

CHAPTER 234

THE CONDOMINIUM PROPERTY ACT

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CHAPTER 234**THE CONDOMINIUM PROPERTY ACT**

Commencement: 23 February, 2001

An Act to provide for the division of buildings into units and common property; to provide for individual ownership of those units by issuance of certificates of title in relation to the units; to provide for ownership of common property by proprietors of units as tenants in common; to provide for the use and management of the units and common property and for related matters.

PART I—INTERPRETATION**1. Interpretation**

In this Act, unless the context otherwise requires—

“annual general meeting” means a meeting convened in accordance with section 27;

“amortisation period” means the period within which all liabilities in respect of a charge must be discharged;

“Board” means a Management Board elected under section 25;

“building” means—

- (a) any structure, whether of a temporary or permanent nature, and, irrespective of the materials used in its erection, erected or used for or in connection with—
 - (i) accommodation or convenience of human beings or animals;
 - (ii) the manufacture, processing, storage or sale of any goods;
 - (iii) the rendering of any service;
 - (iv) the destruction or treatment of refuse or other waste material;
 - (v) the cultivation or growing of any plant or crop;
- (b) a swimming pool, reservoir, bridge, tower or any other structure connected with it;
- (c) a fuel pump or tank used in connection with the pump;

- (d) an electrical installation or any other installation connected with it;
- (e) gas supply installation or any installation connected with it; and
- (f) any other part of a building or installation connected to the building;

“certificate of title” means a certificate of title issued under section 3;

“Chairperson” means the Chairperson of a Board;

“charge” includes a mortgage;

“common property” means that part of the condominium property which

does not belong to any specific unit and which is used in common by the owners of the units and includes, without prejudice to the general effect of the foregoing, the land on which the property is situated, support structures, infrastructure and services;

“condominium” means a system of separate ownership of individual units in a multiple unit building, the individual units of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those units;

“condominium plan” means a plan registered in accordance with this Act and includes a phased condominium plan;

“corporation” means a corporation established under section 19;

“court” means a court of competent jurisdiction and includes tribunals established under the Land Act;

“currency point” has the value assigned to it in Schedule 1 to this Act;

“developer” means a person who, whether alone or in conjunction with another person develops, sells or offers for sale to the public, units or proposed units;

“developer’s management agreement” means a management agreement

entered into by a corporation at a time when the majority of units are owned by a developer;

“document” includes a summons, notice, tax notice, order and other legal process;

“easement” means a right attached to one particular piece of land which

allows the owner of that land either to use the land of another person in a particular manner or to restrict its use by that other person to a particular extent but which does not allow him or her to take any part of its natural produce or its soil, and includes a right of way, a right to draw water, a right to place erections such

as sign posts, a right of light and a right of support to a building and any other rights provided by any law in force;

“landlord” means the owner of a unit that is being rented and includes a person acting on behalf of the owner;

“local authority” means a district, subcounty, municipal, division or town council and includes a public officer authorised by a local authority;

“management agreement” means an agreement entered into by a corporation governing the management of—

(a) the movable and immovable property of the corporation associated with the units; and

(b) the common property associated with the units;

“managing agent” means a person appointed by the Board under section 28 to manage the units, the movable and immovable property of the corporation and the common property, and the day-to-day affairs of the corporation;

“Minister” means the Minister to whom the functions of the Minister under this Act have for the time being been assigned by the President;

“ordinary resolution” means a resolution—

(a) passed at a properly convened meeting of a corporation by a simple majority of all persons entitled to vote; or

(b) signed by a simple majority of all persons who, at a properly convened meeting of a corporation, would be entitled to vote;

“owner” means a person who is registered as the owner of

(a) freehold estate in a unit;

(b) mailo estate in a unit; or

(c) the leasehold estate in a unit where the parcel on which the unit is located is held under a lease;

“parcel” means the land comprised in a condominium plan;

“planning authority” means the planning authority for the time being responsible for planning in the area;

“proprietor” means—

(a) in relation to land or a lease, the person named in the register as the proprietor of the land or lease; and

(b) in relation to any unit, the person who is registered as proprietor of an estate in the unit;

“rating authority” has the meaning assigned to it under the Local Governments (Rating) Act;

- “recreational agreement” means any agreement concerning recreational facilities to be used by a person occupying a unit;
- “register” has the same meaning as register book in the Registration of Titles Act;
- “Registrar” means a Registrar appointed under the Registration of Titles Act;
- “regulations” means regulations made by the Minister under section 55;
- “rules” means the rules made by a corporation under section 29;
- “sale agreement” means an agreement with a developer by which a person purchases a unit or proposed unit or acquires a right to purchase a unit or proposed unit;
- “special resolution” means a resolution—
- (a) passed at a properly convened meeting of a corporation by a majority of not less than seventy-five percent of all the persons entitled to vote and representing not less than seventy-five percent of the total unit factors for all the units; or
 - (b) signed by not less than seventy-five percent of all the persons who, at a properly convened meeting of a corporation, would be entitled to vote and representing not less than seventy-five percent of all the total unit factors for all the units;
- “tenancy in common” means a holding of land where two or more persons have interests in the same land, accruing under different titles; or accruing under the same title, but at different periods, or conferred by words of limitation importing that the tenants are to take in distinct shares which are severable;
- “unanimous resolution” means a resolution supported by all owners of units;
- “unit” means a space that is situated within a building and described in a condominium plan by reference to floors, walls and ceilings within the building;
- “unit factor” means the unit entitlement of a condominium plan and indicates the share of an owner in the common property, common facilities and other assets of the corporation and is the figure which determines the owner’s contribution to the common expenses of a corporation and may be determined in accordance with the byelaws of the corporation using such variables as the size of the unit, location of the unit and the view which the unit commands.

PART II—DIVISION OF BUILDING INTO UNITS
AND REGISTRATION OF CONDOMINIUM
PROPERTIES

2. Division of building into units

(1) A proprietor or developer of an existing or planned building may divide the building into two or more units by registering with the Registrar a condominium plan in accordance with this Act.

(2) The condominium plan shall be presented for registration in quadruplicate and shall indicate the number of units into which the building is divided.

(3) The developer in depositing a plan with the Registrar under subsection (1) may indicate whether the plan will be developed at once or in successive phases.

(4) Where a plan is to be developed in phases, it shall be known as a phased condominium plan.

(5) Where the developer deposits a phased condominium plan in accordance with subsections (1) and (3), the developer shall indicate a timetable for the development of the various phases.

3. Register of condominium property, *etc.*

(1) The Registrar shall, upon an application for registration of a condominium plan, close the part of the register relating to the parcel described in the plan, and open a separate part for each unit described in the plan, and shall, upon the payment of the prescribed fee, issue a certificate of title in respect of the unit.

(2) The Registrar shall preserve the closed part of the register referred to in subsection (1).

4. Application of Registration of Titles Act

(1) The provisions of the Registration of Titles Act relating to registration techniques, procedures and practices shall, unless otherwise provided in this Act, apply to the registration of land dealings under this Act.

(2) A certificate of title issued in respect of a unit comprised in a condominium plan registered under this Act shall, upon registration of the plan, be deemed to have been issued under the Registration of Titles Act.

(3) A proprietor of a unit in respect of which part of the register is opened under section 3 may, subject to this Act, sell, transfer, lease, charge, or otherwise deal with that unit in the same manner and form as land held under the Registration of Titles Act.

5. Entering of interests on register of units, etc.

(1) Any interests affecting the parcel which were entered on the part of the register closed under section 3 shall be endorsed on the separate parts opened under that section and on the certificates of title issued under that section to the extent of the unit factor.

(2) Any interest affecting a unit comprised in a condominium plan registered under section 3 but not endorsed on the separate part of the register shall be endorsed on the separate part of the register of the unit opened under section 3 and on the certificate of title issued in respect of that unit.

6. Common property

(1) The Registrar shall, upon opening a separate part of the register for a unit under section 3, record in that part the unit factor, and shall record that unit factor on the certificate of title issued in respect of the unit.

(2) The common property comprised in a registered condominium plan shall be held by the owners of all the units as tenants in common in shares proportional to the unit factors for their respective units.

(3) Subsection (2) shall apply as if there were different owners for each of the units where, prior to the sale, the developer is the owner of all the units.

(4) A share in the common property shall not, subject to this Act, be disposed of or become subject to a charge except as appurtenant to the unit of an owner.

(5) A disposition of, or a charge on a unit shall operate to dispose of or charge that share in the common property without express reference to it.

7. Subdivision of units, etc.

(1) A proprietor of a unit may, in accordance with this Act, and with the approval of a local authority, subdivide or consolidate his or her unit by registering with the Registrar a condominium plan relating to the unit intended to be subdivided or consolidated.

(2) Except as provided in this section, the provisions of this Act relating to condominium plans shall apply with all necessary modifications to a subdivision or consolidation of units.

(3) A unit comprised in a condominium plan of subdivision or consolidation shall, upon the registration of a condominium plan of subdivision or consolidation, be subject to the burden and have the benefit of any easements that affect units in the original condominium plan.

(4) There shall be indicated in the schedule accompanying a condominium plan of subdivision or consolidation, the apportionment among the units and the unit factor for the unit or units in the original condominium plan.

(5) The Registrar shall, before accepting to register a proposed condominium plan of subdivision or consolidation, amend the original condominium plan in accordance with regulations made under this Act.

(6) Upon registration of a condominium plan of subdivision or consolidation, the land comprised in it shall not be dealt with by reference to units in the original condominium plan.

8. Change of use of unit

(1) An owner of a unit shall not change the use of his or her unit unless—

- (a) the corporation has, by unanimous approval, consented to the change of use; and
- (b) the planning and local authorities have approved the change of use.

(2) An owner of a unit shall, where the change of use of a unit under this section results in modifications to the condominium plan, submit to the Registrar, a modified condominium plan.

(3) The Registrar shall, on receipt of a modified condominium plan under subsection (2) append the plan as an annex to the condominium plan of the condominium property registered under section 3.

9. Condominium plan to conform to certain requirements

(1) The Registrar shall not register a plan as a condominium plan unless—

- (a) that plan, in its heading, is described as a condominium plan;
- (b) there is indicated in that plan, a delineation of the external surface boundaries of the parcel and the location of the building in relation to them;
- (c) the plan includes a drawing illustrating the units and distinguishing the units by numbers or other symbols;
- (d) the boundaries of each unit are clearly defined in the plan;
- (e) the approximate floor area of each unit is clearly shown in the plan;
- (f) the plan is accompanied by a schedule specifying in whole numbers the unit factor for each unit in the parcel;
- (g) the plan is accompanied by a statement containing such particulars as are necessary to identify the title to the parcel;
- (h) the plan is accompanied by the certificates referred to in section 10;
- (i) the plan is signed by the proprietor;
- (j) the plan contains the address at which documents are to be served on the relevant corporation in accordance with section 51; and
- (k) the plan contains any other particulars prescribed by or under regulations.

(2) In the case of a condominium plan that includes residential units, there shall be indicated in that plan, in addition to conforming to the requirements specified in subsection (1) and to the satisfaction of the Registrar, a delineation of the boundaries of the areas that are to be leased under section 4(3).

10. Condominium plan to be accompanied by certificates

(1) A condominium plan referred to in section 9 shall be accompanied by

- (a) a certificate of a registered surveyor to the effect that the structure shown on the plan is within the external surface boundaries of the parcel which is the subject of the plan and if there are projections beyond those external boundaries, that an appropriate easement has been granted as an appurtenance of the parcel; and
- (b) a certificate of a local authority to the effect that the proposed division of the structure as shown on the plan has been approved by the local authority in accordance with any enactment regulating building construction.

(2) In the case of a condominium plan in respect of a building or structure that is to be brought under the operation of this Act, the plan shall, before it is registered, be accompanied by a certificate of an architect registered under the Architects Registration Act, to the effect that the units indicated in the plan correlate with the existing structure.

(3) Where an application is made for a certificate under subsection (1)(b), the local authority

- (a) may, in respect of a building or structure constructed before the commencement of this Act, or for which a building permit was issued prior to the commencement of this Act, refuse to issue a certificate if the building or structure does not conform with this Act; and
- (b) shall, in respect of a building or structure for which a building permit was issued on or after the commencement of this Act, issue the certificate if it is satisfied that the building or structure conforms with any existing law.

11. Boundaries of units

- (1) Unless otherwise provided in the condominium plan—
 - (a) a boundary of a unit is described by reference to floor, wall or ceiling; or
 - (b) where a wall located within a unit is a load bearing wall, the only portion of that floor, wall or ceiling as the case may be, that forms part of the unit, the boundary shall be the finishing material

that is in the interior of that unit, including any lath and plaster, panelling, gypsum board panels, flooring material or coverings or any other material that is attached, laid, glued or applied to the floor, wall or ceiling, as the case may be.

(2) Notwithstanding subsection (1), all doors and windows of a unit are part of the unit unless otherwise provided in the condominium plan.

12. Conversion of premises to units

If a building contains premises that are—

- (a) rented to a tenant who is not a party to a sale agreement; and
- (b) not included in a condominium plan,

the owner of those premises or a person acting on his or her behalf shall not sell the premises until the condominium plan which includes the premises is registered in accordance with this Act.

13. Copies of condominium plan for assessing rates, etc.

(1) A corporation shall, within twenty-eight days after the registration of a condominium plan or amendment to the plan, furnish a rating authority with two copies of the condominium plan certified by the Registrar.

(2) For purposes of assessing, levying or recovery of rates, charges or taxation in relation to the property or a part of it, the particulars shown on the certified copies of the condominium plan furnished under subsection (1), shall be conclusive proof of those particulars.

PART III—EASEMENTS

14. Incidental rights of owners of common property, etc.

(1) Common property and each unit comprised in a registered condominium plan shall have as appurtenant to it, such rights of—

- (a) support, shelter and protection;
- (b) passage or provision of water, sewerage, drainage, gas, electricity, garbage and air;
- (c) passage or provision of telephone, radio and television services; and
- (d) any other service of whatever nature,

over the parcel and every structure on it as may be necessary for the reasonable use or enjoyment of the common property or unit.

(2) Common property and each unit comprised in a condominium plan shall have as appurtenant to it a right to full, free and uninterrupted access and use of light through or from any windows, doors or other apertures existing at the date of the registration of the condominium plan.

(3) The rights created by this section shall carry with them all ancillary rights necessary to make them effective as if they were easements.

(4) Nothing in this section shall affect any parcel other than the parcel to which condominium plan relates.

15. Easements in favour of unit owner

After the registration of a condominium plan, there is implied in favour of each unit shown on the plan, in favour of the owner of the unit and as appurtenant to the unit—

- (a) an easement of the subjacent and lateral support of the unit by the common property and by every other unit capable of affording support;
- (b) an easement for the shelter of the unit by the common property and by every other unit capable of affording shelter; and
- (c) an easement for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air 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 parcel to the extent to which those pipes, wires, cables or ducts are capable of being used in connection with the enjoyment of the unit.

16. Easements against unit owner

(1) After the registration of a condominium plan, there is implied in respect of each unit shown on the condominium plan as against the owner of a unit, an easement to which the unit is subject—

- (a) for the subjacent and lateral support of the common property and of every other unit capable of enjoying support;

- (b) to provide shelter to the common property and to any unit capable of enjoying shelter; and
- (c) for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air 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 the unit as appurtenant to the common property and also to every other unit capable of enjoying those easements.

(2) When an easement is implied by this section, the owner of any utility service providing a service to the parcel, or to any unit on it, is entitled to the benefit of any of those easements which are appropriate to the proper provision of the service, but not to the exclusion of the owner of any other utility service.

17. Implied easements, ancillary rights and obligations

(1) Easements or restrictions to all ancillary rights and obligations as to user implied or created by this Act or by the byelaws take effect and are enforceable without any memorial notification on the parts of the register constituting titles to the dominant or servient tenements.

(2) All ancillary rights and obligations reasonably necessary to make easements effective shall apply in respect of easements implied by this Act, including the right of an owner of a dominant tenement to enter a servient tenement and replace, renew or restore anything from which the dominant tenement is entitled to benefit.

18. Liability of unit owner

The owner of a unit shall only be liable in respect of any interest entered on the condominium plan in proportion to the unit factor for his or her unit.

PART IV—MANAGEMENT AND USE OF CONDOMINIUM
PROPERTY

19. Establishment of corporation

(1) There shall, upon the registration of a condominium plan, be constituted in respect of any building or structure to which the plan relates, a corporation which shall operate under the name—

”

“The owners’ Condominium Plan No

(2) The number to be specified under subsection (1) shall be the number given to the plan upon registration.

(3) A corporation shall consist of persons who own units in the parcel to which the condominium plan relates.

(4) The corporation shall have perpetual succession and a common seal and shall sue and be sued in its corporate name.

(5) The Secretary of the corporation shall keep custody of the corporation seal.

(6) The common seal of the corporation shall be authenticated by the signature of the Chairperson or of any other member authorised in writing by the Board and the Secretary.

(7) The Companies Act shall not apply to a corporation established under subsection (1).

20. Functions of corporation

(1) The functions of a corporation are—

- (a) to manage the common property;
- (b) to keep the common property in a state of good repair;
- (c) to establish and maintain a fund for administrative expenses sufficient, in the opinion of the corporation, for the control, management and administration of the common property, and for the payment of any insurance premiums, rent and the discharge of any other obligations of the corporation;

- (d) to determine from time to time the amounts to be paid for the purposes described in paragraph (c);
- (e) to raise amounts determined under paragraph (d) by levying contributions on the properties in proportion to the unit entitlement of their respective units;
- (f) to insure and keep insured buildings and other improvements on the parcel against fire;
- (g) to effect such other insurance as required by law, or as it may consider expedient;
- (h) to pay the premiums in respect of any policies of insurance effected by it;
- (i) to do all things reasonably necessary for the enforcement of any contract of insurance entered into by it under this section;
- (j) to comply with any notice or order duly served on it by any competent local authority, planning authority or public utility authority requiring repairs to, or work to be performed in respect of the land or any building or improvements on it;
- (k) to submit new plans to the Registrar in case of alterations to the condominium property;
- (l) to do all things reasonably necessary for the enforcement of any lease or licence under which the land is held; and
- (m) subject to this Act, carry out any duties imposed on it by its rules.

(2) A corporation is responsible for the enforcement of its byelaws and the control, management and administration of its movable and immovable property and the common property.

(3) Without limiting the general effect of subsection (1), the duties of a corporation include the following—

- (a) to keep in a state of good and serviceable repair and properly maintain, the movable and immovable property of the corporation and the common property;
- (b) to comply with notices or orders by any local authority, planning authority or public utility authority requiring repairs to, or work to be done in respect of the parcel.

(4) A corporation may, by a special resolution, acquire or dispose of an interest in immovable property.

(5) The functions of a corporation shall, subject to any restriction imposed or direction given at a general meeting, be exercised and performed by the Board.

(6) In addition to the functions specified in subsection (1), the Board shall hear complaints from aggrieved members of the corporation.

(7) The corporation may, in accordance with a resolution of the proprietors, distribute any money or other movable property in its possession and surplus to its current requirements among the proprietors for the time being according to their unit entitlement.

(8) For the purposes of effecting any policy of insurance under subsection (1), the corporation shall be deemed to have an insurable interest in all the buildings and other improvements on the parcel.

(9) Any policy of insurance authorised by this section and effected by the corporation in respect of any building or other improvements on the parcel, shall not be liable to be brought into contribution with any other policy, except another policy authorised by this section in respect of the same building or improvements.

(10) A corporation may, subject to this Act, exercise such powers as are reasonably necessary to enable it to carry out its duties.

(11) A corporation shall not engage itself in any trading activity.

21. Dealings affecting common property

(1) Any instrument evidencing any transfer, lease, grant of easement, or other dealing affecting common property or land that is to become part of the common property may be executed by a corporation, if the transfer, lease, grant, or dealing has been approved by a unanimous resolution of the corporation.

(2) A certificate under the common seal of the corporation that approval has been given shall be sufficient evidence of the approval unless the contrary is proved.

(3) A corporation may, by a unanimous resolution, transfer or lease the common property or any part of it, or grant an easement on the whole or part of the common property.

(4) No part of the common property may be transferred or leased where that part of the common property is used as access by persons to one or more units.

(5) Where the Board is satisfied that a unanimous resolution under subsection (3) was properly passed and that all persons having registered interests, other than statutory interests notified to the corporation—

- (a) have, in the case of either a transfer or a lease, consented in writing to the release of those interests in respect of the land comprised in the proposed transfer; or
 - (b) have, in the case of a lease, approved in writing the execution of the proposed lease,
- the corporation shall execute the appropriate transfer or lease.

(6) The following shall apply to a transfer or lease executed in accordance with subsection (3)—

- (a) the transfer or lease is valid and effective without execution by any person having an interest in the common property; and
- (b) the receipt by the corporation of the purchase money, rent, premiums or other money payable to the corporation under the terms of the transfer or lease is a sufficient discharge of, and exonerates the persons taking under the transfer or lease from any responsibility for the application of the money expressed to have been so received.

(7) The Registrar shall not register a transfer or lease authorised under this section unless it is accompanied by a certificate under the seal of the corporation to the effect that—

- (a) the unanimous resolution was properly passed;
- (b) the transfer or lease conforms with the terms of the transfer or lease; and
- (c) all necessary consents were given.

(8) The certificate referred to in subsection (7)—

- (a) in favour of a purchaser or lessee of the common property, or party to it; and

(b) endorsed by the Registrar,
is conclusive proof of the facts stated in the certificate.

22. Registration of transfers of common property

(1) An instrument of transfer of any part of the common property shall, in addition to any plan that the Registrar may require to be deposited under section 3, be accompanied by a revised condominium plan under the same number.

(2) Where any unit is subject to any existing registered charge, lease, or sublease, the Registrar shall not register any transfer of the whole or any part or parts of the common property until there has been produced to him or her a consent in writing by every registered chargee, lessee and sublessee.

(3) The Registrar shall register any transfer to which subsection (1) refers by—

- (a) causing an appropriate memorial relating to the transfer to be noted on the revised unit plan and on the relevant part of the register; and
- (b) issuing, in the name of the transferee, a certificate of title for the land transferred.

23. Voting rights

(1) The voting rights of the owner of a unit shall be determined by the unit factor of the unit.

(2) When an owner's interest is subject to a registered charge, a power of voting conferred on any owner by this Act or by the byelaws—

- (a) shall, where a unanimous resolution is required, be exercised by the registered chargee first entitled in priority; and
- (b) in any other case, be exercised by the chargee in priority if he or she is present or by proxy.

(3) A chargee shall, upon registration of a charge, notify the corporation in writing of the charge.

(4) A chargee, whose charge is entered on the part of the register in accordance with section 5(1), shall notify the corporation of the existence of the charge within three months after its coming into force.

(5) A corporation shall give notice of any meeting to every chargee who has given notice of the charge under subsections (3) and (4).

(6) Subsection (2) does not apply unless the chargee has given written notice of his or her charge to the corporation.

(7) An owner or chargee, as the case may be, may exercise his or her right to vote personally or by proxy.

24. Voting where owner is incapable

(1) Any powers of voting conferred by this Act or by the rules may be exercised

- (a) in the case of an owner who is a minor, by his or her guardian or where no guardian has been appointed, by the Public Trustee under the Public Trustee Act; or
- (b) in the case of an owner who is for any reason unable to exercise control over his or her property, by the person who for the time being is authorised by law to exercise control over that property.

(2) If the court, on application by the corporation or by an owner, is satisfied that there is no person capable, willing or available to vote in respect of a unit, the court—

- (a) shall, where a unanimous resolution is required by this Act; and
- (b) may, in any other case,

appoint the Public Trustee or such other person as the court may determine for the purpose of exercising the powers of voting under this Act or the byelaws.

(3) Upon making an appointment under subsection (2), the court may make an order it considers necessary or expedient to give effect to the appointment.

25. Management Board

(1) There shall be, in respect of every corporation, a Management Board elected in accordance with the rules.

(2) A corporation shall, within fifteen days after a person becomes or ceases to be a member of the Board, file at the land registry, a notice in the prescribed form stating the name and address of that person and the day on which that person became or ceased to be a member of the Board, as the case may be.

(3) All acts done in good faith by a Board, notwithstanding that it is afterwards discovered that there was some defect in the election or continuance in office of the Board or any of its members, shall be as valid as if the Board or any of its members had been properly elected or appointed or continued in office.

26. Convening of meetings of corporation

When a developer registers a condominium plan, the developer shall—

- (a) within ninety days after the day that fifty percent of the units are sold; or
- (b) within one hundred eighty days after the day that the first unit is sold,

whichever is sooner, convene a meeting of the corporation at which a Board shall be elected.

27. Annual general meeting

(1) A Board shall, once in each year, convene an annual general meeting of the owners.

(2) The first annual general meeting of the owners shall be called within three months after the election of the Board.

(3) An annual general meeting of the owners shall be convened by the Board within fifteen months after the conclusion of the immediately preceding annual general meeting.

28. Managing agent

(1) The Board shall, within twenty-eight days after its election, appoint a managing agent for the management of the units, the movable and immovable property of the corporation and the common property.

(2) The Minister shall, by regulations made under section 55 prescribe the qualifications of a person to be appointed a managing agent under this section.

(3) A managing agent shall perform such functions as may be delegated to him or her by the corporation.

(4) Where a managing agent relinquishes his or her appointment, the Board shall appoint a new managing agent within twenty days after the effective date of that relinquishment.

29. Rules of corporation

(1) A corporation shall make rules to provide for the management of the units and the property of the corporation.

(2) The rules may be amended or revoked by a special resolution.

(3) An amendment or revocation of a rule shall not take effect until it is registered by the Registrar.

(4) No rule shall operate to prohibit or restrict the devolution of units or any transfer, lease or other dealing in the units or to destroy or modify an easement implied or created by this Act.

(5) The rules shall bind the corporation and the owners to the same extent as if the rules had been signed and sealed by the corporation and by each owner.

(6) The rules shall be deemed to contain covenants on the part of each owner with every other owner and with the corporation, to observe and perform all the provisions of the rules.

(7) The rules shall provide for fines which may be imposed for breach of the rules.

(8) Notwithstanding section 14 of the Interpretation Act, rules made by a corporation under this Act are not statutory instruments.

30. Penalties under rules

(1) Where an owner or tenant of a unit is in breach of the rules, he or she is liable to pay a fine prescribed by the rules.

(2) An owner or tenant of a unit is liable for breach of a rule in connection with the occupation or use of the unit, whether or not the act or omission constituting the breach was authorised by him or her.

(3) An authorised agent of the corporation may advise the corporation on the amount of the fine payable under section 29(7).

(4) Any person aggrieved by the decision of the Board under subsection (3) may appeal to a court.

(5) In order to succeed in an action under subsection (4), the corporation shall establish to the satisfaction of the court, that the rules were properly made.

(6) Where an owner or tenant of a unit is in breach of the rules and refuses to pay a fine, the Board may refer the matter to a court.

(7) For the purposes of subsection (5), a certified extract from the rules filed with the Registrar General is *prima facie* proof of its contents and that the rules were properly made.

(8) For the avoidance of doubt, any fine payable under the rules of a corporation shall be taken to be a civil penalty.

(9) A corporation may sue for and recover any civil penalty imposed under its rules as if it is a civil debt owed to the corporation by the person against whom the penalty is imposed.

31. Habitual offenders

(1) The managing agent shall refer to a court the cases of an owner or tenant of a unit who habitually breaches the rules.

(2) For the purposes of this section, an owner or tenant of a unit shall be deemed to be a habitual offender if he or she has breached the rules three or more times within a period of one month.

(3) The court may, upon hearing a case referred to it under this section, impose a punitive fine as prescribed in the regulations.

32. Administrative expenses

(1) A corporation may recover from an owner or a tenant of a unit by an action in debt, amounts payable under the rules or as required by a local authority or public utility authority in respect of a unit or common property which is leased to the owner or tenant under section 37.

(2) A contribution levied as provided in section 20(1)(e) is due and payable on the passing of a resolution to that effect and in accordance with the terms of the resolution, and may be recovered by an action for debt by the corporation

- (a) from the person who was the owner at the time when the resolution was passed; and
- (b) from the person who was the owner at the time when the action was instituted, both jointly and severally.

(3) A corporation shall, on the application of an owner or a person authorised in writing by an owner, certify—

- (a) the amount payable by the owner;
- (b) the manner in which the contribution is payable;
- (c) a statement of account; and
- (d) the interest, if any, on any unpaid balance.

(4) A certificate issued by the corporation under subsection (3) shall be conclusive proof of the matters certified, unless the contrary is proved.

(5) A corporation may present for registration a charge against the title of an owner of a unit for the unpaid amount of a contribution levied on the owner and upon registration, there shall be a unit charge against the unit.

(6) Upon the registration of a charge under subsection (5), the charge created shall be a charge against the unit equal to the unpaid contribution.

(7) Upon the payment of the unpaid amount of the contribution, the corporation shall withdraw the charge created under subsection (5).

(8) A corporation may delegate any or all of its functions under this section to the managing agent.

33. Interest on outstanding account

A corporation may, if permitted to do so by its rules, charge interest at a rate set out in the rules.

34. Investment

Notwithstanding section 20, a corporation may invest any funds not immediately required by it, in accordance with the Public Trustee Act.

35. Information

(1) A management agent shall, upon a written request for information by an owner, tenant or chargee, and upon payment of a prescribed fee, provide that person with information relating to—

- (a) the amount of any contribution due and payable in respect of a unit;
- (b) any action commenced against the corporation and served on the corporation;
- (c) any unsatisfied judgment or order for which the corporation is liable;
- (d) a written demand made on the corporation for any amount in excess of one currency point that, if not met, may result in an action being brought against the corporation;
- (e) any subsisting recreational agreement;
- (f) the particulars of, or a copy of any subsisting management agreement;

- (g) the budget of the corporation;
- (h) any information relating to insurance;
- (i) the financial statement of the corporation; and
- (j) the byelaws of the corporation.

(2) The management agent shall provide the information referred to in subsection (1) within twenty-one days after receipt of the request.

(3) Where a request is made under subsection (1) and the management agent fails to comply with that subsection, the aggrieved person may refer the matter to the Board for appropriate action.

(4) A corporation or a management agent shall, within twenty-one days after receiving a request in writing by an owner or the chargee of a unit, provide to the person making the request, subject to the payment of such fee as is prescribed in the regulations, copies of the policies of insurance effected by the developer or the corporation.

36. Documents required

(1) A developer shall, within six months after the date on which the condominium plan is registered, provide the corporation, free of charge with the following documents—

- (a) all warranties and guarantees on the property of the corporation;
- (b) structural, electrical, mechanical and architectural working drawings and specification;
- (c) as-built drawings, if applicable, of the common property of the corporation;
- (d) plans showing the location of underground utility services and sewer pipes;
- (e) all agreements to which the corporation is a party; and
- (f) all certificates, approvals and permits issued by a local authority, planning authority, the Government or an agent of the Government which relate to the property of the corporation.

(2) Notwithstanding subsection (1), the corporation may, at any time before it receives a document under subsection (1), require the developer to provide the corporation with any of the documents specified in subsection (1), and the developer shall provide the document within a period of twenty-one days, if the document is in the possession of the developer.

37. Exclusive use of areas

Notwithstanding section 21, a corporation may, if its rules permit, grant a lease to an owner of a unit permitting the owner exclusive use of a part or parts of the common property.

38. Covenants benefiting parcel

A corporation may, by a unanimous resolution, accept a grant of easement or a restrictive covenant benefiting the parcel.

39. Procedure for granting restrictive covenants

(1) A corporation may, by a unanimous resolution, execute a grant of easement or a restrictive covenant burdening the parcel.

(2) Where a unanimous resolution has been passed and all persons having registered interests have consented in writing, the corporation shall execute the appropriate instrument to grant the easement or covenant.

(3) An instrument granting an easement or covenant executed in accordance with subsection (2) and a receipt issued by the corporation for the money paid, shall be sufficient proof of the validity of the transaction and constitutes sufficient discharge of, and exonerates all persons taking under the instrument from any responsibility for the application of the money expressed to have been so received.

(4) The Registrar shall not register an instrument granting an easement or covenant authorised under this section unless it is accompanied by copies of the resolution and consent referred to in subsection (2).

PART V—DEALINGS RELATING TO UNITS**40. Sale of units**

(1) A developer shall not sell or agree to sell a unit or proposed unit unless he or she has delivered to the purchaser a copy of—

- (a) the sale agreement whose content shall contain the matters prescribed in Schedule 2 to this Act;
- (b) the proposed rules;

- (c) the proposed management agreement;
- (d) the proposed recreational agreement;
- (e) the lease of the parcel, if the parcel on which the unit is located is held under a lease;
- (f) a certificate of title in respect of the unit or proposed unit;
- (g) any charge or proposed charge which may affect the title of the unit; and
- (h) the condominium plan.

(2) A developer shall deliver to the purchaser in respect of a charge or proposed charge, a written notice indicating—

- (a) the maximum principal amount under the charge;
- (b) the maximum monthly payment, if any;
- (c) the amortisation period;
- (d) the grace period if any;
- (e) the prepayment terms if any; and
- (f) the interest rate or the formula, if any, for determining the interest rate.

(3) Subject to subsection (4), a purchaser of a unit from a developer may, without incurring any liability for doing so, rescind the sale agreement within ten days after the date of its execution.

(4) A purchaser may not rescind the sale agreement under subsection (3) if all the documents required to be delivered to the purchaser under subsection (1) have been delivered to the purchaser not less than ten days before the execution of the sale agreement by the parties to it.

(5) If a sale agreement is rescinded under subsection (3), the developer shall, within ten days from receipt of written notice of the rescission, return to the purchaser all the money paid in respect of the purchase of the unit.

41. Developer to hold money in trust

(1) A developer or a person acting on his or her behalf shall hold in trust all the money paid by a purchaser under a sale agreement and shall immediately deposit the money in an interest earning trust account maintained in a financial institution licensed under the Financial Institutions Act or shall insure the amount against loss; and—

- (a) if the works on the unit and the common property are substantially completed, the money may be paid to the developer on delivery of the title documents to the purchaser; or
- (b) if the works on the unit are substantially completed but the improvements to the common property are not substantially completed—
 - (i) not more than fifty percent of that money less the interest earned on it may be paid to the developer on delivery of the certificate of title to the purchaser; and
 - (ii) upon the works on the common property being substantially completed, the balance of that money and all the interest earned on the total amount held in trust in respect of that sale agreement may be paid to the developer.

(c) If money is being held in trust under subsection (1) and the purchaser of the unit takes possession of or occupies the unit before receiving the certificate of title, the interest earned on that money from the day the purchaser takes possession of or occupies the unit to the day he or she receives the title shall be applied against the purchase price of the unit.

(3) Except as provided in subsection (2), the developer is entitled to the interest earned on money held in trust under this section.

(4) For the purposes of this section, works on the unit or the common property, as the case may be, are deemed to be substantially completed when the units or the relevant part of the common property are ready for use for the purposes intended.

42. Termination of developer's management agreement

(1) A corporation may terminate a developer's management agreement at any time after the majority of the units are owned by persons other than a developer.

(2) Either party may, for good cause, terminate a developer's management agreement.

(3) A developer's management agreement shall not be terminated except by giving sixty days' notice in writing to the other party.

43. Renting of units

(1) The corporation may require an owner who rents his or her unit to pay and maintain with the corporation, a deposit which the corporation may use for—

- (a) the repair or replacement of the property of the corporation; and
- (b) the maintenance, repair or replacement of any property which is subject to a lease granted to the owner of the unit under section 21 which is damaged, destroyed, lost or removed, as the case may be, by a person occupying the unit.

(2) The owner of a unit shall, within seven days after a tenant begins to rent his or her unit, give the corporation notice in writing stating the name of the tenant occupying his or her unit and such other particulars as provided in the rules.

(3) The owner of a unit shall, within seven days after a tenant ceases to rent his or her unit, give the corporation notice in writing stating that his or her unit is no longer being rented.

(4) A corporation shall, within twenty days after receiving a written notice under subsection (3)—

- (a) return the deposit referred to under subsection (1) to the owner;
- (b) if the corporation has made use of the deposit for one or more of the purposes referred to in subsection (1), deliver to the owner a statement of account showing the expenditure and the balance of the deposit not used, if any;
- (c) if the corporation is entitled to make use of the deposit, deliver to the owner, an estimated statement of account showing the amount it intends to use and, within sixty days after delivering to the owner the estimated statement of account, deliver to the owner—
 - (i) a final statement of account showing the amount used; and
 - (ii) the deposit of the balance not used, if any.

PART VI—MISCELLANEOUS**44. Maintenance of facilities shared by several corporations**

(1) Where two or more corporations use common estate roads, parks, play grounds and other related facilities, the corporations shall share the expenses for the maintenance and upkeep of those facilities.

(2) Where any corporation referred to in subsection (1) fails to comply with that subsection, the other corporations which incur the expenses referred to in that subsection may recover the money from the defaulting corporation by instituting proceedings in court.

45. Liability in tort

(1) Where any proceedings are brought in tort against the occupier of any particular parcel of land or premises comprising the condominium property, this section shall apply, notwithstanding any law to the contrary.

(2) For the purposes of any proceedings to which this section applies—

- (a) the common property and each of the units shall be separate premises;
- (b) where the proceedings are brought in respect of the common property, any judgment which may be entered in favour of the plaintiff shall be entered against the corporation; and
- (c) where the cause of action arose through the negligence or unauthorised act or omission of one or more of the owners or former owners of units, the corporation may join the owners or former owners as co-defendants and judgment may be given against the corporation and the owners jointly and severally.

(3) Any award, including costs, given jointly and severally as provided in subsection (2)(c) may be recovered as a debt by the corporation from the owner or owners of the unit.

(4) Where the defendant, in any proceedings to which this section applies, is the corporation, the owners of the units at the time when judgment is entered shall be deemed to have guaranteed to the plaintiff the payment by the corporation of the full amount awarded.

46. Damage to condominium property, etc.

(1) If property is damaged but the condominium status is not terminated under section 47 or 49, an application for settlement under subsection (2) may be made to a court by the corporation, an owner of a unit, a registered chargee of a unit or a purchaser under an agreement for sale of a unit.

(2) Upon an application under this section, a court may order a settlement for—

- (a) reinstatement in whole or in part of the property; or
- (b) transferring the interests of owners of units that have been wholly or partially destroyed to the unit owners whose units are not affected in proportion to their unit factor.

(3) In the exercise of its powers under subsection (2), a court may make such orders as it considers necessary or expedient for giving effect to the scheme, including—

- (a) directing the application of insurance money received by the corporation in respect of damage to the property;
- (b) directing payment of money by the corporation or by the owners of units;
- (c) directing such amendment of the condominium plan as the court thinks fit; or
- (d) imposing any terms and conditions it thinks fit.

(4) Upon an application to a court under this section, an insurer who has effected insurance on the building or any part of it, being insurance against destruction of units or damage to the building, has the right to appear in person or by agent or an advocate.

47. Termination of condominium status of property

(1) The condominium status of property may, subject to section 24(2), be terminated by a unanimous resolution.

(2) An application to terminate the condominium status of a property may be made to a court by the corporation, an owner of a unit, a registered chargee of a unit, or a purchaser under an agreement of sale of a unit.

(3) Where, upon an application under this section, a court is satisfied that having regard to the rights and interests of the owners of units or of a registered mortgagee or purchaser under an agreement for sale of units, it is just and equitable that the condominium status of the property should be terminated, the court may make a declaration to that effect.

(4) Where a declaration has been made under subsection (3), the court may impose any conditions and give any directions as it considers fit.

(5) Upon an application to a court under this section, an insurer of a property or part of it, against destruction or damage to the property, may appear before the court in person or by agent or by an advocate.

48. Effect of termination, sale, transfer, *etc.* of condominium property

(1) Upon the termination of condominium status of a property under section 47, the corporation shall immediately, file with the Registrar a notice of the termination in the prescribed form.

(2) Upon receipt of a notice referred to in subsection (1), the Registrar shall make a notification to that effect on the condominium plan and on the notification being made, the owners of the units in the plan are entitled to the parcel as tenants in common in shares proportional to the unit factors of their respective units.

(3) Upon termination of the condominium status of a property by a unanimous resolution, the corporation shall dispose of the property or part of it by sale or transfer.

(4) The corporation shall not dispose of the property or any part of it, unless all persons having registered interests in the property have consented in writing or executed an appropriate instrument to discharge their interests.

(5) The Registrar shall not register a transfer executed under this section—

- (a) unless the transfer is accompanied by certified copies of the necessary resolutions and consents; and
- (b) until the notification required by subsection (2) has been made on the condominium plan.

(6) When property is transferred by a corporation under this section, the Registrar shall close the registers relating to the units and re-open the register closed under section 3, except that the Registrar shall preserve the closed register.

49. Dissolution of corporation

(1) A court, upon an application by the corporation, owner of a unit or a managing agent, may by order, provide for the winding up of the corporation.

(2) Where a corporation has been wound up under subsection (1), it shall be deemed to be dissolved and shall cease to exist.

50. Rating

(1) For the purpose of assessing rates by a rating authority, each unit and common property shall constitute a separate entity.

(2) An owner of a unit is liable for any rate, charge or tax levied by a rating authority in relation to his or her property.

(3) The corporation is liable for any rate, charge or tax levied by a rating authority in relation to the common property.

51. Service of documents

(1) A document may be served on a corporation by registered mail or by delivering it at the registered physical address or by personal service on a member of the Board or a management agent.

(2) Service by the corporation on an owner of a unit may be effected by—

- (a) personal service;
- (b) leaving it with an adult person who normally resides in the unit;
- (c) fixing it on a conspicuous part of the unit; or
- (d) registered mail.

52. Change of address for service

(1) A corporation may, by a resolution of the Board, change its address for service.

(2) A change in the address for service under subsection (1) does not take effect until a notice of change of address is filed with the Registrar, in the prescribed form.

53. Offences and penalties

Any person who fails to comply with section 36, 40(4) or 41(1) commits an offence and is liable, on conviction, to a fine not exceeding one hundred currency points.

54. Waiver and release

(1) This Act applies notwithstanding any agreement to the contrary and any waiver or release given of the rights, benefits or protection provided by or under this Act is void.

(2) Any remedy which a purchaser of a unit has under this Act is in addition to any other remedies or rights that he or she may have under any other law.

(3) A sale agreement may be enforced by a purchaser, notwithstanding that the developer has failed to comply with this Act.

55. Regulations

(1) The Minister may, by statutory instrument make regulations for the better carrying into effect of this Act.

(2) Notwithstanding the general effect of subsection (1), the Minister may make regulations—

- (a) prescribing forms to be used for the purposes of this Act and the form of certificate of title to units;
- (b) prescribing the manner of registering condominium plans;
- (c) prescribing the fees to be paid for any procedure to be followed or functions to be performed under this Act;

- (d) prescribing the maximum fines which may be imposed under section 29(7);
- (e) prescribing the practice and procedure governing applications to a court under this Act;
- (f) prescribing anything that requires to be prescribed for giving effect to this Act; and
- (g) prescribing in respect of the contravention of the regulations, a penalty of a fine not exceeding one hundred currency points and prescribing, if the Minister thinks fit, an additional fine not exceeding five currency points in respect of each day on which the offence continues.

56. Power to amend Schedules

The Minister may, by statutory instrument, with the approval of Cabinet, amend the Schedules to this Act.

SCHEDULES*Schedule 1*

Sections 1, 56

Currency Point

A currency point is equivalent to twenty thousand shillings.

Schedule 2

Sections 40(1), 56

Contents of Sale Agreement

A developer who enters into a sale agreement shall include in the agreement the following

- (a) a notice in prominent letters on the first page of the sale agreement as follows—

“the purchaser may, without incurring any liability for doing so, rescind this agreement within ten days after its execution by the parties to it, unless all documents required to be delivered to the purchaser under section 40 have been delivered to the purchaser not less than ten days before the execution of this agreement by the parties to it.”;
- (b) descriptions, drawings or photographs showing
 - (i) the interior finishing of the unit and the common property located within the building;
 - (ii) the recreational facilities, equipment and other amenities to be used by the person occupying the unit;
 - (iii) the equipment to be used for the maintenance of the common property;
 - (iv) the location of roadways, walkways, fences, parking areas and recreational facilities;
 - (v) the landscaping; and
 - (vi) the exterior finishing of the building;
- (c) the amount or estimated amount of the monthly contributions in respect of a unit; and
- (d) the unit factor of the unit and the basis of unit factor apportionment for all units comprised in the condominium plan.

History: Act 4/2001

Cross References

Architects Registration Act, Cap. 297
Companies Act, Cap. 106
Financial Institutions Act, Cap. 57
Interpretation Act, Cap. 2
Land Act, Cap. 236
Local Governments (Rating) Act, Cap. 140
Public Trustee Act, Cap. 267
Registration of Titles Act, Cap. 240
