

Serial 299
Unit Titles Amendment Bill 2001
Mr Burke

**A BILL
for
AN ACT**

to amend the *Unit Titles Act*



NORTHERN TERRITORY OF AUSTRALIA

UNIT TITLES AMENDMENT ACT 2001

No. of 2001

TABLE OF PROVISIONS

Section

1. Short title
2. Commencement
3. Principal Act
4. Interpretation
5. New section
21AA. Definition
6. Unanimous consent required
7. Subdivision of units and common property
8. Alteration of building affecting units plan
9. New section
21FA. Changing parcel that has been subdivided
10. Common property to be held in trust
11. New section
26AA. Application of Part
12. Application for approval
13. New Part

PART IVC – BUILDING DEVELOPMENT

Division 1 – Preliminary

- 26ZF. Definitions
26ZG. Boundaries of building lots
26ZH. Application of Part

Division 2 – Subdivision for building development

- 26ZI. Lodging of building development plan
26ZJ. Lodging of security deposit
26ZK. Disclosure statement
26ZL. Registration of building development plan

Division 3 – Failure of development and variation of disclosure statement

- 26ZM. Failure of developer to complete building development
26ZN. Minister's involvement in disputes about disclosure statements
26ZO. Damage for failure, etc. of developer

Division 4 – Effect of registration of building development plan

- 26ZP. Subdivision of parcel by registration

26ZQ. Title to building lots and common property
26ZR. Common property to be held in trust
26ZS. Easements created by this Act
26ZT. No alteration of schedule of unit entitlement

Division 5 – Miscellaneous

26ZU. Conversion of units into building lots
26ZV. Further subdivision
26ZW. Restrictive covenants
26ZX. Disclosure statement part of contract of sale of building lot
26ZY. Rights of developer in respect of access and development zones
26ZZ. Application of Part V
26ZZA. By-laws
26ZZB. Transitional

- 14. New section
 - 28. Incorporation of proprietors of building lots
- 15. Contributions by members of the corporation
- 16. Leasing of common property
- 17. Application of Part
- 18. New section
 - 89A. Application of Part
- 19. New section
 - 94A. Application of Part
- 20. Further amendments



NORTHERN TERRITORY OF AUSTRALIA

No. of 2001

AN ACT

to amend the *Unit Titles Act*

[Assented to 2001]
[Second reading 2001]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Unit Titles Amendment Act 2001*.

2. Commencement

This Act comes into operation on the date 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. Interpretation

Section 4 of the Principal Act is amended by inserting in subsection (1) after the definition of "building" the following:

"'building development' means the subdivision under this Act of a parcel and its development in accordance with a disclosure statement as defined in section 26ZF;

'Building Development Parcel' means a parcel to be subdivided into building lots and common property in accordance with Part IVC;

'building development plan' means a building development plan of subdivision lodged under section 26ZI;

'building lot' means a part of a Building Development Parcel that may be further subdivided into common property and 2 or more units in accordance Part III or IVA;".

5. New section

The Principal Act is amended by inserting in Part IIIA before section 21A the following:

"21AA. Definition

"In this Part, unless the contrary intention appears, 'unit' includes a building lot."

6. Unanimous consent required

Section 21A of the Principal Act is amended by omitting "or alteration" (wherever occurring) and substituting ", alteration or change".

7. Subdivision of units and common property

Section 21B of the Principal Act is amended –

(a) by omitting from subsection (2)(c)(i) "a certificate issued under section 40 of the *Building Act*" and substituting "a building certificate"; and

(b) by adding at the end the following:

"(4) In subsection (2)(c)(i) –

'building certificate' means –

(a) a certificate issued under section 40 of the repealed Act; or

(b) an occupancy permit;

'occupancy permit' has the same meaning as in the *Building Act*;

'repealed Act' has the same meaning as in the *Building Act*."

8. Alteration of building affecting units plan

Section 21F of the Principal Act is amended –

- (a) by omitting "Where" and substituting "(1) Where";
- (b) by omitting "a certificate under section 40 of the *Building Act*" and substituting "a building certificate"; and
- (c) by adding at the end the following:

"(2) In subsection (1) –

'building certificate' means –

- (a) a certificate issued under section 40 of the repealed Act; or
- (b) an occupancy permit;

'occupancy permit' has the same meaning as in the *Building Act*;

'repealed Act' has the same meaning as in the *Building Act*."

9. New section

The Principal Act is amended by inserting after section 21F the following:

"21FA. Changing parcel that has been subdivided

"(1) Subject to section 21A, a person (including a body corporate) may apply to the Registrar-General to change land comprised in a parcel by adding land to, or removing land from, the parcel.

"(2) An application under subsection (1) is to be in the prescribed form and contain the prescribed information (including information concerning unit entitlements and land descriptions).

"(3) If –

- (a) the land is in a condominium development or estate development; and
- (b) the development of the land has not been completed in accordance with the disclosure statement relating to the land,

the Registrar-General must not deal with the application unless the Minister has under section 26J or 26W (as applicable) approved a variation of the disclosure statement.

"(4) The Regulations may provide for the consequences of changing land in the common property in a unit and of changing land for the purposes of creating a new unit.

"(5) In this section, 'parcel' includes the whole of land comprised in a subdivision under this Act."

10. Common property to be held in trust

Section 24 of the Principal Act is amended –

- (a) by omitting from subsection (1) "The corporation" and substituting "Subject to section 42B, the corporation"; and
- (b) by inserting in subsection (2) "or section 42A" after "Part IIIA".

11. New section

The Principal Act is amended by inserting after section 26A in Division 1 the following:

"26AA. Application of Part

"Nothing in this Act prevents a building lot being the subject of an application under section 26B."

12. Application for approval

Section 26Q of the Principal Act is amended by omitting from subsection (2) "3 lots" and substituting "2 lots".

13. New Part

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

"PART IVC – BUILDING DEVELOPMENT

"Division 1 – Preliminary

"26ZF. Definitions

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

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

'disclosure statement' means a disclosure statement referred to in section 26ZI(3) and includes a disclosure statement as varied under this Part.

"(2) In this Part, unless the contrary intention appears, a reference to the proprietor of a building lot includes a reference to the proprietors of units and common property into which a building lot is further subdivided under this Act

and a reference to a building lot includes a reference to those units and common property.

"26ZG. Boundaries of building lots

"(1) The boundaries of a building lot may be determined by reference to one or both, or a combination, of the following:

- (a) walls, ceilings and floors of any building on the Building Development Parcel;
- (b) land in the Building Development Parcel, whether or not the land is contiguous to any building.

"(2) If the boundaries of a building lot are determined by reference to land, the vertical dimension is to be taken to be limited to the extent of any projections or encroachments (above or below the surface of the land) that are part of some other building lot or the common property.

"(3) The boundaries of a building lot may be described by reference to the inside or outside of floors, walls or ceilings.

"26ZH. Application of Part

"(1) Nothing in this Act prevents a lot being the subject of an application under this Part.

"(2) In subsection (1), 'lot' has the same meaning as in section 26N.

"Division 2 – Subdivision for building development

"26ZI. Lodging of building development plan

"(1) Subject to subsection (2), the registered proprietor of an estate in fee simple in or a lease from the Crown of land may lodge with the Registrar-General a building development plan of subdivision.

"(2) A building development plan of subdivision must involve the creation of not less than 2 building lots and common property.

"(3) A building development plan of subdivision is to be in the prescribed form and accompanied by –

- (a) a disclosure statement (in duplicate) in the prescribed form;
- (b) the prescribed fee;
- (c) a development permit issued under section 53 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 building 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;
- (d) a schedule of building lot entitlements prepared in accordance with the Regulations; and
- (e) any other information that may be prescribed to accompany the application.

"(4) A plan lodged under subsection (1) is to be accompanied by a document signed by all persons having an estate or interest in the parcel, being an estate or interest that is registered under the *Land Title Act*, and whose estate or interest is affected by the proposed subdivision, indicating that those persons consent to the proposed subdivision.

"26ZJ. Lodging of security deposit

"(1) The Minister may, on advice from the Registrar-General, require a developer to lodge with the Minister a security.

"(2) The Registrar-General must consider each application under section 26ZI and determine whether to advise the Minister to exercise his or her powers under subsection (1).

"(3) The security –

- (a) is to be in the form, for the amount, and from the person, that the Minister thinks fit; and
- (b) is to be maintained as the Minister directs.

"(4) The security may be used to pay damages to the proprietor of a building lot or a person who has contracted or contracts with the developer for the purchase of a proposed building lot in the building development in the event of the developer's failure to comply with this Act or his or her failure to complete the building development in accordance with the disclosure statement.

"26ZK. Disclosure statement

"(1) A disclosure statement is to contain mechanisms for resolving disputes and for obtaining agreement to contentious issues.

"(2) A provision of a disclosure statement that imposes an obligation that is unjust or oppressive on a prospective owner of a building lot or unit is not binding on, and cannot be enforced against, the prospective owner.

"(3) A disclosure statement is to contain a mechanism for it to be varied in accordance with the Regulations.

"(4) A variation of a disclosure statement is of no effect unless it is lodged with the Registrar-General.

"(5) The Regulations may include provisions for disclosure statements to be varied.

"26ZL. Registration of building development plan

"(1) Except as provided in this section, the Registrar-General must register a building development plan lodged under section 26ZI.

"(2) If the parcel of land is crown leasehold, the Registrar-General must not register the building development plan unless it is accompanied by the written consent of the Minister to the plan and any other documentation that is necessary in order for the leasehold interest to be converted into an estate in fee simple.

"(3) The Registrar-General must not register a building development plan under subsection (1) unless it conforms to applicable development provisions, or an applicable interim development control order, under the *Planning Act*.

"(4) The Registrar-General must not register a building development plan under subsection (1) unless all documents and fees required under section 26ZI have been lodged.

"(5) The Registrar-General must not register a building development plan under subsection (1) unless the security, if any, required under section 26ZJ has been lodged.

"Division 3 – Failure of development and variation of disclosure statement

"26ZM. Failure of developer to complete building development

"(1) A disclosure statement may be varied by –

- (a) an agreement involving, as parties, the lot owners, persons who have contracted to buy a lot and persons with registered interests in the land; or
- (b) the Minister acting in accordance with this Division.

"(2) If a developer fails, or expects or is expected to be unable, to complete a building development in accordance with the disclosure statement and an agreement under subsection (1)(a) cannot be reached, the developer, the proprietor of a building lot or a person who has contracted with the developer to purchase a proposed building lot in the building development may apply to the Minister for the Minister's consent to the disclosure statement being changed.

"(3) The Minister may only consent to a disclosure statement being changed –

- (a) after consulting with those persons who will be affected by the change;
- (b) if satisfied that it is not possible by agreement or legal process for the building development to be completed in an orderly way; and
- (c) after considering advice from an arbitrator appointed under section 26ZN.

"26ZN. Minister's involvement in disputes about disclosure statements

"(1) In the event of a dispute about a variation to a disclosure statement under section 26ZM or about any other matter involving the disclosure statement, or the rights and obligations of the parties, the Minister may, if permitted to do so by the disclosure statement, appoint, on the application of one or more of the parties, an arbitrator.

"(2) The Minister may only appoint an arbitrator under subsection (1) if the disclosure statement contains an express statement permitting the Minister to appoint an arbitrator.

"(3) An arbitrator appointed under subsection (1) may exercise the powers that are prescribed by the Regulations for resolving disputes having regard to the overall interests of the persons affected.

"(4) The costs incurred by the Minister in exercising his or her powers under section 26ZM or this section are a debt due by the owner of the land and may be secured by registering an overriding statutory charge.

"26ZO. Damage for failure, etc. of developer

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

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

"Division 4 – Effect of registration of building development plan

"26ZP. Subdivision of parcel by registration

"On the registration of the building development plan, the parcel is subdivided in the manner specified in the diagrams in the building development plan and the boundaries of the building lots and of the common property are to be ascertained in accordance with those diagrams.

"26ZQ. Title to building lots and common property

"(1) On the registration of the building development plan –

- (a) the person who was the proprietor of the parcel becomes possessed of an estate in fee simple in each building lot; and
- (b) the corporation becomes possessed of an estate in fee simple in the common property.

"(2) On the registration of a building development plan creating common property, the corporation becomes possessed of an estate or interest evidenced by the certificate as to title comprising the land the subject of the building development plan freed and discharged from all mortgages, charges, writs and caveats affecting the land immediately before the registration of the plan.

"(3) On the registration of a notice of conversion, the corporation becomes possessed of the estate or interest in any building lot converted into common property evidenced by the certificate as to title comprising the land the subject of the notice.

"(4) Subject to subsections (2) and (3), the estate of which a person or the corporation, as the case may be, becomes possessed under this section –

- (a) is subject to any mortgage referred to in section 8 of the *Real Property (Unit Titles) Act*; and
- (b) is subject to, and has appurtenant to it, the easements created by section 25, and any easement referred to in section 8 of *Real Property (Unit Titles) Act*.

"26ZR. Common property to be held in trust

"(1) Subject to section 42B, the corporation holds the common property in trust for the persons who are for the time being the members of the corporation as tenants in common in undivided shares proportional to the building lot entitlements of their respective building lots, and, subject to and Part IVB, is to afford those persons opportunity for the reasonable use and enjoyment of the common property.

"(2) Subject to Part IIIA and section 42B, the estate in the common property held by the corporation is not capable, either at law or in equity, of being transferred, assigned or mortgaged.

"26ZS. Easements created by this Act

"(1) In this section –

'proprietor', in relation to the common property, means the corporation;

'tenement' means a building lot, unit or the common property, as the case may be.

"(2) On the registration of the building development plan, the proprietor of each tenement ('the dominant tenement') are to be taken to have over each other tenement ('the servient tenement') those rights specified in subsection (3) that are necessary for the reasonable use and enjoyment of the dominant tenement.

"(3) The rights referred to in subsection (2) are –

- (a) rights of support, shelter and protection afforded by the servient tenement at the time of the registration of the building development plan;
- (b) rights for the collection, passage and provision of water, sewerage, drainage, garbage, gas, electricity and air, and other services of whatsoever nature (including telephone, radio and television services), through or by means of pipes, wires, cables, ducts, or other reasonable means; and
- (c) any other ancillary rights that are necessary to make the rights referred to in paragraphs (a) and (b) effective, including rights of entry by the proprietor of the dominant tenement and his or her agents, servants and workmen at all reasonable times on the servient tenement for the purpose of –
 - (i) inspecting, maintaining or repairing the servient tenement; or

- (ii) inspecting, maintaining, repairing, replacing, renewing or restoring any pipes, wire, cable, duct or other material.

"(4) A right created by this section is to be taken to be an easement appurtenant to the dominant tenement in relation to which it is enjoyed.

"(5) An easement created by this section subsists despite that the same person is the proprietor of both the dominant and servient tenements.

"(6) A person exercising a right under an easement created by subsection (3)(b) or (c) is liable to make good any damage done in the course of exercising the right.

"26ZT. No alteration of schedule of unit entitlement

"On and after the registration of the building development plan, an alteration of the schedule of building lot unit entitlement is not capable of being registered unless it is made in pursuance of an order of the Court under Part VIII or in accordance with this Part.

"Division 5 – Miscellaneous

"26ZU. Conversion of units into building lots

"(1) The owners of units may lodge with the Registrar-General a building development plan to convert the units into building lots.

"(2) An application under subsection (1) cannot be made unless the written consent of all of the owners of the units has been obtained.

"(3) Subject to subsection (4), sections 26ZI to 26ZT (inclusive) apply in respect of a building development plan lodged under subsection (1).

"(4) The Regulations may vary the application of a section referred to in subsection (3) and the section as varied applies accordingly.

"(5) On the Registrar-General registering a building development plan lodged under subsection (1) –

- (a) the body corporate for the units becomes a building management corporation;
- (b) the units become building lots (that may be further subdivided in accordance with section 26ZV); and
- (c) the management rules applying to building lots apply to the exclusion of any other management rules (except that decisions made before the conversion are to be taken to have been made under the management provisions applying to the building units).

"26ZV. Further subdivision

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

"(2) A further subdivision of a building lot under this Act can only be in a manner that is consistent with the disclosure statement and the By-laws.

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

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

"26ZW. Restrictive covenants

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

"26ZX. Disclosure statement part of contract of sale of building lot

"(1) Each contract entered into by a developer for the sale of a building lot, proposed building lot or other interest in a building development is, in addition to any other condition to which it is expressed to be subject, to be taken to be subject to the condition that the developer will construct and complete the building development in accordance with the disclosure statement

"(2) For the purposes of subsection (1), a person who is a successor in title to a building lot or unit or interest is to be taken to be the original purchaser from or contractor with the developer and may enforce the contract accordingly.

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

"26ZY. Rights of developer in respect of access and development zones

"A developer has against the building management corporation of, and the proprietor of each building lot in the completed stage or stages of, a building development the rights in relation to the construction and access zones specified

in the disclosure statement in respect of each stage of the proposed building development as are provided in the disclosure statement.

"26ZZ. Application of Part V

"The Regulations may vary the application of Part V (other than Division 1) and Schedule 1 in relation to a building management corporation and the management of the affairs of the building development and the Part or Schedule, as varied, applies accordingly.

"26ZZA. By-laws

"(1) Subject to subsection (3), a building 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;
- (i) the duties of owners and occupiers of building lots; and
- (j) any other matters that are necessary or convenient to be provided for by by-laws.

"(2) By-laws relating to the further subdivision of a building lot under this Act cannot be inconsistent with the disclosure statement.

"(3) The By-laws may prescribe penalties, not exceeding 100 penalty units, for a contravention of, or failure to comply with, the By-laws and, in addition, may prescribe a penalty, not exceeding one penalty unit, for each day during which the offence continues.

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

"(5) Section 57 of the *Interpretation Act* does not apply to the By-laws.

"26ZZB. Transitional

"(1) At any time before a building management corporation first meets after its incorporation the Minister may make a by-law on any matter that under section 26ZZA the building 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 26ZZA by the building management corporation."

14. New section

The Principal Act is amended by inserting after section 27 the following:

"28. Incorporation of proprietors of building lots

"(1) On the registration of a building development plan there is constituted a body corporate under the name "The Proprietors – Building Development Plan No. ", the number to be included in the name being the number allotted to the building development plan by the Registrar-General on its registration.

"(2) Despite subsection (1), a body corporate may call itself by another name.

"(3) A name under subsection (2) –

- (a) must include the words 'Building Management Corporation'; and
- (b) must be registered with the Registrar-General.

"(4) The members of a corporation referred to in subsection (1) are the persons who are proprietors, for the time being, of the building lots."

15. Contributions by members of the corporation

Section 36 of the Principal Act is amended –

- (a) by omitting from subsection (3) "subsection (4)" and substituting "this section"; and
- (b) by inserting after subsection (4) the following:

"(4A) If a determination under subsection (1) relates to expenditure to be incurred in discharge of a specified liability imposed on the corporation that has been calculated using a formula, the contribution payable in respect of each unit for that expenditure is to be determined having regard to that formula unless before the making of the determination the corporation has, by a unanimous resolution, resolved otherwise."

16. Leasing of common property

Section 42B of the Principal Act is amended by adding at the end the following:

"(3) A building management corporation may, if authorised by a special resolution of the corporation, grant a lease of the common property."

17. Application of Part

Section 80A of the Principal Act is amended –

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

"(2) Except as prescribed by the Regulations, this Part applies to a building management corporation and a reference to a corporation is to be taken to include a building management corporation."

18. New section

The Principal Act is amended by inserting before section 90 in Part VII the following:

"89A. Application of Part

"This Part applies to a building management corporation and a reference to a corporation is to be taken to include a building management corporation."

19. New section

The Principal Act is amended by inserting before section 95 in Part VIII the following:

"94A. Application of Part

"This Part applies to a building management corporation and a reference to a corporation is to be taken to include a building management corporation."

20. Further amendments

The Principal Act is amended as set out in the Schedule.

SCHEDULE

Section 20

Unit Titles Amendment Act 2001

Provision	Amendment	
	omit	substitute
Section 21F	"\$500"	"100 penalty units"
Section 21ZD	"\$2,000"	"100 penalty units"
	"\$50"	"one penalty unit"
Section 37	"\$400"	"20 penalty units"
Section 39	"\$400"	"100 penalty units"
Section 51(5)	"\$500"	"100 penalty units"
Section 51(8)	"\$500"	"1000 penalty units"
Section 56(3)	"\$400"	"20 penalty units"
Section 59(3)	"\$1,000"	"500 penalty units"
Section 78A	"\$100"	"20 penalty units"
Section 103	"\$1,000"	"20 penalty units"