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HĪKINA WHAKATUTUKI

Body Corporate Operational Rules

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Introduction

This publication is to help unit owners, bodies corporate and sector professionals understand body corporate operational rules under the Unit Titles Act 2010 (the Act). In particular it includes important information about the default operational rules, and how to set operational rules to suit a specific type of development.

This guide provides information about:

- › Body corporate operational rules
- › Default rules
- › How to change rules
- › Setting rules for specific types of development
 - Residential
 - Commercial
 - Mixed use
 - Layered
 - Changes from the 1972 Act.

This document has been published by the Ministry of Business Innovation and Employment as a guide to body corporate operational rules under the Unit Titles Act 2010. The guidance contained in this document is general, and may not apply to your specific circumstances. Before making changes to the body corporate operational rules, it is recommended that you obtain independent legal advice from your lawyer.

Body Corporate Operational Rules

What are body corporate operational rules?

Body corporate operational rules help the body corporate govern the unit title development. They are a set of expectations placed on unit owners and help prevent disputes between people who live and work in the development.

The Unit Titles Regulations 2011 prescribe minimum default rules. The default rules cover issues applicable to most unit title developments. The default operational rules (see Schedule 1 of the Regulations) are:

An owner or occupier of a unit must not:

- a. damage or deface the common property
- b. leave rubbish or recycling material on the common property
- c. create noise likely to interfere with the use or enjoyment of the unit title development by other owners or occupiers
- d. park on the common property unless the body corporate has designated it for car parking, or the body corporate consents
- e. interfere with the reasonable use or enjoyment of the common property by other owners or occupiers

An owner or occupier of a unit must dispose of rubbish hygienically and tidily.

The Act enables bodies corporate to add to or amend these rules to suit the individual characteristics of their development.

All unit owners, occupiers, tenants and the body corporate must obey the body corporate operational rules that apply to the development they live or work in.

As a body corporate can amend or add to the default rules set out in the Regulations you should ensure you have the most up-to-date copy of the operational rules that apply to your development. Contact your body corporate chairperson or body corporate manager for a copy if you don't have one. The bodies corporate of developments that existed before the new Act came into force had a transitional period up to

1 October 2012 to review their existing rules. If the body corporate did not review and change its existing rules the new default operational rules replaced any existing rules on 1 October 2012.

What kinds of rules should the body corporate have?

The kind of rules a body corporate needs depends on the kind of development. Residential developments will need different rules than commercial or industrial developments, and mixed use developments might need some of each.

Body corporate rules also reflect the individual characteristics of the development – whether it is urban or suburban, the kind of common property in the development (for example, if there is a gym or swimming pool) and how the individual unit owners like to live.

This publication contains information specific to four different categories of developments that you can use to help you decide on what rules are appropriate for your development. Please follow the relevant link below:

- › [Body Corporate operational rules for residential developments](#)
- › [Body Corporate operational rules for Commercial Developments](#)
- › [Body Corporate operational rules for mixed-use developments](#)
- › [Body Corporate operational rules for Layered developments.](#)

The examples given in these sections of the guidebook are general. If you are designing body corporate operational rules to add to the default rules in regulations you should consider the specific circumstances of your development. Before making changes to the body corporate operational rules, the Ministry of Business Innovation and Employment recommends that you obtain independent legal advice from your lawyer.

Someone in my development is not following the rules. What can I do?

The body corporate and unit owners have the power to enforce the body corporate rules.

You might like to consider dealing directly with the unit owner as a first step. Often, people are unaware that there are body corporate rules or what the body corporate rules are. You could take along a copy of the rules and remind them that they need to follow them.

If the person who is not following the body corporate rules is a tenant, you should deal directly with the unit owner, landlord or their representative, in the first instance. They are responsible for ensuring the tenant follows the rules.

If dealing directly with the unit owner doesn't work, or isn't appropriate, you can make an application for dispute resolution to the Tenancy Tribunal or through the Courts. You can find more information on dispute resolution [here](#) and the application form [here](#).

Do we need to incorporate some of our old rules into the new rules?

Bodies corporate that existed under the Unit Titles Act 1972 are still able to amend their rules.

If the Act or Regulations don't cover all of the matters in your existing rules, the body corporate may amend the default operational rules. When you are making this decision:

- › make sure your rule change is not *ultra vires* (meaning the body corporate does not have the power to make the rule, because it doesn't meet the requirements in the Act). See the next section in this publication for how to make changes to the operational rules
- › have a look at the sections of this publication specific to your type of development (for example residential or commercial) to see the kinds of matters operational rules could cover
- › talk to the other owners in the development about what kinds of rules they think there should be.

How do we make changes to the new operational rules?

There are restrictions on what you can make operational rules on. Additions or alterations must:

- › relate to the control, management, administration, use or enjoyment of the units or the common property; or
- › relate to the regulation of the body corporate.

In addition, alterations or additions to the operational rules cannot:

- › confer or impose any powers or duties on the body corporate that are not incidental (do not relate) to the powers and duties the body corporate has under the Act; and
- › be inconsistent with any provision of the Act, Regulations and any other act or rule of law.

If you decide to change the operational rules you must pass an ordinary resolution to do so.

Changes to the body corporate operational rules should be fair and even-handed. If you disagree with changes the body corporate makes to the rules and voted against the change, you can apply to the Tenancy Tribunal or Courts for relief on the basis the rule change is unfair or inequitable.

Putting the changes into effect

You need to lodge rule changes with Land Information New Zealand in order for them to take effect. Go [here](#) to find the form you will need to lodge.

Lawyers and conveyancing practitioners can lodge the form electronically using Landonline. People not registered to use Landonline will need to lodge the form through their lawyer or conveyancing practitioner, or manually with Land Information New Zealand. You can find instructions on how to lodge a manual dealing at www.linz.govt.nz/survey-titles/land-registration/manual-dealing.

Residential Developments

This section provides guidance for body corporates of a residential development that want to add to or amend the default operational rules in the Regulations.

Considerations for residential developments

Operational rules help the body corporate govern the development and can help prevent disputes between unit owners and occupiers.

When you are considering what kinds of operational rules you need in your development, you should think about:

- › what kinds of matters people have had disputes about in the past, why these disputes arose and whether rules could help prevent disputes from arising in the future
- › what kinds of facilities are there for everyone to use and whether rules are a way to protect or ensure access to those facilities
- › what kind of behaviour is acceptable in the development and what kind of behaviour is not
- › what rules are fair to all unit owners.

Common property

The body corporate operational rules can be used to protect the common property from damage or harm and ensure unit owners and occupiers can access the common property. Unit title developments can have a wide range of common property, for example:

- › recreational facilities such as swimming pools, spas and saunas, gyms
- › outdoor facilities such as lawns and gardens, roof-top terraces, driveways
- › other facilities such as halls, common rooms
- › building facilities such as lobbies, lifts, rubbish and recycling facilities, security
- › chattels such as lobby furniture, gardening or cleaning equipment, artwork
- › infrastructure such as aerials, satellite dishes, telecommunications wiring.

Depending on what kind of common property you have, more operational rules might be necessary. For example some developments make rules about,

- › hours of use of recreational or other facilities
- › whether parts of the common property can be used as a garden
- › conditions of use of certain facilities
- › whether there are facilities to be used for specific purposes (such as service lifts or loading docks for moving furniture into or out of units)
- › how often chattels are cleaned
- › details of any preferred suppliers or trades people the body corporate has contracted for servicing units or the common property (for example, an electrician or plumber who unit owners can contact if they have electrical or plumbing issues)
- › whether there are rubbish or recycling facilities in the development and how rubbish or recycling is disposed of
- › security measures, including whether there are security codes or cards for accessing the building and restrictions on who these are given to
- › if there are car parking facilities on the common property, where owners and guests are allowed to park
- › health and safety in using common property, such as safe areas for children to play
- › whether there are restrictions on signage, such as “for sale” signs (for example, the body corporate may want to protect the common property or external appearance of the development by limiting where signs can be placed).

Units

The way people use their units can impact on other unit owners or the common property.

Under the Act, unit owners must keep their unit in sufficient repair so that no damage or harm is done to other units or the common property. In addition, the default operational rules state that unit owners can't create noise that interferes

with another person's right to quiet enjoyment of their unit or interferes with other owners' or occupiers' use of the common property.

Depending on what kind of development you live in, more operational rules might be necessary. For example, some developments make rules about:

- › where owners or occupiers can hang out washing
- › whether owners or occupiers are allowed to have pets or whether certain kinds of pets are allowed
- › the external appearance of units, such as whether there are approved colour schemes for painting or rules about signage visible from the unit
- › the internal fit-out of units, such as whether particular floor coverings must be used to prevent noise transmission
- › prohibiting parties after certain hours
- › restrictions on keeping hazardous materials in units
- › pest control in units
- › behaviour of unit owners, occupiers and guests.

Administration and governance

The body corporate may make rules on how it will operate.

The Act and the Regulations contain comprehensive administration and governance

rules for unit title developments. You should read the Act and the Regulations before you add new rules about these matters, as you cannot make a rule that contradicts the law.

Other possible rules

Depending on what kind of development you live in, more operational rules might be necessary. For example, some developments make rules about:

- › fire drills and evacuation procedures (the development may be required by law to have these in place)
- › prohibiting the body corporate from unreasonably withholding consent in cases where body corporate consent is required under any operational rules
- › whether the chairperson (or another officer of the body corporate) has additional responsibilities to those outlined in the Regulations.

If the body corporate engages someone to undertake duties on its behalf, such as a professional body corporate manager or building manager, you should exercise caution in making rules that outline their responsibilities. These responsibilities are best established through a contract.

Commercial Developments

This section provides guidance for a body corporate that wants to add to or amend the default operational rules in the Regulations for a commercial development.

Considerations for commercial developments

Operational rules assist the body corporate to govern the development and can help prevent disputes between unit owners and occupiers.

When you are considering what kinds of operational rules you need in your development, you should think about:

- › what kind of business the units are used for, such as office space, car parks or accommodation

- › whether the units are used by the owner or whether there are leasing arrangements in place
- › what kind of duties the body corporate is responsible for undertaking
- › what rules are fair to all unit owners.

Other rules in commercial developments

Units in commercial developments may be leased. In these cases there will usually be formal lease documentation in place between the unit owner and the tenant (for example a deed of lease). This lease documentation will contain additional rights and responsibilities of between the parties to the lease.

Common property

Commercial unit title developments can have a wide range of common property and assets, for example:

- › building facilities, such as lifts, lobbies, stairwells, rubbish and recycling facilities, loading dock areas
- › common facilities, such as staff or customer car parking areas, cafeteria space, shower facilities
- › recreational facilities, such as gardens, gyms
- › infrastructure, such as fire alarms, aerials, satellite dishes, telecommunications wiring.

The default operational rules can be used to protect the common property from damage or harm and ensure unit owners and occupiers can access the common property.

Depending on what kind of common property you have, more operational rules might be necessary. For example some developments make rules about:

- › whether there are carparking facilities on the common property and who is able to use them
- › whether there are restrictions on signage, such as advertising (for example, the body corporate may want to protect the common property or external appearance of the development by limiting where signs can be placed. There may also be council by-laws that prohibit signs in certain locations).
- › security measures, including whether there are security codes or cards for accessing the building and restrictions on who these are given to
- › whether there are restrictions on hours for delivery of goods, documents or other parcels
- › whether there are designated smoking areas
- › whether there are facilities to be used for specific purposes (such as service lifts or loading docks for moving furniture into or out of units)
- › whether there are rubbish or recycling facilities in the development and how rubbish or recycling is disposed of.

Units

The way people use their units can impact on other unit owners or the common property.

Under the Act, unit owners must keep their unit in sufficient repair so that no damage or harm is done to other units or the common property. In addition, the default operational rules state that unit owners can't create noise that interferes with another person's right to quiet enjoyment of their unit or interferes with other owners' or occupiers' use of the common property.

Depending on what kind of development you live in, more operational rules might be necessary. For example, some developments make rules about:

- › whether there are any specific requirements for the use of units, for example, restaurants must have a liquor license, car parks may only be used for car parking
- › permitted trading hours (for example for security reasons or as required by local bylaws)
- › restrictions on keeping hazardous materials in units
- › the external appearance of units, such as whether there are approved colour schemes for painting or rules about signage visible from the unit
- › the internal fit-out of units, such as whether particular floor coverings must be used to prevent noise transmission
- › restrictions on installing equipment or other fixtures (such as heavy objects)
- › details of any preferred suppliers or trades people the body corporate has contracted for servicing units or the common property (for example, an electrician or plumber who unit owners can contact if they have electrical or plumbing issues).

Mixed Use Developments

This section provides guidance for a body corporate that wants to add to or amend the default operational rules in the Regulations for mixed use unit developments.

Considerations for mixed use developments

Operational rules help the body corporate govern the development and can help prevent disputes between unit owners and occupiers.

Deciding on rules that apply in mixed use developments can be difficult. Finding a balance that will ensure the needs of residents, tenants, restaurants, bars, shops, office workers and hotel owners and guests are met (for example) can take time.

The key challenge in mixed use developments is that the different uses of unit can have competing or contradictory interests. For example, residential owners might have noise concerns about bars or nightclubs that stay open late. Conversely, business owners will want as much freedom as possible to make good business decisions, including hours of operation and what services they provide.

Attempting to keep everyone in the development happy relies on having a good, comprehensive set of body corporate rules.

When you are deciding on what rules you need in your development, see the sections on residential developments and commercial developments. You will likely need a combination of the suggested topics in your rules. In addition, see the tips below.

Tips: what to think about when deciding on rules

When you are considering what kinds of operational rules you need in your development, you should think about:

- › what kinds of matters people have had disputes about in the past, why these disputes arose and whether rules could help prevent disputes from arising in the future
- › what kinds of facilities are there for everyone to use and whether rules are a way to protect or ensure access to those facilities

- › what kind of behaviour is acceptable in the development and what kind of behaviour is not
- › what rules are fair to all unit owners
- › what kind of businesses are involved
- › whether the units are used by the owner or whether there are leasing arrangements in place
- › what kind of additional duties the body corporate is responsible for undertaking.

The body corporate could decide that specific rules apply to only certain types of units in the development. For example, if there is a hotel or other accommodation service provided, there could be specific rules that apply to those units. If that is the case, make sure you clearly identify the units that are subject to those rules. You should also be careful to ensure that rules don't contradict the Act or impose rules that are unfair or restrict the rights of owners under the Act.

Involve unit owners from a range of different unit types in deciding on the rules. This will help ensure the rules are fair on everyone and don't contradict any other law or contractual agreements that are in place.

Other rules that can apply in mixed use developments

Units in mixed use developments may be used for commercial or retail purposes. In these cases there will usually be formal lease documentation in place between the unit owner and the tenant (for example a deed of lease). This lease documentation will contain additional rights and responsibilities of between the parties to the lease.

Other contractual arrangements may also need to be taken into consideration. For example, if accommodation units make up a part of the building there may be contracts in place that cover management rights.

There are also other laws and bylaws that can affect commercial and retail units, for example the Sale and Supply of Alcohol Act, food health and safety regulations and council bylaws, which cover a number of areas such as business uses and parking.

Layered Developments

This section provides guidance for a body corporate that wants to add to or amend the default operational rules in the Regulations in a layered development.

What is a layered development?

A layered development is where several bodies corporate are grouped together under an umbrella body corporate. A layered development consists of one “head” unit title development and one or more “parent” and/or “subsidiary” unit title developments.

There is a useful diagram in Schedule 1 of the Act that illustrates the relationship between parent and subsidiary unit title developments.

Considerations for layered developments

Operational rules help the body corporate govern the development and can help prevent disputes between unit owners and occupiers.

Deciding on rules that apply in mixed use developments can be difficult. Often, layered developments will also be mixed use – meaning the different bodies corporate can have different and sometimes competing agendas.

Making everyone in the development happy relies on having a good, comprehensive set of body corporate rules.

When you are deciding on what rules you need in your development, see the sections on residential developments and commercial developments. You will likely need a combination of the suggested topics in your rules. In addition, see the tips below.

Tips: what to think about when deciding on rules

When you are considering what kinds of operational rules you need in your development, you should think about:

- › what kinds of matters people have had disputes about in the past, why these disputes arose and whether rules could help prevent disputes from arising in the future
- › what kinds of facilities are there for everyone to use and whether rules are a way to protect

or ensure access to those facilities

- › what kind of behaviour is acceptable in the development and what kind of behaviour is not
- › what kind of businesses are involved
- › whether the units are used by the owner or whether there are leasing arrangements in place
- › what kind of additional duties the body corporate is responsible for undertaking.

It will be important to think about where you sit in the layered structure – whether your development is part of another body corporate or whether other bodies corporate are part of yours.

This will affect how you make some of your rules – especially the ones about common property. If you are part of another body corporate you can use their common property, but they will set rules. Similarly, if another body corporate is part of your body corporate they can use your common property and this might impact on the rules you make.

Also important are the operational rules of the other bodies corporate in the layered development. Ideally, the rules for each body corporate in a layered development should align – or at least not be in conflict.

Under the Act, if there is a conflict between rules of:

- › a subsidiary body corporate and its parent, the parent body corporate’s operational rules apply
- › a subsidiary body corporate and the head body corporate, the head body corporate’s operational rules apply.

Bodies corporate in layered developments might also choose to add in some rules that make it clear how the governance structure works across the development as a whole. For example, bodies corporate could choose to make rules that clarify the notice periods for meetings (in cases where the notice periods need to be longer than the minimum timeframes provided in the Regulations) – this will depend on how many subsidiary bodies corporate there are in the development.

Glossary

1972 Act – the Unit Titles Act 1972

The Act – the Unit Titles Act 2010

Accessory unit – a unit designed for use with any principal unit (including a garage, parking space, or storage space).

Body corporate – an entity made up of all the unit owners in a unit title development.

Common property – land and facilities in a unit title development which are not contained in a principal unit or accessory unit, and are shared by the unit owners.

Eligible voter – a person who is over the age of 16 years and

- › whose name is on the register of owners of principal units as the owner or representative of the owners of that unit; or
- › who is the nominee of a company the name of which is on the register of owners of principal units as the representative of the owner; or
- › who is a subsidiary body corporate representative.

Ownership interest – the interest assigned to a unit by a registered valuer based on the relative value of the unit in relation to each of the other units.

Principal unit – a unit designed for use as a place of residence or business or for any other use, and that is identified on a unit plan as a principal unit.

Regulations – the Unit Titles Regulations 2011

Unit plan – the plan of a unit title development that has been (or will be) deposited with Land Information New Zealand on subdivision.

Unit title development – an area of land and buildings that has been subdivided into two or more units, such as apartments, and often includes common property shared by the unit owners.

Utility interest – an interest used to calculate a unit's contribution to the operating account and long-term maintenance account.

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