

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

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NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

to amend the *Unit Titles Act*

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 define 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 super imposition 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;" and

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

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

dissentation 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. 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".

10. 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 subdivide 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.

"(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; and

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- (b) an instrument of determination issued under section 94(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 printed the prescribed warning, in such manner 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;
- (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;
- (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 a form approved by the Minister -

(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.

"(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) 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 approval 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.

"(4) 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 and the Court has jurisdiction to hear and determine the application.

"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) a determination under section 94(1) of the *Planning Act* indicating the consent of the relevant consent authority under that Act to the proposal as varied; and

(c) the consent in writing, in an approved form of each proprietor of a lot in the estate development.

"(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.

"Division 4 - Miscellaneous

"26X. 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.

"26Y. 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.

"26Z. 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).

"26ZA. 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.

"26ZB. APPLICATION OF PART V

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

"26ZC. 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 a public roadways;
- (c) the control of vessels;
- (d) the control of wharfs and berths;

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- (e) the control of polluting substances and pollution control and clean-up;
- (f) the imposing 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).

"26ZD. 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 26ZC, 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 26ZC by the estate management corporation."

11. GENERAL PROVISIONS

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

12. 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 -".

13. 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
- (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".

14. 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".

15. 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".

16. FIRST ANNUAL GENERAL MEETING

Section 59(3)(a) of the Principal Act is amended by inserting, after "(including", the words "guarantees and warranties relating to equipment and".

17. 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".

18. 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."
