

Robert Bradshaw  
Executive Director  
Policy Coordination & Intergovernmental Relations  
Department of Attorney-General and Justice  
GPO Box 1722  
DARWIN NT 0801

***Via Email & Post***

Dear Mr Bradshaw

**RE: CANCELLATION OF TITLES UNDER THE UNIT TITLES ACT AND THE UNIT TITLES SCHEMES ACT – DISCUSSION PAPER OF NOVEMBER 2012.**

We are writing in response to your discussion paper of November 2012, as titled above. The REINT Board and Members have had the opportunity to view and discuss this paper and we have also consulted with other relevant parties, including the Strata Community Association NT (SCA).

The Board has asked that we relay their consensus opinion to you, being that they felt Option 2, as outlined in your paper of November 2012, is the more workable of the proposed options. However, this opinion is provided with some reservations.

The document states in its title that it refers to the *Unit Titles Act* and the *Unit Titles Schemes Act*, however the actual wording for the Options that have been suggested only refers to "Schemes". Can you please confirm that it does indeed refer to both Schemes and Unit Plans, and that as such this will be clarified in any final legislation and regulation to reflect this.

As mentioned, that whilst the preferred option of the REINT is Option 2, the REINT supports a view expressed by the SCA that this Option, should it be adopted and amended within both the Unit Titles Act and the Unit Titles Schemes Act, should read as follows:



# REINT

REAL ESTATE INSTITUTE  
OF NORTHERN TERRITORY

*A right for the specified majority of the ownership would vary depending on the age of the scheme or unit plan for the building, noting that with unit plans, the registration date of the unit plan with the Lands Titles Office does not necessarily reflect the age of the building. The percentages applicable for the termination would be based on 95% of the majority for a 1-5 year old scheme or unit plan; 90% for a 6-10 year old scheme or unit plan; 80% for 11-20 year old scheme or unit plan and 70% for schemes or unit plans older than 20 years;*

Further to this the Board is concerned in regard to defining the 'age of the building'. As you would no doubt be aware, there are a number of buildings that remain within Darwin that were built prior to Cyclone Tracey but registered with the Lands Titles Office (LTO) many years later. The REINT Board feels there is a need for this to be accounted for when considering the "age of the building".

Another issue the REINT Board has raised and is seeking clarity on is that of holding of or disbursement of funds, both body corporate trust funds and any funds coming from a developer, following the cancellation of a plan or scheme. As the cancellation of either would require the removal of the Body Corporate Manager / Firm, this would leave a void in the management of funds. The Board would appreciate a comment on how this issue would be addressed under these proposed changes.

The Board also raised the issue that whilst a proposal such as that expressed in both Option 1 and Option 2 of your paper may have the ability to be more easily imposed in larger developments, it would remain problematic in smaller developments and virtually impossible to implement in the case of duplex developments.

We previously sought an indication from you on how this matter might be dealt with under either of these options, but have yet to receive a response.

In addition the REINT feels consideration should be given to other aspects within the *Unit Titles Act* and the *Unit Titles Scheme Act* with regards to amendments. For example the 'abandoned vehicles on common property' or 'titled property' definitions within the Acts, just to name two examples.

The REINT is aware that the SCA is currently working on a 'definitions list' which they would like to see all body corporate management firms in the Northern Territory use as a guide, and it is our understanding that the SCA will, in the near future, be presenting this to the NT Government for consideration as an inclusion as part of the regulations for both Acts. The REINT fully supports such a move.

The REINT would note that it has been in discussion with other stakeholders, including the Property Council of Australia NT Division, in regard to this matter. The REINT is aware of the proposal being put forward by the Property Council and feels that it certainly warrants further discussion, along with the proposal submitted by the REINT, before any final decision is made by Government.

The REINT Board would welcome the opportunity to discuss this paper, or any of the further suggestion it has made, in confidence, prior to the implementation of any changes to the Acts. Should you wish to avail yourself of this opportunity please let me know and I will make the appropriate arrangements for a private meeting with the appropriate Board members.

Regards

**Quentin Kilian**  
**Chief Executive Officer**

29 January 2013



January 2013

## **SUBMISSION ON CANCELLATION OF UNITS PLANS AND SCHEMES UNDER THE UNIT TITLES ACT AND UNIT TITLES SCHEMES ACT**

The Urban Development Institute of Australia (Northern Territory) has considered the draft paper on the above subject, and provides the following comments on behalf of the development industry in the Northern Territory:

1. UDIA (NT) generally supports Option 2.
2. The legislative amendments should contain clear provision to enable effective transfer of the interests of all unit owners upon cancellation of the plan/scheme, given that in the circumstances contemplated there will be a minority who have not voted in favour of the cancellation and will not be able to be compelled to execute an instrument of transfer in respect of their resulting interest as tenant in common.

The current provisions in Unit Title Schemes Act and Management Module 1 are not clear on this point. Whilst there is a reference in clause 70(1)(b)(ii) of Management Module 1 to the plan of termination stating whether the scheme land is proposed to be sold following termination, and a requirement in clause 70(c) that the plan of termination contain details of distribution of any proceeds of sale, there is nothing addressing how the sale is to be effected.

One way of addressing this might be inclusion of provisions enabling a sale contract and an instrument of transfer to be executed by someone on behalf of all of the co-owners of the lot resulting from cancellation of the scheme plan in circumstances where the necessary resolution to cancel the plan/scheme has been made (or some provision to achieve the same end).

3. UDIA (NT) supports inclusion of provision to have regard to the age of the building in question for the purposes of determining the relevant percentage majority required for the resolution of cancellation, where the building is older than the relevant units plan/unit title scheme.

4. Whilst it is clear from the title of the discussion paper and the introductory wording on page 4 that provisions apply for both the Unit Titles Act and the Unit Title Schemes Act, subsequent discussion in the paper tends to refer just to “schemes” and not plans. It is presumed that this wording has been adopted purely as a matter of convenience. UDIA (NT) wishes to emphasise its view that for legislative reform to be effective it must address both the Unit Titles Act and the Unit Title Schemes Act.
5. There have been examples of proposed re-developments in the Northern Territory which have failed to proceed due to one or two unit owners refusing to agree to the proposal, therefore whilst there may be benefit in seeing what reforms New South Wales may proceed with, UDIA (NT) would not like to see delay in reform in other states delay progress in the Northern Territory.

UDIA (NT) is happy to meet with the officers responsible for the review to discuss the issues we have raised above in greater detail, and / or to clarify our perspective on issues, if required.

For further information please contact Graeme Suckling on 0457 882 793 or at [ceo@udiant.com.au](mailto:ceo@udiant.com.au)

Graeme Suckling  
CEO UDIA (NT)



PO Box 36819  
Winnellie NT 0821

30<sup>th</sup> January, 2013

Mr Robert Bradshaw  
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Dear Robert,

**Draft submission on changes to the Unit Titles Act and Unit Titles Schemes Act**

I refer to the draft submission on changes to the Unit Titles Act and the Unit Titles Schemes Act and wish to advise that the Strata Community Australia (Northern Territory) Division has met and discussed your proposed changes.

The comments from the committee of the SCA (NT) in relation to this matter, is as per the following:

1. Whilst the document initially refers to both the Unit Titles Act and the Unit Titles Schemes Act, throughout the document it appears that the Unit Titles Act has been omitted and the document suggests that any amendments will only be made to the Unit Titles Schemes Act. The SCA (NT) wish to clarify with your Department, that it is the intention that the proposed changes will be reflected in both the Unit Titles Act and the Unit Titles Schemes Act.
2. The preferred option as discussed by the SCA (NT) is Option 2 as the inclusion into both the Unit Titles Act and the Unit Titles Schemes Act. We would however request that consideration be given to changing the wording to reflect the following:

*"A right for the specified majority of the ownership would vary depending on the age of the scheme or unit plan for the building, noting that with unit plans, the registration date of the unit plan with the Lands Titles Office does not necessarily reflect the age of the building. The percentages applicable for the termination would be based on 95% of the majority for a 1-5*



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*year old scheme or unit plan; 90% for a 6-10 year old scheme or unit plan; 80% for 11-20 year old scheme or unit plan and 70% for schemes or units plans older than 20 years."*

3. The SCA (NT) are concerned that the age of the building is not necessarily quantified in the proposed changes. It is generally known that many buildings whilst they have been strata titled, are much older than when they were strata titled through the Lands Titles Office. The amendments need to clearly define "age of the building" so as this is taken into consideration when determining exactly how old the building is.
4. Whilst Option 2 is the preferred option from the SCA (NT)'s point of view, it is the opinion of the Board that little consideration has been given to duplexes. Whilst the SCA (NT) has not been able to come up with a suitable solution, consideration needs to be given as to how a determination can be given for the termination of duplexes. Clearly Option 2 (or any option) would be of no benefit to strata titled units in this situation.

The SCA (NT) also believes that this would be the most opportune time for the NT Government to consider any anomalies that appear in both the Unit Titles Act and the Unit Titles Schemes Act. Whilst the Acts are a legal document, working with them is sometimes quite difficult. For example, meeting notices have gone from 14 days notice to 14 working days notice; there is no provision for what a body corporate is able to do with respect to abandoned vehicles; changing of Bylaws within the Unit Titles Schemes Act is difficult as the Lands Titles Office require a new Schemes statement; there is no restriction on the duration of management rights; there is no consistency with regards to how much is being charged for penalty interest; and finally there needs to be some consideration given to building defects which are not affecting the occupational health and safety or devaluing the unit complex as to who is responsible for the maintaining of common property. For example could the body corporate resolve via a duly convened meeting that an individual owner maintains the common property which affects their unit exclusively.

The SCA (NT) has also acknowledged that there is much confusion within the Real Estate Industry with regards to what is a body corporate responsibility and what is owner responsibility. The SCA (NT) consists entirely of body corporate managers within the Northern Territory and to assist all real estate companies within the Territory, has developed a definitions list that would clearly assist all aspects of the real estate industry when understanding who is responsible for what within a body corporate. We ask that you consider including this definitions list in its entirety into the regulations of both the Unit Titles Act and the Unit Titles Scheme Act. We have attached this document for your perusal.



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On behalf of the SCA (NT) we thank you for this opportunity and trust that the issues as raised will be beneficial when considering changes to the Unit Titles Act and the Unit Titles Schemes Act. Should you wish to discuss any of the issues as raised above, please feel free to contact the undersigned on (08) 8945 5604.

Yours sincerely,

*Julie Lewis*

Julie Lewis  
**President**  
SCA (NT)

Encl.

Dear Robert

CANCELLATION OF TITLES UNDER THE *UNIT TITLES ACT* AND THE *UNIT TITLE SCHEMES ACT*  
The Law Society Northern Territory considered the discussion paper released in November 2012 regarding cancellation of schemes.

The Society, particularly the Commercial Law Committee did not consider it was in a position to offer any guidance as to the appropriate mechanism, particularly percentages, that ought apply in the circumstances of scheme members seeking cancellation.

*Kind regards*

**Megan Lawton**

CEO | Law Society Northern Territory

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**Cancellation of units plans and schemes - comments sought \_ Late submission. I only became aware of this document in February.**

I am a unit holder of a unit plan that will probably be affected by this change of law.

I agree with the change that would allow for less than the 100 % agreement that currently is the law, as that would make it almost impossible to affect any change. For the options they all have merits, and do not have a strong opinion one way of the other.

However I think it is important that there be strong protection of the minority or even the silent majority. To do this I would like to see the following included in any change of the law.

1 ) All persons associated with the unit plan, (property owners, unit plan manager, or committee members recently past and present) are required to disclose any personal benefit, interest, promise from developers , payments, gifts, ( in addition to that which is publically disclosed and which will be offered publically to all unit holders ) by means of a legally enforceable statutory declaration or other document for which criminal sanctions would apply if not true.

The reason for this is guard against special deals, favours, benefits etc that some unit holders may receive to the detriment of other unit holders. Also disclosure will enable for a more transparent discussion and decision my all unit holders.

2) Prior to any formal vote by unit holders, all unit holders are to be provided with a written document presenting the proposition to be presented. That is, the formal meeting should not be the first time that unit holders have to had to consider the specific details of the proposition to be put.

3). All unit holders are to have the opportunity to present to other unit holders their views on the proposition. This means that any unit holder should be afforded the same opportunity as the body corporate itself or a select committee to communicate with other unit holders. This can preferably be by email.

4) that to ensure fairness and neutrality for all unit holders that the government make available an independent moderator to facilitate communications and to be present at meetings. This could be for a nominal fee. (the government will receive taxes etc from any redevelopment).

5) a non- binding vote of unit holders should be held to ascertain the interest by unit holders in considering redevelopment and the basic conditions that should be required. This vote should be one that is done in writing and appropriately supervised.