(Published 8th November, 2024)

Act

No. 27 of 2024

I assent

DR. LAZARUS MCCARTHY CHAKWERA
PRESIDENT
4th November, 2024

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An Act to provide for the division of buildings into units to be owned by individual proprietors and common property to be owned by proprietors of the units as tenants in common; to provide for the use and management of the units and common property; and for matters incidental thereto or connected therewith

PART I—PRELIMINARY

Short title and commencement

1.—This Act may be cited as the Sectional Titles Act, 2024, and shall come into operation on such date as the Minister may appoint by notice published in the *Gazette*.

Interpretation

2.—(1) In this Act, unless the context otherwise requires—

"Association" means the body corporate established under section 16;

"board of management" means a board of management an Association referred to in section 26;

"building" means one or more structures on the same parcel;

"by-laws", in relation to an Association, means the by-laws of the Association as amended from time to time, and includes by-laws made in substitution for them;

"common property" means so much of a parcel as is not comprised in a unit shown in a sectional plan, and includes the physical ground on which the building stands, the walls and fencing, the outside of the building, the roofs, the walkways, staircases, stores, garages, parking, pool and garden machinery rooms, lifts, and meter rooms that service the building and owners of the individual units;

"Court" means the High Court of Malawi;

"developer" means a person registered under the Real Estate
28 of 2024 Management Act, 2024 as a real estate developer and who, whether alone or in conjunction with another person, sells or offers for sale to the public units or proposed units that have not previously been sold to the public;

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

"local government authority" means a local government
Cap. 22:01 authority duly constituted under the Local Government Act;

"management agreement" means an agreement entered into by an Association with unit owners for the general control, management and administration of—

(*a*) the movable and immovable property of an Association associated with the residential units; and

(*b*) the common property associated with the residential units;

"owner" means the registered owner of—

(*a*) the freehold estate in a unit;

(*b*) the leasehold estate in a unit; or

(*c*) the customary estate in a unit;

"parcel" means the land comprised in a sectional plan;

"proprietor" means—

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

(*b*) in relation to any unit, the person or persons registered as proprietors of an estate in the unit;

"purchase agreement" means an agreement with a developer whereby a person purchases a unit or proposed unit or acquires a right to purchase a unit or proposed unit;

"recreational agreement" means an agreement entered into by an Association that allows—

(*a*) persons, other than the owners, to use recreational facilities located on the common property; or

(*b*) the owners to use recreational facilities not located on the common property;

"Registrar" means a registrar appointed under the Registered Land Act; Cap. 58:04

"residential unit" means a unit used or intended to be used for residential purposes;

"responsible authority" has the meaning ascribed it under the Physical Planning Act; Cap. 23:01

"sectional plan" means a plan registered in a land registry which complies with section 8, and includes a plan of a sub-division registered under section 11;

"sectional property status" means the status of a building that has fulfilled the conditions of a sectional title;

sectional title" means the separate ownership of a unit within a building;

"sectional title document" means a document indicating title to a unit which is registerable under the Registered Land Act; Cap. 58:04

"special resolution" means a resolution—

(*a*) passed at a properly convened meeting of an Association by a majority of not less than seventy-five per centum of all the persons entitled to exercise the voting powers conferred by this Act or the by-laws, and representing not less than seventy-five per centum of the total unit factors for all the units; or

(*b*) signed by not less than seventy-five per centum of all the persons who, at a properly convened meeting of an Association, would be entitled to exercise the voting powers conferred by this Act or the by-laws, and representing not less than seventy-five per centum of all the total unit factors for all the units;

"unanimous resolution" means a resolution—

(*a*) passed unanimously at a properly convened meeting of an Association by all the persons entitled to exercise the voting powers conferred by this Act or the by-laws, and representing the total units; or

(*b*) signed by all persons who, at a properly convened meeting of an Association, would be entitled to exercise the voting powers conferred by this Act or the by-laws, and representing the total units;

"unit" means a space that is situated within a building and described in a sectional plan by reference to floors, walls and ceilings within the building together its proportion of the common property; and

"unit factor", in relation to a unit, means the unit factor determined for that unit as shown in the schedule of unit factors endorsed on a sectional plan registered by the Registrar.

(2) For the purposes of this Act, the terms "easement", "registry" and "the register" shall have the meaning assigned to those terms under the Registered Land Act.

Cap. 58:04

PART II—REGISTRATION OF SECTIONAL PLANS AND UNITS

Subdivision of buildings into units

3.—(1) An existing or planned structure may be designated a building containing a unit or part of a unit or divided into two or more units by the registration of a sectional plan under this Act.

(2) The Registrar shall not register a sectional plan unless—

(*a*) the sectional plan describes two or more units in it; and

(*b*) the sectional plan is presented for registration in quadruplicate.

(3) A sectional plan, together with the interest attached to it, shall be registered under the Registered Land Act.

Cap. 58:04

Registration of sectional plans

4.—(1) On the registration of a sectional plan, the Registrar shall —

(*a*) close the register of the parcel described in it; and

(*b*) open a separate register for each unit described in the plan; and

(*c*) on the payment of the prescribed fee, issue certificate of land or lease for sectional property in respect of each unit.

(2) Where a certificate was already issued, the registered owner shall surrender the certificate to the Registrar.

(3) Any interest affecting the parcels which are noted on the register closed under subsection (1) (*a*) shall be endorsed, on the registers opened under subsection (1) (*b*) and on the certificate of land or lease for sectional property issued under subsection (1) (*c*).

(4) No more than one unit may be referred to in one register and no other unit, except the share in the common property apportioned to the owner of that unit in accordance with section 5 (2), may be referred to in the same register.

(5) Any interest affecting an individual unit which is part of a sectional plan registered under section 3 (1), and which is not endorsed pursuant to subsection (3) of this section, shall be endorsed on—

(*a*) the register of the unit opened under paragraph (*b*) of subsection (1); and

(*b*) the land certificate or certificate of lease for sectional property issued in respect of the unit under subsection (1) (*c*).

(6) Notwithstanding any other written law, where a sectional plan is registered under this Act, the title to a unit comprised in the plan shall, with effect from the date of the registration of the sectional plan, be deemed to be issued under the Registered Land Act. Cap 58:04

(7) After a register for a unit is opened pursuant to subsection (1) the unit may devolve or be transferred, leased, charged or otherwise dealt with in the same manner and form as land held under the Registered Land Act, and the provisions of that Act shall apply to those dealings in so far as those provisions do not conflict with this Act. Cap 58:04

Certificate to indicate share in common property

5.—(1) The Registrar, on opening a register for a unit under section 4 (1), shall include in that register the share in the common property apportioned to the owner of that unit under subsection (2), and shall include the share in the common property on a certificate of land or lease for sectional property issued in respect of the unit under section 4 (1) (*c*).

(2) The common property comprised in a registered sectional 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) Except as provided in this Act, a share in the common property shall not be disposed or become subject to a charge, except as appurtenant to the unit of an owner, and where a chargee exercises a power of sale on the unit, the sale shall operate to dispose of or charge that share in the common property without express reference to it.

(4) Where the same person is the owner of all the units, subsection (2) shall apply as if there were different owners for each of the units.

Incidental rights of owners of common property, etc.

6.—(1) The common property and each unit on a sectional plan shall have, as appurtenant thereto—

(*a*) all such rights of support, shelter and protection, and for the passage or provision of water, sewerage, drainage, electricity, garbage, air and all other services of whatsoever nature, including telephone, radio and television services, over the parcel and every structure thereon as may, from time to time, be necessary for the reasonable use or enjoyment of the common property or unit; and

(*b*) a right to the full, free and uninterrupted access and use of light to or for any windows, doors or other apertures existing at the date of the registration of the sectional plan and enjoyed at that date.

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

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

Liability of owner of a unit

7. Except to the extent that an interest endorsed on a sectional plan relates to a particular unit, the owner of a unit shall only be liable in respect of an interest endorsed on the sectional plan in proportion to the unit factor for the unit.

Requirements for registration of sectional plans

8.—(1) Every sectional plan presented for registration under this Act shall—

(*a*) be described in the heading of the plan as a sectional plan;

(*b*) delineate the external surface boundaries of the parcel, and the location of the building in relation to the parcel;

(*c*) bear a statement containing those particulars as may be necessary to identify the title to the parcel;

(*d*) include a drawing illustrating the units, and distinguishing the units by numbers or other symbols;

(*e*) define the boundaries of each unit;

(*f*) show the floor area of each unit;

(*g*) be georeferenced;

(*h*) have endorsed on it a schedule specifying in whole numbers the unit factor for each unit in the parcel;

(*i*) have endorsed on it the address at which documents may be served on the Association concerned in accordance with section 61; and

(*j*) contain any other particulars prescribed by the regulations.

(2) Where a sectional plan presented for registration includes residential units, the plan shall, in addition to meeting the requirements of subsection (1), delineate to the satisfaction of the Surveyor General, the boundaries of the areas that are, or may be, leased to an owner of a residential unit in accordance with section 48.

(3) Every sectional plan presented for registration under this section shall be accompanied by proof of insurance place in respect of the parcel.

(4) The Registrar shall, within twenty-one days from the date a sectional plan is registered, submit to the local government authority of the area in which the building is located, a copy of the registered sectional plan.

Boundaries of units

9. Unless otherwise stipulated in the sectional plan—

(*a*) a boundary of a unit shall be described by reference to a floor, wall and ceiling; and

(*b*) all doors and windows of a unit are part of the unit.

Certificates to accompany sectional plans

10.—(1) Every sectional plan presented for registration shall be endorsed with, or accompanied by—

(*a*) a certificate of a surveyor as defined under the Land Survey Act stating 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 guttering project beyond those external boundaries, that an appropriate easement has been granted as an appurtenance of the parcel; and

Cap. 59:03

(*b*) a certificate of a responsible authority as defined under the Physical Planning Act stating that the proposed division of the structure as illustrated on the plan has been approved by the responsible authority.

Cap. 23:01

(2) Where the sectional plan presented for registration is in respect of building containing units, it shall, in addition to the certificate required under subsection (1), be endorsed with, or accompanied by, a certificate of a surveyor as defined under the Land Survey Act, or such other person as shall be approved by the Surveyor General, stating that the units shown on the plan correlate with the existing structure.

Cap. 59:03

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

(*a*) may, with respect to a structure that was constructed prior to the commencement of this Act, or for which the building permit was issued prior to the commencement of this Act, prohibit the issue of the certificate, if it considers it proper to do so; and

(*b*) shall, with respect to a structure for which a building permit was issued on, or after, the commencement of this Act, direct the issue of the certificate, if it is satisfied that the structure conforms to—

(i) the development plan, development control by-law, zoning by-law or land use by-law, as the case may be; and

(ii) any permit issued under that scheme or by-law that existed at the time the building permit was issued.

Application for subdivision, etc.; of a unit

11.—(1) Any proprietor may, with the approval of the responsible authority, subdivide or consolidate a unit by registering a sectional plan relating to the unit intended to be so subdivided or consolidated in the manner provided by this Act for the registration of sectional plans.

(2) A responsible authority shall not approve subdivision or consolidation of a unit unless the application meets the requirements prescribed by the Minister.

(3) On the registration of a sectional plan of subdivision or consolidation, units comprising the sectional plan are subject to the obligations, and have the benefit of, any easements affecting those units in the original sectional plan which are included in the sectional plan of subdivision or consolidation.

(4) The *schedule* endorsed on a sectional plan of sub-division or consolidation as required by section 8 (1) shall apportion among the units the unit factor or factors for the unit or units in the original sectional plan that are included in the subdivision or consolidation.

(5) Before registering a proposed sectional plan of sub-division or consolidation the Surveyor General shall amend the original sectional plan in accordance with the Land Survey Act.

Cap. 59:03

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

(7) Except as provided in this section the provisions of this Act relating to sectional plans apply with all necessary modifications to a sub-division or consolidation of units.

Conversion to units

12. Where a building contains premises that are not included in a sectional plan, the owner of those premises, or a person acting on behalf of the owner, shall not sell those premises as a residential unit until the sectional plan that includes those premises is registered at a registry.

Easements in favour of the owner

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

(*a*) an easement for 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.

Easements against the owner

14.—(1) After the registration of a sectional plan, there is implied in respect of each unit shown on the sectional plan as against the owner of the 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 every other 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) Where an easement is implied under 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 that are appropriate to the proper provision of that service, but not to the exclusion of the owner of any other utility service.

Easement or restrictions exist without mention

15.—(1) The easements or restrictions as to user implied or created by this Act or by-laws take effect, and are enforceable—

(*a*) without any notification on that part of the register constituting titles to the dominant or servient tenements; and

(*b*) without any express indication of those tenements.

(2) The easements and restrictions referred to in subsection (1) include all ancillary rights and obligations reasonably necessary to make easements apply effectively in respect of easements implied under this Act, and the right of an owner of a dominant tenement to enter a servient tenement, and to replace, renew or restore anything the dominant tenement is entitled to benefit from.

PART III—ESTABLISHMENT OF ASSOCIATIONS

Establishment of an Association

16.—(1) On the registration of a sectional plan there shall be constituted an Association under the name "The Owners, Sectional Plan No. ..... (the number to be specified being the number given to the plan of registration)" (in this Act otherwise referred to as an " Association") .

(2) An Association shall consist of all persons who are—

(*a*) the owners of units in the parcel to which the sectional plan relates; or

(*b*) entitled to the parcel when the sectional arrangement is terminated under this Act.

(3) An Association shall have perpetual succession and a common seal.

(4) An Association shall be regulated in accordance with this Act, and subject to this Act, its by-laws.

Documents to be provided an Association

17.—(1) The owner of the land at the time a sectional plan is registered shall, without charge, provide to an Association, not later than one hundred and eighty days from the day the sectional plan is registered, the original or a copy of the following documents—

(*a*) all warranties and guarantees on the movable and immovable property of the Association, and the common property for which the Association is responsible;

(*b*) the structural, electrical, mechanical and architectural documents required working drawings and specification, and as built drawings, which exist for the common property for which the Association is responsible;

(*c*) the plans that exist showing the location of underground utility services and sewer pipes;

(*d*) all written agreements to which the Association is a party;

(*e*) all certificates, approvals and permits issued by a local authority, the Government or an agent of the Government which relate to any property for which the Association is responsible.

(2) An Association may, at any time before it receives a document under subsection (1), make a written request to the owner of the land referred to in subsection (1) for a copy of the document, and the owner shall, within twenty-one days of receiving that request, provide to the Association without charge a copy of the document if the document is in the possession of the owner.

Powers of an Association

18. Subject to this Act, an Association shall have all such powers as are reasonably necessary to enable it to carry out the duties imposed on it under this Act and its by-laws:

Provided that an Association shall not have power to carry on any trading activities.

Actions by or against an Association

19.—(1) An Association shall be capable of suing and being sued in its corporate name and, subject to section 18, of doing anything that a body corporate may do.

(2) Without restricting the generality of subsection (1), an Association may sue for and in respect of damage or injury to the common property caused by any person, whether that person is the proprietor of a unit or not.

Duties of an Association

20.—(1) An Association shall, subject to this Act, carry out any duty imposed on it under this Act or its bylaws.

(2) Without derogating from the generality of subsection (1), an Association shall—

(*a*) insure and keep insured buildings and other improvements on the parcel against loss resulting from destruction or damage caused by fire, and such other perils as are specified in the by-laws;

(*b*) effect such other insurance as it is required by law to effect, or as it may consider expedient;

(*c*) pay the premiums in respect of any policies of insurance effected by it;

(*d*) do all things reasonably necessary for the enforcement of any contract of insurance entered into by it under this section;

(*e*) keep the common property in a state of good repair;

(*f*) comply with any notice or order duly served on it by any competent local authority or public body requiring repairs to, or work to be performed in respect of, the parcel or any building or improvements thereon;

(*g*) control, manage, and administer the common property, and do all things reasonably necessary for the enforcement of the by-laws; and

(*h*) do all things reasonably necessary for the enforcement of any lease or licence under which the parcel is held.

(3) An Association shall—

(*a*) establish and maintain a fund for administrative expenses sufficient, in the opinion of the Association 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 obligation of the Association; and

(*b*) determine from time to time the amounts to be paid for the purposes aforesaid; and

(*c*) raise amounts so determined by levying contributions on the proprietors in proportion to the unit entitlement of their respective units.

(4) An Association may, pursuant to a resolution of the proprietors, distribute any money or personal property in its possession and surplus to its current requirements among the proprietors for the time being according to their unit entitlements.

(5) For the purposes of effecting any policy of insurance under subsection (2), an Association shall be deemed to have an insurable interest on all the buildings and other improvements on the parcel.

(6) Any policy of insurance authorized by this section and effected by an Association in respect of any buildings or other improvements on the parcel shall not be liable to be brought into contribution with any other policy, save another policy authorized by this section in respect of the same buildings or improvements.

Liability in tort

21.—(1) Where any proceedings are commenced in tort, or in respect of an alleged breach of any statutory duty, and it is required by law that proceedings be brought against the owner or occupier of any particular parcel or premises, the provisions of this section shall apply, notwithstanding any other written 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; and

(*b*) where the proceedings are brought in respect of the common property, an Association shall be deemed to be the owner and occupier of the common property, and any judgment which may be awarded to the plaintiff shall be entered against the Association accordingly:

Provided that, where the cause of action arose for negligence or unauthorized act or omission of one or more of the proprietors or former proprietors, an Association may join that proprietor or those proprietors as co-defendants, and judgment may be given against the Association and the proprietor or proprietors, jointly and severally.

(3) The amount of any judgment, including costs, given jointly and severally as provided in subsection (2) may be recovered as a debt by an Association from the proprietor or proprietors against whom judgment is given in an action in any Court of competent jurisdiction.

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

(5) Where an Association in a general meeting so resolves, any sum payable by it in accordance with the provisions of this section may be paid out of any general fund established by it.

Dealings affecting the common property

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

(2) A certificate of an Association that any approval referred to in subsection (1) has been given shall be sufficient evidence of the approval in the absence of proof to the contrary.

Registration of transfers of common property

23.—(1) Every transfer of the whole, or 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 sectional plan which shall be in substitution for, and shall be deposited under the same number as, the existing sectional plan, and shall show the effect of the transfer to the satisfaction of the Registrar.

(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, of the common property until there has been produced to the Registrar a consent in writing by every registered chargee, lessee, or sublessee to the release of the interest in the land comprised in the transfer; and upon registration of the transfer each such consent shall operate as a discharge of the charge, or a surrender of the lease or sublease, as to the land comprised in the transfer, as the case may be.

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

(*a*) causing the transfer to be noted on the new unit plan and on the supplementary record sheet; and

(*b*) issuing in the name of the transferee a certificate of land or lease for sectional property for the land transferred free from any incidental rights existing over the land by virtue of any written law.

Voting Rights

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

(2) Where an interest of the owner of a unit is subject to a registered charge, a power of voting conferred on an owner by this Act or by-laws—

(*a*) if a unanimous resolution is required, may not be exercised by the owner of the unit, but is exercisable by the registered chargee first entitled in priority; and

(*b*) in other cases, is exercisable by the chargee first entitled in priority, and may not be exercised by the owner of the unit where the chargee is present personally or by proxy.

(3) Subsection (2) does not apply unless the chargee has given written notice of the charge to an Association.

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

Voting where owner incapable of voting

25.—(1) Where an owner of a unit is incapable of voting, any powers of voting conferred by this Act, or by-laws, may be exercised—

(*a*) in the case of an owner who is a minor, by the guardian of his estate, or if no guardian has been appointed, by the person who is for the time being authorized by law to exercise control over that property; or

(*b*) in the case of an owner who is for any reason unable to exercise control over the property, by the person who is for the time being authorized by law to exercise control over that property.

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

(*a*) shall in cases when a unanimous resolution is required by this Act; and

(*b*) may, in its discretion, in any other case,

appoint such other person as the Court determines for the purpose of exercising the powers of voting under this Act or the by-laws.

(3) The Court may, when making an appointment under subsection (2), make any other order it considers necessary or expedient to give effect to the appointment.

Board of management

26.—(1) An Association shall have a board of management (in this Act otherwise referred to as the "board of management") which shall be constituted as provided by the by-laws of the Association.

(2) An Association shall, within fifteen days of a person becoming or ceasing to be a member of the board of management, file at the land registry a notice, in the prescribed form, stating the name and address of that person, and the day that the person became, or ceased to be, as the case may be, a member of the board.

(3) The powers and duties of an Association shall, subject to any restriction imposed, or direction given at a general meeting of the Association, be exercised and performed by the board of the management.

(4) All acts done in good faith by a board of management are, notwithstanding that it is afterwards discovered that there was some defect in the election or appointment or continuance in office of any member of the board, as valid as if the member had been properly elected or appointed or had properly continued in office.

Convening of meetings of an Association

27. A developer who registers a sectional plan shall—

(*a*) within ninety days from the day that fifty percent of the residential units are sold; or

(*b*) within one hundred and eight days from the day that the first residential unit is sold,

whichever is sooner, convene a meeting of the Association at which a board of management shall be elected.

Annual meetings

28.—(1) A board of management shall, once every year, convene an annual general meeting of the owners.

(2) An annual general meeting of the owners shall be convened by the board of management within fifteen months of the conclusion of the immediately preceding annual general meeting.

Appointment of an institutional manager

29.—(1) A board of management may appoint an institutional manager for the management of the units, the movable and immovable property of an Association and the common property.

(2) An institutional manager shall perform such functions as may be delegated to him by the board of management.

(3) The institutional manager shall be paid such remuneration as may be specified in the by-laws.

(4) Where an institutional manager relinquishes his appointment for whatever reason the board of management shall appoint another institutional manager within twenty-one days.

(5) A local government authority, a judgment creditor of an Association for an amount of not less than K5,000,000 or any owner or person having a registered interest in or over the units comprised in a sectional plan, may apply to Court for the appointment of an institutional manager to replace an institutional manager appointed by the board of management under this section.

(6) An institutional manager appointed by the Court under subsection (5) shall hold office for a period determined by the Court; and the dismissal of an institutional manager by the Court terminates any contract between the Association and the institutional manager.

By-laws of an Association

30.—(1) An Association may make by-laws to provide for the control, management and administration of the units, the movable and immovable property of the Association and the common property.

(2) Any by-laws of an Association made pursuant to subsection (1) do not take effect until—

(*a*) the Association has filed a copy thereof with the Registrar; and

(*b*) the Registrar has made a memorandum of the filing on the sectional plan.

(3) An Association may, by a special resolution, amend, repeal or replace any by-laws.

(4) An amendment, repeal or replacement of by-laws do not take effect until—

(*a*) the Association has filed a copy of it with the Registrar; and

(*b*) the Registrar has made a memorandum of the filing on the sectional plan.

(5) No by-laws shall operate to prohibit or restrict the alteration of a unit, or the transfer, lease or other dealing with the unit, or to destroy or modify an easement implied or created by this Act.

(6) The by-laws bind an Association and the owners to the same extent as if the by-laws had been signed and sealed by the Association and by each owner, and contained covenants on the part of each owner with every other owner and with the Association to observe and perform all the provisions of the by-laws.

(7) By-laws made by an Association under subsection (1) shall have no force or effect to the extent to which it purports to prohibit or restrict—

(*a*) the keeping on a unit of a dog used as a guide by a completely blind owner, occupier or resident of the unit; or

(*b*) the use of a dog as a guide on a unit or common property by a completely or partially blind person.

(8) An Association is responsible for the enforcement of its by-laws.

(9) Where an owner or tenant residing in a residential unit contravenes a by-law, the Association may impose on the owner or tenant a penalty of not more than K500,000 in respect of a contravention.

Control and management

31.—(1) An Association is responsible for the control, management and administration of its movable and immovable property and the common property.

(2) Without derogating from the generality of subsection (1), the duties of an Association include—

(*a*) keeping in a state of good and serviceable repair and properly maintain the movable and immovable property of the Association and the common property;

(*b*) complying with notices or orders by any local authority or public authority requiring repairs to or work to be done in respect of the parcel; and

(*c*) paying such charges or rates as may be levied against the property.

(3) An Association may by a special resolution acquire or dispose of an interest in immovable property.

(4) An Association may recover from an owner, by an action in debt, any sum of money spent by the Association—

(*a*) pursuant to a by-law; or

(*b*) as required by a local authority or other public authority, in respect of the unit or common property that is leased to that owner under section 48.

(5) An Association may recover, by an action for debt, as provided in section 19 (2), any contribution levied that is due and payable on the passing of a resolution to that effect and in accordance with the terms of the resolution, from the person who was the owner at the time when—

(*a*) the resolution was passed; and

(*b*) the action was instituted, both jointly and severally.

(6) An Association shall, in relation to the contribution referred to subsection (5), on the application of an owner or a person authorized in writing by the owner, certify—

(*a*) the amount of any contribution of the owner;

(*b*) the manner in which the contribution is payable;

(*c*) the extent to which the contribution has been paid by the owner; and

(*d*) the interest owing, if any, on any unpaid balance of a contribution,

and in favour of a person dealing with that owner the certificate is conclusive proof of the matter so certified.

(7) An Association may register a caution against the title to an owner's unit for the amount of a contribution levied on the owner but unpaid by him.

(8) On the registration of the caution under subsection (7) the Association has a charge against the unit equal to the unpaid contribution.

(9) A charge under subsection (7) has the same priority from the date of registration of the caution as a charge under the Registered Land Act.

Cap. 58:04

(10) Where an Association has registered a caution under subsection (7), the Association shall, on the payment to it of the amount of the unpaid contribution, withdraw the caution.

(11) An Association may delegate any or all of its functions under this section to an institutional manager, and shall provide such assistance as is necessary to the institutional manager to perform such delegated functions.

Interest on outstanding account

32. An Association may, if permitted to do so by the by-laws, charge interest at a rate to be set out in the by-laws on any unpaid balance of a contribution owing to it by an owner.

Recovery of money owing

33. Where any interest referred to in section 32, or a deposit referred to in section 48 (3), is owing by an owner to an Association, the Association may, in addition to any rights of recovery that the Association has in law, recover that amount in the same manner as the recovery of a contribution under section 31.

Recovery of costs

34. Where an Association registers a caution against the title to a unit under section 31 (7), an Association may recover from the owner of the unit the cost incurred in preparing and registering the caution and in discharging the caution.

Investments

35. An Association may invest any funds not immediately required by it only in those investments in which a trustee may invest under the Trustee Act.

Cap. 5:02

Information on request

36.—(1) An Association or institutional manager shall, on the written request of an owner, a purchaser or chargee of a unit, within twenty-one days of receiving the request, provide the person making the request, any of the following information as requested by that person—

(*a*) a statement setting forth the amount of any contribution due and payable in respect of a unit;

(*b*) the particulars of—

(i) any action commenced against, and served on, the Association;

(ii) any unsatisfied judgment or order for which the Association is liable; and

(iii) a written demand made on the Association for an amount in excess of K500,000 that, if not met, may result in an action being brought against the Association;

(*c*) the particulars of, or a copy of, any subsisting recreational agreement;

(*d*) the particulars of or a copy of any subsisting management agreement;

(*e*) a copy of the budget of the Association;

(*f*) a copy of the financial statement of the Association;

(*g*) a copy of the by-laws of the Association; and

(*h*) a copy of any minutes of proceedings of a general meeting of the Association or of the board of management.

(2) Where a request is made under subsection (1) and the Association or institutional manager fails to comply with the request, the aggrieved person may seek an order of the Court that the Association or the institutional manager, as the case may be, comply with such request.

(3) Where an aggrieved person commences proceedings pursuant to subsection (2), a Court may make an order against the Association or the institutional manager, as the case may be, that it comply with subsection (1), and the Court may also—

(*a*) award a penalty against the Association or the institutional manager of a sum not exceeding K100,000 per day for each day exceeding twenty-one days after a request was properly made under subsection (1); and

(*b*) make such award as to costs as seems appropriate in the circumstances.

Insurance

37.—(1) Where a sectional plan has not been registered prior to the sale of any units, the developer—

(*a*) shall place insurance on the units, and the common property against—

(i) loss resulting from destruction or damage caused by fire, and such other perils as are specified in the by-laws; and

(ii) damages awarded against the developer, the owner of a unit or the Association in an action for occupier's liability; and

(*b*) may place insurance on the units and the common property or either of them against additional perils other than those specified in the Act or the by-laws; and for that purpose, the developer has an insurable interest in the units and the common property.

(2) Upon the registration of the sectional plan, the insurable interest in the units and the common property passes to the Association, and if no insurance on the units and common property has been effected under subsection (1), the Association—

(*a*) shall place insurance on the units and the common property against—

(i) loss resulting from destruction or damage caused by fire, and such other perils as are specified in the by-laws; and

(ii) damages awarded against the owner of a unit or the body corporate in an action for occupier's liability; and

(*b*) may place insurance on the units and the common property or either of them against additional perils other than those specified in the Act or the by-laws.

(3) An Association shall, subject to subsection (4), maintain such insurance on the units and common property as has been placed under subsections (1) or (2).

(4) Upon the appointment of an institutional manager as provided under this Act, the duty to maintain insurance under the terms of subsection (3) devolves upon the institutional manager.

(5) In complying with subsections (1) or (2) the developer or an Association, as the case may be, must place insurance which provides that upon—

(*a*) the insured property being destroyed or damaged; and

(*b*) that property being replaced or repaired,

no deduction shall be made from the settlement for depreciation of the property.

(6) Where insurance has been placed under subsection (1) (*b*) or (2) (*b*), such insurance may be continued by an Association unless it is prohibited from doing so by a resolution passed at a properly convened meeting of the Association.

(7) Any payment by an insurer under a policy of insurance for destruction of or damage to a unit or the common property shall, notwithstanding the terms of the policy—

(*a*) be paid to the insurance trustee designated in the by-laws, or where the by-laws do not designate an insurance trustee, to the Association; and

(*b*) subject to sections 54 (3), be used forthwith, for the repair or replacement of the insured property which was destroyed or damaged.

(8) Notwithstanding the Insurance Act, or any other policy of insurance, where insurance is placed by both a developer or an Association, and an owner against the loss resulting from destruction of or damage to the units or the common property— Cap. 47:01

(*a*) the insurance placed by the developer or the Association is deemed to be first loss insurance; and

(*b*) the insurance placed by the owner of the unit in respect of the same property which is insured by the developer or the Association is deemed to be excess insurance.

(9) A developer, an Association or institutional manager that fails to comply with this section commits an offence, and shall, upon conviction, be liable to a fine of K10,000,000, and to imprisonment for five years.

38. An Association or an institutional manager shall, within twenty-one days of receiving a request in writing from an owner or a person authorized in writing by an owner, or the chargee of a unit, provide to the person making the request, subject to the payment of Copies of insurance policies

such fee as is prescribed in the by-laws, copies of the policies of insurance placed by the developer or the Association.

Disposition of common property

39.—(1) An Association may, by a unanimous resolution, transfer or lease the common property or any part thereof, or may grant an easement on the whole or part of the common property:

Provided that no part of the common property may be transferred or leased, where such part of the common property is used for personal access to one or more units.

(2) Where the board of management is satisfied that the unanimous resolution was properly passed and that all persons having registered interests in the parcel and all other persons having interests, other than statutory interests, notified to an Association have—

(*a*) in the case of either a transfer, consented in writing to the release of those interests in respect of the land comprised in the proposed transfer; or

(*b*) in the case of a lease, approved in writing of the execution of the proposed lease,

the Association shall execute the appropriate transfer or lease.

(3) A transfer or lease executed in accordance with subsection (2) is valid and effective without execution by any person having an interest in the common property, and the receipt of an Association of the purchase money, rent, premiums or other money payable to the Association under the terms of the transfer or lease is a sufficient discharge of, and exonerates the persons taking under the transfer or the lease from, any responsibility for the application of the money expressed to have been so received.

(4) The Registrar shall not register a transfer or lease authorized under this section unless it has endorsed on it, or is accompanied by a certificate of an Association stating that -

(*a*) the unanimous resolution was properly passed;

(*b*) the transfer or lease conforms with the terms of it; and

(*c*) all necessary consents were given.

(5) The certificate referred to in subsection (4) is—

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

(*b*) in favour of the Registrar,

conclusive proof of the facts stated in the certificate.

(6) On the filing for registration of a transfer or lease of common property, the Registrar shall register the transfer or lease in accordance with the Registered Land Act. Cap. 58:04

Exclusive use areas

40. An Association may, if its by-laws permit it to do so, grant a lease to an owner of a residential unit permitting that owner to exercise exclusive possession in respect of an area or areas of the common property.

Covenants benefiting parcel

41. An Association may, by a unanimous resolution, accept, on behalf of the owners, a grant of easement or a restrictive covenant benefiting a parcel.

Procedure for granting restrictive covenant

42.—(1) An Association may, by a unanimous resolution, execute, on behalf of the owners, a grant of easement or a restrictive covenant on the parcel.

(2) Where a board of management is satisfied that a unanimous resolution was properly passed and that all persons having interests in the parcel and all other persons having interests, other than statutory interests, that have been notified to an Association, have consented in writing to the release of those interests in respect of the land comprised in the proposed disposition, the Association shall execute the appropriate instrument to grant the easement or restrictive covenant.

(3) An instrument granting an easement or restrictive covenant executed in accordance with subsection (2) is valid and effective without execution by any person having an interest in the parcel, and the receipt of an Association of any moneys payable to the Association under the terms of the grant of easement or restrictive covenant is a sufficient discharge of, and exonerates all persons taking under the instrument from, any responsibility for the application of the moneys expressed to have been so received.

(4) The Registrar shall not register an instrument granting an easement or restrictive covenant authorized under this section unless it has endorsed on it, or is accompanied by, a certificate of an Association stating that the unanimous resolution was properly passed, and that all necessary consents were given.

(5) The certificate referred to in subsection (4) in favour of a person dealing with an Association under this section shall be conclusive proof of the facts stated in the certificate.

(6) The Registrar shall register the instrument granting the easement or restrictive covenant by noting it on the sectional plan in the prescribed manner.

Part IV—Sale and Rental of Units

Sale of a unit

43.—(1) A developer shall not sell or agree to sell a unit or proposed unit, unless there has been delivered to a purchaser a copy of—

(*a*) the proposed purchase agreement;

(*b*) the by-laws or proposed by-laws;

(*c*) any management agreement, or proposed management agreement;

(*d*) any recreational agreement or proposed recreational agreement;

(*e*) if the parcel on which the unit is located is held under a lease, the lease of the parcel;

(*f*) the certificate of sectional property in respect of the unit, or proposed unit, which has been, or will be, issued under section 4 (1) (*c*);

(*g*) any charge that affects, or proposed charge that will affect, the title to the unit or proposed unit or, in respect of that charge or proposed charge a notice prescribed under subsection (2); and

(*h*) the sectional plan or proposed sectional plan.

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

(*a*) the maximum principal amount available under the charge;

(*b*) the maximum monthly payment that may be paid under the charge;

(*c*) the amortization;

(*d*) the term of the charge;

(*e*) the interest rate or the formula, if any, for determining the interest rate; and

(*f*) the pre-payment privileges, if any.

(3) Subject to subsection (4), a purchaser under this section may, without incurring any liability for doing so, rescind the purchase agreement within ten days from the date the purchase agreement was executed by the parties.

(4) A purchaser may not rescind the purchase agreement under subsection (3) if all the documents required to be delivered to the purchaser under subsection (2) have been delivered to the purchaser not less than ten days prior to the execution of the purchase agreement by the parties.

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

(6) A purchaser shall not resell a unit until the property is fully developed, and a certificate of occupation is issued.

Contents of purchase agreement

44. A developer who enters into a purchase agreement shall include in the agreement the following—

(*a*) a notification that is at least as prominent as the rest of the contents of the agreement, and that is printed in red ink on the outside front cover or on the first page of the agreement stating as follows—

"The purchaser may, without incurring any liability for doing so, rescind this agreement within ten days of its execution by the parties to it, unless all of the documents required to be delivered to the purchaser under section 43 have been delivered to the purchaser not less than ten days prior to the execution of this agreement by the parties to it."

(*b*) a description, drawing or photograph showing—

(i) the interior finishing of all major improvements to the common property located within a building;

(ii) the recreational facilities, equipment and other amenities to be used by the person residing in the residential units;

(iii) the equipment to be used for the maintenance of the common property;

(iv) the location of roadways, walkways, fences, paving areas and recreational facilities;

(v) the landscaping; and

(vi) the exterior finishing of the building as it will exist when the developer has fulfilled his obligations under the agreement;

(*c*) the amount or estimated amount of the monthly unit contributions in respect of a residential unit; and

(*d*) the unit factor of the unit, and the basis of unit factor apportionment for all units comprised in the sectional plan.

Payment held in trust

45.—(1) A developer, or a person acting on behalf of the developer, shall hold in trust all the money paid by a purchaser under a purchase agreement, other than rents, security deposits or mortgage advances, and—

(*a*) if the improvements to 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 improvements to 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 title document to the purchaser; and

(ii) on the improvements to 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 purchase agreement, may be paid to the developer.

(2) The developer, or a person acting on behalf of the developer, who receives money that is to be held in trust under subsection (1), shall forthwith deposit the money into an interest earning trust account maintained in a financial institution licensed under the Banking Act.

Cap. 44:01

(3) Where money is being held in trust under subsection (1), and the purchaser of the unit takes possession of, or occupies the unit prior to receiving the title document, the interest earned on that money from the day the purchaser takes possession or occupies the unit to the day the purchaser receives the title document shall be applied against the purchase price of the unit.

(4) Subject to section (3), the developer is entitled to the interest earned on money held in trust under this section.

(5) For the purposes of this section, improvements to the unit or the common property, as the case may be, are deemed to be substantially completed when the improvements are ready for use or are being used for the purpose intended.

(6) The provisions of this section shall not apply if the purchaser does not perform the obligations of the purchaser under the purchase agreement.

Limit on security deposit

46. Where a purchaser of a unit prior to receiving title to the unit, rents that unit from the developer, the amount that the developer may charge the purchaser as a security deposit in respect of the unit shall not exceed one month's rent charged for the unit.

Developer's management agreements

47.—(1) Subject to subsection (2), an Association may, notwithstanding anything contained in a developer's management agreement or a collateral agreement, terminate a developer's management agreement at any time after its board of management is comprised of persons who were elected to the board after the majority of the units were owned by persons other than a developer.

(2) A developer's management agreement—

(*a*) may not be terminated under subsection (1) without reasonable cause until two years have elapsed from the day that the agreement was entered into, except when the agreement permits termination at an earlier date; and

(*b*) may only be terminated under subsection (1) on an Association giving sixty days' written notice to the developer of its intention to terminate the agreement, and the Association is not liable to the developer by reason only of the agreement being terminated under this section.

(3) For purposes this section "developer's management agreement" means a management agreement that was entered into by an Association at time when its board of management was comprised of persons who were elected to the board while the majority of units were owned by a developer.

Rental of residential units

48.—(1) An owner of a residential unit shall not rent out the unit without giving an Association written notice of intention to rent out the unit, setting forth—

(*a*) the address at which the owner may be served with a notice given by the Association under section 49 or an order referred to in section 50; and

(*b*) the amount of rent to be charged for the unit.

(2) Where the owner of a residential unit rents [out] the unit, it shall be a condition of that tenancy that, notwithstanding anything in the tenancy agreement, the persons residing in the unit shall not -

(*a*) cause damage to the movable or immovable property of an Association or the common property; or

(*b*) contravene the by-laws.

(3) An Association may require an owner who rents out a residential unit to pay to, and maintain with the Association, a deposit, not exceeding one month's rent, that the Association may use for—

(*a*) the repair or replacement of the movable and immovable property of the Association, or of the common property; and

(*b*) the maintenance, repair or replacement of any common property that is subject to a lease granted to the owner of the unit under section 39,

that is damaged, destroyed, lost or removed, as the case may be, by a person residing in the rented unit.

(4) Where owner of a residential unit rents out the unit, the owner shall, within twenty-one days from the commencement of the tenancy, give an Association written notice of the name of the tenant residing in the unit.

(5) Where the owner of a residential unit ceases to rent [out] the unit, the owner shall, within twenty-one days of ceasing to rent his unit, give an Association written notice that the unit is no longer rented out.

(6) An Association shall, within twenty-one days of receiving a written notice under subsection (5)—

(*a*) return to the owner the deposit referred to in subsection (3);

(*b*) if the Association has made use of the deposit for one or more of the purposes referred to under subsection (3), deliver to the owner—

(i) a statement of account showing the amount used; and

(ii) the balance of the deposit not used, if any; or

(*c*) if the Association 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 balance of the deposit not used, if any.

Notice to give up possession

49.—(1) An Association may give a tenant renting a residential unit notice to give up possession of that unit, if the tenant residing in the unit—

(*a*) causes damage, other than normal wear and tear, to the movable or immovable property of the Association or to the common property; or

(*b*) contravenes a by-law.

(2) Where an Association gives a tenant a notice under subsection (1)—

(*a*) the tenant shall give up possession of the residential unit; and

(*b*) notwithstanding any written law or anything contained in the tenancy agreement between the tenant and the landlord, the tenancy agreement terminates on the last day of the month immediately following the month in which the notice is served on the tenant.

(3) A notice given under subsection (1) shall be served on the tenant and the landlord.

Application for order to give up possession

50.—(1) Where a tenant is given notice under section 49 (1) to give up residential unit and does not give up possession, an Association or the landlord, as the case may be, may make an application to the Court for an order requiring the tenant to give up possession of the unit.

(2) The application to the Court under subsection (1) shall be supported by an affidavit—

(*a*) indicating service of the notice under section 49 to give up possession;

(*b*) stating the reasons for giving the tenant a notice to give up possession;

(*c*) stating the failure of the tenant to give up possession and the reasons given, if any, for that failure; and

(*d*) stating any other relevant facts.

(3) The Court may, on hearing an application made under this section, order the tenant to give up possession of the residential unit by a date specified in the order, and may make any other order that it considers proper in the circumstances.

(4) Where an Association is granted an order under subsection (3), it shall serve a copy of that order on the tenant and the landlord.

(4) Where a landlord is granted an order under subsection (3), it shall serve a copy of that order on the tenant.

Part V—Termination of Sectional Title and Sectional Property Status

Termination of sectional title

51. The owners of a sectional title of a building may terminate their sectional title by a unanimous resolution.

Termination of sectional property status

52.—(1) Where, in accordance with section 51, the sectional title of a building is terminated, the sectional property status of a building shall be terminated by a unanimous resolution of the owners.

(2) Where the sectional property status of a building is not terminated in accordance with subsection (1), an Association, an owner, a registered chargee of a unit or a purchaser under an agreement for sale of a unit, may make an application to the Court for the termination of the sectional status of a building.

(3) The Court may, on an application under subsection (2), terminate the sectional property status of the building, if the Court is satisfied that having regard to the rights and interests of the owners as a whole, or the registered chargee or purchaser under agreement for sale of units, it is just and equitable to do so.

(4) Where the sectional property status of a building is terminated pursuant to subsection (3), the Court may, by order, impose any conditions and give any directions, including directions for the payment of money, that the Court thinks fit for the purpose of adjusting, as between an Association and the owners, and as

amongst the owners themselves, the effect of terminating the sectional property status of the building.

(5) Where an application to terminate the sectional property status of a building is made under subsection (3), an insurer who has effected insurance on the building, or a 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 by a legal practitioner.

Effect of termination of sectional property status

53.—(1) Where the sectional property status of the building is terminated under section 52, an Association shall forthwith file with the Registrar a notice of the termination in the prescribed form.

(2) The Registrar shall, on the receipt of a notice referred to in subsection (1), make a notification in respect of the notice on the sectional plan in the prescribed manner, 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.

Settlement of scheme

54.—(1) Where a building is damaged but the sectional property status is not terminated pursuant to section 52 or 55, an Association, an owner, a registered chargee of a unit or a purchaser under an agreement for sale of a unit may make an application to the Court to settle a scheme in accordance with subsection (2).

(2) Where on an application is made under subsection (1), the Court may, by order settle a scheme, including provisions for—

(*a*) the reinstatement in whole or in part of the building; and

(*b*) the transfer of the interests of owners of units that have been wholly or partially destroyed to the other owners in proportion to their unit factors.

(3) The Court may, in the exercise of the powers conferred by subsection (2), make such further orders as it considers necessary or expedient for giving effect to the scheme, including orders—

(*a*) directing the application of insurance money received by an Association in respect of damage to the building;

(*b*) directing payment of money by an Association or by the owners or by one or more of them;

(*c*) directing such amendment of the sectional plan, as the Court thinks fit, so as to include in the common property any accretion to the property; and

(*d*) imposing any terms and conditions as the Court thinks fit.

(4) Where an application to settle a scheme is made under subsection (2), 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 a legal practitioner.

Transfer of property

55.—(1) Where the sectional property status of a building is terminated an Association may, by a unanimous resolution, transfer the parcel or any part of it.

(2) When the board of management is satisfied that the unanimous resolution was properly passed, and that—

(*a*) all persons having registered interests in the parcel; and

(*b*) all other persons having interests, other than statutory interests, which have been notified to the Association, have consented in writing to the release of the interests in respect of the land comprised in the proposed disposition,

the Association shall execute the appropriate transfer.

(3) A transfer executed pursuant to subsection (2) is valid and effective, without execution by any person having an interest in the parcel, and the receipt of an Association of the purchase money or other moneys payable to the Association under terms of the transfer is sufficient discharge of, and exonerates the person taking under the transfer from, any responsibility for the application of the money expressed to have been received.

(4) The Registrar shall not register a transfer executed pursuant to this section—

(*a*) unless the transferor has endorsed on it, or is accompanied by, a certificate under the seal of the Association that the unanimous resolution was properly passed, and that all necessary consents were given; and

(*b*) until the notification required by section 23 has been made on the sectional plan.

(5) A certificate issued pursuant to subsection (4)—

(*a*) in favour of a purchaser of the parcel; and

(*b*) in favour of the Registrar,

is conclusive proof of the facts stated in the certificate.

(6) Where a parcel is transferred by an Association pursuant to this section, the Registrar—

(*a*) shall close the registers relating to the units, and reopen the register closed under section 4 (1); and

(*b*) shall register the transfer.

Dissolution of an Association

56.—(1) An Association may be dissolved by unanimous resolution of the owners.

(2) The Court may, on an application by an Association, a member of the Association, or an institutional manager—

(*a*) order the winding up of the affairs of an Association; and

(*b*) by the same or subsequent order, declare an Association dissolved on a date specified in the order.

PART VI—MISCELLANEOUS

Copies of sectional plan to assessing authority

57.—(1) An Association shall, within twenty-eight days after the registration of a sectional plan or an amendment thereto, furnish to the local government authority two copies of the sectional plan or an amendment thereto, and all certified endorsements thereon, as prescribed by the regulations.

(2) For all purposes in relation to the making, levying, imposition, assessment or recovery of rates, charges or taxes in relation to a parcel or a part of it—

(*a*) the particulars shown on the certified copy of the sectional plan or any amendment thereto furnished pursuant to subsection (1) are conclusive proof of those particulars; and

(*b*) the production by an assessing authority of what purports to be a certified copy of a sectional plan or an amendment thereto furnished pursuant to subsection (1) is prima-facie proof that it is a certified copy so furnished.

(3) An Association that fails to comply with subsection (1), commits an offence and shall, on conviction, be liable to—

(*a*) a fine of K5,000,000; and

(*b*) where the offence continues, a fine of K100,000 for each day the Association fails to comply.

Assessment and taxation

58. For the purposes of assessment of rates by a local government authority—

(*a*) each unit and the share in the common property appurtenant to it constitutes a separate parcel of land and improvements; and

(*b*) the common property does not constitute a separate parcel of land or improvements.

Applications to Court

59.—(1) An application to the Court under this Act shall be—

(*a*) by petition; and

(*b*) served on the persons whom the Court directs.

(2) The Court may direct the trial of an issue, and may give any directions as to all matters, including filing of pleadings, that appear necessary and proper for the final hearing of the application.

(3) The Court may, from time to time, vary any order made under this section.

Right of entry

60. Where a local government authority or public authority, or a person authorized by either of them, has a statutory power to enter on a parcel or any part of a parcel, the authority or person authorized by the authority is entitled to enter on a parcel or any other part of the parcel to the extent necessary or expedient to enable the authority or authorized person to exercise a statutory power.

Service of notices

61.—(1) Any document, including any written notice or request, required to be served on an Association under this Act may be served on the Association—

(*a*) by leaving it at or by sending it by registered post—

(i) to the address shown on the sectional plan; or

(ii) if a change of address for service has been filed under section 63 (2), to the address for service shown on the latest notice filed; or

(*b*) by personal service on a member of the board of management.

(2) For the purposes of this section "document" includes a summons, notice, tax notice, order and other legal process.

Service of documents and notice

62.—(1) Any notice required to be served by an Association on an owner of a residential unit under this Act may be served by personal service at, or by registered post sent to, the address given to the Association under section 48.

(2) Any notice required to be served by an Association on a tenant under this Act may be serve—

(*a*) by personal service; or

(*b*) if the tenant cannot be served personally by reason of his absence from the premises or by reason of his evading service—

(i) by giving it to an adult person who is residing with the tenant;

(ii) by posting it up in a conspicuous place on some part of the premises; or

(iii) by sending it by registered post to the tenant at the address where he resides.

Change of address for service

63.—(1) An Association may by resolution of the board of management change its address for service.

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

Fees for documents

64. An Association may charge any person a reasonable fee to compensate it for the expenses it incurs in producing and providing a document required under this Act.

Writ of execution

65. If a judgment is obtained against an Association, a writ of execution in respect of the judgment may be registered against the sectional plan.

Offences and penalty

66.—Any person who fails to comply with any provision of this Act for which no penalty has been prescribed commits an offence and shall, on conviction, liable to—

(*a*) in case of an individual, a fine of K5,000,000, and to imprisonment of two years; or

(*b*) in the case of body corporate or partnership, to a fine of K10,000,000.

Waiver release, etc.

67.—(1) This Act applies notwithstanding any agreement to the contrary and any waiver or release given of the rights, benefits or protections provided by or under this Act shall be void.

(2) A remedy that a purchaser of a residential unit has under this Act is in addition to any other rights or remedies that the purchaser has at law.

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

Regulations

68.—(1) The Minister may make regulations for the better carrying out into effect of the provisions of this Act.

(2) Without derogation from the generality of subsection (1), the Minister may make regulations—

(*a*) in respect of forms to be used for the purposes of this Act including the form of certificates of title to units;

(*b*) respecting the manner of registering sectional plans;

(*c*) prescribing the fees to be paid for any process, procedure or function required or permitted to be done under this Act;

(*d*) prescribing the form of by-laws that may be adopted by an Association; and

(*e*) concerning all matters that by this Act are required or be permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(3) Notwithstanding the provisions of section 21 (*e*) of the General Interpretation Act, regulations made under subsection (1) may provide for offences the contravention of which may impose a penalty of—

(*a*) in case of an individual, to a fine of K1,000,000, and imprisonment of twelve months; or

(*b*) in the case of body corporate, a fine of K5,000,000.

Passed in Parliament this sixteenth day of September, two thousand and twenty-four.

FIONA KALEMBA
Clerk of Parliament