

Guide to pre-purchase disclosure

What you need to know





Ministry of Business, Innovation and Employment (MBIE) Hīkina Whakatutuki – Lifting to make successful

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The Unit Titles Act 2010 (the Act or the UTA) and the Unit Titles Regulations 2011 (the Regulations) include requirements for a wider range of information to be provided to prospective buyers. It also provides buyers with additional rights if these requirements are not met.

Pre-contract disclosure statement

Before entering into a sale and purchase agreement, the seller must provide certain information in a pre-contract disclosure statement. This is a requirement of the Unit Titles Act 2010 (the Act or the UTA). The information that must be included is specified in the Unit Titles Regulations 2011 (the Regulations). The body corporate has an obligation to keep the records necessary for this purpose.

There are legal consequences for the seller if they do not provide a complete and accurate pre-contract disclosure statement in the time frames required by the Act, including delay of settlement and cancellation of the agreement.

If the information required is inaccurate, is not provided because it does not exist, or despite reasonable efforts cannot be found, this must be noted in the pre-contract disclosure statement.

Information required in a pre-contract disclosure statement

A pre-contract disclosure statement for the sale of an existing unit must include, as far as it can be provided, as follows:

■ Financial information

- › the body corporate levies payable for the unit for the current financial year
- › the balance of every fund or bank account held or operated by or on behalf of the body corporate at the date of the last financial statement
- › financial statements and audit reports for the previous 3 years
 - If an audit report is unavailable for this time frame, then provide the most recent 3 year audit report and a statement of the years for that unaudited time period
- › confirmation of the 12-month period that is the financial year.

■ Maintenance, weather tightness and related information

- › a copy of the long-term maintenance plan
- › the next review date for the long-term maintenance plan
- › details of any maintenance (whether in the long-term maintenance plan or not) that the body corporate proposes to carry out on the unit title development in the coming year and how the costs will be met
- › Any proposed works under the long-term maintenance plan to be carried out or begun within the next 3 years and the estimated costs
- › whether the body corporate or body corporate committee has actual knowledge that any part of the unit title development has:
 - weathertightness issues, whether the weathertightness issues have been remedied or not, and whether or not a claim has been made under the Weathertight Homes Resolution Services Act 2006; or
 - earthquake-prone issues; or
 - any other significant defects in the land or the unit title development that may require remediation
 - any remediation reports commissioned by the body corporate within the previous 3 years.

■ Governance information

- › notices and minutes of general meetings of the body corporate and the body corporate committee for the previous 3 years:
 - including all supporting documentation; but
 - excluding any information that may be removed – see below
- › the name and contact details of the body corporate manager or managers
- › a summary of the insurance cover the body corporate maintains for the unit title development, including:
 - the insurer's name and contact details
 - the type and amount of cover, the annual amount payable for it, and the excess payable on any claim under it
 - any specific exclusions from cover
 - a statement of where and how the insurance policy can be viewed
- › whether the body corporate is involved in any proceedings in any court or tribunal and details of the proceedings

Information in the minutes may be removed if:

- › disclosing the information would be a breach of the Privacy Act 2020 or any other law; or
- › the information is subject to legal professional privilege; or
- › confidentiality of the information must be protected on grounds of commercial sensitivity.

■ Explanations

- › an explanation of the following:
 - unit title property ownership
 - unit plans
 - ownership and utility interests
 - body corporate operational rules
 - the information required to be contained in a pre-settlement disclosure statement
 - records of title
 - the land information memoranda issued under section 44A of the Local Government Official Information and Meetings Act 1987
 - easements and covenants.

A pre-contract disclosure statement for the **sale of an off-the-plans unit** must include, as far as it can be provided, as follows:

- › summary of the draft financial budget for the unit title development, including an estimate of the cost of operating the body corporate in an average 12 month time frame
- › an estimate of the proposed ownership interest for the unit based on the sales value. Where an actual sales value is not available, an estimate based on an estimated sales value
- › an estimate of the proposed utility interest for the unit
- › the draft (if any) of the body corporate operational rules that will first apply
- › any service contracts have been or are proposed to be entered into that will continue after the unit purchase is settled, including:
 - any contracts for utilities (for example, telecommunications, water, or electricity)
 - any contract appointing a body corporate manager.

As of 9 May 2024, new information is required as part of an 'off-the-plans' sale to ensure a buyer is well-informed. This information has been listed below under the heading Pre-settlement disclosure statement.

Pre-settlement disclosure statement

Once the agreement for sale and purchase has been entered into, the seller must provide certain information in a pre-settlement disclosure statement. This is a requirement of the Unit Titles Act 2010 (the Act or the UTA). The information that must be included is specified in the Unit Titles Regulations 2011 (the Regulations).

There are legal consequences for the seller if they do not provide a complete and accurate pre-settlement disclosure statement in the time frames required by the Act, including delay of settlement and cancellation of the agreement.

Information required in a pre-settlement disclosure statement

A pre-settlement disclosure statement for the sale of an existing unit must include:

- › the unit number
- › the body corporate number
- › the amount of any contributions levied by the body corporate in respect of the unit being sold
- › the period covered by such contribution/levy
- › the manner of payment of the levy
- › the date on or before which payment of the levy is due
- › whether any levies due to the body corporate are unpaid and, if so, the amount
- › whether legal proceedings have been initiated in relation to any unpaid levy
- › whether any metered charges due to the body corporate are unpaid and, if so, the amount
- › whether any costs relating to repairs to building elements or infrastructure contained in the unit are unpaid and, if so, the amount

The following points relate to information as part of a pre-settlement disclosure statement that relate to the unit title development.

- › the interest rate on any money owing to the body corporate by the seller
- › whether there are any proceedings pending against the body corporate in any court or tribunal
- › whether there are any proceedings:
 - initiated by the body corporate and pending in any court or tribunal; or
 - intended to be initiated by the body corporate in any court or tribunal
- › whether there is any written claim by the body corporate against a third party that is yet to be resolved
- › whether there have been any changes to the body corporate operational rules since the pre-contract disclosure statement.

A pre-settlement disclosure statement for the **sale of an off-the-plans unit** must include:

- › the information required for the pre-settlement disclosure for an existing unit to the extent that it is capable at the date the statement is provided
- › the following additional information to the extent that it is capable at the date the statement is provided:
 - the name and contact details of the body corporate manager if there is one
 - the same insurance information as is required for a pre-contract disclosure statement for an existing unit

- details of any contract that will bind the body corporate or the unit owner after the settlement date
- details of any obligation arising from the decision of a court or tribunal that will bind the body corporate or the unit owner after the settlement date
- a copy of the long-term maintenance plan
- a copy of the written agreement setting out the body corporate manager's terms of employment or engagement
- a copy of the body corporate operational rules that apply to the body corporate, including any amendments, revocations, or additions to the rules that have been made by the body corporate but that do not yet have effect
- a copy of the minutes of the most recent general meeting of the body corporate.

Ability to cancel an agreement or delay settlement – pre-contract disclosure

A buyer can delay settlement or cancel an agreement where pre-contract disclosure is late, not provided, is incomplete or inaccurate. Depending on the situation, a buyer can choose whether to cancel the agreement or delay settlement. Certain time frames and requirements apply.

■ Delaying settlement

If the seller has still not provided a complete and accurate pre-contract disclosure statement and it is five working days before settlement, the buyer can give notice to delay settlement until five working days after a complete and accurate disclosure statement is provided.

Ability for further delay

If an incomplete or inaccurate statement is provided, or the seller does not provide a statement within five working days of receiving the notice from the buyer, then the buyer can give a further notice to delay the settlement date.

Decision after further delay

If, after the notice of further delay is given, an incomplete or inaccurate statement is provided, or no statement is provided within five working days of the notice, the buyer must decide whether to cancel the agreement (if permitted) or proceed with the purchase. However, the buyer and seller can agree otherwise for example, they can agree to a further delay.

■ Cancelling the agreement

The buyer can cancel the agreement if the seller has not provided a pre-contract disclosure statement before entering into the agreement for sale and purchase, or has provided a pre-contract disclosure statement that is incomplete or inaccurate. The buyer can follow the cancellation process if:

- › the buyer has not chosen to delay settlement; or
- › after giving notice of delay, the buyer decides to cancel.

Restrictions on the ability to cancel

If there was no pre-contract disclosure statement provided before the agreement was entered into, the buyer can cancel the contract without the restrictions noted below.

If the incomplete or inaccurate disclosure was provided before the agreement was entered into, there are the following restrictions on the ability to cancel the agreement. A buyer cannot cancel if:

- › Disclosure is incomplete and inaccurate, but this was noted by the seller in the disclosure statement with reference to the specific information, and the reason for the incomplete disclosure or inaccuracy is that the information does not exist, or despite reasonable efforts, could not be found; or

- › The incomplete or inaccurate information would not:
 - substantially reduce the benefit to the buyer; or
 - substantially increase the burden to the buyer; or
 - make the benefit or burden substantially different from that represented or contracted for; or
- › The seller provides the information or corrects the inaccuracy before the buyer gives notice to cancel the contract.

Process for cancellation

A buyer must give notice of their intention to cancel. The seller has 10 working days from the notice to provide a complete and accurate pre-contract disclosure statement.

After the 10-working day period, the buyer has 5 working days to decide whether to cancel the agreement, or proceed with the agreement. If the buyer is able to cancel the agreement (because they meet the requirements or the restrictions do not apply), the buyer can cancel whether or not the seller has provided a complete and accurate pre-contract disclosure statement before the end of the 10-working day period.

Ability to cancel an agreement or delay settlement – pre-settlement disclosure

■ Delaying settlement

If a seller has not provided a complete and accurate pre-settlement disclosure statement five working days before settlement, the buyer can delay settlement until five working days after an accurate and complete pre-settlement disclosure statement is provided.

■ Cancelling the agreement

The buyer may cancel the agreement if the seller has not provided a complete and accurate pre-settlement disclosure statement five working days before settlement, and the buyer does not choose to delay settlement.

■ Process for cancellation

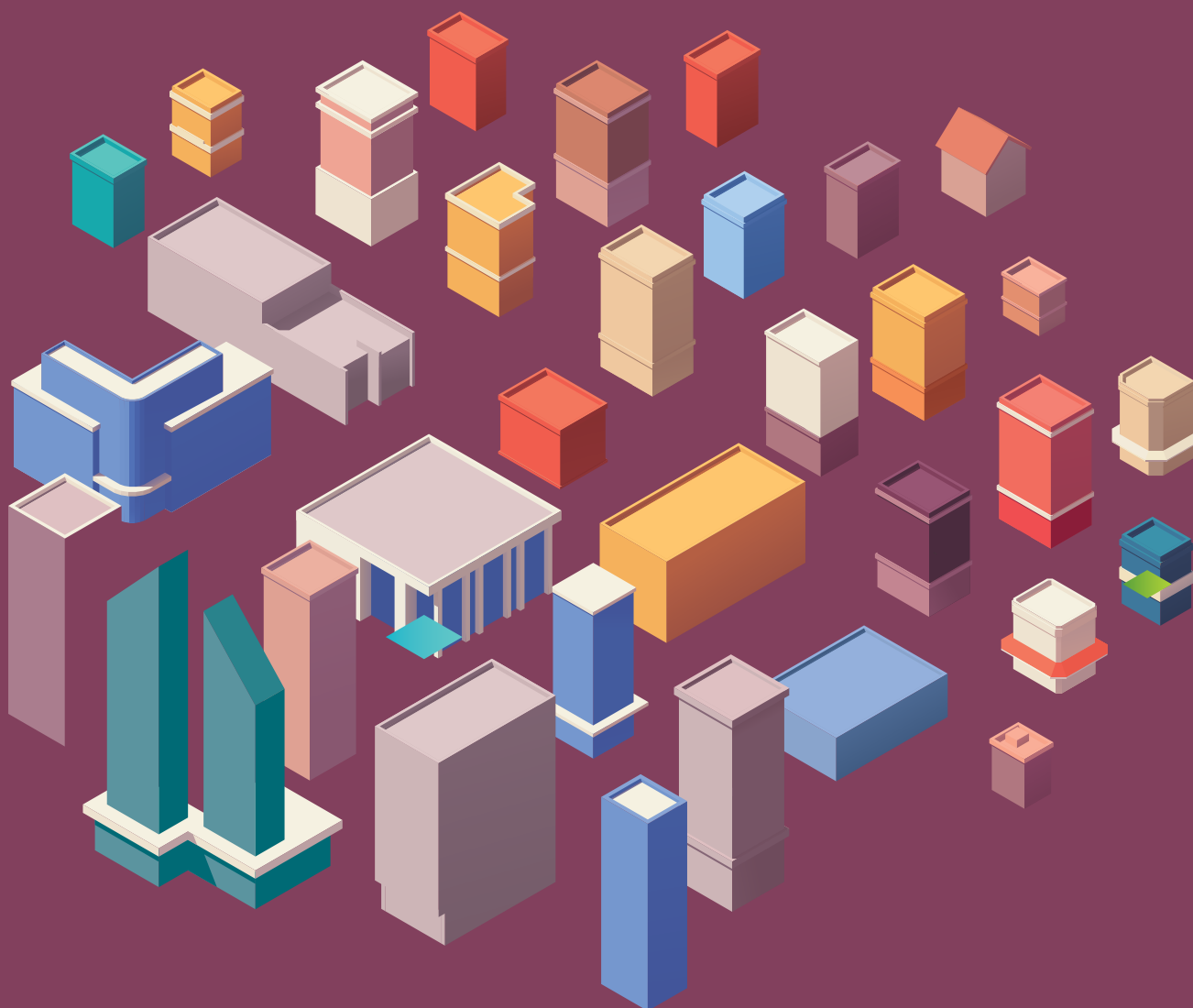
The buyer must give the seller notice in writing they intend to cancel the agreement. The seller has 10 working days to comply with their obligations.

If the seller has not fully complied with their pre-settlement disclosure obligations within the 10 working days, the buyer must decide whether to cancel the agreement, or proceed with the agreement. The buyer must make their decision within five working days of the end of the 10-working day period.

■ Restriction on the ability to cancel

If the seller fully complies with their pre-settlement disclosure obligations within the 10-working day period, the buyer cannot cancel the agreement.

To access the pre-disclosure statements and pre-settlement disclosure statements (standard and off-the-plans) please go to the Unit Title Services website [‘Forms and resources’ page](#).



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