



# UNIT TITLES LEGISLATION

March 2009

In 2008, the ACT Legislative Assembly passed *The Unit Titles Amendment Act 2008* which made changes to the *Unit Titles Act 2001*.

The legislation was amended after a lengthy public consultation process.

## Why was the legislation changed?

Unit owners and occupiers had brought to the government's attention possible shortcomings in the provisions of the *Unit Titles Act 2001* and the way those provisions were operating. In particular, they identified a need to:

- strengthen the dispute resolution mechanisms in the Act
- provide further protection to buyers of units, particularly buyers 'off-the-plan'
- better control the actions of executive committees, their executive members and owners corporation managers.

## How do the changes provide better protection for consumers?

The changes in the *Unit Titles Amendment Act 2008* give greater protection to people who own a unit or live in unit complexes.

The Act introduces improved dispute resolution processes, regulation of owners corporation managers, new developer disclosure requirements and a more stringent and streamlined process when selling and/or purchasing a unit.

## How will the new dispute resolution processes work?

Currently, the only option available to unit owners in the event of a dispute which cannot be resolved within the owners corporation is to apply to the Magistrates Court to require the owners corporation or its executive committee to exercise a function under the Act.

Allowing unit title disputes, which cannot be resolved at the owners corporation level, to be heard in the new ACT Civil and Administrative Tribunal (ACAT) will allow for matters to be heard in an informal and inexpensive conflict resolution setting, leading to better outcomes for all parties.

Before a matter is referred to the tribunal a variety of alternative dispute resolution mechanisms will be available, such as conferencing and mediation.

The ACAT began operating on 2 February 2009 with referrals being heard from 31 March 2009.

## Do owners corporation managers need to be real estate agents?

No.

Owners corporation managers are not required to be real estate agents.

A new license category has been created especially for the purpose of regulating owners corporation managers, which means that conditional real estate licences can be issued to anyone appointed as an owners corporation manager.



The new legislation includes a 'member of the corporation' as someone who can be appointed as a manager.

People who currently provide owners corporation management services but who don't hold a real estate agents licence do not need to do anything until 1 July 2009 when they will need to apply for a license.

Real estate agents who already provide these services will not have to do anything because they are already licensed to provide these services.

The Office of Regulatory Services is developing processes for the issuing of the conditional licences. These will be place at the beginning of 2009–2010 financial year.

### Is there a code of conduct for owners corporation managers?

Yes.

A code of conduct for owners corporation managers is included in the new legislation. The code comes into effect on 31 March 2009. The code includes:

- a manager must have a good working knowledge and understanding of the Act, including the code of conduct, relevant to their functions as a manager
- a manager must act honestly, fairly and professionally in performing their functions
- a manager must exercise reasonable skill, care and diligence in performing their functions under their engagement
- a manager must act in the best interests of the owners corporation unless it is unlawful to do so
- a manager must keep the owners corporation informed of any significant development or issue about an activity performed for the owners corporation.

### What do the developer disclosure changes mean?

These changes protect consumers after a units plan is registered. They come into effect on 31 March 2009.

Starting from the day the units plan is registered and ending on the day that more than one-third of the unit entitlements of the units plan are held by people other than the developer, there are controls on what the owners corporation can do.

This period is defined as the developer control period. During this period, an owners corporation cannot enter into a contract unless that contract is disclosed in a contract for sale of a unit in the units plan.

Other extra information that needs to be included in the Contract of Sale includes:

- the developer's estimate of the buyer's contribution to the owners corporation's general funds for two years after the units plan is registered at the Registrar-General's Office
- if a staged development of the units is proposed — details of the proposed development statement.



## What consultation has taken place on the changes?

The ACT Government worked with the community and with key stakeholders on its reform of the consumer protection and dispute resolution aspects of the unit titles legislation for two years.

This involved:

- engaging a consultant with extensive experience in unit and strata title reform in other Australian jurisdictions
- convening public workshops and conducting online surveys
- releasing an issues paper for comment in November 2006
- the release of draft legislation for comment in May 2008
- further discussions with stakeholders, briefing Members of the ACT Legislative Assembly
- making amendments to the draft legislation in the light of submissions received.

## How do the changes affect the keeping of pets?

The new legislation allows for a unit owner to keep a pet with the consent of the owners corporation.

An owner of a unit may also apply to the ACAT to resolve a dispute with the owners corporation about the keeping of pets in units.

## How do the changes affect sinking funds?

Under the new legislation an owners corporation of a units plan with at least four units must establish and maintain a sinking fund.

A sinking fund provides funds to meet expenses of a capital nature, like common property painting, carpet replacement in the stairwells, guttering replacement, landscape upgrading, etc.

An owners corporation must prepare an initial sinking fund plan of the anticipated sinking fund expenditure every ten years starting on the day of the first annual general meeting of the owners corporation.

The date of the first annual general meeting now needs to be within three months of the registration of the units plan (which creates the owners corporation).

An owners corporation must by ordinary resolution approve this plan no later than the day of the second annual general meeting.

An owners corporation must review this plan and amend it if necessary no later than four years after it is approved.

Every subsequent sinking fund plan must also be approved by ordinary resolution no later than the first annual general meeting after the start of each 10 year period, and must be reviewed no later than 5 years after the plan is approved.

These changes will allow greater scrutiny of the sinking fund plan and commence on 31 March 2009.