

In this final of 3 articles we continue our commentary on issues that have been facing bodies corporate in recent times.

1. Strata Estates in Leasehold/Review of Ground Rent

A number of leasehold unit title subdivisions have been completed where, at the time the development was completed and units sold, there was either no ground rent payable, or a review of the ground rent wasn't due for several years (typically 7 or 10 years).

In many cases the review of ground rent has resulted in substantial increases in the rent payable by unit owners in leasehold developments, and caused corresponding increases in fees payable to the body corporate to cover the rent. Increases in ground rent can also have the effect of significantly reducing the value of units in leasehold developments.

For an inexperienced investor the relationship between ground rent and the value of the property, and the fees payable to the body corporate, can be something which is overlooked, or not fully considered in making the decision to purchase. When it occurs, a ground rent review can result in the value of the property falling well below the original purchase price. The reduced value of the property can also fall below the amount owed to the bank or financier and secured against the property. In such circumstances owners have taken huge losses when selling the property and have faced intense pressure from banks and lending institutions to provide adequate security for borrowing. Ultimately, the lender has the option to take the property to a mortgagee sale and recover any shortfall from the borrower personally.

When purchasing a property which is labelled "stratum estate in leasehold" it is vital to fully understand the future risks and obligations associated with this type of title. These may not be apparent at the time of purchase.

2. Adequacy of Insurance

Under the Act the body corporate is responsible for insuring the building elements. Such insurance cover is based on the utility interest of each unit in the development. In the case of an existing building, utility interest is established by reference to unit entitlement. In the case of new developments utility interest is the same as ownership interest unless a body corporate fixes it at a different amount, which it considers to be a fair and reasonable assessment of the proportion of outgoings each owner should pay. In either case a utility interest can be updated every 3 years. The body corporate generally does not insure for improvements an owner may choose to make to the interior of a unit, or where special arrangement has been entered into granting an exclusive right for one unit owner to use and enjoy part of a common area.

There have been circumstances where significant valuable improvements have been made to owner occupied units, while other units have been rented out in the same building with little or no modification or improvement. Owner occupiers have discovered that they were not insured for the full value of the substantial improvements they had made, which are not recoverable from the body corporate or its insurers. Owners therefore need to be careful to take out additional insurance cover for improvements that are not covered under the body corporate's material damage cover.

3. Summary

As with the issues we have raised in our earlier articles the issues we have highlighted here are not insurmountable. They highlight matters to be aware of when buying a unit or if you are considering becoming involved in the running of a body corporate.

With the push towards more intensive housing, especially in and around the Auckland isthmus, it is likely that a number of future inner city and fringe city property developments are going to be structured on the basis of unit title ownership. Understanding the obligations and risks involved with membership of a body corporate is going to become more and more important if the housing intensification proposals in Auckland Council's Unitary Plan are realised through apartment/town house construction. Taking appropriate well timed advice for all those involved in or dealing with bodies corporate can avoid common traps and pitfalls for the unwary.

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