



Australian Capital Territory

Unit Titles Amendment Regulation 2010 (No 1)

Subordinate Law SL2010-37

The Australian Capital Territory Executive makes the following regulation under the *Unit Titles Act 2001* and the *Planning and Development Act 2007*.

Dated 6 September 2010.

ANDREW BARR
Minister

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Minister



Australian Capital Territory

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1 Name of regulation

This regulation is the *Unit Titles Amendment Regulation 2010 (No 1)*.

2 Commencement

This regulation commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Legislation amended

This regulation amends the *Unit Titles Regulation 2001*.

Note This regulation also amends the *Planning and Development Regulation 2008* (see s 9 to s 11).

4 New section 1A

in part 1, insert

1A Dictionary

The dictionary at the end of this regulation is part of this regulation.

Note 1 The dictionary at the end of this regulation defines certain terms used in this regulation, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*approved plans*—see the *Building Act 2004*, dictionary.' means that the term 'approved plans' is defined in that dictionary and the definition applies to this regulation.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire regulation unless the definition, or another provision of the regulation, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

5 New division 2.1A

before division 2.1, insert

Division 2.1A Unit title assessment report

2 Definitions—div 2.1A

In this division:

planning documents, for a parcel, means—

- (a) the approved plans; and
- (b) for a development under the *Planning and Development Act 2007*—a notice of decision given under the *Planning and Development Act 2007*, division 7.3.8; and
- (c) for a development under a planning and development law in force in the ACT before the commencement of the *Planning and Development Act 2007*—an approval given under the law previously in force; and
- (d) for works in a designated area under the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth)—
 - (i) a copy of the proposal to perform works submitted to the National Capital Authority; and
 - (ii) the plans and specifications (if any) required by the National Capital Authority; and
 - (iii) a copy of the approval for the works given by the National Capital Authority.

relevant development approval, for a parcel, means the planning documents that show the approval status of development on the parcel immediately before the unit title application is made.

2A Prescription of parcel—Act, s 17 (5) (b)

A parcel under the Act, section 5 (a) is prescribed.

2B Unit title assessment report application—Act, s 22B (2)

The following details and material are prescribed:

- (a) in relation to the parcel—
 - (i) the block and section number and division; and
 - (ii) the street name and number;
- (b) in relation to the applicant—
 - (i) if the applicant is an entity—the full name of the entity; and
 - (ii) if the applicant is a company—the company name and the Australian Company Number (ACN); and
 - (iii) the postal and email address; and
 - (iv) the contact telephone and facsimile numbers;
- (c) the number of class A or class B units applied for;
- (d) the proposed commencement and completion dates of the development;
- (e) if the application is in relation to a staged development—a schedule of commencement and completion dates for each stage;
- (f) a copy of the relevant development approval for the parcel;
- (g) the applicant's signature.

2C Offence—false or misleading information in application

A person commits an offence if—

- (a) the person applies for a unit title assessment report; and
- (b) the application—
 - (i) includes information that is false or misleading; or
 - (ii) omits something without which the information is false or misleading; and
- (c) the person knows, or is reckless as to whether, the application—
 - (i) includes information that is false or misleading; or
 - (ii) omits something without which the information is false or misleading.

Maximum penalty: 60 penalty units.

2D Unit title assessment report—contents—Act, s 22B (5) (a)

- (1) The following contents of a unit title assessment report are prescribed:
 - (a) the block and section number, street name and number of the parcel to be subdivided;
 - (b) if the parcel is in a district—
 - (i) that is divided into divisions—the division name; or
 - (ii) that is not divided into divisions—the district name;
 - (c) the following particulars of the unit title assessor:
 - (i) the full name, postal, email, fax and telephone contact details;
 - (ii) if the unit title assessor is a company—the company's ACN;

- (d) the date the report is prepared;
- (e) the signature of the unit title assessor or, if the assessor is not a natural person, the signature of the assessor's nominee under the *Construction Occupations Licensing Regulation 2004*, section 15 (2);
- (f) the date of each site inspection conducted by the unit title assessor;
- (g) a statement by the unit title assessor that—
 - (i) the assessor has conducted a site inspection; and
 - (ii) the development is complete;
- (h) a statement by the unit title assessor that the unit entitlements shown on the certification of unit entitlements are the same as those shown on the schedule of unit entitlement form and that the total number of unit entitlements shown on the form is 10, 100, 1 000, 10 000 or 100 000;
- (i) if the relevant development approval for the parcel includes a condition other than a condition that applied only in the construction stage of the development—an assessment of whether the condition has been complied with;
- (j) if the landscape plans form part of the relevant development approval—a statement by the unit title assessor that the landscaping has been inspected and complies with the relevant development approval;
- (k) an assessment based on a site inspection of the extent to which the development is consistent with the site plan and floor plan for the parcel in relation to the following:
 - (i) the position of the boundary of—
 - (A) the parcel; and
 - (B) a unit; and

- (C) a non-adjointing unit subsidiary; and
- (D) the common property;
- (ii) the footprint of any building on the parcel, including the footprint of—
 - (A) any building within each unit boundary; and
 - (B) any building within 1 metre of the boundary of the parcel;
- (iii) the position of boundary fences and boundary walls;
- (iv) the number of each unit and each non-adjointing unit subsidiary, allocated car park and storage cage, taking account of an address schedule for the parcel (if any);
- (l) an assessment based on a site inspection of the extent to which the development is consistent with the relevant development approval for the parcel in relation to the following:
 - (i) the number of units in the development;
 - (ii) the position of a retaining wall, courtyard wall, boundary fence, fence within a unit, car parking space, access ramp, carport, garage, bicycle parking space, storage cage, garbage enclosure, letterbox, water tank or lighting that is shown on a plan that forms part of the development approval;
- (m) an assessment based on a site inspection of the extent to which each unit and unit subsidiary has access to common property without requiring access through another unit or unit subsidiary;
- (n) a statement by the unit title assessor that—
 - (i) there is a letter box for each unit and for the owners' corporation; and

- (ii) the numbers on the letter boxes correspond to the numbers for the units, taking account of an address schedule for the parcel (if any).

Note 1 If a unit title assessor contravenes an applicable code of practice the unit title assessor commits an offence—see the *Construction Occupations Licensing Act 2004*, s 87.

Note 2 If a form is approved under the Act, s 180 for this provision, the form must be used.

- (2) If the unit title assessment report is in relation to a staged development, the unit title assessor need only report on those matters mentioned in subsection (1) that relate to stage 1 of the development.

- (3) In this section:

district—see the *Districts Act 2002*, dictionary.

footprint, of a building on a parcel, means the part of the parcel covered by the extremities of the building at or projected to ground level.

2E Unit title assessment report—accompanying material— Act, s 22B (5) (b)

- (1) The following accompanying material is prescribed:
 - (a) the relevant development approval;
 - (b) the most recent certificate of occupancy and use—
 - (i) for each unit in the parcel; and
 - (ii) for any structure within the boundaries of the common property;
 - (c) a certification of unit entitlements for the parcel that is not more than 3 months old;
 - (d) a completed schedule of unit entitlement form for the parcel that is not more than 3 months old;

- (e) a site plan for the parcel that is not more than 3 months old;
- (f) a floor plan for the parcel that is not more than 3 months old;
- (g) a completed registered surveyor's declaration form for the parcel that is not more than 3 months old;
- (h) if permission for the development is required under the *Roads and Public Places Act 1937*, section 9—a copy of the permit;
- (i) a certificate (a *fitness for unit title certificate*) that—
 - (i) is not more than 3 months old; and
 - (ii) is issued by an eligible building surveyor; and
 - (iii) certifies that each proposed unit in the parcel is suitable for separate occupation;
- (j) certification by a registered surveyor, not more than 3 months old, that any structure not shown on the site plan or floor plan does not encroach on any of the following:
 - (i) the parcel boundary;
 - (ii) a unit boundary;
 - (iii) a unit subsidiary;
 - (iv) the common property;
- (k) if an attachment is allowed to encroach on leased or unleased Territory land, certification by a registered surveyor—
 - (i) that is not more than 3 months old; and
 - (ii) that the encroachment is allowed under the Act and the relevant development approval for the parcel; and
 - (iii) that the attachment complies with the approval based on a site inspection; and

- (iv) for leased land—that includes the Land Titles Office dealing number of the registered transfer and grant of the easement;

Note Attachment—see the Act, dictionary.

- (1) any other further information obtained by the unit title assessor under the Act, section 22C.
- (2) In this section:

certificate of occupancy and use means—

- (a) for a development on or after 1 July 1995—a certificate of occupancy issued under, or taken to be issued under, the *Building Act 2004*; or
- (b) for a development before 1 July 1995—a certificate of occupancy issued under the *Building Act 1972* (repealed) and the approval of plumbing or drainage work issued under the *Energy and Water Act 1988* (repealed).

eligible building surveyor means a building surveyor who would be eligible to be appointed as a building certifier of the building if the building were to be built when the fitness for unit title certificate is given.

registered surveyor's declaration form means the surveyor's declaration form approved under the *Land Titles Act 1925*, section 140.

2F Offence—preparing false or misleading unit title assessment report

- (1) A unit title assessor commits an offence if—
- (a) the unit title assessor prepares a unit title assessment report;
and
 - (b) the report—
 - (i) is false or misleading; or
 - (ii) omits something without which the report is false or misleading; and
 - (c) the person knows, or is reckless as to whether the report—
 - (i) is false or misleading; or
 - (ii) omits something without which the report is false or misleading.

Maximum penalty: 60 penalty units.

- (2) Each partner of a unit title assessor commits an offence if—
- (a) the unit title assessor prepares a unit title assessment report;
and
 - (b) the report—
 - (i) is false or misleading; or
 - (ii) omits something without which the report is false or misleading; and
 - (c) the partner, or one of the partners, knows, or is reckless as to whether—
 - (i) the report is false or misleading; or

- (ii) omits something without which the report is false or misleading.

Maximum penalty: 60 penalty units.

- (3) It is a defence to a prosecution for an offence against subsection (2) if the partner proves—
 - (a) that—
 - (i) the partner did not know about the false or misleading report; and
 - (ii) reasonable precautions were taken and appropriate diligence was exercised to avoid the preparation of a false or misleading report; or
 - (b) that the partner was not in a position to influence the other partners in relation to the preparation of the report.

2G Offence—providing false or misleading unit title assessment report in application for unit title

- (1) A person commits an offence if—
 - (a) the person applies for the subdivision of a parcel under the Act, section 17; and
 - (b) the person provides a unit title assessment report as part of the application; and
 - (c) the report—
 - (i) is false or misleading; or
 - (ii) omits something without which the report is false or misleading; and
 - (d) the person knows, or is reckless as to whether the report—
 - (i) is false or misleading; or

- (ii) omits something without which the report is false or misleading.

Maximum penalty: 60 penalty units.

- (2) Each partner of a partnership commits an offence if—
 - (a) the partnership applies for the subdivision of a parcel under the Act, section 17; and
 - (b) the partnership provides a unit title assessment report as part of the application; and
 - (c) the report—
 - (i) is false or misleading; or
 - (ii) omits something without which the report is false or misleading; and
 - (d) the partner or one of the partners knows, or is reckless as to whether the report—
 - (i) is false or misleading; or
 - (ii) omits something without which the report is false or misleading.

Maximum penalty: 60 penalty units.

- (3) It is a defence to a prosecution for an offence against subsection (2) if the partner proves—
 - (a) that—
 - (i) the partner did not know about the false or misleading report; and
 - (ii) reasonable precautions were taken and appropriate diligence was exercised to avoid the provision of a false or misleading report; or

- (b) that the partner was not in a position to influence the other partners in relation to the provision of the report.

6 Section 3 (1) (a) (i)

omit

7 New section 6 (3) (c) to (e)

insert

- (c) the position of boundary fences and boundary walls; and
- (d) the nature and extent of any encroachments, whether on leased land or unleased land, and their relationship to the parcel or unit boundary, including—
 - (A) whether the encroachment is for use with a unit or the common property; and
 - (B) if the encroachment is for use with a unit—the unit to which the encroachment relates; and
- (e) the site and nature of any existing or proposed easements affecting the parcel.

8 New dictionary

insert

Dictionary

(see s 1A)

Note 1 The Legislation Act contains definitions and other provisions relevant to this regulation.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- Act
- planning and land authority
- registered surveyor.

Note 3 Terms used in this regulation have the same meaning that they have in the *Unit Titles Act 2001* (see Legislation Act, s 148). For example, the following terms are defined in the *Unit Titles Act 2001*, dictionary:

- attachment
- building
- development
- staged development
- unit subsidiary (see s 12).

address schedule, for a parcel, means a schedule that shows the relationship between the numbering of units on the site plan or floor plan of the parcel and the door numbering and street address of the units in the parcel.

approved plans—see the *Building Act 2004*, dictionary.

building code means the Building Code of Australia prepared and published by the Australian Building Codes Board, as amended from time to time by—

- (a) the Australian Building Codes Board; and
- (b) the Australian Capital Territory Appendix to the Building Code of Australia.

certification of unit entitlements, for a parcel, means a written statement showing the details of the value of unit entitlements for the units in the parcel—

- (a) prepared by a certified practising member of the Australian Property Institute (ABN 49 007 505 866); and
- (b) dated and signed by the member.

division—see the *Districts Act 2002*, dictionary.

floor plan means a floor plan prepared for a parcel in the form approved under the *Land Titles Act 1925*, section 140.

schedule of unit entitlement form means the schedule of unit entitlements form approved under the *Land Titles Act 1925*, section 140.

site plan means a site plan prepared for a parcel in the form approved under the *Land Titles Act 1925*, section 140.

9 Planning and Development Regulation 2008, schedule 1, section 1.104 (1) (a)

omit

residential purposes

substitute

residential use

10 Planning and Development Regulation 2008, schedule 1, new section 1.104 (1) (aa)

insert

- (aa) if the landscape gardening is subject to a condition in a development approval in relation to the land—the condition has been complied with; and

11 Planning and Development Regulation 2008, schedule 1, section 1.104 (3), new definition of *residential use*

after the note, insert

residential use—see the Territory Plan, 13 (Definitions).

Endnotes

1 Notification

Notified under the Legislation Act on 7 September 2010.

2 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.
