

New Zealand Law Society

Comments to LINZ on draft forms for inclusion in the Unit Titles Regulations

General

1. It is apparent from the commentary for a number of the draft forms that the Unit Titles Act 2010 (UTA) requires amendment to clarify the content of the regulations and forms. There is an attempt in the regulations and forms to work around the deficiencies in the UTA and this inevitably will create ongoing problems for users of the legislation, which is undesirable. An example is the commentary on the draft form titled “Notice of resolution or order for conversion of company lease or cross lease into unit title development” where deficiencies in the UTA have been identified, which is now causing problems in drafting appropriate forms.
2. Another deficiency in the UTA that causes difficulties in drafting forms is the uncertainty as to how a Body Corporate without a Committee can sign. For example, it is unclear whether, if there is no committee:
 - it is necessary for all owners to sign the documents, or if
 - the owners need to authorise a person to sign the documents on behalf of the body corporate.

Body corporate certificate under s 65(4)

3. No comment.

Body corporate notice under s 86(1) and Certificate under s 86(5)

4. No comment.

Body corporate certificate under s 216

5. The process under s 167 should be included in paragraph 7. This section refers to a right of renewal or extension of the lease, which requires a special resolution and therefore presumably a certificate under s 216.

Caveat forbidding the deposit of unit plan by company or cross lease owners and subsequent notices

6. The Society supports the recommendations in paragraphs 11 to 13 to address the difficulties with notices and timing. Use of the terminology “caveat”, however, might imply that the Land Transfer Act procedure for caveats applies, when in fact the procedure is different.

7. There is no provision for notice to be given to the owner or company upon lodgement of a caveat against a unit title subdivision, such as there is under s 142 of the Land Transfer Act. The owner or company may give notice to the caveator under s 196, requiring either consent to plan deposit or High Court proceedings to be commenced, but it is unreasonable to expect the owner or company to check daily with the Registrar whether a caveat has been lodged.
8. The draft form of caveat mirrors that for a claim of an interest under the Land Transfer Act. However, the caveat under s 195 is a mere objection against subdivision, not based on the claim of an interest in the land. Section 195(3) requires the caveat to be by “*any person claiming an estate or interest in the land or shares ... forbidding the subdivision*”.
9. The term “**Description of land**” is adequate. The words “*subject to the claim*” should be deleted because they are unnecessary.
10. Section 195(3) refers to “*forbidding the subdivision*”, whereas the draft caveat heading says “*...forbidding the deposit of unit plan...*” and the notice clause says “*...forbids the deposit of a unit plan...*”. The terminology should follow that of the statute. The “deposit of a unit plan” is a more confined process than subdivision, so the wider grounds for objection conferred by the UTA should be preserved.

Certificate of expiry of lease s 166

11. The form requires a description of “**land**” and “**lease**”, and asks for the lease number and computer reference number for the lease. Given that the lease is expiring, it may be appropriate also to register the certificate of expiry against the fee simple estate.
12. The form requires the names of the parties calling for the certificate of expiry of lease to be registered to be entered. There could be a substantial number of people involved in this application if it were a large body corporate and the application is being made by 25% or more of the lessors. The form should allow for an authorised signatory/ies to sign on behalf of the certifying parties.
13. In the area headed “certification” the form leaves blanks (which presumably are intended to have the names of the applicant parties entered), which could make the form cumbersome and unworkable. It would be simpler to refer to the parties named as the “applicant/s” and to allow for the applicant to “certify”. It would be clearer if the certification section is divided into three numbered parts, rather than one extended paragraph.

Notice of application to High Court for cancellation of unit plan

14. The notes to the form refer to the capacity of the applicant being one of the following:
 - body corporate
 - lessor
 - administrator
 - unit owner.

15. Section 187(1) of the UTA refers only to the body corporate, and administrator or one or more unit owners. It does not refer to a lessor.

16. The form provides for every party to the application to sign the form, which in the case of the large body corporate could be problematic. See comments above at paragraph 12. Given that the form is simply notice of the lodging of a High Court application, there would be some merit in allowing it to be executed by a representative of the applicant.

Notice of cancellation under s 187(4)

17. The above comments at paragraph 12 apply in respect of the number of applicants whose names might have to be entered on this form, and the way in which the form is to be executed.

18. The notice provision at paragraph (b) refers to the High Court refusing to make a declaration or order authorising the cancellation of the unit plan. The UTA refers only to a declaration with additional conditions being imposed by way of order. If there is no declaration then there can be no order and accordingly the reference to an order should be removed.

Application to cancel unit plan under s 177

19. A further form should be drafted to cover situations where s 65 applies and amendments to the plan in a redevelopment are required.

Application to cancel unit plan under s 189

20. The form for s 189 cancellation is acceptable, although the notes on the form might be more descriptive. For example, they could add the need to check and submit evidence that all the conditions of the High Court order have been satisfied.

21. It is understood that cancellations of unit plans must be lodged manually, which creates difficulties for practitioners and LINZ. The issues raised in paragraph (k) of the notes should be addressed.

Application to deposit unit plan

22. No comment.

Certificate by territorial authority under s 32(2)(a)

23. No comment.

Change to body corporate operational rules

24. This form as drafted is satisfactory for s 105(2) changes to the rules *after* the deposit of the unit plan. The execution clause, however, assumes a body corporate common seal. Unlike the 1972 Act, that is not provided for in the 2010 Act. The witnessing box should be amended by deleting the reference to the common seal.
25. The form is inadequate for s 105(1) changes *before* the deposit of the unit plan. Neither the body of the form nor the signing provisions are applicable. There should be two forms; one for section 105(1) changes and one for section 105(2) changes.
26. It would be preferable if s 105(1) could be amended to make it explicit that amended rules can be adopted by the owners of the base land before the deposit of the unit plan.

Notice of resolution or order for conversion of company lease or cross lease into unit title development

27. This form will create problems for practitioners and LINZ for the reasons set out in the commentary, which cannot be resolved without an amendment to the UTA. The Society supports LINZ's comments at paragraph 12, i.e. that the notice should follow the statutory formula in s 195(3).

Ownership and utility interests – assessments and re-assessments by valuers and bodies corporate

28. Some forms refer to “unit number” and some refer to “unit”. This should be amended to ensure consistent use of terminology.
29. Forms for a staged development are required, i.e. assignation of proposed ownership interest to a future development unit.

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 19.7.10