



Regulatory Systems (Building and Housing) Amendment Act 2017

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Commencement see section 2

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Regulatory Systems (Building and Housing) Amendment Act 2017.

2 Commencement

This Act comes into force immediately after the expiry of the 2-month period that starts on the date of Royal assent.

**Part 1
Building Act 2004**

3 Principal Act

This Part amends the Building Act 2004 (the **principal Act**).

4 Section 12 amended (Role of building consent authority and territorial authority)

In section 12(2)(c), replace “Schedule 1” with “clause 2 of Schedule 1”.

5 Section 96 amended (Territorial authority may issue certificate of acceptance in certain circumstances)

- (1) In section 96(1)(c), delete “; or”.
- (2) Repeal section 96(1)(d).

6 Section 177 amended (Application for determination)

In section 177(3)(c), replace “paragraph (k) of Schedule 1” with “clause 2 of Schedule 1”.

7 Consequential amendments to Building Amendment Act 2012

- (1) This section amends the Building Amendment Act 2012.
- (2) In section 38(1),—
 - (a) replace “and (d)(iii) are” with “is”; and
 - (b) delete “in each case”.
- (3) After section 38(1), insert:
- (1A) In section 96(1)(c), after “consent) apply”, insert “; or”.
- (4) Repeal section 38(2).
- (5) In section 38(3), replace “(e)” with “(d)”.

Part 2
Unit Titles Act 2010

8 Principal Act

This Part amends the Unit Titles Act 2010 (the **principal Act**).

9 Section 4 amended (Overview)

In section 4(1)(l), after “transitional provisions”, insert “(see also Schedule 1AA for further transitional provisions)”.

10 Section 5 amended (Interpretation)

- (1) In section 5(1), replace the definition of **body corporate operational rules** with:

body corporate operational rules, in relation to a particular body corporate, means the rules that apply to that body corporate under section 105(2) as altered from time to time by the body corporate under section 105(3)
- (2) In section 5(1), replace the definition of **ownership interest** and **proposed ownership interest** with:

ownership interest, in relation to a particular unit, means the ownership interest assigned to that unit (*see*, for example, section 38)
- (3) In section 5(1), replace the definition of **proposed ownership interest** with:

proposed ownership interest, in relation to a particular proposed principal unit or proposed accessory unit, means the proposed ownership interest assigned to that unit (*see*, for example, section 38)
- (4) In section 5(1), replace the definition of **utility interest** with:

utility interest, in relation to a particular unit, means the utility interest assigned to that unit (*see*, for example, section 39).

11 Section 6 amended (Meaning of control period)

In section 6(2)(a)(ii), replace “fixed” with “assigned”.

12 Section 7 amended (Meaning of principal unit)

Replace section 7(1) with:

- (1) In this Act, **principal unit** means a unit—
- (a) that is designed for use (whether in conjunction with any accessory unit or not) as a place of residence or business or for any other use of any nature, and that is shown on a unit plan as a principal unit; and
 - (b) that—
 - (i) contains a building or part of a building or is contained in a building (although the unit may or may not be bounded by the physical dimensions of the building); or
 - (ii) is 1 or more car parks.

13 New sections 9A and 9B inserted

After section 9, insert:

9A Status of examples

- (1) An example used in this Act is only illustrative of the provisions to which it relates. It does not limit those provisions.
- (2) If an example and a provision to which it relates are inconsistent, the provision prevails.

9B Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

14 Section 15 amended (Relationship with Public Works Act 1981)

- (1) In section 15(2), replace “proclamation” with “Proclamation”.
- (2) Replace section 15(3) with:
- (3) Subsection (4) applies if—
 - (a) an estate or interest in land in a unit title development is acquired under the Public Works Act 1981 (whether by Proclamation or otherwise); and
 - (b) in respect of the transfer of that estate or interest, this Act requires a new unit plan, or an amendment to a unit plan, to be deposited.
- (3) In section 15(4), replace “If the body corporate requests in writing, the authority” with “The authority”.
- (4) In section 15(5), replace “a proclamation under the Public Works Act 1981” with “an acquisition under the Public Works Act 1981, whether by Proclamation or otherwise.”

15 Section 32 amended (Restrictions on deposit of unit plans)

- (1) In section 32(2)(b), replace “fixed under section 38” with “assessed under section 38(2)”.
- (2) Repeal section 32(3)(b).

16 Section 38 amended (Ownership interest)

- (1) Replace section 38(1) and (2) with:
 - (1) Before a unit plan is deposited under section 17(1), 21(1), or 24(2)(a), the registered proprietor or owner (as the case may be) must assign—
 - (a) an ownership interest to every principal unit and every accessory unit; and
 - (b) a proposed ownership interest to every proposed principal unit and every proposed accessory unit.
 - (2) The ownership interest or proposed ownership interest assigned to a unit is that assessed by a registered valuer on the basis of the value of the unit relative to each other unit and shown on the documentation required to be lodged—
 - (a) with the unit plan (in the case of a unit plan deposited under section 17(1) or 21(1)); or
 - (b) with the proposed unit development plan (in the case of a stage unit plan or complete unit plan deposited under section 24(2)).
- (2) Replace section 38(6) with:
 - (6) After a unit plan is deposited, the ownership interest or proposed ownership interest of a unit may be reassessed, and the new interest assigned to the unit, as set out in this Act.

17 Section 39 amended (Utility interest (other than for future development units))

Replace section 39(1) and (2) with:

- (1) Before a unit plan is deposited under section 17(1), 21(1), or 24(2)(a), the registered proprietor or owner (as the case may be) must assign a utility interest to every principal unit and every accessory unit.
- (2) The utility interest assigned to a unit is the same as the ownership interest assessed for the unit under section 38(2).
- (2A) Alternatively, the registered proprietor or owner may assign to a unit a different utility interest if that different utility interest is—
 - (a) fair and equitable, in the view of the registered proprietor or owner, having regard to the relevant benefits and the costs to units; and
 - (b) shown on the documentation lodged with the unit plan.

18 Section 40 amended (Utility interest for future development unit)

Replace section 40(1) and (2) with:

- (1) As soon as a future development unit is in use as a place of residence or business or otherwise, the registered proprietor, owner, or body corporate (as the case may be) must assign a deemed utility interest to that unit.
- (2) The deemed utility interest assigned to the future development unit is the total of all the proposed ownership interests assigned to the proposed principal units and proposed accessory units in the future development unit under section 38.
- (2A) Alternatively, the body corporate (if any) may assess and assign the first deemed utility interest for a future development unit by special resolution at a general meeting under section 41 (with all necessary modifications).

19 New cross-heading above section 41 inserted

After section 40, insert:

Reassessment

20 Section 41 amended (Reassessment of ownership interest and utility interest)

- (1) Replace section 41(1) with:
 - (1) A body corporate may, by special resolution at a general meeting, decide to reassess the ownership interest or utility interest, or both, for each unit and assign to each unit the new interest or interests.
- (2) Repeal section 41(2).
- (3) Replace section 41(3) to (6) with:
 - (3) However, a decision by the body corporate under subsection (1) may be made only if—
 - (a) at least 36 months have passed—
 - (i) since the date of deposit of the unit plan; and
 - (ii) since the effective date of the last reassessment (if any) of the relevant interest or interests; or
 - (b) the reassessment is for the purpose of the deposit of a unit plan to subdivide a unit in the unit title development to create a subsidiary unit title development.
- (3A) Subsections (1) and (3) do not prevent an assessment or a reassessment, and the subsequent assignment of the new interest or interests, under another section of this Act (*see*, for example, section 177).
- (4) A reassessment under subsection (1) takes effect, and the new interest or interests are assigned to each unit, on—

- (a) the date determined as part of the special resolution under subsection (1); or
 - (b) the date of the valuer's assessment; or
 - (c) if there are 2 dates (1 under paragraph (a) and 1 under paragraph (b)), the earlier date.
- (5) Any reassessment of the ownership interest of a unit must be made by a registered valuer assessing the value of each of the units relative to each other.
- (5A) A reassessment of the utility interest may be made by the body corporate on a fair and equitable basis, having regard to the relevant benefits and the costs to units.
- (6) If, as a result of a reassessment, a utility interest is to be assigned other than on the basis of the value of the unit relative to each other unit, the body corporate must, by special resolution, approve the method of apportionment of the utility interest.

21 Section 42 amended (Registrar to be notified of reassessment)

Replace section 42(2) with:

- (2) The Registrar must record the new ownership interest or utility interest, or both, assigned to each unit.

22 Section 48 amended (Noting of subsidiary unit title development)

- (1) In section 48(a), delete “; and”.
- (2) Repeal section 48(b).

23 Section 56 amended (Sale, lease, or licence of common property)

Replace section 56(7) with:

- (7) Proceeds distributed to the unit owners under subsection (6) must be distributed in shares proportional to their ownership interest (including any proposed ownership interest) as at the date that the payment giving rise to the proceeds fell due under the terms of the sale, lease, or licence.

24 Section 58 amended (Additions to common property)

In section 58(1)(c), replace “either—” with “either,—”.

25 Section 62 amended (Powers of body corporate in respect of easements and covenants over or for benefit of common property)

- (1) Replace section 62(1) with:
 - (1) The body corporate may, after a special resolution to do so, grant an easement or enter into a covenant over the whole or any part of the common property.
- (2) In section 62(3)(b), delete “for the benefit of any unit or any other land”.

26 Section 63 amended (Ability of owner of unit in respect of easements and covenants)

- (1) In section 63(2), delete “, for the benefit of other land.”.
- (2) In section 63(3)(b), delete “for the benefit of other land”.

27 Section 65 amended (Redevelopment requiring amendment to unit plan)

Replace section 65(1) with:

- (1) This section applies if a redevelopment consists solely of the adjustment of the boundary between 1 or more units shown on a unit plan but the adjustment does not—
 - (a) affect the common property; or
 - (b) materially affect the use, enjoyment, or ownership interest of any unit the boundary of which is not being adjusted; or
 - (c) change the number of units.

28 Section 67 amended (Deposit of amendment to unit plan)

In section 67(1)(b)(i), replace “determining the ownership interest of” with “showing the ownership interest assessed for”.

29 Section 69 amended (Requirements for new unit plan under section 68)

- (1) In section 69(3), replace “registered valuer—” with “registered valuer,—”.
- (2) In section 69(3)(b), replace “reassessing the ownership interests of” with “showing the ownership interests reassessed for”.
- (3) Replace section 69(4) with:
 - (4) A reassessment of ownership interests for the purpose of subsection (3)(b) must be made by the registered valuer assessing the value of each of the units relative to each other.
- (4) In section 69(5), replace “reassess” with “assess”.
- (5) After section 69(5), insert:
 - (5A) The body corporate must assign the reassessed ownership interests to the relevant units.

30 Section 73 amended (Incidental rights)

- (1) In section 73(1) and (2), delete “base”.
- (2) In section 73(4), replace “base land” with “land to which the unit plan relates”.

31 Section 84 amended (Powers and duties of body corporate)

- (1) Replace section 84(1)(a) with:
 - (a) sections 40 to 42 (which relate to the assignment and reassessment of ownership interests and utility interests):

- (2) In section 84(1)(g), replace “section 105(3)” with “section 105(4)”.

32 New section 89A inserted (Requirement for extraordinary general meeting: request by unit owners of not less than 25% of principal units)

After section 89, insert:

89A Requirement for extraordinary general meeting: request by unit owners of not less than 25% of principal units

An extraordinary general meeting must be held in accordance with the regulations if the chairperson receives a notice that—

- (a) asks for an extraordinary general meeting to consider and decide motions proposed in the notice; and
- (b) is signed by or for the unit owners of not less than 25% of the principal units.

33 Section 90 amended (Who may call general meetings)

Replace section 90(2) with:

- (2) An extraordinary general meeting of a body corporate required by section 89A must be called by the chairperson in accordance with the regulations.
- (3) An extraordinary general meeting of a body corporate may be called at any other time by the chairperson or the body corporate committee in accordance with the regulations.

34 Section 105 replaced (Body corporate operational rules)

Replace section 105 with:

105 Body corporate operational rules

- (1) Every body corporate must have, at all times, body corporate operational rules.
- (2) The first body corporate operational rules that apply to a particular body corporate are—
 - (a) the rules prescribed by regulations made under section 217(i); or
 - (b) if the original owner lodges altered rules for deposit with the unit plan under this Act, those altered rules.
- (3) The body corporate may amend, revoke, or make additions to the body corporate operational rules at any time after the date that the unit plan is deposited (*see* section 106).
- (4) The body corporate operational rules are binding on—
 - (a) the body corporate; and
 - (b) the owners of principal units; and
 - (c) any person who occupies a principal unit; and
 - (d) any mortgagee who is in possession of a principal unit.

(5) For the purpose of subsection (4), **principal unit** includes a future development unit.

35 Section 107 amended (Conflict between body corporate operational rules)

In section 107(2), replace “in accordance with section 105” with “in accordance with section 105(3)”.

36 Section 108 amended (Delegation of duties and powers)

In section 108(2)(c), replace “section 105(3)” with “section 105(4)”.

37 Section 163 amended (Implied guarantee by unit owners)

In section 163(4)(b), replace “; and” with “; or”.

38 Section 165 amended (Lessor may apply for appointment of administrator or cancellation of unit plan)

In section 165(3)(b), after “section 189”, insert “(other than subsection (2))”.

39 Section 167 replaced (Renewal or expiry of lease and purchase of reversionary interest)

Replace section 167 with:

167 Variation of lease, renewal or expiry of lease, or purchase of reversionary interest

- (1) The body corporate may, by special resolution,—
- (a) agree to vary the lease (and agree the terms of the variation):
 - (b) in the case of a lease that gives the lessee a right of renewal or extension of the lease, exercise the renewal or extension (and agree the terms applying):
 - (c) in the case of a lease that gives the lessee an option to purchase the reversionary estate in the base land, exercise the option (and agree the terms of the purchase).
- (2) Sections 212 to 216 (which provide for an objection process) apply to a resolution under subsection (1)(a) or (c).
- (3) None of the following has the effect of terminating the unit title development, merging any estate, or discontinuing any easement, covenant, or other registered interest:
- (a) a variation of lease by agreement:
 - (b) the exercise of a right of renewal or extension of lease:
 - (c) the exercise of an option to purchase the reversionary estate in the base land.

40 Section 169 amended (Merger)

Replace section 169(2) to (5) with:

- (2) If the lessor has purchased or acquired the stratum estates in leasehold in all the units shown on the plan, those estates do not merge with the lessor's reversionary estate in the base land unless and until—
 - (a) the base land is free from all registered interests other than easements or covenants and there are no caveats or notices of claim entered on the register over the whole or any part of the base land; and
 - (b) the lessor deposits with the Registrar a declaration that it is his or her intention that such a merger should occur.
- (3) If all the owners of all the units shown on the plan have purchased or acquired the reversionary estate in the whole of the base land, that estate does not merge with the stratum estates in leasehold in these units unless and until—
 - (a) that reversionary estate is purchased or acquired by those owners in shares proportional to the ownership interest of their respective units; and
 - (b) the base land is free from all registered interests other than easements or covenants and there are no caveats or notices of claim entered on the register over the whole or any part of the base land; and
 - (c) the registered owners deposit with the Registrar a declaration that it is their intention that a merger should occur.
- (4) The effect of a merger is as follows:
 - (a) if the lessor has purchased or acquired the stratum estates in leasehold in all of the units shown on the plan, the stratum estate in freehold in each of the units vests in the lessor:
 - (b) if all the registered owners of the stratum estates in leasehold in all of the units shown on the plan have purchased or acquired the reversionary estate in the base land, the stratum estate in freehold in each of the units vests in the person who immediately before the merger was the owner of that unit:
 - (c) the lease is extinguished:
 - (d) any easement or covenant of a kind to which section 62 applies continues, and any sublease of the common property continues as a lease, over the whole or part of the common property of the freehold unit title development:
 - (e) any registered interest, and any caveat or notice of claim existing on a computer register for the stratum estate in leasehold in a unit, continues over the whole or part of the stratum estate in freehold in the unit.
- (5) On the deposit of any declaration under subsection (2)(b) or (3)(c), the Registrar, if satisfied that the stratum estates in leasehold in all of the units shown on

the plan have merged under the provisions of this section with the reversionary estate in the base land, must—

- (a) note on the supplementary record sheet a memorial of the merger; and
 - (b) enter on the existing computer register for the base land a memorial of the merger; and
 - (c) cancel the existing computer register in respect of the stratum estate in leasehold in each of the units and create a computer register in respect of the stratum estate in freehold in each of the units to the person entitled to it in accordance with subsection (4)(a) or (b); and
 - (d) in the case of any registered interest, caveat, or notice of claim existing on a computer register for the stratum estate in leasehold in a unit immediately before cancellation, enter that registered interest, caveat, or notice of claim on the new computer register for the stratum estate in freehold for that unit; and
 - (e) cancel the existing computer register for the base land.
- (6) The merger has no effect on any easement or covenant to which the base land is subject or on any easement or covenant that is appurtenant to the base land.
- (7) Sections 60 and 61 apply to any easements and covenants referred to in subsection (6) (with all necessary modifications).

41 Section 177 amended (Application by body corporate for cancellation of unit plan)

- (1) Replace section 177(3) with:
- (3) Before making an application under subsection (1), the body corporate—
- (a) must agree by special resolution to the cancellation; and
 - (b) must—
 - (i) arrange for an assessment of the ownership interests and proposed ownership interests (if any) of all the units in the unit title development by a registered valuer, and assign the reassessed interests to the relevant units; or
 - (ii) decide, by a special resolution that sets out the reason for the decision, not to reassess the ownership interests and proposed ownership interests (if any).

Example

The special resolution records that a body corporate has decided not to reassess the ownership interests and proposed ownership interests on the basis that they were recently reassessed for and assigned to all units.

- (2) In section 177(5)(b), replace “resolution” with “resolution under subsection (3)(a)”.

- (3) In section 177(6), replace “In addition” with “In relation to the resolution under subsection (3)(a), in addition”.
- (4) Replace section 177(7) with:
- (7) The application for cancellation of the unit plan must be accompanied by—
 - (a) a certificate from a registered valuer showing the ownership interests and proposed ownership interests (if any) reassessed for all the units in the unit title development; or
 - (b) the certificate required under section 216 in relation to the resolution under subsection (3)(b)(ii).

42 Section 180 amended (Effect of cancellation of unit plan—standard unit title development or head unit title development)

In the heading to section 180, replace “—” with “:”.

43 Section 182 amended (Effect of cancellation of stage unit plan)

In section 182(4), replace “, assessed as required by section 177(7),” with “(as reassessed if section 177(7)(a) applies)”.

44 Section 183 amended (Extinguishment of registered interests, etc)

Replace section 183(1) with:

- (1) This section applies if an application is made under section 177 and the Registrar has received a certificate or certificates from the body corporate that comply with the requirements of sections 177(6) and (7) and 216.

45 Section 189 amended (Cancellation of plan following decision of High Court)

- (1) In section 189(2), delete “, within 6 months after the date of the declaration,”.
- (2) Replace section 189(3) with:
- (3) The application—
 - (a) must be in the prescribed form; and
 - (b) must be accompanied by or have lodged in support of it a copy of every declaration or order made by the High Court under section 188 in relation to the body corporate or unit plan; and
 - (c) must be accompanied by a certificate given by the applicant or the applicant’s successor in title certifying that all conditions and directions imposed or given by the High Court have been complied with.
- (3) After section 189(5)(a), insert:
 - (aa) the application must be accompanied by a certificate from a registered valuer showing the ownership interests and proposed ownership interests (if any) reassessed for all the units in the unit title development, unless the High Court directs otherwise:

- (4) In section 189(5)(b), replace “sections 177(7), 180,” with “sections 180,”.

46 Section 212 amended (Designated resolutions)

- (1) After section 212(i), insert:
- (ia) variations of leases under section 167(1)(a):
- (2) In section 212(j), replace “section 167(3)” with “section 167(1)(c)”.
- (3) After section 212(k), insert:
- (l) not reassessing the ownership interests and proposed ownership interests (if any) before applying, under section 177, for cancellation of a unit plan (*see* section 177(3)(b)(ii)).

47 New Schedule 1AA inserted

Insert the Schedule 1AA set out in the Schedule of this Act as the first schedule to appear after the last section of the principal Act.

48 Schedule 2 amended

- (1) In Schedule 2, repeal the item relating to section 65(1)(b).
- (2) In Schedule 2, after the item relating to new section 84A, insert:

Section 89A

Omit and substitute:

89A When extraordinary general meeting is required

An extraordinary general meeting must be held in accordance with the regulations if the chairperson receives a notice that—

- (a) asks for an extraordinary general meeting to consider and decide motions proposed in the notice; and
- (b) in the case of—
- (i) a timeshare resort comprising both timeshare units and principal units that are not timeshare units, is signed by or for not less than 20% of the timeshare owners and by or for the unit owners of not less than 20% of the non-timeshare units; or
- (ii) a timeshare resort comprising timeshare units only, is signed by or for the timeshare unit owners of not less than 20% of the timeshare units.
- (3) In Schedule 2, repeal the item relating to section 90.

Schedule
**Transitional, savings, and related provisions for amendments to Unit
Titles Act 2010**

s 47

Schedule 1AA
Transitional, savings, and related provisions

s 9B

Part 1
**Provisions relating to Regulatory Systems (Building and Housing)
Amendment Act 2017**

1 Interpretation

In this Part,—

commencement date means the date of commencement of Part 2 of the Regulatory Systems (Building and Housing) Amendment Act 2017

regulations means the Unit Titles Regulations 2011.

2 Saving provision for existing notices requesting extraordinary general meeting

- (1) This clause applies to any notice that is given to the chairperson, in accordance with the requirements of section 90(2)(a) (including as modified and applied by Schedule 2), before the commencement date and in relation to which a meeting has not been held before the commencement date.
- (2) Section 90(2)(a) and any related regulations, in each case as in force immediately before the commencement date, continue to apply in relation to that notice despite the enactment of Part 2 of the Regulatory Systems (Building and Housing) Amendment Act 2017.

3 Saving provision for existing High Court declarations authorising cancellation of unit plan

- (1) This clause applies to any declaration of the High Court that is made under section 188 (including as applied by section 165 and Schedule 2) before the commencement date and that authorises the cancellation of a unit plan.
- (2) Section 189 and any related regulations, in each case as in force immediately before the commencement date, continue to apply in relation to that declaration despite the enactment of Part 2 of the Regulatory Systems (Building and Housing) Amendment Act 2017.

Legislative history

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| 12 October 2016 | Introduction (Bill 191–1) |
| 18 October 2016 | First reading and referral to Local Government and Environment Committee |
| 3 March 2017 | Reported from Local Government and Environment Committee (Bill 191–2) |
| 16 March 2017 | Second reading |
| 21 March 2017 | Committee of the whole House |
| 23 March 2017 | Third reading |
| 30 March 2017 | Royal assent |

This Act is administered by the Ministry of Business, Innovation, and Employment.