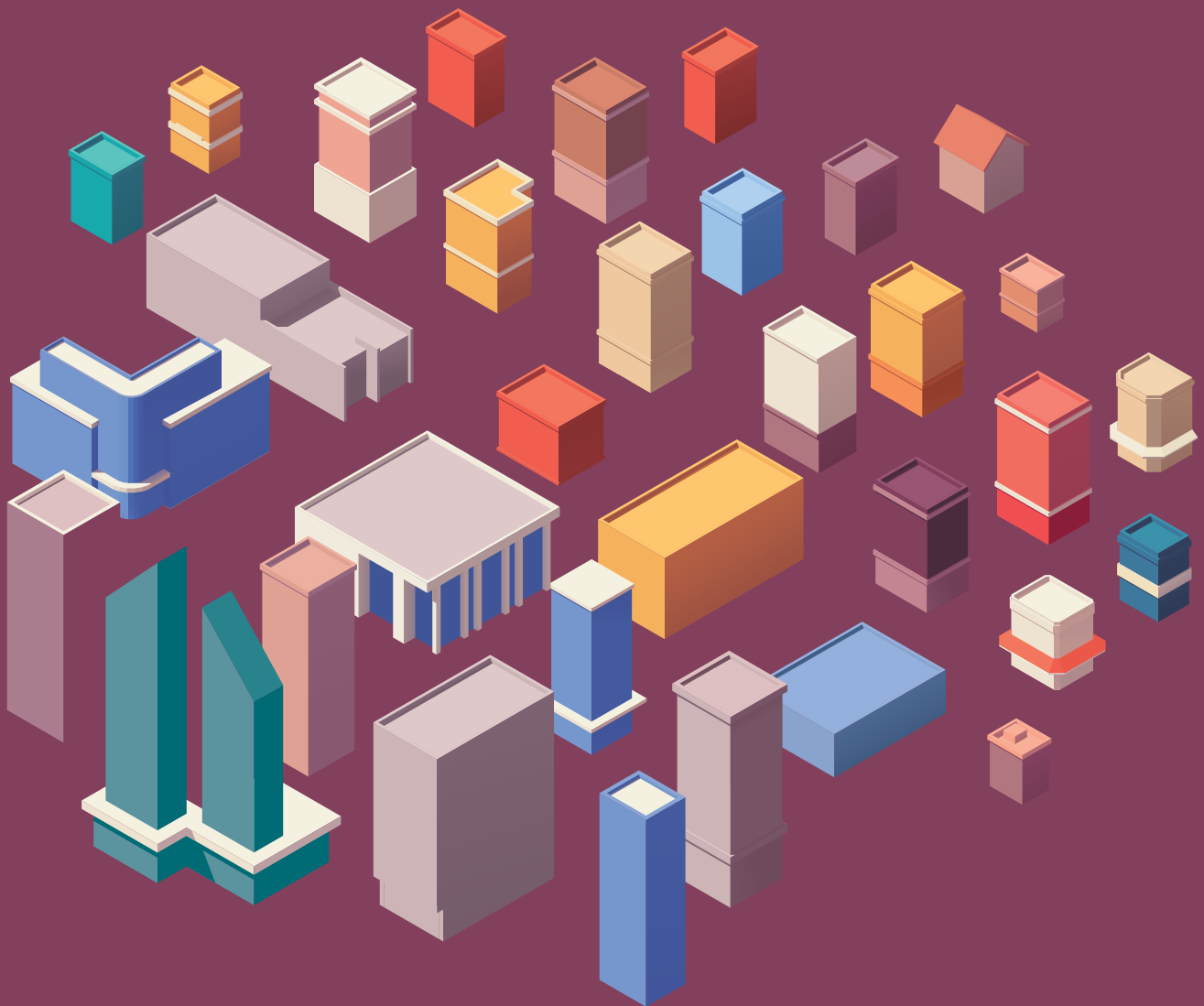
- › unpaid levies
- › body corporate decisions, repairs and maintenance.

■ The Courts

The District Court can hear disputes about insurance money (up to \$50,000) and other issues between \$100,000 and \$350,000.

The High Court can hear disputes about the title of land, insurance money (over \$50,000) and issues over \$350,000.

For more information, visit our website:
www.unittitles.govt.nz or
call 0800 864 884



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