

Unit Titles



Including knowing and understanding how Unit Title properties differ from other property titles and your obligations when selling Unit Title properties as a real estate salesperson

The Purpose of Unit Titles Act 2010

The purpose of this Act is to provide a legal framework for the ownership and management of land and associated buildings and facilities on a socially and economically sustainable basis by communities of individual owners and, in particular,—

- [a] to allow for the subdivision of land and buildings into unit title developments comprising units that are owned in stratum estate in freehold or stratum estate in leasehold or licence by unit owners, and common property that is owned by the body corporate on behalf of the unit owners; and
- [b] to create bodies corporate, which comprise all unit owners in a development, to operate and manage unit title developments; and
- [c] to establish a flexible and responsive regime for the governance of unit title developments; and
- [d] to protect the integrity of the development as a whole.



Unit Titles Act 2010

Licensees must obtain and familiarise themselves with the record (certificate) of title (and accompanying documents) for any properties they market, whether for sale or lease.

Identifying a unit title property

You can tell if a property is a unit title development as the Record (Certificate) of Title will state either 'stratum in freehold' or 'stratum in leasehold'.

There is a Supplementary Record Sheet identified

The Legal Description usually says "Unit A"

If there is any doubt, check with a lawyer or licensed conveyancing practitioner.

Click on the following link for the Unit Titles Act Information Sheet

https://reinz.co.nz/Media/Default/pdf/Advisory%20Documents/2015_UnitTitleslicenseereformat.pdf

Unit Titles Act 2010 – Your responsibilities

A professionally competent and ethical licensees should be able to explain the following key points when listing a property.

Key points are:

- Disclosure obligations relating to commercial / industrial properties on unit titles
- How this information will be provided/obtained
- Costs involved
- Legislative and council issues affecting commercial / industrial properties
- Other Disclosures during and after the marketing period
- Principal units (PU)
- Accessory units (AU)
- Common areas
- Body corporate -
 - Rules
 - Long-term maintenance plan
 - Budget
 - Levy on all owners



Unit Title Terminology explained

Ownership interest is the interest assigned to a unit by a registered valuer based on the relative value of the unit in relation to each of the other units.

- *Make time to read section 38 [3] in the Unit Titles Act 2010 that states what the ownership interest is used to determine.*

A **utility interest** is the interest used to calculate a unit's contribution to the operating account and long-term maintenance account.

- *Make time to read section 39 [3] in the Unit Titles Act 2010 that states what the utility interest is used to determine.*

A **unit** is a defined space of any shape below, on or above the surface of any land designed for separate ownership

The **unit title development** defines the bundle of legal rights associated with a unit.

The bundle of legal rights applying to a unit is known as a 'stratum estate'.

When a unit title is developed, the developer submits a **unit plan** to Land Information NZ. The unit plan shows the principal units as well as any accessory units and common property in the development. It is a formal record of all of the boundaries of the units and the common property.



Unit Title Terminology explained

A **principal unit** is a unit designed as a place of residence or business and is shown on the unit plan as a principal unit. A unit owner's main unit is known as a principal unit. Some examples of a principal unit include an apartment, a set of offices, a retail store, or a warehouse, depending on the type of development. A principal unit could be a car park if the unit title development is a parking building. However, a car park will more often be an accessory unit. The owner of a principal unit is also referred to as the **proprietor**

An **accessory unit** is a unit designed for use with a principal unit and is shown on a unit plan as an accessory unit. Accessory units are designed to be used with a principal unit and must be owned by the owner of a principal unit. They may only be sold with the principal unit, or to the owner of another principal unit in the same development. Examples of accessory units include a car park, private garden, garage or storage space.

Common property is the land and associated fixtures that are part of the unit title development but which are not contained in a principal unit, accessory unit or any future unit developments. Examples include access ways, such as lifts and shared driveways, and shared facilities such as a mailbox area or swimming pool. Common property is owned and managed by the body corporate on behalf of the unit owners.

Unit Titles Act 2010

Unit Title example



**RECORD OF TITLE
UNDER LAND TRANSFER ACT 2017
UNIT TITLE**



Identifier **WN42B/942**
Land Registration District **Wellington**
Date Issued 12 March 1993

Prior References
 WN42B/653

Supplementary Record Sheet
 WN42B/949

Estate Stratum in Freehold
Legal Description Unit 1/2 and Accessory Unit 1/2 Deposited
 Plan 75685

Registered Owners

The above estates are subject to the reservations, restrictions, encumbrances, liens and interests noted below and on the relevant unit plan and supplementary record sheet



What you need to know and do as a licensee

Talk to your client about the need to provide a pre-contract disclosure statement as early as possible and before the marketing of the property starts.

Part of a licensee's duty of due diligence before marketing a property, where that property is a unit title, includes understanding the key aspects of the body corporate rules and other documentation that will be provided as part of the required disclosure, to ensure that the marketing of the property, and any representation about the property made to a customer, is accurate.

Licensees are not expected to be lawyers so the input of the vendor client's lawyer may be necessary at this stage.

Show your client the recommended pre-contract disclosure statement (Form 18 of the Unit Titles Regulations 2011) and discuss with them how the information can be collected to meet its requirements.

Encourage your client to consider providing genuinely interested prospective purchasers with as much relevant information about the Body Corporate as they can get from other owners or the Body Corporate so prospective purchasers can make a more informed decision about their purchase.



What you need to know and do as a licensee

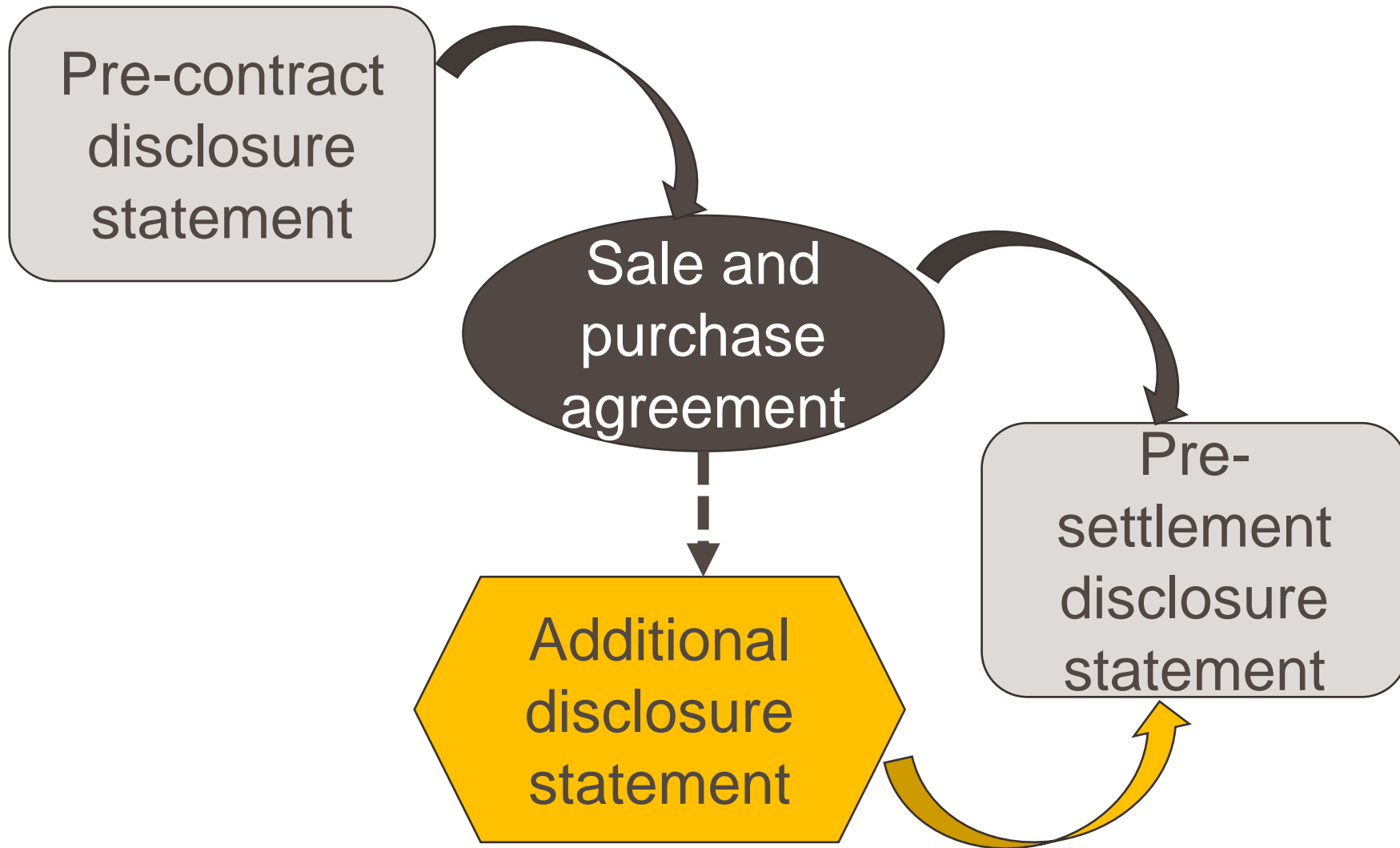
Explain to your client that until a completed and signed pre-contract disclosure statement is provided, you may need to postpone any active marketing of the property.

Once obtained, provide the complete, signed and dated pre-contract disclosure statement to all potential purchasers as soon as you can, for example, at open homes. At the very latest it must be provided to the purchaser before the purchaser enters into a sale and purchase agreement.

Receipt of the pre-contract disclosure statement should be acknowledged.

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The 3 Main Disclosure statements



Pre-Contract Disclosure

Pre-contract disclosure

When selling a unit title, the client must provide a Pre-Contract Disclosure Statement that details the matters set out in the Unit Titles Regulations.

- Clients must provide a pre-contract disclosure statement to purchasers before a sale and purchase agreement is entered into (section 146(1)).
- This statement must be in the prescribed form (Form 18 of the Unit Titles Regulations 2011) and involves making some very specific declarations. Tenancy Services / Ministry of Business, Innovation and Employment has created a more user-friendly form which is downloadable from its website

<https://www.mbie.govt.nz/>

Failure to provide a proper statement may result in the sale being **unenforceable**

Information in the Pre-contract disclosure will include:

- Payment of Levy
- Date that the Levy is due
- Body Corporate Number

Pre-Settlement Disclosure

- See section 147 of the Unit Titles Act 2010, and section 34 of the Unit Titles Regulations 2011.
- Where a buyer and seller have entered into an agreement for sale and purchase of a unit title, the seller must provide a Pre-Settlement Disclosure Statement to the buyer not later than five working days prior to settlement date. The Pre-Settlement Disclosure Statement must contain the information required by the Regulations and have a certificate by the body corporate certifying that the information is correct.
- If the seller fails to provide the statement within the required time, the buyer may postpone the settlement date or the buyer may cancel the agreement for sale and purchase.
- See section 148 of the Unit Titles Act 2010, and section 35 of the Unit Titles Regulations 2011.

Additional Disclosure

A buyer of a unit title may request additional disclosure at any time before the first of:

- the close of the 5th working day after the date the agreement was entered into; or
- the close of the 10th working day before settlement date.

The seller must provide the additional disclosure no later than the 5th working day after the request is made.

- If the seller fails to provide the additional disclosure within the required time, the buyer may postpone the settlement date or the buyer may cancel the agreement for sale and purchase.

Information in an Additional Disclosure statement will include:

- Information about the Body Corporate operational rules
- The long term maintenance plan
- Regular fees
- Insurance policy information
- Liabilities such as repair or maintenance bills.



Body corporate – what is it?

A **body corporate** is created when a unit plan is deposited with LINZ and exists only for the purposes set out in the Unit Titles Act 2010.

- A body corporate is an **entity** made up of all the unit owners in a unit title development. Each unit owner is a member of the body corporate.
- Bodies corporate have ‘perpetual succession’, which means they have their own identity and continue to exist when changes happen. For example, when a unit owner sells their unit, they are no longer a member of the body corporate and the new unit owner automatically becomes a member of the body corporate.
- Each unit owner has a **right** to vote at body corporate meetings. To be eligible to vote, a voter must be aged 16 years or older and be:
 - recorded on the body corporate’s register as the owner of a principal unit or the owner’s authorised representative, or
 - the nominee [for a company] or **proxy** of that registered owner or their representative, or
 - a **subsidiary** body corporate representative.
- A person will not be entitled to vote if the body corporate **levies** [fees] for their unit are due and haven’t been paid.

What does the body corporate do?

The body corporate is responsible for a range of management, financial and administrative functions relating to the common property and to the unit development as a whole. These functions relate to the things all unit owners have a shared interest in, which is why all unit owners are member of the body corporate.

The key functions or duties of a body corporate include:

- maintaining the common property in the development, as well as building elements and infrastructure that relate to, or serve more than, one unit
- establishing and maintaining a long-term maintenance plan, which covers at least 10 years
- holding an annual general meeting [AGM] once every calendar year, and not later than 15 months after the previous AGM.
- As part of your assessment, you will have to explain the roles, duties, and powers of a body corporate.



Power of a body corporate to appoint a body corporate manager

A body corporate can contract with a body corporate manager to perform some of the services and administrative responsibilities. A body corporate manager or building manager typically provides the following services:

- Arranging maintenance of common property
- Organising facilities for meetings
- Administering the body corporate's financial activities

Appointing a body corporate manager does not affect either the individual or collective property rights of a unit owner.

Functions and duties of a body corporate secretary

- The role of the body corporate secretary referred to in the Unit Titles Act 1972 has disappeared from the Unit Titles Act 2010.
- However, the administrative responsibilities of body corporate committees mean that most body corporates would prefer to hire a professional management company to undertake many of the duties.

Body corporate operational rules

All body corporates must have **operational rules** that the body corporate, owners of principal units, occupiers of principal units, and mortgagees in possession, must follow.

There are six minimum body corporate operational rules set out in **Schedule 1** of the **Unit Titles Regulations 2011**. These six rules must be followed by all unit owners.

1 An owner or occupier of a unit must not—

[a] damage or deface the common property:

[b] leave rubbish or recycling material on the common property:

[c] create noise likely to interfere with the use or enjoyment of the unit title development by other owners or occupiers:

[d] park on the common property unless the body corporate has designated it for car parking, or the body corporate consents:

[e] interfere with the reasonable use or enjoyment of the common property by other owners or occupiers.

2 An owner or occupier of a unit must dispose of rubbish hygienically and tidily

Additional or amended rules to these can be created by the body corporate to suit the individual characteristics of their development.

Body corporate duties of repairs and maintenance

Under Section 138 - the body corporate must repair and maintain—

- (a) the common property; and
- (b) any assets designed for use in connection with the common property;
- (c) any other assets owned by the body corporate; and
- (d) any building elements and infrastructure that relate to or serve more than 1 unit.

The body corporate may access at all reasonable hours any unit to enable it to carry out repairs and maintenance under this section.

They may also access a unit in an emergency to carry repairs and maintenance

Any costs incurred by the body corporate that relate to repairs to or maintenance of building elements and infrastructure contained in a principal unit are recoverable by the body corporate from the owner of that unit as a debt due to the body corporate (less any amount already paid) by the person who was the unit owner at the time the expense was incurred or by the person who is the unit owner at the time the proceedings are instituted.



Body corporate committee

A **body corporate committee** may act on behalf of a body corporate.

- A body corporate with 10 or more principal units must form a body corporate committee unless the body corporate resolves [votes and agrees] not to form a committee.
- A body corporate with less than 10 principal units may form a committee.
- The body corporate may delegate some of its powers to the committee.

The Unit Titles Regulations 2011 provide for the setting up and operation of body corporate committees, as does sections 112 to 114 in the Unit Titles Act 2010.

<https://www.tenancy.govt.nz/assets/Uploads/Tenancy/short-guide-to-unit-titles.pdf>



Body corporate meetings

All body corporates must hold annual general meetings [AGMs] once every calendar year and not more than 15 months after the previous meeting.

- The **quorum** for general meetings is 25% of owners of principal units, or their representatives, as provided for under the Act and Regulations.
- **Unanimous** resolutions [i.e. 100% in favour] are not required for passing **motions** at body corporate meetings. Motions can be passed as ordinary or special resolutions depending on the nature of the resolution and the relevant rules.
- An **ordinary resolution** is achieved when a majority of eligible votes [i.e. 50% or more] are in favour of a motion.
- A **special resolution** is achieved when 75% or more eligible votes are in favour of a motion.
- A body corporate can also hold an extraordinary general meeting [EGM]. An EGM can be held at any time of the year to discuss any matter relating to the unit title development. For example, the body corporate committee needs to get agreement from the body corporate to carry out urgent repairs on common property.

Levies or contributions

The body corporate has power to levy [charge] unit owners for financial contributions to its funds. These funds help the body corporate to operate and meet long-term maintenance needs. The body corporate may also need a contingency fund to provide for unbudgeted expenses on the common property. Under the Unit Titles Act 1972, levies were charged based on a **unit entitlement**. Under the 2010 Act, the term 'unit entitlement' is removed. Now, under the Unit Titles Act 2010, unit owners will contribute to body corporate operational expenses [funds] based on **ownership interests** and **utility interests**. Section 121 outlines this:

Section 121 Contributions to be levied on unit owners

- [1] A body corporate may determine from time to time the amounts to be raised for each fund and impose levies on the owners of principal units to establish and maintain each fund.
- [2] The levies must be calculated as follows:
 - [a] in the case of the operating account, long-term maintenance fund, and any contingency fund, in proportion to each unit owner's utility interest; and
 - [b] in the case of any capital improvement fund, in proportion to each unit owner's ownership interest.



Levies or contributions- Section 121 continued

[3] The owner of a future development unit is liable to pay contributions levied by the body corporate under this section from the date that the future development unit is first in use as a place of residence or business or otherwise and from that date that future development unit is to be treated as a principal unit for the purposes of this section.

[4] Any levies imposed by a subsidiary body corporate must be sufficient to pay any levies raised under subsection [1] by the head body corporate, its parent body corporate, or any other parent body corporate located between the subsidiary body corporate and its head body corporate.

Responsibilities of owners of principal units

An owner of a principal unit—

- (a) must permit the body corporate (or its agents) to enter the unit at any time in an emergency and at all reasonable hours, and after giving reasonable notice, for any of the following purposes:
 - (i) to view the condition of the unit for the purpose of ascertaining compliance with the principal unit owners' or occupiers' obligations under this Act:
 - (ii) to maintain, repair, or renew any infrastructure for services and utilities that serve more than 1 unit and any building elements that affect more than 1 unit or the common property, or both:
 - (iii) to maintain, repair, or renew any common property:
 - (iv) to ensure the body corporate operational rules are being complied with:
- (b) must do all things necessary to give effect to decisions of the body corporate:
- (c) must consult with his or her mortgagee, if required to do so, before exercising a vote under [section 97](#) or [98](#):
- (d) must comply with all laws and legal requirements relating to the use, occupation, or enjoyment of the unit:

Responsibilities of owners of principal units

An owner of a principal unit— continued

- (e) must carry out, without delay, all work that may be ordered by a territorial authority or public body in respect of the unit to the satisfaction of that authority or body:
- (f) must pay all rates, taxes, charges, body corporate levies, and other outgoings that are from time to time payable in respect of the unit:
- (g) must repair and maintain the unit and keep it in good order to ensure that no damage or harm, whether physical, economic, or otherwise, is, or has the potential to be, caused to the common property, any building element, any infrastructure, or any other unit in the building:
- (h) must notify the body corporate of his or her intention to carry out any additions or structural alterations before the commencement of any work:
- (i) must not make any additions or structural alterations to the unit that materially affect any other unit or the common property without the written consent of the body corporate:
- (j) must comply with the body corporate operational rules:
- (k) must not do anything that breaches or in any way undermines any policy of insurance in the name of the body corporate.

Non-compliance

When a unit owner or body corporate fails to meet their legal duties under law, regulations and rules, this is known as **non-compliance**.

Let's look at some examples of unit owners' and body corporate's failures to meet their legal responsibilities under the Unit Titles Act 2010.

Failure of unit owner to comply with operational rules and duties to body corporate

A body corporate has powers to take **remedial action** to ensure compliance by unit owners, including:

- entry into a unit to carry out necessary work [see section 80 [1] [a] of the UTA 2010], and
- charging the owner for any costs incurred in doing any work which was the responsibility of a unit owner [see section 127 of the UTA 2010].
- If a unit owner does not pay their levies or contributions, any unpaid levy together with reasonable costs is recoverable as a debt by the body corporate against the unit owner.
- A unit owner loses their voting rights in any body corporate meetings and motions if they have any unpaid body corporate levies.



127 Recovery of money expended where person at fault

[1] This section applies if the body corporate does any repair, work, or act that it is required or authorised to do, by or under this Act, or by or under any other Act, and the repair, work, or act was rendered necessary by reason of any wilful or negligent act or omission on the part of, or any breach of the Act, the body corporate rules, or any regulations by, any unit owner or his or her tenant, lessee, licensee, or invitee.

[2] Any expense incurred by the body corporate in doing the repair, work, or act, together with any reasonable costs incurred in collecting the expense, is recoverable as a debt due to the body corporate [less any amount already paid] by the person who was the unit owner at the time the expense became payable or by the person who is the unit owner at the time proceedings are instituted.

Example: If the owner of a unit makes alterations to their unit which causes damage to another unit or they do not maintain their exclusive use area and breach the body corporate rules then the Body Corporate can authorise the repairs or maintenance and collect the money from the unit owner.

Failure of body corporate

The body corporate is made up of representatives of all the owners of the principal units in the unit title development. Meetings are to be held to manage the body corporate's responsibilities or, where appropriate, to appoint a body corporate committee to manage the responsibilities on behalf of the body corporate.

- If a body corporate fails to perform its responsibilities, 25% or more of the unit owners can call for an extraordinary general meeting to discuss the lack of performance.
- The body corporate, a creditor of the body corporate, or any person having a registered interest in a unit, may apply to the High Court for the appointment of an administrator. The High Court may appoint an administrator for a period on such terms and conditions as it thinks fit.
- The administrator takes over the powers of the body corporate and the committee and must carry out the duties of the body corporate and the committee, or those powers and duties that the High Court orders. The administrator can exclude the body corporate and body corporate committee from all powers and duties.

Failure of body corporate

- Disputes between unit owners, the body corporate, an administrator, a registered valuer, an occupier, contractor, prospective buyer, owner, lessor, or the Chief Executive of the government department responsible for the Unit Titles Act 2010 can be referred to the Tenancy Tribunal, District Court or High Court depending on the nature and value of the dispute.

See section 90 [2] [a] 141, 171 and 173 of the Unit Titles Act 2010.

Handling disputes

- Disputes that cannot be worked through between unit owners and/or body corporate can be dealt with by the Tenancy Tribunal, a District Court, and the High Court.
- There are certain circumstances that determine which Tribunal or Court will deal with the dispute.
- The Unit Titles [Unit Title Disputes—Fees] Regulations 2011 provides guidance on what kind of unit disputes can be referred to / dealt with by the Tenancy Tribunal.

Unconditional Sale and Release of deposit

When a sale involves a unit title property before a deposit can be released the vendor has to supply the Pre-Settlement Disclosure statement to make sure there have been no changes to the initial disclosure document. This needs to happen by the end of the 5th working day before settlement. It is at this time the sale goes unconditional.

You will need to obtain authorisation from both solicitors before releasing the deposit.

Important Note:

Unit Title properties sold at auction can not be deemed to be unconditional until the Pre-Settlement Disclosure Statement has been supplied to the purchaser.



TEST YOUR KNOWLEDGE

Match the letter from the right column to the number on the left column.

1. Accessory Unit		A. You must form a body corporate committee with 10 or more principal units.
2. Body Corporate		B. Designed as a place of residence or business and is the owner's main unit.
3. Common Property		C. A unit Title has 3 main disclosure statements
4. Principle Unit		D. Used to calculate a unit's contribution to the towards future long-term maintenance.
5. Utility Interest		E. Made up of all the unit owners in a unit title development.
6. Operational Rules		F. For use with a principal unit and must be owned by the owner of a principal unit.
7. Ownership Interest		G. Owners, occupiers and mortgagees in possession of principle units, must follow the body corporate rules
8. Body Corporate Committee		H. Is the land or fixtures that are part of the unit title property but the use is shared by all the owners.
9. Disclosure Statements		I. An interest assigned to a unit by a registered valuer based on the value of the unit in relation to all the other units.



TEST YOUR KNOWLEDGE

Match the letter from the right column to the number on the left column.

1. Accessory Unit	F	A. You must form a body corporate committee with 10 or more principal units.
2. Body Corporate	E	B. Designed as a place of residence or business and is the owner's main unit.
3. Common Property	H	C. A unit Title has 3 main disclosure statements
4. Principle Unit	B	D. Used to calculate a unit's contribution to the towards future long-term maintenance.
5. Utility Interest	D	E. Made up of all the unit owners in a unit title development.
6. Operational Rules	G	F. For use with a principal unit and must be owned by the owner of a principal unit.
7. Ownership Interest	I	G. Owners, occupiers and mortgagees in possession of principle units, must follow the body corporate rules
8. Body Corporate Committee	A	H. Is the land or fixtures that are part of the unit title property but the use is shared by all the owners.
9. Disclosure Statements	C	I. An interest assigned to a unit by a registered valuer based on the value of the unit in relation to all the other units.

Resources Acknowledgment

Statement

The material contained in these power points has been collated from various sources acknowledged below:

- REINZ Best Practice Guides
- The REA public website
- The REA Verifiable Training material from 2012 through to 2019
- The Skills.org Real Estate Salespersons Level 4 - Learning guides
- Real Estate Industry information from various Agencies.

The information included in these Power Points is based on best practice and industry experience and should not be considered as legal advice.

If employed by an Agency students must adhere to Agency policy and procedures unless contrary to law.