

# Chapter 5

## UNIT ENTITLEMENTS

IN WHICH THE FOLLOWING TOPICS ARE DISCUSSED:-

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## CHAPTER 5 UNIT ENTITLEMENTS

### 501 UNIT ENTITLEMENTS - THEIR CONCEPT

As explained in Chapter 1, a Strata Title scheme must comprise at least two units and an area of common ownership called common property.

The Strata Titles Act, 1988 prescribes a system, called *unit entitlements*, by which the extent of responsibility of each unit owner towards the running costs and other obligations to the administration of the scheme can easily be determined.

← SEE S.6 AND PARA 309

Prior to the enactment of the current legislation, which came into force on 12/9/1988, unit entitlements were not certified correct by a licensed valuer and in early days of the previous legislation there was a general misunderstanding amongst conveyancers as to how they should be calculated. In some schemes units were allotted equal entitlements regardless of actual capital value. Consequently, these schemes were and still may be using incorrect unit entitlements.

← SEE PARA 1004.2

### 502 UNIT ENTITLEMENTS DEFINED

Unit entitlements are defined in Section 6 of the Act as being a number assigned to a unit that bears in relation to the aggregate unit entitlements of all the units, the same proportion that the capital value of the unit bears to the aggregate capital value of the scheme.

Unit entitlements must be certified correct by a licensed valuer, to within a tolerance of  $\pm 10\%$  and be expressed in whole numbers and aggregate to 10,000. Under the repealed legislation, there was no requirement for unit entitlements to aggregate to 10000. It is not necessary for a corporation to apply to have unit entitlements amended under the present Act, however they will be updated if application is made to amend a scheme in any way.

← R.4 and SS.7(4)(e), 12(3)(c)(iii)

By way of example, consider a scheme of 2 units, the aggregate capital value of which is \$500,000 and the capital value of the units are \$220,000 and \$280,000 respectively.

Using a simple formula:

$$\frac{UV}{AV} \times 10,000 = UE$$

where UV = Unit Value; Av = Aggregate Value of the scheme and UE = the unit entitlement.

Each unit entitlement is then:

$$\frac{220,000}{500,000} \times 10,000 = 4,400$$

and,

$$\frac{280,000}{500,000} \times 10,000 = 5,600$$

I.e., the unit entitlements would be 4,400 and 5,600 respectively with an aggregate unit entitlement of 10,000.

# STRATA FACTS

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### 503 USES OF UNIT ENTITLEMENTS

A strata corporation may use unit entitlements to determine;

← SEE S.6 AND PARA 504

1. Monetary contributions payable to various funds that may be established (maintenance, insurance, etc.), ← S.27(3)(a)
2. In the case of a non-residential scheme, where the corporation determines by unanimous resolution, voting rights exercisable in respect of each unit, ← SEE S.34(2)
3. The ultimate undivided share each unit owner would receive in a certificate (or certificates) of title issued upon cancellation of the scheme. ← SEE S.17(7)(a) AND PARA 1303
4. The extent of liabilities of a former strata corporation that will attach directly to each former unit holder upon cancellation of a scheme. ← SEE S.17(7)(c)
5. Subject to any court order, the assets of a former strata corporation will, upon cancellation of a scheme, be divided between the former unit owners. ← SEE S.17(7)(d)
6. The extent of liabilities of two or more unit holders of a debt to a strata corporation incurred under its powers to carry out work that may benefit those units. ← SEE S.27(6)&(7)
7. The amount of surplus moneys (after meeting any outstanding administrative debt or other liabilities) paid to each unit holder after the sale of real property of the corporation. ← SEE S.26(6)
8. The amount payable by each unit holder upon default of a corporation of a pecuniary (monetary) liability. ← SEE S.21(2)
9. The equitable share in the common property that attaches to each unit. ← SEE S.10(3)
10. The number of votes exercisable in respect of each unit for a resolution, in a non-residential scheme. ← SEE S.34(2)

### 504 HOW A STRATA CORPORATION MAY USE UNIT ENTITLEMENTS

The Strata Titles Act provides that a strata corporation may establish funds for the purpose of maintaining the scheme. ← SEE S. 26(1)

Such funds may be for the purposes of payment of accounts for general maintenance, insurance and other day to day expenses or perhaps moneys set aside in a sinking fund for unexpected contingencies. ← SEE S. 27(3)(b)

Contributions to these funds may be calculated by;

- a) using the unit entitlements, or
- b) on such other basis as the strata corporation determines by unanimous resolution.

This latter method can be used where it is agreed that a particular unit owner has, for example, less use of a particular portion of the common property and is excused from paying a contribution for the maintenance of that area. ← SEE PARA 509

## 505 WHEN AND HOW TO CHANGE UNIT ENTITLEMENTS

Where it is known that the unit entitlements of the scheme are not representative of the capital value of the scheme it is incumbent on the strata corporation to make application to the Lands Titles Registration Office to amend the Schedule of Unit Entitlements in accordance with the provisions of Section 12 of the Act.

Whether originally incorrect or when capital value has changed (perhaps due to improvements made to a unit), failure to keep unit entitlements up to date may have unfortunate consequences to some unit owners and be to an unfair advantage to others in the event of claims against insurance, distribution of surplus funds or on the undivided share received in a certificate of title on cancellation of the scheme.

Eg., Where the unit entitlement of a unit has become less than current capital value, the owner of that unit will receive a reduced compensation.

A strata corporation should make every effort to continually review and ensure that unit entitlements are kept up to date on the Schedule of Unit Entitlements.

## 506 AN ALTERNATIVE TO UNIT ENTITLEMENTS

Although it is mandatory under the Act to have unit entitlements recorded as part of a strata plan, a Strata Corporation may in appropriate circumstances adopt entitlements calculated from the annual property valuation of the unit by the Valuer-General to determine contributions payable to funds of the corporation. The annual valuation of the Valuer-General may be found by searching the Land Ownership and Tenure System (LOTS), valuations file of the scheme at the Land Services Group of the Department of Environment and Natural Resources. Inquiries on how to do this can be made at that office.

The valuation file will need to be searched as regards each unit to determine the capital value of each unit. Once the aggregate values is determined, proportions of contribution can be calculated.

← SEE S.27(3)(b) AND  
SEE ALSO S.5(2)  
VALUATION OF  
LAND ACT, 1971

## 507 HOW TO APPLY UNIT ENTITLEMENTS

When a need arises to proportion expenses between unit owners based on unit entitlements, simply consider the unit entitlement as a decimal number and move the decimal point 2 places to the left. The result be the percentage (%) of the cost to be applied to that unit.

Eg., A unit entitlement of 4,400 = 4400.00 or 44.00%

To determine a decimal fraction, move the point a further 2 places to the left.

44.00 % = 0.44 (as a multiplication factor).

## 508 WHERE UNIT ENTITLEMENTS ARE NOT USED

Unit Entitlements are not used by Crown or Local Government authorities for the determination of rates and taxes.

Under Section 5 (2) of the Valuation of Land Act, 1971, the annual valuations of the Valuer-General is used for the purpose of determining water and sewerage rates, land tax (where applicable) and council rates.

These rating authorities send accounts direct to the unit owner.

The strata corporation will only be billed for the payment of excess water. However the corporation may resolve that this expense be paid by the actual user where it is not the corporation. Eg., where a particular unit owner may own a swimming pool or large garden, etc.

In this case, the corporation may use the annual valuations of the scheme or the unit entitlements to determine individual contributions.

← SEE PARA 506

# STRATA FACTS

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### **509 SOME INSTANCES WHERE UNIT ENTITLEMENTS SHOULD NOT BE USED.**

Unit entitlements should not be used in a manner that would unfairly advantage or disadvantage a unit owner or group of owners.

For example, it would be unfair to levy maintenance funds for repairs to a lift on owners who have no need to (or cannot) use it.

A more equitable method of determining the amount of payment of maintenance, and other contributions, levied to a particular unit, can be applied by a corporation using its powers under Section 27 Act.

← SEE S.27(3)(b) & (6);  
PARA 506

As well as providing for the method of levying contributions mentioned in Para 506, Section 27 also provides for the recovery of expenses for work carried out that substantially benefits a particular owner or group of owners.