

Unit Title

Unit titles were created by the Unit Titles Act 1972 to allow an individual to own a residential dwelling or commercial/industrial unit within in a larger complex. It also provides a legal mechanism for multiple ownership of the common spaces and facilities, such as driveways, communal gardens and facilities, air conditioning systems and lifts.



The Unit Titles Act 1972 provides a stratum estate in fee simple to a defined 'space' bounded by dimensions of height, length and breadth, being part of the larger title. Unlike Cross Lease ownership it is buildings based rather than land based. Unit Titles can function in two dimensions, as in a standard development, as well as in strata or airspace situations where it functions in three dimensions.

A unit title can be bought and sold, leased or mortgaged. It is made up of four components:

1. Ownership of the major units. These are called Principal Units (PU) such as the major residence.
2. Assessor Units (AU) such as a car park, courtyard or garden. Assessor Units must be associated with a PU and cannot be sold off separately unless to the owner of another PU. For example: say you owned a car park in a building you could sell it to another PU owner within the same building but not to an outsider.
3. An undivided share in the ownership of the common property as tenants in common. That is the share of the common areas such as driveway, lifts, communal gardens, etc.
4. An undivided share in the ownership of the units if the unit plan is cancelled.

Body Corporate (BC)

This is made up of all of the individual owners within the complex. The BC arranges the upkeep, maintenance and insurance for the building structure. It also pays for items such as repairs and maintenance of lifts and mechanical services and payment of electricity for lighting common areas. These expenses are paid from money levied from all of the owners.

There are various rules defining the powers and behaviour of the BC and these are set out in the legislation.

However, suffice to say that when the various owners are in disagreement, body corporate arrangements can be a potential source of friction.

Unit Entitlement

This is an important concept as it defines the level of your financial contribution to the BC expenses. The Unit Entitlement is a figure based on the value of your unit in a ratio to the value of all other units (both PUs and AUs) and is determined and recorded at the outset on the unit plan by a Registered Valuer. Your Unit Entitlement share defines your percentage liability for the costs of the Body Corporate (e.g. rates, insurance, and upkeep of the common area). For example if you had 100/1000 share, you would be responsible to pay 10% of the above costs.

New Zealand's Land Registration System

Land ownership in New Zealand is based on the 'Torrens System' of land registration. The system was first developed in South Australia by R. Torrens in 1858. It was introduced to New Zealand in 1860. The Deeds

System and Torrens System of land registration ran concurrently from 1860 until all land dealings finally came under the current system by authority of the Land Transfer Act 1952.

The Torrens system provides a public register recording all material facts relative to the title. Once as registration is accepted the state guarantees what is called an 'indefeasible' title.

The major advantage of the system is that anybody dealing with land in New Zealand is saved the effort of investigating back to the root of the title, and is able to rely on the details on the face of the register.

This is a distinct advantage over the old Deeds System, which is still in use in the US, UK and elsewhere. Under the Deeds System you could lose your land rights if somebody popped out of the woodwork with a valid claim of prior ownership. Thus dealing with land transfer under the Deeds system is a much lengthier and expensive process where it is incumbent on the lawyer acting on behalf of the purchaser to research the deeds and various previous transfers and interests, to ensure the above does not occur.

Limitations to Indefeasibility of Title

Where a title has written on it 'Limited as to Parcels' or 'Limited as to Title' or both, it means that when the land was brought into the system under the Land Transfer Act 1952, the Land Registrar was not satisfied with some aspect of the transfer.

Limited as to Parcels means that an aspect such as the physical coordinates, area or boundaries of the land were uncertain and therefore not fully guaranteed. Usually this limitation can be removed upon completion of a resurvey.

Limited as to Title means that the proprietor's ownership is not guaranteed. This arises when the Land Registrar was not satisfied that the proprietor was in possession of the land when it was brought under the Land Transfer Act 1952. This limitation can be removed with the surrender of all outstanding instruments affecting the title together with a statutory declaration of ownership.

When the above limitations have been removed then a fully guaranteed 'indefeasible' title can be issued.

Doctrine of Eminent Domain

The crown retains the Allodial Estate or absolute ownership of all land to which the ownership rights of individual citizens are subservient. This Allodial Estate is expressed by the Crown's power to resume privately owned land under the Doctrine of Eminent Domain. The Crown sometimes exercises this right under the Public Works Act where privately owned land is taken for public uses, although unlike in feudal times, fair compensation is now paid and they rarely burn villages or make off with the livestock to speed up the process.

Co-Ownership (tenants in common & joint tenancies)

There are two main forms of co-ownership being (i) joint tenancies and (ii) tenancies in common. In neither case does the tenant have an exclusive claim to any specific part of the land owned in common, although this has been somewhat modified in practice in cross lease developments where the land used exclusively by one owner is delineated on the flats plan with the lease stating the occupation rights.

(i) Joint Tenancies

These are between statutorily related parties, for example a married couple. The main feature that defines a Joint Tenancy is the right of survivorship. Upon the death of a joint tenant, the joint tenant's

shares devolve to the survivor. If during his/her life a joint tenant disposes of his or her interests to another person then that person receiving a share of the land becomes a Tenant in Common with the other joint tenants.

(ii) Tenants in Common

Tenants in common hold the land concurrently with other owners and have an undivided but defined share. The tenant in common can deal with his/her interests separately by disposing of it by will after death or by transfer when alive.

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