

2007

Unit Titles Amendment

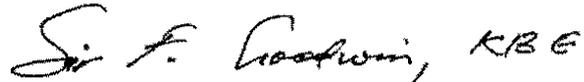
No. 15

Examined and certified by:


Clerk of the Parliament

In the name and on behalf of Her Majesty Queen Elizabeth the Second I hereby assent to
this Act this 27th day of June 2007




Queen's Representative

Queen's Representative

ANALYSIS

- | | |
|-------------|---|
| 1. Title | 2. Dealing with stratum estate in leasehold |
| Short Title | |

2007, No. 15

An Act to amend the Unit Titles Act 2005

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled and by the authority of the same, as follows:

1. Short Title – This Act may be cited as the Unit Titles Amendment Act 2007 and shall be read together with and deemed part of the Unit Titles Act 2005 (hereinafter referred to as ‘the principal Act’).

2. Dealing with stratum estate in leasehold – Section 25 of the principal Act is repealed and substituted by the following –

“25. Dealing with stratum estate in leasehold – (1) The lessor’s consent shall be required to any assignment of a stratum estate in leasehold, provided that such consent shall not be unreasonably or arbitrarily withheld, but this proviso does not preclude the right of the lessor to require payment of a reasonable sum in respect of any legal or other expenses incurred in connection with any such consent.

(2) Where the provisions of any assignment of a stratum estate in leasehold are inconsistent in any way with those of any instrument of alienation of or affecting that stratum estate in leasehold then notwithstanding the giving of consent to that assignment by the lessor -

- (a) the provisions of that instrument of alienation shall prevail over those of the assignment; and

Price \$1.50

- (b) the provisions of the assignment shall be deemed consequentially amended to the extent required to resolve the inconsistency; and
- (c) the lessor shall not be estopped or otherwise precluded from asserting and requiring performance of the terms of that instrument of alienation.

Provided that nothing in this subsection shall operate to preclude the negotiation and execution of a formal deed of variation of any instrument of alienation by a proprietor.

(3) For the purposes of subsection (1) a plan of redevelopment in accordance with the provisions of section 46 affecting any unit shall not be deemed to be an assignment of the stratum estate in leasehold in that unit.

(4) The approval of the Leases Approval Tribunal shall be required to an assignment of a stratum estate in leasehold.

(5) Notwithstanding section 109(1) of the Property Law Act 1952 of New Zealand as applied in the Cook Islands, but subject to subsection (9), every proprietor shall pay to the lessor on the occasion of and simultaneous with every assignment of a stratum estate in leasehold a sum being not less than 2.5% of the sale proceeds derived from or arising out of that assignment.

(6) For the purposes of subsection (5) the expression "sale proceeds" shall mean the total consideration payable in respect of the assignment, including improvements and fixtures (other than leased or hired items) and shall be determined by reference to the documents of title, all relevant agreements between the parties and other relevant circumstances and matters; but shall not include any chattels or real estate agent's commissions and shall not include the value added tax component (if any) of the said total consideration.

(7) For the purposes of this section, the expression "lessor" shall mean the person or persons who, from time to time are recognised by order of the High Court as being the owner or owners as the case may be, of the native freehold land (as that expression is defined in section 2 of the Cook Islands Act 1915) on which the stratum estate in leasehold being assigned is situate and the expression "assignment" includes a transfer, assignment, underletting or parting with possession of the whole or any part of a stratum estate in leasehold (other than an assignment by way of mortgage) including the transfer, assignment underletting or parting with possession of any lesser interest therein.

(8) If the proprietor of a stratum estate in leasehold being assigned is a unincorporated body of persons or is a company or other body corporate, then any disposal of any ownership interest or shares in that proprietor shall be deemed to be an assignment and the provisions of subsection (5), (6) and (7) shall apply *mutatis mutandis* to that assignment.

(9) The lessor may, provided that the lessor has first received independent legal advice, agree in writing witnessed and certified in accordance with the requirements of subsections (1), (2) and (3) of section 475 of the Cook Islands Act 1915, to waive in whole or in part, to such extent and for such period or periods as the lessor may agree, the lessor's entitlements under subsection (5)."

This Act is administered by the Ministry of Justice