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THE SECTIONAL PROPERTIES ACT

CAP. 286

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Sectional Properties Act

Cap. 286

Legislation as at 31 December 2022

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Sectional Properties Act (Cap. 286)
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SECTIONAL PROPERTIES ACT

CAP. 286

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An Act of Parliament 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 and to provide for the use and management of the units and common property and for connected purposes

Part I – PRELIMINARY

1. Short title

This Act may be cited as the Sectional Properties Act.

2. Application

This Act shall apply only in respect of land held on freehold title or on a leasehold title where the unexpired residue of the term is not less than twenty-one years and there is an intention to confer ownership.

3. Interpretation

In this Act, unless the context otherwise requires—

"board" means the board of a Corporation as provided for in section 26;

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

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

"Cabinet Secretary" means the Cabinet Secretary responsible for matters relating to land;

"cadastral map" has the meaning assigned to it under the Land Registration Act (Cap. 300);

"cadastral plan" has the meaning assigned to it under the Land Registration Act (Cap. 300);

"certificate of lease" has the meaning assigned to it under the Land Act (Cap. 280);

"certificate of title" has the meaning assigned to it under the Land Act (Cap. 280);

"Committee" means a Dispute Resolution Committee provided for under section 20 or section 30;

"common property" means so much of a parcel as is not comprised in a unit shown in a sectional plan;

"Corporation" means the body corporate incorporated in accordance with section 17;

"county government" means a county government as provided for under Article 176 of the Constitution;

"Court" means the Environment and Land Court established under the Environment and Land Court Act (Cap. 8D);

"developer" means a person 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;

"easement" has the meaning assigned to it under the Land Act (Cap. 280);

"geo-reference" has the meaning assigned to it under the Land Registration Act (Cap. 300);

"management agreement" means an agreement entered into by a Corporation governing the general control, management and administration of—

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

(b) the common property associated with the units;

"owner" means a person who is registered as the proprietor of a unit in a freehold or leasehold interest;

"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 for the time being 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 a Corporation 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;

"register" means the register the opened for each unit under section 5 (1)(b);

"Registrar" has the meaning assigned to it under the Land Registration Act (Cap. 300);

"registry" has the meaning assigned to it under the Land Registration Act (Cap. 300);

"sectional plan" has the meaning assigned to it under section 2 of the Land Registration Act (Cap. 300);

"special resolution" means a resolution —

(a) passed at a properly convened meeting of a Corporation 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 a Corporation, 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;

"surveyor" has the meaning assigned under section 2 of the Survey Act (Cap. 299);

"unanimous resolution" means a resolution —

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

(b) signed by all persons who, at a properly convened meeting of a Corporation, would be entitled to exercise the voting powers conferred by this Act or the by-laws;

"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 and shall include its proportionate share in the common property;

"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; and

"user" means the purpose for which a building or unit is to be used and for which development permission has been granted by the County Government.

Part II – PREPARATION AND REGISTRATION OF SECTIONAL PLANS AND UNITS

4. Sub-division of buildings into units

(1) An existing 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 prepared, by a surveyor, from a building plan that has been approved by a county government.

(2) A surveyor shall not prepare a sectional plan unless he is presented with proof of ownership of the parcel or unit to which the sectional plan shall apply.

(3) A sectional plan shall be accompanied by an application for registration by the corporation and a list of the persons who are the owners of the units in the parcel which shall be updated from time to time on need basis.

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

(a) describes two or more units in it; and

(b) is presented for registration in quadruplicate.

(5) For the purposes of the Land Registration Act (Cap. 300), a sectional plan shall be deemed on registration to be embodied in the register.

5. Registration of sectional plans

(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 payment of the prescribed fee, issue, in respect of each unit of the sectional property, a certificate of title if the property is freehold or a certificate of lease if the property is leasehold and shall include its proportionate share in the common property.

(2) Any interests affecting the parcel 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 title deed for sectional property issued under subsection (1)(c).

(3) No more than one unit may be referred to in one register and no other land, except the share in the common property apportioned to the owner of that unit in accordance with section 6(2) may be referred to in the same register.

(4) Any interest affecting an individual unit which is part of a sectional plan registered under section 4(1) and not endorsed pursuant to subsection (2) of this section shall be endorsed on —

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

(b) the title deed for sectional property issued in respect of the unit under subsection (1)(c).

(5) Notwithstanding any other written law, as soon as 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 Land Registration Act (Cap. 300).

(6) After the register for a unit is opened pursuant to subsection (1)(b), all dealings and dispositions regarding the unit shall be done in accordance with the Land Registration Act (Cap. 300).

6. Certificate to indicate share in common property

(1) The Registrar shall, on opening a register for a unit under section 5 (1), include in that register the share in the common property apportioned to the owner of that unit under subsection (2) of this section, and shall include that share in the common property on a title deed for sectional property issued in respect of the unit under section 5(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) 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.

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

(1) The common property and each unit on a sectional plan shall, by virtue of this section, have as appurtenant thereto all such rights of support, shelter and protection, and for the passage or provision of water, sewerage, drainage, gas, 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.

(2) The common property and each unit on a sectional plan shall, by virtue of this section, have as appurtenant thereto 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.

(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 the sectional plan relates.

8. Liability of owner of a unit

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 his unit.

9. Requirements of sectional plans

(1) Every plan presented for registration as a sectional plan under this Act shall—

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

(b) be geo-referenced;

(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) show the approximate floor area of each unit;

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

(g) be signed by the proprietor;

(h) be signed and sealed by the office or authority responsible for survey;

(i) have endorsed on it the address at which documents may be served on the Corporation concerned in accordance with section 54;

(j) clearly indicate the user of the unit; and

(k) contain any other particulars prescribed in the regulations.

(2) The Registrar shall, within twenty-one days from the day a sectional plan is registered, submit to the county government of the area in which the parcel is located, a copy of the registered sectional plan.

10. Boundaries of sectional units

(1) Unless otherwise stipulated in the sectional plan if—

(a) a boundary of a unit is described by reference to a floor, wall or ceiling; or

(b) 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, is 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 stipulated in the sectional plan.

11. Certificates to accompany sectional plans

(1) Every plan presented for registration as a sectional plan shall be endorsed by—

(a) a surveyor 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 gutterings project beyond those external boundaries, that an appropriate easement has been granted as an appurtenance of the parcel; and

(b) a certificate from the county government stating that the proposed division of the structure as illustrated on the plan has been approved by the county government.

(2) A surveyor shall apply for an endorsement by a county government under subsection (1) (b), in the prescribed form, to the County Executive Committee Member responsible for approval of buildings.

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

(4) Upon the receipt of an application for an endorsement under subsection (1) (b), the respective county government shall, with respect to a structure for which a building plan was approved, issue the endorsement, within thirty days, if satisfied that the structure conformed to —

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

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

(5) The provisions of the law relating to physical planning and any other land use planning laws relating to the sub-division of land do not apply to the division of a building under a sectional plan if —

(a) the surface boundaries of the parcel as defined in this Act on which that building is located correspond to the boundaries of a parcel as defined in the Physical and Land Use Planning Act (Cap. 303); and

(b) the building located on the parcel contains two or more units.

12. Application for sub-division etc., of a unit

(1) Any proprietor may, with the approval of the county government, sub-divide or consolidate his unit by registering a sectional plan relating to the unit intended to be so sub-divided or consolidated in the manner provided by this Act for the registration of sectional plans.

(2) 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.

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

(4) The schedule endorsed on a sectional plan of sub-division or consolidation as required by section 9 (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 sub-division or consolidation.

(5) Before registering a proposed sectional plan of sub-division or consolidation, the Registrar shall amend, in the manner prescribed by the regulations, the original sectional plan as endorsed by a surveyor.

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

13. Conversion to units

(1) If a building contains premises that are—

(a) rented for residential or commercial purposes to a tenant who is not a party to a purchase agreement; and

(b) not included in a sectional plan,

the owner of the premises or a person acting on his behalf shall not sell those premises as a residential or commercial unit until the sectional plan that includes those premises is registered at a registry.

(2) All long term sub-leases that are intended to confer ownership of an apartment, flat, maisonette, town house or an office that were registered before the commencement of this Act shall be reviewed to conform to section 54(5) of the Land Registration Act (Cap. 300) within a period of two years of the commencement of this Act.

(3) An owner who had already paid stamp duty for a sub-lease shall not be required to pay stamp duty during its revision under subsection (2).

(4) A developer, a management company or an owner of a unit may initiate the conversion required under subsection (2).

(5) The Registrar shall dispense with the production of the original title pursuant to section 31 of the Land Registration Act (Cap. 300) if the developer is not willing or is unavailable to surrender the title to the parcel for the purposes of conversion.

(6) The Registrar shall register a restriction against the title of the parcel to prevent any further dealings on it if a proprietor or developer fails to comply with this section.

14. Easements in favour of the owner

After the registration of a sectional plan, there is implied in respect of each unit shown on the sectional plan—

(a) in favour of the owner of the unit and as appurtenant to the unit, 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) in favour of the owner of the unit, and as appurtenant to the unit, an easement for the shelter of the unit by the common property and by every other unit capable of affording shelter; and

(c) in favour of the owner of the unit, and as appurtenant to the unit, 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.

15. Easements against the owner

(1) After the registration of a sectional plan, there is implied in respect of each unit shown on the sectional plan—

(a) as against the owner of the unit, an easement, to which the unit is subject, for the subjacent and lateral support of the common property and of every other unit capable of enjoying support;

(b) as against the owner of the unit, an easement, to which the unit is subject, to provide shelter to the common property and to every other unit capable of enjoying shelter; and

(c) as against the owner of the unit, an easement, to which the unit is subject, 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 that are appropriate to the proper provision of that service, but not to the exclusion of the owner of any other utility service.

16. Easements or restrictions exist without mention

(1) Easements or restrictions as to user implied or created by this Act or the by-laws take effect and are enforceable—

(a) without any memorial or 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) All ancillary rights and obligations reasonably necessary to make easements effectively apply in respect of easements implied by this Act, including the right of an owner of dominant tenement to enter a servient tenement and replace, renew or restore anything the dominant tenement is entitled to benefit from.

Part III – ESTABLISHMENT OF THE CORPORATION

17. Establishment of a Corporation

(1) On the registration of a sectional plan, there shall be constituted a Corporation under the name "The Owners, Sectional Plan No. (the number to be specified being the number given to the plan on registration)".

(2) The Registrar shall issue a certificate of registration of the corporation.

(3) A Corporation shall consist of all those persons—

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

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

(4) The Corporation shall have perpetual succession and a common seal.

(5) The Corporation shall be regulated in accordance with this Act and the bylaws specified in the regulations shall subject thereto, have effect in relation to the corporation and its board.

(6) The provisions of the Companies Act (Cap. 486) shall not apply to the Corporation.

18. Actions by or against the Corporation

(1) The Corporation shall be capable of suing and being sued in its corporate name subject to section 21, and of doing anything that a body corporate may do.

(2) Without restricting the generality of subsection (1), the Corporation 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.

19. Liability in tort

(1) Where any proceedings are brought under the Occupiers Liability Act (Cap 34) or 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 of land or premises, the provisions of this section shall apply notwithstanding any Act or rule of 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, the Corporation 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 Corporation accordingly:

Provided that, where the cause of action arose through the negligence or unauthorized act or omission of one or more of the proprietors of former proprietors, the Corporation may join that proprietor or those proprietors as co-defendants and judgment may be given against the Corporation 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 the Corporation 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 the Corporation, 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 Corporation of the full amount awarded by way of judgment.

(5) If the Corporation 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.

20. Duties of the Corporation

(1) The Corporation shall—

(a) subject to this Act, carry out any duties imposed on it by the by-laws;

(b) unless by unanimous resolution all the proprietors otherwise resolve, insure and keep insured buildings and other improvements on the parcel against fire;

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

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

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

(f) comply with any notice or order duly served on it by the county government or public body requiring repairs to, or work to be performed in respect of, the land or any building or improvements thereon;

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

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

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

(j) do all other things to ensure the property is well managed including engaging the services of a property manager or any other persons they deem necessary.

(2) The Corporation shall—

(a) 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, and the discharge of any other obligation of the Corporation;

(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.

(3) The Corporation 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.

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

(5) Any policy of insurance authorized by this section and effected by the Corporation 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.

(6) The corporation may constitute an Internal Dispute Resolution Committee on a need basis to hear and determine disputes.

(7) The Corporation may use technology in the execution of its duties.

21. Powers of the Corporation

Subject to this Act, the Corporation shall have all such powers as are reasonably necessary to enable it to carry out the duties imposed on it by this Act and by the by-laws:

Provided that the Corporation shall not have power to carry on any trading activities.

22. Disposition and dealings affecting the common property

(1) Any disposition and dealing affecting the common property or land that is to become part of the common property shall be executed in accordance with Land Registration Act (Cap. 300) and approved by a unanimous resolution of the Corporation.

(2) A certificate under the common seal of the Corporation that any such approval has been given shall be sufficient evidence of the approval in the absence of proof to the contrary.

(3) There shall be no disposition or dealing affecting the common property until a meeting of the corporation is held in accordance with section 27.

23. Registration of transfers of common property

(1) Every memorandum of transfer of the whole or any part or parts of the common property shall, in addition to any plan that the Registrar may require to be deposited under section 4, 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 or parts of the common property until there has been produced to him a consent in writing by every registered chargee, lessee, and sub-lessee to the release of his 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 an appropriate memorial relating to 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 sectional property for the land transferred, free from any incidental rights existing over the land by virtue of any written law.

24. Voting rights

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

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

(a) if a unanimous resolution is required, may not be exercised by the owner, 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 if the chargee is present personally or by proxy.

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

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

25. Voting where owner incapable

(1) Any powers of voting conferred by this Act or the 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 Public Trustee; or

(b) in the case of an owner who is for any reason unable to exercise control over his property, by the person who for the time being is authorized 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 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 the Public Trustee or such other person as the Court determines for the purpose of exercising the powers of voting under this Act and the by-laws.

(3) On making an appointment under this section, the Court may make any order it considers necessary or expedient to give effect to the appointment.

26. Board of management

(1) A Corporation shall have a board of management that shall be constituted as provided by the by-laws of the Corporation.

(2) A Corporation shall, within fifteen days of a person becoming or ceasing 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 that the person became or ceased to be, as the case may be, a member of the board.

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

(4) All acts done in good faith by a board 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.

27. Convening of meetings of the Corporation

When a developer registers a sectional plan, he shall within—

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

(b) one hundred and eighty days from the day that the first unit is sold, whichever is sooner, convene a meeting of the Corporation at which a board shall be elected.

28. Annual meeting

(1) The board 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 within fifteen months of the conclusion of the immediately preceding annual general meeting.

29. By-laws of the Corporation

(1) The Corporation may make by-laws to provide for the control, management and administration of the units, the movable and immovable property of the Corporation and the common property and for establishment of a Committee.

(2) Notwithstanding subsection (1), on first registration, the by-laws specified in the regulations shall be the by-laws of the Corporation.

(3) Any by-law may be amended, repealed or replaced by a special resolution.

(4) An amendment, repeal or replacement of a by-law does not take effect until—

(a) the Corporation 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-law shall operate to prohibit or restrict the devolution of units or any transfer, lease or other dealing with them or to destroy or modify an easement implied or created by this Act.

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

(7) A by-law made by a corporation under subsection (1) shall have no force or effect to the extent to which it purports to permit material change in the use or density of the common property without the approval of the relevant county government.

(8) A by-law made by the Corporation 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.

30. Enforcement of by-laws

(1) If an owner contravenes any of the by-laws, a corporation or an aggrieved owner may refer the dispute to the Committee provided for under section 20 and 30.

(2) A corporation or an aggrieved owner shall, when referring a dispute to the Committee under subsection (1), specify the by-laws that were contravened by the owner.

(3) On hearing a dispute referred to it in accordance with subsection (1), the Committee shall determine the dispute and make a finding and order which shall be in writing and signed by the members of the Committee.

(4) A Corporation shall not commence an action under this section unless it is authorized by the by-laws to do so.

(5) Referral of a dispute to a Committee under this section shall not restrict or derogate the referee from a remedy that an owner or the corporation may have against the disputing person.

(6) In the event of non-compliance with an order of a Committee the aggrieved party may apply to the Court to enforce the order of the Committee.

(7) If a party is dissatisfied with the determination of a Committee under this section, the party may appeal to the Court.

31. Administrative expenses

(1) In addition to other powers under this Act, the Corporation shall have the power to recover, from an owner, by an action in debt, any sum of money spent by the Corporation in execution of its duties as stipulated in section 20.

(2) A contribution levied as provided in section 20(2) 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 authorized, in writing, by him, certify—

(a) the amount of any contribution determined as the 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 certified in it.

(4) A Corporation 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.

(5) On the registration of the caution under subsection (4) the Corporation has a charge against the unit equal to the unpaid contribution.

(6) A charge under subsection (5) has the same priority from the date of registration of the caution as a charge under the Land Registration Act (Cap. 300).

(7) If the Corporation has registered a caution under this section the Corporation shall, within thirty days of the payment to it of the amount of the unpaid contribution, withdraw the caution.

32. Interest on outstanding account

The Corporation 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.

33. Recovery of money

If any interest referred to in section 32 or a deposit is owing by an owner to a Corporation, the Corporation may, in addition to any rights of recovery that it has in law, recover that amount in the same manner as a contribution under section 31.

34. Recovery of costs

If a Corporation registers a caution against the title to a unit under section 31(4), it may recover from the owner of the unit the cost incurred in preparing and registering the caution and in discharging the caution.

35. Investments

Subject to section 32, a Corporation may invest any funds not immediately required by it only in those investments in which a trustee may invest under the Trustee Act (Cap. 167) and is endorsed by a special resolution.

36. Information on request

(1) On the written request of an owner, a purchaser or chargee of a unit, the Corporation shall, within twenty days of receiving that request, provide the person making the request, subject to the payment of such charge as is prescribed in the regulations, with one or more of the following as requested by that person—

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

(b) the particulars of—

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

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

(iii) a written demand made on the Corporation for an amount in excess of five thousand shillings that, if not met, may result in an action being brought against the Corporation;

(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, if any, of the Corporation;

(f) a copy of the financial statement, if any, of the Corporation;

(g) a copy of the by-laws of the Corporation;

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

(2) Where a request is made under subsection (1) and the Corporation fails to comply with provisions of that subsection, the aggrieved person may seek an order that the Corporation comply with such request.

(3) Where an aggrieved person takes proceedings before a Committee pursuant to subsection (2), the Committee shall have power to make an order against the Corporation that it comply with subsection (1) and the Committee shall also have power to award a penalty against the institutional manager of a sum not exceeding five hundred shillings per day for each day exceeding twenty days after a request has been properly made under subsection (1).

(4) A Committee may make an order—

(a) pursuant to subsection (2) if it finds non-compliance with subsection (1) proved;

(b) dismissing the proceedings; or

(c) pronouncing a remedy or a penalty to ensure compliance with the by-laws, and in either case may make such award as to costs as seems appropriate in the circumstances.

(5) A Committee shall make its order under subsection (4) after a hearing conducted in accordance with the rules of natural justice.

(6) A party may appeal a decision of the Committee to any court in respect of an error of law.

37. Handing over of documents

(1) The owner of the land at the time a sectional plan is registered shall provide to the Corporation without charge 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 Corporation and the common property for which the Corporation is responsible;

(b) the —

(i) structural, electrical, mechanical and architectural working drawings and specification; and

(ii) built drawings which exist for the common property for which the Corporation is responsible;

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

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

(e) all certificates, approvals and permits issued by a county government, the Government or an agent of the Government which relate to any property for which the Corporation is responsible.

(2) A Corporation 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 that document and that person shall, within twenty days receiving that request, provide to the Corporation without charge a copy of that document if the document is in the possession of that person.

38. Insurance

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

(a) shall insure 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 Corporation in an action for occupier's liability; and

(b) may insure 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 Corporation, and if no insurance on the units and common property has been effected under subsection (1), the Corporation—

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

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

(5) 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 Corporation; and

(b) be used forthwith, for the repair or replacement of the insured property which was destroyed or damaged.

(6) Notwithstanding the Insurance Act (Cap. 487) or any other policy of insurance, where insurance is placed by both a developer or a body corporate, and an owner against the loss resulting from destruction of or damage to the units or the common property—

(a) the insurance placed by the developer or the body corporate 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 Corporation is deemed to be excess insurance.

39. Copies of insurance policies

A Corporation shall, within twenty 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 such charge as is prescribed in the by-laws, copies of the policies of insurance placed by the developer or the Corporation.

40. Exclusive use areas

A Corporation, by a unanimous resolution, may, if its by-laws permit, grant a lease to an owner of a unit permitting that owner to exercise exclusive use in respect of an area or areas of the common property.

41. Covenants benefiting parcel

By a unanimous resolution a Corporation may be directed to accept on behalf of the owners a grant of easement or a restrictive covenant benefiting the parcel.

42. Procedure for granting restrictive covenants

(1) By a unanimous resolution a Corporation may be directed to execute on behalf of the owners a grant of easement or a restrictive covenant burdening the parcel.

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

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

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

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) is valid and effective without execution by any person having an interest in the parcel, and the receipt of the Corporation is a 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 authorized under this section unless it has been endorsed and is accompanied by, a certificate under the seal of the Corporation stating that the unanimous resolution was properly passed and that all necessary consents were given.

(5) An instrument granting an easement or a covenant under this section shall be registered in accordance with Land Registration Act (Cap. 300).

Part IV – PROVISIONS RELATING TO UNITS

43. Sale of units

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

(a) the purchase agreement;

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

(c) the management agreement or proposed management agreement, if any;

(d) the recreational agreement or proposed recreational agreement, if any;

(e) the lease or title of the parcel on which the unit is located or the certificate of title or the certificate of lease in respect of the unit;

(f) 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

(g) 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 period;

(d) the term;

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

(f) the prepayment privileges, if any.

44. Management agreement

(1) A Corporation may contract a management agreement when its board is comprised of persons who were elected to the board while the majority of units were owned by the developer.

(2) Subject to subsection (3), a Corporation may terminate a management agreement contracted by the Corporation at any time after its board is comprised of persons who were elected to the board after the majority of the units were owned by persons other than a developer.

(3) A management agreement—

(a) may not be terminated under subsection (2) without 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 (2) on the Corporation giving sixty days' written notice to the other party to the agreement of its intention to terminate the agreement, and the Corporation is not liable to the other party to the agreement by reason only of the agreement being terminated under this section.

45. Renting of units

(1) An owner of a unit shall not rent his unit until he has given written notice to the Corporation of his intention to rent the unit, setting forth the address at which he may be served with a notice given by the Corporation under section 46.

(2) The owner of a unit shall give an undertaking to the Corporation to be liable for any damage caused by the tenant.

(3) The owner of a unit shall give the Corporation written notice of the name of the tenant residing in the unit within twenty days from the commencement of the tenancy.

(4) Within twenty days of ceasing to rent his unit, the owner shall give the Corporation written notice that his unit is no longer rented.

46. Notice to give up possession

(1) If a tenant occupying a unit causes the contravention or contravenes the by-laws, the corporation shall give notice to the owner of the unit to take necessary action immediately.

(2) If an owner fails to take necessary action within the time specified in the notice, the Corporation shall give the tenant a notice to vacate the premises.

(3) If a tenant refuses to vacate, the Corporation shall take necessary action against the tenant.

Part V – MISCELLANEOUS PROVISIONS

47. Termination of sectional property

The sectional status of a building may be terminated by—

(a) unanimous resolution;

(b) substantial or total damage to the building; or

(c) compulsory acquisition.

48. Effect of termination of sectional property

(1) On the sectional status of the building being terminated under section 47, the Corporation shall forthwith file with the Registrar a notice of the termination in the prescribed form.

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

49. Sale of sectional property

(1) When the sectional status of a building is being terminated, the Corporation may, by a unanimous resolution, be directed to transfer the parcel or any part of it.

(2) When the board is satisfied that the unanimous resolution was properly passed, the transfer shall be executed in accordance to Land Registration Act (Cap. 300).

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

(a) unless an amended cadastral map and plan of the parcel is submitted;

(b) unless the transfer it is endorsed with or is accompanied by a certificate under the seal of the Corporation that the unanimous resolution was properly passed and that all necessary consents were given; and

(c) until the notification required by section 48 has been made on the sectional plan.

(4) When land is transferred by a Corporation pursuant to this section, the Registrar shall—

(a) close the registers relating to the units and open a new register; and

(b) register the transfer in accordance with Land Registration Act (Cap. 300).

50. Dissolution of Corporation

(1) The corporation shall stand dissolved upon the termination of the sectional property.

(2) By the same or subsequent order the Court may declare the Corporation dissolved on a date specified in the order.

51. Assessment and taxation

(1) The rating authority shall assess rates, charges ground rent and taxes in relation to the parcel or a part of it.

(2) For the purpose of assessment of rates and ground rent by a rating authority—

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

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

52. Liability of Corporation

The Corporation is not liable in relation to the parcel for any rate, ground rent, charge or tax levied by a rating authority.

53. Right of entry

A county government, public authority or person authorized by either a county government or public authority shall have the right to access any part of a parcel or any other part of the parcel to the extent necessary or expedient to enable it or him to exercise its or his powers.

54. Service of documents and notices

(1) Service of a document shall be effected through—

(a) physical delivery to a registered office or by registered post;

(b) personal service on a member of the board; or

(c) electronic transmission.

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

55. Change of address for service

(1) A Corporation may by 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 that change of address is filed in the prescribed form at the land registry.

56. Fees for documents

The Corporation may charge a reasonable fee for the expenses incurred in producing and providing a document required under this Act.

57. Offences and penalty

(1) A person who fails to comply with section 13(1) or 43 is guilty of an offence and shall be liable on conviction to a fine not exceeding twenty million shillings or imprisonment for one year.

(2) Subject to subsection (1), a person who contravenes the provisions of this Act, for which no specific penalty is prescribed, is guilty of an offence and shall be liable, on conviction, to a fine not exceeding two hundred and fifty thousand shillings.

(3) If a Corporation fails to comply with this Act, each member of the board who is knowingly a party to that failure is guilty of an offence and shall be liable on conviction to a fine not exceeding two hundred and fifty thousand shillings.

58. Waiver, release, *etc.*

(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 is void.

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

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

59. Regulations

(1) The Cabinet Secretary 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 procedure or function required or permitted to be done under this Act;

(d) respecting the practice and procedure governing application to the Court under this Act;

(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.

(2) For the purposes of Article 94 (6) of the Constitution—

(a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make regulations for better carrying into effect the provisions of this Act; and

(b) the authority of the Cabinet Secretary to make regulations under this Act will be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section.

(3) The principles and standards applicable to the delegated power referred to under this Act are those found in—

(a) the Statutory Instruments Act (Cap. 2A);

(b) the Interpretation and General Provisions Act (Cap. 2);

(c) the general rules of international law as specified under Article 2 (5) of the Constitution; and

(d) any treaty and convention ratified by Kenya under Article 2 (6) of the Constitution.

60. [Spent]