



Securities Act (Carlin Enterprises Limited and The Styx Mill Country Club Incorporated) Exemption Notice 2005

Pursuant to the Securities Act 1978, the Securities Commission gives the following notice (to which is appended a statement of reasons of the Securities Commission).

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Notice

1 Title

This notice is the Securities Act (Carlin Enterprises Limited and The Styx Mill Country Club Incorporated) Exemption Notice 2005.

2 Commencement

This notice comes into force on the day after the date of its notification in the *Gazette*.

3 Expiry

This notice expires on 31 January 2010.

4 Interpretation

- (1) In this notice, unless the context otherwise requires,—
Act means the Securities Act 1978

communal facilities—

- (a) means the land within the development designated by the developer or the society for use by the owners or certain classes of owners of residential properties; and
- (b) includes chattels, fixtures, and fittings used, or intended, adopted, or designed for use, in connection with the use of the land by those owners; and
- (c) includes the excluded facility except for the purposes of clauses 6(1)(d)(i), 6(1)(d)(ii), 6(1)(e), 7(2)(a), and 7(2)(b)

developer—

- (a) means Carlin Enterprises Limited; and
- (b) includes Kevin David Carlin, the sole director of Carlin Enterprises Limited, as promoter and manager of the development

development means the subdivision of land contained in Deposited Plan 325710 (but excluding Lot 602) into residential properties

excluded facility means the tennis court more particularly described as an estate in fee simple in that piece of land containing 1 106 m² more or less, being Lot 1001 on the developer's scheme plan of subdivision (Plan A) to be comprised and described in Certificate of Title 157418 (which title is to be issued on the subdivision of Lot 604, Deposited Plan 325710)

lease, in relation to the lease by the society of communal facilities in the development, means lease under a memorandum of lease registered under the Land Transfer Act 1952

Regulations means the Securities Regulations 1983

residential property means a residential property for which a certificate of title has been or will be issued, or for which a computer register has been or will be created,—

- (a) for an estate in fee simple under the Land Transfer Act 1952; or
- (b) for a stratum estate under the Unit Titles Act 1972

rules means the rules of the society

sale agreement means an agreement for the sale of a residential property in the development

society means The Styx Mill Country Club Incorporated, a society incorporated under the Incorporated Societies Act 1908 that—

- (a) owns, or will own, the communal facilities in the development; or
- (b) leases, or will lease, the communal facilities in the development

specified security means a participatory security in the form of membership of the society that confers rights to participate in the ownership and use of all or part of the communal facilities in the development

undeveloped land means that piece of land containing 4.447 ha more or less, being Lot 604, Deposited Plan 325710.

- (2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

5 Exemptions

The developer, the society, and every person acting on behalf of either the developer or the society, are exempted from sections 33(3), 37, 37A, 38A, and 54 of the Act and from the Regulations (except regulation 8) in respect of specified securities of which the developer or the society is an issuer.

6 Conditions of exemptions

- (1) The exemptions in clause 5 are subject to the following conditions:
 - (a) the developer has supplied to each subscriber for specified securities, before subscription, a copy of each of the following documents:
 - (i) the rules (including a copy of any agreement for the management of the society's affairs);
 - (ii) a specimen of any deed or agreement providing for the transfer of communal facilities from the developer to the society;
 - (iii) a specimen of the sale agreement;
 - (iv) a specimen of any lease agreement for communal facilities; and

- (b) the specified securities are subscribed for by each subscriber entering into a sale agreement with the developer; and
- (c) deposit moneys paid by a subscriber for specified securities are held in any of the following trust accounts until the sale agreement becomes unconditional:
 - (i) a trust account operated by a solicitor under the Law Practitioners Act 1982; or
 - (ii) a trust account operated by a real estate agent under the Real Estate Agents Act 1976; or
 - (iii) a trust account operated by a trustee company under the Trustee Companies Act 1967; and
- (d) no settlement of a sale agreement is completed until,—
 - (i) if the developer represents or agrees that communal facilities will be held by the society, the communal facilities are owned or leased by the society; and
 - (ii) if land is included in the communal facilities, the society's interest in that land is registered on a certificate of title, or computer register, under the Land Transfer Act 1952 or the society holds a certificate of title for a stratum estate under the Unit Titles Act 1972 for that land; and
- (e) if communal facilities are leased, or to be leased, by the society,—
 - (i) the communal facilities are owned, or to be owned, by subscribers for specified securities; and
 - (ii) interests in the communal facilities can only be purchased with a purchase of residential property; and
- (f) in respect of the excluded facility,—
 - (i) the developer has executed in favour of the society a deed of transfer; and
 - (ii) it is a term of the offer that the deed of transfer is registered immediately after the subdivision of the undeveloped land and the issue of a separate certificate of title, or the creation of a computer register, for an estate in fee simple in respect of the land on which the excluded facility is to be situated; and

- (iii) it is a term of the offer that the developer provides the deed of transfer to the society; and
- (g) it is a term of the offer that the developer provides to a subscriber or a prospective purchaser of residential property, within 5 working days after receiving a request, a copy of the most recent financial statements of the society; and
- (h) it is a term of the offer that the financial statements of the society are audited annually and distributed to members of the society as soon as is reasonably practicable after each audit is completed and in any event, no later than 5 months after the end of each accounting period of the society (except for the first financial statement of the society, which must be audited and distributed to members of the society by 31 July 2005); and
- (i) it is a term of the offer that all moneys paid to the society by its members under the rules are applied solely for the purposes of—
 - (i) holding, administering, and maintaining the communal facilities (including issuing licences to members of the society that confer rights solely on those members to use the communal facilities, and administering those licences in accordance with the rules); or
 - (ii) administering and enforcing a scheme for the regulation and control of matters relating to the use and enjoyment, repair, decoration and landscaping of, and provision of services to, residential properties; and
- (j) the rules provide that—
 - (i) members of the society have the right to use and enjoy the communal facilities in accordance with the rules, and have the right to vote at meetings of members of the society; and
 - (ii) on a winding up of the society, any interest of the society in communal facilities vests in the members of the society as tenants in common; and
 - (iii) levies, fees, or subscriptions payable to the society by its members are determined by a committee of members of the society constituted or appointed under the rules; and

- (k) the society does not have as objects—
 - (i) the carrying on of trading activities; or
 - (ii) the carrying on of business for profit.
- (2) This clause is subject to clause 7.

7 Transitional provisions

- (1) Clause 6(1)(b) does not apply to specified securities that are subscribed for by a person who entered into a sale agreement, whether settled or unsettled, before the date on which this notice comes into force.
- (2) Clause 6(1)(d) and (e) does not apply to specified securities that are subscribed for by a person who entered into a sale agreement that has been settled before the date on which this notice comes into force so long as before the allotment of the specified securities,—
 - (a) if the developer represents or agrees that communal facilities will be held by a society, the communal facilities are owned or leased by the society; and
 - (b) if land is included in the communal facilities, the society's interest in that land is registered on a certificate of title, or computer register, under the Land Transfer Act 1952 or the society holds a certificate of title for a stratum estate under the Unit Titles Act 1972 for that land.

Dated at Wellington this 21st day of January 2005.

The Common Seal of the Securities Commission was affixed in the presence of:

[L.S.]

J. Diplock,
Chairperson.

Statement of reasons

This notice comes into force on the day after the date of its notification in the *Gazette* and expires on 31 January 2010.

This notice exempts Carlin Enterprises Limited, Kevin David Carlin, and The Styx Mill Country Club Incorporated, subject to conditions, from sections 33(3), 37, 37A, 38A, and 54 of the Securities Act 1978 and from the Securities Regulations 1983 (except regulation 8) in respect of the offer of participatory securities in the form of membership in The Styx Mill Country Club Incorporated that confer rights to participate in the ownership and use of all or part of the communal facilities in a residential property development in Christchurch.

The Securities Commission considers that it is appropriate to grant the exemptions because—

- real estate developments often include communal facilities for the use of residents. Where these facilities are offered in the form of membership of an incorporated society, the interests offered are participatory securities under the Securities Act 1978. The Securities Commission has granted a class notice to allow these offers to be made without the need for a statutory supervisor, registered prospectus, and investment statement. Membership of the society is secondary to the purchase of the real estate interest. In these circumstances, the Securities Commission considers that full compliance with the provisions of the Securities Act 1978 would not provide additional benefits to purchasers that would offset the costs of compliance. The Securities Commission considers that adequate protection could be secured for these purchasers by compliance with the conditions of exemption; and
- the offer by Carlin Enterprises Limited cannot strictly comply with the terms of a condition of the class notice in that a part of the communal facilities will not be owned by the incorporated society at the time of settlement. As this affects only a small part of the communal facilities, the Securities Commission is satisfied that adequate protection can be secured by compliance with additional conditions requiring representations that the additional facilities will be transferred to the incorporated society as soon as this is possible. In other

respects the Securities Commission is satisfied that the offer falls within the policy of the class notice.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 25 January 2005.

This notice is administered by the Securities Commission.
