2015

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

UNIT TITLES AMENDMENT REGULATION 2015 (No 1)

Subordinate law SL2015-8

EXPLANATORY STATEMENT

Presented by

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EXPLANATORY STATEMENT

This explanatory statement relates to the *Unit Titles Amendment Regulation 2015 (No 1)* (the amending regulation) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the amending regulation and to help inform debate on it. It does not form part of the amending regulation and has not been endorsed by the Assembly.

The statement is to be read in conjunction with the amending regulation. It is not, and is not meant to be, a comprehensive description of the amending regulation. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Terms used

In this explanatory statement, the following terms are used:

"the Act" means the *Unit Titles Act 2001*
"the regulation" means the *Unit Titles Regulation 2001*

Overview

The amending regulation expands the definition of *Attachment* in the Act and corrects a minor inconsistency between the regulation and the Surveyor (Surveyor General) Practice Directions 2013 No.1.

Amendment of the definition of *Attachment*

Applications to unit title a building are considered pursuant to section 20 of the Act. The Act provides for encroachments on public unleased land by an attachment to a building. Encroachments by an attachment are permitted if the attachment is lawful or if the encroachment would not endanger public safety or unreasonably interfere with the amenity of the neighbourhood and it is not in the public interest to refuse to approve the application because of the encroachment.

Attachments are lawful if approved as part of a development application (DA) process. If an attachment encroaches on public unleased land, exists at the time the application for unit title is lodged and has been approved as part of a DA, then the planning and land authority (authority) can approve the unit titling application with the encroachment.

The current definition of *Attachment* is in the Dictionary of the Act. It states that Attachment in relation to a building means an eave, gutter, downpipe, and awning or anything attached to the building prescribed by the regulation. There are no attachments prescribed by the regulation.

The definition of *Attachment* unnecessarily limits the authority when considering unit titling applications. If there is an encroachment on public unleased land by something other than an eave, gutter, downpipe or awning, the applicant either has to remove the encroachment or, alternatively, make an application to purchase the unleased land and/or air space for the encroachment and obtain ownership before the application for unit title may be approved. This can be a lengthy as well as costly

process that can delay development particularly if the encroachment is not identified very early in the project planning.

The amending regulation promotes efficiencies, for the applicant and government, by prescribing by regulation other things that can be an *Attachment*. This will reduce the unnecessary purchase of airspace and the need for encroachments to be removed prior to unit titling. It will also permit design innovation in buildings without the developer having to buy the air space. The amending regulation is a red tape reduction initiative. It will provide increased flexibility for developers and remove the need for a direct sale process in certain circumstances.

The amending regulation expands the definition of *Attachment* by prescribing, by regulation, things that are attachments. However, the expanded definition of *Attachment* will not apply to any encroachment that is included in the gross floor area of the building, or is at ground level or is a balcony.

Surveyor General amendment

There is a minor conflict between the provisions of the regulation and the Surveyor (Surveyor General) Practice Directions 2013 No.1 (DI2013 -217) in relation to how unit areas are shown on unit plans. Paragraph 75 of the Practice Directions require surveyors to show approximate unit areas (which includes half the area of surrounding walls) whereas section 6 of the regulation requires surveyors to show approximate floor areas.The amending regulation corrects this inconsistency.

Regulatory Impact Statement

Section 36(1)(b) of the *Legislation Act 2001* states that a regulatory impact statement is not required for matters that do not adversely affect people's rights or impose liabilities. This amending regulation is a regulation of this type and as such a regulatory impact statement has not been prepared. The amending regulation expands the things that can be considered attachments so that applications for unit titling are not unnecessarily delayed and do not involve unnecessary expense for the applicant.

Outline of Provisions

Clause 1 Name of the regulation

Clause 1 names the regulation as the *Unit Titles Amendment Regulation 2015 (No 1).*

Clause 2 Commencement

Clause 2 states that the amending regulation commences on the day after it is notified.

Clause 3 Legislation amended

Clause 3 notes that the amending regulation amends the *Unit Titles Regulation 2001.*

Clause 4 Section 6(1)(b)(ii) and (c) (ii)

There is a minor conflict between the provisions of the regulation and the Surveyor (Surveyor General) Practice Directions 2013 No.1 (DI2013 -217) in relation to how unit areas are shown on unit plans. Paragraph 75 of the Practice Directions requires surveyors to show approximate unit areas (which includes half the area of surrounding walls) whereas section 6 of the regulation requires surveyors to show approximate floor areas. The amending regulation corrects this inconsistency by omitting the words “floor area” and substituting the word “area” in section 6 of the regulation.

Clause 5 New division 2.5

Clause 5 inserts a new division 2.5.

Attachment is defined in the Dictionary of the Act as follows:

attachment, in relation to a building, means—

(a) an eave, gutter or downpipe; or
(b) an awning; or
(c) anything attached to the building prescribed by regulation.

There is not presently anything prescribed by regulation pursuant to paragraph (c).

Applications to unit title a building are considered by the authority pursuant to section 20 of the Act.

One of the requirements to approve an application is s20 (1) (d) which states:

(d) if the application shows an encroachment on public unleased land by an attachment to a building—
  (i) if the attachment exists on the day the application is lodged with the authority—the attachment is an authorised existing attachment; or Note Authorised existing attachment—see s (10).
  (ii) in any other case—
    (A) the encroachment would not endanger public safety or unreasonably interfere with the amenity of the neighbourhood; and
    (B) it is not in the public interest to refuse to approve the application because of the encroachment.

Section 20 (10) relevantly defines **authorised existing attachment** as:

(a) if the application includes the cancellation of a units plan (the old plan) that was registered before 1 January 2002—the old plan shows the attachment; or

(b) in any other case—the attachment was lawful when it was constructed.

Attachments are lawful if approved as part of the development application (DA) process. Therefore, if an attachment that encroaches on public unleased land exists on the date of the unit titling application and it has been approved as part of the DA process then the authority can approve the unit titling application despite the encroachment. Encroachments by an attachment are also permitted if the encroachment would not endanger public safety or unreasonably interfere with the amenity of the neighbourhood and it is not in the public interest to refuse to approve the application because of the encroachment.

However, the authority is limited to encroachments by an eave, gutter, downpipe or an awning because only these things are presently included in the definition of *Attachment* in the Dictionary of the Act.

This unnecessarily constrains the use the authority can make of section 20 (1) when considering a unit title application with the consequence that applicants are sometimes required to go through the process of purchasing the air space for encroachments such as artworks and architectural embellishments, or remove them, in order to have a unit title application approved.

For example, a building is constructed that has an artwork attached that encroaches over public unleased land. An application to unit title the building cannot be approved until the air space for the encroachment of the art work has been purchased by the applicant or the art work is removed. This is because the authority cannot presently consider the artwork as an attachment given the current narrow definition of *Attachment* as an eave, gutter, downpipe or an awning.

Clause 5 of the amending regulation inserts a new section 10 in the regulation to expand the definition of *Attachment* to include things that the authority can consider an attachment when approving a unit titling application. *Attachment* now includes:

- Fixtures and fittings, for example, air conditioning units, fire alarm systems, light fittings and security alarms;
- Architectural embellishments, for example, decorative brackets and screens, planter boxes, window shutters, fin blades;
- Artworks; and
- Signs.

This means that the authority may now be able to approve a unit title application even though, for instance, an artwork or a planter box or a sign, encroaches over public unleased land without requiring the applicant to remove it or buy the air space associated with the encroachment.

New section 10 (2) clarifies that the things listed in subsection (1) cannot be an attachment if the thing is:

- included in the gross floor area of the building; or
- at ground level; or
- a balcony.

If a thing is included in the gross floor area of the building it is considered part of the building and cannot be an attachment for the purposes of a unit titling application.

An encroachment defined in section 10 of the regulations and located at ground level must be rectified by removal of the encroachment or by the purchase of the area of unleased Territory land affected by the encroachment. Balconies are mentioned to clarify that a balcony is not to be considered an attachment.

Gross floor area and balcony are defined in the territory plan as follows:

- **Gross floor area (GFA)** means the sum of the area of all floors of the building measured from the external faces of the exterior walls, or from the centre lines of walls separating the building from any other building, excluding any area used solely for rooftop fixed mechanical plant and/or basement car parking.
- **Balcony** means a small outdoor area, raised above the ground, directly accessible from within the *building* and open except for a balustrade on at least one side.

The amending regulation is a red tape reduction initiative. It will provide increased flexibility for proponents and remove the need for a direct sale process in certain circumstances and the unnecessary removal of certain encroachments. It will also permit design innovation in buildings without the developer having to buy the air space.

Clause 6 Dictionary, note 2

This is a consequential amendment. Because of the reference to the territory plan in new section10, territory plan has been included in the Dictionary, note 2 to indicate that the *Legislation Act 2001* defines the term.