

27 May 2016

Financial Markets Authority
PO Box 1179
Wellington 6140

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Exemption and designation: communal facilities offered with real property

1 Introduction

- 1.1 The New Zealand Law Society welcomes the opportunity to comment on the supplementary material published by the Financial Markets Authority on 6 May 2016, in relation to relief for interests in entities used to own and manage communal property ancillary to property in real property developments.
- 1.2 The FMA has sought feedback on how best to define the class of interests for which a designation (in the case of new interests in new companies owning communal facilities) and an exemption (in the case of existing interests in companies owning communal facilities) is appropriate.
- 1.3 The Law Society's comments relate to the "controlling interest" proposal, and the question of compliance cost saving.

2 Controlling interest

- 2.1 The proposal (on page 3 of the supplementary material) concerning the concept of a "controlling interest" is limited to the requirement that any provisions in the constitution conferring rights or powers on a controlling entity must terminate no later than completion of the development.
- 2.2 In its submission on the policy proposal in November 2015,¹ the Law Society noted that developers occasionally attempt to retain control of voting rights after completion of the development. The Law Society recommended then, and is still of the view, that consideration should be given to providing that lot owners are entitled to exercise voting rights on their own account, and that proxy, power of attorney and other arrangements that provide scope for exercising voting rights by or behalf of the developer should not be permitted to separate ownership of the lot from the right to vote as shareholder. This should extend to both ongoing proxies and ongoing powers of attorney.

¹ http://www.lawsociety.org.nz/__data/assets/pdf_file/0006/96522/l-fma-fmca-communal-property-6-11-15.pdf.

3 Compliance cost savings

- 3.1 The Law Society does not have any quantitative data on the costs, or cost savings, associated with compliance. Anecdotal feedback from lawyers indicates that compliance cost issues can arise with developers and individual purchasers. It is difficult to collate or quantify these, but they emphasise the importance of the exemption being in plain English, simple and practical to apply, and widely understood.

4 Conclusion

- 4.1 This submission was prepared by the Law Society's Commercial and Business Law Committee and Property Law Section, and members would be happy to work with officials on drafting the exemption if this would be of assistance. Please contact the Law Society's Law Reform Manager Vicky Stanbridge (vicky.stanbridge@lawsociety.org.nz / 04 463 2912) in the first instance.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Kathryn Beck', with a large, sweeping flourish underneath.

Kathryn Beck
President