

PROPERTY

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DISCLOSURE OBLIGATIONS UNDER THE UNIT TITLES ACT 2010 - ARE YOU READY?



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The commencement date for the Unit Titles Act 2010 (**Act**) has just been announced.

From **20 June 2011**, sellers of unit title property will need to comply with disclosure obligations under the Act, including in respect of existing agreements, and will be obliged to provide buyers with up to three separate disclosure statements.

The Act also brings in many other changes relating to bodies corporate and developers of unit titles, which will be the subject of a separate update.

**Types of disclosure**

The required disclosure statements are:

TYPE OF DISCLOSURE	TIMING AND COST	REQUIRED CONTENT
<b>Pre-contract disclosure</b>	<p>Before the buyer enters into an agreement for sale and purchase.</p> <p>The seller bears the cost.</p>	<ul style="list-style-type: none"> <li>• The amount of body corporate levies.</li> <li>• The period covered by the levies.</li> <li>• The proposed levies for the next 12 months.</li> <li>• The proposed maintenance in the next 12 months, and how the body corporate proposes to meet those costs.</li> <li>• Balances of all bank accounts held by the body corporate, as at the date of the body corporate's last financial statements.</li> <li>• A general explanation of various terms relating to unit title property ownership.</li> <li>• Whether the unit or common property is, or has been, the subject of a claim or proceedings under the Weathertight Homes Resolution Service, or otherwise relating to water penetration.</li> </ul>

TYPE OF DISCLOSURE	TIMING AND COST	REQUIRED CONTENT
<b>Additional disclosure</b>	<p>Within five working days of request by the buyer. (The buyer must make the request by the earlier of five working days after the date of the agreement, and 10 working days before settlement.</p> <p>The buyer must pay the seller's reasonable costs.</p>	<ul style="list-style-type: none"> <li>• Contact details for the body corporate and the body corporate committee (if any).</li> <li>• Balances of all bank accounts held by the body corporate, as at the date of the body corporate's last financial statements.</li> <li>• Amounts due by, and owed to, the body corporate as at the disclosure request date.</li> <li>• Details of regular expenses incurred by the body corporate at least once a year.</li> <li>• Details of every current insurance policy held by the body corporate.</li> <li>• Details of every current contract entered into by the body corporate, including price and term.</li> <li>• Information about every lease affecting the base land of the unit title development.</li> <li>• The text of motions voted on at the last general meeting, and whether the motion was passed or not.</li> <li>• Differences between the body corporate's operational rules and the default operational rules under the regulations.</li> <li>• A summary of the body corporate's long-term maintenance plan, details of maintenance carried out in the last year and to be carried out, and details of the body corporate's long-term maintenance fund.</li> </ul>
<b>Pre-settlement disclosure</b>	<p>No later than the fifth working day before the settlement date.</p> <p>The seller bears the cost.</p>	<ul style="list-style-type: none"> <li>• The unit number.</li> <li>• The body corporate number.</li> <li>• The amount of body corporate levies.</li> <li>• The period covered by the levies.</li> <li>• The manner of payment of the levies.</li> <li>• The due date for the levies.</li> <li>• The amount of any unpaid levies and metered charges due to the body corporate.</li> <li>• Whether legal proceedings have been instituted for any unpaid levy.</li> <li>• The amount of any unpaid costs relating to repairs to the unit due to the body corporate.</li> <li>• The interest rate accruing on any unpaid amounts.</li> <li>• Whether any proceedings are pending against the body corporate in any court or tribunal.</li> <li>• Whether there have been any changes to the body corporate rules since the most recent disclosure statement.</li> </ul>

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## Other requirements

All disclosure statements must be **dated** and **signed** by the seller or a person authorised by the seller.

If, before the settlement date, the seller becomes aware of any inaccuracies in any disclosure statement, the seller must give another statement correcting those inaccuracies.

## Effect of non-disclosure

If the *additional disclosure statement* or the *pre-settlement disclosure statement* is not given within the required timeframes, the buyer may:

- postpone the settlement date until the fifth working day after the day all disclosure is provided; or
- cancel the agreement by 10 days' notice in writing.

## Effect of disclosure

The Act states that a buyer is entitled to rely on the disclosed information as "conclusive evidence" of its accuracy. A seller and the body corporate will need to ensure the disclosed information is accurate.

A buyer does not have any remedies prescribed under the Act if it is not happy with any of the disclosed items. Accordingly, a buyer will need to include either a specific condition or warranty in the sale and purchase agreement if it wishes to be able to approve the information in any disclosure statement.

## Prohibition on contracting out

The Act prohibits any provision in an agreement that seeks to exclude or limit the obligation to disclose under the

"disclosure" subpart of the Act. It remains to be seen how widely this prohibition will be applied.

Our view is that the prohibition will not restrict including buyer-friendly amendments (such as providing that the seller must also bear the costs of additional disclosure). However, it may affect standard vendor clauses relating to limitations on liability, costs and options for cancellation.

Receivers and mortgagees of unit title developments will need to be aware of the disclosure obligations and potential liability under the Act when exercising their power of sale.

## Timing

The Act comes into force on **20 June 2011** and applies to all sale and purchase agreements from that date. Accordingly, you should consider the provisions of the Act for any existing or new agreements that may be uncompleted after 20 June 2011.

Bell Gully is able to assist you by providing further advice on the Act, reviewing your standard terms, and preparing forms of disclosure statements.

Please contact your usual Bell Gully adviser or Jane Holland, Andrew Petersen, Tom Bennett or Hugh Kettle of our Property speciality team for further details.

Disclaimer: This publication is necessarily brief and general in nature. You should seek professional advice before taking any further action in relation to the matters dealt with in this publication.

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