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19

APPENDIX

CAYMAN ISLANDS



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DISCUSSION DRAFT

**A BILL FOR A LAW TO MODERNISE THE REGULATION OF
STRATA SCHEMES IN THE ISLANDS; TO REPEAL THE STRATA
TITLES REGISTRATION LAW (2013 REVISION); AND FOR
INCIDENTAL AND CONNECTED PURPOSES**

STRATA TITLES BILL, 2014

[MEMORANDUM OF OBJECTS AND REASONS]

TO BE COMPLETED UPON APPROVAL OF THE DRAFT BILL

STRATA TITLES BILL, 2014

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CAYMAN ISLANDS

A BILL FOR A LAW TO MODERNISE THE REGULATION OF STRATA SCHEMES IN THE ISLANDS; TO REPEAL THE STRATA TITLES REGISTRATION LAW (2013 REVISION); AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

PART 1- PRELIMINARY

1. (1) This Law may be cited as the Strata Titles Law, 2014.

Short title and commencement

(2) This Law shall come into force on such date as may be appointed by order made by the Cabinet, and different dates may be appointed for different provisions of this Law and in relation to different matters.

2. (1) In this Law-

Interpretation

“administrative expenses” means expenses-¹

- (a) relating to the common property and common assets of the corporation; or
- (b) required to meet any other purpose or obligation of the corporation;

¹ See BC Strata Property Act

“administrative fund” means the fund established under section 41 and administered by the corporation for the purposes of the payment of administrative expenses;

“building” means a building shown on a strata plan;

(2004 Revision) “caution” means a restraint on disposition of land made in accordance with the Registered Land Law (2004 Revision);

“cautioner” means a person who lodges a caution in accordance with section 127 of the Registered Land Law (2004 Revision);

“charge” means an interest in land securing the payment of money or money’s worth or the fulfilment of any condition, and includes a sub-charge and the instrument creating a charge;

(2004 Revision) “chargee” means the proprietor of a charge registered under this Law or the Registered Land Law (2004 Revision);

“common property”² means-

- (a) that part of the land and buildings shown on a strata plan that is not part of a strata lot; and
- (b) pipes, wires, cables, chutes, ducts and other facilities for the passage or provision of water, sewage, drainage, gas, oil, electricity, telephone, radio, television, garbage, heating and cooling systems, or other similar services, if they are located-
 - (i) within a floor, wall or ceiling that forms a boundary-
 - (A) between a strata lot and another strata lot;
 - (B) between a strata lot and the common property; or
 - (C) between a strata lot or common property and another parcel of land; or
 - (ii) wholly or partially within a strata lot, if they are capable of being and intended to be used in connection with the enjoyment of another strata lot or the common property;

“corporation” means a body incorporated under this Law upon the registration of a strata plan;

“court”, unless the context otherwise specifies, means the Grand Court;

(2004 Revision) “developer”³ means a person who is registered under the Registered Land Law (2004 Revision) as the proprietor of the freehold or leasehold estate or interest in

² *ibid*

³ See Ontario Condominium Act

land and who, for the purpose of developing such land, registers a strata plan under this Law; and includes a successor or assignee of that person but does not include a purchaser of a strata lot or a successor or assignee of such purchaser;

“executive committee” means the executive committee of a corporation constituted under this Law;

“incumbrance” means a claim that secures the payment of money or the performance of any other obligation and includes a charge under the Registered Land Law (2004 Revision); (2004 Revision)

“land” includes land covered with water, all things growing on land and buildings and other things permanently affixed to land;

“Land Register” means the Land Register compiled under Division 2 of Part II of the Registered Land Law (2004 Revision); (2004 Revision)

“licensed surveyor” means a land surveyor licensed under the Land Surveyors Law (1996 Revision) or an officer of the survey department authorised by the Chief Surveyor of the Islands to carry out surveys;

“ordinary resolution” of a corporation means a resolution passed at a properly convened meeting of the corporation by a simple majority of the votes of members present and voting on the resolution;

“parcel” means land subdivided in accordance with a strata plan registered pursuant to this Law;

“phased development” means development of a strata scheme in phases in accordance with Part 7;

“proprietor”⁴ means a person, including a developer, who is a person shown in the register as the proprietor of a freehold or leasehold estate or interest in a strata lot, whether entitled to it in the person's own right or in a representative capacity unless there is a registered life estate, in which case it means the tenant for life;

“Registrar”, means the Registrar of Lands appointed under section 5 of the Registered Land Law (2004 Revision); (2004 Revision)

“register” means the leaf of the Land Register kept in respect of a parcel of land or of a registered lease;

⁴ BC Strata Property Act

“to register” means to make an entry, note or record in the register under this Law, and “registered”, “unregistered” and “registration” bear a corresponding meaning;

“registered interest” means an interest which is registered under the Registered Land Law (2004 Revision);

“reserve fund” means the fund established and administered by the corporation under section 41;

“residential strata scheme” means a strata scheme which is used solely for the purposes of dwelling and “residential strata lot” means a strata lot within such strata scheme;

“restriction” has the meaning assigned by Part VIII of the Registered Land Law (2004 Revision);

“strata lot” means a horizontal or vertical subdivision of a parcel which is shown on a registered plan as a strata lot;

“strata management statement” means a document which complies with Part 3 and which is required for all parcels which are subdivided by more than one strata plan or where a strata plan divides only part of a parcel;

“strata scheme” means-

- (a) the manner of division of a parcel into strata lots or into strata lots and common property under a strata plan and the manner of the allocation of unit entitlements among the strata lots; and
- (b) the rights and obligations, between themselves, of proprietors, other persons having proprietary interests in or occupying the strata lots and the corporation, as conferred or imposed by this Law or by anything done under the authority of this Law;

“vacant land strata scheme” means a strata scheme to which a strata plan registered under section 115 relates;

“vacant land strata plan” means a strata plan registered under section 115; and

(2007 Revision)

“working day” means Monday to Friday but not a day that is a public holiday as defined by the Public Holidays Law (2007 Revision).

(2) A reference in this Law to a re-subdivision of a strata lot or common property is a reference to the alteration of the boundaries of -

- (a) one or more strata lots so as to create two or more different strata lots;
- (b) one or more strata lots so as to create one or more different strata lots and common property;
- (c) one or more strata lots and common property so as to create one or more different strata lots or one or more different strata lots and common property; or
- (d) common property so as to create one or more strata lots,

but does not include a reference to the consolidation of two or more strata lots into one strata lot or the conversion of one or more strata lots into common property.

(3) Where a motion must be passed under this Law by special resolution the resolution is passed where it is passed at a duly convened meeting of its corporation by-

- (a) not less than two thirds of the votes cast at the meeting; and
- (b) the total of the unit entitlements for the strata lots for which votes are counted for the resolution is not less than two thirds of the total of the unit entitlements for all strata lots included in the strata scheme.

(4) Where a motion must be passed under this Law by super-majority resolution, the resolution is passed where it is passed at a duly convened meeting of its corporation by-

- (a) not less than eight-tenths of the votes cast at the meeting; and
- (b) the total of the unit entitlements for the strata lots for which votes are counted for the resolution is not less than eight-tenths of the total of the unit entitlements for all strata lots included in the strata.

PART 2- CREATION OF STRATA LOTS AND COMMON PROPERTY

3. (1) Subject to this Law, a developer of freehold or leasehold land, may apply to the Registrar, in the manner provided under this Law and prescribed by the Registered Land Law (2004 Revision), for the registration of subdivisions of land to be known as strata lots in accordance with a strata plan which shall accompany the application; and one or more strata plans may be registered in relation to one parcel of land.

Subdivision into strata
lots and common
property
(2004 Revision)

(2) If the land to be subdivided is subject to a life estate, the proprietors of the life estate and the reversionary or remainder interest will be taken together, for the purposes of subsection (1), to be the developers of the freehold land.

(3) Upon registration of a strata plan, a complete strata plan, a phase strata plan and an amended strata plan-

- (a) this Law governs the land and the interests described in the strata plan;
- (b) the land described in the strata plan is divided into strata lots and common property in accordance with the strata plan;
- (c) subject to subsection (4), a corporation is created; and
- (d) the proprietor of each strata lot is entitled to all the rights and obligations of a proprietor including the right to vote as a member of the corporation established upon registration of the plan.⁵

(4) A corporation is not created where a strata plan is a plan of re-subdivision as defined by section 11.

Dealing with strata lots
(2004 Revision)

4. (1) Where a strata plan is registered under this Law, the strata lots comprised in the plan, or any one or more of them, may devolve or be transferred, leased, charged or otherwise dealt with in the same manner and form as land held under the provisions of the Registered Land Law (2004 Revision).

(2004 Revision)

(2) A strata plan shall, for the purposes of the Registered Land Law (2004 Revision), be deemed upon registration under this Law to be embodied in the register; and a proprietor shall hold his strata lot and his share in the common property subject to any interests for the time being notified on the registered strata plan and any amendments to the strata plans in relation to strata lots and common property.

(3) Easements and restrictions as to use implied or created by this Law, shall take effect without any notification in the register in relation to the dominant or servient tenements and without any express indication of those tenements.

(2004 Revision)

(4) Acts preparatory to the registration of a strata plan may be done in relation thereto before the land comprised therein is brought under the operation of the Registered Land Law (2004 Revision).

(5) Any enactment, other than this Law, relating to the subdivision of land for sale or for the purpose of building thereon shall, to such extent as may be prescribed by regulations under this Law, not apply to land comprised in a strata plan.

⁵ See section 3 of the Strata Titles (Registration) (Amendment) Law of 2012

(6) The Cabinet may, upon the application of a proposed developer, grant permission for the registration of a strata plan over a parcel of land being used or intended to be used wholly or partly as a hotel, and such permission may be granted upon such terms and conditions as the Cabinet thinks fit.

(7) The Cabinet may make regulations relating to the manner of making an application under subsection (6).⁶

5. (1) Unless otherwise shown on the strata plan, if a strata lot is separated from another strata lot, the common property or another parcel of land by a wall, floor or ceiling, the boundary of the strata lot is midway between the surface of the structural portion of the wall, floor or ceiling that faces the strata lot and the surface of the structural portion of the wall, floor or ceiling that faces the other strata lot, the common property or the other parcel of land.

Boundaries of strata lots

(2) If a strata lot is not separated from another strata lot, the common property or another parcel of land by a wall, floor or ceiling, the boundary of the strata lot is as shown on the strata plan.

(3) A boundary shown on the strata plan shall be shown in a manner approved by the Registrar.

(4) In the case of a vacant land strata scheme, the boundaries of the strata lots shall be shown on the strata plan by reference to survey marks, and in compliance with regulations, if any, made under section 28 of the Land Surveyors Law (1996 Revision) for the purposes of this section.

(1996 Revision)

6. (1) Every strata plan shall-

Requirements of a strata plan

(a) state the full reference of the parcel and be described as a strata plan;

⁶ Sub-clauses (6) and (7) are in the current Law and were inserted because of the definition of “hotel” under the Hotel Aids Law which is as follows-

“hotel” means any building or group of buildings within the same precinct containing or intended to contain when completed an aggregate number of not less than ten bedrooms and facilities for meals for the accommodation of transient guests including guests for reward together with the precinct thereof and all other buildings and structures within such precinct not being a strata lot or an apartment house;”.

- (b) delineate the boundaries of the parcel and, except in the case of a vacant land strata plan, the location of any building or buildings in relation thereto;
- (c) include such elevations, sections, plans, diagrams and other information as shall be sufficient to-
 - (i) illustrate the strata lots and distinguish each strata lot by a number;
 - (ii) subject to sub-paragraph (iii), define the boundaries of each strata lot in accordance with section 5, but it shall not be necessary to show any bearings or dimensions of the strata lots;
 - (iii) in the case of a strata lot in a vacant land strata scheme, define the boundaries in accordance with section 5; and
 - (iv) specify the approximate area of each strata lot;
- (d) have endorsed upon it a schedule setting out the unit entitlement of each strata lot indicating, as a whole number, the proportion of the common property allocated to that strata lot;
- (e) have endorsed upon it the address at which documents may be served upon the corporation; and
- (f) contain such other particulars and be accompanied by such certificates and other documents as may be prescribed.

(2) The reference of the parcel and the number of the strata lot shall together be a sufficient reference to a strata lot.

(3) A strata plan which relates to a strata scheme other than a vacant land strata scheme shall not be registered unless the Registrar is satisfied that the building or buildings in the strata scheme has or have exterior walls, roof or roofs, windows and doors.

(4) Parking stalls, garage areas, gardens, enclosed storage areas and similar areas or spaces intended to be used in conjunction with a strata lot shall not be designated as separate strata lots but shall be included as part of a strata lot or as part of the common property.

Further provisions as to
registration of strata
plans

7. (1) A strata plan lodged for registration shall be accompanied by certificates given by a licensed surveyor in accordance with section 35.

(2) A strata plan shall not be registered if, in the opinion of the Registrar, the name of the strata scheme endorsed on the plan is offensive or otherwise undesirable.

(3) When a strata plan is lodged for registration the Registrar shall allocate a number to the plan, and, if it complies with this Law and the regulations, shall register it in the prescribed manner.

8. (1) A strata plan lodged for registration under this Law may, by an appropriate endorsement that delineates the area or space affected and refers to this section, restrict the use to which the parcel or part of the parcel may be put.

Strata plan may restrict use of parcel or part of parcel

(2) Subject to subsections (5) and (6), a strata plan may be amended, by special resolution of the corporation, to restrict the use of the parcel or part of the parcel.

(3) A resolution under subsection (2) shall refer to a plan of the parcel showing the area or space affected.

(4) Where a strata plan restricts the use of the parcel or part of the parcel, a proprietor of any strata lot that is part of the parcel shall not use, or permit to be used, the parcel or part of the parcel in any manner that contravenes the restriction.

(5) Subject to subsection (6), restrictions endorsed on a strata plan under this section may be added, varied or removed by an ordinary resolution of the corporation.

(6) A resolution adding a restriction to or varying or removing a restriction endorsed on a registered strata plan under this section shall not be effective until notice of the resolution is filed in the prescribed manner with the Registrar and the Registrar has approved such resolution in the prescribed manner.

9. (1) A proprietor shall not, without the prior written approval, expressed by a majority of members of the executive committee, cause or permit any structure to be erected on his strata lot or alter or extend any structure on his strata lot.

Structural erections, alterations and extensions restricted

(2) The grounds on which approval may be refused are-

- (a) in the case of a strata lot that is not a vacant strata lot, that the carrying out of the proposal-
 - (i) will result in a structure that is visible from outside the strata lot and that is not in keeping with the rest of the development;
 - (ii) may affect the structural soundness of a building;
 - (iii) may interfere with any easement created under this Law; or
- (b) any other ground that is prescribed.

(3) In this section, “structure” includes any proposed improvement.

Further provisions as to approvals for purposes of section 9

10. (1) A proprietor who wishes to obtain an approval required under section 9(1) shall apply in writing to the executive committee and in the application shall set out details of the work proposed and such other prescribed information.

(2) Notice in writing of the decision on an application shall be given to the applicant by the executive committee within sixty days of receipt of the application from the proprietor.

(3) If an application made under subsection (1) is not approved, a notice under subsection (2) shall state the ground or grounds on which approval is refused.

(4) If notice of a decision is not given to the applicant in accordance with subsection (2) and, where applicable, subsection (3), the approval applied for shall be considered to have been given.

(5) Where an application is not approved a proprietor may apply for mediation in accordance with section 148 or to the summary court in accordance with section 152.

Re-subdivision within a scheme

11. (1) A strata lot or common property, or a strata lot and common property, may be re-subdivided by the registration of a plan under and in the manner provided by this Law as a plan of re-subdivision.

(2) A strata lot or common property, or a strata lot and common property, may be re-subdivided for purposes which include boundary realignment or the creation of new strata lots from a strata lot or from common property or a combination of those variations.

(3) The reference in subsection (1) to common property does not include common property that is the subject of a lease accepted by the corporation under section 32.

Requirements for plan of re-subdivision

12. A plan of re-subdivision shall-

- (a) be accompanied by an application by a proprietor or by a corporation in the prescribed form requesting the Registrar to register the plan; and the application shall confirm that the corporation has, by a special resolution, consented to the proposed re-subdivision and to the proposed allocation of unit entitlement set out in the application;

- (b) define, in the prescribed manner, the boundaries of each strata lot in the parcel that is to be altered or created by the plan of re-subdivision and do so by reference to a floor plan or a survey plan;
- (c) be accompanied by a certificate given by a licensed surveyor containing such information as the Registrar may require; and
- (d) be accompanied by a certificate given by every person who-
 - (i) has a registered interest in any strata lot proposed to be affected otherwise than as the proprietor of the strata lot; or
 - (ii) is a cautioner in respect of any such strata lot,certifying his consent to the proposed re-subdivision.

13. Every transfer or other document that is necessary to give effect to a plan of re-subdivision shall be lodged for registration together with the plan of re-subdivision.

Transfers etc. to give effect to re-subdivision plan

14. (1) Upon registration, a plan of re-subdivision shall be deemed to be part of the strata plan as previously registered, and the Registrar shall direct that the strata plan and the schedule of unit entitlement be amended in the manner prescribed.

Effect of registration of plan of re-subdivision

(2) Upon registration of a plan of re-subdivision every strata lot of the strata plan as previously registered that-

- (a) is enlarged under the plan of re-subdivision by the addition of part of a strata lot or common property of the strata plan as previously registered; or
- (b) is diminished under the plan of re-subdivision; and

is, by operation of law, subject to any incumbrance registered or caution lodged with the Registrar against the first-mentioned strata lot and every such incumbrance or caution is deemed to be amended accordingly.

(3) Upon registration of a plan of re-subdivision every strata lot or part strata lot of the strata plan as previously registered that is common property under the plan of re-subdivision by operation of law vests in the corporation.

15. (1) Two or more strata lots may be consolidated into one strata lot by the registration of a plan under and in the manner provided by this Law as a strata plan of consolidation.

Consolidation of strata lots

(2) The unit entitlement of a strata lot created by the consolidation of two or more strata lots shall be the sum of the unit entitlements of each of those strata lots.

- (3) A strata plan of consolidation shall-
- (a) be accompanied by an application by a proprietor or by a corporation in the prescribed form requesting the Registrar to register the plan; and the application shall confirm that the corporation has, by a special resolution, consented to the proposed consolidation and to the proposed allocation of unit entitlement set out in the application;
 - (b) define, in the prescribed manner, the boundaries of each strata lot in the parcel that is to be altered or created by the plan of consolidation and do so by reference to a floor plan or a survey plan;
 - (c) be accompanied by a certificate given by a licensed surveyor containing such information as the Registrar may require; and
 - (d) be accompanied by a certificate given by every person who-
 - (i) has a registered interest in any strata lot proposed to be affected otherwise than as the proprietor of the strata lot; or
 - (ii) is a cautioner in respect of any such strata lot,certifying his consent to the proposed consolidation.

(4) Upon registration of a strata plan of consolidation the Registrar shall close the register in relation to the strata lots which have been consolidated and open a new register in relation to the consolidated strata lot.

Transfers etc. to give effect to plan of consolidation

16. Every transfer or other document that is necessary to give effect to a plan of consolidation shall be lodged for registration together with the plan of consolidation.

Effect of registration of plan of consolidation

17. (1) Upon registration, a strata plan of consolidation shall be deemed to be part of the strata plan as previously registered, and the Registrar shall direct that the strata plan and the schedule of unit entitlement be amended in the manner prescribed.

(2) Upon registration of a strata plan of consolidation every strata lot of the strata plan as previously registered that is enlarged under the plan of consolidation by the addition of part of a strata lot of the strata plan as previously registered is, by operation of law, subject to any incumbrance registered or caution lodged with the Registrar against the first-mentioned strata lot and every such incumbrance or caution is deemed to be amended accordingly.

Conversion of strata lots into common property

18. (1) One or more strata lots may be converted into common property by the registration of a transfer executed by the proprietor or proprietors of that strata lot or those strata lots and by the corporation.

- (2) A transfer under subsection (1) shall not be registered unless-
- (a) it is accompanied by a certificate of the corporation certifying that the corporation has by super-majority resolution, consented to the conversion effected by the transfer; and
 - (b) every charge, current lease, caution or other interest recorded in the register in relation to the strata lot or each strata lot to which the transfer relates has, in so far as it affects any such strata lot, been discharged or surrendered or withdrawn or otherwise disposed of.

(3) Upon the registration of a transfer under this section, the land comprised in the transfer becomes common property and is subject to the provisions of this Law relating to common property and the Registrar shall direct that the strata plan and the schedule of unit entitlement be amended in the prescribed manner.

19. The unit entitlement of a strata lot, as stated in the schedule referred to in section 6, determines-

Unit entitlement of strata lots

- (a) the quantum of the undivided share of each proprietor in the common property; and
- (b) subject to section 41(1)(c)(ii), the proportion payable by each proprietor of contributions levied in accordance with bye-laws made under that section.

PART 3 - STRATA MANAGEMENT STATEMENTS

20. (1) The Registrar shall not register a strata plan which relates to only part of a building or part of parcel unless he also registers a strata management statement for the building or the parcel concerned.

Management statement

(2) The Registrar may dispense with the requirement for a strata management statement-

- (a) if all of the remainder of the building or the parcel concerned will be common property;
- (b) if a strata management statement has already been registered for the building or parcel concerned; or
- (c) on the direction of the Cabinet, given on such grounds as the Cabinet considers sufficient.

(3) A strata management statement may be amended in accordance with this Law and any amendment of such a statement shall be in the prescribed form.

(4) A strata management statement shall comply with either Part A or Part B of Schedule 1 as is relevant to the scheme.

(5) The Registrar may register a strata management statement and an amendment of such a statement by making such recordings in the register as he considers appropriate.

(6) The Registrar may refuse to register a strata management statement or any amendment of such a statement if the application for registration fails to comply with any requirement made by this Law or the regulations or is not accompanied by the prescribed fee.

Registration of strata management statement

21. (1) If a strata management statement has been registered in accordance with this Part, the Registrar shall record in the part of the register relating to the corporation of the strata scheme concerned and the common property, if any-

- (a) the existence of the statement and of any subsequent amendment of it that is registered; and
- (b) such information relating to the statement and any amendment of it as the Registrar considers appropriate.

(2) The Registrar shall make a similar record in the part of the register for each of the other corporations for the other strata schemes in the building or the parcel concerned.

Amendment of strata management statement

22. (1) A registered strata management statement may be amended only if the amendment is-

- (a) supported by a special resolution of the corporation for each strata scheme for part of the parcel or building concerned and by each person who is a registered proprietor in any part of that parcel or building that is not included in a strata scheme; or
- (b) ordered under this or any other Law by a court.

(2) An amendment of a strata management statement shall not have effect under this Part unless it is recorded in the part of the register-

- (a) for each of the corporations for the strata schemes for part of the parcel or building concerned; and
- (b) for each part of the parcel or the building or site concerned that does not form part of a strata scheme.

Signing of strata management statement

23. (1) The Registrar may register a strata management statement or any amendment of such a statement only if the statement or amendment-

- (a) is lodged with a certificate given by the secretary of the corporation for each strata scheme, if any, for a part of the

building or the parcel concerned certifying that the statement is supported by a special resolution of the corporation;

- (b) has been signed by each person who is a registered proprietor of a part of the parcel or the building or its site that is not included in a strata scheme (whether or not it is included in a proposed strata scheme); and
- (c) has been signed by every chargee of a charge registered in relation to such part of the parcel or building or its site.

(2) The Registrar may refuse to register a strata management statement or an amendment of such a statement unless there have been lodged in the office of the Registrar written consents to the registration of the statement or amendment signed by or by an agent authorised by one or more of the following as the Registrar determines-

- (a) the lessee under any lease of an unexpired term of five or more years,
- (b) the judgment creditor under any writ, recorded in the register relating to any common property affected by the statement or amendment; or
- (b) the cautioner under a caution affecting any estate or interest of any such registered proprietor or chargee or under a caution affecting any such common property.

(3) The Registrar may, in a particular case, dispense with any signature required by or under this section without giving notice to any person.

24. (1) A registered strata management statement relating to the management of a strata scheme has effect as a deed containing the covenants referred to in subsection (2) entered into by each person who is-

Effect of strata
management statement

- (a) a corporation of a strata scheme for part of the building or part of the parcel; or
- (b) a proprietor, chargee or lessee of any of the strata lots in such strata scheme; and
- (c) any other person who is the registered proprietor in any part of that parcel or the building or its site (being a part affected by the statement) or the chargee of any such part.

(2) The covenants referred to in this section are-

- (a) a covenant by which those persons jointly and severally agree to carry out their obligations under the registered strata management statement in force; and
- (b) a covenant by which those persons jointly and severally agree to permit the carrying out of those obligations.

- (3) A strata management statement ceases to have effect under this Part-
 - (a) in relation to a person who is described in subsection (1)(b) or (c), on that person ceasing to be a person so described; and
 - (b) in relation to all of the persons described in subsection (1), on termination of all strata schemes to which the strata management statement relates.

(4) Subsection (3) does not prejudice or affect any obligation that was incurred by a person, or any right that accrued to a person, under the strata management statement while the agreement was in force.

(5) Except as may be provided otherwise by this Law or the regulations, a provision in any instrument under which the strata management statement is excluded, modified or restricted is void.

(6) Without limiting subsection (5), a provision of a phased strata plan relating to a strata scheme is void to the extent, if any, that it is inconsistent with any provision of a strata management statement relating to that strata scheme.

(7) A covenant entered into under a strata management statement does not merge in a transfer of a strata lot.

(8) Except as provided by Part 12, nothing in this section affects any right or remedy that a person may have under a strata management statement apart from a right or remedy under this Part.

PART 4 - STRATA LOT REGISTERS, STRATA EASEMENTS, ETC.

Registration of strata
plan

25. If the Registrar is satisfied that an application for registration of a strata plan is in order he shall-

- (a) file the strata plan;
- (b) open a new register in respect of each strata lot shown on the strata plan in accordance with section 26;
- (c) in respect of the register of a parcel that does not relate to a strata lot development scheme-
 - (i) record in the property section that the land comprised consists only of the common property;
 - (ii) in the proprietorship section, delete the name of the developer and substitute the name of the corporation established under this Law;
 - (iii) enter a restriction prohibiting any dealings with the land otherwise than by order of the court or of the Registrar; and

- (iv) note in the incumbrances section that registers in respect of the strata lots have been opened; and
 - (d) in the case where the plan relates to a strata lot development scheme, note, on the appropriate part of the register for the parcel, that the parcel is subject to phased development.
26. (1) The registers opened by the Registrar in accordance with section 25 in respect of each strata lot in a parcel shall record-
- Strata lot registers
- (a) all the particulars recorded in the property section of the register relating to the strata lot including the relevant unit entitlement and the relevant parcel;
 - (b) the developer as the first proprietor of the strata lot; and
 - (c) the incumbrances noted in the incumbrances section of the register relating to the parcel.
- (2) Notwithstanding subsection (1), if the Registrar is satisfied that any of such particulars or incumbrances do not apply to a strata lot he shall omit them from the register relating to such strata lot and record the reason for his decision.
- (3) A strata lot shall be deemed-
- (a) for the purposes of sections 23 and 24 of the Registered Land Law (2004 Revision) to be a parcel; and
 - (b) for all purposes of this Law to be land.
- (2004 Revision)
27. (1) In respect of each strata lot there shall be implied-
- Support and services
- (a) in favour of the proprietor and as appurtenant to his strata lot-
 - (i) an easement for the subjacent and lateral support thereof by the common property and by every other strata lot capable of affording support; and
 - (ii) easements for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air, heating oil and other services including telephone, radio and television services, through or by means of any pipes, wires, cables or ducts for the time being existing in the land comprising the parcel to the extent to which those pipes, wires, cables or ducts are capable of being used in connection with the enjoyment of that strata lot; and
 - (iii) shelter for his strata lot by all such parts of the building as are capable of affording shelter.
 - (b) as against the proprietor and to which his strata lot shall be subject-

- (i) an easement for the subjacent and lateral support of the common property and of every other strata lot capable of enjoying support;
- (ii) easements for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air, heating oil and other services including telephone, radio and television services, through or by means of any pipes, wires, cables or ducts for the time being existing within that lot, as appurtenant to the common property and also to every other strata lot capable of enjoying such easements; and
- (iii) shelter of the common property by every part of a building that is shown on the strata plan as part of a strata lot and that is capable of providing shelter.

(2) A proprietor shall not do any thing or permit any thing to be done on or in relation to his strata lot so that-

- (a) any support or shelter provided by that strata lot for another strata lot or common property is interfered with; or
- (b) the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air, heating oil and other services, including telephone, radio and television services, through or by means of any pipes, wires, cables or ducts in the strata lot or common property is interfered with.

(3) The easement of shelter created by this section entitles the proprietor of the dominant tenement to enter on the servient tenement to replace, renew or restore any shelter at his or its own cost and upon reasonable notice except in the case of an emergency where no notice will be required.

(4) Sub-sections (1)(a)(iii), (1)(b)(iii) and (3) do not apply to a vacant land strata scheme.

Access for maintenance where part of building intrudes into another strata lot

28. (1) Where the boundary of a strata lot or part of a strata lot is the external surface of a part of a building and the part is on the boundary with another lot, the proprietor of the strata lot that includes that part, and his employees and agents, may-

- (a) inspect, alter, repair and replace the part; and
- (b) enter on the other strata lot, if necessary with vehicles and equipment, for the purpose of doing so,

and shall repair any damage to the adjacent lot which may arise as a result of any such alteration, repair or replacement or entry.

(2) In exercising any power given under subsection (1) a proprietor shall give the proprietor of the adjacent lot reasonable notice of his intention to carry out any work under subsection (1) except in the case of an emergency for which no notice is required.

(3) The rights created by subsection (1) are an easement to which the other strata lot is subject.

29. All ancillary rights and obligations reasonably necessary to make easements effective shall apply in relation to easements implied or created by this Law. Ancillary rights

30. (1) The common property in a strata scheme shall be held by the proprietors in common shares proportionate to the unit entitlement of their respective strata lots. Ownership of common property

(2) Except as is provided in this Law, no share in the common property shall be disposed of except as appurtenant to a strata lot and any disposition of a strata lot shall operate to dispose of the share of the disposing party in the common property without express reference thereto.

31. (1) A corporation may, pursuant to a special resolution, direct the corporation, to accept a transfer or acquire a lease or sub-lease of any land for the purpose of enjoying such land as common property or for such other purpose of the corporation as may be determined by special resolution of the proprietors. Acquisition of additional common property

(2) Every such acquisition, lease or sub-lease under subsection (1) lodged for registration shall be endorsed with or accompanied by a certificate under the seal of the corporation that the resolution referred to in subsection (1) was duly passed, that the acquisition, lease or sub-lease conforms with the terms thereof and that all necessary consents were given; and such certificate shall, in favour of vendors of the land and in favour of the Registrar, be conclusive evidence of the facts stated therein.

(3) Upon the registration in the prescribed manner of any such transfer or acquisition of a lease or sub-lease-

- (a) the land comprised in the transfer, lease or sub-lease shall be deemed to be common property of the strata scheme and thereupon is subject to such of the provisions of this Law relating to common property and the Registrar shall make an appropriate recording in the register of such land, lease or sub-lease; and
- (b) the corporation is responsible for all payments and the performance of all duties required of the lessee by the terms of the lease or sub-lease.

Transfer or lease of
common property

(4) A corporation may, pursuant to a special resolution and with the concurrence of the lessor, surrender a lease accepted by it under this section.

32. (1) A corporation may, pursuant to a special resolution and where satisfied that all other persons concerned have consented in writing to the transfer or lease, execute a transfer or lease of common property, other than common property the subject of a lease accepted or acquired by the corporation pursuant to section 31(1).

(2) A corporation, pursuant to a special resolution and where satisfied that all other persons concerned have consented in writing to the transfer, may, if not prevented by the terms of the lease, transfer a lease of common property accepted or acquired by the corporation pursuant to section 31(1) or grant, by way of sub-lease, a lease of its estate or interest in common property the subject of a lease so accepted or acquired.

(3) A corporation may, if otherwise empowered so to do, re-enter under the terms of a lease, or, pursuant to a special resolution, accept a surrender of a lease, granted under subsection (1) or (2).

(4) Upon execution of a transfer or lease or sub-lease in accordance with subsection (1) or (2) the receipt of the corporation-

- (a) is a sufficient discharge for; and
- (b) exonerates the person taking under the transfer or lease or sub-lease from responsibility for the application of,

the moneys expressed to have been received by it and is likewise a sufficient discharge and exoneration for all moneys payable to the corporation under the transfer or lease or sub-lease.

(5) Every transfer or lease or sub-lease executed under subsection (1) or (2) shall be endorsed with or accompanied by a certificate of the corporation that the resolution referred to in the relevant subsection was duly passed and that all necessary consents were given.

(6) A certificate under subsection (5) is conclusive evidence of the facts stated in it in favour of a purchaser, lessee or sub-lessee of the common property and the Registrar.

(7) The Registrar shall-

- (a) in the case of a transfer of common property under this section, register the transfer accordingly; and

(b) in the case of a lease or sub-lease of common property under this section, register the lease or sub-lease in the manner prescribed.

(8) Upon the lodging for registration of a transfer of common property, the Registrar shall direct the amendment of the registered strata plan in the manner prescribed.

33. (1) A corporation may, pursuant to a special resolution-

Creation of easements
and covenants

- (a) execute a grant of easement or a restrictive covenant burdening the parcel;
- (b) accept a grant of easement or a restrictive covenant benefiting the parcel;
- (c) surrender a grant of easement or a restrictive covenant benefiting the parcel; or
- (d) accept the release of an easement or restrictive covenant binding the parcel.

(2) Subsection (1) does not authorise a corporation to accept a grant or to execute a surrender of an easement relating to common property the subject of a lease accepted or acquired by the corporation under section 31(1) that, apart from subsection (1), it is not entitled to accept or execute as a lessee or, by the terms of the lease, it is prevented from accepting or executing.

(3) A corporation may, pursuant to a super-majority resolution, consent to the execution or acceptance by a lessor of a grant or surrender of an easement relating to common property the subject of a lease accepted or acquired by the corporation under section 31(1).

(4) The corporation shall execute the appropriate instrument required under this section and any plan necessary therefor and every such instrument shall be valid and effective without execution by any person having an interest in the parcel.

(5) The receipt of the corporation of any moneys payable to the corporation under the terms of the instrument shall be a sufficient discharge, and shall exonerate the persons taking under the instrument from any responsibility for the application of the moneys expressed to have been so received.

(6) Every instrument executed pursuant to subsection (4) and lodged for registration with the Registrar shall be endorsed with or accompanied by a certificate of the corporation that the resolution was duly passed and that all necessary consents were given.

(7) In favour of persons dealing with the corporation pursuant to this section and in favour of the Registrar, the certificate referred to in subsection (6) shall be conclusive evidence of the matters certified in it.

(8) The Registrar shall register the instrument creating or surrendering a grant of easement or a restrictive covenant by noting it on the strata plan in the manner prescribed and in the appropriate section of the register relating to the parcel.

Encroachments treated as common property

34. Where a strata plan or plan of re-subdivision in respect of a strata scheme indicates the existence of an encroachment, the provisions of this Law, other than those relating to ownership and certification of title, apply to the encroachment as if it were common property.

Certificate of licensed surveyor

35. The certificate of a licensed surveyor which is required by section 7 to accompany a strata plan lodged for registration shall be in the prescribed form and shall certify that each strata lot that is not wholly within a building shown on the plan is within the legal boundaries of the parcel and either-

- (a) each building shown on the plan is within the external surface boundaries of the parcel; or
- (b) in a case where a part of a wall or building, or material attached thereto, encroaches beyond the external surface boundaries of the parcel-
 - (i) all strata lots shown on the plan are within the external surface boundaries of the parcel;
 - (ii) the plan clearly indicates the existence of the encroachment and its nature and extent; and
 - (iii) where the encroachment is not on to a public road, street or way, that an appropriate easement has been granted and will be lodged with the Registrar to enable it to be registered as an appurtenance of the parcel.

PART 5 - MANAGEMENT OF STRATA SCHEMES

Incorporation of proprietors

36. (1) The proprietors of all the strata lots contained in a strata plan shall, upon registration of the strata plan, become a body corporate (hereafter referred to as “a corporation”) under the name “The Proprietors, Strata Plan No. ” with the appropriate number of the strata plan inserted in the blank space.

(2) A corporation created under subsection (1) is one with perpetual succession and a common seal.

(3) A corporation-

- (a) is capable of suing and being sued;
- (b) shall be regulated in accordance with this Law and the bye-laws in force in respect of that corporation; and
- (c) may do and suffer all things that bodies corporate generally may, by law, do and suffer and that are necessary for or incidental to or consistent with the purposes for which a corporation is constituted.

(4) Any other law providing for the incorporation, regulation and winding up of companies shall not apply to a corporation.

37. (1) A corporation shall-

Duties of corporation

- (a) enforce the bye-laws and rules relating to a strata scheme;
- (b) control and manage the common property for the benefit of all the proprietors;
- (c) keep in good and serviceable repair, properly maintain and, where necessary, renew and replace -
 - (i) the common property, including the fittings, fixtures and elevators used in connection with the common property; and
 - (ii) any personal property vested in the corporation,

and to do so whether damage or deterioration arises from fair wear and tear, inherent defect or any other cause;

- (d) cause to be recorded in a loose-leaf or bound book, particulars of notices served on the corporation under this or any other law, and orders made by a court and served on the corporation and, in relation to each such notice or order -
 - (i) the date on which it was served and the manner of service;
 - (ii) the part of the parcel to which it relates;
 - (iii) the date by which compliance therewith is required; and
 - (iv) the date on which it is complied with;
- (e) cause to be kept minutes of its meetings, which shall include particulars of motions passed at those meetings;
- (f) cause to be kept proper books of account in respect of moneys received or expended by the corporation showing the items in respect of which the moneys were received or expended;
- (g) subject to section 39, cause to be prepared from the books of account referred to in paragraph (f), financial statements in accordance with section 39;
- (h) cause the audit of financial statements in accordance with section 39;
- (i) cause to be retained for six years or such other period as may be prescribed -

- (i) the records kept under, and the notices and orders referred to in paragraph (d);
- (ii) the minutes and books of accounts referred to in paragraph (e) and (f);
- (iii) the financial statements referred to in paragraph (g) and section 39;
- (iv) copies of correspondence received and sent by the corporation;
- (v) notices of meetings of the corporation and its executive committee;
- (vi) proxies delivered to the corporation;
- (vii) papers relating to motions for resolutions by the corporation and to the election of office holders and the executive committee;
- (viii) records of resolutions passed by proprietors; and
- (ix) such other documents as may be prescribed;
- (j) effect insurance in accordance with this Part;
- (k) comply with notices and orders of any competent public authority requiring repairs to or work to be done in respect of the parcel or building, or anything in, on or over it; and
- (l) carry out such other functions and duties as provided by this Law and any other Law.

(2) A corporation may employ such persons as it thinks fit to assist it in the exercise of any of its duties or functions.

(3) A corporation shall ensure that any person employed to assist it in the exercise of a duty or function has the qualifications necessary for the exercise of that duty or function.

Books of account

38. (1) The books of account which the corporation is required to keep in accordance with section 37(1)(f) shall include the following-

- (a) receipts;
- (b) passbook, deposit book or statement of deposits and withdrawals for the account of the corporation;
- (c) a cash record; and
- (d) a levy register.

(2) The corporation shall keep separate books of account for the administrative fund and the reserve fund.

(3) The books of account may be kept in any medium.

39. (1) A corporation shall, from the books of account kept in accordance with this Law, cause to be prepared financial statements for-
- Preparation and auditing
of financial statements
- (a) the period that commences on the date of registration of the strata plan and ends on a date that is not earlier than two months before the date of the first annual general meeting; and
 - (b) each period that commences on the date up to which those statements were last prepared under this section and ends on a date that is not earlier than two months before the next succeeding annual general meeting.
- (2) The financial statements shall comprise the following matters-
- (a) a statement of income and expenditure for the administrative fund; and
 - (b) a statement of income and expenditure for the reserve fund.
- (3) Each financial statement shall specify the fund and the period for which it is prepared.
- (4) The financial statements for a fund shall also specify the following-
- (a) the balance carried forward in the fund from the previous period;
 - (b) the particulars and amount of each item of income of the fund received during the current period;
 - (c) the particulars and amount of each item of expenditure from the fund during the current period;
 - (d) the amount of the contribution to the fund determined for each person liable to make such a contribution;
 - (e) the balance outstanding for each such contribution;
 - (f) the cash in the fund at the end of the current period;
 - (g) the balance of the fund;
 - (h) in respect of each liability to contribute to the fund, any unpaid arrears and any balance outstanding; and
 - (i) the extent to which, at the end of the current period, the fund is in debit or credit.
- (5) The executive committee shall approve the financial statements before placing them before an annual general meeting.
- (6) An approval under subsection (5) shall be evidenced by the signature at the bottom of the financial statements by two of the members of the executive committee authorised by the corporation to sign.

(7) A corporation may, pursuant to special resolution, cause the accounts and financial statements of the corporation to be audited before presentation to the annual general meeting.

(8) Where it is resolved that a corporation's accounts shall be audited, the accounts and financial statements of a corporation shall be prepared and audited in accordance with generally accepted accounting principles.

(9) The costs of an audit shall be an administrative expense payable from the administrative fund.

Roll to be kept by corporation

40. (1) A corporation shall prepare and maintain a roll containing the particulars required by subsection (4).

(2) The roll may be kept in any medium.

(3) A corporation may make or amend entries in the roll on the basis of -

(2004 Revision)

- (a) the information in documents registered under this Law or the Registered Land Law (2004 Revision); or
- (b) information provided by, or on behalf of, a proprietor or a chargee of a lot.

(4) The particulars to be entered in the roll are-

- (a) the name and address of each proprietor;
- (b) the name and address of any chargees;
- (c) the address for service of any proprietor or chargee of a strata lot who has provided an address for service to the corporation;
- (d) the name and address of any agent of the corporation employed by it to carry out duties of the corporation in relation to the strata;
- (e) particulars of insurance taken out by the corporation, including the following-
 - (i) the name of the insurance company;
 - (ii) the number of the insurance policy;
 - (iii) the nature of the risk insured;
 - (iv) the amount of the insurance;
 - (v) the due date for payment of the premium; and
 - (vi) the date on which the premium was last paid.

Levy of contributions on proprietors

41. (1) A corporation shall-

- (a) establish an administrative fund that is sufficient, in the opinion of the corporation, 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 corporation;

- (b) determine from time to time the amounts to be raised for the purposes described in paragraph (a);
 - (c) raise amounts so determined by levying contributions on proprietors-
 - (i) in proportion to the unit entitlements of their respective strata lots; or
 - (ii) where a bye-law referred to in section 51 is in force, in accordance with that bye-law; and
 - (d) subject to section 42, recover from any proprietor, any sum of money expended by the corporation for repairs or work done by it or at its direction in complying with any notice or order of a competent public authority in respect of that portion of the building comprising the strata lot of that proprietor.
- (2) A corporation may by ordinary resolution-
- (a) establish a reserve fund for the purpose of accumulating funds to meet contingent expenses, other than those of a routine nature, and other major expenses of the corporation likely to arise in the future;
 - (b) determine from time to time the amounts to be raised for the purpose described in paragraph (a); and
 - (c) raise amounts so determined by levying contributions on the proprietors in proportion to the unit entitlements of their respective strata lots.
- (3) The functions set out in subsection (1)(a), (b) and (c) and subsection (2) shall be exercised by the executive committee unless the bye-laws of the corporation provide otherwise.
- (4) Any contribution levied under this section-
- (a) becomes due and payable to the corporation in accordance with the resolution passed to make the levy;
 - (b) if not paid when it becomes due and payable, bears interest on the amount unpaid at a rate specified in section 42 unless the corporation determines, either generally or in a particular case, that an unpaid contribution shall bear no interest or interest at a lesser rate; and
 - (c) including interest accrued under paragraph (b), may be recovered by the corporation in accordance with the provisions under section 42 as a debt due to the corporation or in a court of competent jurisdiction; and the corporation may agree to a compromise of such a debt.

(5) Interest paid or recovered under subsection (4) or (6) shall form part of the fund to which the contribution belongs.

(6) A proprietor is liable, in respect of any contribution levied under this section and any interest thereon, jointly and severally with any prior proprietor who was liable to pay that contribution and interest when that proprietor became the proprietor of that strata lot, to pay so much of that contribution and interest as was unpaid when he became the proprietor of that strata lot.

(7) Contributions to be paid by proprietors in accordance with this section are known as strata fees and shall include any late fees payable in accordance with bye-laws.

Collection of strata fees

42. (1) Where a proprietor has failed to pay contributions levied under section 41, he shall pay to the corporation within thirty-one days of demand all such contributions.

(2) Subject to subsection (6), where a proprietor does not make the payment specified in subsection (1) within the thirty-one days, the proprietor shall pay interest thereon at the US prime lending rate of the corporation's bankers plus five per cent from the date of default, which interest shall accrue from day to day until the date of actual payment.

(3) Where-

- (a) a proprietor does not make the payments specified in subsection (1) within one hundred and twenty days of demand or the due date;
- (b) the proprietor becomes bankrupt or makes composition with his creditors; or
- (c) the proprietor, being a corporation, enters into liquidation,

the proprietor shall be deemed to have authorised the corporation to enter into possession of his strata lot and shall be deemed to have appointed the corporation to be the receiver of the rents and profits of his strata lot until such date as the payments specified in subsection (1) have been made by him to the corporation or received by the corporation pursuant to the appointment; and the corporation shall have the same powers of receiver as a receiver appointed by the court.

(4) Subsection (3) does not apply where a chargee of the strata lot has appointed a receiver in respect of the strata lot.

(5) The corporation shall not be liable for any damage or loss caused to the strata lot or chattel therein which loss or damage may have arisen after action

is taken by the corporation and the executive committee under this section unless such loss or damage is caused by the negligence of the corporation or the executive committee.

(6) Where a proprietor refuses to allow the corporation to enter into possession of his strata lot in accordance with subsection (3) or where subsection (4) applies, the corporation may commence action in a court of competent jurisdiction to collect payments specified in subsection (1) which are due and payable; and a proprietor is liable-

- (a) subject to subsection (7), to a civil penalty of four thousand dollars; and
- (b) from the date of commencement of the court action, to pay interest on the monies owed at the rate of twelve per cent per annum which interest shall accrue from day to day until payment.

(7) A proprietor is liable for a penalty under subsection (6) only once in any year in an action by the corporation and any penalty levied under subsection (6) shall form part of the fund to which the contribution belongs.

43. (1) Every registered charge of a strata lot shall be deemed to contain a provision that- Chargee's rights⁷

- (a) the chargee has the right to collect the proprietor's contribution to the administrative expenses and shall promptly pay the amount so collected to the corporation on behalf of the proprietor;
- (b) the chargee has the right to pay-
 - (i) the amounts of the proprietor's contribution to the administrative expenses that from time to time fall due and are unpaid in respect of the charged strata lot; and
 - (ii) all interest owing and all reasonable legal costs and reasonable expenses that the corporation incurs in connection with the collection or attempted collection of the amounts described in subparagraph (i);
- (c) payments made by the chargee under paragraph (b), together with interest and all reasonable costs, charges and expenses incurred in respect of the payments, are to be added to the debt secured by the charge and to be payable, with interest at the rate payable on the charge; and
- (d) if after demand the proprietor fails to fully reimburse the chargee, the charge immediately becomes due and payable at the option of the chargee and the chargee shall have such rights as are

(2004 Revision)

⁷ See precedent- section 88 of Ontario Condominium Act

applicable in the circumstances in accordance with the Registered Land Law (2004 Revision).

(2) A corporation shall, on request and free of charge, provide to the chargee of a strata lot a written statement setting out the administrative expenses in respect of the strata lot and, if there is a default in the payment of them, the amounts described in section 41(1) in respect of the strata lot.

(3) A chargee of a strata lot who wishes, without having to make a specific request each time, to receive notices of annual or special general meetings and notices of administrative expenses which are in default, shall give a chargee's request for notification in the prescribed form to the corporation and the corporation shall provide the notices accordingly.

Powers of corporation

44. (1) In addition to any other power given under this Law, a corporation may-

- (a) purchase, lease, transfer or obtain or grant a licence over real property on behalf of the proprietors in connection with their enjoyment of the common property or for use by the corporation in the performance of its functions in accordance with the provisions of this Law;
- (b) purchase, hire or otherwise acquire personal property for use by proprietors in connection with their enjoyment of the common property or for use by the corporation in the performance of its functions in accordance with the provisions of this Law;
- (c) sell or otherwise dispose of personal property owned by it;
- (d) borrow moneys required by it in the performance of its functions;
- (e) secure the repayment of moneys borrowed by it, and the payment of interest thereon, by negotiable instrument, or charge of unpaid contributions (whether imposed or not), or charge of any property vested in it, or by a combination of those means;
- (f) where the corporation considers it necessary, effect a compromise of any action for the recovery of money due to the corporation; or
- (g) make an agreement with any proprietor of a strata lot for the provision of amenities or services by it to that strata lot or to the proprietor of that strata lot.

(2) Any interest received on an investment made under subsection (1) shall form part of the fund to which the investment belongs.

Corporation may grant licence to use common property

45. (1) A corporation may grant a licence to a proprietor or group of proprietors to use common property in a particular manner or for particular

purposes if the corporation has approved the granting of the licence by special resolution passed at a general meeting of the corporation.

(2) A licence under subsection (1) may be given for a period of not more than two years and may be made subject to conditions.

(3) The corporation may renew the licence if approval to do so has been given by special resolution at a general meeting of the corporation and on renewal the corporation may change the period or conditions.

(4) The licence given under subsection (1) may be cancelled by the corporation in accordance with the terms and conditions of the licence or, where no notice period is specified in the licence, upon giving the proprietor or group of proprietors reasonable notice of the cancellation.

46. (1) A public authority may require a proprietor to carry out work on or in relation to his strata lot by serving notice to that effect on the proprietor.

Power of corporation to carry out work

(2) The public authority shall send a copy of the notice under subsection (1) to the corporation.

(3) Where a proprietor fails or neglects to carry out any work required to be carried out by him under a term or condition of a bye-law the corporation may carry out that work.

(4) Where a proprietor fails or neglects to carry out any work on or in relation to his strata lot required to be carried out by order of a court the corporation may carry out the work specified in the order.

(5) Where the corporation carries out any work on or in relation to a strata lot or common property under this section other than work performed for the benefit of the building generally, it may recover the cost of so doing, as a debt in a court of competent jurisdiction-

- (a) from the proprietor referred to in subsection (1) or (3); or
- (b) where the work is carried out pursuant to-
 - (i) subsection (1), from any person who, after the work is carried out, becomes the proprietor of the strata lot on or in relation to which the work was carried out; or
 - (ii) subsection (3), from any person who, after the work is carried out, becomes the proprietor of the strata lot in respect of which the bye-law referred to in subsection (3) was made.

(6) Where an order has been made to which subsection (4) refers and the order is not complied with, the corporation may recover from the person against whom the order was made the cost of carrying out the work as a debt in a court of competent jurisdiction.

(7) Where-

- (a) any part of a building comprised in a strata lot contains a structural defect which affects or is likely to affect another strata lot in that building or the common property; or
- (b) a defect occurs in any pipes, wires, cables or ducts within a strata lot,

the corporation may carry out such work as is necessary to rectify the defect and, where the defect is not due to any breach of the duty imposed on any person by this Law, the corporation shall be responsible for the cost of such work.

Power of corporation to enter

47. (1) For the purpose of carrying out-

- (a) any work pursuant to section 46(1), (3), (4) or (7);
- (b) any work required to be carried out by a corporation by a notice or order of a public authority;
- (c) any work referred to in section 37(1)(c);
- (d) any work necessary to repair or renew any pipes, wires, cables or ducts on a strata lot;
- (e) any work required to be carried out by the corporation by order of a court; or
- (f) any other work required or permitted to be carried out by the corporation under any other provision of this Law or as provided for in the bye-laws of the corporation,

the corporation may, by its agents, servants or contractors, enter upon any part of the parcel or any strata lot for the purpose of carrying out the work-

- (i) in the case of an emergency, at any time; or
- (ii) in any other case, at any reasonable time on notice given to a proprietor or any occupier of that part of the parcel.

(2) The corporation may, by its agents, enter upon any part of the parcel or any strata lot for the purpose of-

- (a) inspecting that part of the parcel; or
- (b) ensuring that the bye-laws are being observed,

and may do so, in the case of an emergency, at any time, or, in any other case, at any reasonable time on notice given to a proprietor or any occupier of that part of the parcel.

(3) A person shall not obstruct or hinder a corporation in the exercise of its power under subsection (1) or (2) and a person who contravenes this subsection is liable on summary conviction to a fine of one thousand dollars.

48. (1) There is implied in every agreement to which this section applies a provision that a corporation may terminate the agreement, by notice in writing to every other party to the agreement, after five years have passed since the agreement was entered into.

Power to terminate
certain contracts for
services

(2) No cause of action against any person arises from the exercise of the power referred to in subsection (1).

(3) An agreement shall not exclude the operation of subsection (1) and to the extent that it purports to do so it is of no effect.

(4) This section applies to an agreement if -

- (a) it relates to the provision of services to the corporation or the proprietors, including the services of an agent in connection with the management of the common property or the performance of the functions of the corporation;
- (b) it is made after the commencement of this Law;
- (c) either-
 - (i) it was entered into by the corporation when any proprietor held fifty per cent or more of the aggregate unit entitlement of the lots; or
 - (ii) the summary court has, by order made on the application of a proprietor, determined that the agreement is unfair to the proprietors of twenty-five per cent or more of the aggregate unit entitlement of the lots.

(5) The summary court may, on the application of any person made in respect of an agreement, by order extend the period of five years provided for by subsection (1), so far as it applies to that agreement, if satisfied that the agreement-

- (a) is fair to all proprietors; and
- (b) will remain fair to all proprietors during the extended period.

(6) An extended period under subsection (5) shall not exceed the term specified in the agreement or a period of ten years from the time when the agreement was entered into, whichever is the lesser.

Service of documents on corporation 49. A summons, notice, order or other document may be served on the corporation by post in a registered letter addressed to the corporation at the address shown on the strata plan.

Change of corporation's address for service 50. (1) A corporation may, in a general meeting, resolve that the address registered by the Registrar for the service of notices on the corporation shall be changed.

(2) Where-

- (a) a corporation has under subsection (1) resolved that the address for the service of notices on it shall be changed; and
- (b) the Registrar has made such record with respect to the change of address as he considers appropriate,

the address for service of notices on the corporation shall, notwithstanding any other provision of this Law, be the address so recorded.

Bye-laws 51. ⁸(1) Subject to subsection (5), the first bye-laws of a corporation are the bye-laws registered with the strata plan for that strata scheme.

(2) Bye-laws may include provisions relating to the following-

- (a) safety and security measures;
- (b) the keeping of pets;
- (c) parking;
- (d) garbage disposal;
- (e) behaviour in the strata scheme; and
- (f) the administration, management and control of common property.

(3) A bye-law may also-

- (a) regulate-
 - (i) the position, design, dimensions, methods and materials of construction and external appearance of buildings or other improvements on strata lots;
 - (ii) the maintenance and repair of buildings on strata lots or on common property;
 - (iii) landscaping, including the establishment, care and maintenance of lawns, gardens and other areas on strata lots;

⁸ Compare South Wales and South Australia legislation

- (b) impose requirements or restrictions relating to the appearance of strata lots or buildings or other improvements situated on strata lots;
- (c) regulate the use and enjoyment of strata lots in order to prevent interference with the use and enjoyment of other strata lots and common property;
- (d) regulate such other matters as are permitted by this Law to be regulated by bye- laws; or
- (e) provide that the corporation may recover any money owed to it by a proprietor under a bye-law as a debt owed to the corporation.

(4) A bye-law may confer discretionary powers on a corporation and a bye-law may apply to a particular strata lot or strata lots, to a class or classes of strata lots, or to strata lots or common property generally.

(5) Until bye-laws are made by a corporation of a residential strata scheme (not including a vacant land strata scheme) the bye-laws set out in Schedule 2 shall, as and from the registration of a strata plan relating to such strata scheme, be in force for all purposes in relation to that strata scheme.

(6) In the case of a strata scheme to which subsection (5) does not apply, an application for the registration of a strata plan shall be accompanied by bye-laws prepared by the developer and, until bye-laws are made by the relevant corporation, such bye-laws shall, upon registration of the strata plan and approval by the Registrar, be in force for all purposes in relation to the relevant parcel and the strata lots and common property therein.

52. (1) Instead of granting a licence under section 45, a bye-law may confer on the proprietor of a strata lot, or the proprietors of a group of strata lots, the exclusive right to use a specified part of the common property for the purpose or purposes set out in the bye-law.

Bye-law granting
exclusive use of part of
the common property

- (2) A bye-law-
 - (a) may impose conditions relating to the use of that part of the common property;
 - (b) may impose requirements on the proprietor of the strata lot or strata lots; and
 - (c) without limiting paragraph (b), may require the proprietor of the strata lot or strata lots to pay a fee, whether periodically or not, to the corporation or to the proprietor or proprietors of another strata lot or strata lots.

(3) A proprietor shall not erect a building or install a fixture on the part of the common property of which he has exclusive use or alter that part of the common property in any other way without the approval of a special resolution of the corporation.

(4) The proprietor or proprietors to whom exclusive use has been granted under this section shall each indemnify, defend and hold the corporation and any other proprietor to whom exclusive use has not been granted, harmless from and against—

- (a) all claims, actions, suits, demands, assessments or judgments asserted, and
- (b) all losses, liabilities, damages, costs and expenses alleged or incurred,

arising out of or relating to any operations, acts or omissions of the indemnifying proprietor or any of his agents and invitees in the exercise of the indemnifying proprietor's exclusive rights or the performance or observance of the indemnifying proprietor's obligations under the bye-law.

Restrictions on the making of bye-laws

53. (1) Subject to subsection (2), a bye-law shall not-

- (a) prohibit or restrict the transfer, transmission, leasing (including the granting of a right of occupation), charging of, or other dealing with, a strata lot;
- (b) prevent access by the proprietor or other person to a strata lot;
- (c) prevent a proprietor who suffers from a disability from keeping a dog on the strata lot or restrict the use of a dog by the proprietor if the dog is trained to assist the proprietor in respect of that disability; or
- (d) prevent a visitor to the parcel who suffers from a disability from using a dog trained to assist the visitor in respect of the disability.

(2) A bye-law may prohibit or restrict the proprietor from leasing or granting rights of occupation to a person who is not the family member of the proprietor in respect of his strata lot for valuable consideration for a period of three months or less.

(3) A bye-law cannot empower a corporation to-

- (a) screen potential lessees of a strata lot;
- (b) establish screening criteria for potential lessees of a strata lot;
- (c) require the approval by the corporation of lessees;
- (d) restrict the leasing of a strata lot by the corporation only;
- (e) require the insertion of terms in lease agreements; or

(f) otherwise restrict the lease of a strata lot except as provided in subsection (2)

(4) For the purposes of this section “family member” means-

- (a) a spouse of the proprietor;
- (b) a parent or child of the proprietor; or
- (c) a parent or child of the spouse of the proprietor.

(5) In subsection (4)-

“child” includes an adopted child or step-child;

“parent” includes an adopted parent or step-parent; and

“spouse” includes an individual of the opposite sex who has lived and cohabited with the proprietor, for a continuous period of at least two years at the relevant time, in a marriage-like relationship.

54. (1) A bye-law that-

- (a) reduces the value of a strata lot; or
- (b) unfairly discriminates against a proprietor,

Certain bye-laws may be struck out by court

may be struck out by order of the court on an application made under Part 12.

(2) An application referred to in subsection (1) can only be made by the person who was a proprietor of the strata lot when the bye-law came into force and shall be made within three months after the proprietor (or either or any of the proprietors where the strata lot is owned by two or more persons) first knew, or could reasonably be expected to have known, that the bye-law had been made.

(3) Where a bye-law is registered with the Registrar in accordance with this Law, the executive committee shall, in writing, notify all proprietors within twenty-one working days of such registration.

55. (1) Bye-laws may provide for penalties of five thousand dollars or less for a breach of any specified provision of the bye-laws.

Bye-laws may provide for penalties

(2) The penalties under a bye-law shall be enforced only by a corporation and may be recovered as a civil debt in a summary court.

56. (1) A bye-law may be varied or repealed by special resolution of the corporation.

Variation of bye-laws

(2) A variation or repeal of a bye-law shall not have effect until the relevant corporation has lodged with the Registrar a notification of such amendment or variation in the prescribed form and he has noted such variation or repeal on the strata plan.

(3) A notification cannot be lodged with the Registrar more than two years after the passing of the resolution for the variation or repeal of the bye-law.

(4) Subject to subsection (5), where the court varies or repeals a bye-law pursuant to section 54, the repeal or variation of the bye-law shall come into force at the expiration of a period of thirty-one days after the day on which the order is made.

(5) If an appeal is instituted then notwithstanding any order in force under subsection (4) the order, unless reversed or rescinded, takes effect under this section-

- (a) at the expiration of a period of thirty-one days after the day on which the appeal is determined or discontinued; or
- (b) on the day on which the order would have taken effect under subsection (1) if no appeal had been instituted,

whichever is the later.

(6) The Clerk of the Court shall lodge with the Registrar a copy of the order within fourteen days after the expiration of the period for appealing against the making of such order where no appeal has been filed or within fourteen days of the date on which the appeal against the order is determined or discontinued.

(7) If the requirements of this section are satisfied, the Registrar shall file the certified copy of the amended bye-law with the strata plan.

Date of operation of
bye-laws

57. (1) The first bye-laws of a corporation of a strata scheme come into operation when the strata plan is registered.

(2) Bye-laws which are varied in accordance with this Law come into operation when the certified copy of the bye-laws as varied are filed with the Registrar under section 56.

Invalidity of bye-laws

58. Bye-laws are invalid to the extent which they are inconsistent with-

- (a) a management statement registered with the relevant strata plan;
or
- (b) this Law or any other law or regulations made under this or any other law.

59. (1) The bye-laws for a strata scheme bind the corporation and the proprietors and any chargee, lessee or occupier of a strata lot to the same extent as if the bye-laws-

Persons required to comply with bye-laws

- (a) had been executed as a deed by the corporation and each proprietor and each such chargee, lessee and occupier; and
- (b) contained mutual covenants to observe and perform all the provisions of the bye-laws.

(2) In this section, “lessee” means, in relation to a strata lot in a leasehold strata scheme, a sublessee of the strata lot.

60. (1) A corporation shall, for a prescribed fee, make current copies of the bye-laws, rules and regulations available to proprietors, chargees, lessees and occupiers of strata lots and for purchase by persons considering purchasing a strata lot or entering into any other transaction in relation to such strata lot.

Availability of copies of bye-laws, rules and regulations

(2) The Registrar shall make copies of bye-laws registered with strata plans available for purchase by members of the public at the prescribed fee.

61.⁹ (1) A corporation shall, on application by a proprietor, by any person authorised by him or by a chargee of a strata lot-

Supply of information and certificates by corporation

- (a) provide such applicant within a period of two weeks or less from the date of the application a certificate setting out-
 - (i) particulars of any contribution payable in relation to his strata lot including details of any arrears of contributions in relation to the strata lot;
 - (ii) particulars of the assets and liabilities of the corporation;
 - (iii) particulars of any expenditure that the corporation has incurred, or has resolved to incur, and to which the proprietor is required to contribute, or is likely to be required to contribute as a special assessment;
 - (iv) particulars of any expenditure referred to under subparagraph (iii) which the corporation is considering at the date of the certificate and upon which a resolution will or may be made within a period of one year from the date of the certificate;
 - (v) particulars in relation to any other matter prescribed by regulations; and
- (b) provide or make available for inspection copies of-

⁹ Based on Western Australia

- (i) the minutes of general meetings of the corporation and meetings of its executive committee, if any, for such period, not exceeding two years, specified in the application;
- (ii) the financial statements of the corporation last prepared by the corporation;
- (iii) current policies of insurance taken out by the corporation; and
- (iv) any other documentary material prescribed by regulations.

(2) A corporation which, without a reasonable excuse, fails to comply with subsection (1) is liable to pay the sum of five hundred dollars to the relevant proprietor or the chargee on receiving a written request for payment from such person and evidence that an application was made in accordance with subsection (1); and the proprietor or chargee may, where the corporation fails to pay, recover such sum as a civil debt in the summary court.

(3) An application under this section shall be accompanied by the prescribed fee, if any.

(4) A corporation shall not charge more than the prescribed fee in respect of a service provided in pursuance of an application under this section.

(5) A corporation which contravenes subsection (4) commits an offence and is liable on summary conviction to a fine of five hundred dollars.

(6) The application under this section is duly made if given or sent to the manager of the strata scheme, the secretary of the corporation or a member of the executive committee or the proprietor designated to receive and deal with such applications.

(7) A person to whom a certificate of a corporation is provided under subsection (1)(a) may, as against the corporation, rely on the certificate as conclusive evidence, as at the date of the certificate, of the matters contained in the certificate.

Functions of executive committees

62. (1) The functions of a corporation shall, subject to this Law and to any restriction imposed or direction given at a general meeting, be performed by the executive committee of the corporation.

(2) An executive committee shall be constituted and shall perform its functions in accordance with and in the manner provided by this Law and the bye-laws of the corporation.

(3) In exercising the powers and performing the functions of the corporation, each member of the executive committee shall-

- (a) act honestly and in good faith with a view to the best interests of the corporation; and
- (b) exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.¹⁰

63. (1) Subject to section 64, the persons who are eligible to be members of the executive committee are-

Eligibility for executive committee

- (a) proprietors, including bodies corporate;
- (b) lessees who have been assigned their lessor's right to stand for the executive committee; and
- (c) an individual who is not a proprietor but who is nominated for election by a proprietor who is not a candidate for election.

(2) Notwithstanding subsection (1), the corporation may, by a bye-law passed at an annual or special general meeting held after the first annual general meeting, allow classes of persons, other than those referred to in subsection (1), to be members.

64. (1) Where a body corporate is chairman, secretary or treasurer of the corporation or a member of the executive committee, it may authorise an individual to perform on its behalf any function conferred by or under this Law or the bye-laws on the corporation as chairman, secretary or treasurer of the corporation or as a member of the executive committee and may revoke the authority of an individual so authorised.

Corporate body may be chairman, secretary, treasurer or executive committee member

(2) Where an individual performs a function that the individual is authorised to perform by a body corporate under subsection (1), the function shall be deemed to be performed by the body corporate.

65. If at any time there is no executive committee of a corporation or there are insufficient members of the executive committee to constitute a quorum in accordance with the bye-laws of the corporation, the functions of the executive committee may be performed by the proprietors in a general meeting of the corporation.

Performance of functions where no executive committee or no quorum

66. (1) Except as authorised by or under this section an executive committee shall not, in any one case, undertake or agree to expenditure exceeding the sum obtained by multiplying-

Restrictions on powers of expenditure

¹⁰ BC Strata Property Act

- (a) a sum per strata lot fixed by special resolution of the corporation;
or
- (b) if no such sum is fixed, the prescribed amount per strata lot,

by the number of strata lots that are the subject of the strata scheme.

(2) Subsection (1) does not apply to-

- (a) expenditure that is deemed to be approved under subsection (3);
- (b) the payment of any premium of insurance effected by or on behalf of the corporation;
- (c) payments approved by the corporation for damages arising as a result of a fire, hurricane or other natural disaster;
- (d) any payment required to comply with-
 - (i) a notice or order served on the corporation by any public authority;
 - (ii) an order made with respect to the corporation by a court or tribunal; or
- (e) expenditure authorised by the corporation in a general meeting as part of the budget of the corporation.

(3) For the purposes of subsection (2)(a) expenditure is deemed to be approved if notice in writing of the purpose and amount of the proposed expenditure has been given to the proprietors and, within fourteen days after all proprietors have been given the notice, objection to the proposed expenditure has not been given in writing to the executive committee by -

- (a) the proprietors of not less than twenty-five per cent of the strata lots in the strata scheme; or
- (b) the proprietors of strata lots of which the total unit entitlement is at least twenty-five per cent of the aggregate unit entitlement of the strata lots in the strata scheme.

(4) Subsection (3) has effect subject to any restriction imposed on the executive committee by the bye-laws of the corporation.

Recovery of books and records by executive committee

67. (1) A person who has possession or control of-

- (a) any records, books of account or keys belonging to a corporation;
or
- (b) any other property of a corporation,¹¹

shall, within seven days after service by the corporation on the person of notice of a resolution of the executive committee requiring that person to do so, deliver

¹¹ NSW- Strata Schemes Management Act

those records, books of account, keys or other property to a member of the executive committee specified in the notice.

(2) Nothing in subsection (1) shall be construed so as to affect any lawful claim or lien which a person may have against or upon any records, accounts or property of a corporation.

68. (1) A developer shall convene a general meeting of the corporation within three months of the date on which there are proprietors of strata lots the subject of the strata scheme concerned (other than the developer) the sum of whose unit entitlements is at least one-third of the aggregate unit entitlement.

First annual general meeting

(2) A proprietor may convene the first meeting if the developer fails to do so.

(3) The meeting convened and held under subsection (1) or (2) shall be the first annual general meeting of the corporation.

69. (1) The developer shall deliver to the corporation at the first general meeting-

Business at the first general meeting

- (a) all plans, specifications, drawings showing water pipes, electric cables, drainage pipes, ventilation ducts or air-conditioning systems, relevant certificates (other than certificates of title for strata lots), diagrams (including lift wiring diagrams) and other documents (including policies of insurance) obtained or received by him and relating to the parcel or building or strata scheme; and
- (b) if they are in his possession or under his control, books of account and any notices or other records relating to the strata scheme,

other than documents which are subject to legal privilege, exclusively evidence rights or obligations of the developer and which are not capable of being used for the benefit of the corporation or any of the proprietors other than the developer.

(2) The following matters shall be addressed at the first general meeting-

- (a) the election of the chairman, treasurer and secretary;
- (b) the corporation's recurrent and non-recurrent expenditure in its first financial year and the amount to be raised by contributions from the proprietors of the strata lots to cover that expenditure; and
- (c) such other matters as are required by regulations or by the by-laws.

(3) Where a meeting of the corporation convened in accordance with this section is held after the time limited by this section for the holding of the meeting, it does not on that account fail to be the first annual general meeting of the corporation.

Voting at meetings

70. (1) Powers of voting conferred under this Law may be exercised-

- (a) in the case of a proprietor who is a child, by his guardian; and
- (b) in the case of a proprietor who is for any reason unable to control or is legally incapable of controlling his property, by the person who for the time being is authorised by law to control his property.

(2) Where the court, upon the application of the corporation or of a proprietor, is satisfied that there is no person able to vote in respect of a strata lot or that the person able to vote in respect of a strata lot cannot be found, the court may appoint a receiver or some other fit and proper person, for the purpose of exercising such powers of voting under this Law as the court shall determine.

(3) The court may order service of notice of an application under subsection (2) on such persons as it thinks fit or may dispense with service of that notice.

(4) On making an appointment under subsection (2), the court may make such order as it thinks necessary or expedient to give effect to the appointment, including an order as to the payment of costs of the application, and may vary any order so made.

(5) Where a proprietor holds his strata lot as a trustee he shall exercise the voting rights in respect of the strata lot to the exclusion of persons beneficially interested in the trust.

Performance of functions by proprietors in general meeting¹²

71. Where, by ordinary resolution passed at a duly convened general meeting of a corporation, a restriction has been imposed in relation to the performance of a function by the executive committee, that function may be performed to the extent that it is so restricted by the proprietors in a general meeting of the corporation.

Further interpretation for insurance provisions

72. For the purposes of this Part-

“building” includes-

- (a) a building consisting entirely of common property; and

¹² Section 52 Western Australia

- (b) fixtures built or installed on a strata lot, if the fixtures are built or installed by the developer as part of the original construction on the strata lot¹³;

but does not include-

- (c) fixtures removable by a lessee or sublessee at the expiration of a tenancy; or
- (d) anything prescribed by the regulations as not forming part of a building for the purposes of this definition;

“re-instatement cost”¹⁴ in relation to a contract of insurance of a building, requires provision to be specified in the policy-

- (a) for-
 - (i) the rebuilding of the building or its replacement by a similar building in the event of its destruction; and
 - (ii) the repair of damage to, or the restoration of the damaged portion of, the building in the event of it being damaged but not destroyed,

so that, in the case of destruction, every part of the rebuilt building or the replacement building and, in the case of damage, the repaired or restored portion, is in a condition no worse nor less extensive than that part or portion or its condition when that part or portion was new; and

- (b) for the payment of expenses incurred in the removal of debris and the remuneration of architects, surveyors, engineers and other persons whose services are necessary as an incident to the rebuilding, replacement, repair or restoration.

73. (1) Subject to subsection (2), a corporation shall-

Insurance of buildings
and corporations

- (a) insure and keep insured the building or buildings to the re-instatement cost thereof against fire, storm, lightning, explosion, earthquake, hurricane, flooding or inundation by the sea and all other similar perils usually insured against; and
- (b) effect and maintain insurance in respect of damage to property, death, or bodily injury for which the corporation could become liable in damages.

(2) This section does not apply to a corporation of a two-lot strata scheme if-

- (a) the corporation so determines by unanimous resolution;

¹³ See section 149 of BC Act

¹⁴ See Western Australia Strata Titles Act

- (b) the buildings comprised in one of those strata lots are physically detached from the buildings comprised in the other strata lot; and
- (c) no building or part of a building in the strata scheme is situated outside those strata lots.

(3) A building shall be insured for at least the re-instatement cost of the building indicated by the last valuation obtained for it in accordance with this Part.

(4) It is a defence to any claim by a proprietor or chargee that a corporation has failed to comply with subsection (1) for the corporation to prove that, despite having taken all reasonably practicable steps available to it to comply with that subsection, it is unable to find an insurer who is willing to enter into a contract of insurance that meets the obligation imposed by that subsection or that provides insurance cover required under this section at a premium which is affordable to the corporation.

(5) The defence under subsection (4) shall only apply where the executive committee had given due notice to all of the proprietors that the corporation has not complied with this section for the reasons or any of the reasons stated in subsection (4).

Deductible¹⁵

74. (1) Where a contract of insurance contains a deductible clause, the portion of a loss that is excluded from coverage shall be collected from the proprietors by assessment, be deposited into and become payable from the reserve fund.

(2) If a proprietor, a lessee of a proprietor or an occupier of a strata lot through a negligent act or omission causes damage to the proprietor's strata lot, the amount that is the lesser of the cost of repairing the damage and the deductible limit of the contract of insurance obtained by the corporation shall be added to the contributions payable for that strata lot.

(3) The corporation may pass a bye-law to extend the circumstances in subsection (2) under which an amount shall be added to the contributions payable for a proprietor's strata lot if the damage to the strata lot was not caused or contributed to by an act or omission of the corporation, its directors, officers, agents or employees.

Valuations to be obtained for the purposes of insurance

75. (1) A valuation of the re-instatement cost of a building that is required to be insured under this Part shall be obtained, at least once every three years or such lesser period as is provided under the bye-laws of a strata scheme, by-

¹⁵ Compare section 105 Ontario Condominium Act

- (a) if the whole building is the subject of one strata scheme, the corporation for that strata scheme; or
- (b) in any other case, the corporation for each strata scheme for part of the building.

(2) The valuation shall be carried out by a person who is a qualified chartered surveyor.

(3) The proportion of the cost of a valuation that is payable by a corporation or other person referred to in subsection (1)(b) is the same as the proportion of the premium for the damage policy that is payable by the corporation or person in respect of the building concerned.

76. (1) A proprietor shall not carry on any activity on or in his strata lot which would prevent the corporation from obtaining insurance cover for the building or any part of it or which may render such cover void or voidable.

Activity by proprietor which may cause higher premium

(2) A proprietor may carry on any activity on or in his strata lot permitted by the bye-laws which may cause the corporation to pay a higher premium under a contract of insurance than would otherwise have been payable if the proprietor has agreed in writing with the corporation, prior to carrying out such activity, to pay and has paid that part of the premium which is in excess of the amount the corporation would be liable to pay if the activity is not to be carried out.

77. (1) In addition to insurance effected by the corporation under this Law, a corporation shall effect and maintain insurance-

Further insurance by corporation

- (a) in respect of any occurrence against which it is required by law to insure, including where applicable, insurance against liability to pay compensation under the Workmen's Compensation Law (1996 Revision) and against such other risks as the corporation may determine;
- (b) against the possibility of the proprietors becoming jointly liable by reason of a claim arising in respect of any occurrence against which the corporation in accordance with a special resolution, decides to insure; and
- (c) against any damages for which the corporation could become liable by reason that without fee or reward or any expectation of fee or reward a person acting on behalf of the corporation does work in a building or on common property in the strata scheme.

(1996 Revision)

(2) The amount of the insurance shall be the amount for which a prudent person would insure.

(3) A corporation may insure and keep insured the building against any occurrence other than those occurrences referred to and included in section 73(1).

(4) If the insurance is reasonably available, a corporation may obtain and maintain insurance for the benefit of the members of the executive committee of the corporation against-

- (a) any liability and all costs, charges and expenses that the member sustains or incurs in respect of any action, suit or proceeding that is proposed or commenced against the person for or in respect of anything that the person has done, omitted to do or permitted in respect of the execution of the duties of office; and
- (b) all other costs, charges and expenses that the member sustains or incurs in respect of the affairs of the corporation,

but that insurance need not include indemnity against a liability, cost, charge or expense of the member incurred as a result of a breach of the duty to act honestly and in good faith.

(5) A proprietor may bring against the corporation of which the proprietor is a member any action that the proprietor might have brought against the corporation if the proprietor had not been a member of the corporation.

Insurance by proprietor

78. (1) Nothing in this Part limits any right of a proprietor to effect insurance.

(2) Insurance effected by a proprietor does not affect, and shall not be taken into consideration in determining the amount payable to a corporation under a contract of insurance entered into between it and an insurer pursuant to this Law, notwithstanding anything contained in that contract of insurance.

Proprietor may insure if corporation in default¹⁶

79. (1) If a proprietor or his chargee considers that a corporation is in breach of any obligation to insure imposed on it by this Law or the bye-laws, the proprietor or the chargee may effect and maintain in the name of the corporation such insurance as he thinks the corporation ought to effect and maintain to meet that obligation.

(2) The cost of the insurance under subsection (1) shall be a debt due to the proprietor or his chargee from the corporation and is recoverable as a civil debt by the proprietor or the chargee in a court of competent jurisdiction.

Insurance of charged lot

80. (1) Where a building is insured to its re-instatement cost, a proprietor may effect a policy of insurance in respect of any damage to his strata lot in a sum

¹⁶ Precedent section 56A Western Australia

equal to the amount secured, at the date of any loss referred to in such policy, by charges charged upon his strata lot.

(2) Where such policy of insurance is in force, then subject to the terms and conditions of the policy, the insurer shall be liable to pay thereunder to the chargees whose interests are noted thereon in order of their respective priorities-

- (a) the sum insured stated in such policy;
- (b) the amount of the loss; or
- (c) the amount sufficient, at the date of the loss, to discharge charges charged upon the strata lot,

whichever is less.

(3) Where the amount paid by an insurer in accordance with subsection (2) is sufficient to discharge a charge charged upon the strata lot the insurer shall be entitled to a transfer of that charge.

(4) Where the amount paid by an insurer in accordance with subsection (2) is less than the amount necessary to discharge a charge charged upon the strata lot the insurer shall be entitled to an assignment of an interest, to the extent of the amount paid by him, in such charge to secure the amount so paid on such terms and conditions, if any, as were agreed upon under subsection (7) or, failing agreement, on the same terms and conditions as those contained in the charge by the proprietor.

(5) Where a building is uninsured or has been insured for less than its re-instatement cost, a proprietor may-

- (a) effect a policy of insurance in respect of any damage to his strata lot in a sum equal to the re-instatement cost of his strata lot less any amount for which his strata lot is insured under any policy of insurance effected on the building; and
- (b) notwithstanding any existing policies, effect a policy of insurance in respect of damage to his strata lot in a sum equal to the amount secured at the date of any loss referred to in such policy, by charges charged upon his lot, and subsections (2), (3) and (4) shall apply in respect of any payment under such policy as they apply to a policy effected under subsection (1).

(6) For the purpose of subsection (5), the amount for which a strata lot is insured under a policy of insurance effected in respect of the building shall be determined by multiplying the value stated in such policy by the unit entitlement of the strata lot proprietor and dividing the product so obtained by the sum of the unit entitlement of all strata proprietors.

(7) For the purposes of subsection (4) or (5)(b), any insurer and chargee or chargees may, at any time, whether before or after a policy of insurance has been effected by a proprietor, agree upon the terms and conditions of the assignment of an interest.

(8) The policy of insurance authorised by this section and taken out by a proprietor in respect of damage to his strata lot shall not be liable to be brought into contribution with any other policy of insurance except another policy authorised by this section and taken out in respect of damage to the same strata lot and relates to the same debt.

Insurable interest 81. Notwithstanding any other law relating to insurance, a corporation shall, for the purpose of effecting any insurance entered into pursuant to this Part, be deemed to have an insurable interest in the subject matter of that insurance.

Application of insurance moneys to rebuilding 82. Subject to any order made under Part 12, where a corporation receives payment of moneys from an insurer in respect of the destruction of or damage to a building, those moneys shall forthwith be applied by the corporation in rebuilding, replacing, repairing or restoring the building so far as that may lawfully be effected.

Interpretation for leasing of strata lots by proprietor 83. For the purposes of this Part “lessor” means a proprietor who has leased his strata lot.

Lease restriction bye-law does not apply to some strata lots 84. Unless a bye-law that limits leases of strata lots in accordance with this Law is registered with the strata plan, such a bye-law does not apply to a strata lot until the later of-

- (a) one year after a lessee who is occupying the strata lot at the time the bye-law is passed ceases to occupy it as a lessee; or
- (b) one year after the bye-law is passed.

Exemption from lease restriction bye-law 85. (1) A proprietor may apply to the executive committee for an exemption from a bye-law that limits leases on the ground that the bye-law causes hardship to the proprietor.

- (2) The application under subsection (1) shall be in writing and shall state-
 - (a) the reason the proprietor thinks an exemption should be made; and
 - (b) whether the proprietor wishes a hearing by the executive committee.

(3) If the proprietor wishes a hearing, the executive committee shall hear the proprietor or his agent within four weeks after the date the application is given to the executive committee.

(4) An exemption shall be considered to be allowed if-

- (a) the corporation does not give its decision in writing to the proprietor-
 - (i) if a hearing is held, within one week after the hearing; or
 - (ii) if no hearing is requested, within two weeks after the application is given to the executive committee; or
- (b) the proprietor requests a hearing under subsection (2)(b) and the executive committee does not hold a hearing within four weeks after the date the application is given to the executive committee.

(5) An exemption granted by the executive committee may be for a limited time.

(6) The executive committee shall not unreasonably refuse to grant an exemption.

86. (1) If an agreement for the lease of a residential strata lot contravenes a bye-law that limits leases, the lessee-

Lease agreement in contravention of lease restriction bye-law

- (a) is not in contravention of the bye-law; and
- (b) may, within ninety days of learning of the lessor's contravention, end the tenancy agreement without penalty by giving notice to the lessor.

(2) If a lessee ends a tenancy agreement under subsection (1), the lessor shall pay the lessee's reasonable moving expenses to a maximum of one month's rent.

87. A proprietor, before he leases all or part of a strata lot, shall give the prospective lessee the current bye-laws and rules of the strata scheme and shall inform the corporation by written notice that he has done so.

Proprietor to give bye-laws to lessee

88. (1) A lessor may assign to a lessee some or all of the powers and duties of the lessor that arise under this Law, the bye-laws or the rules, but may not assign to a lessee the lessor's responsibility under this Law for the costs of remedying a contravention of the bye-laws or rules.

Assignment of powers and duties to lessee

(2) An assignment under this section is not effective until the lessor gives the corporation a written notice stating all of the following-

- (a) the name of the lessee to whom the assignment is made;

- (b) the powers and duties that have been assigned; and
- (c) the time period during which the assignment is effective.

(3) Notwithstanding the assignment of his powers and duties under subsection (1), the lessor shall remain liable for any claims, damages, costs charges or expenses arising from a breach of those powers or duties by the lessee but he may obtain a written indemnity from the lessee indemnifying him against all claims, damages, costs, charges or expenses incurred by that lessee as result of a breach of such powers or duties.

Long term lease

89. (1) In this section, “long term lease” means a lease to the same person for a fixed term of three years or more.

(2) If a residential strata lot is leased under a long term lease, the lessee is assigned the powers and duties of the lessor under this Law, the bye-laws and the rules for the term of the lease other than the financial obligations owed by the lessor to the corporation in relation to the strata lot unless the lease otherwise provides.

(3) The lessee, before exercising any powers of the lessor, shall give to the corporation written notice of the lease referred to in subsection (2), stating his name and the time period during which the lease is effective.

(4) The assignment does not include an assignment of the lessor's responsibility under this Law for the payment of fines or the costs of remedying a contravention of the bye-laws or rules.

(5) The lessee shall not, without the lessor's consent, exercise any power or right of a lessor-

- (a) to acquire or dispose of land;
- (b) to cancel or amend the strata plan; or
- (c) to do anything that would affect the proprietor's interest in the strata lot or common property.

(6) The lessor shall not deal with his interest in the strata lot or common property in a way that unreasonably interferes with the rights of the lessee under the lease or assignment.

Certain provisions do not apply to corporations for two and three strata lot schemes

90. (1) Notwithstanding the provisions of this Law, the sections set out in the following table do not apply to a corporation of two and three strata lot strata schemes-

Table

section	relating to
37(1)(e) and (f); 38	minutes of meetings, books of account
39	financial statements
40	roll of proprietors etc.
41	administrative fund

(2) Nothing in subsection (1) prevents a corporation of a two or three strata lot strata scheme from doing anything described in a provision referred to in the table.

(3) Notwithstanding subsection (2), a corporation for a two or three strata lot scheme cannot establish an administrative fund except pursuant to a bye-law made by it.

91. Notwithstanding the provisions of this Law, the sections set out in the table in section 90 do not apply to a corporation of a four or five strata lot strata scheme if the corporation has, by special-majority resolution, made a bye-law to that effect and that bye-law has effect under this Law.

Certain provisions may be excluded for four or five strata lot schemes

PART 6 - ADMINISTRATION

92. (1) The court may, on application by-

- (a) a corporation;
- (b) a creditor of a corporation;
- (c) the proprietor; or
- (d) a chargee of a strata lot,

Appointment of administrator

appoint an administrator of the corporation and the court may, in its discretion on cause shown, appoint the administrator for an indefinite period or for a fixed period on such terms and conditions as to remuneration or otherwise as it thinks fit.

(2) The remuneration and expenses of the administrator shall be an administrative expense within the meaning of this Law.

(3) The administrator shall, to the exclusion of the corporation and its executive committee, have the duties and powers of the corporation and its executive committee or such of those duties and powers as the court shall order.

(4) The administrator may delegate any of the powers vested in him under subsection (3).

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

(6) On any application made under this section, the court may make such order for the payment of costs as it thinks fit.

PART 7 - PHASED DEVELOPMENT OF STRATA SCHEMES

Interpretation in this Part 93. In this Part-

“complete strata plan”, in relation to a subdivision of land into strata lots in phases, means a strata plan specifying all of the strata lots and the whole of the common property of a development;

“future development strata lot”, in relation to a subdivision of land into strata lots in phases, means a strata lot that is proposed to be developed at a later phase of the development, and that is shown on a phase strata plan as a future development strata lot;

“phase strata plan”, in relation to a subdivision of land into strata lots in phases, means a strata plan specifying each strata lot and each part of the common property that has so far been completed showing-

- (a) in the case of strata plan which is not a vacant land strata plan, that every building shown on the plan has been erected; and
- (b) in the case of all strata plans, that all other development work has been carried out, to the extent necessary to enable all the boundaries of every strata lot and the common property shown on the plan to be physically measured at the date of the lodgement of the plan, the balance being specified as one or more future development strata lots;

“proposed strata lot development plan”, in relation to a subdivision of land into strata lots in phases, means a plan specifying all of the strata lots, and the whole of the common property, proposed to be included in the development when it is completed; and

“strata lot development scheme” means a scheme developed in phases in accordance with this Part.

94. A developer may, in accordance with this Part, register subdivisions of land in two or more phases. Subdivision of land into strata lots in phases
95. The subdivision of land so as to provide for strata lots in two or more phases shall be effected by the successive registration of-
- (a) a proposed strata lot development plan, which shall specify all of the strata lots and the whole of the common property proposed to be included in the development when it is completed;
 - (b) one or more phase strata plans each of which shall, in addition to satisfying the requirements of section 6, specify-
 - (i) each part of any common property that has been completed; and
 - (ii) any area (designated on the plan as a future development strata lot) in which further development subdivision and other operations are required to complete the development; and
 - (c) a complete strata plan.
96. (1) Further to section 95(a), a proposed strata lot development plan shall include a description of- Contents of a proposed strata lot development plan
- (a) so much, if any, of the development as the developer is permitted by the plan to carry out and may be compelled to carry out by any purchaser of a strata lot in a phase strata plan (such development being identified in the plan as “warranted development-proposed development subject to a warranty”); and
 - (b) of so much (if any) of the development as the developer is permitted by the plan to carry out but cannot, merely because it is described in the plan, be compelled to carry out (identified in the plan as “authorised proposals-proposed development not subject to a warranty”).
- (2) A proposed strata lot development plan shall also-
- (a) subject to section 99, include an undertaking by the developer that he will interfere as little as is reasonably practicable with the use and enjoyment of the strata lots and common property in the course of performing his obligations under the plan;
 - (b) set out the means by which the developer will obtain access to the future development strata lots or common property and the part or parts of the parcel that the developer will need to occupy or have access to;
 - (c) set out the obligations, if any, of the corporation and proprietors and occupiers of strata lots;

- (d) subject to section 100, state the date for fulfilment by the developer of his obligations under the proposed strata lot development plan and the completion of the entire development, such date being no later than the tenth anniversary of the day on which the plan is registered;
- (e) be endorsed with a certificate, in the form prescribed by regulation, from the person who prepared the proposed strata development plan certifying that the proposed strata development plan has been correctly prepared in accordance with this Law; and
- (f) include such other documents, particulars and information as may be required by the regulations.

(3) A proposed strata lot development plan cannot provide for the subdivision of common property without the consent, by special resolution, of the corporation.

Proposed strata lot
development plans

97. (1) A proposed strata lot development plan shall not be registered unless it is accompanied by a phase strata plan in respect of the same development.

(2) When a proposed strata lot development plan has been registered, the proposed strata lot development scheme shall not be further altered in any way, unless a further proposed strata lot development plan has been registered, incorporating the proposed changes, in accordance with subsections (3), (4) and (5).

(3) The applicant for registration of a further proposed strata lot development plan may, without the consent of the corporation or any person specified under subsection (4)(b)(i), (ii) or (iii), alter such plan where the alteration is required-

- (a) to ensure compliance with any change in relevant legislation;
- (b) to alter the specifications of the future development strata lots in the plan or to meet current standards in construction and land development; or
- (c) to vary the unit entitlement of any one or more future development strata lots shown on any such plan;
- (d) to alter the unit types and mix of units in any building, by adding, removing or modifying any future development strata lots to meet changes in market conditions for the sale and marketing of such strata lots, subject to obtaining and complying with all relevant planning approvals and regulations as may be relevant thereto in respect of set backs, site density and similar matters.

(4) Where the applicant for registration of a further proposed strata lot development plan wishes to alter such plan in order to change-

- (a) the basic architectural or landscaping design of the proposed strata development; or
- (b) the essence or theme of the proposed strata lot development scheme,

he shall obtain the consent, by super-majority resolution of-

- (i) the proprietors of the strata lots (including future development strata lots) shown on the latest phase strata plan registered in respect of the development;
- (ii) other persons who have a registered interest in any such strata lot; and
- (iii) every cautioner claiming any interest in any such strata lot.

(5) The applicant for registration of the further proposed strata lot development plan shall have assigned to every strata lot shown on the plan its proposed unit entitlement; but the unit entitlement for every such strata lot, if the plan is altered in accordance with this section, may be increased or decreased in accordance with such alteration.

98. (1) Every successive phase strata plan after the first, and the complete strata plan, relating to a strata lot development scheme shall be deposited in substitution for, and under the same number as the phase strata plan previously registered in respect of that development.

Phase strata plans

(2) Subject to section 97(5), on each phase strata plan (including the first), and on the complete strata plan, the unit entitlement to be assigned to each strata lot shall be that shown on the proposed strata lot development plan in respect of that strata lot.

99. (1) When carrying out development under a proposed strata lot development plan, a developer is entitled to use any common property to which the plan relates-

Use of common property by developer

- (a) to the extent necessary to carry out the development; or
- (b) to such other extent as may be specified in the plan, which may confer on the developer an exclusive or any lesser right to occupy specified common property.

(2) A corporation shall permit a developer to use the power, water, cable, sewage and road way facilities installed in and forming part of the common property in order to allow the developer to provide future development strata lots with such types of services; and the cost of connecting such services and carrying

out any repairs to the common property which may have been damaged as a result of making such connections shall be borne by the developer.

(3) A right conferred by this section may be exercised despite any other provision of this Law or any provision of the bye-laws but shall be exercised in a manner that does not cause unreasonable inconvenience to the occupier of any strata lot.

(4) Any provision of a proposed strata lot development plan that relates to the maintenance or upkeep of common property to which the plan relates have effect notwithstanding any provision of the bye-laws.

Conclusion of
development scheme

100. (1) For the purposes of this Part, a strata lot development scheme to which a proposed strata lot development plan relates is concluded when any of the following occurs-

- (a) a strata plan of subdivision is registered which subdivides the last remaining unsubdivided development lot to which the plan relates or subdivides the residue of that development lot after excision of part of that lot in accordance with the proposed strata lot development plan;
- (b) subject to subsection (2), the time specified in the plan for conclusion of the development scheme arrives;
- (c) a notice in the approved form, that complies with subsection (4) and stating that the development scheme to which the plan relates has concluded, is registered by the Registrar; or
- (d) the strata scheme concerned is terminated under Part 11 by an order of the court.

(2) Where a development has not been carried out within the period specified in the strata lot development plan, the Registrar may, upon application and good cause shown by a developer, extend the date for fulfillment by the developer of his obligations under the proposed strata lot development plan referred to in section 96(2)(d) for a further period or periods as the Registrar shall determine.

(3) Where the Registrar refuses an application under subsection (2) or where the developer is unable to or elects not to complete a development and he decides to close the strata plan, the developer may-

- (a) subdivide any portion of the undeveloped land which he cannot be compelled to develop pursuant to section 96(1)(b); or
- (b) where any portion of the undeveloped land is subject to development under section 96(1)(a), he shall either transfer such portion to the corporation to which the phased development

relates as common property where such portion is contiguous to the parcel, and where it is not so contiguous, compensate the corporation for the value of such land.

- (4) A notice complies with this subsection only if-
- (a) it has been signed by the developer concerned;
 - (b) it has been signed by each registered proprietor of the future development strata lot; and
 - (c) it is lodged with a certificate in the prescribed form given by the corporation for the strata scheme concerned, certifying that the relevant agreement is supported by a super-majority resolution of the corporation.

(5) The Registrar is required to make an appropriate record of the conclusion of a phased strata lot development in the complete strata plan of the strata scheme concerned and he shall, in respect of the register relating to the parcel, make the entries referred to in section 25(c)(i),(ii),(iii) and (iv).

(6) If, after the conclusion of a phased strata lot development, a revised schedule of unit entitlement for a strata scheme is lodged with the Registrar, the Registrar shall record it as the schedule of unit entitlement in substitution for the existing schedule of unit entitlement for the scheme.

101. Subject to this Part, the other provisions of this Law shall apply in respect of- Application of this Law

- (a) subdivision of land into strata lots under this Part; and
- (b) phase strata plans and complete strata plans.

PART 8 - LEASEHOLD STRATA SCHEMES¹⁷

102. In this Part-

Interpretation for this
Part

“leasehold strata scheme” means a strata scheme registered under this Law by a developer who is the proprietor of the leasehold estate of the parcel over which the relevant strata plan is registered and which is regulated under this Part; and

“lessor”, means the Crown or any person holding a lease or sublease where the Crown is the ultimate lessor or the person entitled to the freehold reversion.

103. (1) Subject to this Part, the provisions of this Law relating generally to strata schemes apply with necessary modifications to a leasehold strata scheme. Application of this Part

¹⁷ Precedent is Ontario Condominium Act

(2) If there is a conflict between a provision of this Part and a provision of another Part, the provision of this Part prevails.

(3) This Part does not apply to a strata scheme that is not a leasehold strata scheme.

Creation of leasehold strata lots

104. (1) An application under section 3 in relation to a leasehold strata scheme shall be accompanied by the prescribed certificate of the lessor that the developer has paid the rent for the parcel for the full term under the lease.

(2) In addition to the requirements of section 6, a strata plan relating to a leasehold strata scheme shall contain-

- (a) the consent of the lessor to the division of the leasehold interest; and
- (b) all other information that the regulations made under this Law require.

(3) The term of the unexpired leasehold interests before registration of a strata plan relating to a leasehold strata scheme shall be not less than fifty years.

Leasehold interest of proprietors

105. (1) All leasehold interests in a leasehold strata scheme shall be for the same term.

(2004 Revision)

(2) Part V, Division 2 of the Registered Land Law (2004 Revision) does not apply to the leasehold interest of a proprietor of a strata lot but does apply to a lease of a proprietor's leasehold interest in a strata lot.

Obligations under leased strata lot

106. A proprietor under this Part is deemed to have agreed with the lessor to observe the terms and conditions contained in the lease of the strata lot.

Amendment of leasehold strata plan

107. An amendment to the leasehold strata plan that affects the leasehold interests in the parcel is not effective unless the lessor has consented in writing to the amendment.

Corporation of leasehold strata scheme

108. (1) Where a leasehold strata plan is registered under this Law, the type of corporation created by the plan is known as a leasehold strata corporation.

(2) The provisions of this Law regulating the duties, powers and functions of corporations apply, with any necessary changes, to leasehold strata corporations.

Consent of lessor for transfer of common property

109. A leasehold strata corporation shall not transfer a part of the common property without the written consent of the lessor.

110. (1) At least five years before the end of the term of the leasehold interests in the strata lots in a leasehold strata scheme, the lessor shall give the leasehold strata corporation-
- Expiration of leasehold interests
- (a) a written notice which sets out the intention to renew all the leasehold interests and the provisions applicable to the renewal;
 - or
 - (b) a written notice of intention not to renew all the leasehold interests.
- (2) A renewal of the leasehold interests shall be for at least thirty years or the greater term specified in the notice.
- (3) Subject to subsection (2), a renewal of the leasehold interests shall be on the same terms as the current lease except that the rent may be changed.
- (4) The rent shall be that share of the current market value of the parcel included in the strata plan, excluding all buildings and improvements, apportioned to the strata lot in the proportion that the most recent assessed value of the strata lot bears to the total of the most recent assessed values of all the strata lots included in the leasehold strata plan.
- (5) Agreement on the rent for the renewal period must be reached by the beginning of the renewal period unless expressly provided otherwise in the strata lot lease, or agreed to in writing between the lessor and the leasehold strata corporation; and if agreement on the rent is not reached under subsection (5) the rent shall be determined by arbitration under the Arbitration Law, 2012.
- (6) Upon receiving the notice, the leasehold strata corporation shall send a copy of it to each proprietor.
- (7) If the lessor does not give the required notice, the lessor shall be deemed to have given the notice required to renew the leasehold interests for thirty years subject to the same provisions that govern the leasehold interests before the renewal and the leasehold strata corporation shall send a notice of that fact to the proprietors.
- (8) The leasehold interests shall be renewed for the term and subject to the provisions specified in the notice or the deemed notice, unless the proprietors by special resolution vote against the renewal no later than one year after the notice or the deemed notice was given to the leasehold strata corporation.
- (9) The leasehold strata corporation shall give notice to the lessor if, under subsection (8), the proprietors vote against the renewal.

(10) The lessor shall prepare a notice in the prescribed form stating whether the leasehold interests have been renewed or not and register the notice with the Registrar.

(11) If the leasehold interests are renewed subject to provisions that are different from those that applied before the renewal, the strata plan shall be deemed to be amended to contain the provisions that apply upon the renewal and the leasehold strata corporation shall register a copy of the provisions as an amendment to the strata plan.

(12) Where the lessor elects not to renew the lease of the parcel to which the strata scheme relates or the proprietors vote in accordance with subsection (8) not to renew the lease, the scheme shall be considered to have been terminated on the date the lease expires and the provisions of section 112 shall apply.

Destruction of buildings

111. (1) If the buildings that are part of the leasehold strata scheme are destroyed or damaged by more than one-third of their fair market value, the proprietors may elect not to rebuild by a super-majority resolution passed at a duly convened annual or special general meeting; and the strata scheme shall be deemed to have been terminated.

(2) Where a strata scheme is terminated in accordance with subsection (1) the provisions of section 113 applies.

Purchase of proprietor's interest on termination¹⁸

112. (1) The lessor shall purchase each proprietor's interest in the proprietor's strata lot where the leasehold strata scheme is terminated in accordance with the circumstances referred to in section 110(12).

(2) The purchase price shall be arrived at as of the date the leasehold strata scheme terminates and shall be, in relation to each strata lot,-

- (a) if a basis for calculating the purchase price was set out in the lease of the strata lot or in a schedule filed with the leasehold strata plan, the price calculated on that basis; or
- (b) if a basis for calculating the purchase price was not set out in the lease of the strata lot or a schedule, the fair market value of the proprietor's interest in the strata lot evaluated as if the lease of the strata lot had not expired and had an unexpired term of thirty years or more.

(3) The lessor may change the basis for calculating the purchase price of the strata lots set out in a schedule if-

¹⁸ Based on BC

- (a) the proprietors consent to the change by a resolution passed by a super-majority vote at an annual or special general meeting; and
- (b) an amended schedule is filed with the Registrar, accompanied by a certificate of the corporation in the prescribed form, stating that the resolution referred to in paragraph (a) has been passed and that the amended schedule conforms to the resolution.

(4) Unless expressly provided otherwise in the lease of the strata lot or agreed to in writing by the lessor and the proprietor, the purchase price under subsection (2)(b) shall be determined, by arbitration under the Arbitration Law, 2012 if the lessor and the proprietor have failed to agree on the purchase price by thirty days before the date the lease of the strata lot expires, or thirty days after the date of a termination under section 110.

(5) The lessor shall purchase each proprietor's interest within thirty days after the earlier of-

- (a) the date the purchase price is agreed to; and
- (b) the date the purchase price is determined by arbitration referred to in subsection (4).

113. (1) Upon the termination of a leasehold strata scheme or the registration of a notice under section 110 that the leasehold interests in the strata lots will not be renewed or such other date, if any, specified in the registered notice-

Effect of termination or
expiration

- (a) this Law ceases to govern the property from the date of expiration of the lease;
- (b) the leasehold interests in the strata lots are terminated;
- (c) claims against the leasehold interests that do not secure the payment of money are extinguished, unless the lessor consented to their registration, in which case they are continued against the lessor's interest;
- (d) claims against the leasehold interests that secure the payment of money are claims against the persons who were proprietors of the leasehold interests immediately before the termination of those interests, and not against the parcel;
- (e) the proprietors shall be liable for the debts of the corporation and the expenses of its liquidation in proportion to the unit entitlement of their respective strata lots;
- (f) the corporation shall be liquidated and dissolved;
- (g) a liquidator appointed by the corporation for the purpose of the termination, shall carry out all duties connected with the termination of the strata scheme and the consequential liquidation and dissolution of the corporation;
- (h) a lease over a strata lot or the common property is extinguished;
- (i) all internal easements are extinguished;

- (j) an easement over a strata lot or the common property where the dominant land is outside the parcel is unaffected; and
- (k) an easement that was appurtenant to part, but not the whole, of the parcel will be appurtenant to the whole of the land formerly comprised in the parcel if the owner of the servient land and all persons who hold a registered encumbrance over the servient land (other than an easement that will not be affected) consent to the cancellation of the strata scheme.

(2) Part 11 does not apply to a leasehold strata corporation under this Part.

(3) Before the time at which this Law ceases to govern the property, the leasehold strata corporation shall appoint a trustee to pay out the money remaining in the corporation's reserve fund in accordance with this section.

(4) When this Law ceases to govern the property, the trustee shall pay out the moneys remaining in the reserve fund at that time in accordance with the following priorities-

- (a) to the lessor, the amount, if any, that is required to repair damage to the property that has not been repaired; and
- (b) to each of the proprietors, a share of the balance in the same proportion as their common interests, subject to subsection (5).

(5) The trustee, before paying out a share of money payable to a proprietor, shall deduct from the share the amount of claims against the proprietor that secure the payment of moneys and shall remit the deduction to the persons entitled to the claims.

Conversion to freehold strata plan¹⁹

114. (1) A lessor, where, pursuant to a super-majority resolution, a corporation so requests, may agree to transfer the freehold reversion in each of the strata lots included in the leasehold strata scheme to each of the proprietors and, thereupon the Registrar, upon the application of the corporation, shall register each proprietor with absolute title to his strata lot and-

- (a) the leasehold strata plan continues as a strata plan and the land shown on the strata plan is not subject to a lease;
- (b) the corporation continues as if it were originally created by registration of a strata plan that was not a leasehold strata plan,
- (c) the leasehold strata lot ceases to exist and the proprietor ceases to be liable for the performance of obligations in respect of the leasehold strata plan and shall thereafter be liable for performance of his obligations in the freehold strata plan; and

¹⁹ Precedent is BC Act

- (d) any charge in existence against the proprietor's interest immediately before the registration of the strata lot becomes a charge against the absolute title acquired by the proprietor, and, if the charge was registered, the Registrar shall register it against the absolute title and shall amend the parcel number if such change is required.
- (2) The Registrar may register the absolute title in the strata lot only if the Registrar has-
- (a) received an application for registration accompanied by a certificate that the conversion has been approved by a super-majority resolution; and
 - (b) determined that all the interests are registrable.

PART 9 -VACANT LAND STRATA SCHEME²⁰

115. (1) Subject to the regulations made under this Law, a developer may register a vacant land strata plan that creates a vacant land strata scheme in which, at the time of the registration-

Registration of vacant
land strata plan

- (a) one or more strata lots are not part of a building or structure and do not include any part of a building or structure; and
- (b) none of the strata lots are located above or below any other strata lot.

(2) Subject to this Part, the provisions of this Law relating generally to strata schemes apply with necessary modifications to a vacant land strata scheme.

(3) This Part does not apply to a strata scheme that is not a vacant land strata scheme.

116. (1) If a strata lot in a vacant land strata scheme will include a building or structure constructed after the registration of the strata plan, the vacant land strata plan and the bye-laws of the vacant land strata corporation may contain restrictions with respect to-

Contents of vacant land
strata plan

- (a) the size, location, construction standards, quality of materials and appearance of the building or structure;
- (b) architectural standards and construction design standards of the building or structure;
- (c) the time of commencement and completion of construction of the building or structure; and

²⁰ Based on Ontario Condominium Act

- (d) the minimum maintenance requirements for the building or structure.

(2011 Revision)

(2) A restriction contained in the vacant land strata plan or the relevant bye-laws shall be consistent with any conditions imposed under the Development and Planning Law (2011 Revision) in respect of the strata lot.

(3) A vacant land strata plan shall also contain-

- (a) a plan of survey showing the perimeter of the horizontal surface of the land, the perimeter of the buildings and structures on the common property and the boundaries of each strata lot;
- (b) subject to section 117, architectural plans of the buildings and structures included in the common property and, if there are any, structural plans of them;
- (c) subject to section 117, a certificate of an architect that the buildings included in the common property have been constructed in accordance with the regulations made under this Law and, if there are structural plans, a certificate of an engineer that the buildings have been constructed in accordance with the regulations;
- (d) a description of all interests appurtenant to the land that are included in the parcel; and
- (e) all other material that the regulations made under this Law require.

Buildings on common property

117. A vacant land strata plan that shows buildings, structures, facilities and services to be included in the common property shall not be registered unless all buildings, structures, facilities and services shown in the vacant land strata plan to be included in the common property have been completed, installed and provided in accordance with regulations made under this Law.

Status of buildings in vacant land strata scheme

118. (1) The buildings and structures located on a strata lot whether or not the buildings and structures had been constructed at the time of the registration of the vacant land strata plan, or those on the common property of a vacant land strata scheme, are real property and form part of the strata lot or common property respectively.

(2) The corporation of a vacant land strata scheme is exempt from the obligation to obtain and maintain the insurance as required under section 73.

(3) The proprietor of a strata lot shall obtain and maintain the insurance for damage to the strata lot that, but for subsection (2), the corporation would have had to obtain with respect to the strata lot.

119. (1) Where a vacant land strata plan is registered under this Law the type of corporation created by the plan is known as a vacant land strata corporation. Corporation of vacant land strata scheme

(2) The provisions of this Law regulating the duties, powers and functions of corporations apply, with any necessary changes, to vacant land strata corporations.

120. In addition to the power to make, amend or repeal bye-laws under this Law, the executive committee of a vacant land strata corporation may make, amend or repeal bye-laws, not contrary to the vacant land strata plan, specifying minimum maintenance requirements for a strata lot, or a building or structure located on a strata lot. Bye-laws

121. (1) A vacant land strata corporation shall maintain the common property and repair it after damage. Repair and maintenance

(2) The proprietor of a strata lot in a vacant land strata scheme shall maintain his strata lot and repair it after damage.

(3) If a proprietor of a strata lot in a vacant land strata scheme fails to maintain his strata lot within a reasonable time or to repair it within a reasonable time after damage, the vacant land strata corporation may maintain or repair the strata lot.

(4) A proprietor shall be deemed to have consented to the repairs or maintenance carried out by the vacant land strata corporation and the cost of the work shall be added to the proprietor's contribution to the administrative expenses.

122. (1) If the executive committee of a vacant land strata corporation determines that substantial damage has occurred to a building located on a strata lot and the proprietors do not vote for termination under this Law, the proprietor of the affected strata lot may elect- Substantial damage

- (a) not to repair the damage; or
- (b) to replace the building with a different building, subject to this Law, the strata plan and the bye-laws.

(2) A proprietor who elects not to repair the damage shall, as soon as is reasonably possible, restore the land on which the building was located to the state that the land was in immediately before the construction of the building.

(3) If the proprietor does not restore the strata lot within a reasonable time, the vacant land strata corporation may do so.

(4) The proprietor shall be deemed to have consented to the restoration done by the vacant land strata corporation and the cost of the restoration shall be added to the proprietor's contribution to the administrative expenses.

PART 10 - PROTECTION OF PURCHASERS DEALING WITH DEVELOPER

Interpretation in this Part

123. In this Part-

“contract” means an agreement or document that legally binds the purchaser whether conditionally or unconditionally;

“purchaser” includes an intending purchaser; and

“vendor” means a developer and includes an intending developer.

Information to be given to purchaser

124. (1) A purchaser of a strata lot or proposed strata lot shall be given the notifiable information, as provided by sections 125 and 126, before he signs a contract to buy the strata lot or proposed strata lot.

(2) The vendor of a strata lot or proposed strata lot shall ensure that subsection (1) is complied with either-

- (a) by giving the notifiable information to the purchaser on the form referred to in subsection (3); or
- (b) by ensuring that the notifiable information forms part of the contract.

(3) A form or forms shall be prescribed for use by vendors in giving the notifiable information under this section.

(4) In any civil proceedings arising out of or connected with a contract, the onus of proving that the notifiable information was duly given in accordance with this Part shall lie upon the vendor.

Notifiable information to be given by vendor

125. The notifiable information to be given under section 124 in every case is-

- (a) the name and address of the vendor and the purchaser;
- (b) a copy of the registered strata plan, the proposed strata plan or, where neither is available, the proposed elevation drawings for the development;
- (c) the approximate unit entitlement of every strata lot in the strata plan and the aggregate unit entitlement or, if the strata plan has not been registered, those entitlements as proposed;

- (d) in the case of a registered strata scheme, the bye-laws for the strata scheme that are-
 - (i) in force; or
 - (ii) resolved to be made but not yet in force;
- (e) in the case of a proposed strata scheme, the proposed bye-laws for the strata scheme;
- (f) proposed budget, if any; and
- (g) any information prescribed for the purposes of this section.

126. (1) This section applies only if-

- (a) the strata plan has not been registered;
- (b) the first annual general meeting of the corporation has not been held; or
- (c) the vendor-
 - (i) is the registered proprietor of fifty per cent or more of the strata lots in the strata scheme; or
 - (ii) has votes at a general meeting of the corporation equal in value to fifty per cent or more of the aggregate unit entitlement of the strata lots in the strata scheme.

Notifiable information to be given by the developer in certain cases

(2) Where this section applies, the notifiable information to be given under section 124 by a vendor, in addition to that required by section 125 shall be the following-

- (a) details of every agreement for the provision of any amenity or service to the corporation or to any part of the parcel that-
 - (i) the corporation or the vendor has entered into and that is still in operation; or
 - (ii) the vendor in his own right or exercising the power of the corporation proposes to enter into,
including the terms and conditions of every such agreement, the consideration for it, and the estimated costs to the proprietor of the strata lot;
- (b) particulars of any direct or indirect pecuniary interest that the vendor has in any agreement referred to in paragraph (a), other than as a proprietor;
- (c) the estimated receipts and expenditure of the corporation for the period of twelve months starting with-
 - (i) the day of the proposed registration of the strata plan; or
 - (ii) the day of the last annual general meeting or if no such meeting has been held during the fifteen months preceding the date of the contract, the day for settlement designated in the contract,
whichever is the later, if a budget is available;

- (d) the estimated contributions of the proprietor under section 41(1) and (2) during the period referred to in paragraph (c) if known;
- (e) details of every lease granted, and still in operation, or proposed to be granted to the purchaser or any other person in relation to the common property; and
- (f) details of every licence, right of exclusive use and enjoyment, or special privilege granted, and still in operation, or proposed to be granted to the purchaser or any other person in relation to the common property.

Vendor to inform
purchaser of full
particulars of notifiable
variation

127. (1) The vendor under a contract to sell a strata lot or proposed strata lot shall, by notice in writing given to the purchaser, inform the purchaser of the full particulars of any notifiable variation.

(2) Notice under subsection (1) shall be given by the vendor within ten working days of his becoming aware of the variation.

(3) For the purposes of subsection (1), a notifiable variation occurs if before the registration of the purchaser as proprietor of the strata lot or proposed strata lot or earlier avoidance of the contract-

- (a) the vendor in his own right or exercising the power of the corporation-
 - (i) makes a bye-law; or
 - (ii) amends or repeals any bye-law;
- (b) the registered or proposed strata plan is varied in a material particular or the registered strata plan differs in a material particular from the proposed strata plan;
- (c) subject to subsection (4), the unit entitlement of any strata lot or the aggregate unit entitlement is not the same as the unit entitlement or proposed unit entitlement or the aggregate unit entitlement or proposed aggregate unit entitlement, as the case may be, that was notified under section 125(c); and
- (d) a lease, licence, right or privilege in relation to the common property is granted or varied.

(4) An alteration of a proposed strata development plan under section 97 (3) is not a notifiable variation.

(5) Subsection (1) does not apply if -

- (a) the vendor has by notice in writing informed the purchaser of any proposed action or matter that would be a notifiable variation under subsection (3); and

- (b) the action or matter when completed does not materially differ from that described in the notice.

128. (1) Subject to subsection (3), if a vendor has failed to give to a purchaser information that substantially complies with section 124 or 127 and at the time required by that section, the purchaser has a right to avoid the contract by notice in writing given to the vendor before the completion of the contract.

When purchaser may
avoid contract

(2) If-

- (a) a vendor gives to a purchaser information that substantially complies with section 127 and at the time required by that section; and
- (b) the purchaser has been materially prejudiced (proof of which shall lie on him) by any matter referred to in the notice and the purchaser has not agreed to be bound by that matter,

the purchaser has a right to avoid the contract by notice in writing given to the vendor within seven working days after that information is given.

(3) If under subsection (1) a purchaser has a right to avoid a contract but before notice of avoidance is given the vendor gives to the purchaser information that substantially complies with section 124 or 127, the purchaser's right under subsection (1) to avoid the contract is extinguished.

(4) If the vendor gives to the purchaser information that substantially or partially complies with section 124 or 127 within seven working days before the completion date designated in the contract, the purchaser-

- (a) may, despite the contract and without incurring any penalty under it, by notice in writing, postpone the completion date beyond that designated settlement date by not more than seven working days after that information is given; and
- (b) subject to subsection (5), has a right to avoid the contract by notice in writing given to the vendor at any time before the expiration of that period and before completion is effected.

(5) The right conferred on a purchaser by subsection (4) does not apply if the information was given under section 127 and at the time required by that section unless the purchaser has been materially prejudiced (proof of which shall lie on him) by any matter referred to in the notice and has not agreed to be bound by that matter.

(6) In this section "completion date" means the date on which the purchaser is contractually liable to pay to the vendor the purchase price or the balance of the purchase price, if any.

Effect of avoidance 129. Upon the avoidance of a contract under section 128, the vendor is liable to repay to the purchaser all moneys paid by the purchaser under the contract and such moneys shall be recoverable, by action for a debt, by the purchaser accordingly.

Holding of deposit and other contract moneys when a strata lot is pre-sold 130. (1) No person shall enter into a contract to sell a strata lot in a proposed strata plan before the strata plan is registered under Part 2 unless the contract of sale provides that any deposit and all other moneys payable by the purchaser prior to the registration of the strata plan are to be paid to an attorney-at-law or a real estate agent who shall be named or specified in the contract, to be held by that attorney-at-law or real estate agent as stakeholder for the parties until the commencement of construction, unless the contract otherwise provides.

(2) Any deposit and other moneys payable and paid by the purchaser prior to the registration of the strata plan under any such contract as is referred to in subsection (1) shall be paid by the purchaser to the attorney-at-law or real estate agent named or specified in the contract of sale.

(3) In the event of a contravention of subsection (1) or subsection (2), the purchaser may at any time before the strata plan is registered avoid the sale.

Contracting out prohibited 131. (1) A contract or arrangement is of no effect to the extent that it purports to exclude or restrict the operation of this Part or the rights and remedies conferred on a purchaser by this Part.

(2) A purported waiver of a right, remedy or benefit conferred on a purchaser by this Part is of no effect.

(3) Subsections (1) and (2) do not apply to section 130(1) and (2).

Savings 132. Except as provided by sections 128, 130(3) and 131, this Part does not apply so as to render any contract illegal or void or to empower any party to avoid the contract.

PART 11 - TERMINATION AND VARIATION OF STRATA SCHEMES

Voluntary destruction of a building for purposes of re-development of a strata scheme 133. (1) The proprietors of strata lots and chargees of the strata lots whose interest under their respective charges is not less than fifty per cent of the value of the charge may, in relation to the building which comprises their strata lots, resolve by super-majority resolution to destroy the building for the purposes of the re-development of the strata scheme.

(2) The provisions of sections 135 and 136 shall apply in relation to this section.

134. A strata scheme may be terminated-

Termination by court or
by corporation

- (a) by a super-majority resolution of the corporation and by -
 - (i) the written consent of eighty per cent of all chargees of the strata lots whose interest under their respective charges is not less than fifty per cent of the value of the charge; and
 - (ii) the written consent of eighty per cent of all chargees of the whole or part of the common property,

and such termination is referred to in this Law as a “proprietors’ voluntary termination”; or

- (b) by an order of the court (in this Law referred to as a “compulsory termination”).

135. Where a corporation wishes to re-develop a building in accordance with section 133 or terminate a strata scheme in accordance with section 134 (a), the executive committee shall-

Proprietors’ voluntary
termination

- (a) in the case of a re-development, at least twelve months prior to the date on which the resolution referred to in that section is to be voted upon; or
- (b) in the case of a termination, at least three months prior to the date on which the resolution referred to in that section is to be voted upon

provide-

- (i) every proprietor;
- (ii) every chargee of a strata lot;
- (iii) every chargee of the whole or part of the common property; and
- [(iv) any person who is the grantee of an unregistered lease or licence over the whole or part of the common property,]

with the following documents-

- (A) in the case of a termination, a valuation report from an independent valuer on the value of the strata scheme;
- (B) in the case of the re-development of a building, a valuation report from an independent valuer on the value of strata lots in the building; and
- (C) a report by an independent valuer on the proposed method of distributing the proceeds of a sale upon the

re-development or termination of the strata scheme if the strata scheme is to be sold.

Notices of resolution under section 135

136. (1) After passing a resolution and obtaining the consent required by section 134(a), the corporation shall serve a notice of the resolution in the prescribed form on the following persons-

- (a) every proprietor;
- (b) any person having a reversionary interest or estate in a strata lot;
- (c) every chargee of any strata lot;
- (d) every chargee of the whole or part of the common property; and
- (e) any person who is the grantee of an unregistered lease or licence over the whole or part of the common property.

(2) Any person served with a notice under subsection (1)(a), (b) or (c) may, within twenty-eight days of being served with that notice, give written notice in the prescribed form to the corporation of his objection to the resolution and his intention to apply to the court for relief on the grounds that the effect of the resolution would be unjust or inequitable for the minority.

(3) A person who has given a notice of objection under subsection (2) shall also, within twenty-eight days of being served with that notice, file with the court an application for relief in the prescribed form.

(4) A notice of objection under subsection (2) shall be of no effect if it is given to the corporation after the specified twenty-eight days or is not filed with the court within that time.

(5) The court shall hear the objection as soon as practicable and may make any order it thinks fit, including any of the following orders-

- (a) confirming the resolution;
- (b) overturning the resolution;
- (c) requiring the corporation to pay compensation to the person making the objection;
- (d) requiring the person making the objection to pay compensation to the corporation where the court is of the opinion that the objection is unreasonable; or
- (e) granting an injunction.

(6) The court shall not make an order under subsection (5) unless it is satisfied that it is just and equitable to do so.

(7) An order may be subject to any terms or conditions that the court thinks fit including an order for costs.

- (8) If the court-
 - (a) makes an order overturning the resolution, then the resolution is to be treated as not having been passed; or
 - (b) makes an order confirming the resolution, then the corporation may proceed to carry out the resolution subject to any terms and conditions imposed by the summary court under subsection (5).

137. (1) An application to the court for an order for the termination of a strata scheme may be made by a corporation (acting upon the authority of its executive committee), by a proprietor or by a chargee of a strata lot or of the whole or part of the common property.

Termination of strata scheme by order of the court

(2) Notice of an application shall be served, in accordance with Rules of Court on-

- (a) every person referred to in subsection (1) other than the applicant;
- (b) the Registrar;
- (c) any person having a reversionary interest or estate in a strata lot; and
- (d) such other persons, including creditors of the corporation as the court may direct.

(3) The applicant and any person referred to in subsection (2), whether or not he has been served with a notice of the application, shall be entitled to appear and be heard on the hearing of the application.

(4) An order for the termination of a strata scheme may be made on the ground that-

- (a) a majority of the buildings comprised in the strata scheme have been destroyed or damaged and it is not reasonably practical for them to be repaired or re-instated;
- (b) the buildings comprised in the strata scheme (other than those comprised in the common property) are no longer suitable for the use for which they were originally constructed;
- (c) the whole of the land comprised within the strata scheme has been compulsorily purchased by Government pursuant to the Land Acquisition Law (1995 Revision) or any other legislation providing for the compulsory acquisition of land; or
- (d) part of the land comprised in the strata scheme has been compulsorily purchased with the result that it is impractical or uneconomic for the remainder to be used in the manner for which it was originally intended,

(1995 Revision)

and that it is just and equitable in all the circumstances for an order to be made.

(5) An order made under subsection (4) shall include directions for or with respect to the following matters-

- (a) the sale or disposition of any property of the corporation;
- (b) the discharge of the liabilities of the corporation;
- (c) the persons liable to contribute moneys required for the discharge of the liabilities of the corporation and the proportionate liability of each such person;
- (d) the distribution of the assets of the corporation and the proportionate entitlement of each person under that distribution;
- (e) the administration, powers, duties and functions of the corporation;
- (f) the voting power at meetings of the corporation of persons referred to in paragraph (c) or (d);
- (g) any matter in respect of which it is, in the opinion of the court, just and equitable, in the circumstances of the case, to make provision in the order; and
- (h) the winding up of the corporation (including the appointment, powers, duties and functions of any person to carry out the winding up).

Payment to proprietors on voluntary destruction of a building for purposes of re-development

138. (1) Where a resolution has been passed pursuant to section 133(1) and no objection to the resolution has been made under section 136 or the resolution has been confirmed by the court under section 136, the corporation shall settle the interests of the proprietors of the strata lots in that building as follows-

- (a) by paying any one or more of the proprietors the market value of his or their interest in the strata lots in the building;
- (b) by offering to any one or more of the proprietors in exchange for his or their strata lots in the building a strata lot or strata lots to be developed in the building or other strata lots located elsewhere on the parcel;
- (c) by acting in accordance with both paragraphs (a) and (b); or
- (d) in the absence of agreement under paragraph (a) or (b), by applying to the court for settlement.

(2) Where a building is destroyed-

- (a) the corporation shall forthwith lodge with the Registrar, in such form as may be prescribed, a notification of such destruction; and
- (b) the Registrar shall, upon receipt of such notification, make, in such form as may be prescribed, an entry thereof on the registered strata plan,

and thereafter the proprietors of all the strata lots contained in such strata plan shall be entitled to the parcel as proprietors in common in shares proportionate to the unit entitlement of their respective strata lots and sections 32 and 33 shall apply in relation to the transfer or lease of the parcel and to the creation of any easement or restrictive agreement burdening or benefiting it.

139. (1) Where there has been no objection to a termination of a strata scheme or where it has been confirmed by the court in accordance with section 136 that the termination of the strata scheme shall take effect, the consequential liquidation of the corporation shall commence upon filing by the corporation with the Registrar-

Application to the Registrar upon proprietors' voluntary termination

- (a) in the case of a compulsory termination, a court order;
- (b) in the case of a voluntary termination, a copy of the resolution;
- (c) the notice under section 136(1); and
- (d) where an objection was made under section 136 and dismissed by the, a copy of the relevant order;
- (e) a document which details the debts of the corporation, if any;
- (f) any document required by the Registrar-
 - (i) to resolve the priority of interests of any charges against the land shown on the strata plan or held in the name of or on behalf of the corporation, but not shown on the strata plan; or
 - (ii) to transfer title.

(2) The court order or resolution by which a strata scheme is terminated shall state the name, address and contact details of the person or persons (herein referred to as “voluntary liquidators” in the case of a voluntary liquidation and “compulsory liquidators” in the case of a compulsory liquidation) appointed to carry out such duties as are connected with the termination of the strata scheme and the consequential liquidation of the corporation.

(3) The court order or resolution shall, where there are more than ten proprietors, also appoint a person as trustee to hold the parcel on behalf of the proprietors after termination of the strata scheme.

(4) A voluntary liquidator shall have such qualifications to carry out his duties as the Registrar shall direct; and a compulsory liquidator shall have such qualifications as may be determined by Rules of Court made under section 147.

140. (1) Upon receipt of the court order or the resolution and the documents specified under section 139(1), the Registrar shall make an entry in the register and on the relevant registered strata plan in the manner prescribed and thereupon-

Registration by the Registrar upon termination of a scheme

- (a) where there are ten or less proprietors, the parcel shall be held by the proprietors in common in shares proportionate to the unit entitlement of their respective strata lots; and
 - (b) where there are more than ten proprietors, the trustee named in accordance with section 139(3) shall hold the parcel on trust for the former proprietors of the strata lots.
- (2) When the entry is made in the register pursuant to subsection (1)-
- (a) the corporation shall be liquidated and dissolved;
 - (b) charges and other incumbrances against each strata lot and the common property that were created after the registration of the strata plan, are claims against the interests of the proprietor in the land and interests appurtenant to the land described in the strata plan and have the same priority as they had before the filing of the resolution or order;
 - (c) the proprietors shall be liable for the debts of the former corporation and the expenses of its liquidation in proportion to the unit entitlements of their respective strata lots;
 - (d) the voluntary and compulsory liquidator shall carry out such duties as are connected with the termination of the strata scheme and the consequential liquidation of the corporation and as specified in section 141;
 - (e) a lease over a strata lot or the common property is extinguished;
 - (f) all internal easements are extinguished;
 - (g) an easement over a strata lot or the common property where the dominant land is outside the parcel is unaffected;
 - (h) an easement that was appurtenant to part, but not the whole, of the parcel will be appurtenant to the whole of the land formerly comprised in the parcel if the owner of the servient land and all persons who hold a registered encumbrance over the servient land (other than an easement that will not be affected) consent to the cancellation of the strata scheme; and
 - (i) subject to any order of the court, the assets of the former corporation shall be divided among the proprietors of the former strata lots in proportion to the unit entitlements of the former strata lots.
- (3) Where any proprietor or trustee is of the opinion that a liquidator has failed or is refusing to carry out such duties as are connected with the termination of the strata scheme and the consequential liquidation of the corporation, the proprietor or the trustee may apply to the court for the removal of the liquidator, for a replacement liquidator and for any other relief.

Duties of liquidator

141. (1) The duties of a voluntary and compulsory liquidator include-

- (a) selling the parcel or any part thereof, if ordered to do so by the court or upon the relevant resolution of the proprietors as indicated in section 134(a) or (b);
 - (b) collecting in and realising any property of the former corporation;
 - (c) collecting in any contributions due and owing by proprietors as at the commencement of the liquidation;
 - (d) ascertaining and discharging the debts of the former corporation;
 - (e) in the circumstances where the parcel is to be sold, insuring any buildings comprised in the parcel pending their sale for an amount equivalent to their full reinstatement value;
 - (f) determining from time to time the amounts to be raised from the proprietors for the purposes of discharging the debts of the corporation and paying the expenses of the liquidation, including the liquidator's own remuneration;
 - (g) raising the amounts so determined by levying contributions on the proprietors in proportion to the unit entitlement of their respective strata lots;
 - (h) distributing the net proceeds of the sale of the parcel or any part thereof (subject to ascertaining and discharging the amounts owing to chargees) and the sale of any property of the corporation after having discharged the debts out of the strata lots distributed;
 - (i) providing reports and accounts to the proprietors;
 - (j) convening meetings of the proprietors upon the written request of any two or more proprietors owning collectively at least twenty percent of the total unit entitlement; and
 - (k) completing the liquidation.
- (2) A liquidator shall be authorised to-
- (a) exercise all the powers of the former corporation;
 - (b) in the case of a sale of the parcel or any part thereof, act on behalf of the proprietors for all purposes in connection with the sale of the parcel including the execution of any contract or transfer;
 - (c) convene meetings of the proprietors for the purpose of seeking their views about any matter arising in connection with the sale of the parcel or the liquidation of the corporation;
 - (d) apply to the court for a direction in respect of any disputed matter or any matter which he considers difficult arising in connection with the sale of the parcel or liquidation of the corporation; and
 - (e) do all such other things which are reasonably necessary or incidental to the performance of his duties.

Effect of filing resolution or order under this Part

142. Upon filing a court order or notice of a resolution under this Part-

- (a) the bye-laws of the strata scheme are revoked; and
- (b) a notification of any subsisting charge and incumbrance of any proprietor shall be entered in the register in respect of his share of the parcel and shall bear the same date as the date of registration of that charge or other incumbrance against the strata lot.

Termination of strata scheme by compulsory acquisition

143. (1) The Cabinet may in an order in respect of the whole of a parcel declare that a strata scheme for that parcel is terminated on the making of that order.

(2) Where subsection (1) applies the Registrar shall register the land in the parcel in the name of the Crown.

(1995 Revision)

(3) In this section “order” means an order made under the Land Acquisition Law (1995 Revision) or other legislation providing for the compulsory acquisition of land.

(4) Subject to subsection (5), if part of the common property is compulsorily acquired the proprietors shall share the proceeds in the same proportions as their unit entitlements.

(5) The portion of the proceeds received on compulsory acquisition that is attributable to a portion of the common property that is for the use of the proprietors of certain designated strata lots, and not all the proprietors, shall be divided among the proprietors of the designated strata lots in the proportions in which their interests are affected.

Variation of strata scheme upon damage or destruction of a building²¹

144. (1) Where a building shown on a strata plan is damaged or destroyed, the court may, on an application by the corporation, by a proprietor, or a chargee of a strata lot within the strata scheme, make an order for, or with respect to, the variation of the existing strata scheme or the substitution for the existing strata scheme of a new strata scheme.

(2) An insurer who has effected insurance on the building, or any part of the building, against damage to or destruction of the building has the right to appear, in person or by an attorney-at-law, on an application to the court under this section.

(3) Without limiting the generality of subsection (1), an order made under that subsection may include such directions for or with respect to any one or more of the following matters as the court considers necessary or expedient-

²¹ Precedent is Western Australia

- (a) the reinstatement in whole or in part of the building;
 - (b) the transfer or conveyance of the interests of the proprietors of strata lots that have been damaged or destroyed to the other proprietors in proportion to their unit entitlements;
 - (c) the substitution for the existing schedule of unit entitlement of a new schedule of unit entitlement;
 - (d) the application of insurance moneys received by the corporation in respect of damage to or destruction of the building;
 - (e) the payment of moneys to or by the corporation or any one or more of the proprietors;
 - (f) the amendment of the strata plan, in such manner as the court thinks fit, so as to include any addition to the common property;
 - (g) the payment to a chargee of a strata lot of money received by the corporation from an insurer of the building;
 - (h) any matter in respect of which it is, in the opinion of the court, just and equitable in the circumstances of the case to make provision in the order; and
 - (i) the imposition of such terms and conditions as the court thinks fit.
- (4) The court may from time to time amend any order made under this section.
- (5) An order made under this section shall take effect on the day specified in the order or the day when the order is lodged for registration with the Registrar, whichever is the later.
- (6) Where the court is of the opinion that an order should not be made under this section -
- (a) it may, upon application made by any person entitled to appear and be heard on the hearing of the application made under subsection (1), or of its own motion, direct that the application be treated as an application for an order for termination of the strata scheme under 137; and
 - (b) where it makes such a direction-
 - (i) the application the subject of the direction shall be deemed to be made under section 137 by a person entitled to make the application; and
 - (ii) the applicant under subsection (1), as well as any other, person entitled to appear and be heard under section 137, is entitled to appear and be heard on the hearing of the application.

(7) On any application under this section, the court may make such order for the payment of costs as it thinks fit.

Variation of strata scheme upon compulsory acquisition

145. Subject to any necessary modifications, section 144 shall apply and the court shall have jurisdiction in any case of the compulsory acquisition of part of the land in a strata scheme in the manner and to the extent that that section applies and the court has jurisdiction in the case of damage to or destruction of a building.

Lodgement of documents with Registrar following partial compulsory acquisition of strata scheme or part of strata scheme

146. (1) Where part of the land in a strata scheme is compulsorily acquired and the acquisition includes part but not the whole of any strata lot in the strata scheme, the Crown shall, as soon as is practicable after the acquisition takes effect, cause to be prepared and lodged with the Registrar a plan that complies with subsection (2).

(2) The plan shall-

- (a) define the boundaries of the balance of the strata lot that remains in the strata scheme after the taking and do so by reference to a plan; and
- (b) comply with such requirements as may be prescribed.

(3) Upon registration of the plan referred to in subsection (2)-

- (a) that plan shall be deemed to be part of the strata plan as previously registered; and
- (b) the Registrar shall direct that the plan be amended in the prescribed manner.

Rules relating to this Part

147. The court may make Rules of Court-

- (a) giving effect to the provisions of this Part;
- (b) regulating the manner in which liquidators perform their duties and exercise their powers under this Law;
- (c) providing for the rates of remuneration of liquidators; and
- (d) determining the qualifications of persons who may be appointed by the court to the office of compulsory liquidator.

PART 12-RESOLUTION OF DISPUTES

Resolution of disputes

148. Where any of the following matters occur, namely-

- (a) a corporation or a proprietor claims that a breach of this Law or of the bye-laws has occurred;
- (b) a proprietor claims to have been prejudiced by the wrongful act or default of the corporation, of the executive committee or of some other proprietor;

- (c) a proprietor claims that a decision of the corporation or of the executive committee is unreasonable, oppressive or unjust; or
- (d) a dispute arises-
 - (i) between a corporation and a proprietor; or
 - (ii) between two or more proprietors,in relation to any aspect of the occupation or use of a strata lot or the common property including administrative expenses related to that strata lot,

and the matter or dispute cannot be resolved by the relevant persons, any relevant person may, in order to resolve the dispute or matter, first apply for mediation of the dispute by a person selected by the parties.

149. (1) A mediator selected under section 148 shall, where both parties have agreed to mediation, confer with the parties and endeavour to obtain a settlement with respect to the disagreement submitted to mediation.

Duty of mediator, fees, etc

(2) Each party shall pay the share of the mediator's fees and expenses that-

- (a) the settlement specifies, if a settlement is obtained; or
- (b) the mediator specifies in the notice stating that the mediation has failed, if the mediation fails.

150. (1) Where a settlement is reached it shall be put in writing by the mediator and signed by the parties.

Agreed settlements

(2) A mediator shall not approve an agreement which is inconsistent with this Law.

151. (1) If it appears to the mediator that it is unlikely that a settlement can be reached within a reasonable time or at all, the mediator shall prepare a report which shall include-

Failure to reach settlement during mediation

- (a) any statement of facts agreed to by the parties;
- (b) a summary of the points, if any, settled in mediation and those still requiring determination by a court; and
- (c) any comments that the mediator may wish to make on the conduct of the parties so far as that may be relevant to the question of costs before a court.

(2) The mediator shall provide a copy of the report to each party to the dispute and shall advise the parties of their right to seek determination of the matter by the court.

(3) A report of the mediator shall be admissible in evidence in any proceedings before a court.

Resolution of disputes
by the court

152. (1) Where parties have failed to resolve a matter or dispute by mediation or either party has refused to accept mediation, either party may, subject to this section, apply to the summary court for relief.

(2) A person may, with the permission of the Grand Court, bring an application under this section in the Grand Court.

(3) The Grand Court may, on the application of a party to proceedings under this section that have been commenced in the summary court, order that the proceedings be transferred to the Grand Court; and such an order will have effect according to its terms.

(4) Proceedings shall not be commenced in, or transferred to, the Grand Court under subsections (3) or (4) unless the Grand Court considers that it is appropriate for the court to deal with the matter by reason of the complexity or significance of the matter.

(5) The chairman or a member of the executive committee duly appointed by the corporation for the purpose may represent the corporation in any proceedings under this section.

(6) A court may, in respect of an application under this section-

- (a) require a party to provide reports or other information for the purposes of the proceedings;
- (b) order that a party take such action as in the opinion of the court is necessary to remedy any default, or to resolve any dispute, as is specified in the order;
- (c) order that a party refrain from any further action of a kind specified in the order;
- (d) by order vary or reverse any decision of the corporation, or of the executive committee;
- (e) give judgment on any monetary claim;
- (f) make orders as to costs; or
- (g) make any incidental or ancillary orders.

(7) A court shall not make an order to alter the bye-laws of a corporation unless-

- (a) the corporation is a party to the proceedings or the court is satisfied that the corporation has been given a reasonable opportunity to become a party to the proceedings;

- (b) if it appears to the court that the alteration could adversely affect a proprietor or chargee who is not a party to the proceedings, the court is satisfied that the proprietor and chargee have been notified of the possibility that such an order could be made and given a reasonable opportunity to make submissions to the court in relation to the matter; and
- (c) in any event, the court is satisfied that the order is essential to achieving a fair and equitable resolution of the matters in dispute.

(8) Where an application is made under this section and the court is satisfied that an interim order is justified by the urgency of the case, the court may make an interim order to safeguard the position of any person pending its final resolution.

(9) An interim order-

- (a) has effect for such period as the court may determine and specifies in the order, and may be renewed by the court from time to time;
- (b) may be made or renewed whether or not notice of the application has been given to a respondent; and
- (c) unless sooner revoked, ceases to have effect on the determination or resolution of an application under this section.

(10) A person who fails to comply with an order under this section commits an offence and is liable on summary conviction to a fine of five thousand dollars.

(11) Subsection (10) does not limit the court's power to punish for contempt a person who fails to comply with an order.

(12) A court may decline to proceed with an application under this section if it considers that it would be more appropriate for proceedings to be taken in another court or tribunal constituted by law.

(13) The power to make an order under this section includes the power to vary or revoke an order.

(14) This section does not limit or derogate from any civil remedy at law or in equity.

(15) Rules of Court may be made to provide for any matter necessary for the effective and efficient operation of this section.

- Arbitration
153. (1) Persons may, instead of referring a dispute to the summary court or the Grand Court under this Part, refer such dispute to arbitration and the Arbitration Law, 2012 will apply accordingly.
- (2) An arbitrator, before holding a hearing, shall advise the parties of the possibility of a mediated settlement.

PART 13 - MISCELLANEOUS

- Regulations
154. The Cabinet may make regulations generally for the proper carrying out of this Law, and in particular, but without prejudice to the generality of the foregoing, may make regulations-
- (a) as to the manner and form of registering strata plans and documents;
 - (b) the fees to be paid for any procedure or function required or permitted to be done under this Law;
 - (c) prescribing forms under this Law and the respective purposes for which those forms are to be used and providing that in such cases as may be prescribed, forms or other documents required by or under this Law to be lodged with the Registrar shall be verified by statutory declaration made by such persons as may be prescribed;
 - (d) providing for the amendment of registered strata plans;
 - (e) prescribing the manner of registering transfers and leases of common property;
 - (f) prescribing for the management of parcels to which more than one strata plan and strata scheme relates and for the management of such schemes;
 - (g) providing for the voting rights of chargees of strata lots;
 - (h) providing exemptions from any provisions of the Law as is necessary for the establishment and management of any strata scheme;
 - (i) prescribing any other matter or anything which may be, or is required by this Law to be, prescribed; and
 - (j) providing that a contravention of a provision of the regulations constitutes an offence and for a penalty in respect of such a contravention of two thousand dollars.
- Rules of Court
155. Provision may be made by Rules of Court as to the practice and procedure to be followed in relation to applications which may be made to the court under this Law.

156. The Hotels Aid Law (1995 Revision) does not apply to any building or property regulated by this Law. Hotels Aid Law (1995 Revision)
157. Nothing in this Law derogates from any rights or remedies that a corporation, a proprietor, a person having an estate or interest in a strata lot or an occupier may have in relation to any strata lot or the common property apart from this Law. Other rights and remedies not affected by this Law
158. A public authority which is authorised by any Law to enter upon part of a parcel for the purpose of exercising any power conferred on it may enter upon any other part of that parcel if it is necessary to do so in order to exercise that power. Powers of entry by a public authority
159. Where a public authority is authorised or required by any Law to serve or deliver a notice or order on all the proprietors in a strata scheme, the public authority may serve or deliver the notice or order on the corporation for the strata scheme and, for the purposes of that Law, such service shall be taken to be service on all the proprietors and any obligation imposed on the proprietors of that strata scheme by the notice or order shall be deemed to be imposed on the corporation. Service of orders by public authority
160. A notice or other document required or authorised by this Law or the bye-laws to be served by the court, the corporation or an executive committee on a proprietor or occupier of a strata lot may be served-
- (a) in the case of an occupier, by leaving it with a person apparently of or over the age of sixteen years who is at the address of the strata lot; or
 - (b) in the case of a proprietor-
 - (i) personally;
 - (ii) by post to the proprietor's address for service appearing on the roll maintained by the corporation under this Law or where no such address is specified, by post to the address of the proprietor's strata lot; or
 - (iii) in any manner authorised by the bye-laws for the service of notices on proprietors.
161. (1) The Registrar may-
- (a) correct errors in, or in entries made in, the register; and
 - (b) supply any entry omitted to be made in the register.
- (2) The Registrar may in respect of any plan or other document lodged for registration or approval- Correction of errors by Registrar

- (a) correct any patent error appearing on the face of the plan or other document; and
- (b) supply any entry omitted to be made under this Law in the plan or other document.

(3) When correcting an error under subsection (1) or (2), the Registrar-

- (a) shall not erase or render illegible the original writing; and
- (b) shall affix the date upon which any correction was made or omission supplied together with his initials.

(4) A plan or other document corrected under this section has the same validity and effect as if the error or omission had not been made except as regards any entry made in the Register before the time of correcting the error or supplying the omitted entry.

Repeal and savings
(2013 Revision)

162. (1) The Strata Titles Registration Law (2013 Revision) is repealed.

(2) Until regulations are made under the Law to provide for a matter that may be prescribed by regulations, the regulations made under the Strata Titles Registration Law (2013 Revision) that are in force immediately before the date of commencement of this Law shall have effect provided they are consistent with this Law and until expressly repealed by this Law or by regulations made under this Law.

[Transitional provisions

163. The transitional provisions set out in Schedule 3 shall apply. **TO BE REVISED UPON COMPLETION OF THE REVIEW.]**

Section 20

SCHEDULE 1

STRATA MANAGEMENT STATEMENTS

PART A

STRATA MANAGEMENT STATEMENTS RELATING TO BUILDINGS

Form of strata management statement

1. A strata management statement shall include any information required by regulations and shall not be inconsistent with this or any other Law.

Matters that must be included

2. (1) A strata management statement under this Part shall provide for-

- (a) the establishment and composition of a building management committee and its members;
- (b) the functions of that committee and those members in managing the building and its site;
- (c) the manner in which the statement may be amended;
- (d) the settlement of disputes, or the rectification of complaints, concerning the management of the building or its site, whether by requiring reference of disputes or complaints to arbitration or to any other person for a recommendation or decision or otherwise,
- (e) in the case of the complete destruction of the building, the procedure to be followed and the type of resolution required in the case of a proposal to terminate all of the strata schemes in the building; and
- (f) the manner in which notices and other documents may be served on the committee.

(2) Each corporation for a strata scheme for part of the building and any other person has an absolute or leasehold interest in any part of the building or its site that does not form part of a strata scheme must be members of the building management committee.

(3) Notwithstanding subparagraph (2), any such corporation or other person may be excluded from membership, but only with the consent of the corporation supported by a special resolution or with the written consent of the other person.

(4) A corporation or other corporation that is a member of a building management committee may be represented for the purposes of the committee by a person appointed by, or selected in accordance with, a special resolution or by-law made by the corporation or a resolution made by the other corporation.

(5) A person who has been appointed or selected as a representative and whose term of office has not expired or been terminated by the corporation is, while representing the corporation for those purposes, taken to be the corporation.

Other matters

3. (1) A strata management statement under this Part may include provisions regulating (or providing for the regulation of) any one or more of the following-

- (a) the location, control, management, use and maintenance of any part of the building or its site that is a means of access;
- (b) the storage and collection of garbage on and from the various parts of the building;

- (c) meetings of the building management committee; and
- (d) the keeping of records of proceedings of the committee.

(2) A strata management statement may include particulars relating to any one or more of the following-

- (a) safety and security measures;
- (b) the appointment of a managing agent;
- (c) the control of unacceptable noise levels;
- (d) prohibiting or regulating trading activities;
- (e) service contracts; and
- (f) an architectural code to preserve the appearance of the building.

(3) This paragraph does not limit the matters that may be included in a strata management statement.

(4) A strata management statement may incorporate plans and other instruments as part of the statement.

Implied provisions

4. Each strata management statement under this Part is considered to include the following provisions, except to the extent that it provides otherwise-

- (a) the building management committee shall meet at least once each year;
- (b) at least seven days' notice of a meeting must be given to each person who is a member of the committee; and notice may be given personally or by post or in any way any other notice may be given to the person under this Law;
- (c) the quorum for a meeting of the committee is a majority of the members; and
- (d) the decision of a majority of the members present and voting at a meeting of the committee is the decision of the committee.

PART B

STRATA MANAGEMENT STATEMENT RELATING TO VACANT LAND

Form of strata management statement

1. A strata management statement shall include any information required by regulations and shall not be inconsistent with this or any other Law.

Matters that must be included

2. (1) A strata management statement under this Part shall provide for-
 - (a) the establishment and composition of a management committee and its members;
 - (b) the functions of that committee and those members in managing the parcel;
 - (c) the manner in which the statement may be amended;
 - (d) the settlement of disputes, or the rectification of complaints, concerning the management of the parcel, whether by requiring reference of disputes or complaints to arbitration or to any other person for a recommendation or decision or otherwise, and
 - (e) the manner in which notices and other documents may be served on the committee.
- (2) Each corporation for a strata scheme for part of the parcel and any other person who has an absolute or leasehold interest in any part of the parcel that does not form part of a strata scheme must be members of the management committee.
- (3) Notwithstanding subparagraph (2), any such corporation or other person may be excluded from membership, but only with the consent of the corporation supported by a special resolution or with the written consent of the other person.
- (4) A corporation or other corporation that is a member of a management committee may be represented for the purposes of the committee by a person appointed by, or selected in accordance with, a special resolution or bye-law made by the corporation or a resolution made by the other corporation.
- (5) A person who has been so appointed or selected and whose term of office as such a representative has not expired or been terminated by the corporation is, while representing the corporation for those purposes, taken to be the corporation.
3. A management statement under this Part shall also include bye-laws, plans and other particulars relating to-
 - (a) the location, control, management, use and maintenance of any part of the parcel that is an open access way or a private access way;
 - (b) the control, management, use and maintenance of any other part of the parcel, including any special facilities provided on the common property;

- (c) matters affecting the provision of, and payment for, internal fencing on the parcel including any obligations of the corporations;
- (d) the storage and collection of garbage on and from the parcel and any related obligations of the corporations;
- (e) the maintenance of water, sewerage, drainage, gas, electricity, telephone and other services; and
- (f) insurance of the common property.

Optional matters for management statement

4. (1) A strata management statement under this Part may include bye-laws and other particulars relating to any of the following-

- (a) the hanging of washing within the parcel;
- (b) safety and security measures;
- (c) details of any common property of which the use is restricted by bye-laws in force under the strata scheme of which it forms part;
- (d) the keeping of pets;
- (e) the obligation of the proprietor of a strata lot within a scheme not to interfere with the quiet enjoyment of another strata lot or the common property;
- (f) the control of unacceptable noise levels;
- (g) details of any business or trading activity to be carried on by a corporation and the method of distributing and sharing any profit or loss;
- (h) the control or preservation of the essence or theme of the development under the scheme,
- (i) architectural and landscaping guidelines to be observed by proprietors;
- (j) a diagram for the purpose of statutory easements;
- (k) any agreements entered into for the provision of services or recreational facilities; and
- (l) a plan for the purposes of providing access ways within the scheme.

(3) This paragraph does not limit the matters that may be included in a strata management statement.

Implied provisions

5. Each strata management statement under this Part is considered to include the following provisions, except to the extent that it provides otherwise-

- (a) the management committee shall meet at least once each year;

- (b) at least seven days' notice of a meeting must be given to each person who is a member of the committee; and notice may be given personally or by post or in any way any other notice may be given to the person under this Law;
- (c) the quorum for a meeting of the committee is a majority of the members; and
- (d) the decision of a majority of the members present and voting at a meeting of the committee is the decision of the committee.

SCHEDULE 2

Section 51

MODEL BYE-LAWS

1. (1) In these bye-laws-

“general meeting” includes an annual general meeting and an extraordinary general meeting;

“occupier” includes a lessee of the strata lot; and

“Law” means the Strata Titles Law, 2014.

(2) In accordance with section 59 of the Law, these bye-laws bind the corporation and the proprietors and any chargee or occupier of a strata lot to the same extent as if the bye-laws-

- (a) had been executed as a deed by the corporation and each proprietor and each such chargee and occupier; and
- (b) contained mutual covenants to observe and perform all the provisions of the bye-laws.

GENERAL MEETINGS

2. (1) The corporation shall, in each year hold an annual general meeting in addition to any other meetings in that year and shall specify the meeting as such in the notices calling it.

(2) Not more than fifteen months shall elapse between the date of one annual general meeting of the corporation and that of the next.

3. All general meetings other than annual general meetings shall be called extraordinary general meetings.

4. (1) A general meeting, other than the first general meeting, may be convened-

- (a) by the chairman, treasurer or secretary of the corporation;
- (b) by any two members of the executive committee of the corporation;
- (c) by one or more proprietors entitled to twenty-five per cent of the total unit entitlement of the strata lots; or
- (d) on the order of a summary court on cause shown, by a proprietor.

(2) A meeting, including the first general meeting, shall be convened by giving at least three days' written notice of the day, time and place of the meeting to all persons entitled to attend the meeting.

(3) The day, time and place of the meeting shall be determined by the executive committee.

(4) The notice convening a general meeting shall set out the agenda for the meeting.

(5) The agenda shall include-

- (a) the text of any resolutions to be moved at the meeting;
- (b) a motion confirming the minutes of the previous general meeting;
- (c) in the case of an annual general meeting, the election of the executive committee to serve until the next annual general meeting;
- (d) in the case of the first general meeting, the matters required to be dealt with under section 69(2) of the Law; and
- (e) in the case of an annual general meeting-
 - (i) presentation of the financial statements for the previous financial year;
 - (ii) in the case of where it is required under the Law by a super-majority resolution to have an annual statement of accounts audited, the appointment of an auditor of the accounts for the current financial year;
 - (iii) contributions to be paid by proprietors for the current financial year; and
 - (iv) such other matters as are required by regulations or determined by the corporation.

5. Subject to these bye-laws, no business shall be transacted in any general meeting unless a quorum of persons entitled to vote is present at the time when the meeting proceeds to business; and where the appropriate notice has been

given, all votes taken shall constitute a quorum and deemed to be representing the whole and the meeting shall proceed.

6. (1) The chairman of the executive committee shall chair all general meetings.

(2) If the chairman of the executive committee is unwilling or unable to act, the meeting shall be chaired by the deputy chairman of the executive committee.

(3) If neither the chairman nor the deputy chairman chairs the meeting, a chairman shall be elected by the eligible voters present in person or by proxy from among those persons who are present at the meeting.

7. (1) Lessees of strata lots may attend general meetings, whether or not they are eligible to vote.

(2) Persons who are not eligible to vote, may participate in the discussion at the meeting, but only if permitted to do so by the chairman of the meeting.

(3) Persons who are not eligible to vote shall leave the meeting if requested to do so by a resolution passed by a majority vote at the meeting.

THE EXECUTIVE COMMITTEE

8. There shall be an executive committee of the corporation which shall, subject to the provisions of these bye-laws and subject to any restriction imposed or direction given at a general meeting, exercise the powers and perform the duties of the corporation.

9. (1) Subject to subparagraph (2) and paragraph 11, the executive committee shall comprise at least three and not more than seven members.

(2) If the strata scheme has fewer than four strata lots or the corporation has fewer than four proprietors, all the proprietors are members of the executive committee.

10. (1) Subject to paragraph 11, the term of office of a member ends at the end of the annual general meeting at which the new executive committee is elected.

(2) A person whose term as member is ending is eligible for re-election.

11. (1) Subject to subparagraph (2), the first members of the executive committee shall be persons appointed by the developer in writing and they shall remain in office until the first anniversary of the completion of the sale of the last strata lot by the developer or until two years after the registration of the strata plan, whichever is earlier.

(2) The developer may remove all or any of the persons appointed by him at any time and appoint any other person or persons to hold office in their place.

12. Subject to the provisions of paragraphs 10 and 11 and, except where the executive committee consists of all the proprietors, the corporation may, by resolution at any extraordinary general meeting, remove any member of the executive committee before the expiration of his term of office and appoint another proprietor in his place to hold office until the next annual general meeting.

13. Any casual vacancy on the executive committee may be filled by the remaining members thereof provided that there is a quorum.

14. The quorum of the executive committee shall be-

- (a) one, if the executive committee consists of one member;
- (b) two, if the executive committee consists of two, three or four members;
- (c) three, if the executive committee consists of five or six members; and
- (d) four, if the executive committee consists of seven members.

15. (1) Subject to subparagraph (3), at the first meeting of the executive committee held after each annual general meeting the executive committee shall elect from among its members a chairman, a deputy chairman, a secretary and a treasurer; and a person may hold more than one office at a time, other than the offices of chairman and deputy chairman.

(2) A deputy chairman has the powers and duties of the chairman-

- (a) while the chairman is absent or unable to act; or
- (b) for the remainder of the term of the chairman if the chairman ceases to hold office.

(3) In the case of a two-lot strata scheme, the executive committee shall consist of-

- (a) the proprietor of each strata lot that has only one proprietor and the proprietor shall hold all posts;
- (b) one co-proprietor of each strata lot owned by co-proprietors; and

(c) the corporate nominee of each strata lot owned by a corporation.

(4) The co-proprietor of a strata lot is a member of the executive committee if the other co-proprietors have consented to that co-proprietor being the member or, in the absence of consent, the co-proprietor is the co-proprietor first named in the strata roll²².

16. At a meeting of the executive committee, subject to any exception in the Law, all matters shall be determined by majority vote and the chairman shall, in addition to an original vote, have a casting vote in any case in which voting is equal.

17. The results of all votes at a meeting of the executive committee shall be recorded in the minutes of the meeting.

18. The executive committee shall inform all proprietors and all persons entitled to attend meetings of the minutes of all executive committee meetings within two weeks of the meeting, whether or not the minutes have been approved, by delivering such minutes to the postal address of each proprietor and other person, either personally or by e-mail (where the proprietor or the other person has provided the corporation with an e-mail address).

19. Subject to the provisions of these bye-laws and the Law, the executive committee shall have the power to regulate its own procedure.

20. The executive committee may-

- (a) employ for and on behalf of the corporation such agents and servants as it thinks fit in connection with the control, management and administration of the common property and the exercise and performance of the powers and duties of the corporation;
- (b) subject to any restriction imposed or direction given at a general meeting, delegate to one or more of its members such of its powers and duties as it thinks fit, and may at any time revoke such delegation; and
- (c) subject to any restriction imposed or direction given at a general meeting, cause the corporation to enter into such deeds or agreements upon such terms as it may consider beneficial to the corporation or its members.

21. The executive committee shall-

²² See NSW Strata Schemes Management Act, Schedule 2, para 10 (5)

- (a) keep minutes of its meetings;
- (b) cause proper books of account to be kept in respect of all moneys received and spent by it on behalf of the corporation;
- (c) prepare proper accounts relating to all monies of the corporation and the income and expenditure thereof for each annual general meeting; and
- (d) on the application of a proprietor or a chargee or any person authorised in writing by either of them, make the books of account available for inspection at all reasonable times.

22. The validity of the proceedings of the executive committee shall not be affected by any vacancy amongst the members of the executive committee or by any defect in the appointment of a member thereof.

VOTING

23. (1) At any general meeting, subject to any exception in the Law, a resolution by the vote of the meeting shall be decided on a show of hands unless a poll is demanded by any proprietor or by any other person entitled to vote who is present or represented by proxy.

(2) Unless a poll is so demanded, a declaration by the chairman that a resolution has on a show of hands been carried shall be conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against such resolution.

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

24. In case of equality in votes, whether on a show of hands or on a poll, the chairman shall be entitled to a casting vote in addition to his original vote.

25. Subject to any exception in the Law, on a show of hands each proprietor shall have one vote while on a poll the votes of proprietors shall correspond with the unit entitlement of their respective strata lots.

26. On a show of hands or on a poll, votes may be given either personally or by proxy.

27. (1) An instrument appointing a proxy shall be in writing under the hand of the appointor or his attorney and shall be either general or for a particular meeting.

(2) A proxy holder need not be a proprietor.

28. No proprietor shall be entitled to vote at any general meeting unless all contributions payable in respect of his strata lot have been duly paid.

29. (1) Subject to subparagraphs (2) and (3), at a general meeting or a meeting of the executive committee a person shall not vote on his own behalf or as a proxy of another person on a motion relating to a management contract or arrangement with the corporation if the person or the proxy has a financial interest in the contract or arrangement.

(2) Subparagraph (1) does not apply if-

- (a) notice of the meeting included notice of the motion and, where applicable, the particulars described in subparagraph (3); and
- (b) the instrument appointing the proxy expressly authorises the proxy to vote on the motion and specifies whether the proxy is to vote for or against it.

(3) Where the motion relates to the corporation entering into or renewing a management contract or arrangement with a person, notice of the motion shall be accompanied by a copy of the contract or written details of the arrangement.

(4) For the purposes of this paragraph a person has a financial interest in a contract or arrangement if the person or his spouse-

- (a) owns shares (whether beneficially or otherwise) in a company;
- (b) is a member of a firm; or
- (c) is a director or employee of a company or of a firm,

that benefits or will benefit directly from the contract or arrangement to which the motion relates.

(5) In this paragraph-

“management contract or arrangement” means a contract or arrangement, or a proposed contract or arrangement, for the provision to the corporation of services in connection with the corporation’s powers and duties under these bye-laws and the Law; and

“spouse” in relation to a person, means the husband or wife of that person.

30. (1) Co-proprietors of a strata lot may vote by a single proxy jointly appointed by them and, in the absence of such proxy, only the first named in the strata roll shall be entitled to vote on a show of hands.

(2) Where proprietors are entitled to successive interests in a strata lot, the proprietor entitled to the first interest shall alone be entitled to vote whether on a show of hands or a poll.

31. Where a proprietor holds his strata lot or strata lots as a trustee he shall exercise the voting rights in respect of the strata lot or strata lots to the exclusion of persons beneficially interested in the trust and such persons shall not vote.

NOTICES

32. A notice may be served by the corporation upon any proprietor or other person upon whom a notice may be served either personally or by e-mail (where the proprietor or other person has provided the corporation with an e-mail address) or by sending it through the post in a prepaid letter addressed to such proprietor or person at his registered address as appearing in the register maintained by the Registrar or at such other address which the proprietor or person has provided to the corporation.

33. Any notice, if served by post, shall be deemed to have been served ten days following that on which the letter containing the notice is put into the post in the Islands and, in proving such service, it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office as a prepaid letter.

PROPRIETOR'S OBLIGATIONS

34. A proprietor or occupier shall permit the corporation and its agents, at all reasonable times on forty-eight hours notice (except in case of emergency when no notice shall be required), to enter his strata lot for the purpose-

- (a) of inspecting, maintaining, repairing or renewing pipes, wires, cables and ducts located in his strata lot and capable of being used in connection with the enjoyment of any other strata lot or the common property; or
- (b) of maintaining, repairing or renewing the common property,

and the proprietor or occupier shall provide the corporation with a key to the strata lot.

35. Subject to any agreement between the proprietor and the occupier, a proprietor shall pay all rates, taxes, charges, outgoings and assessments that may be payable in respect of his strata lot.

36. Section 42 of the Law shall apply in relation to the payment of contributions from proprietors and collection of such contributions by the corporation.

37. (1) A proprietor shall repair and maintain his strata lot, and keep it in a state of good repair, reasonable wear and tear and damage by fire, storm, tempest or act of God excepted.

(2) A proprietor shall repair and maintain his strata lot in accordance with subparagraph (1) except for repair and maintenance that is the responsibility of the corporation under these bye-laws or the Law.

(3) A proprietor who has the use of limited common property shall repair and maintain it in accordance with paragraph (1), except for repair and maintenance that is the responsibility of the corporation under these bye-laws or the Law.

38. A proprietor or occupier shall not use a strata lot or the common property in a way that-

- (a) causes a nuisance or hazard to another person;
- (b) causes unreasonable noise;
- (c) unreasonably interferes with the rights of other persons to use and enjoy the common property or another strata lot;
- (d) is illegal; or
- (e) is contrary to a purpose for which the strata lot or common property is intended as shown expressly or by necessary implication on or by the strata plan.

(2) A proprietor or occupier, shall not cause damage, other than reasonable wear and tear, to the common property or those parts of a strata lot which the corporation is required to repair and maintain under these bye-laws or insure under the Law; and he shall be liable for any such damage

(3) A proprietor or occupier shall ensure that his animals are leashed or otherwise secured when on the common property.

(4) A proprietor or occupier shall not keep any pets on a strata lot other than any one or more of the following-

- (a) fish or other small aquarium animals;
- (b) one caged bird of a breed approved in writing by the executive committee;
- (c) one cat; or
- (d) one dog of a breed approved in writing by the executive committee.

(5) An executive committee shall not grant an approval to keep any pet where the executive committee has reason to believe that the pet may cause a nuisance or danger to other proprietors.

(6) A proprietor or occupier shall ensure that any visitor to his strata lot complies with this bye-law and the proprietor or occupier is liable for any breach of this bye-law by his visitor.

39. On request by the corporation, a lessee shall inform the corporation of his name.

40. A proprietor or occupier shall not, except with the prior written approval of the corporation-

- (a) damage any lawn, garden, tree, shrub, plant or flower being part of or situated on common property; or
- (b) use for his own purposes, as a garden, any portion of the common property.

41. (1) A proprietor or occupier shall not mark, paint, drive nails or screws or the like into, or otherwise damage or deface, any structure that forms part of the common property except with the prior written approval of the corporation.

(2) An approval given by the corporation under subparagraph (1) cannot authorise any additions to the common property.

(3) This bye-law does not prevent a proprietor or occupier or person authorised by a proprietor from installing-

- (a) any locking or other safety device for protection of the proprietor's strata lot against intruders or to improve safety within the proprietor's strata lot;
- (b) any screen or other device to prevent entry of animals or insects on the strata lot;
- (c) any structure or device to prevent harm to children; or
- (d) any device used to affix decorative items to the internal surfaces of walls in the proprietor's strata lot.

(4) Any such locking or safety device, screen, other device or structure shall be installed in a competent and proper manner and shall have an appearance, after it has been installed, in keeping with the appearance of the rest of the building and the strata scheme.

42. A proprietor shall not make any alterations in his strata lot or carry out any works without the approval in writing of the corporation to the plans and

specifications thereof and shall make such alterations or carry out such works only in accordance with such plans and specifications when approved.

43. A proprietor shall do all such work as under any Law is directed or necessary to be done in respect of the strata lot and keep the corporation indemnified against all claims, demands and liabilities in respect of such work.

44. A proprietor or occupier shall comply with and observe any reasonable rules and regulations which the corporation may make to govern the use of the strata lots and the common property and, without limiting the generality of the foregoing, such rules and regulations may be restrictive of acts done on the strata lots or on the common property detrimental to the character or amenities of the strata lots.

45. (1) A proprietor or occupier shall keep all sinks and waste pipes in his strata lot clear and open and shall be responsible for all damage occasioned through the bursting or stopping up of pipes caused through the improper use or negligence of the proprietor, his family, servants, agents, lessees, licensees or visitors.

(2) All defects of which the proprietor or occupier shall become aware and which may in any way affect the other strata lots shall forthwith be notified by the proprietor or occupier to the corporation.

46. (1) A proprietor or occupier is responsible for cleaning all interior surfaces of glass in windows and doors on the boundary of the strata lot, including so much as is common property.

(2) The corporation is responsible for cleaning regularly all exterior surfaces of glass in windows and doors.

47. A proprietor shall ensure that all floor space within the strata lot is covered or otherwise treated to an extent sufficient to prevent the transmission from the floor space of noise likely to disturb the peaceful enjoyment of the proprietor of another strata lot.

48. (1) A proprietor or occupier shall ensure that before garbage or waste is placed in the receptacles for garbage or waste it is, in the case of garbage, securely wrapped or, in the case of tins or other containers, completely drained.

(2) The corporation may post signs on the common property with instructions on the handling of garbage, waste material that are consistent with requirements under any legislation regulating public health.

49. A proprietor or occupier shall not cause or permit on the common property or the grounds, driveways, parking areas and ways or any part or parts thereof any motor vehicle or other vehicles belonging to him or to his family, servants, licensees or visitors or under his or their control to-

- (a) travel at an excessive speed or at speed in excess of any speed limit which may at the discretion of the corporation be imposed by the corporation;
- (b) travel over or remain on any grass verges, lawns or gardens;
- (c) be parked or remain stationary except in the areas from time to time indicated and allocated to the proprietor; or
- (d) be dismantled or repaired.

THE CORPORATION - OBLIGATIONS AND RIGHTS

50. A corporation shall-

- (a) control, manage and administer the common property for the benefit of all proprietors;
- (b) keep in a state of good and serviceable repair and properly maintain the fixtures and fittings used in connection with the common property;
- (c) where practicable, establish and maintain suitable lawns and gardens on the common property; and
- (d) maintain and repair (including renew where reasonably necessary) pipes, wires, cables and ducts located in the common property and capable of being used in connection with the enjoyment of more than one strata lot and the common property.

51. The corporation shall pay all rates, taxes, assessments and outgoings imposed on or payable in respect of the common property.

52. The corporation shall insure the strata lots together with the common property and all erections, buildings and installations installed on the common property parcel and keep them insured against-

- (a) loss;
- (b) damage by riot;
- (c) malicious damage;
- (d) fire;
- (e) explosion;
- (f) storm;
- (g) hurricane;
- (h) earthquake;
- (i) flooding; and

- (j) impact or damage caused by aircraft or anything falling or dropping therefrom,

and such other risks as the corporation shall think fit or is required by law to insure with a reputable insurance company to an amount or amounts necessary to pay the full replacement costs of such property as well as to pay fees for surveyors, architects, attorneys-at-law and fees for such other professional and other services provided to the corporation as the corporation considers necessary.

53. If, in the opinion of the corporation the insurance is commercially viable, the corporation shall obtain and maintain insurance for the benefit of the members of the executive committee against-

- (a) any liability and all costs, charges and expenses that the member sustains or incurs in respect of any action, suit or proceeding that is proposed or commenced against the person for or in respect of anything that the person has done, omitted to do or permitted in respect of the execution of the duties of office; and
- (b) all other costs, charges and expenses that the person sustains or incurs in respect of the affairs of the corporation,

and that insurance shall include indemnity against a liability, cost, charge or expense of the member incurred as a result of a breach of the duty to act honestly and in good faith.

54. In the event that any strata lot or common property is destroyed or damaged by any insured risk, the corporation shall rebuild and reinstate the same in accordance with the Law and planning or development schemes of any competent authority for the time being affecting the strata lot or common property; and any monies received in respect of the insurance provided for shall be applied so far as such monies shall extend to rebuilding or reinstating the strata lot and common property.

55. Nothing contained in these bye-laws shall prejudice the corporation's right to recover from the proprietor of any strata lot or any other person the amount or value of any loss or damage suffered by or caused to the corporation or the common property by the negligence, wrongful act or default of the proprietor of any strata lot or such other person.

56. (1) The corporation, before repairing any joist or beam to which is attached any ceiling or floor of any of the strata lots and before carrying out repairs or works to the common property for the carrying out of which it requires access to any one or more strata lots, shall give reasonable notice (except in cases of extreme urgency where no notice shall be required) of at least forty-eight hours in writing to the proprietor.

(2) The corporation shall, on giving such notice, be entitled to repair the joist or beam or carry out the repairs or works but shall act carefully and reasonably, doing as little damage as possible to the relevant strata lot or strata lots and shall repair any damage done to such strata lot or strata lots.

57. The corporation may-

- (a) purchase, hire or otherwise acquire personal property for use by proprietors in connection with their enjoyment of the common property;
- (b) borrow monies required by it in the performance of its duties or the exercise of its powers;
- (c) secure the repayment of monies borrowed by it and the payment of interest thereon by negotiable instrument or charge of unpaid contributions (whether levied or not) or charge of any property vested in it or by combination of those means;
- (d) invest as it may determine acting reasonably without the risk to principal any monies in the fund for expenses;
- (e) make an agreement with the proprietor or occupier of any strata lot for the provision of amenities or services by it to such strata lot or to the proprietor or occupier thereof; and
- (f) do all things reasonably necessary for the enforcement of the bye-laws and the control, management and administration of the common property including the making of rules governing the use of the strata lots and the common property.

ENFORCEMENT OF BYE- LAWS AND RULES

58. (1) The corporation may fine a proprietor or occupier a maximum of-

- (a) one hundred dollars for each contravention of a bye-law; and
- (b) twenty dollars for each contravention of a rule or regulation.

(2) If an activity or lack of activity that constitutes a contravention of a bye-law, rule or regulation continues, without interruption, for longer than seven days, a fine may be imposed every seven days.

INDEMNITY

59. (1) The members of the executive committee, auditors and any trustee acting in relation to any of the affairs of the corporation and their heirs, executors, administrators and personal representatives shall be indemnified out of the assets of the corporation from and against all actions, proceedings, costs, charges, losses, damages and expenses which they or any of them shall or may incur or sustain by reason of any act done or omitted in or about the execution of their

duty in their respective offices or trusts, except such (if any) as they shall incur or sustain by or through their own wilful neglect or default.

(2) No such member, auditor or trustee shall be answerable for the acts, receipts, neglects or defaults of any other member, auditor or trustee for-

- (a) joining in any receipt for the sake of conformity;
- (b) the solvency or honesty of any banker or other persons with whom any moneys or effects belonging to the corporation may be lodged or deposited for safe custody; or
- (c) for any insufficiency of any security upon which any monies of the corporation may be invested

or for any other loss or damage due to any such cause as aforesaid or which may happen in or about the execution of his office or trust unless the same shall happen through the wilful neglect or default of such member, auditor or trustee.

AMENDMENT OF BYE-LAWS

60. Subject to the provisions of the Law, these bye-laws shall not be amended or varied except by resolution of the corporation by two-thirds majority at a general meeting.

SEVERANCE

61. If any provision of these bye-laws is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from these bye-laws and rendered ineffective as far as possible without modifying the remaining provisions of these bye-laws; and shall not in any way affect any other circumstances of or the validity or enforcement of these bye-laws.

SCHEDULE 3

Section 163

TRANSITIONAL AND SAVINGS PROVISIONS

Interpretation

1. (1) In this Schedule -

“appointed day” means the day on which the Law comes into operation as fixed under section 2 of the Law;

“corporation” means a body corporate created by section 5 of the former Law;

“former bye-law” means a bye-law within the meaning of the former Law as that bye-law was in force immediately before the appointed day;

“former common property” means so much of a former parcel as, immediately before the appointed day, was not comprised in any former strata lot;

(2013 Revision)

“former Law” means the Strata Titles Registration Law (2013 Revision);

“former parcel” means land which, immediately before the appointed day, comprised the former strata lots and the former common property the subject of a former strata scheme;

“former proprietor” means a person who, immediately before the appointed day, was a proprietor, within the meaning of the former Law, of a former strata lot;

“former strata lot” means a strata lot under the former Law as it existed immediately before the appointed day;

“former strata scheme” means-

- (a) the manner of division, immediately before the appointed day, of a former parcel into former strata lots or into former strata lots and former common property and the manner of allocation, immediately before that day, of unit entitlements under the former Law among the former strata lots; and
- (b) the rights and obligations, between themselves, immediately before the appointed day, of former proprietors, other persons having property interests in or occupying former strata lots and the corporation, as conferred or imposed by the former Law or by anything done under the authority of the former Law; and

“Law” means the Strata Titles Law, 2014

(2) For the purposes of the application of any provision of the Law to or in respect of a strata scheme to which the provisions of the Law apply by reason of paragraph 5, a reference to a developer, in relation to that strata scheme, is a reference to the person by whom the freehold or leasehold interest in the parcel (being the parcel comprised in the strata plan within the meaning of the former Law, the registration of which under the former Law initiated the strata scheme) was held at the time of that registration.

(3) The express application of any provision of the Law (whether unamended or deemed to be amended) by any provision of this Schedule to or in respect of any act, matter or thing referred to in this Schedule shall not, except in

so far as a contrary intention appears, be construed as preventing or limiting the application of any other provision of the Law to that or any other act, matter or thing.

Registration of unregistered former strata plans

2. (1) Notwithstanding section 3 or 6, a strata plan within the meaning of the former Law, may be registered as a strata plan but shall not be so registered unless-

- (a) the requirements of the former Law have been or are complied with in so far as those requirements relate to the registration of a strata plan; and
- (b) registration is effected within twenty four months after the appointed day.

(2) Where a plan is registered under subparagraph (1), the land comprised in the plan shall be deemed to have been subdivided under the Law into strata lots or into strata lots and common property in the same manner as that land would have been subdivided if that plan had been registered under the former Law and any such strata lots or common property shall, for the purposes of the Law, be deemed to be strata lots or common property.

(3) Where, under any provision of the Law, any act, matter or thing depends on or results from (either directly or indirectly) the registration of a strata plan, that provision operates in relation to the registration of a plan under subparagraph (1) in the same way as it operates in relation to the registration of a strata plan.

(4) Subject to this paragraph, a reference in the Law to a strata plan includes a reference to a plan registered under subparagraph (1) as a strata plan.

(5) The address endorsed, as referred to in section 4(1)(e) of the former Law, upon a plan registered under subparagraph (1) shall, for the purposes of this Law, be deemed to be the address for the service of notices on the corporation concerned until that address is altered in accordance with the Law.

(6) A reference to a strata lot shown in a plan capable of being registered under subparagraph (1) made in any instrument executed before the registration of that plan under subparagraph (1) (being an instrument relating to the sale or other disposition of an estate or interest in the strata lot so shown) shall, on and after the registration of that plan, be construed as a reference to the strata lot which corresponds to the strata lot so shown.

Continuation of corporations

3. A corporation created under the former Law, in relation to a former strata scheme-
- (a) shall continue notwithstanding the repeal of the former Law;
 - (b) shall, on the appointed day, be deemed to be the corporation constituted under section 36 in respect of the scheme that corresponds to that former strata scheme and to which the provisions of this Law apply by reason of paragraph 5; and
 - (c) notwithstanding section 36, shall have as its name its name under the former Law.

Continuation of estates or interests in former lots and former common property and rights in former common property

4. A person who, immediately before the appointed day-
- (a) had an estate or interest in a former strata lot, has on that day the same estate or interest in the strata lot under this law which corresponds to that former strata lot; or
 - (b) had an estate or interest (not being a right or special privilege referred to in paragraph 11) in former common property, has on that day the same estate or interest in the common property under this Law which corresponds to that former common property.

Application of Law to former strata schemes, former parcels

5. Subject to this Schedule, the provisions of the Law shall, on and from the appointed day, apply to and in respect of-
- (a) a former strata scheme as if it were a strata scheme; and
 - (b) a former parcel as if it were a parcel.

Registration of transfers or leases of former common property registrable under section 14 of former Law

6. (1) Where a transfer or lease of any common property under the former Law-
- (a) would under section 14 of the former Law have been registrable had this Law not been enacted but had not, before the appointed day, been so registered; and
 - (b) was executed pursuant to an agreement entered into by the corporation before the appointed day, that transfer or lease, upon its lodgement for registration, shall be dealt with under section 32(8) as if it were a dealing referred to in section 32(2).

(2) In the event of the registration of an instrument by the Registrar the effect of which is to render the register relating to a former strata lot incorrect in so far as that register certifies the share of the common property held by the proprietor of the former strata lot, the Registrar shall amend that register accordingly.

General meetings of certain continued corporations

7. (1) Where, in relation to a corporation continued as a corporation by the operation of paragraph 3, the developer is not, on the appointed day, the proprietor of any of the strata lots the subject of the strata scheme or is the proprietor of strata lots the subject of the strata scheme the sum of whose unit entitlements is less than two-thirds of the aggregate unit entitlement and-

- (a) a general meeting of that corporation has not been held before the appointed day, a general meeting of that corporation shall be held within three months after the appointed day and that general meeting shall, for the purposes of the Law be the first annual general meeting of the corporation; or
- (b) [an annual general meeting of that corporation has been held before the appointed day, the last annual general meeting of that corporation held before that day shall, for the purposes of the Law be deemed to have been the first annual general meeting.]

(2) If a meeting of the corporation is not held in accordance with subparagraph (1)(a), the summary court may, pursuant to an application by a proprietor or chargee of a strata lot appoint, by order, a person to convene and hold a general meeting within such time as may be specified in the order and the meeting convened by that person shall for the purposes of this Law be the first annual general meeting of the corporation.

(3) An order made under subparagraph (2) may include such ancillary or consequential provisions as the court thinks fit.

(4) The developer shall deliver to the corporation (being a corporation a general meeting of which is required to be held under subparagraph (1)(a)), within fourteen days after notice in writing is given to him by the corporation or if the documents referred to in paragraphs (a) and (b) are not then in his possession within fourteen days after they come into his possession or under his control-

- (a) all plans, specifications, drawings showing water pipes, electric cables, drainage pipes, ventilation ducts or air conditioning systems, certificates, diagrams (including lift wiring diagrams)

- and other documents (including any policy of insurance) obtained or received by him and relating to the parcel or building; and
- (b) any books of account, notices or other records relating to the former strata scheme or the strata scheme, other than documents which exclusively evidence rights or obligations of the developer and which are not capable of being used for the benefit of the corporation or any of the proprietors, other than the developer.

Meetings of former corporations held within two months after appointed day

8. Notwithstanding the bye-laws in Schedule 2, for the purposes of any general meeting of a corporation continued by the operation of paragraph 3, being a general meeting held before the expiration of two months after the appointed day, the procedure for the convening and holding of meetings of such a corporation and the right of persons to vote at and to requisition meetings of such a corporation shall be the same as they were under the former Law.

Notices served by public authority before the appointed day

9. The reference in section 46 to a notice served on the proprietor of a strata lot by a public authority includes a reference to a notice served, before the appointed day, by such an authority on the proprietor of a former strata lot.

Effect of former bye-laws

10. (1) Subject to this paragraph, the former bye-laws relating to a former strata scheme, including statutory bye-laws under the former Law, shall, notwithstanding the repeal of the former Law, continue in force in respect of the corresponding scheme to which the provisions of this Law apply by reason of paragraph 5 except to the extent of any inconsistency of the former bye-laws with any provision of the Law.

(2) Upon the expiration of twelve months of the commencement of the Law all of the statutory bye-laws under the former law shall cease to have effect and the bye-laws in Schedule 2 shall apply.

(3) The former bye-laws relating to a former strata scheme may be added to, amended or repealed in the manner provided by this Law, and any such addition, amendment or repeal shall have effect upon notification being recorded, in the manner provided under section 56 of the Law, on the relevant strata plan registered under the former Law.

Maintenance of exclusive use, or special privileges in respect of common property

11. Where immediately before the appointed day a proprietor of a former strata lot was entitled, pursuant to a former bye-law, to a right of exclusive use and enjoyment of, or special privileges in respect of, any of the former common property, the proprietor for the time being of the strata lot shall continue to be entitled to that right or those special privileges in accordance with the terms of the grant and any such grant shall be determinable on reasonable notice unless the corporation otherwise resolves by super-majority resolution.

Recovery of contributions levied under former Law

12. (1) Any contribution levied under the former Law by a corporation and unpaid at the appointed day may be recovered by the continued corporation as if it were a contribution levied under this Law and bears interest from the appointed day as if it were a contribution levied under this Law.

(2) Any determination made under the former Law by a corporation specifying amounts to be raised by regular periodic contributions shall be deemed to be a determination made under section 41(1)(b).

Inspection of former records etc.

13. A corporation continued as a corporation by the operation of paragraph 3 shall, for the purposes of the strata scheme concerned, cause to be retained until the expiration of the prescribed period, any records, minutes of meetings, notices and books of account kept or received by it before the appointed day and in its custody or under its control on that day and upon application under section 61(1) made in respect of a strata lot, the subject of the strata scheme concerned shall make those records, minutes, notices and books available for inspection by the applicant or his agent at a time and place ascertained in accordance with section 61.

Administrative funds of continued corporations

14. (1) Where a determination made under section 6(2)(b) of the former Law by a corporation continued as a corporation by the operation of paragraph 3 was in force immediately before the appointed day, that determination shall be deemed to be the determination required by section 41(1)(b) to be made by that corporation.

(2) Where a fund was, immediately before the appointed day, kept under section 6(2)(a) of the former Law by a corporation continued as a corporation by the operation of paragraph 3, that fund shall, on the appointed day, be deemed to be the fund required under section 41(1)(a) to be established by that corporation.

(3) Any contribution levied under the former Law by a corporation and unpaid before the appointed day shall be deemed to be a contribution levied under section 41(1)(c).

Continuation of executive committees of former corporations

15. (1) The executive committee constituted under the former Law of a corporation continued as a corporation by the operation of paragraph 3 shall, subject to this Law, be, on and from the appointed day, the executive committee of that corporation.

(2) A person who is a member of a executive committee of a corporation referred to in subparagraph (1) shall, for the purposes of the Law and the by-laws, be deemed to have been elected as a member of that executive committee if he was elected as a member of the executive committee of the corporation created under the former Law.

Transitional arrangements for certain phased development of strata schemes

16. (1) Sections 93, 94, 95, 97, 98, 99 and 101 apply to phased strata schemes registered under the former Law.

(2) A proposed strata development plan registered under the former law shall be deemed to include a statement that the date for fulfillment by the developer of his obligations under the plan and the completion of the entire development shall be a date no later than the tenth anniversary of the appointed day.

(3) Section 100 of the Law applies to phased strata schemes registered under the former law subject to the following amendments-

(a) by deleting paragraph (b) and substituting the following-

“(b) subject to subsection (2), the time deemed to be specified in the plan for conclusion of the development scheme arrived;”

(b) by deleting subsection (2) and substituting the following-

“(2) Where a development has not been carried out within the period deemed to be specified in the strata development plan, the Registrar may, upon application and good cause shown by a developer, extend the date for fulfillment by the developer of his obligations under the proposed strata development plan for a further period or periods not exceeding five years in total from that date.”; and

(c) by deleting subsection (3) and substituting the following-

“(3) Where the Registrar refuses an application under subsection (2) or where the developer is unable to or elects not to complete a development and he decides to close the strata plan, he may subdivide any portion of the undeveloped land or otherwise deal with the land as he requires.”.

Keeping of animals

17. Where at the expiration of a period of three months after the appointed day-

- (a) the bye-laws in force in respect of a strata scheme in existence on the appointed day which prohibit a proprietor of a strata lot from keeping any animal or bird in his strata lot or on the common property without the approval in writing of the executive committee; and
- (b) the proprietor of any strata lot the subject of that strata scheme was keeping an animal or bird in that strata lot or on the common property and had not before the expiration of that period been given a notice by the executive committee requiring him not so to keep that animal or bird,

the executive committee shall be deemed to have given its approval under the bye-laws referred to in paragraph (a) to the keeping of that animal or bird on that strata lot or the common property.

Modification of Part 5 of the Law- insurance provisions

18. (1) Section 73 does not apply to or in respect of a corporation continued as a corporation by the operation of paragraph 3, which has in force on the appointed day a policy of insurance expiring not later than one year after the appointed day and effected by it in accordance with section 6(1)(a) of the former Law, until the expiry of that policy.

(2) Section 77(1)(a) does not apply to or in respect of a corporation continued as a corporation by the operation of paragraph 3, which has in force on the appointed day a policy of insurance expiring not later than one year after the

appointed day and effected by it in accordance with section 6(1)(c) of the former Law, until the expiry of that policy.

(3) Sections 78(2) and 80 apply to and in respect of a policy of insurance entered into in accordance with the former Law before the appointed day between a corporation continued as a corporation by the operation of paragraph 3 and an insurer in the same way as those sections apply to and in respect of a contract of insurance entered into between a corporation and an insurer pursuant to Part 5 of the Law.

Proceedings etc under former Law

19. (1) Any proceedings under the former Law which were pending before any court immediately before the appointed day may be continued and completed as if the Law had not been enacted.

(2) Any declaration or order made by a court under the former Law before the appointed day shall, notwithstanding the repeal of the former Law, continue to operate and shall have the same force and effect as if the Law had not been enacted.

Super-majority and other resolutions under the former Law

20. (1) Any special or super-majority resolution made by a corporation under the former Law between 9th October 2012 and the appointed day in relation to any matter shall, notwithstanding the repeal of the former Law, continue to operate and shall have the same force and effect as if the Law had not been enacted.

(2) Notwithstanding subparagraphs (1) and (3), where any matter was to be resolved by unanimous resolution by a former corporation under the former Law prior to 9th October 2012, after the appointed day such matter shall again be dealt with by unanimous resolution by that former corporation.

(3) A former corporation may vote by unanimous resolution to continue to use special and super-majority resolutions as defined by the Law to deal with any matter which could have been dealt with by unanimous resolution prior to 9th October 2012.

Strata management statements in relation to former strata schemes

21. (1) Where at the appointed day a strata scheme is still being developed and the building or parcel will be partially subdivided by a strata plan or divided by more than one strata plan the developer may, prior to the completion of the

development of the strata scheme, register a strata management statement for the building or the parcel concerned.

(2) At the appointed day the corporation of a former strata scheme which is partially subdivided by a strata plan or the corporations of a former strata scheme which is subdivided by two or more strata plans may decide by ordinary resolution to register a management statement in accordance with the Law.

Administrators under former Law

22. (1) A person who, immediately before the appointed day, held office as an administrator under section 9 of the former Law shall, notwithstanding the repeal of the former Law, continue to have the powers and duties he had, as the holder of that office, immediately before the appointed day.

(2) The provisions of section 9 of the former Law continue to apply to and in respect of a person holding office as referred to in subparagraph (1) notwithstanding the repeal of the former Law.

(3) Where immediately before the appointed day an application under section 9(1) of the former Law was pending, the court shall continue to deal with such application as if the Law had not been enacted.

Miscellaneous

23. (1) Where, apart from this section, anything done under or for the purposes of the former Law would cease to have effect by virtue of the repeal of that Law it shall have effect as if it had been done under and for the purposes of the corresponding provisions of the Law.

(2) A proprietor of land divided into two or more lots as duplexes or triplexes before or on the appointed day, may within twenty-four months of the appointed day, apply to have such land registered as a strata scheme under the Law subject to prescribed conditions.

Passed by the Legislative Assembly this day of , 2014

Speaker

Clerk of the Legislative Assembly