

Unit Titles Act 2010

Information Sheet

What needs to be disclosed when buying or selling unit title properties?

The Unit Titles Act 2010 (“the Act”) introduced new disclosure requirements for the buying and selling of unit title properties such as apartments and townhouse developments.

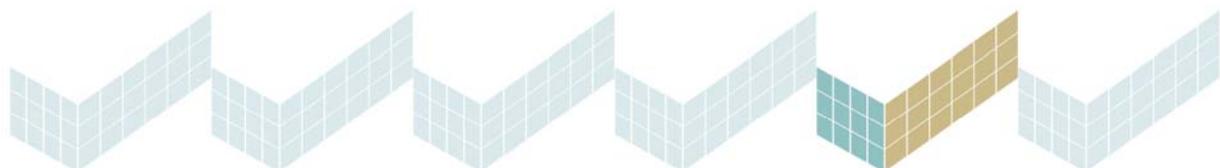
This information sheet outlines what these disclosure requirements are and what real estate agents, buyers and sellers need to do to ensure they comply with the Act and the consequences if they do not comply.

This information has been jointly prepared by the Real Estate Institute of New Zealand (REINZ), the Real Estate Agents Authority (the Authority) and the Home Owners & Buyers Association of New Zealand Inc. (HOBANZ). This information is a guide only and is not intended as legal advice.

It is recommended that both the buyer and seller of unit titles get independent advice from a lawyer or licensed conveyancing practitioner before entering into any agreement for sale and purchase.

These disclosure requirements only apply to unit title developments.

You can tell if a property is a unit title development as the Certificate of Title will state either ‘*stratum in freehold*’ or ‘*stratum in leasehold*’. *If in doubt, please check with your lawyer or licensed conveyancing practitioner.*



What are the disclosure requirements?

The Act introduced four different types of disclosure requirements:

- Pre-contract disclosure
- Pre-settlement disclosure
- Additional disclosure
- Turn-over disclosure

Pre-contract disclosure

Sellers must provide a pre-contract disclosure statement to buyers **before** a sale and purchase agreement is entered into (s 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. The Department of Building and Housing has created a more user-friendly form which is downloadable from its website (<http://www.dbh.govt.nz/unit-titles-templates>).

Pre-settlement disclosure

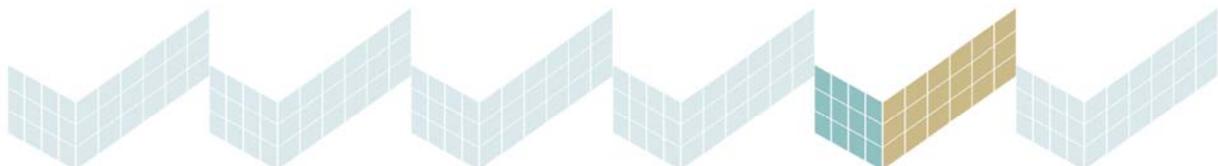
Sellers must provide a pre-settlement disclosure statement to buyers once a sale and purchase agreement has been entered into and before it has settled (s 147(1)).

It must be provided by the end of the 5th working day before the settlement date (s147(2)). If it is not provided by this time the buyer can either delay settlement until the 5th working day after it is provided or cancel the sale and purchase agreement by giving 10 days' notice.

There is no prescribed form to use for this; however we recommend you use the form available from the Department of Building and Housing website (<http://www.dbh.govt.nz/unit-titles-templates>).

Sellers should prepare this statement with assistance from their lawyer or licensed conveyancing practitioner. Sellers are normally expected to meet the related costs.

The pre-settlement disclosure statement must be accompanied by a certificate given by the Body Corporate certifying that the information in the statement is correct.



Additional disclosure

Sellers must provide additional disclosure statements **if requested** by the buyer. This must be requested by the buyer before the earlier of (s148):

1. the end of the 5th working day after the date of the sale and purchase agreement ; or
2. the end of the 10th working day before the settlement date.

The seller must provide the additional disclosure statement by the end of the 5th working day after the request was made (s148(3)). If it is not provided in this time the buyer can either delay settlement until the 5th working day after the date it is provided or cancel the sale and purchase agreement by giving 10 days notice.

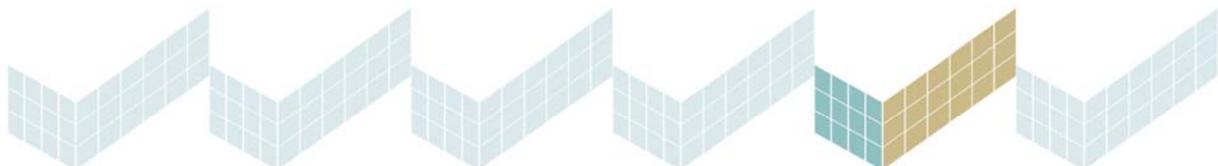
There is no prescribed form to use for this but there is prescribed information which must be provided; we recommend you use the form available from the Department of Building and Housing website (<http://www.dbh.govt.nz/unit-titles-templates>).

Sellers should prepare this statement with assistance from their lawyer or licensed conveyancing practitioner. The seller's reasonable costs incurred in preparing this disclosure statement must be met by the buyer (s148(5)).

Turn-over disclosure

Turn-over disclosure does not relate to the buying and selling of a unit title property. A turn-over disclosure statement must be provided by the original owner or developer to the Body Corporate.

The parties should seek detailed legal advice from their lawyers in relation to this.



What do I need to do if I am selling a unit title property?

You should consult with your lawyer, licensed conveyancing practitioner and/or real estate agent about preparing a pre-contract disclosure statement, preferably before the marketing of your property starts.

As soon as a sale and purchase agreement is signed you need to consult with your lawyer, licensed conveyancing practitioner and/or real estate agent to prepare the pre-settlement disclosure statement and obtain the certificate signed by the body corporate (s147) stating that all of the information in the pre-settlement disclosure statement is correct. It is important to note that the Body Corporate does not have to give this certificate if you owe any money, such as outstanding levies, to the Body Corporate.

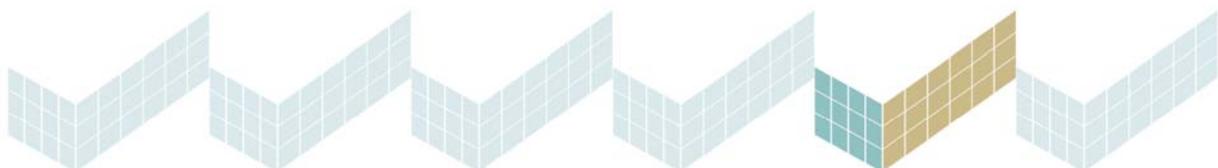
As this obligation lies with you as the owner of the property, you should actively participate in preparing the disclosure statements that need to be given to the buyer and take advice from your lawyer or licensed conveyancing practitioner on the implications of the declarations made.

You may have to contact your Body Corporate to get the information required in the disclosure statement, or give them written authorisation to deal with your lawyer, licensed conveyancing practitioner or real estate agent so they can get this information on your behalf. Discuss this with your lawyer, licensed conveyancing practitioner and/or your real estate agent. You will also need to contact your Body Corporate to obtain the certificate required for the pre-settlement disclosure statement.

The Body Corporate is obliged to provide the information needed (s206) but it can charge for this and it is not obliged to provide the pre-settlement disclosure certificate if you owe any money to the Body Corporate.

You may want to provide some of the information that a buyer can request under the additional disclosure requirement at this stage rather than wait for it to be requested. This means that there is time to resolve any concerns raised by this information and reduces the risk of the purchase falling through at the last minute due to concerns not being able to be resolved in time.

Your lawyer or licensed conveyancing practitioner will remind you of the requirement for further disclosure statements once they have received the signed sale and purchase agreement from you.



If the purchaser requests the additional disclosure statement they must pay the reasonable costs you incur in providing this.

If at any time after providing any of the disclosure statements you become aware of any inaccuracies in the disclosure you must give a statement correcting the inaccuracy.

What do I need to do if I am buying a unit title property?

It is a good idea to read and understand information on unit titles before committing to the purchase. Useful information includes:

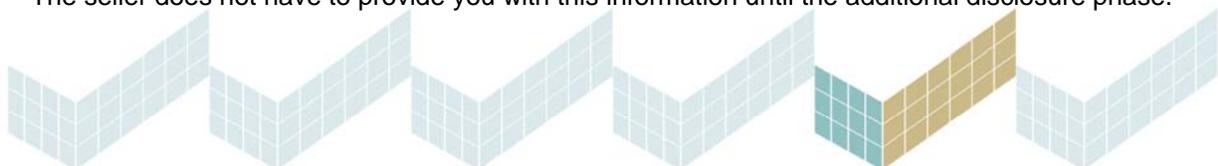
- The Department of Building and Housing 'A quick guide to unit title developments' (<http://www.dbh.govt.nz/UserFiles/File/Publications/unit-titles/unit-titles-quick-guide.pdf>).
- The HOBANZ website (<http://www.hobanz.org.nz/body-corporate.html>).

When a pre-contract disclosure statement is given to you, make sure you read it, understand it and ask questions to clarify your understanding before you sign the sale and purchase agreement. You may need the help of your lawyer or licensed conveyancing practitioner with this. They may recommend changes to the sale and purchase agreement depending on what is disclosed in the pre-contract disclosure statement.

It is a good idea to ask for copies of meeting minutes, financial statements, budgets and the long term maintenance plan for the complex early in the purchasing process. Having this information early on, rather than leaving it to the additional disclosure phase¹, means that you can make an informed decision and reduces the risk of the purchase falling through at a later stage.

Be aware that although the Act now requires each Body Corporate to establish and regularly maintain a long-term maintenance plan, the establishment of a long-term maintenance fund is not mandatory. It is important that you find out if the Body Corporate into which you are intending to buy has adequately provided for the cost of maintenance. If there is no long-term maintenance budget, or one that does not adequately provide for the required long-term maintenance as detailed in a maintenance plan prepared by a competent building surveyor, then as the new owner you are at risk of having to pay your share of any maintenance costs.

¹ The seller does not have to provide you with this information until the additional disclosure phase.



Look out for the acknowledgement section in the sale and purchase agreement where it states that the pre-contract disclosure has been made to you by the seller. The last page of the sale and purchase agreement should also include some notes about what you should have been provided with before signing the sale and purchase agreement.

Your lawyer or licensed conveyancing practitioner will remind you of your entitlement to any further disclosure once they have received the signed sale and purchase agreement from you.

What do I need to do if I am a real estate agent?

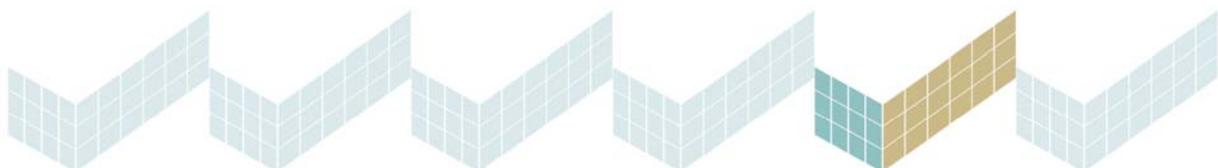
Talk to your seller client about the need to provide a pre-contract disclosure statement as early as possible and preferably before the marketing of the property starts.

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. Explain to your client that they as owner must sign the pre-contract disclosure statement and that they should get advice if they are unclear on what this means.

Encourage your client to consider providing genuinely interested prospective purchasers with as much relevant information about the Body Corporate as they have or can get from other owners or the Body Corporate. This may mean that your client will be disclosing more than is legally necessary at the pre-contract stage, but it will help prospective buyers to make a more informed decision about their purchase. This will reduce the risk of the deal falling over at a later stage.

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 buyers as soon as you can – e.g. at open homes. At the very latest it must be provided to the buyer before the buyer enters into a sale and purchase agreement. Receipt of the pre-contract disclosure statement is acknowledged in the standard sale and purchase agreement.



If you are a member of the Real Estate Institute of New Zealand Inc. then you can also view other useful information about the Unit Titles Act 2010 from its website www.reinz.co.nz.

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Real Estate Agents Authority

Address: PO Box 25371
Wellington, 6146
Phone: 0800 367 732) or (04) 471 8930
Fax: 04 815 8468
Email: info@reaa.govt.nz
Website: www.reaa.govt.nz

REINZ

Address: PO Box 5663, Wellesley St
Auckland 1141
Phone: 09 356 1755
Fax: 09 379 8471
Email: reinz@reinz.co.nz
Website: www.reinz.co.nz

HOBANZ

Address: PO Box 47-281
Auckland 1144
Phone: 09 360 8083
Fax: 09 376 5289
Website: www.hobanz.org.nz

