

NORTHERN TERRITORY OF AUSTRALIA
UNIT TITLES AMENDMENT ACT (No. 2) 1993

No. 65 of 1993

TABLE OF PROVISIONS

Section

1. Short title
2. Commencement
3. Principal Act
4. Purpose
5. Interpretation
6. Reference to unanimous resolution
7. Units
8. Nature of diagrams to be included in proposals
9. Endorsement of Units Plan for Registration
10. Title to Units and common property
11. Common property to be held in trust
12. No alteration of Schedule of Unit Entitlement
13. New part:

"PART IVB - ESTATE DEVELOPMENT

"Division 1 - Preliminary

- "26N. DEFINITIONS
- "26P. APPLICATION OF ACT TO ESTATE DEVELOPMENTS

"Division 2 - Subdivision for Estate Development

- "26Q. APPLICATION FOR APPROVAL
- "26R. CONTENTS OF DISCLOSURE STATEMENT
- "26S. CONDITION OF APPROVAL
- "26T. LODGEMENT OF DISCLOSURE STATEMENT FOR REGISTRATION

"Division 3 - Failure of Development and Variation of Disclosure Statement

- "26U. APPROVAL TO DISCONTINUE
- "26V. DAMAGE FOR FAILURE, &c., OF DEVELOPER
- "26W. VARIATION OF DISCLOSURE STATEMENT

"Division 4 - Miscellaneous

- "26X. REASSESSMENT OF UNIT ENTITLEMENTS AFTER COMPLETION OF ESTATE DEVELOPMENT
- "26Y. FURTHER SUBDIVISION
- "26Z. RESTRICTIVE COVENANTS
- "26ZA. DISCLOSURE STATEMENT DEEMED PART OF CONTRACT OF SALE OF LOT
- "26ZB. RIGHTS OF DEVELOPER IN RESPECT OF ACCESS AND DEVELOPMENT ZONES
- "26ZC. APPLICATION OF PART V
- "26ZD. BY-LAWS
- "26ZE. TRANSITIONAL"

14. Incorporation of proprietors of units
15. General provisions
16. General duties
17. Apportionment of Expenditure in respect of
Condominium or Estate Development
18. Special privileges relating to common property
19. Constitution of committee before first annual
general meeting
20. Committee may employ agents and servants
21. First annual general meeting
22. General meeting after registration of second
or subsequent completed stage of condominium
or estate development
23. Notice of general meeting
24. New section:

"80A. APPLICATION OF PART"
25. Schedule



NORTHERN TERRITORY OF AUSTRALIA

No. 65 of 1993

AN ACT

to amend the *Unit Titles Act*

[Assented to 3 November 1993]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Unit Titles Amendment Act (No. 2) 1993*.

2. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3. PRINCIPAL ACT

The *Unit Titles Act* is in this Act referred to as the Principal Act.

4. PURPOSE

The purpose of this Act is to amend the *Unit Titles Act* -

- (a) by inserting provisions allowing for the subdivision of vacant land (including land covered by water) into lots and common property;
 - (b) to provide for the management of that common property;
-

- (c) to allow for the leasing out of that common property; and
- (d) to permit the further subdivision under the Principal Act as amended of any of the lots into which the land is subdivided.

5. INTERPRETATION

Section 4(1) of the Principal Act is amended -

- (a) by omitting the definition of "corporation" and substituting the following:

"'corporation' means a body corporate constituted under section 27;

'estate development' means the subdivision under this Act of a parcel and its development (whether or not in stages) in accordance with a disclosure statement as defined in section 26N;"

- (b) by omitting from the definition of "floor plan" all words after paragraph (c)(i) and substituting the following:

"(ii) specifies, by reference to floors or levels, the order in which that superimposition occurs,

and, in relation to an estate development, means a lot plan of the lots and common property into which the parcel is or is proposed to be subdivided;"

- (c) by inserting in the definition of "parcel", after "condominium development", the words "or an estate development to be completed in stages";

- (d) by inserting after the definition of "schedule of unit entitlement" the following:

"'stage', in relation to an estate development, means a separate part of land into which the Estate, as defined in section 26N(1), is subdivided and in respect of which the relevant consent authority has certified under section 96 of the Planning Act that the requirements of Part V of that Act have been complied with;"

- (e) by omitting from the definition of "unit" the words "in Part III" and substituting "in Part III and subject to section 26P"; and

Unit Titles Amendment (No. 2)

- (f) by inserting in the definition of "units plan", after "condominium development" (twice occurring) the words "or an estate development".

6. REFERENCE TO UNANIMOUS RESOLUTION

Section 8 of the Principal Act is amended -

- (a) by omitting from subsection (1)(a) "Act; or" and substituting "Act;";
- (b) by inserting in subsection (1)(b), after "a general meeting", the words ", other than a general meeting of an estate management corporation";
- (c) by omitting from subsection (1)(b) "Act." and substituting "Act; or";
- (d) by adding at the end of subsection (1) the following:
 - "(c) where more than one person is entitled to vote at a general meeting of an estate management corporation - a resolution at a duly convened general meeting in respect of which there is no dissension expressed by or on behalf of a person entitled to be present and to vote on the resolution and recorded as such in the minute book of the corporation kept under this Act."; and
- (e) by omitting from subsection (2) "subsection (1)(b)" and substituting "subsection (1)(b) and (c)".

7. UNITS

Section 9 of the Principal Act is amended -

- (a) by omitting "a reference to either" and substituting "a reference to";
- (b) by omitting from paragraph (a) "part; or" and substituting "part;";
- (c) by omitting from paragraph (b) "to the part." and substituting "to the part; or"; and
- (d) by adding at the end the following:
 - "(c) in the case of an estate development, a part of the parcel unlimited in its vertical dimensions.".

8. NATURE OF DIAGRAMS TO BE INCLUDED IN PROPOSALS

Section 12(2) of the Principal Act is amended by omitting "A diagram" and substituting "Except in the case of a proposed estate development, a diagram".

9. ENDORSEMENT OF UNITS PLAN FOR REGISTRATION

Section 20(1) of the Principal Act is amended by omitting paragraph (a) and substituting the following:

- "(a) in the case of a unit development or condominium development - diagrams showing the subdivision in accordance with the proposals as so approved;
- (aa) in the case of an estate development - a plan of survey prepared by a licensed surveyor showing the subdivision in accordance with the proposals as so approved; and".

10. TITLE TO UNITS AND COMMON PROPERTY

Section 23(1A) of the Principal Act is amended -

- (a) by inserting, after "condominium development" (first and second occurring), the words "or estate development"; and
- (b) by omitting from paragraph (d) "the developer" and substituting "in the case of a condominium development, the developer".

11. COMMON PROPERTY TO BE HELD IN TRUST

Section 24 of the Principal Act is amended -

- (a) by omitting from subsection (1) "and shall afford" and substituting "and, subject to Part IVB, shall afford"; and
- (b) by omitting from subsection (2) "the corporation is" and substituting "the corporation (other than common property in an estate development, which common property may, in accordance with a special resolution at a general meeting of the estate management corporation, be leased out) is".

12. NO ALTERATION OF SCHEDULE OF UNIT ENTITLEMENT

Section 26 of the Principal Act is amended by inserting, after "Part IIIA", the words "section 26U, 26W or 26WA".

13. NEW PART

The Principal Act is amended by inserting after Part IVA the following:

"PART IVB - ESTATE DEVELOPMENT

"Division 1 - Preliminary

"26N. DEFINITIONS

"(1) In this Part, unless the contrary appears -

'approved' means approved by the Minister;

'common property' means the common property of the estate management corporation;

'disclosure statement' means a disclosure statement referred to in section 26Q(3), and includes such a statement as varied under this Part;

'lot' means a lot into which the Estate is or is to be subdivided in pursuance of this Part;

'Estate' means the parcel subdivided or to be subdivided in pursuance of this Part.

"(2) In this Part a reference to the proprietor of a lot includes a reference to the proprietors of units and common property into which a lot is further subdivided under this Act and a reference to a lot includes a reference to such a unit and common property.

"26P. APPLICATION OF ACT TO ESTATE DEVELOPMENTS

"This Act applies to and in relation to an estate development as if a reference in this Act to a unit were a reference to a lot and notwithstanding that there is no building on, or a particular building proposed to be constructed on, the lot.

"Division 2 - Subdivision for Estate Development

"26Q. APPLICATION FOR APPROVAL

"(1) Subject to subsection (2), the registered proprietor of an estate in fee simple in or a lease from the Crown of land may, in respect of that land, apply to the Minister for the approval of a proposal for the subdivision under this Act of the land and its development as an estate development.

Unit Titles Amendment (No. 2)

"(2) An application under subsection (1) shall not be made except in respect of a proposal involving the creation of not less than 3 lots.

"(3) An application under subsection (1) shall be accompanied by -

- (a) a disclosure statement in duplicate;
- (b) a fee of \$500 or such other amount as is prescribed; and
- (c) an instrument of determination issued under section 95(1) of the *Planning Act* indicating -
 - (i) the consent of the relevant consent authority under that Act to the subdivision of the land in accordance with the estate development proposal; and
 - (ii) that the determination to which it relates is conditional on the applicant's compliance with the terms of the disclosure statement.

"26R. CONTENTS OF DISCLOSURE STATEMENT

"(1) A disclosure statement shall, on its first page, have typed or printed in block capital letters of a size not less than 8 points and so as to be clearly legible, the warning specified in Schedule 2 (or such other warning in addition to or in substitution for that warning as is prescribed), and no other information other than the title of the estate development.

"(2) In addition to the warning referred to in subsection (1), a disclosure statement shall consist of -

- (a) the documents required by section 11 to be included in an application under section 10(1) as if the disclosure statement were an application under Part III for the approval of the estate development as a units plan;
- (b) a description of the proposed development (and each stage of the proposed development where it is proposed to be developed in stages) signed by or on behalf of the proposed developer;
- (c) a lot plan for the estate development prepared by a surveyor licensed under the *Licensed Surveyors Act* showing each proposed stage of the development, and indicating the precalculated dimensions and areas of the lots, construction zones, access zones and common property;

Unit Titles Amendment (No. 2)

- (d) a description of what use can be made of access zones and construction zones referred to in paragraph (c);
- (e) a schedule of lots on the completion of the estate development and, as the case may be, its various proposed stages and indicating the zoning under the *Planning Act* for each lot;
- (f) a schedule of commencement and completion dates for each proposed stage of the estate development;
- (g) a statement of any special rights or privileges in relation to the common property proposed to adhere to each lot; and
- (h) such other documents, if any, as are prescribed.

"26S. CONDITION OF APPROVAL

"Without derogating from section 16, the Minister may, as a condition of approval of an estate development proposal, require the developer to lodge with the Minister and maintain a security, in such form, for such amount, and from such person as the Minister thinks fit, to secure the payment of damages to the proprietor of a lot or a person who has contracted or contracts with the developer for the purchase of a proposed lot in the estate development in the event of the developer's failure to comply with this Act or his failure to complete the estate development in accordance with the disclosure statement.

"26T. LODGEMENT OF DISCLOSURE STATEMENT FOR REGISTRATION

"(1) As soon as practicable after he receives a notice under section 18 in respect of an estate development proposal, the proprietor of the Estate shall lodge with the Registrar-General a copy of the disclosure statement, certified by the Minister as being a true copy.

"(2) An approval under section 15 in respect of an estate development proposal has no force or effect until a copy of the disclosure statement has been registered.

"(3) In this section 'estate development proposal' includes a variation, in pursuance of section 26W of such a proposal and 'disclosure statement', in relation to such a variation, includes a new proposal referred to in section 26W(2) (a).

"Division 3 - Failure of Development and
Variation of Disclosure Statement

"26U. APPROVAL TO DISCONTINUE

"(1) If after the registration under Part IV of a units plan in respect of the first stage of an estate development the developer is, for any reason, unable or unwilling to complete the estate development in accordance with the disclosure statement, he may apply to the Minister, in an approved form -

- (a) for approval to transfer his interest in the estate development (other than his interest as the proprietor of a lot or a unit into which a lot is further subdivided under this Act) to a person named in the application; or
- (b) to subdivide the parcel as indicated in the application,

and shall serve a copy of the application on the estate management corporation.

"(2) The Minister shall not approve of the transfer of a developer's interest in an estate development unless the person to whom it is proposed to be transferred has undertaken in writing to the Minister to complete the estate development in accordance with the disclosure statement and has lodged with the Minister a security referred to in section 26S to secure the performance of his and the former developer's obligations to the proprietors of lots in, or under a contract for the sale of a proposed lot in, the estate development.

"(3) An application under subsection (1)(b) shall be accompanied by a revised schedule of lot entitlements for the lots in respect of which freehold titles have been issued under the *Real Property (Unit Titles) Act* or are intended to be issued, prepared by a valuer.

"(4) The Minister shall not approve a subdivision referred to in subsection (1)(b) unless the developer has obtained from the relevant consent authority an unconditional consent under section 94(1) of the *Planning Act* to the proposed subdivision and the consent in writing of the estate management corporation given in accordance with a unanimous resolution of the corporation at a general meeting called for the purpose of consenting to the proposed subdivision.

"(5) If the developer applies to the estate management corporation for consent to the subdivision of the parcel as referred to in subsection (1)(b) and the consent is refused or is not, within 28 days after the application, granted, the developer may apply to the Court

for an order varying the disclosure statement so as to allow the subdivision in accordance with the application under subsection (1)(b) and the Court has jurisdiction to hear and determine the application.

"(6) Where the Minister approves a subdivision referred to in subsection (1)(b) or the Court determines under subsection (5) that the disclosure statement be varied, the developer shall lodge with the Registrar-General for registration the instrument of approval or the order of the Court and a disclosure statement containing the revised schedule of lot entitlements referred to in subsection (3).

"26V. DAMAGE FOR FAILURE, &c., OF DEVELOPER

"(1) Where a developer fails to comply with a disclosure statement or complete an estate development in accordance with the disclosure statement, the proprietor of a lot, or a person who has contracted with the developer to purchase a proposed lot in the estate development may, in addition to any other right at law or in equity he may have, sue for and recover such damages from the developer as the Court thinks fit.

"(2) Without limiting the generality of subsection (1), the proprietor of a lot, or a person who has contracted with the developer to purchase a proposed lot, in the estate development shall be entitled to recover any expected loss of capital appreciation of his lot or proposed lot arising out of the failure, calculated to the date on which the estate development was to be completed in accordance with the disclosure statement.

"26W. VARIATION OF DISCLOSURE STATEMENT

"(1) At any time the developer may apply to the Minister for a variation of the Minister's approval of the subdivision proposed in the disclosure statement.

"(2) An application under subsection (1) shall be accompanied by -

- (a) a disclosure statement in the form required under section 26R indicating the manner it is proposed that the estate development proposal be varied and the new proposal;
- (b) an instrument of determination under section 95(1) of the *Planning Act* indicating the consent of the relevant consent authority under that Act to the proposal as varied;
- (c) where the variation, if approved, will affect common property - the consent in writing, in an approved form, of each proprietor of a lot in the estate development;

Unit Titles Amendment (No. 2)

- (d) a fee of \$300 or such other amount as is prescribed; and
- (e) a revised schedule of lot entitlements for the whole estate development prepared by a valuer,

and the developer shall serve a copy of the application, and the documents required by this subsection to accompany it, on the estate management corporation.

"(3) If the developer applies to a proprietor of a lot for consent to a proposed variation and the consent is refused or is not, within 28 days after the application, granted, the developer may apply to the Court for an order consenting, in the name of the proprietor, to the proposed variation and the Court has jurisdiction to hear and determine the application and make such an order.

"(4) Subject to this section, an application under subsection (1) shall be dealt with by the Minister in the same manner as an application for the approval of the subdivision proposed in the original disclosure statement.

"(5) Where the Minister approves a variation under this section or the Court consents under subsection (3) to the variation, the developer shall lodge with the Registrar-General for registration the instrument of approval or order of the Court and the revised schedule of lot entitlements referred to in subsection (2)(e).

"Division 4 - Miscellaneous

"26X. REASSESSMENT OF UNIT ENTITLEMENTS AFTER COMPLETION OF ESTATE DEVELOPMENT

"(1) At any time in the third to sixth year after the completion of an estate development the estate management corporation may apply to the Minister, in an approved form, for the Minister's approval to a revised schedule of lot entitlements for the whole estate development prepared by a valuer and shall serve a copy of the application and revised schedule on the owner of each lot.

"(2) Where the Minister approves a revised schedule of lot entitlements lodged under subsection (1), the estate management corporation shall lodge with the Registrar-General for registration the instrument of approval and the revised schedule.

"26Y. FURTHER SUBDIVISION

"(1) Subject to the *Planning Act*, a lot may be further subdivided under this Act into units and common property.

"(2) Where a lot is further subdivided under this Act into units, the Registrar-General shall note on the certificate as to title of each unit into which it is subdivided that the lot comprising all the units and common property in that further subdivision has the relevant lot entitlement for the purposes of this Act.

"(3) The Regulations may prescribe how the relevant entitlement of each unit into which a lot is further subdivided shall be determined and an entitlement so determined may be expressed as a number that is not a whole number.

"26Z. RESTRICTIVE COVENANTS

"For the purposes of imposing a restrictive covenant on the use of a lot in accordance with the disclosure statement, the common property shall be deemed to be the dominant tenement for the benefit of which the covenant is imposed (notwithstanding that no part of the common property may be contiguous to the lot), and the burden of the covenant shall run with the land comprised in the lot.

"26ZA. DISCLOSURE STATEMENT DEEMED PART OF CONTRACT OF SALE OF LOT

"(1) Each contract entered into by a developer for the sale of a lot, proposed lot or other interest in an estate development, other than an interest referred to in section 26U(1)(a), shall, in addition to any other condition to which it is expressed to be subject, be deemed to be subject to the condition that the developer will construct and complete the estate development in accordance with the disclosure statement, and each successor in title to a unit or interest so sold shall be deemed to be the original purchaser from or contractor with the developer and may enforce the contract accordingly.

"(2) A person is incapable of contracting out of the effect of subsection (1).

"26ZB. RIGHTS OF DEVELOPER IN RESPECT OF ACCESS AND DEVELOPMENT ZONES

"A developer shall have against the estate management corporation of, and the proprietor of each lot in the completed stage or stages of, an estate development such rights in relation to the construction and access zones specified in the disclosure statement in respect of each stage of the proposed estate development as is provided in the disclosure statement.

"26ZC. APPLICATION OF PART V

"The Regulations may vary the application of Part V (other than Division 1 of that Part) and Schedule 1 to and in relation to an estate development corporation and the management of the affairs of the estate development and, where they do so, that Part or Schedule 1, as so varied, applies accordingly.

"26ZD. BY-LAWS

"(1) Subject to subsection (3), an estate management corporation may, by special resolution, in respect of its common property, make By-laws, not inconsistent with this or any other law of the Territory, relating to -

- (a) the management, use and maintenance of the common property;
- (b) the control of vehicles in areas that are not part of public roadways;
- (c) the control of vessels;
- (d) the control of wharfs and berths;
- (e) the control of polluting substances and pollution control and clean-up;
- (f) the imposition and collection of dues and other fees and charges;
- (g) noise and other nuisance control;
- (h) the enforcement of the By-laws and prosecuting persons for offences against the By-laws;
- (j) the duties of owners and occupiers of lots; and
- (k) such other matters as are necessary or convenient to be provided for by by-laws.

"(2) The By-laws may prescribe penalties, not exceeding \$2,000, for a contravention of, or failure to comply with, the By-laws and, in addition, may prescribe a penalty, not exceeding \$50, for each day during which the offence continues.

"(3) A pecuniary penalty recovered on prosecution for an offence against the By-laws is payable to the estate management corporation and may be recovered by it as a debt due to it.

"(4) Section 57 of the *Interpretation Act* does not apply to or in relation to By-laws made under subsection (1)

"26ZE. TRANSITIONAL

"(1) At any time before an estate management corporation first meets after its incorporation the Minister may make a by-law on any matter which, under section 26ZD, the estate management corporation could make a by-law.

"(2) A by-law made under subsection (1) may be revoked or amended by a by-law under section 26ZD by the estate management corporation."

14. INCORPORATION OF PROPRIETORS OF UNITS

Section 27 of the Principal Act is amended -

- (a) by inserting in subsection (1), after "condominium development", the words "or on the issuing under the *Real Property (Unit Titles) Act* of the first freehold title to land in an estate development"; and
- (b) by inserting in subsection (2), after "condominium development" (twice occurring), the words "or estate development".

15. GENERAL PROVISIONS

Section 33(1) of the Principal Act is amended by omitting "by this Act" and substituting "by or under this Act".

16. GENERAL DUTIES

Section 34 of the Principal Act is amended by omitting all words before paragraph (a) and substituting "A corporation shall, subject to this Act and the Regulations -".

17. APPORTIONMENT OF EXPENDITURE IN RESPECT OF CONDOMINIUM OR ESTATE DEVELOPMENT

Section 36A of the Principal Act is amended by inserting, after "condominium development" (wherever occurring), the words "or estate development".

18. SPECIAL PRIVILEGES RELATING TO COMMON PROPERTY

Section 44 of the Principal Act is amended -

- (a) by inserting in subsection (1), after "unanimous resolution", the words "or as otherwise prescribed";
- (b) by omitting from subsection (1) "(not being a lease)" and substituting "(except in the case of an estate development, not being a lease)"; and

Unit Titles Amendment (No. 2)

- (c) by omitting from subsection (2) "A grant" and substituting "Except in the case of a lease granted in respect of common property in an estate development, a grant".

19. CONSTITUTION OF COMMITTEE BEFORE FIRST ANNUAL GENERAL MEETING

Section 48(2) of the Principal Act is amended by inserting, after "unanimous resolution", the words "or the Regulations".

20. COMMITTEE MAY EMPLOY AGENTS AND SERVANTS

Section 55(2) of the Principal Act is amended by inserting, after "condominium development", the words "or estate development".

21. FIRST ANNUAL GENERAL MEETING

Section 59 of the Principal Act is amended -

- (a) by inserting in subsection (1), after "condominium development", the words "or estate development"; and
 - (b) by inserting in subsection (3)(a), after "(including", the words "guarantees and warranties relating to equipment and".
22. GENERAL MEETING AFTER REGISTRATION OF SECOND OR SUBSEQUENT COMPLETED STAGE OF CONDOMINIUM OR ESTATE DEVELOPMENT .

Section 59A(1) of the Principal Act is amended by inserting, after "condominium development", the words "or estate development".

23. NOTICE OF GENERAL MEETING

Section 61 of the Principal Act is amended -

- (a) by omitting from subsection (1) all words after and including "not less than" and substituting the following:
"not less than -
 - (a) in the case of an estate development - one month; and
 - (b) in any other case - 14 days,notice of the time fixed for the meeting to be given.";

- (b) by omitting from subsection (5)(b) and (6) "less than 14 days" and substituting "less than one month, 14 days".

24. NEW SECTION

The Principal Act is amended by inserting in Part VI, before section 80, the following:

"80A. APPLICATION OF PART

"This Part does not apply to or in relation to the corporation of an estate development except in relation to improvements and buildings the common property of the estate development.".

25. SCHEDULE

The Schedule to the Principal Act is amended -

- (a) by omitting "THE SCHEDULE" and substituting "SCHEDULE 1"; and
- (b) by adding at the end the following:

"SCHEDULE 2

Section 26R(1)

"WARNING: THIS STATEMENT CONTAINS DETAILS OF AN ESTATE DEVELOPMENT SCHEME WHICH IS PROPOSED TO BE DEVELOPED IN [insert number of stages] STAGES ON THE LAND DESCRIBED WITHIN.

PERSONS INTERESTED ARE ADVISED THAT THE PROPOSED SCHEME MAY BE VARIED AND MAY NOT BE COMPLETED. HOWEVER, ANY DEPARTURE FROM THE PROPOSALS OUTLINED IN THE STATEMENT WILL ATTRACT PROVISIONS OF THE *PLANNING ACT* AND PART IVB OF THE *UNIT TITLES ACT*.

THIS STATEMENT SHOULD NOT BE CONSIDERED ALONE BUT IN CONJUNCTION WITH THE RESULTS OF THE SEARCHES AND INQUIRIES NORMALLY MADE IN RESPECT OF A LOT IN AN ESTATE DEVELOPMENT SCHEME AND A LOT RESULTING FROM THE SUBDIVISION OF LAND IN ACCORDANCE WITH ALL RELEVANT INSTRUMENTS OF DETERMINATION UNDER THE *PLANNING ACT*.".
