



By Lloyd Collins
lloyd@collinsmay.co.nz
 DD: 576 1403

Eugene Collins
eugene@collinsmay.co.nz
 DD: 576 1407

Amy Haste
amy@collinsmay.co.nz
 DD: 576 1412

Simone Seddon
simone@collinsmay.co.nz
 DD: 576 1411

Freya Boyd
freya@collinsmay.co.nz
 DD: 576 1409

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UNIT TITLES ACT 2010 - PERSONAL LIABILITY OF BODY CORPORATE COMMITTEE MEMBERS

The purchase of apartments and property investments under the Unit Titles Act 2010 ("the Act") are becoming more common. If the title is issued under the Act then the day to day operation of that apartment or unit is governed by the provisions set out in the Act.

This includes:

- Body Corporate Governance;
- Levies payable to the Body Corporate to cover insurance and maintenance of common areas.

Invariably the Body Corporate has an AGM and sets up a Body Corporate Committee under The Act in order to manage the collection of levies and payment of expenses on behalf of the Body Corporate. In most cases Committee Members are owners of units in the complex and they give up their time on a pro bono basis to assist with the management of the complex.

A recent High Court decision of *Guardian Retail Holdings Limited v Buddle Finlay* is cause for concern for those persons who are a member of the Body Corporate. The High Court has held that a Committee Member is personally liable to ensure:

- That the Body Corporate is operated in accordance with the Act; and
- The Body Corporate is managed

in accordance with its own rules.

If the Body Corporate makes a decision which is not authorised by the Act or the rules then the Body Corporate Member may be personally liable for any losses incurred to other members of the Body Corporate/and or third parties.

Examples of mismanagement could be:

- Expenditure of Body Corporate funds on maintenance which should have been the responsibility of an individual unit owner (not the Body Corporate);
- Use of the Body Corporate's maintenance fund for day to day expenses;
- Failure to ensure that the building has adequate insurance.

It is our view therefore that one should give serious consideration as to whether voluntarily agreeing to become a member of the Body Corporate Committee. It would be essential that a condition of appointment be that the Body Corporate arranges adequate insurance to cover liability.

20 MINUTE FREE

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