

**BASIC DISCLOSURE REQUIREMENTS UNDER  
THE UNIT TITLES ACT 2010**

**THE ACT**

The Unit Titles Act 2010 (“the Act”) came into force on 20 June 2011. The Act is accompanied by the Unit Titles Regulations 2011. Some provisions will continue to apply for a transitional period while the Unit Titles Act 1972 is repealed from 20 June 2011.

**WHAT IS NEW?**

The Act aims to bring clarity and better inform consumers by added disclosure requirements.

Consumer protection means there is added disclosure requirements for vendors selling their unit titles under s146 and s147 which means they must provide pre-contractual disclosure statements to the potential purchasers before signing the agreement and then pre-settlement disclosure before 5 working days from the settlement date.

The new idea of layered developments and the newly defined “unit entitlements” of “unanimous consent” provisions will bring flexibility for developers for unit title scheme structures and management. There are additional duties for the Body Corporate and the Body Corporate Chairman/Committee.

**NEW DISCLOSURE REGIME**

**1. Introduction**

The Act introduces a mandatory disclosure regime for unit title developments as follows:

- (a) pre-contractual disclosure by the vendor to all potential purchasers before their sign an agreement for sale and purchase;
- (b) pre-settlement disclosure by the vendor to the purchaser five working days before settlement; and
- (c) additional disclosure which may be requested by the purchasers (with additional costs incurred by the purchaser).

All disclosure statements must be **dated** and **signed** by the vendor or by its authorised agent.

These are mandatory requirements and one cannot contract out.

**2. Pre Contractual Disclosure (s 146 of the Act)**

The following are the key aspects of the disclosure regime:

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- If, before settlement, the seller becomes aware of any inaccuracies in any of the disclosure statements provided to a buyer, the seller must provide another disclosure statement correcting those inaccuracies.
- Differing remedies apply according to the disclosure obligations with deferring of settlement or termination allowed where post-contractual disclosure is not made on time.
- Developers and sellers will be responsible for ensuring that the disclosure statements provided are accurate as the new Act provides that buyer's are entitled to rely on the information included.

### **3. Pre Settlement Disclosure (s 147 of the Act)**

The Act has replaced the previous section 36 certificate, with a pre-settlement disclosure. The disclosure must occur more than 5 days prior to settlement. If a pre-settlement disclosure is not received, the purchaser can defer settlement (s149) or even cancel the agreement (s151).

The following information must be provided:

- (a) the unit number; and
- (b) the body corporate number; and
- (c) the amount of the contribution levied by the body corporate under section 121 of the Act in respect of the unit being sold; and
- (d) the period covered by such contribution; and
- (e) the manner of payment of the levy; and
- (f) the date on or before which payment of the levy is due; and
- (g) whether a levy, or part of a levy, due to the body corporate is unpaid and, if so, the amount of the unpaid levy; and
- (h) whether legal proceedings have been instituted in relation to any unpaid levy; and
- (i) whether any metered charges due to the body corporate are unpaid and, if so, the amount of unpaid metered charges; and
- (j) whether any costs relating to repairs to building elements or infrastructure contained in the unit are unpaid and, if so, the amount of unpaid costs; and
- (k) the rate at which interest is accruing on any money owing to the body corporate by the seller; and
- (l) whether there are any proceedings pending against the body corporate in any court or tribunal; and
- (m) whether there have been any changes to the body corporate operational rules since—
  - (i) the additional disclosure statement, if one has been provided; or
  - (ii) the pre-contract disclosure statement.

### **4. Additional Disclosure (s 148 of the Act)**

Additional information may be requested by the Purchaser at the Purchaser's cost. An interesting point to note is that the new disclosure regime does require specification of insurance arrangements which means that unless additional disclosure statements are requested (which cannot be activated within the first five days (s228)), the Purchaser may not have a way of finding this information out.

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## NEW BODY CORPORATE DUTIES

### 5. Introduction

Regardless of Body Corporate rules and current arrangements, the Act prescribes mandatory duties and powers for the Body Corporate to follow including:

- Insuring the property;
- Repair and maintenance of the *common* property;
- Establishment of various funds and accounts;
- Levying contributions from owners;
- Record keeping and financial statements;
- Calling meetings;
- Keeping a register of members;
- Fixing ownership and utility interest; compliance with body corporate operating rules; and
- Spending, borrowing and investing of money.

#### **Disclaimer:**

We have taken every care to ensure that the information given is accurate, however it is intended for general guidance only and it should not be relied upon in individual cases. Professional advice should always be sought before any decision or action is taken.

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