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**ACT**

Government

Environment and
Sustainable Development

Unit titling and dual occupancies

The Unit Titles Act and unit titling two units (dual occupancy)

In September 2009, changes to the Unit Titles Act 2001 came into effect which restricted unit titling of some two-unit developments. The amendments mean that two unit developments are only permitted to be unit titled where one unit is wholly or partly superimposed on the other unit. Three or more unit developments are not affected.

Why was the legislation changed to restrict unit titling of two-unit developments?

The legislation was changed because unit owners and occupiers and the Law Society raised concerns about shortcomings in existing legislation.

Most complaints about dual occupancies were found to be about non-observance of legislative requirements relating to separate dwellings built beside one another or behind one another.

Developers and owners appeared to view these developments as a subdivision rather than a unit title and were not complying with the Act regarding unit titling. This presented significant difficulties when one or both units were to be sold. It was at this point when full compliance with the Act was required.

In some circumstances, accounts, minutes and other documents needed to be assembled for many years past; and in many cases these were not available. This could have the effect of significantly delaying settlement of units in a dual occupancy development of this type.

Can I still build two dwellings that sit side by side or one behind the other?

Yes, but you can't unit title these dwellings. You can subdivide the block (where the zoning and block size allows) into two separate Crown leases and separate services with appropriate easements for access should be provided.

However, if you are contemplating subdivision you should first consult with utility providers eg. ACTEW as separate services cannot be provided in all circumstances.

Why can people still unit title two buildings that are partly superimposed or one on top the other?

It was believed that in these cases the attitude to managing the buildings was less likely to mean non-compliance with the Act.

Also, there was feedback from consumers, agents and the Law Society that this was the case. When one unit is partly or wholly superimposed on another unit there is a physical interrelationship between the dwellings which requires the owners to acknowledge that they are part of a unit development.

What does partly superimposed mean?

Partly superimposed means that some useable gross floor area (GFA) of each of the two units overlaps the other (eg. storage, laundry, at grade garage, bathroom/en-suite, walk-in robe, bedroom, rumpus room). Provided some useable GFA from one unit is located either directly above or below some of the GFA of the other unit, then the two unit development will be considered to be partly superimposed.

This must also be able to be clearly identified as being superimposed on the proposed unit plan.

Apartments and two unit developments in RZ2 zones

While apartments are prohibited in RZ2 zones, two unit developments are permitted as long as the development satisfies the following definition of an attached house.

Attached house means a dwelling in a building containing two or more dwellings where each dwelling has, within its curtilage, open space at ground level and private access for the exclusive use of the occupants of the dwelling.

An apartment is defined as 'a dwelling located in a building containing two or more dwellings and which is not attached to a house'.

As long as a two unit development meets the definition of an attached house and at least some of the GFA of one of the units overlaps some GFA in another, then the two unit development is not considered to be an apartment.

Can I still build a smaller second dwelling for a family member (aka 'granny flat')?

Yes. You can still build a 'granny flat' (as long it meets the requirements of the Territory Plan) but you can't have separate title and then sell it separately. You can also rent out this flat.

Do I have to have separate driveways for a dual occupancy?

No. There is no requirement for separate driveways.

However, when blocks are created as a result of subdivision the leases for those blocks must specify the location of any easements that are needed for access.

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