

CHAPTER 208

THE COMMON LEASEHOLD SCHEMES ACT

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CHAPTER 208

COMMON LEASEHOLD SCHEMES

39 of 1994

An Act to provide for the division of land and buildings into units with separate titles by means of common leasehold schemes; and to provide for matters connected with or incidental to the foregoing.

[31st December, 1994

PART I PRELIMINARY

1. This Act may be cited as the Common Leasehold Schemes Act. Short title
2. In this Act, unless the context otherwise requires- Interpretation
 - "body corporate" means the body corporate of unit-holders under a common leasehold scheme created by section *eight*;
 - "Certificate of Title" means a Certificate of Title or Provisional Certificate within the meaning of the Lands and Deeds Registry Act; Cap. 185
 - "common leasehold scheme" means a scheme registered under this Act for the division of a parcel of land and its buildings into units;
 - "common property" means so much of the land and buildings subject to a common leasehold scheme as is not comprised in any one unit under the scheme;
 - "Lands Register" means the Lands Register under the Lands and Deeds Registry Act; Cap. 185
 - "parcel" means the land subject to a common leasehold scheme;
 - "phased development" means a common leasehold scheme which

includes units for which no Certificate of Title has yet been issued;

"Registered Proprietor" means a person to whom a Certificate of Title has been issued;

"Registrar" means a Registrar for the purposes of the Lands and Deeds Registry Act; Cap. 185

"remainder" means the remainder of phased development referred to in section *seventeen*;

"special resolution" means a special resolution of the unit-holders made in accordance with the by-laws of the body corporate;

"Tribunal" means the Lands Tribunal established by the Lands Act; Cap. 184

"unanimous resolution" means a unanimous resolution of the unit-holders made in accordance with the by-laws of the body corporate;

"unit" means the part of the parcel of land and buildings specified as a unit in a common leasehold scheme together with the share of the common property appurtenant thereto;

"unit-holder" means the Registered Proprietor of a unit;

"unit entitlement" means the unit entitlement in respect of a unit set for the purposes of paragraph (1) (f) of section *five*.

PART II

COMMON LEASEHOLD SCHEME

3. (1) A parcel of land registered in the Lands Register together with the buildings on it, or proposed to be built on it, may be divided into units by registering a common leasehold scheme in the manner provided by this Act.

Land may be subdivided by registering a common leasehold scheme

(2) A unit may devolve or be transferred, leased, mortgaged or otherwise dealt with, and shall be subject to taxation relating to land, in the same manner and form as if it were a piece of land registered in the Lands Register.

(3) A unit-holder shall hold his unit subject to-

- (a) any registered interests in the parcel;
- (b) any registered variation to the common leasehold scheme.

(4) Easements and restrictions as to use implied or created by this Act between units under a common leasehold scheme or between a unit and the common property shall take effect without any notification on the register.

4. (1) The Registered Proprietor of a parcel of land on the Lands Register may apply to the Registrar for the registration of a common leasehold scheme in relation to the parcel by lodging with him a copy of the proposed scheme in a form approved by the Registrar.

Method of
registration

(2) The application shall be accompanied by a certificate made by a registered architect or a registered quantity surveyor that-

(a) in the case of a proposed common leasehold scheme other than a phased development-

- (i) all the buildings and other fixtures marked on the plan of the scheme are in place;
- (ii) the plan shows their position with reasonable accuracy;
- (iii) they are all structurally sound;
- (iv) they are within the boundaries of the parcel and any caves, guttering or other projections are the subjects of registered easements; and
- (v) they conform to the planning permit applying to the parcel; or

(b) in the case of a proposed phased development-

- (i) all the buildings and other fixtures marked on the plan of the

- scheme as completed are in place;
- (ii) the plan shows their positions with reasonable accuracy;
- (iii) they are all structurally sound;
- (iv) they are within the boundaries of the parcel and any eaves, guttering or other projections are the subjects of registered easements;
- (v) they conform to the planning permit applying to the parcel;
- (vi) any proposed buildings are planned to lie within the boundaries of the parcel and any eaves, guttering or other projections are the subjects of registered easements; and
- (vii) the plans for any proposed buildings or fixtures conform to the planning permit.

(3) The Registrar shall register the common leasehold scheme if he is satisfied that the application satisfies this Act.

(4) A common leasehold scheme shall not be registered unless the Surveyor-General has given each prospective unit an identifying number.

(5) On the registration of a common leasehold scheme-

- (a) the Registrar shall recall and cancel the Certificate of Title relating to the parcel; and
- (b) subject to this Act, the Registrar shall issue to the former Registered Proprietor of the parcel a separate Certificate of Title for each unit.

5. (1) A proposed common leasehold scheme shall-

Content of a
common
leasehold
scheme

- (a) identify the parcel of land by the identifying number provided by the Surveyor-General;
- (b) specify the external surface boundaries of the parcel by means of

Cap. 185

- a diagram or plan conforming with section *twelve* of the Lands and Deeds Registry Act and specify the location in relation thereto of all buildings and fixtures existing and proposed to be built under the scheme;
- (c) divide the land and existing and proposed buildings and fixtures into the parts belonging to the several units, together with common property, defining the boundaries of each unit's property;
 - (d) include a plan illustrating the units and stating for each the identity number provided by the Surveyor-General;
 - (e) show the approximate floor area of the part of any unit that is part of a building, and the approximate area of the part that is not a part of any building;
 - (f) specify the unit entitlement of each unit, being a whole number, and state the sum of the unit entitlements of all the units;
 - (g) state a physical or postal address of the body corporate for the purpose of service of notices under section *twenty-seven*; and
 - (h) contain such other particulars as the approved form may require.
- (2) The common leasehold scheme may set out by-laws, not inconsistent with this Act, amending the by-laws in the Schedule.
- (3) The common leasehold scheme may, with the approval of the Registrar, specify a name by which the body corporate shall be known.
- (4) The common leasehold scheme shall divide the parcel into at least two units.
- (5) Where a building is of more than one storey, the several storeys above any point in the parcel may belong to different units.
- (6) Where a boundary of a unit is a wall, floor, ceiling or other partition of a building, for the purposes of paragraph (c) of subsection (1), it shall

be sufficient to identify the partition concerned without showing bearings or dimensions.

(7) Unless the common leasehold scheme provides otherwise-

- (a) a wall, floor or other partition that constitutes a boundary of a unit; and
- (b) any structural member or load-bearing part of a building; shall be, except for its surface within a unit, part of a common property

6. (1) In respect of each unit there shall be-

Easements
between units

- (a) in favour of the unit-holder, and as appurtenant to his unit-
 - (i) an easement for the subjacent and lateral support thereof by the common property and by every other unit capable of providing support; and
 - (ii) easements for the passage or provision through other units and the common property of any services by means of pipes, wires, cables or ducts for the time being existing in the parcel, to the extent to which those pipes, wires, cables or ducts are capable of being used for the enjoyment of the unit; and
- (b) as against the unit-holder and to which his unit shall be subject-
 - (i) an easement for the subjacent and lateral support of the common property and of every other unit capable of enjoying support; and
 - (ii) easements for the passage or provision through the unit of any services by means of pipes, wires, cables or ducts for the time being existing in the parcel, to the extent to which those pipes, wires, cables or ducts are capable of being used for the enjoyment of other units or the common property;
as appurtenant to the common property and to every other unit capable of enjoying such easements.

(2) In respect of each unit there shall be-

- (a) in favour of the unit-holder, and as appurtenant to his unit, an

easement for the shelter of his unit by the common property and by every other unit capable of providing shelter; and

- (b) as against the unit-holder and to which his unit shall be subject, an easement for the shelter of the common property and of every other unit capable of enjoying shelter.

(3) The easement of shelter created by this section shall entitle the unit-holder of the dominant tenement to enter on the servient tenement to replace, renew or restore any shelter.

(4) All ancillary rights and obligations reasonably necessary to make them effective shall belong to easements implied or created by this Act.

7. (1) The common property under a common leasehold scheme shall be held by the unit-holders of the units as tenants in common in shares proportional to the unit entitlements of their units. Ownership of common property

(2) The Registrar shall, in the Certificate of Title to a unit, certify the share of the unit-holder in the common property.

(3) Except where a common leasehold scheme is varied in accordance with this Act-

- (a) no share in the common property may be disposed of except as appurtenant to the unit of the unit-holder concerned; and
- (b) an assurance of a unit shall operate to assure the share of the disposing party in the common property, without express reference thereto.

PART III

THE BODY CORPORATE UNDER A COMMON LEASEHOLD SCHEME

8. (1) Upon the registration of a common leasehold scheme, the Unit-holders

unit-holders shall constitute a body corporate with perpetual succession and a common seal. become incorporated on registration

(2) Where the common leasehold scheme is a phased development, the members of the body corporate shall be the unit-holders of the completed units.

(3) The name of the body corporate shall be "The Owners of Common Leasehold Scheme Number [registration number of the parcel]", or such other name as may be specified in the common leasehold scheme or adopted by the body corporate with the approval of the Registrar.

(4) The body corporate-

(a) may sue and be sued on any contract made by it;

(b) may sue for and in respect of any damage or injury to the common property caused by any person, whether a unit-holder or not;

(c) may be sued in respect of any matter connected with the parcel for which the unit-holders are jointly liable; and

(d) shall not be subject to the Companies Act, 1994.

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(5) The body corporate may use a rubber stamp as its common seal in place of an impress seal, and any document on which the stamp is used shall be as valid for all purposes as if it had been sealed.

9. The body corporate and its members from time to time shall have the same rights and obligations among themselves as they were all party to a contract under seal providing that the activities of the members and the body corporate will be conducted in accordance with the common leasehold scheme, the by-laws of the body corporate and this Act. Incorporation has effect of contract under seal

10. (1) The body corporate shall be governed by this Act and the by-laws of the body corporate.

Powers and duties of the body corporate

(2) the body corporate shall-

- (a) enforce the by-laws;
- (b) control and manage the common property;
- (c) insure and keep insured the buildings to the replacement value thereof against fire and such other risks as may be prescribed, unless the unit-holders by unanimous resolution decide otherwise;
- (d) effect such insurance as it is required by law to effect;
- (e) insure against such other risks as the proprietors may from time to time determine by special resolution;
- (f) subject to any order of the Lands Tribunal, forthwith apply insurance moneys received by it in respect of damage to the buildings in rebuilding and reinstating the building so far as that may lawfully be effected;
- (g) pay the premiums on any policies of insurance effected by it;
- (h) comply with notices and orders of any competent public or local authority requiring repairs to, or work to be done in respect of, the parcel or building, or anything in, on or over it;
- (i) comply, or ensure compliance, with any conditions under which the parcel is held; and
- (j) comply with any reasonable request for the names and addresses of the persons who are members of the body corporate or of its board.

(3) For the purposes of effecting any insurance referred to in subsection (2), the body corporate shall be deemed to have an insurable interest-

- (a) in the buildings on the parcel to the replacement value thereof; and

(b) in the subject matter of any other insurance referred to.

(4) The body corporate shall-

- (a) establish a fund for administrative expenses sufficient in the opinion of the body corporate for the control and management of the common property, for the payment of any premiums of insurance and the discharge of any other obligation of the body corporate;
- (b) determine from time to time the amounts to be raised for those purposes;
- (c) raise the amounts so determined by levying contributions on the unit-holders in proportion to the unit entitlements of their respective units; and
- (d) recover from any unit-holder, if necessary by action in a court of competent jurisdiction, any sum of money expended by the body corporate for repairs or work done by it or at its direction in complying with any notice or order of a competent public or local authority in respect of the unit concerned.

(5) Subject to subsection (4), any contributions to be levied by the body corporate shall be due and payable on the passing of a resolution to that effect and in accordance with the terms of the resolution, and may be recovered by the body corporate by action in any court of competent jurisdiction jointly and severally from the unit-holder entitled at the time when the resolution was passed and the unit-holder at the time when the action is instituted.

(6) The body corporate shall, on the application of a unit-holder or a person authorised in writing by him, certify-

- (a) the amount of any contributions due or payable by the unit-holder;
- (b) the manner in which the contribution is payable; and

(c) the extent to which the contribution has been paid by the unit-holder.

(7) A certificate under subsection (6) shall, in favour of any person dealing with that unit-holder (including a person who purchases an interest in the unit from the unit-holder) be conclusive evidence of the matters certified.

11. (1) the By-laws contained in Part I of the Schedule shall be by-laws of every body corporate. By-laws of the body corporate

(2) The by-laws contained in Part II of the Schedule shall be by-laws of every body corporate unless amended in the common leasehold scheme or by the body corporate.

(3) By-laws set out in common leasehold scheme on its registration, being consistent with this Act and Part I of the Schedule, shall be by-laws of the body corporate on its incorporation.

(4) A body corporate may amend its by-laws in accordance with this Act and its by-laws.

(5) A purported by-law inconsistent with this Act or with Part I of the Schedule shall be void to the extent of the inconsistency.

(6) Where the body corporate resolves to amend its by-laws, the body corporate shall forthwith lodge a copy of the resolution with the Registrar for registration, and the resolution shall not have effect before the day of lodgment.

12. Where a by-law under a common leasehold scheme places restrictions on the manner of use or enjoyment of units or of the common property, and the occupier or a unit fails to comply with the by-law, the body corporate shall have power to enforce the by-law directly against the occupier as if he were the unit-holder.

Body corporate may enforce certain by-laws directly on occupiers of units

13. (1) The unit-holders under a common ownership scheme may, by unanimous resolution, direct the body corporate-

Creation of easements and covenants

(a) to execute on their behalf a grant of easement or a restrictive covenant burdening the parcel; and

(b) to accept or surrender on their behalf a grant of easement or a restrictive covenant benefiting the parcel.

(2) When such a resolution is passed, the body corporate or, in the case of a phased development, the body corporate and the Registered Proprietor of the remainder, shall be competent to execute the appropriate instruments in relation to the parcel and to lodge them for registration.

14. (1) The body corporate, a creditor of the body corporate, or any person having an interest in a unit may apply to the Tribunal for the appointment of an administrator.

Appointment of administrator

(2) The Tribunal may, on cause shown, appoint an administrator for a definite or indefinite period on such terms and conditions as to remuneration or otherwise as it thinks fit.

(3) The remuneration and expenses of the administrator shall be payable out of the funds of the body corporate for administrative purposes.

(4) The administrator shall have, to the exclusion of the body corporate, the powers and duties of the body corporate or such of those powers and duties as the Tribunal may order.

(5) The Tribunal may, on the application of the administrator or any person referred to in subsection (1), remove or replace the administrator.

15. (1) A unit-holder or the lawful occupier of a unit under a common leasehold scheme who is aggrieved by an action, or proposed action, by the body corporate or the unit-holders of other units may apply to the

Remedy for oppression

Tribunal for relief.

(2) The Tribunal may, if it is satisfied that the actions or proposed actions are or would be oppressive toward the unit-holder concerned, make such orders as seem to it just and reasonable to resolve the matter, including orders for the appointment of an administrator or the variation or termination of the common leasehold scheme.

PART IV

PHASED DEVELOPMENTS

16. (1) A proposed phased development shall not be registered unless, when the application is lodged, not fewer than twenty-five per centum of the total number of units or eight units, whichever is fewer, are structurally complete and provided with services, together with sufficient of the common property and its buildings and fixtures to allow the reasonable enjoyment of the common property by the holders of those units. Phased developments

(2) The proposed phased development shall contain-

- (a) detailed building plans of the unfinished buildings and fixtures; and
- (b) a timetable for their completion covering not more than two years, or such longer period as the Registrar may approve if he considers it justified in the circumstances.

17. (1) On registering a phased development, the Registrar shall issue a separate Certificate of Title for each of the completed units, together with a Certificate of Title for the remainder of the parcel. Certificates of Title in phased developments

(2) The remainder may devolve or be transferred, leased, mortgaged or otherwise dealt with in the same manner and form as if it were a piece of land registered in the Lands Register.

(3) When units contained in the remainder amounting to not fewer than

twenty-five per centum of the whole or eight units or the remaining units, whichever is fewest, are structurally complete and provided with services, together with sufficient of the common property and its buildings and fixtures to allow the reasonable enjoyment of the common property by the holders of those units, the Registered Proprietor of the remainder may apply for the issue of Certificates of Title for those units.

(4) The application shall be accompanied by the Certificate of Title for the remainder and a certificate relating to the completed units of the kind required under subsection (2) of section *four*.

(5) If the Registrar is satisfied that the application conforms to this Act, he shall-

- (a) cancel the Certificate of Title to the remainder; and
- (b) issue Certificates of Title for each newly completed unit, together with a Certificate of Title for the new remainder if any units remain uncompleted.

18. (1) The Registered Proprietor of a remainder under a phased development shall complete the buildings and fixtures in accordance with the building plans and the timetable of the phased development.

Obligations of
Registered
Proprietor of
remainder

(2) The Registered Proprietor for the time being of a remainder shall be deemed to have contracted with each unit-holder to comply with subsection (1).

(3) Where a person has contracted with the Registered Proprietor of the remainder to purchase a specified unit on its completion in accordance with the timetable under the phased development, and the contract is registered under this Act-

- (a) the Registered Proprietor for the time being of the remainder, or of a subsequent remainder that includes the unit concerned, shall be deemed to be a party to the contract; and
- (b) if the Registered Proprietor fails to comply with subsection (1), the other party to the contract may terminate the contract and

require the repayment of any moneys paid under the contract together with interest at the prevailing bank deposit rate.

19. (1) A phased development may provide that the Registered Proprietor of the remainder shall be the agent of the body corporate in all or specified aspects of the maintenance of or the provision of services to the common property of the completed units until the whole of the buildings and fixtures are completed.

Provision of services in a phased development

(2) Where it so provides, the phased development shall specify the maximum amounts, or a method of calculating the maximum amounts, to be charged to the body corporate for the maintenance or services, and the Registered Proprietor shall not be entitled to more than the amount so specified or calculated.

PART V

VARIATION AND TERMINATION OF A COMMON LEASEHOLD SCHEME

20. (1) On the passing of a unanimous resolution of the unit-holders under a common leasehold scheme approving a specified variation to the scheme, together with, where the scheme is a phased development, the agreement in writing of the Registered Proprietor of the remainder and of each party to a registered contract for the purchase on completion of an uncompleted unit, the body corporate shall lodge an application for the variation.

Variation of common leasehold scheme by common consent

(2) The application shall be accompanied by the resolution and the agreements in writing, if any.

(3) The application shall specify the variation to the satisfaction of the Registrar.

(4) The variation shall not be registered if the common leasehold scheme is varied would not comply with this Act.

(5) Where the variation proposes new buildings for the creation of further units, the common leasehold scheme as varied shall be treated as if it were a phased development, with the existing unit-holders being tenant-in-common of the remainder in shares proportional to the unit entitlements of their units unless the variation provides otherwise.

21. (1) A common leasehold scheme, not being a phased development, may be terminated under this section if the unit-holders pass a unanimous resolution for its termination.

Termination of
a common
leasehold
scheme by
common
consent

(2) On the passing of such a resolution, the body corporate shall wind up its affairs and pay off its debts.

(3) On the passing of a unanimous resolution that the body corporate has satisfactorily wound up its affairs and has no debts outstanding, the body corporate shall lodge with the Registrar-

(a) the resolution that the common leasehold scheme be terminated;

(b) the resolution that the body corporate has satisfactorily wound up its affairs and has no debts outstanding;

(c) a certificate signed by a registered accountant having a practice certificate issued by the Zambia Institute of Certified Accountants under the Accountants Act, 1982, that he has examined the affairs of the body corporate and is satisfied that no debts are outstanding; and

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(d) the Certificate of Title of each unit.

(4) On the registration of the documents-

(a) the common leasehold scheme shall be terminated and the Registrar shall enter that fact in the register;

(b) the body corporate shall be dissolved;

- (c) unless the resolution for termination provides otherwise, the unit-holders shall become tenants in common of the undivided parcel with shares in proportion to the unit entitlements of the units that each held before the scheme was terminated; and
- (d) the Registrar shall cancel the Certificates of Title and shall issue a new Certificate of Title for the parcel.

(5) Where the body corporate was dissolved having outstanding debts, each unit-holder shall be personally liable for an amount of each debt having the same proportion to the whole of the debt as his unit entitlement had to the aggregate of unit entitlements of all the units.

22. (1) On the application of the body corporate, a unit-holder or a registered mortgagee of a unit under common leasehold scheme, the Tribunal may by order settle an arrangement of the interests of the unit-holders and other interested parties which may include provisions-

Variation or termination of a common leasehold scheme by order of the Tribunal

- (a) for a variation in the scheme, including the removal of all or part of the buildings on the parcel or the construction of further buildings and the alteration, removal or creation of units;
- (b) for the reinstatement in whole or in part of a damaged or destroyed building;
- (c) for the re-assignment among the unit-holders of their interests in units or in the parcel; or
- (d) for the winding up of the body corporate and the termination of the scheme.

(2) In the exercise of its powers under this section, the Tribunal may make such orders as it considers expedient or necessary for giving effect to its orders, including orders-

- (a) directing the Registrar to register variations to the scheme or to

- terminate the scheme and to recall or issue appropriate Certificates of Title;
- (b) directing the application of insurance moneys received by the body corporate or by unit-holders or by some one or more of them;
 - (c) directing the payment of money by the body corporate or by unit-holders or by some one or more of them; or
 - (d) imposing such terms and conditions as the Tribunal considers just.
- (3) On an application to the Tribunal under this section, an insurer who has effected insurance on a building under the common leasehold scheme or part thereof, being insurance against destruction of units or damage to the buildings shall have the right to appear on the application in person or by counsel.
- (4) The Tribunal may from time to time vary an order made by it under this section.

PART VI

MISCELLANEOUS

- 23.** (1) A law imposing a rate or tax on land shall apply to each unit under a common leasehold scheme as if it were a piece of land on the Lands Register. Taxes and statutory charges on land
- (2) Where any sum due to a public or local authority, not being a rate or tax, is a statutory charge on all or any part of the parcel of land under a common leasehold scheme, the authority shall have, instead of that charge, a like charge on each unit of an amount bearing the same proportion to the amount of that charge as the unit entitlement of the unit bears to the aggregate unit entitlements of all the units.
- 24.** Where a public or local authority or person authorised by it has a Powers of entry

statutory power to enter any part of the parcel covered by a common leasehold scheme, that authority or person shall have power to enter any other part to the extent necessary or expedient for it or him to exercise its or his statutory power. by public or local authority

25. (1) Where a voting right is conferred on a unit-holder by or under this Act, the right may be exercised- Voting

- (a) by the guardian of the unit-holder; where the unit-holder is a minor;
- (b) by any person lawfully authorised by the unit-holder to do so; or
- (c) by any person who, by the operation of law or by an order of a court is authorised to control the property of the unit-holder.

26. (1) A document may be served on the body corporate under a common leasehold scheme by- Service of documents

- (a) leaving it at the physical address registered as the address of the body corporate; or
- (b) personal service on a unit-holder.

(2) A document sent by post to the registered postal address of the body corporate shall be deemed to have been served on the company if it is proved, by a receipt issued or otherwise, that the document or a post office notification of the document, was delivered to the registered postal address.

(3) Nothing in this section shall detract from the power of any court to direct how service shall be effected of any document relating to legal proceedings before the court.

27. (1) The Minister may, by statutory instrument, make regulations for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. Regulations

(2) Without limiting the generality of subsection (1), such regulations may be made on-

- (a) the form, including the number of copies, and content of any application or other document required for the purposes of this Act; and
- (b) the payment of fees and charges in respect of any matter or anything done or supplied under this Act.

SCHEDULE

(Sections 5 and 11)

BY-LAWS OF A BODY CORPORATE

PART I

MANDATORY BY-LAWS

- | | |
|--|-------------------------|
| 1. The by-laws under this part may not be altered by the body corporate. | This part is mandatory |
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| 2. In these by-laws, unless the context otherwise requires- <ul style="list-style-type: none">(a) "the Act" means the Common Leasehold Schemes Act (Cap. 208); and(b) a term used in these by-laws and in the Act has the same meaning as in the Act. | Interpretation |
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 | |
| 3. The body corporate may make by-laws not inconsistent with the Act or Part I of these by-laws by means of- <ul style="list-style-type: none">(a) a unanimous resolution, in the case of a by-laws that amends Part II of these by-laws; or(b) a special resolution, in any other case. | By-laws |
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| 4. A unit-holder shall- <ul style="list-style-type: none">(a) permit the body corporate and its agents, at all reasonable times | Duties of a unit-holder |

on notice (except in case of emergency when no notice shall be required) to enter his unit for the purpose of inspecting it and maintaining, repairing or renewing-

(i) the common property; and

(ii) all pipes, wires, cables and ducts existing in the unit and capable of being used in connection with enjoyment of any other unit or the common property;

or for the purpose of ensuring that the by-laws are being observed;

- (b) forthwith carry out all work that may be ordered by any competent public or local authority in respect of his unit, other than such work as may be for the benefit of the parcel generally, and pay all rates, taxes, charges, outgoings and assessments that may be chargeable in respect of his unit;
- (c) keep his unit in a state of good repair, reasonable wear and tear and damage by fire, storm or act of God excepted;
- (d) use and enjoy the common property in such a manner as not unreasonably to interfere with the use and enjoyment thereof by the lawful occupier of any other unit;
- (e) not use his unit or permit it to be used in a manner or for a purpose that causes a nuisance to the lawful occupier of any other unit;
- (f) not use his unit or permit it to be used for any purpose that may be injurious to the reputation of the parcel;
- (g) notify the body corporate forthwith upon any change of tenancy or of any transfer of an interest in his unit; and
- (h) notify the body corporate forthwith upon any change of use of his unit.

5. The body corporate shall-

Duties of the
body corporate

- (a) control and manage the common property for the benefit of all unit-holders;
- (b) keep in a state of good and serviceable repair and properly maintain the common property, including fixtures and fittings;
- (c) maintain, repair and, where reasonably necessary, replace pipes, wires, cables and ducts for the time being existing in the parcel and capable of being used in connection with the enjoyment of the common property or of more than one unit; and
- (d) on the written request of the unit-holder or registered mortgagee of a unit, produce the current policy or policies of insurance

effected by the body corporate, and the receipt or receipts for the premiums in respect thereof.

6. The body corporate may-

Powers of the
body corporate

- (a) purchase, hire or otherwise acquire personal property for use by unit-holders in connection with their enjoyment of common property;
- (b) borrow money required by it in the performance of its duties or the exercise of its powers;
- (c) secure the repayment of money borrowed by it, and the payment of interest thereon, by negotiable instrument, or mortgage of unpaid contribution (whether imposed or not), or mortgage of any property vested in it, or by combination of these methods;
- (d) invest as it considers fit any money in the fund for administrative expenses;
- (e) make an agreement with the unit-holder or occupier of any unit for the provision of amenities or services by it to that unit or to the unit-holder or occupier;
- (f) grant to a unit-holder the right to exclusive use and enjoyment of common property, or special privileges in respect thereof, such a grant being determinable on reasonable notice unless the body corporate by unanimous resolution resolves otherwise;
- (g) employ such agents and servants as it considers desirable or necessary in connection with the control and management of the common property, and the exercise and performance of the powers and duties of the body corporate;
- (h) delegate to one or more of its members such of its powers and duties as it thinks fit, and at any time withdraw the delegation; and
- (i) do all things reasonably necessary for the enforcement of the by-laws and the management of the common property.

7. The body corporate shall not borrow money or grant any security except in accordance with a special resolution.

Restrictions on
borrowing

8. (1) A general meeting of the unit-holders shall be held within three months after their incorporation.

General
meetings of the
unit-holders

(2) A general meeting, to be called the annual general meeting, shall be held once in each calendar year, and so that there is not more than fifteen months before the first annual general meeting or between annual general meetings.

(3) Other general meetings, called extraordinary general meetings, may be held at any time.

(4) The board, if there is one, may convene a general meeting at any time.

(5) Eight unit-holders, or the holders of units with one quarter or more of the total unit entitlement of the units, whichever is fewer, may convene a general meeting at any time.

(6) Fourteen days notice of every general meeting shall be given to all unit-holders and registered first mortgagees who have notified their interest to the body corporate, specifying the place and time of the meeting and, where any business is proposed other than the consideration of accounts and election of board members at an annual general meeting, the general nature of the business.

(7) Proceedings at a general meeting shall not be invalidated only because of an accidental omission to give notice to, or failure to receive notice by, a unit-holder or first mortgage holder.

9. (1) A unit-holder may notify the body-corporate that a specified person is the occupier for the time being of the unit.

Right of occupiers to attend certain meetings

(2) Where it is proposed to amend the by-laws in a way that would vary the restrictions on the manner of use or enjoyment of units or of the common property, a person so specified shall have the right-

(a) to receive notice of the meeting and the proposal in the same manner as a unit-holder; and

(b) to attend the meeting and be heard on that matter only, but not to vote.

10. (1) At the beginning of each general meeting, the meeting shall elect a chairman for the meeting.

Procedure at general meetings of the unit-holders

(2) No business may be transacted at a general meeting unless a quorum is present.

(3) One half of the unit-holders, holding at least one half of the unit voting rights, present in person or by proxy shall constitute a quorum.

(4) If a quorum is not present within half an hour after the time appointed for the meeting, the meeting shall stand adjourned to the next week, on the same day, at the same time and at the same place.

(5) The chairman may, with the consent of the meeting, adjourn the meeting from time to time and from place to place.

(6) No business may be transacted at an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(7) If a quorum is not present within half an hour after the time appointed for an adjourned meeting, the persons present and entitled to vote shall constitute a quorum.

(8) At a general meeting, a resolution shall be passed if it is passed as an ordinary resolution, except where it is otherwise required by or under the Act.

(9) At a general meeting, a vote shall be taken on a resolution by a show of hands unless a poll is required by these by-laws or demanded by any unit-holder present in person or by proxy.

(10) If no poll is demanded, a declaration by the chairman that the resolution has been passed or failed to pass on a show of hands shall be conclusive evidence of the fact declared.

(11) A demand for a poll may be withdrawn.

(12) The chairman shall determine the manner of taking a poll, and the result of a poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

11. The body corporate shall-

Minutes and
accounts to be
kept

- (a) cause minutes to be kept of general meetings;
- (b) cause a record to be kept of resolutions, and a separate record of unanimous resolutions;
- (c) cause proper books of account to be kept in respect of all money received and expended by it and the matters to which the receipts and expenditures relate;
- (d) cause proper accounts to be prepared relating to the assets and liabilities of the body corporate, and its income and expenditure for each annual general meeting;
- (e) on the application of a unit-holder or registered mortgagee, make the records and documents referred to in this by-law available for inspection by him or his agent authorised in writing at any reasonable time.

12. (1) On a show of hands, each unit-holder shall have one vote.

Voting

(2) On a poll, each unit-holder shall have the same number of votes as the unit entitlement of his unit or units.

(3) An instrument appointing a proxy shall be in writing under the hand of the appointer or his attorney, and may be general or for a particular meeting.

(4) A proxy need not be a unit-holder.

(5) Except where a unanimous resolution is required by or under this

Act, a unit-holder shall not be entitled to vote unless all contributions payable in respect of his unit have been duly paid.

(6) Joint unit-holders may vote by a proxy jointly appointed (who may be one of the joint unit-holders), but in the absence of such a proxy are not entitled to vote except where a unanimous resolution is required.

13. (1) A resolution shall be an ordinary resolution if it is passed by a simple majority of votes cast by such members of the body corporate as, being entitled so to do, vote in person or by proxy at a meeting duly convened and held. Resolutions

(2) A resolution shall be a special resolution if-

- (a) notice of the resolution is given not less than fourteen days before the meeting at which the resolution is proposed; and
- (b) it is passed on a poll by a majority of not less than three-fourths of the unit-holders with not less than three-fourths of the total unit entitlement of the units.

(3) A resolution shall be a unanimous resolution if each person who is a unit-holder on the date of the resolution signs a paper containing the text of the resolution and expressing his consent to the resolution.

(4) The date of a unanimous resolution shall be the date of the meeting at which it was proposed or the date on which it is signed by the last unit-holder to sign, whichever is later.

(5) Where a resolution or a special resolution is required by or under the Act, other than a resolution to remove a member from the board, the resolution may also be passed by a unanimous resolution.

(6) If a unanimous resolution states a date as being the date of the signature thereof by any unit-holder, the statement shall be *prima facie* evidence that it was signed by the unit-holder on that date.

14. (1) The common seal of the body corporate shall not be used except with the authority of the board, if there is one, or of the body corporate otherwise, and in the presence of two members of the board or body corporate, or, if there is only one unit-holder, of that unit-holder, who shall sign each instrument to which the seal is affixed. Common seal

(2) The seal shall be kept in safe custody.

PART II

ALTERABLE BY-LAWS

15. A unit-holder shall not-

- (a) make any undue noise on the parcel;

Additional
duties of unit

- (b) keep any animal on his unit or the common property after receiving a notice from the body corporate requiring him to desist; or
 - (c) erect any structure on or visible from the common property or another unit without the prior approval of the body corporate.
- holders

16. The body corporate shall establish and maintain suitable lawns and garden on the common property.

Additional duties of the body corporate

17. (1) There shall be a board of the body corporate at any time when there are five or more unit-holders.

Board of the body corporate

(2) The powers and duties of the body corporate shall, subject to sub-by-law (3) and to any restriction imposed or direction given by resolution, be exercised and performed by the board.

(3) A meeting of the body corporate at which a quorum is present shall be competent to exercise all or any of its authorities, functions or powers.

(4) The board shall consist of a number of unit-holders set by resolution, being not more than seven or fewer than three.

(5) Where the board is not all the unit-holders-

- (a) they shall be elected at each annual general meeting;
- (b) the unit-holders may, by resolution, remove a member of the board and appoint another unit-holder in his place until the next annual general meeting; and
- (c) a casual vacancy on the board may be filled by the other members of the board.

(6) The quorum of the board shall be-

- (a) two, if the board has three or four members;
- (b) three, if the board has five or six members; and
- (c) four, if the board has seven members.

(7) The continuing members of the board may act notwithstanding any vacancy, but if the number of members is reduced below the number required by or under these by-laws as the quorum, the continuing members may act only for the purposes of increasing the number of members of the board or for convening a general meeting of the body corporate.

(8) At the beginning of each meeting, the board shall elect a chairman for the meeting.

(9) Decisions of the board shall be determined by the votes of a majority of those present.

(10) The board may-

- (a) hold meetings and regulate the conduct of meetings as it sees fit, but shall meet when any member of the board gives to the other

- members not less than seven day's notice of a meeting proposed by him, specifying the reasons for calling it; and
- (b) subject to any restriction imposed or direction given by the body corporate by resolution, delegate to one or more of its members such of its powers and duties as it thinks fit, and at any time withdraw the delegation.
- (11) The board shall cause to be kept minutes of its meetings and other records and accounts of the body corporate required to be kept.
- (12) An act done in good faith by the board shall not be invalid only because it is later discovered that there was a defect in the appointment or continuation in office of a member of the board.