

Western Australia

# **Strata Titles Act 1985**

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Western Australia

## Strata Titles Act 1985

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**Notes**

**Defined Terms**





Western Australia

## Strata Titles Act 1985

**An Act to facilitate the horizontal and vertical subdivision of land and the disposition of titles thereto, to provide for incidental and connected purposes and to repeal the *Strata Titles Act 1966*.**

*[Long title amended by No. 58 of 1995 s.4.]*

### Part I — Preliminary

**1. Short title**

This Act may be cited as the *Strata Titles Act 1985*<sup>1</sup>.

**2. Commencement**

This Act shall come into operation on a day to be fixed by proclamation<sup>1</sup>.

**3. Interpretation**

(1) In this Act unless the contrary intention appears —

“**administrator**” means an administrator appointed by a referee under section 102;

“**building**” means a building or buildings shown on a strata plan;

“**Commission**” means Western Australian Planning Commission established under the *Western Australian Planning Commission Act 1985*;

**“common property”** means —

- (a) so much of the land comprised in a strata plan as from time to time is not comprised in a lot shown on the plan;
- (b) any leasehold interest acquired by a strata company under section 18; and
- (c) the lot or lots shown on a survey-strata plan as common property;

**“council”** means the council of a strata company constituted or deemed to have been constituted under this Act;

**“floor”** includes a stairway or ramp;

**“floor area”** in relation to a cubic space, means the area occupied on a horizontal plane by the base of that cubic space;

**“floor plan”** means a plan, consisting of one or more sheets, which —

- (a) defines by lines (in paragraph (c) referred to as **“base lines”**) the base of each vertical boundary of every cubic space forming the whole of a proposed lot, or the whole of any part of a proposed lot, to which the plan relates;
- (b) shows —
  - (i) the floor area of any such cubic space; and
  - (ii) where any such cubic space forms part only of a proposed lot, the aggregate of the floor areas of every cubic space that forms part of the proposed lot;

and

- (c) where proposed lots or parts thereof to which the plan relates are superimposed on other proposed lots or parts thereof to which the plan relates —
  - (i) shows the base lines in respect of the proposed lots or parts thereof that are so superimposed separately from those in respect of the other proposed lots or parts thereof upon which they are superimposed; and

- (ii) specifies, by reference to floors or levels, the order in which that superimposition occurs;

**“land”** means land that is under the operation of the *Transfer of Land Act 1893* and held by the registered proprietor of the land in fee simple;

**“licensed surveyor”** means a surveyor licensed under the *Licensed Surveyors Act 1909*;

**“licensed valuer”** means a licensed valuer licensed under the *Land Valuers Licensing Act 1978*;

**“local government”** means the local government of the district in which the parcel in question is situated;

**“location plan”**, in relation to a strata plan, means a plan, consisting of one or more sheets, which relates to land and delineates the perimeter of that land and, in relation to that perimeter, the location of any building erected on that land and of any proposed lots or part of proposed lots not within any such building;

**“lot”**, in relation to a strata scheme, means one or more cubic spaces forming part of the parcel to which a strata scheme relates, the base of each such cubic space being designated as one lot or part of one lot on the floor plan forming part of the strata plan, plan of re-subdivision or plan of consolidation to which that strata scheme relates, being in each case, but subject to section 3AB, cubic space the base of whose vertical boundaries is as delineated on a sheet of that floor plan and which has horizontal boundaries as ascertained under subsection (2), but does not include any structural cubic space except where —

- (a) the boundaries of the cubic space are fixed under section 3AB; or
- (b) the boundaries are not so fixed and that structural cubic space —
  - (i) has boundaries described in accordance with the regulations; and

(ii) is shown in that floor plan as part of a lot;

**“lot”**, in relation to a survey-strata scheme, means land that is shown as a lot consisting of one or more parts on the plan for that scheme, but does not include —

(a) a lot shown as common property; or

(b) land shown as being set aside for a road or reserve;

**“mortgage”** includes a charge for securing money or money’s worth;

**“occupier”** in relation to a lot, means a person in lawful occupation of that lot;

**“open space”** means the area of a lot that is not occupied by any building and is to be calculated in such manner as is prescribed;

**“original proprietor”** in relation to a scheme, means the person by whom the parcel that is the subject of that scheme is held in fee simple at the time of registration of the strata/survey-strata plan to which the scheme relates;

**“parcel”** means the land comprised in a strata/survey-strata plan;

**“permitted boundary deviation”** for the purposes of the definition of “single tier strata scheme” and other provisions, means a part of a lot that is above or below another lot in circumstances allowed by the regulations;

**“person concerned”** means —

(a) a person appearing by the Register to have an estate or interest in the common property; and

(b) a person having an estate or interest (other than a charge for a tax, rate or other statutory liability) that has been notified to the strata company;

**“plot ratio”**, in relation to a lot or parcel, means the ratio of the gross total of the areas of all floors in any building on the lot or parcel to the area of the lot or parcel, and is to be calculated in such manner as is prescribed;

- “prescribed”** means prescribed by regulations;
- “proprietor”** means the person who is for the time being registered under the *Transfer of Land Act 1893* as proprietor of an estate in fee simple or an estate for life in a lot;
- “referee”** means a Strata Titles Referee appointed under section 71;
- “Register”** has the meaning given by the *Transfer of Land Act 1893*;
- “Registrar of Titles”** means the person appointed Registrar of Titles under the *Transfer of Land Act 1893* and includes any person appointed an Assistant Registrar under that Act;
- “resolution without dissent”** means a resolution that complies with sections 3AC and 3C and also has the meaning given by section 3CA;
- “re-subdivision”** has the meaning given by subsection (5) and section 8(1);
- “resumption”** means the compulsory acquisition of land under the provisions of any Act or Act of the Commonwealth authorizing compulsory acquisition of land;
- “scheme”** means a strata scheme or a survey-strata scheme;
- “single tier strata scheme”** means a strata scheme —
- (a) in which no lot or part of a lot is above or below another lot; or
  - (b) which comes within paragraph (a) except for any lot that has a permitted boundary deviation;
- “special resolution”** means a resolution that complies with sections 3B and 3C and also has the meaning given by section 3CA;
- “strata company”** means a body corporate constituted under section 32 whether for a strata scheme or a survey-strata scheme;

**“strata/survey-strata plan”** means a strata plan or a survey-strata plan;

**“strata plan”** has the meaning given by section 4(1a);

**“strata scheme”** means —

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

**“structural cubic space”** means —

- (a) cubic space occupied by a vertical structural member, not being a wall, of a building;
- (b) any pipes, wires, cables or ducts in a building; and
- (c) any cubic space enclosed by a structure enclosing any such pipes, wires, cables or ducts,

but, except where section 3AB applies, does not include any pipes, wires, cables or ducts that are for the exclusive use or enjoyment of one lot;

**“survey-strata plan”** has the meaning given by section 4(1b);

**“survey-strata scheme”** means —

- (a) the manner of division, from time to time, of a parcel into lots or into lots and common property under a survey-strata plan and the manner of the allocation, from time to time, of unit entitlements among the lots; and
- (b) the rights and obligations, between themselves, of proprietors, other persons having proprietary interests in or occupying the lots and the strata company, as

conferred or imposed by this Act or by anything done under the authority of this Act;

**“two-lot scheme”** means —

- (a) a strata scheme in which there are not more than 2 lots; or
- (b) a survey-strata scheme in which there are not more than 2 lots, not including lots designated as common property lots;

**“unanimous resolution”** means —

- (a) a resolution that is passed unanimously at a duly convened general meeting of the strata company —
  - (i) of which at least 14 days’ notice specifying the proposed resolution has been given; and
  - (ii) at which all persons entitled to exercise the powers of voting conferred under this Act are present and vote, either personally or by proxy;

or

- (b) a resolution that is passed unanimously at a duly convened general meeting of the strata company by every person entitled to exercise the powers of voting conferred under this Act who is present and votes either personally or by proxy and agreed to, in writing signed by him, within 28 days after the day of the meeting by every other person who was entitled to exercise the powers of voting conferred under this Act at the meeting, or by every person who at the time of his signature was entitled to exercise those powers in place of such other persons;

**“unit entitlement”** in respect of a lot, means the unit entitlement of that lot shown on the schedule of unit entitlement registered with the Registrar of Titles;

**“wall”** includes a door, window or other structure dividing a lot from common property or from another lot.

**s. 3**

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- (2) Except where section 3AB applies, the boundaries of any cubic space referred to in paragraph (a) of the definition of “**floor plan**” in subsection (1) —
- (a) except as provided in paragraph (b) —
    - (i) are in the case of a vertical boundary, where the base of any wall corresponds substantially with any line referred to in paragraph (a) of that definition — the inner surface of that wall; and
    - (ii) are, in the case of a horizontal boundary, where any floor or ceiling joins a vertical boundary of that cubic space — the upper surface of that floor and the under surface of that ceiling;
  - or
  - (b) are such boundaries as are described on a sheet of the floor plan relating to that cubic space (those boundaries being described in the prescribed manner by reference to a wall, floor or ceiling in a building to which that plan relates or to structural cubic space within that building).
- (2a) Notwithstanding subsection (2), where —
- (a) a strata plan creates a boundary external to a building; or
  - (b) other prescribed circumstances apply,
- the floor plan may include dimensions or survey information defining that boundary, in the prescribed manner, by reference to the parcel boundary.
- (3) A reference in this Act to cubic space includes a reference to space contained in any three-dimensional geometric figure which is not a cube.
- (4) The fact that any boundary is defined in a plan in terms of or by reference to —
- (a) a wall that is not vertical; or
  - (b) a floor or ceiling that is not horizontal,
- does not prevent that plan from being a floor plan.



- (5) A reference in this Act to a re-subdivision of a lot or common property is a reference to the alteration of the boundaries of —
- (a) one or more lots so as to create only 2 or more different lots;
  - (b) one or more lots so to create one or more different lots and common property;
  - (c) one or more lots and common property so as to create one or more different lots or one or more different lots and common property; or
  - (d) common property so as to create one or more lots,

but does not include a reference to the consolidation of 2 or more lots into one lot or the conversion of one or more lots into common property.

- (6) Except in so far as the context or subject-matter otherwise indicates or requires, it is a sufficient compliance with any provision of this Act requiring an instrument to be accompanied by another instrument if that other instrument is endorsed on the first-mentioned instrument.

*[Section 3 amended by No. 84 of 1994 s.46; No. 58 of 1995 ss.5<sup>2</sup>, 95 and 96; No. 14 of 1996 s.4; No. 61 of 1996 ss.4 and 5; No. 79 of 1996 s.28; No. 81 of 1996 s.153(1).]*

**3A. Single tier strata schemes to which section 3AB applies**

- (1) Section 3AB fixes the boundaries of lots and parts of lots, other than boundaries that are external to a building, for single tier strata schemes in the following cases —
- (a) for a scheme the strata plan for which is registered —
    - (i) on or after the commencement of section 6 of the *Strata Titles Amendment Act 1996*; and
    - (ii) before 1 January 1998,unless the plan provides that section 3AB does not apply to it;

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- (b) for a scheme in respect of which —
    - (i) a notice of resolution has been registered under section 21H; or
    - (ii) section 21M has effect (but subject to any order under section 103P),  
including any lot or part of a lot in such a scheme the boundaries of which are amended by registration of a notice of resolution under section 21X;
  - (c) for a scheme the strata plan for which is registered on or after 1 January 1998, except where the boundaries are —
    - (i) stated on the plan to be those provided for by section 3(2)(a); or
    - (ii) are fixed by a description shown on the plan under section 3(2)(b).
- (2) Section 3AB also fixes the boundaries of lots or parts of lots, other than boundaries that are external to a building, created by way of re-subdivision or consolidation in a scheme to which subsection (1) applies.

*[Section 3A inserted by No. 61 of 1996 s.6.]*

**3AB. Alternative boundaries for lots in single tier strata schemes**

- (1) Where this section applies the boundaries of any cubic space referred to in paragraph (a) of the definition of “**floor plan**” in section 3(1) are, regardless of the exact location of the lines referred to in that paragraph —
- (a) the external surfaces of the building occupying the area represented on that floor plan —
    - (i) including any thing that —
      - (I) is attached to and projects from the building; and
      - (II) is prescribed by the regulations to be included as part of a lot;
- but

- (ii) excluding any thing that is prescribed by the regulations not to be included as part of a lot;
- or
- (b) despite paragraph (a), where 2 lots —
  - (i) have a common or party wall, the centre plane of that wall; or
  - (ii) have buildings on them that are joined, the plane or planes at which they are joined.
- (2) If under subsection (1) —
  - (a) the boundary of a lot is a part of a building that constitutes a permitted boundary deviation; and
  - (b) the part is destroyed and is not reinstated within one year, or a longer period allowed by a referee under section 103N, after the destruction,

the boundary referred to in paragraph (a) ceases to apply on the expiry of that period and the boundary in question becomes a vertical plane from the base line shown on the strata plan.
- (3) Nothing in this section applies to a boundary of a lot or a part of a lot that is external to a building.
- (4) Where this section applies it —
  - (a) displaces the operation of section 3(2)(a); but
  - (b) does not affect the operation of subsection (2)(b) of that section.

*[Section 3AB inserted by No. 61 of 1996 s.6.]*

**3AC. Meaning of “resolution without dissent”**

- (1) For the purposes of this Act a resolution without dissent is a resolution —
  - (a) passed at a duly convened general meeting of the strata company of which sufficient notice (as defined by

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- section 3C) has been given and at which a sufficient quorum (as so defined) is present; and
- (b) against which no vote is cast by a person entitled to exercise the powers of voting on the resolution conferred under this Act —
    - (i) voting at the meeting either personally or by proxy; or
    - (ii) voting in accordance with subsection (2).
- (2) A person entitled to exercise the powers of voting conferred under this Act is also to be taken to vote —
- (a) in support of a resolution if he signifies in writing served in accordance with subsection (3) that he agrees to the resolution; or
  - (b) against the resolution if he signifies in writing served in accordance with subsection (3) that he disagrees with the resolution,
- within 28 days after the day of the meeting, whether that writing is signed by the person or by another person who at the time of the signing is entitled to exercise the power of voting in place of that person.
- (3) The writing referred to in subsection (2) is not effective unless it is served —
- (a) on the strata company; or
  - (b) where under section 36A or 36B a roll is not maintained by the strata company, on the other proprietors.

*[Section 3AC inserted as section 3A<sup>18</sup> by No. 58 of 1995 s.6.]*

**3B. Special resolution of a strata company**

- (1) For the purposes of this Act a special resolution of a strata company shall be passed at a duly convened general meeting —
  - (a) of which sufficient notice (as defined by section 3C) has been given; and

- (b) without limiting subsection (5), at which a sufficient quorum (as defined by section 3C) is present.
- (2) Except where subsection (3) applies, a special resolution is passed if —
- (a) it is supported by votes, within the meaning in subsections (4) and (5) —
    - (i) having a value of not less than 50% of the aggregate unit entitlement of the lots in the scheme; and
    - (ii) of the proprietors of not less than 50% of the lots in the scheme;
- and
- (b) the votes, within the meaning in subsections (4) and (5), against the resolution —
    - (i) do not have a value of 25% or more of the aggregate unit entitlement of the lots in the scheme; or
    - (ii) are not cast by the proprietors of 25% or more of the lots in the scheme.
- (3) A special resolution is passed in the case of a strata company for a scheme in which there are no more than the following number of lots, if it is supported by the votes, within the meaning in subsections (4) and (5), of the following number of proprietors —
- (a) 3 lots, the votes of the proprietors of not less than 2 of the lots;
  - (b) 4 lots, the votes of the proprietors of not less than 3 of the lots; or
  - (c) 5 lots, the votes of the proprietors of not less than 4 of the lots,

and if those votes have a value of not less than 50% of the aggregate unit entitlement of the lots.

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- (4) References in subsections (2) and (3) to votes are to the votes of persons entitled to exercise the powers of voting conferred under this Act voting at the meeting either personally or by proxy.
- (5) Despite subsection (4), a person entitled to exercise the powers of voting conferred under this Act is also to be taken to vote —
- (a) in support of a resolution if he signifies in writing served in accordance with subsection (6) that he agrees to the resolution; or
  - (b) against the resolution if he signifies in writing served in accordance with subsection (6) that he disagrees with the resolution,
- within 28 days after the day of the meeting, whether that writing is signed by the person or by another person who at the time of the signing is entitled to exercise the power of voting in place of that person.
- (6) The writing referred to in subsection (5) is not effective unless it is served —
- (a) on the strata company; or
  - (b) where under section 36A or 36B a roll is not maintained by the strata company, on the other proprietors.
- (7) A special resolution referred to in subsection (3) does not have effect —
- (a) until the expiration of the period referred to in section 103D(2); or
  - (b) if an application is made for an order under that section, until the application is dismissed, or withdrawn; or
  - (c) if the referee refuses to make the order, until the time for appeal under Division 4 has expired or any appeal has been dismissed or withdrawn or determined in such a way that an order under section 103D is not made.

- (8) In subsection (3) “**lot**” does not include a lot in a survey-strata scheme that is designated as a common property lot.

*[Section 3B inserted by No. 58 of 1995 s.6.]*

**3C. Supplementary provisions to sections 3AC and 3B**

- (1) For the purposes of sections 3AC and 3B —
- (a) a sufficient notice of a meeting is given if at least 14 days’ notice specifying the proposed resolution has been given;
  - (b) a sufficient quorum is present if there are present at the meeting either personally or by proxy at the time when the resolution is voted on —
    - (i) the proprietors of not less than 50% of the lots in the scheme; and
    - (ii) proprietors whose votes have a value of not less than 50% of the aggregate unit entitlement of the lots in the scheme;
- and
- (c) the value of a vote cast by a proprietor of a lot entitled to vote in respect of that lot is equal to the unit entitlement of that lot.
- (2) If a resolution specified in a notice of a meeting is passed with amendment at the meeting the strata company shall, not later than 7 days after the meeting, serve a copy of the amended resolution on each proprietor who was not present at the meeting either personally or by proxy at the time when the resolution was voted on.
- (3) If subsection (2) is not complied with the amended resolution is of no effect.

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- (4) If subsection (2) applies, the right to vote conferred by section 3AC(2) or 3B(5) may be exercised in respect of the amended resolution.

*[Section 3C inserted by No. 58 of 1995 s.6; amended by No. 61 of 1996 s.5.]*

**3CA. Certain resolutions deemed to be resolutions without dissent or special resolutions**

- (1) Where under this Act a thing may be done or a result occurs only if a strata company has passed a resolution without dissent in respect of a matter, the thing may be done or the result occurs if the strata company has passed any of the following resolutions in respect of the matter —

- (a) a unanimous resolution passed before the commencement of the *Strata Titles Amendment Act 1995*;
- (b) a resolution expressed to be a resolution without dissent but passed in such a manner as to satisfy the requirements of this Act for a unanimous resolution; or
- (c) in the case of a two-lot scheme, a unanimous resolution.

- (2) Where a resolution comes within subsection (1)(b), section 3C(2) and (3) do not apply.

- (3) Where under this Act a thing may be done or a result occurs only if a strata company has passed a special resolution in respect of a matter, the thing may be done or the result occurs if the strata company has passed any of the following resolutions in respect of the matter —

- (a) a unanimous resolution passed before the commencement of the *Strata Titles Amendment Act 1995*;
- (b) a resolution expressed to be a special resolution but passed in such a manner as to satisfy the requirements of this Act for a unanimous resolution; or



- (c) in the case of a two-lot scheme, a unanimous resolution.
- (4) Where a resolution comes within subsection (3)(b), section 3B(5), (6) and (7) do not apply.

*[Section 3CA inserted by No. 61 of 1996 s.7.]*

**3D. Unfinancial proprietors may vote in certain cases**

Despite anything in the by-laws of the strata company, a proprietor is entitled to exercise his powers of voting on a matter requiring a unanimous resolution or a resolution without dissent even though all contributions payable in respect of his lot have not been duly paid or other moneys recoverable under the Act by the strata company from him have not been paid.

*[Section 3D inserted by No. 58 of 1995 s.6.]*

## **Part II — Strata schemes and survey-strata schemes**

*[Heading inserted by No. 58 of 1995 s.7.]*

### **Division 1 — Creation of lots and common property**

#### **4. Subdivision into lots and common property**

(1) Land may be subdivided into lots, or lots and common property, by the registration of a strata plan or a survey-strata plan.

(1a) A strata plan is a plan that —

- (a) is described as such in its title or heading;
- (b) shows the whole or any part of the land comprised in the plan as being divided into 2 or more lots; and
- (c) complies with section 5,

and includes any amendment duly made to that plan.

(1b) A survey-strata plan is a plan that —

- (a) is described as such in its title or heading;
- (b) shows the whole or any part of the land comprised in the plan as being divided into 2 or more lots; and
- (c) complies with section 5A,

and includes any amendment duly made to that plan.

(1c) Except as otherwise allowed by the regulations, a lot can only be created in a survey-strata scheme as a cubic space lot (limited in height and depth) if the balance of the land above and below the lot is common property.

(2) Where a strata/survey-strata plan is registered under this Act, the lots comprised in the plan, or any one or more of them, may devolve or be transferred, leased, mortgaged or otherwise dealt with in the same manner and form as land held under the provisions of the *Transfer of Land Act 1893*.

(3) A strata/survey-strata plan shall, for the purposes of the *Transfer of Land Act 1893*, be deemed upon registration under this Act to

be embodied in the Register; and notwithstanding the provisions of that Act, a proprietor shall hold his lot and share in the common property subject to —

- (a) any interests for the time being notified on the registered strata/survey-strata plan; and
  - (b) any amendments to lots or common property shown on that plan.
- (4) Where a strata/survey-strata plan is registered under this Act, a memorial shall be entered on the certificate of title relating to the parcel and thereupon the Registrar of Titles may create and register a separate certificate of title for each lot together with the share of common property appurtenant to that lot.
- (5) Easements and restrictions as to use implied or created by this Act, other than an easement created by section 5D, shall take effect without any memorial or notification in the Register in relation to the dominant or servient tenements and without any express indication of those tenements.
- (6) Subject to this section, any transfer, lease, mortgage or other dealing affecting a lot has the same effect in relation to the lot as a similar dealing affecting a lot on a plan of subdivision lodged pursuant to section 166 of the *Transfer of Land Act 1893* has in relation to such a lot.

*[Section 4 amended by No. 58 of 1995 ss.8 and 95; No. 61 of 1996 s.8; No. 81 of 1996 s.153(1).]*

## **5. Strata plan: requirements**

- (1) A strata plan shall —
- (a) consist of a location plan and a floor plan in respect of the parcel;
  - (aa) where section 3(2)(a) or 3AB applies, contain a statement in the prescribed form describing all of the boundaries of a lot, or part of a lot, on the plan that are fixed by reference to a building or part of a building;

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- (b) bear a statement containing such particulars as may be necessary to identify the title to the parcel;
- (c) be accompanied by a schedule specifying, in a whole number, the proposed unit entitlement in respect of each lot into which the parcel is to be subdivided and specifying also the proposed aggregate unit entitlement;
- (d) have endorsed on it the name of the scheme;
- (e) have endorsed on it the address of the parcel; and
- (f) contain such other features as may be prescribed.

*[(2), (3), (4) and (5) repealed]*

*[Section 5 amended by No. 84 of 1994 s.46; No. 58 of 1995 s.9; No. 61 of 1996 s.9.]*

**5A. Survey-strata plan: requirements**

A survey-strata plan shall —

- (a) contain a survey plan in respect of the parcel, that is a plan that defines, in the prescribed manner, the boundaries of lots and common property by dimensions and survey information obtained from a survey of the parcel;
- (b) bear a statement containing such particulars as may be necessary to identify the title to such parcel;
- (c) show the area of each lot and of any common property;
- (d) be accompanied by a schedule specifying, in a whole number, the proposed unit entitlement in respect of each lot into which the parcel is to be subdivided and specifying also the proposed aggregate unit entitlement;
- (e) have endorsed on it the name of the scheme;
- (f) have endorsed on it the address of the parcel; and
- (g) contain such other features as may be prescribed.

*[Section 5A inserted by No. 58 of 1995 s.10.]*

**5B. Further provisions as to registration of plans**

- (1) A strata/survey-strata plan lodged for registration shall be accompanied by certificates given by —
  - (a) a licensed surveyor in accordance with section 22;
  - (b) a licensed valuer in accordance with section 14(2); and
  - (c) the Commission —
    - (i) where required under section 25(1), in the case of a strata plan; or
    - (ii) in the case of a survey-strata plan, under section 25B(2).
- (2) A strata plan lodged for registration shall be accompanied by a certificate given by the local government in accordance with section 23.
- (3) A strata/survey-strata plan shall not be registered if, in the opinion of the Registrar of Titles, the name of the scheme endorsed on the plan is undesirable.
- (4) When a strata/survey-strata plan is lodged for registration the Registrar of Titles shall allocate a number to the plan, and, if it complies with this Act and the regulations, shall register it in the prescribed manner.

*[Section 5B inserted by No. 58 of 1995 s.10; amended by No. 57 of 1997 s.115(1).]*

**5C. Management statement setting out by-laws may be registered**

- (1) When a strata/survey-strata plan is lodged for registration a management statement —
  - (a) that is in the prescribed form; and
  - (b) that complies with subsection (3),may be lodged for registration with it.

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- (2) A management statement is a document setting out —
- (a) by-laws of the strata company that are to have effect under sections 42, 42A and 42B; and
  - (b) amendments and repeals referred to in section 42(2),
- and may include by-laws in relation to any matter specified in Schedule 2A.
- (3) A management statement shall be signed by —
- (a) the person who is registered as proprietor of the fee simple of the parcel; and
  - (b) each person who has a registered interest in, or is a caveator in respect of, the parcel.
- [(4) *repealed*]
- (5) Upon registration of a management statement, the by-laws set out in the statement, and any amendments and repeals, have effect for the purposes of section 42.
- (6) By-laws set out in a management statement may be amended in accordance with section 42 or as otherwise provided by this Act.

*[Section 5C inserted by No. 58 of 1995 s.10; amended by No. 61 of 1996 s.10.]*

**5D. Creation of easements by notation on survey-strata plans**

- (1) A survey-strata plan lodged for registration may, in accordance with this section, provide for easements that will have effect on registration of the plan.
- (2) An easement that may be provided for under this section on a survey-strata plan is an easement —
- (a) of a kind prescribed by the regulations made for the purposes of section 5H; and

- (b) having effect in favour of a lot (“**the dominant lot**”), and against another lot (“**the servient lot**”), in the scheme to which the plan relates.
- (3) An easement under this section is created on the registration of the plan if there are noted on the plan —
  - (a) the location of the easement;
  - (b) the dominant and servient lots; and
  - (c) a specification of the easement by use of the short form description prescribed by the regulations for that kind of easement.
- (4) A notation under subsection (3)(a) or (b) is to be in accordance with the regulations.
- (5) This section is in addition to any other method by which an easement may be created in respect of lots in a survey-strata scheme.

*[Section 5D inserted by No. 61 of 1996 s.11.]*

**5E. Provision on plan etc. overrides regulations as to easements**

- (1) To the extent allowed by the regulations provision may be made by —
  - (a) notation on a survey-strata plan; or
  - (b) memorial or other instrument lodged with such a plan,for any term, condition or provision of or in relation to an easement under section 5D.
- (2) The fact that any such provision is made does not prevent an easement being treated as one that is created under section 5D.
- (3) Any term, condition or provision prescribed by the regulations of or in relation to an easement under section 5D has effect subject to any express provision in that behalf —
  - (a) made under subsection (1); or

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- (b) made by any by-law of the strata company that is classified under section 42(2a) as a Schedule 1 by-law.

*[Section 5E inserted by No. 61 of 1996 s.11.]*

**5F. Variation or discharge of easements under section 5D**

- (1) An easement under section 5D —
  - (a) is automatically discharged by the termination of the scheme in which it has effect;
  - (b) may with the approval in writing of the Commission —
    - (i) be varied by instrument signed by each person who has a registered interest in, or is a caveator in respect of, the dominant lot and the servient lot; and
    - (ii) be discharged by instrument signed by each person who has a registered interest in, or is a caveator in respect of, the dominant lot.
- (2) An instrument under subsection (1)(b) varying or discharging an easement is not effective until it is registered by the Registrar of Titles.
- (3) On registration of an instrument under subsection (1)(b) the Registrar of Titles is to amend the survey-strata plan to show the effect of the instrument.

*[Section 5F inserted by No. 61 of 1996 s.11.]*

**5G. Easement where common ownership**

An easement created under section 5D has effect even though the dominant lot and the servient lot have the same proprietor.

*[Section 5G inserted by No. 61 of 1996 s.11.]*

**5H. Regulations as to easements**

- (1) The regulations may prescribe —
  - (a) the terms, conditions and provisions of and relating to easements that may be created under section 5D; and



- (b) a short form description by which each kind of easement may be referred to and which is to be deemed to be a reference to the full terms, conditions and provisions of an easement of that kind.
- (2) Regulations made for the purposes of subsection (1)(a) may make provision for and in relation to —
  - (a) liability for the costs of the upkeep of an area over which an easement is created;
  - (b) a proprietor's right of access to an area over which an easement is created to inspect any thing or carry out work;
  - (c) the proprietor of the dominant lot keeping the proprietor of the servient lot indemnified in respect of liability arising from the use of, or the activities undertaken in, an area by the first-mentioned proprietor; and
  - (d) the circumstances in which an easement is terminated where a building to which it relates is destroyed.
- (3) Regulations made for the purposes of subsection (1) may provide that —
  - (a) in specified circumstances a proprietor of a lot is to be taken to have agreed to undertake any positive obligation specified in the regulations in connection with an easement; and
  - (b) any such obligation runs with the land and is binding on a succeeding proprietor of the lot.
- (4) If the regulations prescribe any easement for access or use of light or air, section 121 of the *Property Law Act 1969* does not apply to the creation of any such easement under section 5D.

*[Section 5H inserted by No. 61 of 1996 s.11.]*

**6. Strata/survey-strata plan may restrict use of parcel or part of parcel**

- (1) A strata/survey-strata plan lodged for registration under this Act may, by an appropriate endorsement that delineates the area or

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space affected and refers to this section, restrict the use to which the parcel or part of the parcel may be put.

- (1a) Subject to subsections (3a) and (4), a registered strata/survey-strata plan may be amended, by resolution without dissent of the strata company, to restrict the use to which the parcel or part of the parcel may be put.
- (1b) A resolution under subsection (1a) shall refer to a plan of the parcel showing the area or space affected.
- (2) Where a registered strata/survey-strata plan restricts the use to which the parcel or part of the parcel may be put, a proprietor, occupier or other resident of any lot that is part of the parcel shall not use, or permit to be used, the parcel or part of the parcel in any manner that contravenes the restriction.  
Penalty: \$2 000 and a daily penalty of \$200.
- (3) Subject to subsections (3a) and (4) a restriction endorsed on a registered strata/survey-strata plan under this section may be varied or removed by resolution without dissent of the strata company.
- (3a) An addition of a restriction under subsection (1a) or a variation or removal under subsection (3) is effective only if the local government approves the resolution and, if the subdivision in the plan was one to which the consent of the Commission was required under this Act, the Commission approves the resolution.
- (4) A resolution adding a restriction to or varying or removing a restriction endorsed on a registered strata/survey-strata plan under this section shall not be effective until notice of the resolution is registered in the prescribed manner with the Registrar of Titles and upon registration the Registrar of Titles shall amend the strata/survey-strata plan accordingly.

*[Section 6 amended by No. 84 of 1994 s.46; No. 58 of 1995 ss.11 and 95; No. 57 of 1997 s.115(1).]*

**6A. Restrictions relating to retired persons**

- (1) A restriction under section 6 may limit the use of the lots by requiring that each lot is to be occupied only, or predominantly, by retired persons.
- (2) Nothing in this section or section 6 is to be read as limiting the power of the strata company to make by-laws under section 42 relating to the circumstances in which persons, other than the occupier, may reside in a lot which is subject to a restriction referred to in subsection (1).
- (3) In subsection (1) —  
**“retired person”** means a person who has —
  - (a) attained the age of 55 years; or
  - (b) retired from full-time employment,and is deemed to include a person who is or was the spouse of such a person;  
**“spouse”** includes a person living with another person of the opposite sex as a husband or wife of that person on a *bona fide* domestic basis, although not legally married to that person.

*[Section 6A inserted by No. 58 of 1995 s.12.]*

**7. Structural erections, alterations and extensions restricted, strata schemes**

- (1) This section does not apply to —
  - (a) a lot in a survey-strata scheme; or
  - (b) the erection of, alteration to or extension of a structure on a lot in a strata scheme if —
    - (i) each proprietor of a lot in the scheme has in writing given approval to the erection, alteration or extension;
    - (ii) that approval, if subject to conditions, is given by each proprietor subject to the same conditions; and

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- (iii) a copy of each such approval is served on the strata company.
- (2) The proprietor of a lot shall not cause or permit —
  - (a) any structure to be erected; or
  - (b) any alteration of a structural kind to, or extension of, a structure,on his lot except —
  - (c) with the prior approval of the proprietor of the other lot in the case of a strata scheme in which there are not more than 2 lots; and
  - (d) in any other case with the prior approval, expressed by resolution without dissent, of the strata company.
- (3) Where an application is made to a proprietor in accordance with section 7B the proprietor may refuse to give approval on any ground that is permitted by subsection (5), but not otherwise.
- (4) Where an application is made to a strata company in accordance with section 7B —
  - (a) notice of the general meeting to which the application is to be submitted shall contain or be accompanied by a statement, in the prescribed form, of the effect of paragraphs (c) and (d);
  - (b) the chairman of the general meeting shall before a vote is taken on the application read out the statement referred to in paragraph (a);
  - (c) a proprietor may vote —
    - (i) against a resolution to approve the application; or
    - (ii) in support of a resolution to refuse approval of the application,on any ground that is permitted by subsection (5), but not otherwise; and

- (d) a vote referred to in paragraph (c) is of no effect unless the person casting the vote discloses as a ground for his vote one or more of the grounds permitted by subsection (5).
- (5) The grounds on which approval may be refused are —
  - (a) that the carrying out of the proposal will breach the plot ratio restrictions or open space requirements for the lot ascertained in accordance with section 7A(3);
  - (b) in the case of a lot that is not a vacant lot, that the carrying out of the proposal —
    - (i) will result in a structure that is visible from outside the lot and that is not in keeping with the rest of the development;
    - (ii) may affect the structural soundness of a building;  
or
    - (iii) may interfere with any easement created by section 11 or 12;
  - or
  - (c) any other ground that is prescribed.
- (6) In this section —
  - “structure”** includes any prescribed improvement;
  - “vacant lot”** means a lot that is wholly unimproved apart from having merged improvements within the meaning of that expression in the *Valuation of Land Act 1978*.

*[Section 7 inserted by No. 58 of 1995 s.13.]*

**7A. Structural erections, alterations and extensions restricted, survey-strata schemes**

- (1) This section does not apply to a lot in a strata scheme.
- (2) The proprietor of a lot shall not cause or permit —
  - (a) any structure to be erected; or

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- (b) any alteration of a structural kind to, or extension of, a structure to be made,

on his lot if on completion of the work the structures on the lot will not conform to plot ratio restrictions or open space requirements for the lot, except —

- (c) with the prior approval of the proprietor of the other lot in the case of a survey-strata scheme in which there are not more than 2 lots (not including lots designated as common property lots); and
  - (d) in any other case with the prior approval, expressed by resolution without dissent, of the strata company.
- (3) For the purposes of subsection (2) the plot ratio restrictions or open space requirements for a lot are —
- (a) those provided for by the by-laws of the strata company; or
  - (b) in the absence of any such provision, those that represent the *pro rata* entitlements of or requirements for the lot calculated on the proportion that the area of the lot bears to the area of the parcel.

- (4) In this section —  
“**structure**” includes any prescribed improvement.

*[Section 7A inserted by No. 58 of 1995 s.13.]*

**7B. Further provisions as to approvals for purposes of sections 7 and 7A**

- (1) A proprietor who wishes to obtain an approval of a proposal that comes within section 7(2) or 7A(2) shall serve an application on the strata company or the other proprietor, as the case may require, and in the application shall set out details of the proposal and such other information as may be prescribed.
- (2) Where an application is made to a strata company under subsection (1) the council of the company shall submit the

application to a general meeting of the company convened for the purpose, or for purposes which include that purpose, within 35 days after the application is received (“**the allowed period**”).

- (3) If the council does not —
- (a) give notice of such a meeting, within 14 days after the application is served on the strata company, to each proprietor and registered mortgagee who has notified his interest to the strata company; or
  - (b) convene a general meeting of the company within the allowed period,
- any proprietor may convene a general meeting, in the same manner as nearly as possible as that in which meetings are to be convened by the council, and submit the application to that meeting.
- (4) Despite subsection (2), a council may submit an application to a general meeting convened by the council after the allowed period if that meeting is held before a meeting is convened by the applicant under subsection (3).
- (5) Notice in writing of the decision on an application shall be given to the applicant —
- (a) in the case of a two-lot scheme, by the other proprietor within 42 days after the service of the application on him; and
  - (b) in any other case, by the strata company within 77 days after service of the application on the company.
- (6) If an application made to a strata company or the other proprietor for approval under section 7 is not approved, a notice under subsection (5) shall show the ground or grounds —
- (a) disclosed by each proprietor who cast a vote of a kind referred to in section 7(4)(c); or
  - (b) on which approval is refused by the other proprietors,
- as the case may be.

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- (7) If notice of a decision is not given to the applicant in accordance with subsection (5) and, where applicable, subsection (6) the approval applied for is to be taken to have been given.

*[Section 7B inserted by No. 58 of 1995 s.13.]*

**8. Re-subdivision within a scheme**

- (1) Lots or common property, or lots and common property, may be re-subdivided by the registration of a plan under and in the manner provided by this Act as a plan of re-subdivision.
- (2) A lot in a strata scheme may only be re-subdivided by a strata plan of re-subdivision.
- (3) A lot in a survey-strata scheme may only be re-subdivided by a survey-strata plan of re-subdivision.
- (4) The reference in subsection (1) to common property does not include common property that is the subject of a lease accepted by the strata company under section 18.

*[Section 8 inserted by No. 58 of 1995 s.14.]*

**8A. Requirements for plan of re-subdivision**

A plan of re-subdivision shall —

- (a) be accompanied by an application in the prescribed form requesting the Registrar of Titles to register the plan; and the application —
- (i) shall be under the seal of the strata company; and
  - (ii) shall confirm that —
    - (I) the strata company has by unanimous resolution consented to the proposed re-subdivision and to the proposed allocation of unit entitlement set out in the application; or
    - (II) the plan either complies with any by-laws of the kind described in item 8



in Schedule 2A or sufficiently complies  
with those by-laws in a way that is  
allowed by the regulations;

- (b) define, in the prescribed manner, the boundaries of each lot in the parcel that is to be altered or created by the plan of re-subdivision and, in the case of a plan of re-subdivision for a strata scheme, do so by reference to a floor plan;
- (c) where amendment of the location plan is necessary in consequence of the re-subdivision, be accompanied by an amended location plan or a plan sufficient to enable the Registrar of Titles to amend the location plan to the extent made necessary by the re-subdivision;
- (d) be accompanied by a certificate given by a licensed surveyor containing, subject to appropriate and necessary modifications, the same particulars as are required by section 22(1) or (2), as the case may require;
- (e) where paragraph (a)(ii)(II) applies, be accompanied by a certificate in the prescribed form given by a licensed surveyor;
- (f) in the case of a re-subdivision of a lot in a strata scheme, be accompanied by a certificate given by the local government containing, subject to appropriate and necessary modifications, the same particulars as are required by section 23 and the local government shall not issue a certificate for the purposes of this paragraph unless satisfied, subject to appropriate and necessary modifications, in respect of the matters referred to in section 23(2);
- (g) where section 25(1) requires or section 25B(2) applies, be accompanied by a certificate of approval of the re-subdivision given by the Commission;
- (h) be accompanied by a certificate of a licensed valuer in accordance with section 14(2);

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- (i) unless paragraph (a)(ii)(II) applies, be accompanied by a certificate given by every person who —
  - (i) has a registered interest in any lot proposed to be affected otherwise than as the proprietor of the lot; or
  - (ii) is a caveator in respect of any such lot, certifying his consent to the proposed re-subdivision; and
- (j) unless paragraph (a)(ii)(II) applies, be accompanied by a certificate given by every person who —
  - (i) has a registered interest in any lot the unit entitlement of which is proposed to be affected otherwise than as the proprietor of the lot; or
  - (ii) is a caveator in respect of any such lot, certifying his consent to the proposed allocation of unit entitlement set out in the application.

*[Section 8A inserted by No. 58 of 1995 s.14; amended by No. 61 of 1996 s.12<sup>15</sup>; No. 57 of 1997 s.115(1).]*

**8B. Transfers etc. to give effect to plan**

- (1) Subject to subsection (2), every transfer or other document that is necessary to give effect to the plan of re-subdivision shall be lodged for registration together with the plan of re-subdivision.
- (2) The regulations may provide for the registration of an instrument (“**a disposition statement**”) —
  - (a) by which various interests in land affected by the proposed re-subdivision are disposed of or vested;
  - (b) by which encumbrances are attached to or discharged from any interest; and
  - (c) in which any certificate required by section 8A(i) is set out,

and subsection (1) does not apply if a disposition statement is lodged for registration with the plan of re-subdivision.

*[Section 8B inserted by No. 58 of 1995 s.14.]*

**8C. Effect of registration of plan of re-subdivision**

- (1) Upon registration, a plan of re-subdivision shall be deemed to be part of the strata/survey-strata plan as previously registered, and the Registrar of Titles shall amend the strata/survey-strata plan and the schedule of unit entitlement in the manner prescribed.
- (2) Upon registration of a plan of re-subdivision every lot of the strata/survey-strata plan as previously registered that —
  - (a) is enlarged under the plan of re-subdivision by the addition of part of a lot or common property of the strata/survey-strata plan as previously registered; or
  - (b) is diminished under the plan of re-subdivision,is by operation of law subject to any encumbrance registered or caveat lodged with the Registrar of Titles against the first-mentioned lot and every such encumbrance or caveat is deemed to be amended accordingly.
- (3) Upon registration of a plan of re-subdivision —
  - (a) every lot or part lot of the strata/survey-strata plan as previously registered that is common property under the plan of re-subdivision by operation of law vests in the proprietors to be held by them as tenants in common in shares proportional to the unit entitlements of their respective lots; and
  - (b) the share of a proprietor in common property vested in the proprietors pursuant to the amended schedule of unit entitlement by operation of law is subject to any encumbrance registered or caveat lodged with the Registrar of Titles against his lot and every such

encumbrance or caveat is deemed to be amended accordingly.

*[Section 8C inserted by No. 58 of 1995 s.14.]*

**9. Consolidation of lots**

- (1) Two or more lots may be consolidated into one lot by the registration of a plan under and in the manner provided by this Act as a strata/survey-strata plan of consolidation.
- (2) The unit entitlement of a lot created by the consolidation of 2 or more lots shall be the sum of the unit entitlements of each of those lots.
- (3) A strata/survey-strata plan of consolidation shall —
  - (a) where section 25(1) requires, be accompanied by a certificate of approval of the consolidation given by the Commission;
  - (b) in the case of a consolidation of lots in a strata scheme, be accompanied by a certificate given by the local government certifying —
    - (i) that the local government consents to the consolidation;
    - (ii) in a case where the proposed consolidation is exempt from the requirement of approval by the Commission, that the proposed consolidation is so exempt; and
    - (iii) in a case where the Commission has granted approval subject to conditions under section 25, that the conditions attached to the approval of the Commission have been complied with;and
  - (c) be accompanied by consent to the consolidation given in the prescribed manner by every person registered as proprietor of an interest in any lot proposed to be consolidated.

- (4) Upon registration a strata/survey-strata plan of consolidation shall be deemed to be part of the strata/survey-strata plan as previously registered and the Registrar of Titles shall amend the strata/survey-strata plan and the schedule of unit entitlement accordingly in the prescribed manner.

*[Section 9 amended by No. 84 of 1994 s.46; No. 58 of 1995 ss.15 and 95; No. 14 of 1996 s.4.]*

**10. Conversion of lots into common property**

- (1) One or more lots may be converted into common property by the registration of a transfer executed by the proprietor or proprietors of that lot or those lots and by the strata company.
- (2) A transfer under subsection (1) shall not be registered unless —
- (a) it is accompanied by a certificate given by the local government consenting to the conversion into common property effected by the transfer;
  - (b) it is accompanied by a certificate under seal of the strata company certifying that the strata company has by resolution without dissent (or unanimous resolution, in the case of a two-lot scheme) consented to the conversion effected by the transfer; and
  - (c) every mortgage, charge, current lease, caveat or other interest recorded in the Register in relation to the lot or each lot to which the transfer relates has, in so far as it affects any such lot, been discharged or surrendered or withdrawn or otherwise disposed of, as the case may be.
- (3) Upon the registration of a transfer under this section, the land comprised in the transfer becomes common property and is subject to the provisions of this Act relating to common property and the Registrar of Titles shall —
- (a) amend the strata/survey-strata plan in the prescribed manner;
  - (b) amend the schedule of unit entitlement in the prescribed manner; and

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- (c) cancel the certificate of title for each lot converted into common property.
- (4) Upon the registration of a transfer under this section, the share of a proprietor in common property vested in the proprietors pursuant to this section shall by operation of law be subject to any encumbrance registered or caveat lodged with the Registrar of Titles against his lot and every such encumbrance or caveat is deemed to be amended accordingly.

*[Section 10 amended by No. 58 of 1995 ss.92 and 95; No. 14 of 1996 s.4; No. 81 of 1996 s.153(1).]*

**11. Support and services**

- (1) In respect of each lot there shall be implied —
  - (a) in favour of the proprietor and as appurtenant to his lot —
    - (i) an easement for the subjacent and lateral support thereof by the common property and by every other lot capable of affording support; and
    - (ii) easements for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air, heating oil and other services including telephone, radio and television services, through or by means of any pipes, wires, cables or ducts for the time being existing in the land comprising the parcel to the extent to which those pipes, wires, cables or ducts are capable of being used in connection with the enjoyment of that lot;
  - (b) as against the proprietor and to which his lot shall be subject —
    - (i) an easement for the subjacent and lateral support of the common property and of every other lot capable of enjoying support; and
    - (ii) easements for the passage or provision of water, sewerage, drainage, gas, electricity, garbage,

artificially heated or cooled air, heating oil and other services including telephone, radio and television services, through or by means of any pipes, wires, cables or ducts for the time being existing within that lot, as appurtenant to the common property and also to every other lot capable of enjoying such easements.

- (2) A proprietor, mortgagee in possession or occupier of a lot shall not do any thing or permit any thing to be done on or in relation to that lot so that —
- (a) any support or shelter provided by that lot for another lot or common property is interfered with; or
  - (b) the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air, heating oil and other services, including telephone, radio and television services, through or by means of any pipes, wires, cables or ducts for the time being in the lot is interfered with.

**12. Shelter**

- (1) Every proprietor of a lot on a strata plan is entitled to have his lot sheltered by all such parts of the building as are capable of affording shelter.
- (2) The right created by subsection (1) is an easement to which such parts of the building as are referred to in that subsection shall be subject.
- (3) The easement of shelter created by this section entitles the proprietor of the dominant tenement to enter on the servient tenement to replace, renew or restore any shelter.

*[Section 12 amended by No. 58 of 1995 s.16.]*

**12A. Access for maintenance where part of building intrudes into another lot**

- (1) Where under section 3AB(1) the boundary of a lot or part of a lot is the external surface of a part of a building and the part —
- (a) constitutes a permitted boundary deviation; or
  - (b) is on the boundary with another lot,
- the proprietor of the lot that includes that part, and his employees and agents, may —
- (c) inspect, alter, repair and replace the part; and
  - (d) enter on the other lot, if necessary with vehicles and equipment, for the purpose of doing so.
- (2) The rights created by subsection (1) are an easement to which the other lot is subject.

*[Section 12A inserted by No. 61 of 1996 s.13.]*

**13. Ancillary rights**

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

**14. Unit entitlement of lots**

- (1) The unit entitlement of a lot, as stated in the schedule referred to in section 5, determines —
- (a) the voting rights of a proprietor;
  - (b) the quantum of the undivided share of each proprietor in the common property; and
  - (c) the proportion payable by each proprietor of contributions levied under section 36.
- (2) The certificate of a licensed valuer which is required by sections 5B(1)(b), 8A(h), 21T(1)(d) and 31E(1)(d) to accompany a strata/survey-strata plan and a plan of re-subdivision lodged for registration shall be in the prescribed



form and shall certify that, or to the effect that, the unit entitlement of each lot, as stated in the schedule referred to in those sections, bears in relation to the aggregate unit entitlement of all lots delineated on the strata/survey-strata plan a proportion not greater than 5% more or 5% less than the proportion that the value of that lot bears to the aggregate value of all the lots delineated on the plan.

(2a) In subsection (2) —

“value” means —

- (a) in the case of a strata scheme, the capital value within the meaning of the *Valuation of Land Act 1978*; and
  - (b) in the case of a survey-strata scheme, the “site value” within the meaning of that Act.
- (3) A certificate given by a licensed valuer for the purposes of this Act shall be valid for such period as is prescribed.

*[Section 14 amended by No. 58 of 1995 ss.17 and 95; No. 61 of 1996 s.14.]*

**15. Reallocation of unit entitlement by resolution without dissent (or unanimous resolution, in the case of a two-lot scheme)**

- (1) The schedule of unit entitlement registered in respect of a scheme may be amended by the registration with the Registrar of Titles of an amended schedule of unit entitlement under and in the manner provided by this section.
- (2) An amended schedule of unit entitlement shall not be registered under this section unless it is accompanied by —
  - (a) a certificate under seal of the strata company certifying that the strata company has by resolution without dissent (or unanimous resolution, in the case of a two-lot scheme) consented to the registration of the amended schedule of unit entitlement;

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- (b) a certificate given by every person, other than a proprietor, who has a registered interest in any lot the unit entitlement of which is affected by the amended schedule of unit entitlement certifying his consent to the registration of the amended schedule; and
- (c) a certificate given in the prescribed form by a licensed valuer certifying that, or to the effect that, the unit entitlement of each lot, as stated in the amended schedule of unit entitlement, bears in relation to the aggregate unit entitlement of all lots delineated on the strata/survey-strata plan a proportion not greater than 5% more or 5% less than the proportion that the value of that lot bears to the aggregate value of all the lots delineated on the plan.

*[(3) repealed]*

- (4) Upon the registration of an amended schedule of unit entitlement under this section, the share of a proprietor in common property vested in the proprietors pursuant to the amended schedule of unit entitlement shall by operation of law be subject to any encumbrance registered or caveat lodged with the Registrar of Titles against his lot and every such encumbrance or caveat is deemed to be amended accordingly.

- (5) In subsection (2) —

**“registered interest”** includes a caveat in respect of a lot but excludes a writ of *feri facias* or a warrant of execution in respect of a lot;

**“value”** means —

- (a) in the case of a strata scheme, the capital value within the meaning of the *Valuation of Land Act 1978*; and
- (b) in the case of a survey-strata scheme, the site value within the meaning of that Act.

*[Section 15 amended by No. 58 of 1995 ss.18, 92, 95 and 96.]*

**16. Reallocation of unit entitlement by Land Valuation Tribunal**

- (1) Upon the application of a proprietor of a lot within a scheme or a strata company, a Land Valuation Tribunal may, under and in the manner provided by this section, order that the schedule of unit entitlement registered in respect of the scheme be amended.
- (2) An application under this section shall not be accepted by a Land Valuation Tribunal unless it is accompanied by —
  - (a) a certificate under seal of the strata company certifying that the strata company has by special resolution authorized an application to a Land Valuation Tribunal under this section for an order that the schedule of unit entitlement be amended; and
  - (b) a certificate given by a licensed valuer certifying that, or to the effect that, the value of a lot identified in the certificate has varied by more than 5% in relation to the value of another lot identified in the certificate since the registration of the strata/survey-strata plan or, if an amended schedule or schedules of unit entitlement has or have been registered, since the most recent registration of an amended schedule of unit entitlement.
- (3) Notice of an application under subsection (1) shall be served on —
  - (a) every person who was entitled to exercise the power of voting conferred under this Act and did not, either in person or by proxy, vote in favour of the resolution authorizing the application; and
  - (b) every person whom the Land Valuation Tribunal declares to have a sufficient interest in the proceedings to require that he should be served with notice of the application,

and the Land Valuation Tribunal may direct that any person served or to be served with notice of proceedings under this subsection shall be joined as a party to the proceedings.

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- (4) Except where in the circumstances of a particular application the Land Valuation Tribunal is satisfied that there are good and sufficient reasons for not making an order under this subsection, the Tribunal shall —
- (a) determine every application under this section by the allocation to each lot in the scheme of a unit entitlement that bears in relation to the aggregate unit entitlement of all lots delineated on the strata/survey-strata plan a proportion not greater than 5% more or 5% less than the proportion that the value of each lot bears to the aggregate value of all the lots delineated on the plan; and
  - (b) order that the schedule of unit entitlement registered in respect of the scheme be amended in accordance with the allocation of unit entitlements made under paragraph (a).
- (5) Upon receiving a copy of an order made under this section, the Registrar of Titles shall amend the schedule of unit entitlement registered in respect of the scheme in the manner prescribed and thereupon the share of a proprietor in common property vested in the proprietors pursuant to the amended schedule of unit entitlement shall by operation of law be subject to any encumbrance registered or caveat lodged with the Registrar of Titles against his lot and every such encumbrance or caveat is deemed to be amended accordingly.
- (6) The Land Valuation Tribunal shall not order a party who opposes an application under this section to pay the costs of a successful applicant unless the Tribunal considers the actions of that party in relation to the application to have been unreasonable.
- (7) In subsections (2) and (4) —
- “value”** means —
- (a) in the case of a strata scheme, the capital value within the meaning of the *Valuation of Land Act 1978*; and

- (b) in the case of a survey-strata scheme, the site value within the meaning of that Act.

*[Section 16 amended by No. 58 of 1995 ss.19, 95 and 96.]*

### **Division 2 — Common property**

#### **17. Ownership of common property**

- (1) Common property shall be held by the proprietors as tenants in common in shares proportional to the unit entitlements of their respective lots.
- (2) The Registrar of Titles shall in the certificate of title to a lot certify that the proprietor holds the share in the common property appurtenant to the lot in accordance with the unit entitlement of that lot as stated in the schedule of unit entitlement registered in respect of the scheme.

*[Section 17 amended by No. 58 of 1995 s.96.]*

#### **18. Acquisition of additional common property**

- (1) A strata company may, pursuant to a resolution without dissent (or unanimous resolution, in the case of a two-lot scheme), accept a transfer or lease of land which is part of, or contiguous to, the parcel and is not subject to a mortgage, charge or other encumbrance, for the purpose of creating, or creating additional, common property.
- (2) A transfer or lease referred to in subsection (1) shall be accompanied by —
  - (a) the certificate of title comprising the land described in the transfer or lease or, in the case of a transfer of a lease or sub-lease, the registered lease referred to in the transfer or sub-lease;
  - (b) a certificate under the seal of the strata company certifying that the resolution authorizing the acceptance of the transfer or lease was a resolution without dissent

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(or unanimous resolution, in the case of a two-lot scheme),

and, in the case of a transfer other than a transfer of a lease, there shall be lodged in the office of the Registrar of Titles a plan showing as a single lot the land comprised in the transfer and the land comprised in the parcel before the registration of the transfer.

- (3) Upon the registration in the prescribed manner of any such transfer, other than a transfer of a lease, the land comprised in the transfer becomes common property and is subject to the provisions of this Act relating to common property and the Registrar of Titles shall make an appropriate recording on the registered strata/survey-strata plan to which the parcel relates and on the certificate of title of the land transferred.
- (4) Upon the registration of any such lease, transfer of a lease or sub-lease —
  - (a) the leasehold interest becomes common property and thereupon is subject to such of the provisions of this Act relating to common property as are applicable to a leasehold interest;
  - (b) the strata company is responsible for all payments and the performance of all duties required of the lessee by the terms of the lease or sub-lease, as the case may be; and
  - (c) the Registrar of Titles shall make an appropriate note on the registered strata/survey-strata plan to which the parcel relates and on the certificate of title or the lease, as the case may be, comprising the demised land to the effect that during the term of the lease or sub-lease the demised land is incorporated with and as part of the common property.
- (5) A strata company may, pursuant to a resolution without dissent (or unanimous resolution, in the case of a two-lot scheme) and

with the concurrence of the lessor, surrender a lease accepted by it under this section, but if the lessor is also a proprietor, that proprietor may participate in debate on the resolution that the lease be surrendered but may not vote on that resolution.

- (6) Upon the registration of any such surrender, the Registrar of Titles shall make an appropriate recording on the registered strata/survey-strata plan on which the lease was recorded.
- (7) The share of a proprietor in common property vested in the proprietors pursuant to this section shall by operation of law be subject to any encumbrance registered or caveat lodged with the Registrar of Titles against his lot and every such encumbrance or caveat is deemed to be amended accordingly.

*[Section 18 amended by No. 58 of 1995 ss.20, 92 and 95.]*

**19. Transfer or lease of common property**

- (1) Except as otherwise provided in this section —
  - (a) no share in the common property may be disposed of except as appurtenant to the lot of the proprietor thereof; and
  - (b) an assurance of a lot operates to assure the share of the disposing party in the common property, without express reference thereto.
- (2) Subject to subsection (10), a strata company may, pursuant to a resolution without dissent (or unanimous resolution, in the case of a two-lot scheme) and where satisfied that all persons concerned have consented in writing to the transfer or lease, execute a transfer or lease of common property, other than common property the subject of a lease accepted or acquired by the strata company under section 18(1).
- (3) Subject to subsection (10), a strata company, pursuant to a resolution without dissent (or unanimous resolution, in the case of a two-lot scheme) and where satisfied that all persons concerned have consented in writing to the transfer, may, if not

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prevented by the terms of the lease, transfer a lease of common property accepted or acquired by the strata company under section 18(1) or grant, by way of sub-lease, a lease of its estate or interest in common property the subject of a lease so accepted or acquired.

- (4) A strata company may, if otherwise empowered so to do, re-enter under a lease, or, pursuant to a resolution without dissent (or unanimous resolution, in the case of a two-lot scheme), accept a surrender of a lease, granted under subsection (2) or (3).
- (5) Upon execution of a transfer or lease or sub-lease in accordance with subsection (2) or (3) —
  - (a) the transfer or lease or sub-lease is valid and effective without execution by any person having any estate or interest in the common property; and
  - (b) the receipt of the strata company —
    - (i) is a sufficient discharge for; and
    - (ii) exonerates the person taking under the transfer or lease or sub-lease from responsibility for the application of,  
  
the moneys expressed to have been received by it and is likewise a sufficient discharge and exoneration for all moneys payable to the strata company under the transfer or lease or sub-lease.
- (6) Every transfer or lease or sub-lease executed under subsection (2) or (3) shall be endorsed with or accompanied by a certificate under the seal of the strata company that the resolution referred to in the relevant subsection was duly passed and that all necessary consents were given.
- (7) In favour of —
  - (a) a purchaser or lessee of the common property; and
  - (b) the Registrar of Titles,



a certificate under subsection (6) is conclusive evidence of the facts stated in it.

- (8) The Registrar of Titles shall —
- (a) in the case of a transfer of common property under this section, register the transfer by creating and registering in the transferee's name a certificate of title for the land transferred, and no notification of the transfer shall be otherwise made in the Register; and
  - (b) in the case of a lease or sub-lease of common property under this section, register the lease or sub-lease in the manner prescribed.
- (9) Upon the lodging for registration of a transfer of common property, the Registrar of Titles shall, before creating and registering a certificate of title, amend the registered strata/survey-strata plan in the manner prescribed.
- (10) Subject to subsections (11), (12) and (13) —
- (a) a transfer or mortgage of the common property or part of the common property; or
  - (b) a lease or licence, or lease and licence, to use or occupy the common property or part of the common property, for any term or terms exceeding the prescribed period in the aggregate including an option to extend or renew the term of a lease or licence granted in respect of the common property or part thereof,
- is not effective unless it has been approved in writing by the Commission and the local government.
- (11) Subsection (10) does not apply so as to require the approval of the Commission in the case of a subdivision of a parcel exempted from the requirement of a certificate of approval of the Commission by regulations made under section 25(2).
- (12) Subsection (10) does not apply to a by-law referred to in section 42(8), whether made before or after the commencement

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of section 15 of the *Strata Titles Amendment Act 1996*, and no such by-law shall be called in question for non-compliance with that subsection.

- (13) Subsection (10) does not apply to anything done under Division 2A of Part II or Division 3 of Part III.

*[Section 19 amended by No. 84 of 1994 s.46; No. 58 of 1995 ss.21, 92 and 95; No. 14 of 1996 s.4; No. 61 of 1996 s.15; No. 81 of 1996 s.153(1).]*

**20. Creation of easements and covenants**

- (1) A strata company may, pursuant to a resolution without dissent (or unanimous resolution, in the case of a two-lot scheme) —
- (a) execute a grant of easement or a restrictive covenant burdening the parcel;
  - (b) accept a grant of easement or a restrictive covenant benefiting the parcel;
  - (c) surrender a grant of easement or a restrictive covenant benefiting the parcel.
- (2) Subsection (1) does not authorize a strata company to accept a grant or execute a surrender of an easement relating to common property the subject of a lease accepted or acquired by the strata company under section 18(1) that, apart from subsection (1), it is not entitled to accept or execute as a lessee or, by the terms of the lease, it is prevented from accepting or executing.
- (3) A strata company may, pursuant to a resolution without dissent (or unanimous resolution, in the case of a two-lot scheme), consent to the execution or acceptance by a lessor of a grant or surrender of easement relating to common property the subject of a lease accepted or acquired by the strata company under section 18(1).
- (4) The strata company, if it is satisfied that all persons having registered interests in the parcel and all other persons having interests (other than statutory interests) which have been notified to

the strata company have consented in writing to the proposed dealing, shall execute the appropriate instrument and any plan necessary therefor and every instrument shall be valid and effective without execution by any person having an interest in the parcel, and the receipt of the strata company of any moneys payable to the strata company under the terms of the instrument shall be a sufficient discharge, and shall exonerate the persons taking under the instrument from any responsibility for the application of the moneys expressed to have been so received.

- (5) Every instrument executed pursuant to subsection (4) and lodged for registration with the Registrar of Titles shall be endorsed with or accompanied by a certificate under the seal of the strata company that the resolution was duly passed and that all necessary consents were given.
- (6) In favour of persons dealing with the strata company pursuant to this section and in favour of the Registrar of Titles, the certificate referred to in subsection (5) shall be conclusive evidence of the matters certified in it.
- (7) The Registrar of Titles shall register the instrument creating or surrendering a grant of easement or a restrictive covenant by noting it on the strata plan in the manner prescribed.

*[Section 20 amended by No. 58 of 1995 s.92.]*

**21. Encroachments treated as common property**

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

*[Section 21 amended by No. 58 of 1995 s.22.]*

**Division 2A — Merger of common property into lots in certain strata schemes**

*[Heading inserted by No. 61 of 1996 s.16.]*

Subdivision 1 — Preliminary

*[Heading inserted by No. 61 of 1996 s.16.]*

**21A. Interpretation**

In this Division —

**“existing small strata scheme”** means a strata scheme —

- (a) in which there are not more than 5 lots; and
- (b) the strata plan for which was registered before 1 January 1998,

but does not include a strata scheme the strata plan for which provides that section 3AB does not apply to the scheme.

*[Section 21A inserted by No. 61 of 1996 s.16.]*

**21B. Division only applies to single tier strata schemes**

This Division applies only to a single tier strata scheme.

*[Section 21B inserted by No. 61 of 1996 s.16.]*

**21C. Procedures cannot be invoked more than once**

- (1) After a notice of resolution has been registered under section 21H in respect of a strata scheme, no further notice of resolution may be registered under that section in respect of that scheme.
- (2) After a resolution has been registered under section 21X in respect of a strata scheme, no further resolution may be registered under that section in respect of that scheme.

*[Section 21C inserted by No. 61 of 1996 s.16.]*

**21D. Saving**

Nothing in this Division prevents or limits the re-subdivision of lots by the registration of a plan of re-subdivision under section 8.

*[Section 21D inserted by No. 61 of 1996 s.16.]*

Subdivision 2 — Merger by resolution of buildings that are common property

*[Heading inserted by No. 61 of 1996 s.16.]*

**21E. Application**

This Subdivision does not apply to a strata scheme the strata plan for which is registered on or after 1 January 1998.

*[Section 21E inserted by No. 61 of 1996 s.16.]*

**21F. Resolution by strata company**

- (1) A strata company for a strata scheme may, in the prescribed form, resolve that the boundaries of lots or parts of lots in the scheme are to be fixed by reference to the boundaries provided for by section 3AB.
- (2) A resolution is effective for the purposes of subsection (1) only if it is —
  - (a) a resolution without dissent or, in the case of a two-lot scheme, a unanimous resolution;
  - (b) in the case of a two-lot scheme, a resolution declared by an order under section 103C to be deemed to have been duly passed as a unanimous resolution; or
  - (c) a resolution passed by the strata company and ordered by a referee under section 103M to be treated as a resolution without dissent.

*[Section 21F inserted by No. 61 of 1996 s.16.]*

**21G. Lodgement of notice of resolution for registration**

- (1) Where a strata company has passed a resolution under section 21F it may, in accordance with the regulations, lodge with the Registrar of Titles —
  - (a) a notice of resolution in the prescribed form; and
  - (b) if applicable, a copy of any relevant order under section 103C or 103M certified by a referee as being a true copy.
- (2) The notice may be lodged in any case by the strata company or alternatively —
  - (a) in the case of an existing small strata scheme, by all of the proprietors of lots in the scheme; or
  - (b) where the resolution is of the kind mentioned in section 21F(2)(b) or (c), by one proprietor.
- (3) The notice of resolution —
  - (a) if it is lodged by the strata company, is to be signed under its seal; or
  - (b) if subsection (2)(a) or (b) applies, is to be signed by the proprietors or the proprietor lodging it.

*[Section 21G inserted by No. 61 of 1996 s.16.]*

**21H. Registration of notice of resolution**

The Registrar of Titles is to register a notice of resolution if the relevant requirements of this Division are satisfied.

*[Section 21H inserted by No. 61 of 1996 s.16.]*

**21I. Effect of registration**

- (1) The effect of the registration of a notice of resolution is that without the need for any other documentation —
  - (a) the boundaries of lots or parts of lots on the strata plan are fixed by reference to section 3AB regardless of where they were located before that registration; and

- (b) each lot as so defined is subject to —
  - (i) any encumbrance that was registered; or
  - (ii) caveat that was lodged,with the Registrar of Titles against the lot before the registration.
- (2) Any encumbrance or caveat referred to in subsection (1) is to be taken to be amended to give effect to that subsection.

*[Section 21I inserted by No. 61 of 1996 s.16.]*

**21J. Registrar of Titles to amend strata plan**

The Registrar of Titles is to amend the strata plan in the prescribed manner to give effect to section 21I.

*[Section 21J inserted by No. 61 of 1996 s.16.]*

Subdivision 3 — Automatic merger of buildings that are common property

*[Heading inserted by No. 61 of 1996 s.16.]*

**21K. Interpretation**

In this Subdivision —

“**change-over day**” means the day after the expiry of 6 months —

- (a) beginning on the commencement day, in the case of a strata scheme registered before that day; or
- (b) beginning on the day on which the scheme is registered, in the case of a strata scheme that is registered on or after the commencement day and before 1 January 1998;

“**commencement day**” means the day on which section 16 of the *Strata Titles Amendment Act 1996* comes into operation.

*[Section 21K inserted by No. 61 of 1996 s.16.]*

**21L. Application**

This Subdivision applies only to an existing small strata scheme.

*[Section 21L inserted by No. 61 of 1996 s.16.]*

**21M. Automatic application of lot boundaries under section 3AB**

If on the change-over day —

(a) a notice of resolution has not been registered under section 21H; and

(b) an objection has not been lodged under section 21O,

in respect of an existing small strata scheme, section 21I applies to the scheme, on and after the change-over day —

(c) as if a notice of resolution had been registered under section 21H; and

(d) without the need for any documentation.

*[Section 21M inserted by No. 61 of 1996 s.16.]*

**21N. Plan to be noted**

Where section 21M applies to a strata scheme the Registrar of Titles is to —

(a) record on the strata plan for the scheme the fact that that section applies to that scheme; and

(b) amend the strata plan in the prescribed manner to give effect to that section.

*[Section 21N inserted by No. 61 of 1996 s.16.]*

**21O. Objection by proprietor**

(1) A proprietor of a lot in an existing small strata scheme may lodge with the Registrar of Titles an objection to the application of section 21M to the scheme.

(2) An objection —

(a) is to be in the prescribed form; and



- (b) is to be lodged before the change-over day.
- (3) Where an objection is lodged by a proprietor of a lot in a scheme the Registrar of Titles is to send a copy of the objection to every other proprietor of a lot in the scheme by posting it to him at the address of his lot.

*[Section 21O inserted by No. 61 of 1996 s.16.]*

Subdivision 4 — Merger by resolution of land that is common property

*[Heading inserted by No. 61 of 1996 s.16.]*

**21P. Application**

This Subdivision does not apply to a strata scheme the strata plan for which is registered on or after 1 January 1998.

*[Section 21P inserted by No. 61 of 1996 s.16.]*

**21Q. Resolution by strata company**

- (1) A strata company for a strata scheme may, in the prescribed form, resolve that the strata plan be amended in one or more of the following ways —
- (a) to reflect any extension or alteration of a building shown on the plan;
  - (b) to include a building not shown on the plan;
  - (c) to merge land that is common property into a lot.
- (2) A resolution is effective for the purposes of subsection (1) only if it is —
- (a) a resolution without dissent or, in the case of a two-lot scheme, a unanimous resolution;
  - (b) in the case of a two-lot scheme, a resolution declared by an order under section 103C to be deemed to have been duly passed as a unanimous resolution; or

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- (c) a resolution passed by the strata company and ordered by a referee under section 103M to be treated as a resolution without dissent.
- (3) A resolution cannot be passed under subsection (1) that would, on registration under section 21X of a notice of resolution, increase the number of lots in the scheme.
- (4) A resolution cannot be passed under subsection (1)(c) unless it specifies the horizontal boundaries of the land that is to be merged into a lot.

*[Section 21Q inserted by No. 61 of 1996 s.16.]*

**21R. Further provisions as to contents of resolution**

- (1) A resolution cannot be passed under section 21Q(1)(a) or (b) unless at the time when the resolution is passed the building or any extension or alteration to which it relates —
  - (a) has been the subject of a building licence under section 374 of the *Local Government (Miscellaneous Provisions) Act 1960*; and
  - (b) has been approved by the strata company or all of the proprietors of lots in the scheme.
- (2) If the strata plan is to be amended as mentioned in section 21Q(1)(c) the resolution is to specify any easement that is to be created in terms of section 21W.

*[Section 21R inserted by No. 61 of 1996 s.16.]*

**21S. Notice of resolution may be lodged for registration**

- (1) Where a strata company has passed a resolution under section 21Q it may, in accordance with the regulations, lodge with the Registrar of Titles a notice of resolution in the prescribed form.

- (2) The notice may be lodged in any case by the strata company or alternatively —
- (a) in the case of an existing small strata scheme, by all of the proprietors of lots in the scheme; or
  - (b) where the resolution is of the kind mentioned in section 21Q(2)(b) or (c), by one proprietor.
- (3) The notice of resolution —
- (a) if it is lodged by the strata company, is to be signed under its seal; or
  - (b) if subsection (2)(a) or (b) applies, is to be signed by the proprietors or the proprietor lodging it.

*[Section 21S inserted by No. 61 of 1996 s.16.]*

**21T. Documents to accompany notice**

- (1) The notice of resolution is to be accompanied by —
- (a) a copy of any relevant order under section 103C or 103M certified by a referee as being a true copy;
  - (b) unless subsection (2) applies, a sketch plan (“**the sketch plan**”) showing in the prescribed manner how the strata plan is to be amended —
    - (i) to show any extension or alteration of a building;
    - (ii) to include a building not shown on the strata plan;
    - (iii) to merge land that is common property into a lot; or
    - (iv) to define any area that is to be subject to an easement under section 21W;
  - (c) unless subsection (2) applies, a certificate given by a licensed surveyor in accordance with section 21U;
  - (d) a certificate, in the prescribed form, given by a licensed valuer in accordance with section 14(2) and, if any unit entitlement is to be changed, an amended schedule of unit entitlement;

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- (e) if the *pro rata* unit entitlement of any lot is to be decreased, a certificate given by every person who —
  - (i) has a registered interest in; or
  - (ii) is a caveator in respect of,the lot certifying his consent to the decrease.
- (2) The Registrar of Titles may dispense with the sketch plan to the extent that he considers that the detail shown on the strata plan or contained in the notice of resolution is sufficient.

*[Section 21T inserted by No. 61 of 1996 s.16.]*

**21U. Certificate of licensed surveyor**

- (1) The certificate of a licensed surveyor referred to in section 21T(1)(c) is to comply with —
  - (a) this section; and
  - (b) any requirement made by the regulations for the purposes of this section.
- (2) If the strata plan is to be amended to reflect any extension or alteration of a building shown on the plan, or to include a building not shown on the plan, the surveyor is to certify that —
  - (a) the extension or alteration, or the building has been the subject of a building licence under section 374 of the *Local Government (Miscellaneous Provisions) Act 1960*;
  - (b) any extension or alteration, or any building not shown on the plan, has been approved by —
    - (i) the strata company; or
    - (ii) all of the proprietors of lots in the scheme;
  - (c) any building or part of a building shown on the sketch plan as being within a lot is wholly within the ground surface boundaries of that lot, except for any permitted boundary deviation; and

- (d) in respect of any land or building or part of a building shown on the sketch plan as common property to be merged into a lot —
  - (i) the land or building or part of a building is wholly within the external surface boundaries of the parcel; or
  - (ii) the requirements of section 22(1)(c) are satisfied.
- (3) If the strata plan is to be amended to merge land that is common property into a lot, the surveyor is to certify, in accordance with subsection (5), that the rights and amenities required to be provided for by the relevant town planning scheme in force under the *Town Planning and Development Act 1928* —
  - (a) are provided for in accordance with that scheme at the time when the certificate is given; or
  - (b) will be provided for when the notice of resolution and the documents referred to in section 21V are registered.
- (4) The regulations may prescribe matters —
  - (a) as to which the surveyor is to certify under subsection (3); or
  - (b) which are to be specifically dealt with in the certificate.
- (5) A certification under subsection (3) is to relate to matters prescribed for the purposes of subsection (4)(a) and not to other matters arising under the relevant town planning scheme.
- (6) The surveyor is to certify in every case that —
  - (a) a reference on the sketch plan to a lot by a designated number is a reference to the lot designated by that number on the strata plan; and
  - (b) there are not more lots on the sketch plan than there are on the strata plan.

*[Section 21U inserted by No. 61 of 1996 s.16.]*

**21V. Transfers etc. to give effect to notice of resolution**

- (1) Subject to subsection (2), every transfer or other document that is necessary to give effect to a notice of resolution is to be lodged for registration together with the notice.
- (2) The regulations may provide for the registration of an instrument ("**a disposition statement**") —
  - (a) by which various interests in land affected by a notice of resolution are disposed of or vested;
  - (b) by which encumbrances are attached to or discharged from any interest; and
  - (c) in which any certificate required by section 21T(1)(e) is set out,

and subsection (1) does not apply if a disposition statement is lodged for registration with the notice of resolution.

- (3) The regulations may provide for a disposition statement to include a certificate that there is no consideration, other than an interest in common property, for —
  - (a) the passing of property under the statement; or
  - (b) any other thing referred to in item 2(18) or 7(13) in the Third Schedule to the *Stamp Act 1921*.

*[Section 21V inserted by No. 61 of 1996 s.16.]*

**21W. Creation of easements for parking etc.**

- (1) The sketch plan referred to in section 21T(1)(b) may provide for easements relating to motor vehicle access, parking or turning to be created under section 5D as if the sketch plan were a survey-strata plan.
- (2) Section 5F also applies to the discharge or variation of an easement that is created under subsection (1).

- (3) If the sketch plan makes provision as mentioned in subsection (1), sections 5D and 5F apply for the purposes of this Subdivision with the following modifications —
- (a) any easement provided for is created on the registration of the notice of resolution; and
  - (b) any variation or discharge of an easement under section 5F is required to be approved by the local government instead of the Commission.

*[Section 21W inserted by No. 61 of 1996 s.16.]*

**21X. Registration of notice of resolution**

The Registrar of Titles is to register the notice of resolution if the requirements of this Division are satisfied.

*[Section 21X inserted by No. 61 of 1996 s.16.]*

**21Y. Effect of registration**

- (1) In addition to —
- (a) the operation of any transfer, document or disposition statement referred to in section 21V; and
  - (b) the creation of any easement under section 5D as read with section 21W,

the registration of a notice of resolution has the effects described in subsections (2), (3), (4), (5) and (6).

- (2) If any land that merges into a lot was before registration of a notice of resolution subject to —
- (a) any right or privilege granted under by-law 3(f) contained in Part I of the Schedule to the *Strata Titles Act 1966*<sup>12</sup>; or
  - (b) a by-law referred to in section 42(8),

on registration of the notice of resolution the right or privilege or the by-law ceases to be applicable to the land that so merges.

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- (3) Each lot as enlarged or diminished on registration of the notice of resolution is subject to —
- (a) any encumbrance that was registered; or
  - (b) caveat that was lodged,
- with the Registrar of Titles against the lot before the registration of the notice of resolution.
- (4) Each lot or part of a lot that becomes common property on registration of the notice of resolution vests in the proprietors to be held by them as tenants in common in shares proportional to the unit entitlements of their respective lots.
- (5) The share of a proprietor so vested is subject to any encumbrance registered or caveat lodged with the Registrar of Titles against his lot.
- (6) Any encumbrance or caveat referred to in subsection (3) or (5) is to be taken to be amended to give effect to that subsection.

*[Section 21Y inserted by No. 61 of 1996 s.16.]*

**21Z. Registrar of Titles to make necessary amendments**

- (1) The Registrar of Titles is to amend —
- (a) the strata plan in the prescribed manner to give effect to sections 21V, 21W and 21Y; and
  - (b) the original certificates of title in respect of the lots, if required, to show any amended unit entitlement.
- (2) The Registrar of Titles may amend the duplicate certificates as mentioned in subsection (1)(b) when they are lodged in the Office of Titles for the purpose of a dealing.

*[Section 21Z inserted by No. 61 of 1996 s.16.]*



### **Division 3 — Certificates and approvals**

#### **22. Certificate of licensed surveyor**

- (1) The certificate of a licensed surveyor which is required by section 5B to accompany a strata plan lodged for registration shall be in the prescribed form and shall certify that —
  - (a) each lot that is not wholly within a building shown on the plan is within the external surface boundaries of the parcel; and either
  - (b) each building shown on the plan is within the external surface boundaries of the parcel; or
  - (c) in a case where a part of a wall or building, or material attached thereto, encroaches beyond the external surface boundaries of the parcel —
    - (i) all lots shown on the plan are within the external surface boundaries of the parcel;
    - (ii) the plan clearly indicates the existence of the encroachment and its nature and extent; and
    - (iii) where the encroachment is not on to a public road, street or way, that an appropriate easement has been granted and will be lodged with the Registrar of Titles to enable it to be registered as an appurtenance of the parcel.
- (2) The certificate of a licensed surveyor which is required by section 5B to accompany a survey-strata plan lodged for registration shall be in the prescribed form.

*[Section 22 amended by No. 58 of 1995 s.23.]*

#### **23. Certificate of local government**

- (1) Subject to this section, the certificate of the local government which is required by section 5B(2) to accompany a strata plan

lodged for registration shall be in the prescribed form and shall certify —

- (a) that the building shown on the plan has been inspected and that it is consistent with the building plans and specifications that have been approved in respect of the building by the local government or on appeal by order of the Minister to whom the administration of the *Local Government (Miscellaneous Provisions) Act 1960* is for the time being committed by the Governor;
- (b) in a case where —
  - (i) a building is divided into lots on the strata plan;
  - (ii) a building contains a lot on the strata plan; or
  - (iii) a building contains or comprises part of a lot on the strata plan,that building is, in the opinion of the local government, of sufficient standard to be brought under this Act;
- (c) in a case where a proposed strata scheme is exempt from the requirement of approval by the Commission, that the proposed strata scheme is so exempt;
- (d) in a case where a part of a wall or building, or material attached thereto, encroaches beyond the external surface boundaries of the parcel on to a public road, street or way, that the local government is of the opinion that retention of the encroachment in its existing state will not endanger public safety or unreasonably interfere with the amenity of the neighbourhood and the local government, with the approval of the Minister to whom the administration of the *Local Government (Miscellaneous Provisions) Act 1960* is for the time being committed by the Governor, does not object to the encroachment; and
- (e) in a case where the Commission has granted a certificate subject to conditions under section 25(4), that the parcel and the buildings shown on the plan have been inspected and the conditions attached to the approval of the Commission have been complied with.

- (2) An application for a certificate under subsection (1) shall be granted by the local government and the certificate shall be issued where the local government is satisfied in respect of the matters referred to in that subsection and is also satisfied that —
- (a) separate occupation of the proposed lots will not contravene the provisions of any town planning scheme prepared or adopted by the local government under the *Town Planning and Development Act 1928*;
  - (b) any consent or approval required under any such town planning scheme or under the provisions of the last-mentioned Act relating to any interim development order, has been given in relation to the separate occupation of the proposed lots; and
  - (c) the development of the parcel as a whole, the building and the proposed subdivision of the parcel into lots for separate occupation will not interfere with the existing or likely future amenity of the neighbourhood, having regard to the circumstances of the case and to the public interest.
- (2a) In satisfying itself in respect of any matter referred to in subsection (1) or (2) a local government shall have regard to such considerations as may be prescribed to be relevant to that matter.
- (3) If in the case of an application for a certificate under this section involving the modification of an existing building to a form suitable for a strata scheme a local government is unable to certify as to the matters referred to in subsection (1)(a) because the available records of the local government are insufficient for the purpose, either in respect of inspection of the building or approval of plans and specifications, it shall be taken to be sufficient compliance with that paragraph if the local government certifies that the building shown on the plan has been inspected and the modification is consistent with the building plans and specifications relating to the modification

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that have been approved by the local government or on appeal by order of the relevant Minister.

- (4) A local government may, either generally or as otherwise provided by the instrument of delegation, by writing under the seal of the local government, delegate to an employee of the local government any of the functions conferred on local governments under this Act, other than the functions so conferred by subsection (3) and section 24.
- (5) A certificate given by a local government for the purposes of this Act shall be signed by the chief executive officer of the local government except that, where the local government has delegated the function of giving a certificate to an employee of the local government, the certificate shall be signed by the delegate.

*[Section 23 amended by No. 84 of 1994 s.46; No. 58 of 1995 s.24; No. 14 of 1996 s.4; No. 57 of 1997 s.115(1).]*

**24. Preliminary determinations by local government**

- (1) Upon or at any time after the submission of building plans and specifications in respect of a proposed strata scheme to the local government in accordance with section 374 of the *Local Government (Miscellaneous Provisions) Act 1960*, an application may be made to the local government by or with the approval of the proprietor for a determination that a building, if constructed in accordance with those plans and specifications, will be, in the opinion of the local government, of sufficient standard to be brought under this Act as a building in a strata scheme.
- (2) Upon or at any time after the submission of an application to the local government for approval of the development constituted by a proposed strata scheme in accordance with a town planning scheme or other requirement imposed by law, an application may be made to the local government for a determination that the local government is satisfied that the proposed development will not be contrary to any of the requirements referred to in section 23(2)(a), (b) and (c).

- (2a) In making determinations of a kind provided for by this section a local government shall have regard to such considerations as may be prescribed to be relevant to determinations of that kind.
- (3) A local government may fix, charge and recover fees to be paid for determinations under this section.
- (4) An applicant for a determination under this section shall provide the local government with such information, particulars and details regarding the proposed development, or the building plans and specifications, as the case may require, as the local government may require to enable it to deal with the application.
- (5) A determination made by a local government under this section shall be in writing and a favourable determination may be issued subject to conditions relating to the proposed development of the parcel.
- (6) A determination under this section shall be valid and binding on the local government for a period of 2 years after it is made unless the local government, at the time of the determination, declares in writing that the determination shall be valid and binding for such period as is specified, being a period greater than 2 years but not exceeding 3 years.
- (7) Where a favourable determination has been made by a local government under subsection (1) and the local government having inspected the building is satisfied that the building is constructed in accordance with the plans and specifications referred to in that subsection and that any condition attached to the determination has been complied with, the local government shall grant the certificate required by section 5B(2) or 8, as the case may require, so long as it is satisfied as to the matters in section 23(1)(c), (d) and (e) and 23(2).
- (8) Where a favourable determination has been made by a local government under subsection (2) and the local government is satisfied that any condition attached to the determination has been complied with, the local government shall grant the

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certificate required so long as it is satisfied as to the matters in section 23(1).

*[Section 24 amended by No. 58 of 1995 s.25; No. 14 of 1996 s.4; No. 57 of 1997 s.115(1).]*

**25. Certificate of Commission**

- (1) Subject to this section, every strata plan and every plan of re-subdivision or consolidation for a strata scheme lodged for registration under this Act shall be accompanied by a certificate of approval given by the Commission unless the proposed subdivision, re-subdivision or consolidation is exempt from the requirement of such a certificate by reason of regulations made under this section.
- (2) The Governor may make regulations providing for the exemption of a proposed subdivision, re-subdivision or consolidation, or subdivisions, re-subdivisions or consolidations of any class or description or in any geographical area, from the requirement of a certificate of approval given by the Commission for the purposes of section 5B, 8 or 9.
- (3) An application for a certificate under this section shall be made to the Commission in the prescribed form and manner and, where a building is to be constructed or modified for the purposes of the strata scheme or a proposed strata scheme, the application shall be made prior to the construction or modification of the building unless the Commission otherwise agrees in a particular case.
- (4) A certificate granted by the Commission under this section shall certify the approval of the Commission to the subdivision, re-subdivision or consolidation, as the case may be, and shall be in the prescribed form and in the case of an application made prior to construction or modification of a building proposed to be divided into lots under the scheme, the Commission may grant a certificate unconditionally or subject to such conditions as are specified in the certificate.

- (5) Without limiting section 25A, sections 20 and 21 of the *Town Planning and Development Act 1928* do not apply to —
- (a) a subdivision effected by the registration of a strata plan;
  - (b) a re-subdivision effected by a plan of re-subdivision for a strata scheme;
  - (c) a consolidation effected by the registration of a plan of consolidation for a strata scheme; or
  - (d) a transfer converting a lot within a strata scheme to common property.

[(6) *repealed*]

- (7) This section and the giving of a certificate of approval by the Commission for the purposes of this section shall be subject to the requirements of section 78 of the *Heritage of Western Australia Act 1990*.
- (8) No exemption from the requirements of this section shall take effect where the land or any part of the land to which the strata scheme relates is land to which section 78 of the *Heritage of Western Australia Act 1990* applies.

[Section 25 amended by No. 97 of 1990 s.30; No. 84 of 1994 s.46; No. 58 of 1995 s.26.]

**25A. Planning Commission to refer plan to other bodies in certain cases**

- (1) If a strata plan or a plan of re-subdivision or consolidation for a strata scheme submitted to the Commission for approval under section 25 contains any vacant lot, the Commission shall comply with section 24 of the *Town Planning and Development Act 1928* as if the plan were a plan of subdivision which required the approval of the Commission under Part III of that Act.
- (2) For the purposes of subsection (1) a vacant lot is one that is wholly unimproved apart from having merged improvements within the meaning of that expression in the *Valuation of Land Act 1978*.

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- (3) Where subsection (1) applies, a prescribed period shall apply for the purposes of paragraph (c) of section 27(3) instead of the period of 40 days mentioned in that paragraph.

*[Section 25A inserted by No. 58 of 1995 s.27.]*

**25B. Subdivision in survey-strata scheme requires approval by Planning Commission**

- (1) The provisions of Part III of the *Town Planning and Development Act 1928*, other than section 20(1)(b), apply to —
- (a) the subdivision or re-subdivision of land by a survey-strata plan or a plan of re-subdivision for a survey-strata scheme; and
  - (b) the consolidation of lots by a plan of consolidation for a survey-strata scheme.
- (2) Every survey-strata plan and every plan of re-subdivision or consolidation for a survey-strata scheme lodged for registration under this Act shall have endorsed on it a statement that the approval of the Commission, required by the provisions referred to in subsection (1), has been granted.
- (3) Where the Minister or the Town Planning Appeal Tribunal upholds an appeal under section 26 of the *Town Planning and Development Act 1928* against the refusal or failure of the Commission to give an approval referred to in subsection (2) —
- (a) the Minister or the Tribunal, as the case requires, shall issue to the applicant a certificate certifying that the appeal has been upheld; and
  - (b) the certificate of the Minister or the Tribunal shall be deemed to be the approval of the Commission.
- (4) The Registrar of Titles may accept for registration a plan referred to in subsection (1) notwithstanding that it does not comply with subsection (2) if the plan —
- (a) is accompanied by a certificate under subsection (3); and



(b) otherwise complies with this Act.

*[Section 25B inserted by No. 58 of 1995 s.27; amended by No. 61 of 1996 s.17.]*

**26. Appeals against local government decision**

- (1) In this section, “**application**” means an application to a local government for a certificate, determination or approval, as the case may be —
- (a) under section 23(1)(a) that the building shown on a strata plan has been inspected and that it is consistent with the approved building plans and specifications;
  - (b) under section 23(1)(b) that a building is of sufficient standard to be brought under this Act;
  - (c) under section 23(1)(c) that a proposed strata scheme is exempt from the requirement of approval by the Commission;
  - (d) under section 23(1)(e) that conditions attached to an approval given by the Commission under section 25(4) have been complied with;
  - (e) under section 23(2)(a) that separate occupation of the proposed lots will not contravene the provisions of any town planning scheme prepared or adopted by the local government under the *Town Planning and Development Act 1928*;
  - (f) under section 23(2)(b) that any consent or approval required under any such town planning scheme or under the provisions of the last-mentioned Act relating to any interim development order, has been given in relation to the separate occupation of the proposed lots;
  - (g) under section 23(2)(c) that the development of the parcel as a whole, the building and the proposed subdivision of the parcel into lots for separate occupation will not interfere with the existing or likely future amenity of the

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- neighbourhood, having regard to the circumstances of the case and to the public interest;
- (h) under section 23(3) that the building shown on the strata plan has been inspected and the modification of the building is consistent with the approved building plans and specifications relating to the modification;
  - (i) under section 24(1) that a building, if constructed in accordance with building plans and specifications as submitted to the local government will be of sufficient standard to be brought under this Act as a building in a strata scheme;
  - (j) under section 24(2) that a proposed development will not be contrary to any of the matters referred to in section 23(2)(a), (b) and (c);
  - (k) under section 6(3) that the local government approves a resolution of a strata company varying or removing a restriction as to use endorsed on a registered strata/survey-strata plan under that section;
  - (l) as required in the case of an application for registration of a plan of re-subdivision for a strata scheme under section 8(3)(e), containing, subject to appropriate and necessary modifications, the same particulars as are required in the case of an application for registration of a strata plan and are referred to —
    - (i) in paragraphs (a), (b) and (d); and
    - (ii) in paragraphs (c), (e), (f) and (g);
  - (m) as required in the case of an application for registration of a plan of consolidation for a strata scheme, under section 9(3)(b);
  - (n) under section 10(2) that the local government consents to the conversion effected by a transfer of a lot or lots within a scheme into common property; and

- (o) under section 19(10) that the local government approves a transfer, mortgage or other disposition as referred to in that subsection of common property within a scheme.
- (2) A local government to which an application is made shall cause notice of its decision on the application to be given in writing to the applicant.
- (3) A notice of refusal by a local government to approve an application shall —
  - (a) specify the grounds of refusal; and
  - (b) inform the applicant of the right to appeal against the refusal conferred by this section.
- (4) Subject to this section, an applicant may appeal to the Minister to whom the administration of the *Local Government (Miscellaneous Provisions) Act 1960* is for the time being committed by the Governor against —
  - (a) a refusal by a local government to approve an application of the kind referred to in subsection (1)(a), (b), (d), (h), (i) and (l)(i);
  - (b) the attachment of a condition to the approval of an application of the kind referred to in subsection (1)(i); or
  - (c) the failure of a local government to notify its approval of an application to the applicant within 40 days of receiving the application.
- (5) Subject to this section, an applicant may appeal to the Minister to whom the administration of the *Town Planning and Development Act 1928* is for the time being committed by the Governor or to the Town Planning Appeal Tribunal constituted under that Act against —
  - (a) a refusal by a local government to approve of an application of the kind referred to in subsection (1)(c), (e), (f), (g), (j), (k), (l)(ii), (m), (n) and (o);
  - (b) the attachment of a condition to the approval of an application of the kind referred to in subsection (1)(j); or

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- (c) the failure of a local government to notify its approval of an application to the applicant within 40 days of receiving the application.
- (6) The commencement of an appeal to the Minister under subsection (5) extinguishes the right of appeal in respect of the same matter to the Town Planning Appeal Tribunal under that subsection and the commencement of an appeal to the Town Planning Appeal Tribunal under that subsection extinguishes the right of appeal in respect of the same matter to the Minister.
- (7) An appeal under this section, other than an appeal to the Town Planning Appeal Tribunal, may be commenced within 30 days of the day on which the applicant received notice of the refusal or attachment of a condition or within 30 days of the expiration of the period of 40 days referred to in subsection (4) or (5), as the case may be, in such manner and upon payment of such fees as may be prescribed.
- (8) An appeal under this section to the Town Planning Appeal Tribunal may be commenced within 30 days of the day on which the applicant received notice of the refusal or attachment of a condition or within 30 days of the expiration of the period of 40 days referred to in subsection (4) or (5), as the case may be, in such manner and upon payment of such fees as may be provided for under the *Town Planning and Development Act 1928* in respect of appeals arising under that Act.
- (9) The relevant Minister, or the Town Planning Appeal Tribunal, as the case may be, may —
  - (a) determine the appeal either on the matter that was before the local government when dealing or failing to deal with, the application or on hearing evidence and submissions, or partly on each, as the Minister or the Tribunal thinks fit; and
  - (b) make such order as the Minister or the Tribunal thinks fit including such order as to costs and expenses of and incidental to the appeal as the Minister or the Tribunal

considers just, and the costs and expenses may be recovered by the person to whom they are payable in any court of competent jurisdiction, as a debt due to him.

- (10) The decision of a Minister or the Town Planning Appeal Tribunal upon any such appeal is final and binding upon the local government and the applicant, and for the purposes of this Act shall be deemed to be the final decision of the local government.
- (11) Where a Minister or the Town Planning Appeal Tribunal upholds an appeal under this section, the Minister or the Tribunal, as the case requires, shall issue to the applicant a certificate certifying that the appeal has been upheld and if the appeal is against the refusal or failure of the local government to issue a certificate, make a determination or give approval, the certificate of the Minister or Tribunal shall, as the case requires, be deemed to be such certificate of the local government, determination or approval.
- (12) The Registrar of Titles may accept for registration a strata plan, a plan of re-subdivision or consolidation for a strata scheme or a transfer under section 10 that relates to the strata scheme in respect of which the local government refused or failed to give a certificate, notwithstanding that the plan is not endorsed with or accompanied by such a certificate, if the plan —
- (a) is accompanied by the appropriate certificate of the Minister or the Town Planning Appeal Tribunal referred to in subsection (11); and
  - (b) otherwise complies with the provisions of this Act.

*[Section 26 amended by No. 84 of 1994 s.46; No. 58 of 1995 ss.28, 95 and 96; No. 14 of 1996 s.4.]*

**27. Appeal against Commission**

- (1) In this section, “**application**” means an application to the Commission for approval or a certificate of approval, as the case may be —
  - (a) under section 25 that the Commission approves the proposed subdivision in a strata plan or a plan of re-subdivision for a strata scheme or approves the proposed consolidation in a plan of consolidation for a strata scheme;
  - (b) under section 19(10) that the Commission approves a transfer, mortgage or other disposition as referred to in that provision of common property within a strata scheme;
  - (c) under section 6(3) that the Commission approves a resolution of a strata company varying or removing a restriction as to use endorsed on a registered strata plan under that provision.
- (2) The Commission shall cause notice of its decision on an application made to it under this Act to be given in writing to the applicant.
- (3) Subject to this section, an applicant may appeal to the Minister to whom the administration of the *Town Planning and Development Act 1928* is for the time being committed by the Governor or to the Town Planning Appeal Tribunal constituted under that Act against —
  - (a) a refusal by the Commission to approve of an application of the kind referred to in subsection (1)(a) to (c);
  - (b) the attachment of a condition under section 25(4) to the approval of the Commission; or
  - (c) the failure of the Commission to notify the applicant of its approval of an application within 40 days of receiving the application.

- (4) The commencement of an appeal to the Minister under subsection (3) extinguishes the right of appeal in respect of the same matter to the Town Planning Appeal Tribunal under that subsection and the commencement of an appeal to the Town Planning Appeal Tribunal under that subsection extinguishes the right of appeal in respect of the same matter to the Minister.
- (5) An appeal under this section, other than an appeal to the Town Planning Appeal Tribunal, may be commenced within 30 days of the day on which the applicant received notice of the refusal or attachment of a condition or within 30 days of the expiration of the period of 40 days referred to in subsection (3), as the case may be, in such manner and upon payment of such fees as may be prescribed.
- (6) An appeal under this section to the Town Planning Appeal Tribunal may be commenced within 30 days of the day on which the applicant received notice of the refusal or attachment of a condition or within 30 days of the expiration of the period of 40 days referred to in subsection (3), as the case may be, in such manner and upon payment of such fees as may be provided for under the *Town Planning and Development Act 1928* in respect of appeals arising under that Act.
- (7) The Minister or the Town Planning Appeal Tribunal, as the case may be, may —
  - (a) determine the appeal either on the matter that was before the Commission when dealing, or failing to deal with, the application or on hearing evidence and submissions, or partly on each, as the Minister or the Tribunal thinks fit; and
  - (b) make such order as the Minister or the Tribunal thinks fit including such order as to costs and expenses of and incidental to the appeal as the Minister or the Tribunal considers just, and the costs and expenses may be recovered by the person to whom they are payable in any court of competent jurisdiction, as a debt due to him.

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- (8) The decision of the Minister or the Town Planning Appeal Tribunal upon any such appeal is final and binding upon the Commission and the applicant, and for the purposes of this Act, shall be deemed to be the final decision of that Commission.
- (9) Where the Minister or the Town Planning Appeal Tribunal upholds an appeal under this section, the Minister or the Tribunal, as the case requires, shall issue to the applicant a certificate certifying that the appeal has been upheld and if the appeal is against the refusal or failure of the Commission to give its approval the certificate of the Minister or the Tribunal shall be deemed to be the approval of that Commission.
- (10) The Registrar of Titles may accept for registration a strata plan or a plan of re-subdivision or consolidation for a strata scheme in respect of which the Commission has refused or failed to give a certificate, notwithstanding that the plan is not endorsed with or accompanied by such a certificate, if the plan —
  - (a) is accompanied by the appropriate certificate of the Minister or the Town Planning Appeal Tribunal referred to in subsection (9); and
  - (b) otherwise complies with this Act.

*[Section 27 amended by No. 84 of 1994 s.46; No. 58 of 1995 s.29.]*



## **Part III — Variation, termination and conversion of schemes**

*[Heading amended by No. 61 of 1996 s.18.]*

### **Division 1 — Variation of schemes**

*[Heading inserted by No. 61 of 1996 s.19.]*

#### **28. Variation of strata scheme upon damage or destruction of building**

- (1) Where a building shown on a registered strata plan is damaged or destroyed, the District Court may, on an application by the strata company or by a proprietor or a registered mortgagee of a lot within the strata scheme, make an order for or with respect to the variation of the existing strata scheme or the substitution for the existing strata scheme of a new strata scheme.
- (2) An insurer who has effected insurance on the building, or any part of the building, against damage to or destruction of the building has the right to appear, in person or by counsel, on an application to the District Court under this section.
- (3) Without limiting the generality of subsection (1), an order made under that subsection may include such directions for or with respect to any one or more of the following matters as the District Court considers necessary or expedient —
  - (a) the reinstatement in whole or in part of the building;
  - (b) the transfer or conveyance of the interests of the proprietors of lots that have been damaged or destroyed to the other proprietors in proportion to their unit entitlements;
  - (c) the substitution for the existing schedule of unit entitlement of a new schedule of unit entitlement;
  - (d) the application of insurance moneys received by the strata company in respect of damage to or destruction of the building;

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- (e) the payment of moneys to or by the strata company or any one or more of the proprietors;
  - (f) the amendment of the registered strata plan, in such manner as the District Court thinks fit, so as to include any addition to the common property;
  - (g) the payment to a mortgagee of a lot of money received by the strata company from an insurer of the building;
  - (h) any matter in respect of which it is, in the opinion of the District Court, just and equitable in the circumstances of the case to make provision in the order;
  - (i) the imposition of such terms and conditions as the District Court thinks fit.
- (4) The District Court may from time to time amend any order made under this section.
- (5) An order made under this section shall take effect —
- (a) except as provided in paragraph (b), on the day specified in the order or the day when the order is lodged for registration with the Registrar of Titles, whichever is the later;
  - (b) in the case of an order made under this section as applied by section 29, on the day on which the resumption referred to in the order takes effect.
- (6) Where the District Court is of the opinion that an order should not be made under this section —
- (a) it may, upon application made by any person entitled to appear and be heard on the hearing of the application made under subsection (1) or of its own motion, direct that the application be treated as an application for an order under section 31; and
  - (b) where it makes such a direction —
    - (i) the application the subject of the direction shall be deemed to be made under section 31 by a person entitled to make the application; and

- (ii) the applicant under subsection (1), as well as any other, person entitled to appear and be heard under section 31, is entitled to appear and be heard on the hearing of the application.
- (7) On any application under this section, the District Court may make such order for the payment of costs as it thinks fit.

*[Section 28 amended by No. 58 of 1995 ss.30 and 93<sup>11</sup>.]*

**29. Variation of strata scheme upon resumption**

Subject to any necessary modifications, section 28 shall apply and the District Court shall have jurisdiction accordingly in any case of the resumption of part of the land in a parcel in a registered strata plan in the manner and to the extent that that section applies and the District Court has jurisdiction in the case of damage to or destruction of a building.

*[Section 29 amended by No. 58 of 1995 ss.31 and 93<sup>11</sup>.]*

**29A. Variation of survey-strata scheme on resumption**

- (1) Where part of the land in a parcel in a survey-strata scheme is resumed, the District Court may, on an application by the strata company or by a proprietor or a registered mortgagee of a lot within the scheme, make an order for or with respect to the variation of the existing scheme or the substitution for the existing scheme of a new scheme.
- (2) Without limiting the generality of subsection (1), an order made under that subsection may include such directions for or with respect to any one or more of the following matters as the District Court considers necessary or expedient —
- (a) the substitution for the existing schedule of unit entitlement of a new schedule of unit entitlement;
  - (b) the payment of moneys to or by the strata company or any one or more of the proprietors;
  - (c) the amendment of the registered survey-strata plan, in such manner as the District Court thinks fit, so as to include any addition to the common property;

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- (d) any matter in respect of which it is, in the opinion of the District Court, just and equitable in the circumstances of the case to make provision in the order; and
  - (e) the imposition of such terms and conditions as the District Court thinks fit.
- (3) The District Court may from time to time amend any order made under this section.
- (4) Where the District Court is of the opinion that an order should not be made under this section —
- (a) it may, upon application made by any person entitled to appear and be heard on the hearing of the application made under subsection (1) or of its own motion, direct that the application be treated as an application for an order under section 31; and
  - (b) where it makes such a direction —
    - (i) the application the subject of the direction shall be deemed to be made under section 31 by a person entitled to make the application; and
    - (ii) the applicant under subsection (1), as well as any other person entitled to appear and be heard under section 31, is entitled to appear and be heard on the hearing of the application.
- (5) On any application under this section, the District Court may make such order for the payment of costs as it thinks fit.

*[Section 29A inserted by No. 58 of 1995 s.32.]*

**29B. Lodgement of documents with Registrar following partial resumption in strata scheme**

- (1) Where part of the land in a strata plan is resumed and the resumption includes part but not the whole of any lot in the scheme, the relevant authority shall, as soon as is practicable after the resumption takes effect, cause to be prepared and lodged with the Registrar of Titles a plan that complies with subsection (2).

- (2) The plan shall —
- (a) define the boundaries of the balance of the lot that remains in the scheme after the resumption and do so by reference to a floor plan; and
  - (b) comply with such requirements as may be prescribed.
- (3) Upon registration of the plan referred to in subsection (2) —
- (a) that plan shall be deemed to be part of the strata plan as previously registered; and
  - (b) the Registrar of Titles shall amend that plan in the manner prescribed.
- (4) In subsection (1) —
- “relevant authority”** in relation to a resumption of land means —
- (a) the Minister under whose hand a notice of that resumption was published under section 17(2)(b) of the *Public Works Act 1902*; or
  - (b) where under section 18 of that Act the land is vested in a local authority within the meaning in that Act, that local authority.

*[Section 29B inserted by No. 58 of 1995 s.32.]*

### **Division 2 — Termination of schemes**

*[Heading inserted by No. 61 of 1996 s.20.]*

#### **29C. Termination of scheme by resumption**

- (1) The Governor may in a resumption notice in respect of the whole of a parcel declare that a scheme for that parcel is terminated on the publication of that notice.
- (2) Where subsection (1) applies the Registrar of Titles shall register the land in the parcel in the name of the Crown or other authority in which it has vested under the resumption notice.

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(3) In this section —

**“resumption notice”** means a notice published in the *Gazette* under section 17(1) of the *Public Works Act 1902* declaring that the whole of a parcel is taken or resumed under that Act.

*[Section 29C inserted by No. 58 of 1995 s.32.]*

**30. Termination of strata scheme by unanimous resolution**

- (1) The proprietors of lots in a strata scheme may resolve by unanimous resolution that the strata scheme be terminated in accordance with this section and upon the passing of such a resolution the strata company shall immediately lodge notice of the resolution with the Registrar of Titles in the prescribed form.
- (2) Upon receipt of the notice referred to in subsection (1), the Registrar of Titles shall make an entry on the relevant registered strata plan in the manner prescribed and thereupon the proprietors of lots in that plan are entitled to the parcel as tenants in common in shares proportional to the unit entitlements of their respective lots.
- (3) Where all the proprietors of lots in a strata scheme desire to transfer the parcel or any part or parts of the parcel, they may by unanimous resolution direct the strata company to transfer the parcel or part or parts thereof, and thereupon —
  - (a) the strata company shall execute the appropriate transfer;
  - (b) the proprietors of the parcel or part of the parcel transferred are entitled to the proceeds of the sale in shares proportional to the unit entitlements of their respective lots; and
  - (c) subsections (5) to (8) of section 19 apply as if the parcel were the common property.
- (4) Upon lodgement for registration of a transfer of a parcel by the strata company pursuant to this section, the Registrar of Titles,

before issuing a certificate of title, shall make the entry required by subsection (2).

- (5) Where land is transferred by the strata company pursuant to this section —
- (a) the proprietors shall surrender to the Registrar of Titles their duplicate certificates of title (if any) for cancellation; and
  - (b) the Registrar of Titles, after cancelling the certificates of title relating to the lots, shall create and register in the transferee's name a new certificate of title for the land transferred.

*[Section 30 amended by No. 58 of 1995 s.33; No. 81 of 1996 s.153(1).]*

**30A. Termination of survey-strata scheme by unanimous resolution**

- (1) The proprietors of lots in a survey-strata scheme may resolve by unanimous resolution that the scheme be terminated in accordance with this section.
- (2) Upon the passing of such a resolution the strata company shall immediately lodge —
  - (a) notice of the resolution with the Registrar of Titles in the prescribed form; and
  - (b) except in a case where the regulations confer an exemption from the requirement of this paragraph, a certificate given by the Commission stating that it consents to the termination of the scheme.
- (3) Upon receipt of the notice referred to in subsection (2), the Registrar of Titles shall make an entry on the relevant registered survey-strata plan and, where applicable, on the relevant certificates of title in the manner prescribed.

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- (4) Where an entry has been made on the plan under subsection (3), the common property in the survey-strata scheme may be transferred by the strata company on the authority of a unanimous resolution of the proprietors of all of the lots in the scheme.
- (5) On the transfer of common property as mentioned in subsection (4) —
  - (a) the proprietors are entitled to the proceeds of the sale of the common property in shares proportional to the unit entitlements of their respective lots; and
  - (b) subsections (6) and (7) of section 19 apply.

*[Section 30A inserted by No. 58 of 1995 s.34.]*

**31. Termination of scheme by order of District Court**

- (1) The District Court may, on an application by the strata company or by a proprietor or a registered mortgagee of a lot within a scheme, make an order terminating the scheme.
- (2) An insurer who has effected insurance on the building (other than a building on a lot in a survey-strata scheme), or any part of the building, against damage to or destruction of the building has the right to appear, in person or by counsel, on an application to the District Court under this section.
- (3) An order made under this section shall include directions for or with respect to the following matters —
  - (a) the sale or disposition of any property of the strata company;
  - (b) the discharge of the liabilities of the strata company;
  - (c) the persons liable to contribute moneys required for the discharge of the liabilities of the strata company and the proportionate liability of each such person;
  - (d) the distribution of the assets of the strata company and the proportionate entitlement of each person under that distribution;



- (e) the administration, powers, authorities, duties and functions of the strata company;
  - (f) the voting power at meetings of the strata company of persons referred to in paragraph (c) or (d);
  - (g) any matter in respect of which it is, in the opinion of the District Court, just and equitable, in the circumstances of the case, to make provision in the order; and
  - (h) the winding up of the strata company (including the appointment, powers, authorities, duties and functions of any person to carry out the winding up).
- (4) An order made under this section may include a direction that money received by the strata company from an insurer of the building shall be paid directly to a mortgagee of a lot.
- (5) The District Court may from time to time amend any order made under this section.
- (6) Where the District Court is of the opinion that an order should not be made under this section —
- (a) it may, upon application made by any person entitled to appear and be heard on the hearing of the application made under subsection (1) or of its own motion, direct that the application be treated as an application for an order under section 28; and
  - (b) where it makes such a direction —
    - (i) the application the subject of the direction shall be deemed to be an application made under section 28 by a person entitled to make the application; and
    - (ii) the applicant under subsection (1), as well as any other person entitled to appear and be heard under section 28, is entitled to appear and be heard on the hearing of the application.
- (7) On any application under this section, the District Court may make such order for the payment of costs as it thinks fit.

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**Part III** Variation, termination and conversion of schemes

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**s. 31A**

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- (8) Upon the making of an order under this section terminating a scheme, the strata company shall immediately lodge a copy of the order with the Registrar of Titles.
- (9) Upon receipt of the copy of the order terminating a scheme, the Registrar of Titles shall make an entry on the relevant registered strata/survey-strata plan and, where applicable, on the relevant certificates of title in the manner prescribed.
- (10) On the making of an entry under subsection (9) —
- (a) in the case of a strata scheme, subsections (2) to (5) of section 30 apply; and
  - (b) in the case of common property in a survey-strata scheme, subsections (4) and (5) of section 30A apply,
- as if the scheme had been terminated by unanimous resolution under section 30(1) or 30A(1) as the case may require.

*[Section 31 amended by No. 58 of 1995 ss.35, 93<sup>11</sup> and 96.]*

**Division 3 — Conversion of strata schemes to survey-strata schemes**

*[Heading inserted by No. 61 of 1996 s.21.]*

**31A. Division only applies to single tier strata schemes registered before 1 January 1998**

This Division —

- (a) applies only to a single tier strata scheme; and
- (b) does not apply to such a scheme the strata plan for which is registered on or after 1 January 1998.

*[Section 31A inserted by No. 61 of 1996 s.21.]*

**31B. Saving**

Nothing in this Division prevents or limits the termination of a strata scheme in respect of any land under Division 2 and the

subsequent registration of a survey-strata plan relating to the land under Part II.

*[Section 31B inserted by No. 61 of 1996 s.21.]*

**31C. Resolution by strata company**

- (1) A strata company for a strata scheme may by unanimous resolution in the prescribed form resolve that the scheme be converted to a survey-strata scheme.
- (2) The resolution is to specify any easement that is to be created in terms of section 31G.
- (3) A resolution cannot be passed under subsection (1) that would, on registration under section 31I of a notice of resolution, increase the number of lots in the scheme.
- (4) Subsection (3) does not apply if the number of lots is increased solely for the purpose of creating any lot that is to be designated as common property.

*[Section 31C inserted by No. 61 of 1996 s.21.]*

**31D. Notice of resolution may be lodged for registration**

- (1) Where a strata company has passed a resolution under section 31C it may, in accordance with the regulations, lodge with the Registrar of Titles a notice of resolution in the prescribed form.
- (2) The notice may be lodged in any case by the strata company or alternatively, in the case of a strata scheme in which there are not more than 5 lots, by all of the proprietors of lots in the scheme.
- (3) The notice of resolution —
  - (a) if it is lodged by the strata company, is to be signed under its seal; or
  - (b) if it is lodged by the proprietors, is to be signed by each proprietor.

*[Section 31D inserted by No. 61 of 1996 s.21.]*

**31E. Documents to accompany notice**

- (1) The notice of resolution is to be accompanied by —
  - (a) a survey-strata plan in respect of the parcel —
    - (i) showing in the prescribed manner —
      - (I) the boundaries of the lots and common property; and
      - (II) the location of any easement that is to be created under section 5D as read with section 31G,  
by dimensions and survey information obtained from a survey of the parcel;
    - (ii) bearing a statement containing such particulars as may be necessary to identify the title to the parcel;
    - (iii) showing the area of each lot and of any common property;
    - (iv) having endorsed on it —
      - (I) the name of the scheme; and
      - (II) the address of the parcel;and
    - (v) containing such other features as may be prescribed for the purposes of section 5A(g);
  - (b) a certificate given by a licensed surveyor in accordance with section 31F;
  - (c) a schedule specifying, in a whole number —
    - (i) the proposed unit entitlement in respect of each lot; and
    - (ii) the aggregate unit entitlement;
  - (d) a certificate, in the prescribed form, given by a licensed valuer in accordance with section 14(2); and

- (e) a certificate given by every person, other than a proprietor, who —
  - (i) has a registered interest in; or
  - (ii) is a caveator in respect of,a lot certifying his consent to the proposed schedule of unit entitlement.
- (2) If the duplicate certificate of title issued for a lot is produced by a registered mortgagee of the lot for the registration of a notice of resolution under section 31I, a certificate of that mortgagee is not required for the purposes of subsection (1)(e).

*[Section 31E inserted by No. 61 of 1996 s.21.]*

**31F. Certificate of licensed surveyor**

- (1) The certificate of a licensed surveyor referred to in section 31E(1)(b) is to comply with —
  - (a) this section; and
  - (b) any requirement made by the regulations for the purposes of this section.
- (2) The surveyor is to certify —
  - (a) as to each of the matters required to be certified in a certificate under section 22(2);
  - (b) that there are not more lots on the survey-strata plan, disregarding any lot designated as a common property lot, than there are on the existing strata plan;
  - (c) that a reference on the survey-strata plan to a lot by a designated number is a reference to the lot designated by that number on the existing strata plan;
  - (d) that where 2 lots have a common or party wall, the centre plane of that wall is on the boundary of the lots; and
  - (e) in accordance with subsection (4), that the rights and amenities required to be provided for by the relevant

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town planning scheme in force under the *Town Planning and Development Act 1928* —

- (i) are provided for in accordance with that scheme at the time when the certificate is given; or
  - (ii) will be provided for when the notice of resolution and the documents referred to in section 31H are registered.
- (3) The regulations may prescribe matters —
- (a) as to which the surveyor is to certify under subsection (2)(e); or
  - (b) which are to be specifically dealt with in the certificate.
- (4) A certification under subsection (2)(e) is to relate to matters prescribed for the purposes of subsection (3)(a) and not to other matters arising under the relevant town planning scheme.

*[Section 31F inserted by No. 61 of 1996 s.21.]*

**31G. Creation of easements**

- (1) The plan referred to in section 31E(1)(a) may provide for easements to be created under section 5D, and any easement so provided for is created on the registration of the notice of resolution.
- (2) Section 5F also applies to the discharge or variation of an easement that is created under subsection (1).

*[Section 31G inserted by No. 61 of 1996 s.21.]*

**31H. Transfers etc. to give effect to resolution**

- (1) Subject to subsection (2), every transfer or other document that is necessary to give effect to a notice of resolution is to be lodged for registration together with the notice.

- (2) The regulations may provide for the registration of an instrument (“**a disposition statement**”) —
- (a) by which various interests in land affected by the notice of resolution are disposed of or vested;
  - (b) by which encumbrances are attached to or discharged from any interest; and
  - (c) in which any certificate required by section 31E(1)(e) is set out,

and subsection (1) does not apply if a disposition statement is lodged for registration with the notice of resolution.

- (3) The regulations may provide for a disposition statement to include a certificate that there is no consideration, other than an interest in common property, for —
- (a) the passing of property under the statement; or
  - (b) any other thing referred to in item 2(18) or 7(13) in the Third Schedule to the *Stamp Act 1921*.

*[Section 31H inserted by No. 61 of 1996 s.21.]*

**31I. Registration of notice of resolution**

The Registrar of Titles is to register a notice of resolution if the requirements of this Division are satisfied.

*[Section 31I inserted by No. 61 of 1996 s.21.]*

**31J. Effect of registration**

- (1) On registration of a notice of resolution the scheme to which it relates ceases to be a strata scheme and becomes registered as a survey-strata scheme under this Act.
- (2) In addition to —
- (a) the operation of any transfer, document or disposition statement referred to in section 31H; and
  - (b) the creation of any easement under section 5D as read with section 31G,

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the registration of a notice of resolution also has the effects described in subsections (3), (4), (5), (6) and (7).

- (3) Where any area of land —
- (a) on registration of a notice of resolution becomes part of a lot; and
  - (b) was before that registration subject to —
    - (i) any right or privilege granted under by-law 3(f) contained in Part I of the Schedule to the *Strata Titles Act 1966*<sup>12</sup>; or
    - (ii) a by-law referred to in section 42(8),
- on registration of the notice of resolution the right or privilege or the by-law ceases to be applicable to the area.
- (4) On registration of the notice of resolution each lot is subject to —
- (a) any encumbrance that was registered; or
  - (b) caveat that was lodged,
- with the Registrar of Titles against the lot before the registration of the notice of resolution.
- (5) Each lot or part of a lot that becomes common property on registration of the notice of resolution vests in the proprietors to be held by them as tenants in common in shares proportional to the unit entitlements of their respective lots.
- (6) The share of a proprietor so vested is subject to any encumbrance registered or caveat lodged with the Registrar of Titles against his lot.
- (7) Any encumbrance or caveat referred to in this section is to be taken to be amended to give effect to that section.

*[Section 31J inserted by No. 61 of 1996 s.21.]*



**31K. Registrar of Titles to make necessary amendments**

- (1) The Registrar of Titles is to amend —
  - (a) the strata plan in the prescribed manner to give effect to sections 31G, 31H and 31J; and
  - (b) the original certificates of title in respect of the lots.
- (2) The Registrar of Titles may amend the duplicate certificates of title when they are lodged in the Office of Titles for the purpose of a dealing.

*[Section 31K inserted by No. 61 of 1996 s.21.]*

## **Part IV — Management**

### **Division 1 — Strata companies**

#### **32. Incorporation of proprietors**

- (1) Upon the registration of a strata/survey-strata plan, the proprietors from time to time shall constitute a strata company by the name of “The Owners of [the name of the scheme]” and the number of the strata/survey-strata plan allocated to it by the Registrar of Titles.
- (2) A strata company created under subsection (1) is a body corporate with perpetual succession and a common seal.
- (2a) For the purposes of subsection (1) the name of the scheme shall be that stated on the strata plan under section 5(1)(d), or on the survey-strata plan under section 5A(1)(e).
- (2b) In the case of a strata plan registered before the commencement of section 36 of the *Strata Titles Amendment Act 1995* the name of the building endorsed on the plan, or recorded under section 41(2), shall be deemed to be the name of the scheme for the purposes of subsection (1).
- (3) A strata company —
  - (a) is capable of suing and being sued;
  - (b) shall be regulated in accordance with this Act and the by-laws in force in respect of that strata company;
  - (c) is not subject to the *Companies (Western Australia) Code*<sup>3</sup>; and
  - (d) may do and suffer all things that bodies corporate generally may, by law, do and suffer and that are necessary for or incidental to the purposes for which a strata company is constituted.

*[Section 32 amended by No. 58 of 1995 s.36.]*

**33. Strata company is representative of proprietors in proceedings**

- (1) Where the proprietors of the lots the subject of a scheme are jointly entitled to take proceedings against any person or are liable to have proceedings taken against them jointly (any such proceedings being proceedings for or with respect to common property), the proceedings may be taken by or against the strata company and any judgment or order given or made in favour of or against the strata company in any such proceedings shall have effect as if it were a judgment or order given or made in favour of or against the proprietors.
- (2) Where a proprietor is liable to make a contribution to another proprietor in respect of a judgment debt arising under a judgment referred to in subsection (1), the amount of that contribution shall bear to the judgment debt the same proportion as the unit entitlement of the lot of the first-mentioned proprietor bears to the aggregate unit entitlement.

*[Section 33 amended by No. 58 of 1995 s.96.]*

**34. Contract formalities**

- (1) In so far as the formalities of making, varying or discharging a contract are concerned, a person acting under the express or implied authority of a strata company may make, vary or discharge a contract in the name of or on behalf of the strata company in the same manner as if that contract were made, varied or discharged by a natural person.
- (2) The making, variation or discharge of a contract in accordance with subsection (1) is effectual in law and binds the strata company and other parties to the contract.
- (3) This section does not affect the operation of a law that requires some consent or sanction to be obtained, or some procedure to be complied with, in relation to the making, variation or discharge of a contract.

**35. Duties of strata companies**

- (1) A strata company shall —
- (a) enforce the by-laws;
  - (b) control and manage the common property for the benefit of all the proprietors;
  - (c) keep in good and serviceable repair, properly maintain and, where necessary, renew and replace —
    - (i) the common property, including the fittings, fixtures and lifts used in connection with the common property; and
    - (ii) any personal property vested in the strata company, and to do so whether damage or deterioration arises from fair wear and tear, inherent defect or any other cause;
  - [(d) *deleted*]
  - (e) cause to be recorded in a loose-leaf or bound book particulars of the purport of notices served on the strata company under this or any other Act, orders under Part VI served on the strata company and orders made by a court and served on the strata company and, in relation to each such notice or order —
    - (i) the date on which it was served and the manner of service;
    - (ii) the part of the parcel to which it relates;
    - (iii) the date by which compliance therewith is required; and
    - (iv) the date on which it is complied with;
  - (f) cause to be kept minutes of its meetings, which shall include particulars of motions passed at those meetings, and proper books of account in respect of moneys received or expended by the strata company showing the items in respect of which the moneys were received or expended;

- (g) cause to be prepared from the books of account referred to in paragraph (f), a proper statement of accounts of the strata company in respect of each period commencing on the date of registration of the strata/survey-strata plan or the date up to which the last previous such statement was prepared and ending on a date not earlier than 2 months before each annual general meeting;
- (h) cause to be retained for the prescribed period —
  - (i) the records kept under, and the notices and orders referred to in, paragraph (e);
  - (ii) the minutes and books of account referred to in paragraph (f);
  - (iii) the statements of account referred to in paragraph (g);
  - (iv) copies of correspondence received and sent by the strata company;
  - (v) notices of meetings of the strata company and its council;
  - (vi) proxies delivered to the strata company;
  - (vii) voting papers relating to motions for resolutions by the strata company and to the election of office holders and the council;
  - (viii) records of unanimous and special resolutions passed by proprietors; and
  - (ix) such other documents as may be prescribed;
- (i) cause to be continuously available and suitably placed on the parcel a receptacle suitable for purposes of postal delivery with the name of the strata company clearly shown on it;
- (j) effect insurance in accordance with Division 4; and
- (k) comply with notices and orders of any competent public authority or local government requiring repairs to or

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work to be done in respect of the parcel or building, or anything in, on or over it.

- (2) A strata company that contravenes subsection (1)(e) or (f) commits an offence and is liable to a fine not exceeding \$400.

*[Section 35 amended by No. 58 of 1995 ss.37, 94 and 95; No. 14 of 1996 s.4.]*

**35A. Roll to be kept by strata company**

- (1) A strata company shall prepare and maintain a roll containing the particulars required by subsection (4).

Penalty: \$400.

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

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

- (a) the information in documents registered under this Act; or
- (b) subject to subsection (5), information provided by, or on behalf of, a proprietor or a mortgagee of a lot.

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

- (a) the plan number allocated by the Registrar of Titles under section 5B(4);
- (b) the name and address of each proprietor;
- (c) the address for service of any proprietor or mortgagee of a lot who has notified an address for service to the strata company;
- (d) the name and address of any agent of the strata company employed by it to carry out duties of the strata company in relation to the scheme;
- (e) the name of any lessee or tenant of a lot notified to the strata company; and
- (f) the name and address of any mortgagee of a lot notified to the strata company under section 50(7).

- (5) A strata company shall not amend the roll —
- (a) to reflect the discharge of a mortgage except on the basis of —
    - (i) information provided by, or on behalf of, the mortgagee; or
    - (ii) the production of a duplicate or a certified copy of a certificate of title showing the mortgage as having been discharged;
  - or
  - (b) to show a change of address of a mortgagee except on the basis of information provided by, or on behalf of, the mortgagee.

*[Section 35A inserted by No. 58 of 1995 s.38<sup>4</sup>.]*

**36. Levy of contributions on proprietors**

- (1) A strata company shall —
- (a) establish a fund for administrative expenses that is sufficient in the opinion of the company for the control and management of the common property, for the payment of any premiums of insurance and the discharge of any other obligation of the strata company;
  - (b) determine from time to time the amounts to be raised for the purposes described in paragraph (a);
  - (c) raise amounts so determined by levying contributions on proprietors —
    - (i) in proportion to the unit entitlements of their respective lots; or
    - (ii) where a by-law referred to in section 42B or an order under section 99A is in force, in accordance with that by-law or order;
  - and
  - (d) recover from any proprietor, by action in a court of competent jurisdiction if necessary, any sum of money

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expended by the company for repairs or work done by it or at its direction in complying with any notice or order of a competent public authority or local government in respect of that portion of the building comprising the lot of that proprietor.

- (1a) If a mortgagee of a lot has entered into possession of the lot any contribution in respect of that lot may be levied on the mortgagee.
- (2) A strata company may —
- (a) establish a reserve fund for the purpose of accumulating funds to meet contingent expenses, other than those of a routine nature, and other major expenses of the strata company likely to arise in the future;
  - (b) determine from time to time the amounts to be raised for the purpose described in paragraph (a); and
  - (c) raise amounts so determined by levying contributions on the proprietors in proportion to the unit entitlements of their respective lots.
- (3) Except in so far as and to the extent that the by-laws of a strata company may empower the council of that company to exercise the functions in subsections (1)(a), (b) and (c) and (2), those functions shall be performed by and in accordance with resolutions of proprietors passed at a general meeting of the strata company.
- (4) Any contribution levied under this section —
- (a) becomes due and payable to the strata company in accordance with the terms of the decision to make the levy;
  - (b) if not paid when it becomes due and payable, bears interest on the amount unpaid at the rate of simple interest prescribed, unless the company determines (either generally or in a particular case) that an unpaid contribution shall bear no interest or interest at a lesser rate; and
  - (c) including interest accrued under paragraph (b), may be recovered as a debt by the strata company in a court of



competent jurisdiction and the strata company may agree to a compromise of such a debt.

- (5) Interest paid or recovered under subsection (4) or (6) shall form part of the fund to which the contribution belongs.
- (6) Subject to section 43(4), a proprietor of a lot is liable in respect of any contribution levied under this section and any interest thereon, jointly and severally with any person who was liable to pay that contribution and interest when that proprietor became the proprietor of that lot, to pay so much of that contribution and interest as was unpaid when he became the proprietor of that lot.

*[Section 36 amended by No. 58 of 1995 s.39; No. 14 of 1996 s.4.]*

**36A. Certain provisions do not apply to companies for two-lot schemes**

- (1) Despite sections 35, 35A and 36, the provisions of this Act —
  - (a) specified in the table to this subsection; or
  - (b) prescribed by the regulations,

do not apply to a strata company for a two-lot scheme.

**Table**

section	relating to
35(1)(f)	minutes of meetings, books of account
35(1)(g)	statements of account
35(1)(i)	receptacle for postal delivery
35A(1)	roll of proprietors etc.
36(1)(a)	fund for administrative purposes.

- (2) Nothing in subsection (1) prevents a strata company for a two-lot scheme doing anything described in a provision referred to in the table to that subsection.
- (3) Despite subsection (2), a strata company for a two-lot scheme cannot establish a fund for administrative purposes, as mentioned in section 36(1)(a), except pursuant to a by-law made by it.

**s. 36B**

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- (4) The operation of this section is subject to any order for the time being in force under section 103A.

*[Section 36A inserted by No. 58 of 1995 s.40.]*

**36B. Certain provisions may be excluded for 3, 4 or 5 lot schemes**

- (1) Despite sections 35, 35A and 36, any provision of this Act —
- (a) specified in the table to this subsection; or
  - (b) prescribed by the regulations,

does not apply to a strata company for a scheme in which there are 3, 4 or 5 lots if the company has, by resolution without dissent, made a by-law to that effect and that by-law has effect under section 42(4).

**Table**

section	relating to
35(1)(f)	minutes of meetings, books of account
35(1)(g)	statements of account
35(1)(i)	receptacle for postal delivery
35A(1)	roll of proprietors etc.
36(1)(a)	fund for administrative purposes.

- (2) In subsection (1) “**lot**” does not include a lot in a survey-strata scheme that is designated as a common property lot.

*[Section 36B inserted by No. 58 of 1995 s.40.]*

**37. Powers of strata company**

- (1) A strata company may —
- (a) purchase, hire or otherwise acquire personal property for use by proprietors in connection with their enjoyment of the common property or for use by the strata company in the performance of its functions;
  - (b) sell or otherwise dispose of personal property owned by it;

- (c) borrow moneys required by it in the performance of its functions;
  - (d) secure the repayment of moneys borrowed by it, and the payment of interest thereon, by negotiable instrument, or mortgage of unpaid contributions (whether imposed or not), or mortgage of any property vested in it, or by a combination of those means;
  - (e) invest any moneys in its administrative fund or reserve fund in any manner permitted by law for the investment of trust funds or in any investment prescribed;
  - (f) where the strata company considers it necessary, effect a compromise of any action for the recovery of money due to the strata company;
  - (g) make an agreement with any proprietor or occupier of a lot for the provision of amenities or services by it to that lot or to the proprietor or occupier of that lot; and
  - (h) accept or acquire a lease, licence or permit for the purpose of providing moorings or landings for vessels.
- (2) Any interest received on an investment made under subsection (1) shall form part of the fund to which the investment belongs.

**38. Power of strata company to carry out work**

- (1) Where a notice has been served on the proprietor of a lot by a public authority or local government requiring that proprietor to carry out any work on or in relation to that lot and the notice is not complied with, the strata company may carry out the work.
- (2) Where a proprietor, mortgagee in possession, or occupier of a lot fails or neglects to carry out any work —
  - (a) required to be carried out by him under a term or condition of a by-law referred to in section 42(8); or
  - (b) necessary to remedy a breach of the duty imposed on him by section 11(2),

the strata company may carry out that work.

- (3) Where a proprietor, mortgagee in possession, or occupier of a lot fails or neglects to carry out any work on or in relation to that lot required to be carried out by order of a court, tribunal or a referee, the strata company may carry out the work specified in the order.
- (4) Where the strata company carries out any work on or in relation to a lot or common property pursuant to subsection (1), other than work performed for the benefit of the building generally, or (2), it may, subject to section 43(4), recover the cost of so doing, as a debt in a court of competent jurisdiction —
  - (a) from the proprietor, mortgagee in possession, or occupier referred to in subsection (1) or (2); or
  - (b) where the work is carried out pursuant to —
    - (i) subsection (1) or (2)(b), from any person who, after the work is carried out, becomes the proprietor of the lot on or in relation to which the work was carried out; or
    - (ii) subsection (2)(a), from any person who, after the work is carried out, becomes the proprietor of the lot in respect of which the by-law referred to in subsection (2)(a) was made.
- (5) Where an order has been made to which subsection (3) refers and the order is not complied with, the strata company may recover from the person against whom the order was made the cost of carrying out the work, as a debt in a court of competent jurisdiction.
- (6) Where —
  - (a) any part of a building comprised in a lot contains a structural defect which affects or is likely to affect the support or shelter provided by that lot for another lot in that building or the common property; or
  - (b) a defect occurs in any pipes, wires, cables or ducts referred to in section 11(2)(b) within a lot,

and the defect is not due to any breach of the duty imposed on any person by section 11(2), the strata company may, at its own expense, carry out such work as is necessary to rectify the defect.

*[Section 38 amended by No. 14 of 1996 s.4.]*

**39. Power of strata company to enter**

- (1) For the purpose of carrying out —
- (a) any work pursuant to section 38(1), (2), (3) or (6);
  - (b) any work required to be carried out by a strata company by a notice or order of a public authority or local government;
  - (c) any work referred to in section 35(1)(c) or (d);
  - (d) any work necessary to repair or renew any pipes, wires, cables or ducts referred to in section 11(2)(b); or
  - (e) any work required to be carried out by the strata company by order of a court, tribunal or referee,
- the strata company may, by its agents, servants or contractors, enter upon any part of the parcel for the purpose of carrying out the work —
- (f) in the case of an emergency, at any time; or
  - (g) in any other case, at any reasonable time on notice given to an occupier of that part of the parcel.
- (2) The strata company may, by its agents, enter upon any part of the parcel for the purpose of —
- (a) inspecting that part of the parcel; or
  - (b) ensuring that the by-laws are being observed,
- and may do so in the case of an emergency at any time or, in any other case, at any reasonable time on notice given to an occupier of that part of the parcel.

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- (3) A person shall not obstruct or hinder a strata company in the exercise of its power under subsection (1) or (2).

Penalty: \$400.

*[Section 39 amended by No. 58 of 1995 s.94; No. 14 of 1996 s.4.]*

**39A. Power to terminate certain contracts for services**

- (1) There is implied in every agreement to which this section applies a provision that the strata company may terminate the agreement, by notice in writing to every other party to the agreement, after 5 years have passed since the agreement was entered into.
- (2) No cause of action against any person arises from the exercise of the power referred to in subsection (1).
- (3) An agreement shall not exclude the operation of subsection (1) and to the extent that it purports to do so it is of no effect.
- (4) This section applies to an agreement if —
- (a) it relates to the provision of services to the strata company or the proprietors, including the services of an agent in connection with the management of the common property or the performance of the functions of the strata company;
  - (b) it is made after the commencement of section 41 of the *Strata Titles Amendment Act 1995*; and
  - (c) either —
    - (i) it was entered into by the strata company when any proprietor held 50% or more of the aggregate unit entitlement of the lots; or
    - (ii) the referee has, by order made on the application of a proprietor, determined that the agreement is unfair to the proprietors of 25% or more of the aggregate unit entitlement of the lots.

- (5) The referee may, on the application of any person made in respect of an agreement, by order extend the period of 5 years provided for by subsection (1), so far as it applies to that agreement, if he is satisfied that the agreement —
  - (a) is fair to all proprietors; and
  - (b) will remain fair to all proprietors during the extended period.
- (6) An extended period under subsection (5) is not to exceed the term specified in the agreement or a period of 10 years from the time when the agreement was entered into, whichever is the lesser.
- (7) The provisions of Part VI apply to an application made to a referee under subsection (4)(c)(ii) or (5) and to an order made by the referee in the same way as they apply to an application and an order made under that Part.

*[Section 39A inserted by No. 58 of 1995 s.41.]*

**40. Change of strata company's address for service**

- (1) A strata company may, in general meeting, resolve that the address registered by the Registrar of Titles for the service of notices on the strata company, shall be changed.
- (2) Where —
  - (a) a strata company has under subsection (1) resolved that the address for the service of notices on it shall be changed;
  - (b) notice in the prescribed form of the change of address has been lodged in the office of the Registrar of Titles; and
  - (c) the Registrar of Titles has made such record with respect to the change of address as he considers appropriate,

the address for service of notices on the strata company shall, notwithstanding any other provision of this Act, be the address so recorded.

**41. Change of name of strata company**

- (1) A strata company may by special resolution and with the approval of the Registrar of Titles resolve that the name of the scheme and, in consequence, the name of the strata company shall be changed.
- (2) Where —
- (a) a strata company has under subsection (1) resolved to change its name;
  - (b) notice in the prescribed form of the change of name has been lodged in the office of the Registrar of Titles; and
  - (c) the Registrar of Titles has recorded the change of name on the strata/survey-strata plan,

the name of the strata company shall, notwithstanding any other provision of this Act, be the name so recorded.

- (3) A change of name of a strata company under this section does not operate —
- (a) to create a new legal entity;
  - (b) to prejudice or affect the identity of the body corporate constituted by the strata company or its continuity as a body corporate;
  - (c) to affect the property, or the rights or obligations, of the strata company; or
  - (d) to render defective any legal proceedings by or against the strata company,

and any legal proceedings that could have been continued or commenced by or against the strata company by its former name may be continued or commenced by or against it by its new name.

*[Section 41 amended by No. 58 of 1995 ss.42 and 95.]*



**42. By-laws**

- (1) A strata company may make by-laws, not inconsistent with this Act, for —
  - (a) its corporate affairs;
  - (b) any matter specified in Schedule 2A; and
  - (c) other matters relating to the management, control, use and enjoyment of the lots and any common property.
- (2) The provisions set out in Schedules 1 and 2 shall be deemed to be by-laws of the strata company and may be amended, repealed or added to by the strata company —
  - (a) by resolution without dissent, in the case of Schedule 1 by-laws;
  - (b) in accordance with any order of a court or a referee or any written law; or
  - (c) in any other case, by special resolution.
- (2a) Each by-law that is additional to the by-laws in Schedules 1 and 2 or any amendment to a Schedule 1 or Schedule 2 by-law shall be classified in the by-laws as —
  - (a) a Schedule 1 by-law; or
  - (b) a Schedule 2 by-law.
- (2b) A by-law of the kind described in items 4, 6 and 8 in Schedule 2A is classified as a Schedule 1 by-law and may only be made, amended or repealed by resolution without dissent of the strata company; but if such a by-law is included in a management statement under section 5C lodged with a strata/survey-strata plan it shall be deemed to be made in accordance with this subsection.
- (2c) Despite subsection (2) but without affecting section 49, by-law 11(1) in Part I of Schedule 1 is not a by-law of a strata company for a two-lot scheme unless the strata company makes such a by-law.

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- (2d) A by-law made by a strata company at the request of a public authority or a local government may be expressed to require the consent of that authority or local government to an amendment or repeal of the by-law, and any such restriction has effect according to its tenor.
- (3) No by-law, amendment or repeal of a by-law is capable of operating so as to prohibit or restrict the devolution of lots or any transfer, lease, mortgage or other dealing therewith or to destroy or modify any easement implied or created by this Act.
- (4) No amendment or repeal of a by-law or additional by-law has effect until —
- (a) the strata company has, not later than 3 months after the passing of the resolution for the amendment, repeal or additional by-law, lodged a notice of the amendment, repeal or additional by-law in the prescribed form with the Registrar of Titles, including in the case of a by-law made under subsection (8) a description of the area affected; and
  - (b) the Registrar of Titles has made a reference to the amendment, repeal or additional by-law on the appropriate registered strata/survey-strata plan.
- (4a) If a notice under subsection (4)(a) applies to the amendment or addition of a by-law of the kind described in item 8 of Schedule 2A it must be accompanied by —
- (a) a certificate given by every person who —
    - (i) has a registered interest in any lot proposed to be affected; or
    - (ii) is a caveator in respect of any such lot, certifying his consent to the proposed re-subdivision; and
  - (b) a certificate given by every person who has a registered interest in any lot the unit entitlement of which is proposed to be affected certifying his consent to the proposed allocation of unit entitlement set out in the application.

- (5) A lease of a lot or common property shall be deemed to contain an agreement by the lessee that he will comply with the by-laws in force.
- (6) Without limiting the operation of any other provision of this Act, the by-laws for the time being in force bind the strata company and the proprietors and any mortgagee in possession (whether by himself or any other person) or occupier or other resident of a lot to the same extent as if the by-laws had been signed and sealed by the strata company and each proprietor and each such mortgagee, occupier or other resident respectively and as if they contained mutual covenants to observe and perform all the provisions of the by-laws.
- (7) A proprietor or mortgagee in possession of a lot shall take all steps that are reasonable in the circumstances to ensure that every occupier or other resident of that lot complies with the by-laws for the time being in force.  
Penalty: \$400.
- (8) Without limiting the generality of any other provision of this section other than subsection (1), a strata company may, with the consent in writing of the proprietor of a lot, pursuant to a resolution without dissent (or unanimous resolution, in the case of a two-lot scheme) make, under this subsection only and not otherwise, a by-law in respect of that lot conferring on that proprietor the exclusive use and enjoyment of, or special privileges in respect of, the common property or any part of it upon such terms and conditions (including the proper maintaining and keeping in a state of good and serviceable repair of the common property or that part of the common property, as the case may be, and the payment of money by that proprietor to the strata company) as may be specified in the by-law and may, pursuant to a resolution without dissent (or unanimous resolution, in the case of a two-lot scheme), make a by-law amending or repealing any by-law made under this subsection.

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- (9) After the expiration of the period of 2 years that next succeeds the making, or purported making, of a by-law referred to in subsection (8) (including a by-law so referred to that amends, adds to or repeals another by-law), it shall be conclusively presumed that all conditions and preliminary steps precedent to the making of the by-law have been complied with and performed.
- (10) Any by-law referred to in subsection (8) shall, while it remains in force, enure as appurtenant to, and for the benefit of, the lot in respect of which it was made and the proprietor, occupier and (subject to the terms of the by-law) any other resident thereof for the time being.
- (11) The proprietor for the time being of a lot in respect of which a by-law referred to in subsection (8) is in force —
- (a) is, subject to section 43(4), liable to pay to the strata company any moneys referred to in the by-law in accordance with the by-law; and
  - (b) is, unless excused by the by-law, responsible for the performance of the duty of the strata company under section 35(1)(c) in respect of the common property, or the part of the common property, to which the by-law relates.
- (12) Where a person becomes proprietor of a lot at a time when, pursuant to subsection (11)(a) or this subsection, another person is liable to pay money to the strata company, the person who so becomes proprietor is, subject to section 43(4), jointly and severally liable with the other person to pay the money to the strata company.
- (13) Any moneys payable by a proprietor to the strata company under a by-law referred to in subsection (8) or pursuant to subsection (12) may be recovered, as a debt, by the strata company in a court of competent jurisdiction.
- (14) Notwithstanding subsection (2), in the case of a scheme in which none of the lots is used or intended to be used for

residential purposes, the strata company may, by special resolution, amend by-laws contained in Part I of Schedule 1 for the purpose of making special provision that in an election of the members of the council of the strata company the voting rights of the proprietors shall be proportionate to the unit entitlements of their respective lots; and any such special provisions may be further amended or repealed by special resolution of the strata company.

- (15) To the extent to which a by-law purports to prohibit or restrict —
- (a) the keeping on a lot of a dog used as a guide by a completely or partially blind proprietor, occupier or other resident of a lot; or
  - (b) the use of a dog as a guide on a lot or common property by a completely or partially blind person,

the by-law has no force or effect.

*[Section 42 amended by No. 58 of 1995 ss.43<sup>5</sup>, 92, 94, 95 and 96; No. 57 of 1997 s.115(2).]*

**42A. By-laws may provide for penalties**

- (1) By-laws made by a strata company under section 42 may provide for penalties, not exceeding the prescribed amount, for a breach of any specified provision of the by-laws.
- (2) A penalty cannot be imposed under a by-law except by order of the referee under section 103I.

*[Section 42A inserted by No. 58 of 1995 s.44.]*

**42B. By-laws may provide for different basis for levying contributions**

- (1) By-laws made by a strata company under section 42 may provide for a method of assessing contributions to be levied on proprietors under section 36 otherwise than in proportion to the unit entitlement of their respective lots.

- (2) Such a by-law may relate to contributions to all of the expenses of the strata company or to one or more particular kinds of expenses.

*[Section 42B inserted by No. 58 of 1995 s.44.]*

**42C. Transitional provision**

- (1) Subject to Schedule 4, section 42(2), as inserted by section 43(1) of the *Strata Titles Amendment Act 1995* applies also to strata companies for which a strata plan was registered after the commencement of this Act but before the commencement of section 43(1) referred to.

- (2) Schedule 4 has effect to make transitional provisions for the purposes of subsection (1).

*[Section 42C inserted by No. 58 of 1995 s.44.]*

**43. Supply of information and certificates by strata company**

- (1) Upon application made in writing to a strata company by a proprietor or mortgagee of a lot, or by a person authorized in writing by such a proprietor or mortgagee, and on payment of the prescribed fee (if any), the strata company shall do such one or more of the following things as are required of it in the application —

- (a) inform the applicant of the name and address of each person who is the chairman, secretary or treasurer of the strata company or a member of the council;
- (b) make available for inspection by the applicant or his agent and for the exercise of the rights conferred by subsection (5) —
  - (i) a copy of the schedule of unit entitlement as recorded on the strata/survey-strata plan;
  - (ia) the roll maintained under section 35A;
  - (ii) the notices and orders referred to in and the records kept under section 35(1)(e);

- (iii) the plans, specifications, drawings, certificates, diagrams and other documents delivered under section 49(3);
  - (iv) the minutes of general meetings of the strata company and meetings of the council;
  - (v) the record of unanimous resolutions, resolutions without dissent and special resolutions passed by the proprietors;
  - (vi) the books of account of the strata company;
  - (vii) a copy of the statement of accounts of the strata company last prepared by the strata company in accordance with section 35(1)(g);
  - (viii) every current policy of insurance effected by the strata company and the receipt for the premium last paid in respect of each such policy;
  - (ix) any other record or document in the custody or under the control of the strata company; and
  - (x) the by-laws for the time being in force;
- at such time and place as may be agreed upon by the applicant or his agent and the strata company and, failing agreement, at the parcel at a time and on a date fixed by the strata company under subsection (2);
- (c) certify, as at the date of the certificate, in respect of the lot in respect of which the application is made —
    - (i) the amount of any regular periodic contributions determined by the strata company under section 36 and the periods in respect of which those contributions are payable;
    - (ii) whether there is any amount of any contribution determined under section 36 due and payable and, if so, the amount due and payable and, in the case of a contribution levied under section 36(2), the date on which any such contribution was levied;

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- (iii) whether there is any amount due and payable by a proprietor under a by-law referred to in section 42(8);
- (iv) whether there is any amount recoverable from the proprietor, mortgagee in possession or occupier of that lot under section 38(4) or (5) and, if so, the amount recoverable;
- (v) any amount and rate of interest payable under section 36(4) in respect of any unpaid contribution referred to in that section;

Penalty: \$400.

- (vi) whether any penalty imposed on a proprietor under section 103I is due but unpaid, and if so the amount unpaid; and
  - (vii) where the lot has a submeter for measuring the amount of gas, electricity or water supplied, whether there is any amount due but unpaid for gas, electricity or water, and if so the amount unpaid.
- (d) certify, as at the date of the certificate —
- (i) details of insurance policies maintained by the strata company, including the name of the insurer, the policy number, the type and amount of cover, and the expiry date; and
  - (ii) whether any transfer, lease or other disposition has been entered into or exclusive use by-law made in favour of any person in respect of the common property but not registered by the Registrar of Titles, and if so the name of the person and the nature and effect of the transaction or by-law.

- (1a) On application made in writing to a strata company by a proprietor or mortgagee of a lot, or by a person authorized in



writing by such a proprietor or mortgagee, the strata company may provide to the applicant copies of —

- (a) any document referred to in subsection (1)(b); or
- (b) the roll maintained by the strata company under section 35A,

and, except for one copy of minutes of general meetings of the strata company provided to each proprietor or mortgagee of that lot, may require the applicant to pay the prescribed fee for any copy so provided.

- (2) Where an applicant and a strata company fail to reach agreement in accordance with subsection (1)(b) within 3 days after the receipt of the application by the strata company, the strata company shall forthwith send by post to the applicant a notice fixing a time, specified in the notice, between 9 a.m. and 8 p.m. on a date so specified, being a date not later than 10 days after the receipt of the application by the strata company, for the making of the inspection referred to in subsection (1)(b).
- (3) Information referred to in subsection (1)(a), and a certificate referred to in subsection (1)(c), shall be provided by the strata company not later than 14 days after receiving the application for the information or certificate, as the case may be.  
Penalty: \$400.
- (4) In favour of a person taking for valuable consideration an estate or interest in any lot, a certificate given under subsection (1)(c) by the strata company in respect of that lot is conclusive evidence, as at the date of the certificate, of the matters stated in the certificate.
- (5) A person entitled to inspect a document made available under subsection (1)(b) may take extracts from, or make a copy of, the document but may not, without the consent of the strata company, remove the document from the custody of the strata company for the purpose of inspecting the document, taking extracts therefrom, or making a copy of it.

- (6) A strata company shall comply with any reasonable request for the name and address of each person who is the chairman, secretary or treasurer of the strata company or a member of the council of the strata company.

*[Section 43 amended by No. 58 of 1995 ss.45<sup>6</sup>, 94 and 95.]*

### **Division 2 — Councils**

#### **44. Functions of Councils**

- (1) The functions of a strata company shall, subject to this Act and to any restriction imposed or direction given at a general meeting, be performed by the council of the strata company.
- (2) The council of a strata company shall be constituted and shall perform its functions in accordance with and in the manner provided by the by-laws of the strata company.

#### **45. Corporate body may be chairman, secretary, treasurer or council member**

- (1) A corporation is eligible to be chairman, secretary or treasurer of the strata company or a member or alternate member of the council.
- (2) A corporation may authorize an individual to perform on its behalf any function conferred by or under this Act on the corporation as chairman, secretary or treasurer of the strata company or as a member or alternate member of the council and may revoke authority of an individual so authorized.
- (3) Where an individual performs a function that the individual is authorized to perform by a corporation under subsection (2), the function shall be deemed to be performed by the corporation.

#### **46. Performance of functions where no council or no quorum**

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

**47. Restrictions on powers of expenditure**

- (1) Except as authorized by or under this section the council of a strata company shall not, in any one case, undertake expenditure exceeding the sum obtained by multiplying —
  - (a) a sum per lot fixed by special resolution of the strata company; or
  - (b) if no such sum is fixed, the prescribed amount per lot, by the number of lots that are the subject of the scheme.
- (2) Subsection (1) does not apply to —
  - (a) expenditure authorized in an emergency, by the referee;
  - (b) expenditure that is deemed to be approved under subsection (3);
  - (c) the payment of any premium of insurance effected by or on behalf of the strata company;
  - (d) any payment required to comply with —
    - (i) a notice or order served on the strata company by any public authority or local government; or
    - (ii) an order made with respect to the strata company by a court or tribunal or the referee;

or

  - (e) expenditure authorized by the strata company in general meeting as part of the budget of the company.
- (3) For the purposes of subsection (2)(b) expenditure is deemed to be approved if notice in writing of the purpose and amount of the proposed expenditure has been given to the proprietors and first mortgagees of all lots in the scheme and, within 14 days after all proprietors and first mortgagees have been given the notice, objection to the proposed expenditure has not been notified in writing to the council by —
  - (a) the proprietors or first mortgagees of not less than 25% of the lots in the scheme; or

- (b) the proprietors or first mortgagees of lots of which the total unit entitlement is at least 25% of the aggregate unit entitlement of the lots in the scheme.
- (4) References in subsection (3) to first mortgagees are to registered mortgagees who are first entitled in priority and who have given written notice of their mortgages to the strata company.
- (5) If an objection is notified under subsection (3) by a first mortgagee of a lot, any objection notified by the proprietor of that lot shall be disregarded.
- (6) Subsection (3) has effect subject to any restriction imposed on the council by the by-laws of the strata company.
- (7) Where proposed expenditure to which subsection (1) applies would exceed an amount calculated in accordance with that subsection, the council shall —
  - (a) submit the proposal for determination at a general meeting of the strata company convened for the purpose of, or for purposes which include, consideration of the proposal; and
  - (b) if the proposed expenditure is in respect of work to be performed or the purchase of personal property, submit at least 2 tenders to that meeting with the proposal.

*[Section 47 inserted by No. 58 of 1995 s.46(1)<sup>7</sup>; amended by No. 57 of 1997 s.115(3).]*

**48. Recovery of books and records by council**

- (1) A person who has possession or control of —
  - (a) any records, books of account or keys belonging to a strata company; or
  - (b) any other property of a strata company,shall, within 7 days after service on the person of notice of a resolution of the council requiring that person to do so, deliver those records, books of account, keys or that other property to a member of the council specified in the notice.  
Penalty: \$400.

- (2) Nothing in subsection (1) shall be construed so as to take away or affect any just claim or lien which a person may have against or upon any records, accounts or property of a strata company.

*[Section 48 amended by No. 58 of 1995 s.94.]*

### **Division 3 — Meetings**

#### **49. First annual general meeting**

- (1) Within 3 months after the registration of the strata/survey-strata plan, the original proprietor, whether or not he is a proprietor at the time he does so, shall, in the prescribed manner, convene and hold a meeting of the strata company to be held within that period.

Penalty: \$2 000.

- (2) The meeting convened and held under subsection (1) shall be the first annual general meeting of the strata company.
- (3) An original proprietor shall deliver to the strata company at its first annual general meeting —
- (a) all plans, specifications, drawings showing water pipes, electric cables, drainage pipes, ventilation ducts or air-conditioning systems, certificates (other than certificates of title for lots), diagrams (including lift wiring diagrams) and other documents (including policies of insurance) obtained or received by him and relating to the parcel or building; and
  - (b) if they are in his possession or under his control, books of account and any notices or other records relating to the scheme,

other than documents which exclusively evidence rights or obligations of the original proprietor and which are not capable of being used for the benefit of the strata company or any of the proprietors, other than the original proprietor.

Penalty: \$2 000.

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

*[Section 49 amended by No. 58 of 1995 ss.95 and 96.]*

**50. Voting at meetings**

- (1) Powers of voting conferred under this Act may be exercised —
- (a) in the case of a proprietor who is an infant, by his guardian;
  - (b) in the case of a proprietor who is for any reason unable to control his property, by the person who for the time being is authorized by law to control his property.
- (2) Where the District Court, upon the application of the strata company or of a proprietor or of a mortgagee in possession, is satisfied that there is no person able to vote in respect of a lot or that the person able to vote in respect of a lot cannot be found, the District Court —
- (a) shall, in cases where a unanimous resolution is required by this Act; and
  - (b) may, in any other case,
- appoint the Public Trustee under the *Public Trustee Act 1941*, or some other fit and proper person, for the purpose of exercising such powers of voting under this Act as the District Court shall determine.
- (3) The District Court may order service of notice of an application under subsection (2) on such persons as it thinks fit or may dispense with service of that notice.
- (4) On making an appointment under subsection (2), the District Court may make such order as it thinks necessary or expedient to give effect to the appointment, including an order as to the payment of costs of the application, and may vary any order so made.
- [(5) repealed]*

- (6) Where the interest of a proprietor in a lot is subject to a registered mortgage, a power of voting conferred on a proprietor under this Act —
- (a) in a case where a unanimous resolution is required, shall not be exercised by the proprietor, but shall be exercised by the mortgagee under such a mortgage first entitled in priority; and
  - (b) in other cases, may be exercised by the mortgagee first entitled in priority and shall not be exercised by the proprietor when that mortgagee is present personally or by proxy.
- (7) Subsection (6) does not apply unless the mortgagee concerned has given written notice of his mortgage to the strata company.  
*[Section 50 amended by No. 58 of 1995 ss.47 and 93<sup>11</sup>.]*

**50A. Disqualification from voting as proxy**

- (1) Subject to subsections (2) and (3), at a meeting of a strata company, or of a council of a strata company, a person shall not vote as a proxy of another person on a motion relating to a management contract or arrangement with the strata company if the person (“**the proxy**”) has a financial interest in the contract or arrangement.
- (2) Subsection (1) does not apply if —
- (a) notice of the meeting included notice of the motion and, where applicable, the particulars described in subsection (3); and
  - (b) the instrument appointing the proxy expressly authorizes the proxy to vote on the motion and specifies whether the proxy is to vote for or against it.
- (3) Where the motion relates to the strata company entering into or renewing a management contract or arrangement with a person, notice of the motion shall include —
- (a) the name of that person;

- (b) the duration of the proposed contract or arrangement; and
  - (c) the remuneration that is payable under it.
- (4) For the purposes of this section the proxy has a financial interest in a contract or arrangement if the proxy or his or her spouse —
- (a) owns shares (whether beneficially or otherwise) in a company;
  - (b) is a member of a firm; or
  - (c) is a director or employee of a company or of a firm,
- that benefits or will benefit directly from the contract or arrangement to which the motion relates.

- (5) In this section —

**“management contract or arrangement”** means a contract or arrangement, or a proposed contract or arrangement, for the provision to the strata company of services in connection with the strata company’s powers and duties under this Act.

*[Section 50A inserted by No. 58 of 1995 s.48.]*

**50B. Quorum for meeting of strata company for two-lot scheme**

Subject to any order under section 103B, the proprietors of the lots in a two-lot scheme, or their respective duly appointed proxies, constitute a quorum for a general meeting of the strata company for that scheme.

*[Section 50B inserted by No. 58 of 1995 s.48.]*

**51. Relief where unanimous resolution or resolution without dissent required**

- (1) In any case where under this Act a unanimous resolution or a resolution without dissent is necessary before any act may be done and that resolution is not obtained but the resolution is supported to the extent necessary for a special resolution, a person included in the majority in favour of the resolution may apply to the District Court to have the resolution as so supported declared sufficient to authorize the particular act proposed and if



the District Court so orders, the resolution shall be deemed to have been passed as a unanimous resolution or a resolution without dissent, as the case may be.

- (1a) This section does not apply to a two-lot scheme.
- (2) Notice of an application under subsection (1) shall be served on —
  - (a) every person who was entitled to exercise the power of voting conferred under this Act and did not, either in person or by proxy, vote in favour of the resolution; and
  - (b) every person whom the District Court declares to have a sufficient interest in the proceedings to require that he should be served with notice of the application,

and the District Court may direct that any person served with notice of proceedings under this subsection shall be joined as a party to the proceedings.

- (3) The District Court shall not order a party who opposes an application under this section to pay the costs of a successful applicant unless the District Court considers the actions of that party in relation to the application to have been unreasonable.

*[Section 51 amended by No. 58 of 1995 ss.49 and 93<sup>11</sup>.]*

**51A. Relief where unanimous resolution required for two-lot scheme**

- (1) Where —
  - (a) under this Act a unanimous resolution is necessary before any act may be done in respect of a two-lot scheme; but
  - (b) that resolution is not obtained because the proprietors of the lots in the scheme do not agree,

a proprietor may apply to the District Court for an order under this section.

- (1a) This section does not apply to a unanimous resolution that is required for the passing of a resolution under section 21F or 21Q.

- (2) An order under this section is an order declaring that a resolution specified in the order is to be deemed to have been duly passed by the strata company as a unanimous resolution.
- (3) On the making of an application by a proprietor under subsection (1), the District Court may make an order under this section if it is satisfied that a proprietor has acted unreasonably in refusing to agree to the resolution or that it is in the best interests of the proprietors that the order be made.
- (4) Where a proprietor makes an application under this section the other proprietor is a party to the proceedings and shall be served with notice of the application.
- (5) Section 51(3) applies to the awarding of costs in proceedings under this section.

*[Section 51A inserted by No. 58 of 1995 s.50; amended by No. 61 of 1996 s.22.]*

**52. Performance of functions by proprietors in general meeting**

Where by resolution passed at a general meeting of a strata company a restriction has been imposed in relation to the performance of a function by the council of the strata company, that function may be performed to the extent that it is so restricted by the proprietors in general meeting of the strata company.

**Division 4 — Insurance**

Subdivision 1 — Preliminary

*[Heading inserted by No. 61 of 1996 s.23.]*

**53. Interpretation**

In this Division —

“**building**” includes any building on the parcel for a scheme whether shown on the strata/survey-strata plan or not and also includes —

- (a) proprietors’ improvements and proprietors’ fixtures forming part of the building including paint and

wallpaper but excluding carpet and temporary wall,  
floor and ceiling coverings; and

*[(b) deleted]*

(c) anything prescribed as forming part of a building for  
the purposes of this definition,

but does not include —

(d) fixtures removable by a lessee at the expiration of a  
tenancy; or

(e) anything prescribed as not forming part of a building  
for the purposes of this definition;

**“replacement value”** in relation to a contract of insurance of a  
building, requires provision to be specified in the policy —

(a) for —

(i) the rebuilding of the building or its  
replacement by a similar building in the event  
of its destruction; and

(ii) the repair of damage to, or the restoration of  
the damaged portion of, the building in the  
event of its being damaged but not destroyed,

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

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

*[Section 53 amended by No. 58 of 1995 s.51; No. 61 of 1996  
s.24.]*

Subdivision 2 — Insurance in single tier strata schemes

*[Heading inserted by No. 61 of 1996 s.25.]*

**53A. Application of this Subdivision**

References in this Subdivision —

- (a) to “**scheme**” are to a single tier strata scheme;
- (b) to “**strata company**” are to a strata company for such a scheme; and
- (c) to “**proprietor**” are to a proprietor of a lot in such a scheme.

*[Section 53A inserted by No. 61 of 1996 s.25.]*

**53B. Insurance for lots in single tier strata schemes**

- (1) For the purposes of this Act —
  - (a) whether there is insurance in respect of —
    - (i) any building on a lot in a scheme; or
    - (ii) damage to property, death or bodily injury for which the proprietor of a lot in a scheme could become liable in damages;
  - (b) the occurrences to be insured against by the proprietor in relation to those matters; and
  - (c) the terms on which any insurance is obtained,are, subject to this section, at the discretion of the proprietor of the lot.
- (2) A strata company for a scheme may determine that it is a function of the company to insure in respect of the matters referred to in subsection (1), and may at any time revoke the determination.
- (3) While such a determination is in force the strata company shall comply with section 53D.

*[Section 53B inserted by No. 61 of 1996 s.25.]*

**53C. Insurance for common property in single tier strata schemes**

- (1) The strata company for a scheme shall —
  - (a) insure and keep insured any building, or part of a building, or improvement on the parcel that is common property; and
  - (b) effect and maintain insurance in respect of damage to property, death or bodily injury for which the proprietors of lots in the scheme could become liable in damages as holders of the common property.
- (2) The strata company does not have the obligations described in subsection (1) if —
  - (a) there is no common property in the scheme except —
    - (i) cubic space in which there is no building or improvement above or below the horizontal boundary of any lot; or
    - (ii) fencing on the boundary of the parcel or any lot;or
  - (b) the strata company has by resolution without dissent (or unanimous resolution in the case of a two-lot scheme) determined that subsection (1) is not to apply to the scheme.
- (3) A resolution under subsection (2)(b) remains in force until —
  - (a) it is revoked; or
  - (b) it ceases to have effect under subsection (4).
- (4) A resolution of a strata company under subsection (2)(b) ceases to have effect if a proprietor at any time after the passing of the resolution serves notice in writing —
  - (a) on the strata company; or
  - (b) in the case of a two-lot scheme, on the other proprietor, that he requires that subsection (1) apply to the scheme.

- (5) While a resolution under subsection (2)(b) is in force —
- (a) whether there is insurance in respect of —
    - (i) the share of a proprietor in any building in the scheme that is common property; or
    - (ii) damage to property, death or bodily injury for which a proprietor of a lot in the scheme could become liable in damages as the holder of a share in the common property;
  - (b) the occurrences to be insured against by a proprietor in relation to those matters; and
  - (c) the terms on which any insurance is obtained,
- are at the discretion of the proprietor.

*[Section 53C inserted by No. 61 of 1996 s.25.]*

**53D. Strata company's obligations where it has an insurance function in single tier strata schemes**

- (1) This section applies where —
- (a) a determination is in force under section 53B(2); or
  - (b) in accordance with section 53C, a strata company has the obligations described in subsection (1) of that section.
- (2) This section also applies where a strata company makes a determination to insure common property that it is not obliged to insure by reason of section 53C(2)(a).
- (3) In those cases the strata company shall —
- (a) insure and keep insured any building to which its obligation extends to the replacement value against fire, storm and tempest (excluding damage by sea, flood or erosion), lightning, explosion and earthquake; and
  - (b) effect and maintain insurance in respect of damage to property, death, or bodily injury for not less than \$5 000 000 or such other amount as may be prescribed in place of that amount.

Penalty: \$400.

- (4) Section 54(2) and (3) apply to a strata company's obligations under subsection (3) as if they referred to that subsection.

*[Section 53D inserted by No. 61 of 1996 s.25.]*

**53E. Recovery of premium by strata company where no administrative fund in single tier strata schemes**

- (1) Where —
- (a) under section 36A or 36B a fund for administrative purposes is not maintained under section 36(1)(a); and
  - (b) a strata company or any proprietor receives notice of the amount of any premium or other charge for insurance under section 53D,

the strata company, or the proprietor, may give notice in writing of that amount to the proprietor of each lot in the scheme, or each other proprietor, and require the proprietor to pay his share of the premium or other charge before a specified time.

- (2) A proprietor's share is —
- (a) a sum equal to the same proportion of the amount as the unit entitlement of the proprietor's lot bears to the aggregate unit entitlement; or
  - (b) if applicable, a sum fixed under a by-law of the strata company made under section 42B.
- (3) Where —
- (a) notice has been given to a proprietor under subsection (1); and
  - (b) the amount of the proprietor's share has not been paid to the strata company or the insurer before the specified time,

that amount becomes a debt due by the proprietor to the strata company and may be recovered by it in a court of competent jurisdiction.

- (4) If the amount of a proprietor's share has become due to the strata company but has not been paid, another proprietor may —
- (a) pay the amount; and
  - (b) recover the amount under section 103L.

*[Section 53E inserted by No. 61 of 1996 s.25.]*

Subdivision 3 — Insurance in schemes other than single tier strata schemes

*[Heading inserted by No. 61 of 1996 s.26.]*

**54. Insurance of buildings and strata companies**

- (1) In this section —
- “strata company”** means a strata company for a scheme other than a single tier strata scheme.
- (1a) Subject to subsection (4) and section 103J, a strata company shall —
- (a) insure and keep insured the building to the replacement value against fire, storm and tempest (excluding damage by sea, flood or erosion), lightning, explosion and earthquake; and
  - (b) effect and maintain insurance in respect of damage to property, death, or bodily injury for which the strata company could become liable in damages in an amount of not less than \$5 000 000 or such other amount as may be prescribed in place of that amount.

Penalty: \$400.

- (2) A contract of insurance entered into for the purposes of subsection (1a) may provide that, instead of the work and the payments specified in the definition of **“replacement value”** in section 53 being carried out or made upon the occurrence of any of the events specified in the policy, the liability of the insurer shall, upon the occurrence of any such event, be limited to an amount specified in the policy.



- (3) It is a defence to a charge of an offence against subsection (1a) for a strata company to prove that, despite having taken all reasonably practicable steps available to it to comply with that subsection, no insurer is willing to enter into a contract of insurance, on reasonable terms, that meets the obligation imposed by that subsection.
- (4) In the case of a survey-strata scheme, the obligation of the strata company under subsection (1a) applies only to a building that is common property in the scheme.

*[Section 54 amended by No. 58 of 1995 ss.52 and 94; No. 61 of 1996 s.27.]*

Subdivision 4 — Insurance provisions applicable to all schemes

*[Heading inserted by No. 61 of 1996 s.28.]*

**54A. Where insurance cover refused, proprietor may be required to take action**

- (1) A proprietor of a lot in a scheme shall ensure that the lot is not used for an activity if the proprietor has been notified in writing by the strata company for the scheme that the strata company cannot obtain insurance cover for the building, or part of it, on reasonable terms because that activity is being carried on on the lot.
- (2) The proprietor of a lot in a scheme shall comply with a notice given to the proprietor by the strata company for the scheme to carry out any work on the building on the lot, being work specified in the notice, if the notice is expressed to be given on the grounds that the strata company cannot obtain insurance cover for the building on reasonable terms until that work has been carried out.
- (3) A proprietor may, instead of complying with subsection (1) or (2), pay a part of the premium for insurance cover if the strata company is satisfied that the amount of premium remaining to be paid by the company is an amount that the company should reasonably pay for that insurance cover.

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- (4) A proprietor may, instead of complying with subsection (2), take any other step that enables insurance cover on the building to be obtained on reasonable terms.
- (5) The obligations created by this section are enforceable under section 103K.

*[Section 54A inserted by No. 58 of 1995 s.53.]*

**55. Further insurance by strata company**

- (1) In addition to insurance effected by the strata company under this Division, a strata company shall effect and maintain insurance —
  - (a) in respect of any occurrence against which it is required by law to insure, including, where applicable, insurance against liability to pay compensation under the *Workers' Compensation and Rehabilitation Act 1981*; and
  - (b) against such other risks as the strata company may from time to time determine.

Penalty for contravention of subsection (1)(a): \$400.

*[(2) and (3) repealed]*

- (4) A strata company may insure and keep insured the building against any occurrence other than those occurrences referred to and included in section 53D or 54(1a).
- (5) A proprietor may bring against the strata company of which the proprietor is a member any action that the proprietor might have brought against the strata company if the proprietor had not been a member of the strata company.

*[Section 55 amended by No. 58 of 1995 ss.54<sup>8</sup> and 94; No. 61 of 1996 s.29.]*

**55A. Proprietor liable for increased insurance premium in certain cases**

- (1) If any part of an insurance premium payable by a strata company is attributable solely to the risk associated with

activities carried on on a lot, the proprietor of that lot is liable to pay to the strata company on demand an amount equal to that part of the premium.

- (2) An amount payable under subsection (1) may be recovered as a debt due in a court of competent jurisdiction.

*[Section 55A inserted by No. 58 of 1995 s.55.]*

**56. Insurance by proprietor**

- (1) Nothing in this Division limits any right of a proprietor to effect insurance.
- (2) Insurance effected by a proprietor does not affect, and shall not be taken into consideration in determining the amount payable to a strata company under a contract of insurance entered into between it and an insurer pursuant to this Division, notwithstanding anything contained in that contract of insurance.

**56A. Proprietor may insure if strata company in default**

If a proprietor considers that a strata company is in breach of any obligation to insure imposed on it by this Act, the proprietor may effect and maintain in the name of the strata company such insurance as he thinks the strata company ought to effect and maintain to meet that obligation.

*[Section 56A inserted by No. 58 of 1995 s.56.]*

**57. Insurance of mortgaged lot**

- (1) Where a building is insured to its replacement value, a proprietor may effect a contract of insurance in respect of any damage to his lot in a sum equal to the amount secured at the date of any loss referred to in the policy by mortgages charged upon his lot.
- (2) Where any contract of insurance of the kind authorized by subsection (1) is in force —
- (a) payment shall be made by the insurer under the contract to the mortgagees whose interests are noted thereon in

- order of their respective priorities, subject to the terms and conditions of the contract;
- (b) subject to the terms and conditions of the contract, the insurer is liable to pay thereunder —
- (i) the value stated in the contract;
  - (ii) the amount of the loss; or
  - (iii) the amount sufficient, at the date of the loss, to discharge mortgages charged upon the lot,
- whichever is the least amount;
- (c) where the amount so paid by the insurer equals the amount necessary to discharge a mortgage charged upon the lot, the insurer is entitled to an assignment of that mortgage;
- (d) where the amount so paid by the insurer is less than the amount necessary to discharge a mortgage of the lot, the insurer shall be entitled in order to secure the amount so paid to have the mortgage transferred to the insurer and the mortgagee as tenants in common in undivided shares proportional to the amount paid by the insurer and the balance necessary to discharge the mortgagee's interest.
- (3) A contract of insurance entered into as referred to in this section shall not be liable to be brought into contribution with any other such contract of insurance except another such contract of insurance which —
- (a) is in respect of damage to the same lot; and
  - (b) relates to the same mortgage debt,
- as that referred to in the contract of insurance first-mentioned in this subsection.
- (4) Where a building is uninsured or has been insured to less than its replacement value, a proprietor may, notwithstanding any existing contracts of insurance, effect a contract of insurance in respect of damage to his lot in a sum equal to the amount

secured, at the date of the loss referred to in the last-mentioned contract, by mortgages charged upon his lot and the provisions of subsection (2)(a), (b), (c) and (d) apply in respect of any payment pursuant to that contract.

- (5) Nothing in this section limits the right of a proprietor to insure against risks other than damage to his lot.

**58. Insurable interest**

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

**59. Application of insurance moneys to rebuilding**

Subject to any order made under section 28 or 31, where a strata company receives payment of moneys from an insurer in respect of the destruction of or damage to a building, those moneys shall forthwith be applied by the strata company in rebuilding, replacing, repairing or restoring the building so far as that may lawfully be effected.

**Division 5 — Rates, taxes and charges**

**60. Delivery of plans to authorities**

- (1) Within 28 days after the registration of any plan under this Act the Registrar of Titles shall deliver a copy of the plan to —
- (a) the Valuer-General; and
  - (b) each local government and other authority that appears to the Registrar to be authorized to levy rates or taxes in respect of the parcel or part of the parcel.
- (2) Within 28 days after the amendment of any plan under section 10(3) the Registrar of Titles shall deliver a copy of the amended plan to each authority referred to in subsection (1)(b).

- (3) A copy of a plan delivered under this section shall be in such form as the Registrar considers appropriate.
- (4) A charge made under the *Water Authority Act 1984*<sup>13</sup> that relates to the provision of a water service, within the meaning of that Act, in respect of land shall be taken, for the purposes of this section, and section 61, to be a rate.

*[Section 60 inserted by No. 58 of 1995 s.57<sup>9</sup>; amended by No. 14 of 1996 s.4.]*

**61. Particulars on plan to be conclusive for rating and taxing purposes**

For all purposes in relation to the making, levying, imposing, assessing or recovery of rates, charges or taxes in respect of the parcel or any part of the parcel —

- (a) the particulars shown in the certified copy of the strata/survey-strata plan, plan of re-subdivision or consolidation for a scheme or transfer delivered as required by section 60, is conclusive evidence of those particulars; and
- (b) the production by a local government or any other authority authorized to levy rates and taxes in relation to the parcel or any part of the parcel of what purports to be the certified copy of the plan or transfer so delivered is evidence that it is the certified copy so delivered.

*[Section 61 amended by No. 58 of 1995 s.58; No. 14 of 1996 s.4.]*

**62. Rating on unimproved value**

- (1) Where the Valuer-General values the unimproved value of a parcel in a strata plan under the *Valuation of Land Act 1978* for rating and taxing purposes, the parcel shall, notwithstanding that or any other Act, be valued as a single parcel of land and as if it were owned by a single owner.

- (2) For the purposes of any such valuation as is referred to in subsection (1) and all purposes incidental thereto, including objection to and appeal against the valuation, but not otherwise, the parcel and improvements thereon shall be deemed to be owned by the strata company only.
- (3) During the period from the registration of the strata/survey-strata plan and until a valuation of the parcel on the basis that the strata company is owner comes into force under the *Valuation of Land Act 1978*, the valuation then in force shall for the purposes of this section be deemed to be a valuation of the parcel made by the Valuer-General as if the strata company is owner.
- (4) Subject to subsection (5), where a local government or other authority (in this section called the rating authority) authorized to make and levy rates on the parcel, uses a valuation of the unimproved value of the parcel made by the Valuer-General on the basis that the strata company is owner, the following provisions have effect —
- (a) the unimproved value of the parcel shown in the valuation shall be apportioned by the local government or the rating authority, as the case may be, between the lots comprised in the parcel in proportion to the unit entitlements of the respective lots as shown on the registered strata plan;
  - (b) the strata company is not liable in relation to the parcel for any rate made and levied by the local government or the rating authority, as the case may be;
  - (c) the proprietor of each lot comprised in the parcel is deemed to be the owner in fee simple in possession of the lot as if it were a separate parcel of land having a value equal to that apportioned to it under paragraph (a) and is, subject to any exemptions or concessions that may be applicable, liable accordingly for any rate made and levied by the local government or the rating authority, as the case may be, on the owners of land.

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**Part IV** Management

**Division 5** Rates, taxes and charges

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(5) Where —

- (a) part only of a lot is liable to any rate, that rate shall be made and levied upon an amount that bears the same proportion to the value of the lot as the rental value of the part so liable bears to the rental value of the lot; and
- (b) part of a parcel is rateable in respect of water, sewerage or drainage services, then the rateable value of that part shall be the value of the parcel after deducting therefrom the value of any lot assessed and rated separately and in which the water, sewerage or drainage service, as the case may be, is exclusively for the use and benefit of such lot.

*[Section 62 amended by No. 58 of 1995 ss.59 and 95; No. 14 of 1996 s.4.]*

**62A. Rating for survey-strata schemes**

- (1) This section applies to the determination of the unimproved value of land in a survey-strata scheme by the Valuer-General under the *Valuation of Land Act 1978* for rating and taxing purposes.
- (2) Each lot in a survey-strata scheme shall be valued as a separate parcel of land and the strata company is not liable for any rate made and levied by the local government or the rating authority, as the case may be, in respect of the lot.
- (3) In valuing a lot in a survey-strata scheme the Valuer-General shall take into account any benefits and disadvantages applicable to the lot as part of a survey-strata scheme.
- (4) Where part only of a lot is liable to any rate, that rate shall be made and levied upon an amount that bears the same proportion to the value of the lot as the rental value of the part so liable bears to the rental value of the lot.

*[Section 62A inserted by No. 58 of 1995 s.60; amended by No. 57 of 1997 s.115(4).]*



**63. Rating on gross rental value**

- (1) Where the Valuer-General values the gross rental value of a parcel under the *Valuation of Land Act 1978* for rating and taxing purposes, each lot of the parcel shall, notwithstanding that or any other Act, be valued separately as a single lot.
- (2) Subject to subsection (3), where a local government or other authority (in this subsection called the rating authority) authorized to make and levy rates on the parcel uses a valuation of the gross rental value of the lots of the parcel —
  - (a) the strata company is not liable in relation to the parcel or any lot of the parcel for any rate made and levied by the local government or the rating authority, as the case may be; and
  - (b) the proprietor of each lot comprised in the parcel is, subject to any exemptions or concession that may be applicable, liable for any rate made and levied by the rating authority.
- (3) Where part only of a lot is liable to any rate, that rate shall be made and levied upon an amount that bears the same proportion to the value of the lot as the rental value of the part so liable bears to the rental value of the lot.

*[Section 63 amended by No. 14 of 1996 s.4.]*

**64. Proprietor may appeal against unimproved value of parcel**

- (1) Notwithstanding section 62(2) and without prejudice to the rights of objection and appeal conferred on the strata company, where the Valuer-General values the unimproved value of a parcel under the *Valuation of Land Act 1978* for rating and taxing purposes, each proprietor of a lot within the parcel shall be entitled to object to and appeal against the valuation of the parcel in accordance with Part IV of the *Valuation of Land Act 1978* as if that proprietor were a person liable to pay a rate or tax assessed in respect of the parcel.

- (2) Upon receiving an objection to the valuation of a parcel made by a proprietor of a lot within the parcel pursuant to subsection (1), the Valuer-General —
- (a) shall inform the strata company of the objection and the grounds upon which it has been made; and
  - (b) may consolidate the objection with any other objection made in respect of the same valuation of that parcel and may deal with such objections together.

**65. Land tax and metropolitan region improvement tax**

- (1) For all purposes in relation to the imposition, assessment or recovery of land tax or metropolitan region improvement tax in respect of the parcel in a strata plan, the following provisions have effect —
- (a) the unimproved value of the parcel shown in the valuation shall be apportioned by the Commissioner of State Taxation between the lots comprised in the parcel in proportion to the unit entitlements of the respective lots as shown on the registered strata plan;
  - (b) the strata company is not liable in respect of the parcel for land tax or metropolitan region improvement tax; and
  - (c) for the purposes of the *Land Tax Assessment Act 1976* and the *Metropolitan Region Town Planning Scheme Act 1959*, and subject to any concessions or exemptions that may be applicable, each lot shall be deemed to be a separate parcel of land with an unimproved value equal to that apportioned to it under paragraph (a).
- (2) A reference in the *Land Tax Assessment Act 1976* or the *Metropolitan Region Town Planning Scheme Act 1959* to an owner includes a proprietor of a lot.

*[Section 65 amended by No. 58 of 1995 s.61.]*

**65A. Land tax etc. for survey-strata schemes**

- (1) This section applies to the imposition, assessment or recovery of land tax or metropolitan region improvement tax under the *Land Tax Assessment Act 1976* and the *Metropolitan Region Town Planning Scheme Act 1959* in respect of the land in a survey-strata scheme.
- (2) For the purposes referred to in subsection (1) —
  - (a) each lot shall be treated as a separate parcel of land, with an unimproved value as determined under section 62A, but subject to any concessions or exemptions that may be applicable;
  - (b) the strata company is not liable for land tax or metropolitan region improvement tax in respect of the lot; and
  - (c) a reference in the Acts referred to in subsection (1) to an owner includes a proprietor of a lot.

*[Section 65A inserted by No. 58 of 1995 s.62.]*

**66. Charges for water supplied**

Where in relation to a scheme an authority provides one water supply connection to all the proprietors and the quantity of water used by each proprietor is not measured, any charges that may become payable according to the quantity of water used shall be payable by and may be recovered by the authority from the strata company.

*[Section 66 amended by No. 24 of 1987 s.166; No. 58 of 1995 s.96.]*

*[67. Repealed by No. 14 of 1996 s.4.]*

## **Part V — Protection of purchasers**

### **68. Interpretation**

In this Part, unless the contrary intention appears —

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

**“original proprietor”** includes, in respect of a proposed lot or proposed plan, the person who upon registration of the proposed plan becomes the original proprietor;

**“purchaser”** includes an intending purchaser;

**“vendor”** includes an intending vendor.

*[Section 68 inserted by No. 58 of 1995 s.63.]*

### **69. Information to be given to purchaser**

- (1) A purchaser of a lot or proposed lot in a scheme shall be given the notifiable information, as provided by sections 69A and 69B, before he or she signs a contract to buy the lot or proposed lot.
- (2) The vendor of a lot or proposed lot in a scheme shall ensure that subsection (1) is complied with either —
  - (a) by giving the notifiable information to the purchaser on the form referred to in subsection (3); or
  - (b) by ensuring that the notifiable information forms part of the contract.
- (3) A form or forms shall be prescribed for use by vendors in giving the notifiable information under this section.
- (4) In any civil proceedings arising out of or connected with a contract, the onus of proving that the notifiable information was duly given in accordance with this Part shall lie upon the vendor.

*[Section 69 inserted by No. 58 of 1995 s.63.]*

**69A. Notifiable information, to be given by every vendor**

The notifiable information to be given under section 69 by every vendor is —

- (a) the name and address of the vendor and the purchaser;
- (b) a copy of either the registered strata/survey-strata plan or the proposed strata/survey-strata plan complying with section 5(1)(a), (b), (d) and (e) or 5A(1)(a) to (c), (e) and (f), as the case may require, and particularly drawing attention to information that relates especially to any lot or proposed lot to which the contract relates;
- (c) the unit entitlement of every lot within the scheme and the aggregate unit entitlement or, if the strata/survey-strata plan has not been registered, those entitlements as proposed;
- (d) the contents of the by-laws for the scheme that are —
  - (i) in force; or
  - (ii) resolved to be made but not yet in force by virtue of section 42(4),but only so far as they amend, repeal or add to the by-laws set out in Schedules 1 and 2;
- (e) in the case of a proposed scheme, the proposed by-laws for the scheme but only so far as they amend, repeal or add to the by-laws set out in Schedules 1 and 2; and
- (f) any information prescribed for the purposes of this section.

*[Section 69A inserted by No. 58 of 1995 s.63.]*

**69B. Notifiable information to be given by original proprietor in certain cases**

- (1) This section applies only if —
  - (a) the strata/survey-strata plan has not been registered;
  - (b) the first annual general meeting of the strata company has not been held; or

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- (c) the original proprietor —
  - (i) is the registered proprietor of 50% or more of the lots in the scheme; or
  - (ii) has votes at a general meeting of the strata company equal in value to 50% or more of the aggregate unit entitlement of the lots in the scheme.
- (2) Where this section applies, the notifiable information to be given under section 69 by a vendor who is the original proprietor is, in addition to that required by section 69A —
  - (a) details of every agreement for the provision of any amenity or service to the strata company or to any part of the parcel that —
    - (i) the company or the original proprietor has entered into and that is still in operation; or
    - (ii) the original proprietor in his own right or exercising the power of the company proposes to enter into,  
including the terms and conditions of every such agreement, the consideration for it, and the estimated costs to the proprietor of the lot;
  - (b) particulars of any direct or indirect pecuniary interest that the vendor has in any agreement referred to in paragraph (a), other than as a proprietor;
  - (c) the estimated receipts and expenditure of the company for the period of 12 months starting with —
    - (i) the day of registration of the strata/survey-strata plan; or
    - (ii) the day of the last annual general meeting or if no such meeting has been held during the 15 months preceding the date of the contract, the day for settlement designated in the contract,  
whichever is the later;

- (d) the estimated contributions of the proprietor under section 36(1) and (2) during the period referred to in paragraph (c);
- (e) details of every lease granted, and still in operation, or proposed to be granted to the purchaser or any other person in relation to the common property;
- (f) details of every licence, right of exclusive use and enjoyment, or special privilege granted, and still in operation, or proposed to be granted to the purchaser or any other person in relation to the common property.

*[Section 69B inserted by No. 58 of 1995 s.63.]*

**69C. Vendor to inform purchaser of full particulars of notifiable variation**

- (1) The vendor under a contract to sell a lot or proposed lot shall by notice in writing given to the purchaser inform the purchaser of full particulars of any notifiable variation.
- (2) Notice under subsection (1) shall be given as soon as the vendor becomes aware of the variation.
- (3) For the purposes of subsection (1), a notifiable variation occurs if before the registration of the purchaser as proprietor of the lot or proposed lot or earlier avoidance of the contract —
  - (a) the company, or the original proprietor in his own right or exercising the power of the company —
    - (i) enters into an agreement for the provision of any amenity or service to the strata company or that is otherwise likely to affect the rights of the purchaser; or
    - (ii) varies any existing agreement of that kind whereby the rights of the purchaser are likely to be affected;
  - (b) the company or the original proprietor in his own right or exercising the power of the company —
    - (i) makes a by-law; or

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- (ii) amends or repeals any by-law;
  - (c) the registered or proposed strata/survey-strata plan is varied in a material particular or the registered strata/survey-strata plan differs in a material particular from the proposed strata/survey-strata plan;
  - (d) the unit entitlement of any lot or the aggregate unit entitlement is not the same as the unit entitlement or proposed unit entitlement or the aggregate unit entitlement or proposed aggregate unit entitlement, as the case may be, that was notified under section 69A(c);
  - (e) a lease, licence, right or privilege in relation to the common property is granted or varied.
- (4) Subsection (1) does not apply if —
- (a) the vendor has by notice in writing informed the purchaser of any proposed action or matter that would be a notifiable variation under subsection (3); and
  - (b) the action or matter when completed does not differ from that described in the notice.

*[Section 69C inserted by No. 58 of 1995 s.63.]*

**69D. When purchaser may avoid contract**

- (1) Subject to subsection (3), if a vendor has failed to give to a purchaser information that substantially complies with section 69 or 69C and at the time required by that section, the purchaser has a right to avoid the contract by notice in writing given to the vendor before the settlement of the contract.
- (2) If —
  - (a) a vendor gives to a purchaser information that substantially complies with section 69C and at the time required by that section; and



- (b) the purchaser has been materially prejudiced (proof of which shall lie on him) by any matter referred to in the notice and has not agreed to be bound by that matter,

the purchaser has a right to avoid the contract by notice in writing given to the vendor within 7 working days after that information is given.

- (3) If under subsection (1) a purchaser has a right to avoid a contract but before notice of avoidance is given the vendor gives to the purchaser information that substantially complies with section 69 or 69C, the purchaser's right under subsection (1) must be exercised within 7 working days after that information is given.
- (4) If the vendor gives to the purchaser information that substantially or partially complies with section 69 or 69C within 7 working days before the settlement date designated in the contract, the purchaser —
  - (a) may, despite the contract and without incurring any penalty under it, by notice in writing, postpone the time for settlement beyond that designated settlement date by not more than 7 working days after that information is given; and
  - (b) subject to subsection (5), has a right to avoid the contract by notice in writing given to the vendor at any time before the expiration of that period and before settlement is effected.
- (5) The right conferred on a purchaser by subsection (4) does not apply if the information was given under section 69C and at the time required by that section unless the purchaser has been materially prejudiced (proof of which shall lie on him) by any matter referred to in the notice and has not agreed to be bound by that matter.

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(6) In this section —

**“settlement”** means —

- (a) the time at which the purchaser pays to the vendor the purchase price, or the balance of the purchase price, in exchange for the documents of title; or
- (b) in the case of a terms contract, as defined in section 5 of the *Sale of Land Act 1970*, the time at which the purchaser becomes entitled to possession or occupation;

**“working days”** means Monday to Friday but excluding, in the case of a contract relating to land in any area of the State, a day that is a public holiday in that area or throughout the State.

*[Section 69D inserted by No. 58 of 1995 s.63.]*

**69E. Effect of avoidance**

Upon the avoidance of a contract under section 69D, the vendor is liable to repay to the purchaser all moneys paid by the purchaser under the contract and such moneys shall be recoverable, by action as for a debt, by the purchaser accordingly.

*[Section 69E inserted by No. 58 of 1995 s.63.]*

**70. Holding of deposit and other contract moneys when a lot is pre-sold**

- (1) No person shall sell a lot in a proposed scheme before the strata/survey-strata plan is registered under Part II unless the contract of sale provides that any deposit and all other moneys payable by the purchaser prior to the registration of the strata/survey-strata plan are to be paid to a solicitor, real estate agent or settlement agent, who shall be named or specified in the contract, to be held by that solicitor, real estate agent or settlement agent on trust for the purchaser until the strata/survey-strata plan is registered.

- (2) Any deposit and other moneys payable and paid by the purchaser prior to the registration of the strata/survey-strata plan under any such contract as is referred to in subsection (1) shall be paid by the purchaser to the solicitor, real estate agent or settlement agent named or specified in the contract of sale.
- (3) In the event of a contravention of subsection (1) or subsection (2), the purchaser may at any time before the strata/survey-strata plan is registered avoid the sale.
- (4) If the strata/survey-strata plan is not registered —
- (a) within such period after the date of the contract as is agreed in writing by the purchaser and the vendor; or
  - (b) in the absence of any such agreement, within 6 months after that date,

the purchaser may avoid the sale at any time before the plan is registered.

- (5) Where a purchaser avoids a sale under this section, all moneys, including the deposit, shall be recoverable by him from the solicitor, real estate agent or settlement agent or other person to whom they were paid, but the purchaser shall be liable to pay an occupation rent for any period during which he was in occupation of the lot or entitled to receive the rents and profits of the lot.

[(6) and (7) repealed]

- (8) In this section —

**“date of the contract”** means the day on which the contract of sale referred to in subsection (1) was signed or, if the parties signed it on different days, the last of those days;

**“real estate agent”** means a person licensed as a real estate agent under the *Real Estate and Business Agents Act 1978*;

**“settlement agent”** means a person licensed as a settlement agent under the *Settlement Agents Act 1981*.

[Section 70 amended by No. 42 of 1986 s.4; No. 58 of 1995 ss.64, 95 and 96; No. 61 of 1996 s.31.]

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**70A. Contracting out prohibited**

- (1) A contract or arrangement is of no effect to the extent that it purports to exclude or restrict the operation of this Part or the rights and remedies conferred on a purchaser by this Part.
- (2) A purported waiver of a right, remedy or benefit conferred on a purchaser by this Part is of no effect.

*[Section 70A inserted by No. 58 of 1995 s.65.]*

**70B. Saving**

Except as provided by sections 69D, 70(3) and (4) and 70A, this Part does not apply so as to render any contract illegal or void or to empower any party to avoid the contract.

*[Section 70B inserted by No. 58 of 1995 s.65.]*

## **Part VI — Resolution of disputes**

### **Division 1 — Strata Titles Referee**

**71. Appointment of Strata Titles Referee**

- (1) The Governor may appoint such number of Strata Titles Referees as he considers necessary to exercise the powers and perform the duties conferred or imposed on referees under this Act.
- (2) A referee shall be appointed for a term not exceeding 7 years, but, subject to section 72, may be reappointed for a further term or terms.

**72. Eligibility to hold office as referee**

A person may be appointed and hold office as a referee if the person is or has been a stipendiary magistrate or is a practitioner within the meaning of the term in the *Legal Practitioners Act 1893*.

*[Section 72 inserted by No. 42 of 1997 s.8.]*

**73. Terms and conditions of office of referee**

- (1) A referee —
  - (a) shall not engage in any paid employment outside the duties of his office except with the express permission of the Governor, which permission may at any time be withdrawn;
  - (b) shall be paid such remuneration as the Governor, on the recommendation of the Public Service Board<sup>14</sup>, from time to time determines;
  - (c) shall be paid the same travelling and other allowances as are paid from time to time to a public service officer within the meaning of the *Public Sector Management Act 1994*;

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- (d) is entitled to the same rights in respect of annual leave of absence for recreation, leave of absence on account of illness, and long service leave as if he were an officer of the Public Service of the State;
  - (e) may, at any time during the term of his appointment as referee, be removed from that office by the Governor if the Governor considers him to be —
    - (i) incompetent in the performance of his functions under this Act; or
    - (ii) unfit to hold the office of referee for any reason;
  - (f) may resign his office by writing signed by him delivered to the Minister; and
  - (g) where he was immediately before his appointment as a referee, an officer of the Public Service of the State —
    - (i) shall retain his existing and accruing rights, and in particular his rights, if any, under the *Superannuation and Family Benefits Act 1938*;
    - (ii) shall, for the purpose of determining all those rights, have his service as a referee taken into account as if it were service in the Public Service of the State; and
    - (iii) shall, if he resigns his office or his term of office expires by effluxion of time, be entitled to be appointed to an office in the Public Service of the State not lower in status than the office which he so occupied immediately prior to his appointment as a referee.
- (2) Notwithstanding subsection (1), where a person holds office as a referee and also holds another public office for which he is remunerated out of the Consolidated Fund, the terms and conditions of office as a referee in respect of matters mentioned in subsection (1)(b), (c), (d), and (g) do not apply to or in relation to that person in his office as a referee except to the extent that they are more favourable to him than the terms and

conditions of his other public office in respect of like matters to those so mentioned.

*[Section 73 amended by No. 6 of 1993 s.11; No. 32 of 1994 s.19; No. 42 of 1997 s.8.]*

**74. Acting referees**

The Governor may appoint a person who is eligible to be appointed and hold office as a referee to act in the the office of a referee during the absence of that referee from his office through illness or other cause and the person so appointed shall while so acting be deemed to be a referee and shall have the immunities, powers, authorities, duties, and functions of a referee and be entitled to remuneration and allowances as a referee.

**75. Delegation by referee**

- (1) A referee may, by instrument signed by him, delegate to a person who is eligible to be appointed and hold office as a referee the exercise of any power or the performance of any duty, other than this power of delegation, conferred or imposed on a referee under this Act.
- (2) An act or thing done or suffered by a delegate in the exercise of a delegation under subsection (1) has the same force and effect as if it had been done or suffered by a referee and shall be deemed to have been done or suffered by a referee.

**76. Registry and officers**

- (1) There shall be established and maintained in Perth a registry at which all records of referees shall be kept.
- (2) There shall be appointed under Part 3 of the *Public Sector Management Act 1994* such officers as are necessary for the proper functioning of the registry and to assist the referees.

- (3) A person may hold office under this section in conjunction with any other office in the Public Service of the State.

*[Section 76 amended by No. 32 of 1994 s.19.]*

### **Division 2 — Applications for orders**

#### **77. How applications are made**

An application to a referee for relief under this Part shall —

- (a) be made in writing;
- (b) comply with section 77B;
- (c) specify the order or orders that are applied for and the grounds relied on for the making of each order; and
- (d) be accompanied by the prescribed fee.

*[Section 77 inserted by No. 58 of 1995 s.67.]*

#### **77A. Application in relation to retirement villages**

- (1) Where, after the coming into operation of section 85 of the *Retirement Villages Act 1992*, an application for an order is made to a referee in relation to a dispute or complaint arising within a retirement village, or in relation to a scheme or land within a retirement village, the referee shall refer the application to the Retirement Villages Disputes Tribunal established under that Act for the making of the order.
- (2) For the purpose of making an order referred to in subsection (1), the Retirement Villages Disputes Tribunal has, in addition to its functions under the *Retirement Villages Act 1992*, the functions of a referee under this Act.
- (3) The provisions of this Act apply to an order made by the Retirement Villages Disputes Tribunal pursuant to a referral under this section as if the order were an order made under this Act.



- (4) In subsection (1) “**retirement village**” means a retirement village as defined in the *Retirement Villages Act 1992*.

*[Section 77A inserted by No. 34 of 1992 s.86; amended by No. 58 of 1995 s.96.]*

**77B. Disputes procedures for scheme to be followed**

- (1) An application for an order under this Part in relation to a scheme shall be accompanied by a certificate under subsection (2) given by the applicant.
- (2) The certificate must state either —
- (a) that there are no relevant provisions in the by-laws of the strata company for the scheme that relate to the resolution of the matter in dispute; or
  - (b) that there are such provisions and the applicant has, so far as is possible, complied with them.

*[Section 77B inserted by No. 58 of 1995 s.68.]*

**78. Referee may inspect certain records**

- (1) Where an application is made to a referee for an order under this Part in relation to a scheme, the strata company for the scheme has, in relation to a referee, the same duties under sections 35A and 43 as it has under those sections in relation to a proprietor.
- (2) A strata company shall not neglect or fail to perform any duty owed by it to a referee under subsection (1).

Penalty: \$500.

*[Section 78 amended by No. 58 of 1995 ss.69 and 96.]*

**79. Notice of application to be given**

- (1) Subject to section 80A, after receiving an application under this Part, a referee —
- (a) shall give written notice of the application to the strata company to which the application relates and to any

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other person who, in the opinion of the referee, would be affected if the order sought were made;

- (b) shall, in a notice required to be given by paragraph (a), specify the order sought and invite the strata company and any member of the strata company and any other person to whom the notice is given to make to the referee, within a time specified in the notice, a written submission in respect of the matter to which the application relates;
  - (c) may, by further notice, allow the strata company, any member of the strata company and each person to whom a notice under paragraph (a) was given a longer time within which to make a submission under paragraph (b);
  - (d) may allow an applicant to amend the application on any condition that the referee thinks fit, including a requirement —
    - (i) that the applicant give notice of the amendment in terms of paragraphs (a) and (b) to every party who was given notice of the application; or
    - (ii) that the applicant pay such costs of any person interested in the application as the referee may award to compensate that person for time unnecessarily spent in connection with the application.
- (2) A strata company that is given notice under subsection (1)(a) or (c) shall forthwith serve a copy of the notice on each —
- (a) proprietor;
  - (b) mortgagee who has given notice in writing of his interest to the strata company; and
  - (c) occupier who would be affected if the order sought were made.

*[Section 79 inserted by No. 58 of 1995 s.70.]*

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*[Heading inserted by No. 58 of 1995 s.71.]*

**80. Investigations**

- (1) A referee shall make such investigations as he thinks necessary for the proper determination of an application under this Part, whether with or without a hearing.
- (2) In conducting an investigation a referee —
  - (a) shall proceed with as little formality and technicality and as speedily as the requirements of this Act and proper investigation of the matter permit;
  - (b) is not bound by the rules of evidence but may inform himself of any matter in such manner as he considers appropriate; and
  - (c) may, subject to this Act and the rules of natural justice, determine his own procedures.

*[Section 80 inserted by No. 58 of 1995 s.71.]*

**80A. Dismissal of applications in certain cases**

A referee may, without being obliged to comply with section 79 and notwithstanding that a time specified under that section may not have expired, by order dismiss an application under this Part if it appears to him that —

- (a) the application does not comply with section 77;
- (b) the application is not accompanied by a certificate under section 77B, or, even though such a certificate is included, the certificate has not been correctly given;
- (c) the application is frivolous, vexatious, misconceived or lacking in substance;
- (d) a decision in favour of the applicant is not within the jurisdiction of the referee; or

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- (e) the applicant has unreasonably delayed complying with a requirement under section 80C(a).

*[Section 80A inserted by No. 58 of 1995 s.71.]*

**80B. Power to enter premises**

- (1) A referee may enter upon any parcel, and every part of a parcel, to which an application relates for the purpose of carrying out any investigation with respect to the application.
- (2) The power conferred by subsection (1) is exercisable at any reasonable time, but only after notice has been given to the strata company and to every person who has been notified of the application.

*[Section 80B inserted by No. 58 of 1995 s.71.]*

**80C. Further information may be requested**

A referee may —

- (a) require an applicant to provide him with such further information in relation to the application as, in his opinion, may assist the investigation of the application;
- (b) require the strata company for a scheme to which an application relates to give to him the names and addresses of the proprietors of lots in the scheme as appearing in the roll maintained under section 35A;
- (c) refuse to deal with the application until a requirement made under paragraph (a) or (b) has been complied with.

*[Section 80C inserted by No. 58 of 1995 s.71.]*

**80D. Powers to obtain information**

- (1) For the purpose of an investigation —
  - (a) a referee may by summons —
    - (i) require the attendance of any person before that referee;

- (ii) require the production of any books, papers or documents; or
  - (iii) require both such attendance and production;
- and
- (b) a referee may —
    - (i) inspect any books, papers or documents produced, retain them for such reasonable period as he thinks fit, and make copies of any of them, or of any of their contents;
    - (ii) require any person appearing before him to make an oath or affirmation that he will truly answer any relevant question put to him by the referee;
    - (iii) require any person appearing before him (whether he has been summoned to appear or not) to answer any relevant question put to him by the referee.
- (2) A person shall not —
- (a) without reasonable excuse fail to comply with the requirements of a summons served on him under subsection (1)(a); or
  - (b) refuse or fail to comply with a requirement under subsection (1)(b).

Penalty: \$500.

*[Section 80D inserted by No. 58 of 1995 s.71.]*

**80E. Obstruction**

A person shall not obstruct or hinder the referee or a delegate of the referee in the exercise of the powers conferred by this Division.

Penalty: \$500.

*[Section 80E inserted by No. 58 of 1995 s.71.]*

### **Division 3 — Orders by referee**

#### **81. Orders under this Division**

- (1) A referee shall not make an order under this Division, other than an order under section 82, until after the expiration of the time specified for the making of written submissions in the notice given under section 79(1)(a), or where a further notice has been given under section 79(1)(c), the expiration of the longer time specified in that notice.
- (2) An order made may include such ancillary or consequential provisions as the referee thinks fit.
- (2a) An order made by a referee may be expressed in terms different from the order sought by the applicant, so long as it does not differ in substance from the order sought.
- (3) A referee may order a strata company, an administrator, a proprietor, a person having an estate or interest in a lot or an occupier or other resident of a lot to do, or to refrain from doing, a specified act with respect to a parcel.
- (4) A referee may by order dismiss an application for an order.
- (5) An application may be withdrawn by the applicant at any time before an order is made.
- [(6) *repealed*]
- (7) Subject to sections 79(1)(d) and 103H(8), a referee may not make any order for the payment of costs in connection with an application for an order.
- (8) Subject to subsection (9) and section 82(5), an order made by a referee shall not be capable of being varied or revoked by him, but this subsection does not prevent a subsequent application and subsequent order being made.
- (9) Subsection (8) does not operate to prevent a referee from varying an order for the purpose of correcting or clarifying it or

extending a time and the order as so varied shall be deemed to be the order instead of the original order.

- (10) Except to the extent that the order otherwise provides, an order under this Division (not being an order for payment of money referred to in section 84(1)(a)) ceases to have any force or effect upon the expiration of the period of 2 years that next succeeds the making of the order.
- (11) Notwithstanding section 36, where an order against a strata company is made under this Division on the application of the proprietor of a lot, the strata company may not levy in respect of that lot a contribution towards the expenses of the strata company in relation to the application.

*[Section 81 amended by No. 58 of 1995 s.72.]*

**82. Interim orders**

- (1) In this section, “**interim order**” means an order made under subsection (2).
- (2) Where an applicant for an order under this Division states in his application that he requests an interim order, the referee may, if he is satisfied on reasonable grounds that by reason of the urgent circumstances of the case he should do so —
  - (a) make under this subsection as an interim order any order that may be made under this Division with respect to the application; and
  - (b) before the expiration of 3 months from the date on which an interim order takes effect and upon a further request made by the applicant, renew the interim order that is in force by serving notice in accordance with section 104 that the order is renewed.
- (3) An interim order may be made or renewed notwithstanding —
  - (a) that any power or duty of the referee under section 79(1) has not been exercised or performed with respect to the application; or

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- (b) where the referee has given written notice of the application under section 79(1)(c), that any time specified under section 79(1)(d) or (e) in that or any further notice has not expired.
- (4) An interim order made pursuant to an application for an order under this Division ceases to have effect —
  - (a) at the expiration of 3 months from the date on which it takes effect or, where the referee has renewed the interim order, at the expiration of 6 months from that date;
  - (b) where the interim order is revoked by the District Court under section 106 or by a referee under subsection (5), when it is so revoked; or
  - (c) where —
    - (i) a referee makes an order under this Division with respect to the application; or
    - (ii) a referee dismisses the application, before the interim order ceases to have effect under paragraph (a) or (b), when the order is made under this Division or the application is dismissed, as the case may be.
- (5) A referee may revoke an interim order and, if he does so, he shall serve notice in accordance with section 104 that the order has been revoked.
- (6) A person shall not in, or in connection with, a request for an interim order or for the renewal of any such order, make a statement that he knows is false or misleading in a material respect.  
Penalty: \$500.

**83. General powers of referee to make orders**

- (1) A referee may, pursuant to an application of a strata company, an administrator, a proprietor, a person having an estate or



interest in a lot or an occupier or other resident of a lot, in respect of a scheme, make an order for the settlement of a dispute, or the rectification of a complaint, with respect to the exercise or performance of, or the failure to exercise or perform, a power, authority, duty or function conferred or imposed by this Act or the by-laws in connection with that scheme on any person entitled to make an application under this subsection or on the council or the chairman, secretary or treasurer of the strata company.

- (2) Where a strata company has a discretion as to whether or not it exercises or performs a power, authority, duty or function conferred or imposed on it by this Act, it shall be deemed to have refused or failed to exercise or perform that power, authority, duty or function only if it has decided not to exercise or perform that power, authority, duty or function.
- (3) For the purposes of subsection (2), where —
- (a) application is made to a strata company to exercise a discretion referred to in that subsection; and
  - (b) the strata company does not, before the expiration of the period of 2 months that next succeeds the making of the application —
    - (i) exercise or perform a power, authority, duty or function in accordance with the application; or
    - (ii) inform the applicant that it has decided not to exercise or perform the power, authority, duty or function in accordance with the application,

the strata company shall be deemed to have decided not to exercise or perform the power, authority, duty or function.

- (4) Nothing in subsection (1) empowers a referee to make an order under that subsection for the settlement of a dispute, or the rectification of a complaint, with respect to the exercise or performance of, or the failure to exercise or perform, a power, authority, duty or function conferred or imposed on the strata

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company by this Act where that power, authority, duty or function may, in accordance with any provision of this Act, only be exercised or performed pursuant to a unanimous resolution, resolution without dissent or a special resolution.

- (5) Nothing in this Part authorizes a referee to make an order of the kind that may be made by the District Court under section 28, 29 or 31.
- (6) Nothing in this Part affects the generality of subsection (1), but an order in respect of any matter referred to in any other section of this Part shall not be made under this section.

*[Section 83 amended by No. 58 of 1995 ss.73, 93 and 96.]*

**84. Further powers of referee**

- (1) A referee is empowered to make an order that —
  - (a) requires a party to the dispute before him to pay money not exceeding the sum of \$1 000 to a person specified in the order;
  - (b) requires a party to the dispute before him to do, or refrain from doing, some specified act to which the application relates;
  - (c) strikes out for want of jurisdiction the dispute before him.
- (2) An order made by a referee may direct that the order shall be complied with within a period specified in the order.
- (3) An order made by a referee that requires the payment of money may be made to take effect immediately or so as to take effect upon default being made in complying with some other order made by the referee.

**85. Order with respect to certain consents affecting common property**

Where, pursuant to an application by a proprietor for an order under this section, the referee considers that the strata company

for the scheme to which the application relates has unreasonably refused to consent to a proposal by that proprietor —

- (a) to effect alterations to the common property; or
- (b) to have carried out repairs to any damage to the common property or any other property of the strata company,

the referee may make an order that the strata company consent to the proposal.

*[Section 85 amended by No. 58 of 1995 s.96.]*

**86. Order with respect to acquisition of personal property**

Where, pursuant to an application by a proprietor for an order under this section, the referee considers that an acquisition or a proposed acquisition of personal property by the strata company for the scheme to which the application relates is unreasonable, the referee may order —

- (a) that the personal property acquired be sold or otherwise disposed of by the strata company within a specified time; or
- (b) that the personal property be not acquired.

*[Section 86 amended by No. 58 of 1995 s.96.]*

**87. Order to acquire personal property**

Where, pursuant to an application by a proprietor for an order under this section, the referee considers that the strata company for the scheme to which the application relates has unreasonably refused to acquire personal property, the referee may order the strata company to acquire the personal property.

*[Section 87 amended by No. 58 of 1995 s.96.]*

**88. Order to make or pursue insurance claim**

Where, pursuant to an application by a proprietor for an order under this section, the referee considers that the strata company

for the scheme to which the application relates has unreasonably refused to make or pursue an insurance claim in respect of damage to a building or any other property insured by the strata company under Part IV, the referee may order the strata company to make or pursue the claim.

*[Section 88 amended by No. 58 of 1995 s.96.]*

**89. Order varying certain rates of interest**

Where, pursuant to an application by a proprietor for an order under this section, the referee considers that the strata company for the scheme to which the application relates has determined an unreasonable rate as the rate of interest chargeable for the late payment of a contribution levied under section 36, the referee may, in respect of such contributions as are specified in the order and instead of the rate so determined, order that no interest be so chargeable or that the rate so chargeable be a rate specified by him in the order.

*[Section 89 amended by No. 58 of 1995 s.96.]*

**90. Order to supply information or documents**

Where, pursuant to an application for an order under this section, the referee considers that the strata company for the scheme to which the application relates, or the administrator for that scheme, or the chairman, secretary or treasurer of that strata company has wrongfully —

- (a) withheld from the applicant information to which he is entitled under this Act; or
- (b) failed to make available for inspection by the applicant or his agent a record or document that under this Act he is entitled to inspect,

the referee may order that strata company, administrator, chairman, secretary or treasurer to supply or make available the

information or to make so available the record or document, as the case may require, to the applicant.

*[Section 90 amended by No. 58 of 1995 s.96.]*

**91. Order relating to animal kept contrary to by-laws**

Where, pursuant to an application by a strata company, a proprietor, an administrator, a person having an estate or interest in a lot or an occupier or other resident of a lot for an order under this section, the referee considers that a person is keeping an animal on a lot or common property in contravention of the by-laws, the referee may order that person to cause the animal to be removed from the parcel within a specified time and thereafter to be kept away from the parcel, unless the keeping of the animal on the lot or common property, as the case may be, is subsequently authorized by the by-laws.

**92. Order relating to animal kept pursuant to by-laws**

Where, pursuant to an application by a strata company, a proprietor, an administrator, a person having an estate or interest in a lot or an occupier or other resident of a lot for an order under this section, the referee considers that an animal kept on a lot or the common property in accordance with the by-laws causes a nuisance or hazard to the proprietor, occupier or resident of another lot or unreasonably interferes with the use and enjoyment of another lot or of the common property, the referee may —

- (a) order the person keeping the animal to cause the animal to be removed from the parcel within a specified time, and thereafter to be kept away from the parcel; or
- (b) order the person keeping the animal to take, within a time specified in the order, such action as is specified in the order and, in the opinion of the referee, will terminate the nuisance, hazard or unreasonable interference.

**93. Order relating to by-laws**

- (1) Any person entitled to vote at a meeting of a strata company (including both a first mortgagee and a proprietor who is a mortgagor of a lot) may apply to a referee for an order under this section.
- (2) An order under this section is an order for one or more of the following —
  - (a) a declaration that a by-law or an amendment or repeal of a by-law is invalid;
  - (b) the repeal of a by-law;
  - (c) the repeal of an amendment to a by-law;
  - (d) the re-instatement of —
    - (i) a by-law that was repealed or deemed by subsection (4) to be repealed; or
    - (ii) any provision of a by-law that was amended or deemed by subsection (4) to be amended.
- (3) On the making of an application under subsection (1) a referee may make an order under this section if he is satisfied that the by-law or the repeal or amendment of a by-law —
  - (a) was made without power;
  - (b) was not made in accordance with this Act or the regulations or any other requirement that ought to have been observed; or
  - (c) should not have been made having regard to the interests of all proprietors in the use and enjoyment of their lots or the common property.
- (4) An order under this section, when recorded under section 115, has effect according to its tenor and subject to any order with respect thereto made by a superior court; and in particular an order has effect —
  - (a) where subsection (2)(a) applies, as if its terms were an exercise of the power to repeal or amend the by-laws; and

- (b) in any other case, as if it were the exercise by the strata company of its powers in respect of by-laws.
- (5) This section does not apply with respect to a by-law made or deemed to be made under section 42(8).

*[Section 93 inserted by No. 58 of 1995 s.74.]*

**94. Order granting certain licence**

- (1) Pursuant to an application by a proprietor for an order under this section, a referee may, subject to this section, order that the applicant, and any occupier or other resident of the lot of which the applicant is the proprietor, may use specified common property in such a manner, for such purposes, and upon such terms and conditions, if any, as are specified in the order.
- (2) A referee shall not make an order under subsection (1) unless he is satisfied —
  - (a) that the lot of which the applicant is proprietor is incapable of reasonable use and enjoyment by the proprietor, occupier, or other resident of the lot unless the order is made; and
  - (b) that the strata company has refused to grant a licence to use common property in such a manner, for such purposes, and upon such terms and conditions as would enable that proprietor or such an occupier or other resident reasonably to use and enjoy that lot.
- (3) An order under subsection (1), when recorded under section 115, has effect, subject to any order with respect thereto made by a superior court, as if its terms were a by-law.

**95. Referee may make certain by-laws**

- (1) Where, pursuant to an application by a proprietor under this section, a referee considers that the strata company has unreasonably refused to make a by-law under section 42(8) with

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respect to any fixture or fitting to be attached to the common property, the referee may —

- (a) by order, exercise the powers conferred on the strata company under section 42(8) with respect to the making of a by-law in relation to the fixture or fitting; and
  - (b) include among the terms and conditions specified in the by-law terms and conditions relating to insurance of the fixture or fitting.
- (2) In making a by-law under subsection (1), the referee shall specify in the order whether or not section 42(10) is to apply to the by-law and section 42(10) shall, or shall not, apply accordingly.

[96. *Repealed by No. 58 of 1995 s.75.*]

**97. Power of referee to invalidate a resolution or election**

- (1) Where, pursuant to an application by a proprietor or first mortgagee of a lot for an order under this section, a referee considers that the provisions of this Act have not been complied with in relation to a meeting of the strata company, the referee may, by order —
- (a) invalidate any resolution of, or election held by, the persons present at the meeting; or
  - (b) refuse to invalidate any such resolution or election.
- (2) A referee shall not make an order under subsection (1) refusing to invalidate a resolution or election unless he considers —
- (a) that the failure to comply with the provisions of this Act did not prejudicially affect any person; and
  - (b) that compliance with the provisions of this Act would not have resulted in a failure to pass the resolution, or have affected the result of the election, as the case may be.



**98. Order authorizing application to Land Valuation Tribunal**

Where, pursuant to an application by a proprietor for an order under this section, the referee considers that the failure of a strata company to authorize by special resolution an application by that proprietor to a Land Valuation Tribunal under section 16 is inequitable, the referee may, by order, exercise the function conferred on the strata company under section 16(2)(a).

**99. Order for variation or manner of payment of contributions**

- (1) Where, pursuant to an application by a proprietor or by a mortgagee in possession (whether by himself or another person) for an order under this section, a referee considers that any amount of contributions levied under section 36 is inadequate or excessive, or that the manner of payment of contributions is unreasonable, the referee may —
  - (a) order variation of the amount;
  - (b) order payment of contributions in a different manner; or
  - (c) make orders under paragraphs (a) and (b).
- (2) Where an order of a referee under subsection (1) takes effect in relation to a contribution levied by a strata company that has been wholly or partly paid in respect of a lot, the strata company shall —
  - (a) where the contribution required to be paid in respect of the lot pursuant to the order of the referee is greater than the amount already paid in respect of the lot — be deemed to have determined to make a levy under section 36 of an amount equal to the difference between the amount already paid in respect of the lot and the amount of the contribution required to be paid in respect of the lot pursuant to the order of the referee; or
  - (b) where the contribution required to be paid in respect of the lot pursuant to the order of the referee is less than the amount already paid in respect of the lot — refund to the proprietor by whom, or on whose behalf, the payment had already been made an amount equal to the

difference between the amount already paid in respect of the lot and the amount of the contribution required to be paid in respect of the lot pursuant to the order of the referee.

**99A. Order fixing different basis for levying contributions**

- (1) A proprietor who is aggrieved by the operation of a by-law referred to in section 42B may apply to a referee for an order under this section.
- (2) An order under this section is an order —
  - (a) fixing a method of assessing contributions to be levied on proprietors under section 36 otherwise than —
    - (i) in proportion to the unit entitlements of their respective lots; or
    - (ii) in accordance with a by-law referred to in section 42B;
  - or
  - (b) that such contributions are to be levied in accordance with section 36(1)(c)(i).
- (3) An order under this section may relate to contributions to all of the expenses of the strata company or to one or more particular kinds of expenses.
- (4) On the making of an application under subsection (1), the referee may make an order under this section that appears to him to provide for a method of fixing contributions that is fair to all proprietors having regard to their use and enjoyment of the common property and any building or other improvement on the parcel.
- (5) To the extent of any inconsistency, an order under this section prevails over section 36(1)(c) or a by-law under section 42B.
- (6) An order under this section is of no effect until a copy of the order has been recorded by the Registrar of Titles under section 115 on the strata/survey-strata plan to which it relates.

- (7) An order under this section is to be taken to be revoked or amended to the extent that it is inconsistent with a by-law, or an amendment of a by-law, subsequently made by the strata company by resolution without dissent.

*[Section 99A inserted by No. 58 of 1995 s.76.]*

**100. Order where voting rights denied or due notice of item of business not given**

- (1) Where, pursuant to an application by a person under this section, a referee is satisfied that a particular resolution would not have been passed at a general meeting of a strata company but for the fact that the applicant —

- (a) was improperly denied a vote on the motion for the resolution; or
- (b) was not given due notice of the item of business pursuant to which the resolution was passed,

the referee may order that the resolution be treated as a nullity on and from the date of the order.

- (2) An application for an order under subsection (1) may not be made later than 30 days after the day of the meeting at which the resolution was passed.

- (3) Where —

- (a) an order under subsection (1) is made in respect of a resolution making a by-law or amending or repealing a by-law;
- (b) the by-law made or amended by that resolution is in force; and
- (c) the order is recorded as provided by section 115,

the by-laws shall, subject to their having been or being amended, added to or repealed under section 42 and to any order with respect to the order under subsection (1) made by a superior court, have force and effect on and from the date the order is so recorded to the same extent as they would have had if the resolution had not been passed.

**101. Order varying amount of insurance to be provided**

Where, pursuant to an application by a proprietor or a mortgagee of a lot for an order under this section, a referee considers that the amount for which the strata company for the scheme concerned has insured under section 54 or 55(1)(b) is not reasonable, the referee may order the strata company to vary that amount to a specified amount.

*[Section 101 amended by No. 58 of 1995 s.96.]*

**102. Order appointing administrator**

(1) Where —

- (a) in consequence of the making of an order under this Part a duty is imposed on a strata company;
- (b) a duty is otherwise imposed by this Act or the by-laws on a strata company;
- (c) a duty is imposed by this Act or the by-laws on the chairman, secretary or treasurer of a strata company or on the council of a strata company; or
- (d) a judgment debt is owed by a strata company,

a referee may —

- (e) in the case referred to in paragraph (a), on the application of the person who obtained the order so referred to;
- (f) in a case referred to in paragraph (b) or (c), on the application of a person having an estate or interest in a lot the subject of the scheme concerned; or
- (g) in the case referred to in paragraph (d), on the application of the judgment creditor,

by order appoint an administrator (being a person who has consented in writing to the appointment) to perform that duty and any other duty specified in the order or to pay that judgment debt, as the case may require.

- (2) A referee who appoints an administrator under subsection (1) may also order that the administrator shall have and may exercise and perform —
- (a) all of the powers, authorities, duties and functions of the strata company for the parcel to which the order relates or of the chairman, secretary or treasurer of that strata company or the council of that strata company;
  - (b) any one or more of those powers, authorities, duties or functions as specified in the order; or
  - (c) all of those powers, authorities, duties and functions except those specified in the order.
- (3) An order made under this section may be revoked or varied by a referee upon the application of the administrator or a person entitled to apply for an order of the kind sought to be revoked or varied.
- (4) Where a referee makes an order under subsection (1) —
- (a) no person other than the administrator appointed by the order may, while that administrator holds office, exercise or perform any power, authority, duty or function which the administrator is authorized to exercise or perform by that order or an order under subsection (2); and
  - (b) any act or thing done or suffered by that administrator in the exercise or performance of such a power, authority, duty or function has the same effect as it would have had if the order had not been made and it had been done or suffered by the person or body who, but for the order, would have been entitled or required to exercise or perform the power, authority, duty or function.
- (5) The appointment of an administrator under this section may be made upon such terms and conditions (including terms and conditions as to remuneration by the strata company and the duration of the appointment) as the referee specifies in the order making the appointment.

- (6) An administrator appointed under subsection (1) who exercises or performs a power, authority, duty or function pursuant to an order under subsection (1) shall, forthwith after its exercise or performance —
- (a) make a written record specifying the power, authority, duty or function and the manner of its exercise or performance; and
  - (b) serve the record on the strata company for the scheme to which the order relates.

*[Section 102 amended by No. 58 of 1995 s.96.]*

**103. Order calling first annual general meeting of strata company**

- (1) If the first annual general meeting of the strata company is not convened in accordance with section 49 or, having been so convened, is not held, a referee may, pursuant to an application by the strata company, a proprietor or a mortgagee of a lot, appoint by order a person to convene a meeting of the strata company within such time as may be specified in the order and the meeting convened by that person shall be deemed to be the meeting convened under that section.
- (2) At any time after the meeting convened under subsection (1) has been held, the referee may, pursuant to an application made by a proprietor or a mortgagee of a lot, appoint by order a person, nominated by the proprietor or mortgagee, who has consented to that nomination —
- (a) if there is not a council of the strata company, to convene a meeting of the strata company within such time as may be specified in the order and a meeting so convened shall, for the purpose of the election of a council, be deemed to be the first annual general meeting of the strata company; or
  - (b) if there is not a chairman, secretary and treasurer of the council of the strata company, to convene a meeting of

the council of the strata company within such time as may be specified in the order and a meeting so convened shall be deemed to have been convened by that council.

- (3) An order made under subsection (1) or (2) may include such ancillary or consequential provisions as the referee thinks fit.
- (4) Notwithstanding Schedule 1, where an order made under subsection (1) or (2) so provides —
  - (a) the person appointed by the order to convene a meeting of a strata company shall preside at the meeting and, while he so presides, shall be deemed to be the chairman of the strata company; and
  - (b) notice of that meeting may be given in the manner specified in the order.
- (5) Where a meeting of the strata company convened in accordance with this section is held after the time limited under this section for the holding of the meeting, it does not on that account fail to be the first annual general meeting of the strata company.
- (6) An original proprietor who has failed to convene and hold a meeting of the body corporate in accordance with section 49 remains liable to the penalty provided by that section notwithstanding that an order is made under subsection (1) or that a meeting is convened and held pursuant to such an order.

**103A. Order for compliance, despite section 36A**

- (1) A proprietor of a lot in a two-lot scheme may apply to a referee for an order under this section.
- (2) An order under this section is an order that, despite subsection (1) of section 36A, one or more of the provisions in the Table to that subsection apply to the strata company for the two-lot scheme.
- (3) On the making of an application under subsection (1), a referee may make an order under this section if he is satisfied that,

having regard to the interests of all proprietors, the provision or provisions should apply to the strata company.

- (4) An order under this section is of no effect until a copy of the order has been recorded by the Registrar of Titles under section 115 on the strata/survey-strata plan to which it relates.
- (5) An order under this section is to be taken to be revoked or amended to the extent that it is inconsistent with a by-law, or an amendment of a by-law, subsequently made by the strata company by resolution without dissent.

*[Section 103A inserted by No. 58 of 1995 s.77.]*

**103B. Order to enable quorum in two-lot scheme**

- (1) Where a proprietor of a lot in a two-lot scheme (“**the proprietor in default**”) has failed or refused to attend a general meeting of the strata company, the proprietor of the other lot may apply to a referee for an order under this section.
- (2) An order under this section is an order appointing a fit and proper person to exercise such powers of voting under this Act in respect of the lot of the proprietor in default as the referee shall specify in the order.
- (3) On the making of an application by a proprietor under subsection (1), the referee may make an order under this section if he is satisfied that the proprietor in default has acted unreasonably in refusing to attend a general meeting of the strata company.

*[Section 103B inserted by No. 58 of 1995 s.77.]*

**103C. Order making resolution for two-lot scheme**

- (1) Where a resolution, including a special resolution, for which an order under this section may be made has been proposed by a proprietor of a lot in a two-lot scheme for passing by the strata company for the scheme but has been defeated, the proprietor may apply to a referee for an order under this section.



- (2) An order under this section is an order declaring that —
- (a) a resolution or a special resolution, as the case may be, specified in the order is to be deemed to have been duly passed by the strata company; or
  - (b) a resolution specified in the order is to be deemed to have been duly passed by the strata company as a unanimous resolution for the purposes of section 21F or 21Q.
- (3) On the making of an application by a proprietor under subsection (1), the referee may make an order under this section if he is satisfied that the other proprietor has acted unreasonably in refusing to agree to the resolution.

*[Section 103C inserted by No. 58 of 1995 s.77; amended by No. 61 of 1996 s.32.]*

**103D. Order cancelling special resolution**

- (1) Where a special resolution has been passed by a strata company for a scheme in which there are 3, 4 or 5 lots a proprietor who did not vote, either personally or by proxy, in support of the resolution may apply to a referee for an order under this section.
- (2) An application under subsection (1) cannot be made by a proprietor later than —
- (a) the 28th day after the day of the meeting at which the special resolution was passed; or
  - (b) if any vote in support of the resolution was cast under section 3B(5), the 56th day after the day of the meeting or the 28th day after service of notice of passing of the special resolution on the proprietor, whichever first occurs.
- (3) An order under this section is an order declaring that a special resolution specified in the order is to be deemed not to have been passed by the strata company.

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(4) On the making of an application by a proprietor under subsection (1), the referee may make an order under this section if he is satisfied that the other proprietors have acted unreasonably in passing the special resolution.

(5) In subsection (1) “**lot**” does not include a lot in a survey-strata scheme that is designated as a common property lot.

*[Section 103D inserted by No. 58 of 1995 s.77.]*

**103E. Order for termination of contract for services to strata company**

(1) A strata company for a scheme, or a proprietor of a lot in a scheme, may apply to a referee for an order under this section.

(2) An order under this section is an order —

- (a) terminating; or
- (b) shortening the term of,

an agreement to which this section applies made between the strata company and another person.

(3) On the making of an application under subsection (1), a referee may make an order under this section if he is satisfied that the agreement —

- (a) is unfair to the proprietors of 25% or more of the aggregate unit entitlement of the lots in the scheme; or
- (b) is for an excessively long term.

(4) This section applies to an agreement if —

- (a) it relates to the provision of services to the strata company or the proprietors; and
- (b) it is made before the commencement of section 77 of the *Strata Titles Amendment Act 1995*.

(5) An order under this section may include an order for the payment of money by any party to the agreement to another party for the purpose of adjusting the position or rights of the

parties consequentially on the termination or shortening of the term of the agreement.

*[Section 103E inserted by No. 58 of 1995 s.77.]*

**103F. Order dispensing with approval under section 7(2)**

- (1) A proprietor of a lot who has applied for but not obtained an approval under section 7B may apply to a referee for an order under this section.
- (2) An order under this section is an order declaring that the approval required under section 7 or 7A, as the case may be, is to be deemed to have been given by the proprietor or the strata company.
- (3) On the making of an application under subsection (1), a referee may make an order under this section if he is satisfied that the approval —
  - (a) should have been given under section 7 or 7A, as the case may be; but
  - (b) has been unreasonably withheld,by the proprietor or the strata company.
- (4) If —
  - (a) a proprietor has made an application to a strata company under section 7B; and
  - (b) the application has been considered at a general meeting at which no vote was passed against the application,the proprietor may make a conditional application for an order under this section.
- (5) The referee cannot make an order on a conditional application unless a proprietor, voting in accordance with section 3AC(2), casts a vote against the application referred to in subsection (4)(a) nor until the expiration of 35 days after the meeting.

*[Section 103F inserted by No. 58 of 1995 s.77; amended by No. 61 of 1996 s.5.]*

**103G. Order granting relief for breach of section 7(2)**

- (1) An application to a referee for a finding and an order under this section may be made —
  - (a) by the proprietor of a lot in a two-lot scheme; or
  - (b) in the case of any other scheme, by the strata company.
- (2) A finding under this section is a finding that the proprietor of a lot in the scheme has committed a breach of section 7(2).
- (3) An order under this section is an order that the proprietor —
  - (a) stop carrying out any work or any specified work in breach of subsection (2) of section 7; or
  - (b) within a specified time, pull down, remove, or alter anything or any specified thing that is in place as a result of work done in breach of that subsection,or an order under both of those paragraphs.
- (4) On the making of an application under subsection (1), a referee shall —
  - (a) make a finding under this section if he is satisfied that a breach of section 7(2) has occurred;
  - (b) make an order under this section unless he is satisfied that the work done or intended to be done will not cause any significant inconvenience or detriment to the other proprietors.

*[Section 103G inserted by No. 58 of 1995 s.77.]*

**103H. Order for variation of unit entitlement**

- (1) An application to a referee for an order under this section may be made —
  - (a) by the proprietor or a registered mortgagee of a lot in a scheme; or
  - (b) by the strata company for the scheme.

- (2) An order under this section is an order amending the schedule of unit entitlement registered in respect of the scheme in a manner that the referee thinks appropriate.
- (3) On the making of an application under subsection (1), a referee may make an order under this section if he is satisfied that —
  - (a) the proportion that the unit entitlement of any lot in the scheme bears to the aggregate unit entitlement of all lots in the scheme is not consistent with the proportion that the value of that lot bears to the aggregate value of all lots in the scheme; and
  - (b) that the lack of consistency is sufficiently great as to be unfair or anomalous.
- (4) References in subsection (3)(a) to “**value**” are to —
  - (a) capital value as defined in the *Valuation of Land Act 1978*, in the case of lots in a strata scheme; and
  - (b) site value as defined in that Act, in the case of lots in a survey-strata scheme.
- (5) An order under this section is of no effect until a copy of the order has been lodged with the Registrar of Titles under section 115 and he has made the amendment required by subsection (7).
- (6) Upon the lodgement of a copy of an order certified by the referee as a true copy, the Registrar of Titles shall amend the schedule of unit entitlement registered in respect of the scheme in the prescribed manner.
- (7) When the schedule is so amended the share of a proprietor in common property vested in the proprietor pursuant to the amended schedule shall by operation of law be subject to any encumbrance registered or caveat lodged with the Registrar of Titles against his lot, and every such encumbrance or caveat is deemed to be amended accordingly.

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- (8) A referee may order a party who opposes an application under this section to pay the costs of a successful applicant if the referee considers the actions of that party in relation to the application have been unreasonable.

*[Section 103H inserted by No. 58 of 1995 s.77.]*

**103I. Order for payment of penalty**

- (1) A strata company for a scheme may apply to a referee for an order under this section.
- (2) An order under this section is an order that a proprietor shall pay to the strata company one or both of the following —
- (a) a specified sum by way of penalty for a breach of a by-law;
  - (b) the company's costs of making the application.
- (3) On the making of an application under subsection (1), the referee may make an order under this section in respect of a by-law if he is satisfied that —
- (a) the by-law specifies a penalty for breach of it;
  - (b) the strata company has authorized the application; and
  - (c) the proprietor has wilfully and persistently breached the by-law.
- (4) A referee cannot order an amount exceeding the prescribed amount to be paid by way of penalty under subsection (2)(a).

*[Section 103I inserted by No. 58 of 1995 s.77.]*

**103J. Order for exemption from section 54 or 55(1)**

- (1) An application to a referee for an order under this section may be made by —
- (a) a strata company; or

- (b) a proprietor of a lot in a strata scheme if —
  - (i) a general meeting of the strata company has been duly convened; but
  - (ii) a quorum was not present within half an hour of the time appointed for the general meeting or for the adjourned meeting provided for by by-law 2(4) in Schedule 1.
- (2) An order under this section is an order exempting the strata company from the obligation to insure imposed upon it by section 54 or 55(1)(c), or both of those provisions, either generally or in a particular respect.
- (3) On the making of an application under subsection (1), a referee may make an order under this section if he is satisfied that the exemption will not be against the interests of any proprietor.
- (4) An order under this section is of no effect until a copy of the order has been recorded by the Registrar of Titles under section 115 on the strata/survey-strata plan to which it relates.
- (5) An order under this section is to be taken to be revoked or amended to the extent that it is inconsistent with a by-law, or an amendment of a by-law, subsequently made by the strata company by resolution without dissent.

*[Section 103J inserted by No. 58 of 1995 s.77; amended by No. 61 of 1996 s.33.]*

**103K. Order for compliance with section 54A**

- (1) A strata company for a scheme may apply to a referee for an order under this section against a proprietor of a lot in that scheme.
- (2) An order under this section is an order that a proprietor of a lot —
  - (a) ensure that the lot is not used for a specified activity contrary to a notice given to the proprietor by the strata company under section 54A(1); or

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- (b) carry out any specified work required by a notice given under section 54A(2).
- (3) On the making of an application for an order referred to in subsection (2)(a) against a proprietor of a lot, the referee may make the order if he is satisfied that —
  - (a) a notice referred to in section 54A(1) has been served on the proprietor;
  - (b) section 54A(3) does not apply; and
  - (c) the strata company cannot obtain insurance cover for the building, or a part of it, on reasonable terms because of the activity being carried on on the lot.
- (4) On the making of an application for an order referred to in subsection (2)(b) against a proprietor of a lot, the referee may make the order if he is satisfied that —
  - (a) a notice referred to in section 54A(2) has been served on the proprietor;
  - (b) section 54A(3) or (4) does not apply; and
  - (c) the strata company cannot obtain insurance cover for the building, or a part of it, on reasonable terms until work is carried out by the proprietor on the building on the lot.
- (5) An order referred to in subsection (2)(b) shall specify a time by which the work is to be carried out.
- (6) An order may be made under this section notwithstanding the terms of any lease, licence or tenancy agreement between a proprietor and any other person, and any such lease, licence or agreement is modified to the extent necessary to enable the proprietor to comply with such an order.

*[Section 103K inserted by No. 58 of 1995 s.77.]*



**103L. Order to contribute to insurance premium paid by proprietor**

- (1) A person who as a proprietor has paid a premium or other charge —
- (a) for any insurance effected or maintained under section 56A; or
  - (b) in the circumstances mentioned in section 53E,
- may apply to a referee for an order under this section.
- (1a) An application under subsection (1)(b) is to be made within 3 months after the day on which the payment is made.
- (2) An order under this section is an order —
- (a) varying the amount of contributions levied under section 36 in a way that the referee considers necessary to ensure that the cost of any premium or other charge referred to in subsection (1) falls fairly on all proprietors of lots in the scheme;
  - (b) requiring the strata company to allow the applicant a credit, against contributions payable by the proprietor, for any premium or other charge paid by him; or
  - (c) where —
    - (i) in accordance with section 36A or 36B there is no fund under section 36(1)(a); or
    - (ii) the applicant is no longer a proprietor,that any proprietor or the strata company pay to the applicant a proportion of any premium or other charge referred to in subsection (1).
- (3) On the making of an application under subsection (1) a referee may make an order under this section if he is satisfied that the applicant was justified in —
- (a) exercising the power in section 56A to effect or maintain insurance; or

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(b) paying the amount of another proprietor's share under section 53E.

- (4) The amount of a contribution required to be paid by a proprietor pursuant to an order under this section shall be deemed to have been levied on that proprietor by the strata company under section 36(1)(c).

*[Section 103L inserted by No. 58 of 1995 s.77; amended by No. 61 of 1996 s.34<sup>17</sup>.]*

**103M. Order as to resolution under section 21F or 21Q**

- (1) Where a resolution of the kind described in section 21F or 21Q has been passed by a strata company for a strata scheme but not as a resolution without dissent, the strata company may apply to a referee for an order under this section.
- (2) Subsection (1) does not apply to a two-lot scheme.
- (3) An order under this section is an order that a resolution —
- (a) of the kind described in section 21F or 21Q; and
  - (b) specified in the order,
- is to be treated as if it were a resolution without dissent.
- (4) On the making of an application under subsection (1), the referee may make an order under this section if he is satisfied that it is fair to all of the proprietors in the scheme to do so.

*[Section 103M inserted by No. 61 of 1996 s.35.]*

**103N. Order for extension of period for reinstatement of building under section 3AB(2)**

- (1) If a part of a building that constitutes a permitted boundary deviation has been destroyed as mentioned in section 3AB(2), the proprietor or a registered mortgagee of the lot that includes the part may apply to a referee for an order under this section.

- (2) An application is to be made within one year from the time when the destruction occurred.
- (3) An order under this section is an order extending the period within which the destroyed part of the building may be reinstated in terms of section 3AB(2).
- (4) The period is not to be extended for more than 5 years from the time of the destruction.
- (5) On the making of an application under subsection (1), the referee may make an order under this section if he is satisfied that there are reasonable grounds for a delay in completing the reinstatement.

*[Section 103N inserted by No. 61 of 1996 s.35.]*

**103O. Order for extension of period for reinstatement of building under regulations**

- (1) If —
  - (a) a part of a building to which an easement under section 5D relates has been destroyed; and
  - (b) regulations made under section 5H —
    - (i) provide for reinstatement of the part to be completed within a specified period; but
    - (ii) authorize a referee to extend the period allowed for reinstatement,

the proprietor or a registered mortgagee of the lot that includes the part may apply to a referee for an order under this section.

- (2) An application is to be made within one year from the time when the destruction occurred.
- (3) An order under this section is an order extending the period within which the destroyed part of the building may be reinstated in terms of the regulations.

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- (4) The period is not to be extended for more than 5 years from the time of the destruction.
- (5) On the making of an application under subsection (1), the referee may make an order under this section if he is satisfied that there are reasonable grounds for a delay in completing the reinstatement.

*[Section 103O inserted by No. 61 of 1996 s.35.]*

**103P. Order reversing the effect of section 21M**

- (1) A proprietor of a lot in an existing small strata scheme, as defined in section 21A, who did not lodge an objection under section 21O may apply to a referee for an order under this section.
- (2) An order under this section is an order —
  - (a) that the boundaries of lots in the scheme are to be amended to be those shown on the strata plan immediately before the change-over day for that scheme under section 21M; and
  - (b) that such other specified things occur or be done as may be necessary to reinstate the rights and interests of proprietors accordingly.
- (3) On the making of an application under subsection (1), the referee may make an order under this section if he is satisfied that —
  - (a) the applicant was unable because of exceptional circumstances to lodge an objection under section 21O;
  - (b) there is a good reason why the boundaries should be amended as mentioned in subsection (2); and
  - (c) it would not be unfair to any person having a registered interest in any lot for the order to be made.
- (4) An order under this section is to specify the day on which the boundaries as amended by the order are to have effect but that day cannot be before subsection (5) has been complied with.

- (5) An order under this section is of no effect until a copy of the order has been recorded by the Registrar of Titles under section 115 on the strata plan to which it relates.
- (6) In addition to the provisions referred to in subsection (2) an order under this section has the effects described in subsections (7), (8), (9) and (10).
- (7) Each lot as enlarged or diminished by the order is subject to —
  - (a) any encumbrance that was registered; or
  - (b) caveat that was lodged,with the Registrar of Titles against the lot before the day on which the order has effect.
- (8) Each lot or part of a lot that becomes common property under the order vests in the proprietors to be held by them as tenants in common in shares proportional to the unit entitlements of their respective lots.
- (9) The share of a proprietor so vested is subject to any encumbrance registered or caveat lodged with the Registrar of Titles against his lot.
- (10) Any encumbrance or caveat referred to in subsection (7) or (9) is to be taken to be amended to give effect to that subsection.  
*[Section 103P inserted by No. 61 of 1996 s.35.]*

**103Q. Order rectifying failure to give notice under section 123A**

- (1) A proprietor of a lot in a single tier strata scheme or a survey-strata scheme who did not before the expiry of the transition period referred to in section 123A —
  - (a) give notice under subsection (3) of that section; and
  - (b) cause a copy of the notice to be lodged with the Registrar of Titles in accordance with subsection (4) of that section,may apply to a referee for an order under this section.

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- (2) An order under this section is an order —
  - (a) that section 123(2) applies to the scheme; and
  - (b) making provisions of a transitional or incidental nature that may be necessary in the circumstances.
- (3) On the making of an application under subsection (1), the referee may make an order under this section if he is satisfied that —
  - (a) the applicant was unable because of exceptional circumstances to do the things mentioned in subsection (1)(a) and (b) before the expiry of the transition period;
  - (b) there is a good reason why section 123(2) should apply to the scheme; and
  - (c) it would not be unfair to any person having a registered interest in any lot for the order to be made.
- (4) An order under this section is to specify the day on and from which section 123(2) is to apply to the scheme but that day cannot be before subsection (5) has been complied with.
- (5) An order under this section is of no effect until a copy of the order has been recorded by the Registrar of Titles under section 115 on the strata plan to which it relates.

*[Section 103Q inserted by No. 61 of 1996 s.35.]*

**103R. Order rectifying failure to give notice under section 123C**

- (1) A proprietor of a lot in a single tier strata scheme or a survey-strata scheme who did not before the expiry of the transition period referred to in section 123C —
  - (a) give notice under subsection (3) of that section; and
  - (b) cause a copy of the notice to be lodged with the Registrar of Titles in accordance with subsection (4) of that section,

may apply to a referee for an order under this section.

- (2) An order under this section is an order —
  - (a) that liability in relation to fencing between lots in the scheme is to be determined as if section 123B had not been enacted; and
  - (b) making provisions of a transitional or incidental nature that may be necessary in the circumstances.
- (3) On the making of an application under subsection (1), the referee may make an order under this section if he is satisfied that —
  - (a) the applicant was unable because of exceptional circumstances to do the things mentioned in subsection (1)(a) and (b) before the expiry of the transition period;
  - (b) there is a good reason why liability in relation to fencing between lots in the scheme should be determined as if section 123B had not been enacted; and
  - (c) it would not be unfair to any person having a registered interest in any lot for the order to be made.
- (4) An order under this section is to specify the day on and from which liability in relation to fencing between lots in the scheme is to be determined as if section 123B had not been enacted but that day cannot be before subsection (5) has been complied with.
- (5) An order under this section is of no effect until a copy of the order has been recorded by the Registrar of Titles under section 115 on the strata plan to which it relates.

*[Section 103R inserted by No. 61 of 1996 s.35.]*

**104. Copy of order to be served**

- (1) An order by a referee shall be made in writing and a copy, certified by the referee to be a true copy, shall be served by the referee on —
  - (a) the strata company for the scheme to which the order relates;
  - (b) the applicant for the order;

- (c) any person who was entitled to make and made a written submission to the referee in connection with the application; and
  - (d) any person against whom the order was sought and any other person who by the order is required to do or to refrain from doing a specified act.
- (2) Each copy of the order served under subsection (1) shall be accompanied by a statement setting out the reasons for the referee's decision.
- (3) In this section, “**order**” includes a variation of an order, an interim order and a renewal or revocation of an interim order.

*[Section 104 amended by No. 58 of 1995 s.96.]*

#### **Division 4 — Appeals**

*[Heading amended by No. 42 of 1986 s.5.]*

#### **105. Appeal against order of referee**

- (1) Where a referee makes an order under this Part —
- (a) the applicant for the order;
  - (b) a person who, in connection with the application for the order, was entitled to make and made written submissions to the referee; or
  - (c) a person required by the order to do or refrain from doing a specified act,

may appeal to the District Court against the order by lodging a written notice of appeal with the referee, accompanied by the prescribed fee not later than 21 days after the order takes effect.

- (2) A person may appeal under this section against an order made by a referee under sections 82(2) or 116A(1) only on the grounds that the referee acted unreasonably by making the order.



- (3) A notice of appeal lodged under subsection (1) shall specify —
- (a) the name and address of the appellant;
  - (b) the order appealed against;
  - (c) the grounds of the appeal; and
  - (d) any other matter prescribed.
- (4) Upon receiving a notice of appeal lodged under subsection (1), the referee shall forward to the District Court —
- (a) the notice of appeal;
  - (b) the referee's records relating to the order appealed against; and
  - (c) the notices referred to in subsection (5).
- (5) The notices that the referee is required by subsection (4)(c) to forward to the District Court are notices in the prescribed form that are addressed to each of the following —
- (a) the appellant;
  - (b) the person against whom the order was sought and each person (other than the appellant) entitled under subsection (1) to appeal against the order; and
  - (c) the strata company for the scheme to which the order appealed against relates, unless the strata company is the appellant,

and each notice shall be accompanied by a copy of the notice of appeal.

- (6) The District Court shall cause —
- (a) the notices referred to in subsection (5) to be completed by specifying therein —
    - (i) the place at which the District Court is to determine the appeal; and
    - (ii) a time and day for the determination of the appeal;
- and

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- (b) each notice to be sent by registered post to the addressee so that it would, in the ordinary course of post, be received by the addressee not less than 7 days before the day specified in the notice for the determination of the appeal.
- (7) If a notice of appeal lodged with a referee under subsection (1) is accompanied by an application for an order under this subsection —
  - (a) the referee, before he forwards to the District Court the documents referred to in subsection (4); or
  - (b) the District Court,

may by order stay the operation of the order appealed against until the appeal is determined and, if such an order is made shall forward notice of the order to the persons referred to in subsection (5).

*[Section 105 amended by No. 58 of 1995 ss.78 and 96.]*

**106. Determination of appeal from order of referee**

- (1) In the determination of an appeal from an order of a referee, the District Court —
  - (a) if it thinks it is proper to do so, may admit evidence other than the evidence before the referee when he made the order;
  - (b) except where the order was made under section 82(2), may by order affirm, vary or revoke the order appealed against or substitute the District Court's order for the order appealed against;
  - (c) where the order was made under section 82(2), may dismiss the appeal or by order revoke the order appealed against; and
  - (d) shall not make any order as to costs.

- (2) An order made under subsection (1)(b) has effect, and the provisions of this Act other than section 105 apply to it, in all respects as if it were an order made under the provision of this Act under which the order appealed against was made.

**107. No appeal except under this Division**

Except as provided by this Division, an appeal does not lie from an order made by a referee.

*[108, 109. Repealed by No. 42 of 1986 s.6.]*

**110. General provisions relating to orders on appeal**

- (1) An order made by the District Court on appeal may include such ancillary or consequential provisions as the District Court thinks fit.
- (2) For the purpose of securing compliance with an order, the District Court may order a strata company, the chairman, secretary or treasurer of a strata company or its council, an administrator or a proprietor or other person having an estate or interest in a lot or an occupier or other resident of a lot to do or refrain from doing a specified act with respect to a scheme.
- (3) The District Court may, by order, dismiss an appeal.

*[Section 110 amended by No. 42 of 1986 s.7; No. 58 of 1995 s.96.]*

**111. Expenses of strata company on appeal**

- (1) Notwithstanding section 36, where the strata company is the respondent to a successful appeal to the District Court under this Division by the proprietor of a lot, the strata company may not levy in respect of that lot a contribution towards the expenses of the strata company in relation to the appeal.

*[(2) repealed]*

*[Section 111 amended by No. 42 of 1986 s.8.]*

*[112. Repealed by No. 42 of 1986 s.9.]*

**113. Copy of order to be served**

- (1) An order made by the District Court under this Part shall be made in writing and the District Court shall cause to be sent to the referee —
  - (a) the order; and
  - (b) the records of the District Court relating to the appeal including records forwarded to it by the referee when referring that appeal to the District Court.
- (2) Where an order has been sent to the referee under subsection (1), the referee shall cause a copy of the order, certified by him to be a true copy, to be served on —
  - (a) the strata company for the scheme to which the order relates;
  - (b) the appellant;
  - (c) any person who was given notice under section 105(6) of the time and place for the determination of the appeal; and
  - (d) any person who by the order is required to do or to refrain from doing a specified act.

*[Section 113 amended by No. 42 of 1986 s.10; No. 58 of 1995 s.96.]*

**Division 5 — Miscellaneous**

**114. Effect of certain orders**

- (1) The terms of an order made under section 85, 86, 87, 89, 99, or 100 (other than section 100(3)(a)) or under section 101 or an order made under section 83 in which the referee declares that it is to have effect as a decision of a strata company shall be deemed to be a resolution passed by the strata company in respect of the scheme to which the order relates.
- (2) Upon service upon it by the referee of a copy of an order referred to in subsection (1), the strata company shall cause the terms of the order to be recorded in its minute book.

- (3) Except in the case of a unanimous resolution, a resolution passed by a strata company has no force or effect if it purports to rescind or amend a resolution deemed by subsection (1) to have been passed by the strata company.
- (4) Where an order referred to in subsection (1) specifies a period during which a resolution passed by the strata company has no force or effect if it purports to alter the effect of that order, such a resolution has no force or effect if it is passed during that period —
- (a) unless it is a unanimous resolution; or
  - (b) unless, upon an application made as referred to in subsection (5), a referee makes an order under this paragraph authorizing the submission to a general meeting of the strata company of a motion for that resolution.
- (5) An application for an order under subsection (4)(b) —
- (a) may be made by any person who, if the application for the order referred to in subsection (1) were made at the time the application referred to in this subsection is made, would be entitled to make the application for the order referred to in subsection (1);
  - (b) shall specify the order sought;
  - (c) shall be made to the referee in writing specifying the grounds on which it is made; and
  - (d) shall be accompanied by the prescribed fee.
- (6) An application referred to in subsection (5) shall be dealt with in all respects as if it were an application for an order under this Part.

*[Section 114 amended by No. 58 of 1995 s.96.]*

**115. Recording of certain orders**

- (1) Where —
- (a) an order is made under section 93, 94, 99A, 103A, 103H, 103J, 103P, 103Q or 103R; or
  - (b) an order is directed by the referee to be registered under this section,

a copy of the order certified by the referee as a true copy shall be lodged in the office of the Registrar of Titles together with the prescribed fee.

- (2) The person who applied for the order shall see to it that subsection (1) is complied with but if he fails to do so any other person may lodge the order together with the prescribed fee.
- (3) The Registrar of Titles shall record an order lodged under subsection (1) on the registered strata/survey-strata plan.

*[Section 115 inserted by No. 58 of 1995 s.79; amended by No. 61 of 1996 s.36.]*

**116. Penalty for contravention of certain orders**

- (1) A person shall not contravene an order, other than an order made under section 82(2), made under this Part to do or refrain from doing a specified act.
- (2) A person shall not contravene an order made under section 82(2) to do or refrain from doing a specified act.
- Penalty applicable to this section: \$2 000 and a daily penalty of \$200.
- (3) A document purporting to be a copy of an order made by a referee shall be admissible in evidence and shall, until the contrary is proved, be deemed to be an order made by the referee.

*[Section 116 amended by No. 58 of 1995 s.80.]*

**116A. Enforcement of certain orders**

- (1) Where —
- (a) an order has been made under this Part that a person do a specified act;
  - (b) the person (“**the defaulting party**”) has been convicted under section 116 of contravening the order; and
  - (c) the order has not been complied with,
- the person in whose favour the order was made (“**the applicant**”) may apply to a referee for an order under this section; and the referee may make an order accordingly.
- (2) An order under this section is an order that the act required to be done be done at the cost of the applicant by a person appointed by the referee.
- (3) Where an order is made under this section the applicant may apply to a referee for an order that the defaulting party reimburse the applicant for costs incurred in the doing of the act ordered to be done; and the referee may make an order accordingly.
- (4) An application cannot be made for an order under subsection (1) until —
- (a) the time for applying for leave to appeal under the *Justices Act 1902* against the conviction referred to in subsection (1)(b) has expired without an application for leave being made;
  - (b) leave to appeal has been refused; or
  - (c) if an appeal has been brought the appeal has been determined, withdrawn or discontinued.
- (5) An order under subsection (1) —
- (a) is not to have effect until the time for appeal under section 105 against the order has expired without an appeal being brought under that section; and

- (b) is automatically stayed by the bringing of an appeal under section 105 and then has effect —
  - (i) subject to any order of the District Court on the appeal; or
  - (ii) if the appeal is withdrawn or discontinued.

*[Section 116A inserted by No. 58 of 1995 s.81.]*

**117. Protection of referee**

No action shall lie against a referee, including his delegate, on account of any proceeding taken, any publication made or anything done under the authority of this Act or taken, made or done *bona fide* purportedly under the authority of this Act.

**118. Enforcement of orders for payment of money**

The person to whom payment is to be made under an order made under this Part that requires the payment of money may enforce the order by filing in the office of a Clerk of a Local Court —

- (a) a copy of the order certified by the referee to be a true copy; and
- (b) his affidavit, as to the amount not paid under the order and, where the order is to take effect upon any default, as to the making of that default,

whereupon the order shall be deemed to be a judgment that requires payment of money duly made by a Local Court and may be enforced accordingly.

**119. Time at which order takes effect**

Except —

- (a) where express provision is otherwise made by this Act; or
- (b) to the extent that a referee or the District Court specifies otherwise in an order under this Part,



an order takes effect when a copy of the order, certified by the referee to be a true copy, is served —

- (c) where the order requires a person to do or refrain from doing a specified act, on that person; or
- (d) in any other case, on the strata company for the scheme to which the order relates.

*[Section 119 amended by No. 58 of 1995 s.96.]*

**120. Inquiries to referee**

A referee shall, upon inquiry having been made to him by a person in writing in, or to the effect of, the prescribed form and upon payment of the fee prescribed in respect of the inquiry —

- (a) by notice in writing, inform that person whether or not —
  - (i) any application (being an application that has not been finally determined at a date and time specified in the notice) has been received by the referee for an order under this Act with respect to the scheme to which the inquiry relates; or
  - (ii) any order has been made under this Act with respect to that scheme, being an order of a class prescribed for the purposes of this subparagraph and specified in the inquiry;

and

- (b) where any such application has been received by the referee or any such order has been so made, provide in that notice particulars of the application or order, as the case may be.

*[Section 120 amended by No. 58 of 1995 s.96.]*

**121. Referee not to have jurisdiction where title to land in question**

Notwithstanding any other provision of this Part, a referee shall not have jurisdiction under this Part in any case in which the title to land is in question otherwise than for the purpose of determining any matter before the referee and any determination made by the referee shall not have any force or effect except as provided by this Act.

## **Part VII — Miscellaneous**

### **122. Other rights and remedies not affected by this Act**

- (1) Nothing in this Act derogates from any rights or remedies that a strata company, a proprietor or mortgagee of a lot, an administrator, a person having an estate or interest in a lot or an occupier may have in relation to any lot or the common property apart from this Act.
- (2) Where a court in which any proceedings to enforce any rights or remedies referred to in subsection (1) are instituted is of the opinion that, having regard to the subject-matter of the proceedings, the taking of the proceedings was not, in the circumstances of the case, warranted by reason that Part VI makes adequate provision for the enforcement of those rights or remedies, the court shall order the plaintiff to pay the defendant's costs in such amount as may be determined by the court.

### **122A. Caravan and camping areas not to be subdivided**

- (1) Land in respect of which —
  - (a) a licence is held under the *Caravan Parks and Camping Grounds Act 1995*; or
  - (b) it is proposed to establish a caravan park or a camping ground,

is not to be subdivided or re-subdivided under this Act where that subdivision or re-subdivision would result in there being a caravan park on more than one lot, a camping ground on more than one lot or a caravan park and camping ground on more than one lot.

- (2) Despite subsection (1), land referred to in subsection (1)(a) may be re-subdivided where that re-subdivision would not result in the land being re-subdivided into more lots used or proposed to be used as, or as part of, a caravan park or camping ground.

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- (3) In this section “caravan park” and “camping ground” have the same meaning as they have for the purposes of the *Caravan Parks and Camping Grounds Act 1995*.

*[Section 122A inserted as section 123A by No. 34 of 1995 s.33 and redesignated as 122A by No. 10 of 1998 s.66.]*

**123. Dividing fences**

- (1) The ownership of land in a scheme is to be determined in accordance with this section for the purposes of the *Dividing Fences Act 1961*.
- (2) Subject to subsection (3), the strata company for a scheme shall be regarded as the owner of the parcel that is the subject of that scheme, other than such part (if any) of the parcel as is the subject of a lease accepted or acquired by the strata company under section 18.
- (3) In a single tier strata scheme or a survey-strata scheme the owner of land in the scheme that adjoins land outside the scheme shall be regarded to be —
- (a) in the case of a lot, the proprietor of the lot; and
  - (b) in the case of common property, the strata company.
- (4) If a by-law of a strata company for —
- (a) a single tier strata scheme; or
  - (b) a survey-strata scheme,

determines who is to be regarded as the owner of land in the scheme for the purposes of the *Dividing Fences Act 1961*, that by-law has effect despite any provision of that Act or of this section.

*[Section 123 inserted by No. 61 of 1996 s.37.]*

**123A. Transitional provision as to dividing fences**

- (1) This section applies to any —
  - (a) single tier strata scheme; or
  - (b) survey-strata scheme,the plan for which is registered before the commencement of section 37 of the *Strata Titles Amendment Act 1996*.
- (2) During the period of 6 months after that commencement (“**the transition period**”) the ownership of land in a scheme is to be determined, for the purposes of the *Dividing Fences Act 1961*, in accordance with section 123(2).
- (3) Before the expiry of the transition period a proprietor of a lot in a scheme may serve notice in writing —
  - (a) on the strata company; or
  - (b) in the case of a two-lot scheme, on the other proprietor,that he requires that section 123(2) continue to apply to the scheme after the expiry of that period.
- (4) If before the expiry of the transition period —
  - (a) a notice is given under subsection (3) by a proprietor of a lot in a scheme; and
  - (b) a copy of the notice accompanied by the prescribed form is lodged with the Registrar of Titles for recording on the strata/survey-strata plan,section 123(2) continues to apply to the scheme after the expiry of the transition period.
- (5) It is for the proprietor who has served a notice under subsection (3) to lodge a copy of the notice, accompanied by the prescribed form, with the Registrar of Titles for the purpose of subsection (4)(b).

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- (6) If before the expiry of the transition period —
- (a) a notice is not given under subsection (3) by a proprietor of a lot in a scheme; and
  - (b) a copy of the notice accompanied by the prescribed form is not lodged with the Registrar of Titles for recording on the strata/survey-strata plan,

section 123(3) applies to the scheme after the expiry of the transition period.

- (7) This section has effect subject to —
- (a) any order under section 103Q; and
  - (b) any by-law of the kind referred to in section 123(4).

*[Section 123A inserted by No. 61 of 1996 s.37.]*

**123B. Internal fencing**

- (1) The *Dividing Fences Act 1961* applies to fencing between lots in a survey-strata scheme and a single tier strata scheme as if —
- (a) adjoining lots were adjoining lands to which that Act applies;
  - (b) a proprietor of a lot held the lot for an estate of freehold in possession; and
  - (c) common property were held by the strata company for an estate of freehold in possession.

- (2) Subsection (1) has effect subject to any by-law of the strata company.

*[Section 123B inserted by No. 61 of 1996 s.37.]*

**123C. Transitional provision as to internal fencing**

- (1) This section applies to any —
- (a) single tier strata scheme; or
  - (b) survey-strata scheme,

the plan for which is registered before the commencement of section 37 of the *Strata Titles Amendment Act 1996*.

- (2) During the period of 6 months after that commencement (“**the transition period**”) liability in relation to fencing between lots in a scheme is to be determined as if section 123B had not been enacted.
- (3) Before the expiry of the transition period a proprietor of a lot in a scheme may serve notice in writing —
  - (a) on the strata company; or
  - (b) in the case of a two-lot scheme, on the other proprietor,that he requires that after the expiry of that period liability in relation to fencing between lots in the scheme is to be determined as if section 123B had not been enacted.
- (4) If before the expiry of the transition period —
  - (a) a notice is given under subsection (3) by a proprietor of a lot in a scheme; and
  - (b) a copy of the notice accompanied by the prescribed form is lodged with the Registrar of Titles for recording on the strata/survey-strata plan,after the expiry of the transition period liability in relation to fencing between lots in the scheme is to be determined as if section 123B had not been enacted.
- (5) It is for the proprietor who has served a notice under subsection (3) to lodge a copy of the notice, accompanied by the prescribed form, with the Registrar of Titles for the purpose of subsection (4)(b).
- (6) If before the expiry of the transition period —
  - (a) a notice is not given under subsection (3) by a proprietor of a lot in a scheme; and

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- (b) a copy of the notice accompanied by the prescribed form is not lodged with the Registrar of Titles for recording on the strata/survey-strata plan,

section 123B applies to the scheme after the expiry of the transition period.

- (7) This section has effect subject to —
  - (a) any order under section 103R; and
  - (b) any by-law of the strata company.

*[Section 123C inserted by No. 61 of 1996 s.37.]*

**124. Notice of application for order under section 28, 29 or 31**

- (1) The District Court may, in respect of any proceedings on an application for an order under section 28, 29 or 31, make either or both of the following orders —
  - (a) an order that public notice, by advertisement or otherwise, be given of the proceedings;
  - (b) an order that service of notice of the application upon any person be dispensed with.
- (2) Except as authorized by rules of court, the District Court shall not make an order referred to in subsection (1)(b) in respect of any person unless the District Court is satisfied that —
  - (a) that person cannot be found in Western Australia;
  - (b) it is uncertain whether that person is living; or
  - (c) service cannot be effected upon that person without expense disproportional to the value, if any, of his interest.

*[Section 124 amended by No. 58 of 1995 ss.82 and 93<sup>11</sup>.]*

**125. Service of documents on strata company, proprietors and others**

- (1) A summons or other legal process may be served on a strata company by leaving it with the chairman or secretary of the strata company or with any member of the council or with every proprietor of a lot.



- (2) A document other than a document referred to in subsection (1) may be served on a strata company —
- (a) by leaving it with any person referred to in subsection (1) or in the receptacle provided by the strata company in accordance with section 35(1)(i); or
  - (b) by posting it, by prepaid mail, to the strata company at its address recorded on the registered strata/survey-strata plan or recorded by the Registrar of Titles under section 40(2).
- (3) Subject to this Act, a notice or other document required or authorized by this Act or the by-laws to be served by a referee, the strata company, a council or the secretary of a council on a proprietor or occupier of a lot may be served —
- (a) in the case of an occupier, by leaving it with some person apparently of or over the age of 16 years at the address of the lot; or
  - (b) in the case of a proprietor —
    - (i) personally;
    - (ii) by post to the proprietor's address for service appearing on the roll maintained by the strata company under section 35A or, where no such address is specified, by post to the address of the proprietor's lot;
    - (iii) where under section 36A or 36B a roll is not maintained by a strata company, by post to the address notified under subsection (3a);
    - [(iv) deleted]*
    - (v) in any manner authorized by the by-laws for the service of notices on proprietors.
- (3a) Where under section 36A or 36B a roll is not maintained by a strata company for a scheme, the proprietor of a lot in the scheme shall give notice in writing to the strata company and each of the other proprietors of his address for service.

Penalty: \$400.

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- (3b) Where on a change of ownership a proprietor of a lot in a scheme for which a roll is not maintained under section 36A or 36B notifies an address for service to the strata company and each of the other proprietors, each of the other proprietors shall give notice in writing to the new proprietor of their respective addresses for service.
- (4) Notice under section 48(1) may be served on a person —
- (a) personally or by post; or
  - (b) by leaving it with a person apparently of or over the age of 16 years at the place of residence or place of business of the first-mentioned person.

*[Section 125 amended by No. 58 of 1995 ss.83 and 95.]*

**126. Powers of entry by public authority or local government**

A public authority or local government which is authorized by any Act to enter upon part of a parcel for the purpose of exercising any power conferred on it may enter upon any other part of that parcel if it is necessary to do so in order to exercise that power.

*[Section 126 amended by No. 14 of 1996 s.4.]*

**127. Service of orders by public authority or local government**

Where a public authority or local government is authorized or required by any Act to serve or deliver a notice or order on all the proprietors of lots in a scheme, the public authority or local government may serve or deliver the notice or order on the strata company for the scheme and for the purposes of that Act such service shall be taken to be service on all the proprietors and any obligation imposed on the proprietors of that scheme by the notice or order shall be deemed to be imposed on the strata company.

*[Section 127 amended by No. 58 of 1995 s.96; No. 14 of 1996 s.4.]*

**128. Powers of entry of referee in certain cases**

- (1) Where a referee believes on reasonable grounds that —
  - (a) an offence against any provision of this Act; or
  - (b) a breach of the by-laws,has been or is being committed upon any part of a parcel, he may, at any reasonable time on reasonable notice given to any proprietor, occupier or other resident of that part of the parcel enter upon that part for the purpose of ascertaining whether that offence or breach has been or is being committed.
- (2) When exercising his power under subsection (1), the referee may, if he thinks fit, be accompanied by —
  - (a) a member of the council of the strata company; or
  - (b) the administrator, if any, of the scheme concerned.
- (3) A person shall not obstruct or hinder —
  - (a) a referee, in the exercise of his power under subsection (1); or
  - (b) a person accompanying a referee in pursuance of subsection (2).

Penalty: \$400.

*[Section 128 amended by No. 58 of 1995 ss.94 and 96.]*

**129. Procedure upon application to District Court**

- (1) Every application to the District Court under this Act shall be by summons at chambers unless otherwise provided by rules of court.
- (2) Notice of an application to the District Court under this Act shall be served on such persons as the District Court thinks fit, or the Court may dispense with notice.
- (3) The District Court may, if it thinks fit, adjourn any application into Court and thereupon may give such directions as to all matters, including filing of pleadings as may appear necessary and proper for the final hearing of the application.

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*[(4) repealed]*

- (5) Rules of court may be made for regulating the practice and procedure of the Court under this Act.

*[Section 129 amended by No. 58 of 1995 ss.84 and 93.]*

**129A. Correction of errors by Registrar**

- (1) The Commissioner of Titles may direct the Registrar of Titles —
- (a) to correct errors in, or in entries made in, the Register; and
  - (b) to supply any entry omitted to be made in the Register,
- and the Registrar shall comply with any such direction.
- (2) The Registrar of Titles may in respect of any plan or other document lodged for registration or approval —
- (a) correct any patent error appearing on the face of the plan or other document; and
  - (b) supply any entry omitted to be made under this Act in the plan or other document.
- (3) When correcting an error under subsection (1) or (2), the Registrar —
- (a) shall not erase or render illegible the original writing; and
  - (b) shall affix the date upon which any correction was made or omission supplied together with his initials.
- (4) A plan or other document corrected under this section has the same validity and effect as if the error or omission had not been made except as regards any entry made in the Register before the time of correcting the error or supplying the omitted entry.

(5) In this section —

**“Commissioner of Titles”** means the Commissioner of Titles under the *Transfer of Land Act 1893*, and includes the Deputy Commissioner of Titles under that Act.

*[Section 129A inserted by No. 58 of 1995 s.85; amended by No. 81 of 1996 s.153(1).]*

### **130. Regulations**

The Governor may make regulations prescribing all matters and things that by this Act are required or permitted to be prescribed or that are necessary or convenient to be prescribed for giving effect to this Act and in particular for and with respect to —

- (a) the manner and form of registering plans and documents;
- (b) the fees to be paid for any procedure or function required or permitted to be done under this Act including fees to be payable in respect of applications to referees;
- (c) prescribing forms under this Act and the respective purposes for which those forms are to be used and providing that in such cases as may be prescribed, forms or other documents required by or under this Act to be lodged with the Registrar of Titles shall be verified by statutory declaration made by such persons as may be prescribed;
- (d) the preparation of plans and documents for the purposes of this Act;
- (e) the plans and documents that under this Act may be lodged with the Registrar of Titles;
- (f) prescribing a simplified procedure enabling the conversion of tenancies in common to strata titles, or of strata schemes to survey-strata schemes, whether by means of endorsements of transfers, consents and instructions as to the issue of certificates of title on the

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application for registration of the strata plan or by other means and providing for the consequential vesting of lots and encumbrances and registered interests in lots;

- (g) the practice and procedure to be followed by referees;
- (h) the enforcement of orders made by referees; and
- (i) providing that a contravention of a provision of the regulations constitutes an offence and for a penalty in respect of such a contravention not exceeding a fine of \$400.

*[Section 130 amended by No. 58 of 1995 ss.86 and 94.]*

**131. Repeal**

The *Strata Titles Act 1966* is repealed.

**132. Transitional and savings**

- (1) Schedule 3 has effect.
- (2) Except as otherwise provided in Schedule 3, nothing in that schedule affects any saving provided by the *Interpretation Act 1984*.

## Schedule 1

[Section 42(2)]

### By-laws

*[Part I heading deleted by No. 58 of 1995 s.87.]*

#### 1. Duties of proprietor, occupiers, etc.

(1) A proprietor shall —

- (a) forthwith carry out all work that may be ordered by any competent public authority or local government in respect of his lot other than such work as may be for the benefit of the building generally and pay all rates, taxes, charges, outgoings and assessments that may be payable in respect of his lot;
- (b) repair and maintain his lot, and keep it in a state of good repair, reasonable wear and tear, and damage by fire, storm, tempest or act of God excepted.

(1a) A proprietor shall —

- (a) notify the strata company forthwith upon any change of ownership, including in the notice an address of the proprietor for service of notices and other documents under this Act; and
- (b) if required in writing by the strata company, notify the strata company of any mortgage or other dealing in connection with his lot, including in the case of a lease of a lot, the name of the lessee and the term of the lease.

(2) A proprietor, occupier or other resident of a lot shall —

- (a) use and enjoy the common property in such a manner as not unreasonably to interfere with the use and enjoyment thereof by other proprietors, occupiers or residents, or of their visitors; and
- (b) not use the lot or permit it to be used in such manner or for such purpose as causes a nuisance to any occupier of another lot (whether a proprietor or not) or the family of such an occupier;
- (c) take all reasonable steps to ensure that his visitors do not behave in a manner likely to interfere with the peaceful

**Schedule 1**

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enjoyment of the proprietor, occupier or other resident of another lot or of any person lawfully using common property; and

- (d) take all reasonable steps to ensure that his visitors comply with the by-laws of the strata company relating to the parking of motor vehicles.

**2. Power of proprietor to decorate etc.**

A proprietor may, without obtaining the consent of the strata company, paint, wallpaper or otherwise decorate the structure which forms the inner surface of the boundary of his lot or affix locking devices, flyscreens, furnishings, furniture, carpets and other similar things to that surface, if and so long as such action does not unreasonably damage the common property.

**3. Power of strata company regarding submeters**

- (1) Where the supply of gas or electricity to a lot is regulated by means of a submeter, the strata company may require the proprietor or other occupier of the lot to pay the strata company by way of security for the payment of charges arising through the submeter an amount not exceeding \$200 and, if any amount so paid is applied by the strata company under sub-bylaw (2), to pay such further amount or amounts by way of such security as may be necessary to maintain the amount of the security as, subject to this sub-bylaw, the strata company may require.
- (2) The strata company shall lodge every sum received under this by-law to the credit of an interest-bearing account with an ADI (authorised deposit-taking institution) as defined in section 5 of the *Banking Act 1959* of the Commonwealth and all interest accruing in respect of amounts so received shall, subject to this by-law, be held on trust for the proprietor or occupier who made the payment.
- (3) If the proprietor or other occupier of a lot in respect of which a submeter is used for the supply of gas or electricity refuses or fails to pay any charges due for the supply of gas or electricity to that lot, the strata company may apply in payment of those charges all, or such part as is necessary, of any amount paid to the strata company by that proprietor or occupier under this by-law, including any interest that may have accrued in respect of that amount.



- (4) Where a person who has paid an amount under this by-law to a strata company satisfies the strata company that he is no longer the proprietor or occupier of a lot and that the strata company no longer has any liability or contingent liability for the supply of gas or electricity to that lot during the period when that person was a proprietor or occupier of the lot, the strata company shall refund to that person the amount then held on his behalf under this by-law.

**4. Constitution of the council**

- (1) The powers and duties of the strata company shall, subject to any restriction imposed or direction given at a general meeting, be exercised and performed by the council of the strata company and a meeting of the council at which a quorum is present shall be competent to exercise all or any of the authorities, functions or powers of the council.
- (2) Until the first annual general meeting of the strata company, the proprietors of all the lots shall constitute the council.
- (3) Where there are not more than 3 proprietors the council shall consist of all proprietors and where there are more than 3 proprietors the council shall consist of not less than 3 nor more than 7 proprietors as is determined by the strata company.
- (4) Where there are more than 3 proprietors the members of the council shall be elected at each annual general meeting of the strata company or, if the number of proprietors increases to more than 3, at an extraordinary general meeting convened for the purpose.
- (5) In determining the number of proprietors for the purposes of this by-law, co-proprietors of a lot or more than one lot shall be deemed to be one proprietor and a person who owns more than one lot shall also be deemed to be one proprietor.
- (6) If there are co-proprietors of a lot, one only of the co-proprietors shall be eligible to be, or to be elected to be, a member of the council and the co-proprietor who is so eligible shall be nominated by his co-proprietors, but, if the co-proprietors fail to agree on a nominee, the co-proprietor who owns the largest share of the lot shall be the nominee or if there is no co-proprietor who owns the largest share of

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the lot, the co-proprietor whose name appears first in the certificate of title for the lot shall be the nominee.

- (7) On an election of members of the council, a proprietor shall have one vote in respect of each lot owned by him.
- (8) Except where the council consists of all the proprietors, the strata company may by special resolution remove any member of the council before the expiration of his term of office.
- (9) A member of the council vacates his office as a member of the council —
  - (a) if he dies or ceases to be a proprietor or a co-proprietor of a lot;
  - (b) upon receipt by the strata company of notice in writing of his resignation from the office of member;
  - (c) at the conclusion of an annual general meeting of the strata company at which an election of members of the council takes place and at which he is not elected or re-elected;
  - (d) in a case where he is a member of the council by reason of there being not more than 3 proprietors, upon an election of members of the council (as a result of there being an increase in the number of proprietors to more than 3) at which he is not elected; or
  - (e) where he is removed from office under sub-by-law (8) of this by-law.
- (10) Any casual vacancy on the council may be filled by the remaining members of the council, except that, in a case where a casual vacancy arises because of the removal from office of a member under sub-by-law (8), the strata company may resolve that the casual vacancy shall be filled by the strata company at a general meeting.
- (11) Except where there is only one proprietor, a quorum of the council shall be 2 where the council consists of 3 or 4 members; 3, where it consists of 5 or 6 members; and 4, where it consists of 7 members.
- (12) The continuing members of the council may act notwithstanding any vacancy in the council, but so long as the number of members is reduced below the number fixed by these by-laws as the quorum of the council, the continuing members or member of the council may

act for the purpose of increasing the number of members of the council or convening a general meeting of the strata company, but for no other purpose.

- (13) All acts done in good faith by the council shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment or continuance in office of any member of the council, be as valid as if that member had been duly appointed or had duly continued in office.

**5. Election of council**

The procedure for nomination and election of members of a council shall be in accordance with the following rules —

- (1) The meeting shall determine, in accordance with the requirements of by-law 4(3) of Part I the number of persons of whom the council shall consist.
- (2) The chairman shall call upon those persons present and entitled to nominate candidates to nominate candidates for election to the council.
- (3) A nomination is ineffective unless supported by the consent of the nominee to his nomination, given —
  - (a) in writing, and furnished to the chairman at the meeting; or
  - (b) orally by a nominee who is present at the meeting.
- (4) When no further nominations are forthcoming, the chairman —
  - (a) where the number of candidates equals the number of members of the council determined in accordance with the requirements of by-law 4(3) of Part I, shall declare those candidates to be elected as members of the council;
  - (b) where the number of candidates exceeds the number of members of the council as so determined, shall direct that a ballot be held.
- (5) If a ballot is to be held, the chairman shall —
  - (a) announce the names of the candidates; and

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- (b) cause to be furnished to each person present and entitled to vote a blank paper in respect of each lot in respect of which he is entitled to vote for use as a ballot-paper.
- (6) A person who is entitled to vote shall complete a valid ballot-paper by —
  - (a) writing thereon the names of candidates, equal in number to the number of members of the council so that no name is repeated;
  - (b) indicating thereon the number of each lot in respect of which his vote is cast and whether he so votes as proprietor or first mortgagee of each such lot or as proxy of the proprietor or first mortgagee;
  - (c) signing the ballot-paper; and
  - (d) returning it to the chairman.
- (7) The chairman, or a person appointed by him, shall count the votes recorded on valid ballot-papers in favour of each candidate.
- (8) Subject to rule (9), candidates, being equal in number to the number of members of the council determined in accordance with by-law 4(3) of Part I, who receive the highest numbers of votes shall be declared elected to the council.
- (9) Where the number of votes recorded in favour of any candidate is the lowest of the numbers of votes referred to in rule (8) and —
  - (a) that number equals the number of votes recorded in favour of any other candidate; and
  - (b) if each of those candidates were to be declared elected the number of persons elected would exceed the number of persons required to be elected,

as between those candidates, the election shall be decided by a show of hands of those present and entitled to vote.

**6. Chairman, secretary and treasurer of council**

- (1) The members of a council shall, at the first meeting of the council after they assume office as such members, appoint a chairman, a secretary and a treasurer of the council.
- (2) A person —
  - (a) shall not be appointed to an office referred to in sub-bylaw (1) of this by-law unless he is a member of the council; and
  - (b) may be appointed to one or more of those offices.
- (3) A person appointed to an office referred to in sub-bylaw (1) of this by-law shall hold office until —
  - (a) he ceases to be a member of the council;
  - (b) receipt by the strata company of notice in writing of his resignation from that office; or
  - (c) another person is appointed by the council to hold that office,whichever first happens.
- (4) The chairman shall preside at all meetings of the council at which he is present and, if he is absent from any meeting, the members of the council present at that meeting shall appoint one of their number to preside at that meeting during the absence of the chairman.

**7. Chairman, secretary and treasurer of strata company**

- (1) Subject to sub-bylaw (2), the chairman, secretary and treasurer of the council are also respectively the chairman, secretary and treasurer of the strata company.
- (2) A strata company may at a general meeting authorize a person who is not a proprietor to act as the chairman of the strata company for the purposes of that meeting.
- (3) A person appointed under sub-bylaw (2) may act until the end of the meeting for which he was appointed to act.

**8. Meetings of council**

- (1) At meetings of the council, all matters shall be determined by a simple majority vote.

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- (2) The council may —
  - (a) meet together for the conduct of business and adjourn and otherwise regulate its meetings as it thinks fit, but the council shall meet when any member of the council gives to the other members not less than 7 days' notice of a meeting proposed by him, specifying in the notice the reason for calling the meeting;
  - (b) employ on behalf of the strata company such agents and employees as it thinks fit in connection with the control and management of the common property and the exercise and performance of the powers and duties of the strata company;
  - (c) subject to any restriction imposed or direction given at a general meeting of the strata company, delegate to one or more of its members such of its powers and duties as it thinks fit, and at any time revoke the delegation.
- (3) A member of a council may appoint a proprietor, or an individual authorized under section 45 of the Act by a corporation which is a proprietor, to act in his place as a member of the council at any meeting of the council and any proprietor or individual so appointed shall, when so acting, be deemed to be a member of the council.
- (4) A proprietor or individual may be appointed under sub-by-law (3) of this by-law whether or not he is a member of the council.
- (5) If a person appointed under sub-by-law (3) of this by-law is a member of the council he may, at any meeting of the council, separately vote in his capacity as a member and on behalf of the member in whose place he has been appointed to act.
- (6) The council shall keep minutes of its proceedings.

**9. Powers and duties of secretary of strata company**

The powers and duties of the secretary of a strata company include —

- (a) the preparation and distribution of minutes of meetings of the strata company and the submission of a motion for confirmation of the minutes of any meeting of the strata company at the next such meeting;

- (b) the giving on behalf of the strata company and of the council of the notices required to be given under the Act;
- (c) the supply of information on behalf of the strata company in accordance with section 43(1)(a) and (b) of the Act;
- (d) the answering of communications addressed to the strata company;
- (e) the calling of nominations of candidates for election as members of the council; and
- (f) subject to sections 49 and 103 of the Act the convening of meetings of the strata company and of the council.

**10. Powers and duties of treasurer of strata company**

The powers and duties of the treasurer of a strata company include —

- (a) the notifying of proprietors of any contributions levied pursuant to the Act;
- (b) the receipt, acknowledgment and banking of and the accounting for any money paid to the strata company;
- (c) the preparation of any certificate applied for under section 43 of the Act; and
- (d) the keeping of the books of account referred to in section 35(1)(f) of the Act and the preparation of the statement of accounts referred to in section 35(1)(g) of the Act.

**11. General meetings of strata company**

- (1) General meetings of the strata company shall be held once in each year and so that not more than 15 months shall elapse between the date of one annual general meeting and that of the next.
- (2) All general meetings other than the annual general meeting shall be called extraordinary general meetings.
- (3) The council may when ever it thinks fit and shall upon a requisition in writing made by proprietors entitled to a quarter or more of the aggregate unit entitlement of the lots convene an extraordinary general meeting.

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- (4) If the council does not within 21 days after the date of the making of a requisition under this by-law proceed to convene an extraordinary general meeting, the requisitionists, or any of them representing more than one-half of the aggregate unit entitlement of all of them, may themselves, in the same manner as nearly as possible as that in which meetings are to be convened by the council, convene an extraordinary general meeting, but any meeting so convened shall not be held after the expiration of 3 months from the date on which the requisition was made.
- (5) Not less than 14 days' notice of every general meeting specifying the place, the date and the hour of meeting and in case of special business the general nature of that business, shall be given to all proprietors and registered first mortgagees who have notified their interests to the strata company, but accidental omission to give the notice to any proprietor or to any registered first mortgagee or non-receipt of the notice by any proprietor or by any registered first mortgagee does not invalidate any proceedings at any such meeting.
- (6) If a proprietor gives notice in writing to the secretary of an item of business that the proprietor requires to be included on the agenda for the next general meeting of the strata company, the secretary shall include that item on the agenda accordingly and shall give notice of that item as an item of special business in accordance with sub-by-law (5) of this by-law.

**12. Proceedings at general meetings**

- (1) All business shall be deemed special that is transacted at an annual general meeting, with the exception of the consideration of accounts and election of members to the council, or at an extraordinary general meeting.
- (2) Except as otherwise provided in these by-laws, no business may be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.
- (3) One-half of the persons entitled to vote present in person or by duly appointed proxy constitutes a quorum.
- (4) If within half an hour from the time appointed for a general meeting a quorum is not present, the meeting, if convened upon the requisition



of proprietors, shall be dissolved and in any other case it shall stand adjourned to the same day in the next week at the same place and time and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the persons entitled to vote and present constitute a quorum.

- (4a) Sub-bylaws (3) and (4) do not apply to a general meeting of a strata company referred to in section 50B.
- (5) The chairman, may with the consent of the meeting, adjourn any general meeting from time to time and from place to place but no business may be transacted at an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (6) Except where otherwise required by or under the Act, resolutions may be passed at a general meeting by a simple majority vote.
- (7) At any general meeting a resolution by the vote of the meeting shall be decided on a show of hands unless a poll is demanded by any proprietor present in person or by proxy.
- (8) Unless a poll be so demanded a declaration by the chairman that a resolution has on the show of hands been carried is conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against such resolution.
- (9) A demand for a poll may be withdrawn.
- (10) A poll if demanded shall be taken in such manner as the chairman thinks fit and the result of the poll shall be deemed to be the resolution of the meeting at which such poll was demanded.
- (11) In the case of equality in the votes whether on a show of hands or on a poll, the question is determined in the negative.

**13. Restriction on moving motion or nominating candidate**

A person is not entitled to move a motion at a general meeting or to nominate a candidate for election as a member of the council unless the person is entitled to vote on the motion or at the election.

**14. Votes of proprietors**

- (1) On a show of hands each proprietor has one vote.

**Schedule 1**

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- (2) On a poll the proprietors have the same number of votes as the unit entitlements of their respective lots.
- (3) On a show of hands or on a poll votes may be given either personally or by duly appointed proxy.
- (4) An instrument appointing a proxy shall be in writing under the hand of the appointer or his attorney and may be either general or for a particular meeting.
- (5) A proxy need not be a proprietor.
- (6) Except in cases where by or under the Act a unanimous resolution is required, no proprietor is entitled to vote at any general meeting unless all contributions payable in respect of his lot have been duly paid and any other moneys recoverable under the Act by the strata company from him at the date of the notice given to proprietors of the meeting have been duly paid before the commencement of the meeting.
- (7) Co-proprietors may vote by proxy jointly appointed by them and in the absence of such a proxy are not entitled to vote on a show of hands, except when the unanimous resolution of proprietors is required by the Act.
- (8) On any poll each co-proprietor is entitled to such part of the vote applicable to a lot as is proportionate to his interest in the lot.
- (9) The joint proxy (if any) on a poll has a vote proportionate to the interests in the lot of such of the joint proprietors as do not vote personally or by individual proxy.

**15. Common seal**

- (1) The common seal of the strata company shall at no time be used except by authority of the council previously given and in the presence of the members of the council or at least 2 members of the council, who shall sign every instrument to which the seal is affixed, but where there is only one member of the strata company his signature shall be sufficient for the purpose of this by-law.

- (2) The council shall make provision for the safe custody of the common seal.

*[16. Repealed]*

*[Part II. Repealed]*

*[Schedule 1 amended by No. 58 of 1995 s.87; No. 14 of 1996 s.4;  
No. 26 of 1999 s.104.]*

**Schedule 2**

[Section 42(2)]

*[Heading deleted by No. 58 of 1995 s.88.]*

**1. Vehicles**

A proprietor, occupier, or other resident of a lot shall not park or stand any motor or other vehicle upon common property except with the written approval of the strata company.

**2. Obstruction of common property**

A proprietor, occupier, or other resident of a lot shall not obstruct lawful use of common property by any person.

**3. Damage to lawns, etc., on common property**

Except with the approval of the strata company, a proprietor, occupier, or other resident of a lot shall not —

- (a) damage any lawn, garden, tree, shrub, plant or flower upon common property; or
- (b) use any portion of the common property for his own purposes as a garden.

**4. Behaviour of proprietors and occupiers**

A proprietor, occupier, or other resident of a lot shall be adequately clothed when upon common property and shall not use language or behave in a manner likely to cause offence or embarrassment to the proprietor, occupier, or other resident of another lot or to any person lawfully using common property.

**5. Children playing upon common property in building**

A proprietor, occupier, or other resident of a lot shall not permit any child of whom he has control to play upon common property within the building or, unless accompanied by an adult exercising effective control, to be or to remain upon common property comprising a laundry, car parking area or other area of possible danger or hazard to children.

**6. Depositing rubbish, etc., on common property**

A proprietor, occupier, or other resident of a lot shall not deposit or throw upon that lot or any other lot or the common property any rubbish, dirt, dust or other material likely to interfere with the peaceful enjoyment of another proprietor, occupier or resident or of any person lawfully using the common property.

**7. Drying of laundry items**

A proprietor, occupier, or other resident of a lot shall not, except with the consent in writing of the strata company —

- (a) hang any washing, towel, bedding, clothing or other article on any part of the parcel in such a way as to be visible from outside the building, other than for a reasonable period on any lines provided by the strata company for the purpose; or
- (b) display any sign, advertisement, placard, banner, pamphlet or like matter on any part of his lot in such a way as to be visible from outside the building.

**8. Storage of inflammable liquids, etc.**

A proprietor, occupier, or other resident of a lot shall not, except with the approval in writing of the strata company, use or store upon the lot or upon the common property any inflammable chemical, liquid or gas or other inflammable material, other than chemicals, liquids, gases or other materials used or intended to be used for domestic purposes, or any such chemical, liquid, gas or other material in a fuel tank of a motor vehicle or internal combustion engine.

**9. Moving furniture etc., on or through common property**

A proprietor, occupier, or other resident of a lot shall not transport any furniture or large object through or upon common property within the building unless he has first given to the council sufficient notice of his intention to do so to enable the council to arrange for its nominee to be present at the time when he does so.

**10. Floor coverings**

A proprietor of a lot shall ensure that all floor space within the lot (other than that comprising kitchen, laundry, lavatory or bathroom) is

**Schedule 2**

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covered or otherwise treated to an extent sufficient to prevent the transmission therefrom of noise likely to disturb the peaceful enjoyment of the proprietor, occupier or other resident of another lot.

**11. Garbage disposal**

A proprietor or occupier of a lot —

- (a) shall maintain within his lot, or on such part of the common property as may be authorized by the strata company, in clean and dry condition and adequately covered, a receptacle for garbage;
- (b) comply with all local laws relating to the disposal of garbage;
- (c) ensure that the health, hygiene and comfort of the proprietor, occupier or other resident of any other lot is not adversely affected by his disposal of garbage.

**12. Additional duties of proprietors, occupiers, etc.**

A proprietor, occupier or other resident shall not —

- (a) use the lot that he owns, occupies or resides in for any purpose that may be illegal or injurious to the reputation of the building;
- (b) make undue noise in or about any lot or common property; or
- (c) keep any animals on the lot that he owns, occupies or resides in or the common property after notice in that behalf given to him by the council.

**13. Notice of alteration to lot**

A proprietor of a lot shall not alter the structure of the lot except as may be permitted and provided for under the Act and the by-laws and in any event shall not alter the structure of the lot without giving to the strata company, not later than 14 days before commencement of the alteration, a written notice describing the proposed alteration.

**14. Appearance of lot**

A proprietor, occupier or other resident of a lot shall not, without the written consent of the strata company, maintain within the lot

anything visible from outside the lot that, viewed from outside the lot,  
is not in keeping with the rest of the building.

*[Schedule 2 amended by No. 58 of 1995 s.88; No. 57 of 1997  
s.115(5).]*

**Schedule 2A**

[Sections 5C and 42]

**Matters that may be provided for in management statement**

1. The amendment or repeal of a by-law contained in Schedule 1.
2. The amendment or repeal of a by-law contained in Schedule 2.
3. Any additional by-law that may be made under section 42.
4. The control or preservation of the essence or theme of the development under the scheme.
5. Architectural and landscaping guidelines to be observed by proprietors.
6. Plot ratio restrictions and open space requirements.
7. The control, management, use and maintenance of any part of the common property, including any special facilities provided on the common property.
8. Provisions relating to any proposed re-subdivision in a scheme being provisions that —
  - (a) comply with the requirements of section 8A(b) and (c) and any other prescribed requirements; and
  - (b) state the proposed unit entitlement of each lot and the proposed aggregate unit entitlement of the scheme following the completion of all proposed re-subdivisions in the scheme.
9. Matters affecting the provision of, and payment for —
  - (a) internal fencing on the parcel; or
  - (b) fencing to which the *Dividing Fences Act 1961* applies,including any obligations of the strata company.
10. The maintenance of water, sewerage, drainage, gas, electricity, telephone and other services.
11. Insurance of the common property.



12. Safety and security.
13. The carrying on of any business or trading activity by the strata company, and the method of distributing and sharing any profit or loss.
14. Procedures to be followed for the resolution of disputes as a prerequisite to the making of an application to the referee for relief under this Act.

*[Schedule 2A inserted by No. 58 of 1995 s.89; amended by No. 61 of 1996 s.38.]*

## Schedule 3

[Section 132]

### Transitional and savings provisions

#### 1. Interpretation

- (1) In this Schedule, unless the contrary intention appears —
- “**appointed day**” means the day on which this Act comes into operation as fixed under section 2;
- “**company**” means a body corporate created by section 13 of the former Act;
- “**former Act**” means the *Strata Titles Act 1966*<sup>12</sup>;
- “**former by-law**” means a by-law within the meaning of the former Act as that by-law was in force immediately before the appointed day;
- “**former common property**” means so much of a former parcel as, immediately before the appointed day, was not comprised in any former lot;
- “**former lot**” means a lot under the former Act as it existed immediately before the appointed day;
- “**former parcel**” means land which, immediately before the appointed day, comprised the former lots and the former common property the subject of a former strata scheme;
- “**former proprietor**” means a person who, immediately before the appointed day, was a proprietor, within the meaning of the former Act, of a former lot; and
- “**former strata scheme**” means —
- (a) the manner of division, immediately before the appointed day, of a former parcel into former lots or into former lots and former common property and the manner of allocation, immediately before that day, of unit entitlements under the former Act among the former lots; and
  - (b) the rights and obligations, between themselves, immediately before the appointed day, of former

proprietors, other persons having property interests in or occupying former lots and the company,

as conferred or imposed by the former Act or by anything done under the authority of the former Act.

- (2) For the purposes of the application of any provision of this Act to or in respect of a scheme to which the provisions of this Act apply by reason of clause 6, a reference to an original proprietor, in relation to that scheme, is a reference to the person by whom the parcel (being the parcel comprised in the strata plan within the meaning of the former Act, the registration of which under the former Act initiated the scheme) was held in fee simple at the time of that registration.
- (3) The express application of any provision of this Act (whether unamended or deemed to be amended) by any provision of this Schedule to or in respect of any act, matter or thing referred to in this Schedule shall not, except in so far as a contrary intention appears, be construed as preventing or limiting the application of any other provision of this Act to that or any other act, matter or thing.
- (4) Where any provision of this Act is deemed to be amended by this Schedule by inserting in that provision any words, those words shall be construed as if they were contained in this Schedule.

**2. Registration of unregistered former strata plans**

- (1) Notwithstanding section 4 or 5, a strata plan within the meaning of the former Act, may be registered as a strata plan but shall not be so registered unless —
  - (a) it illustrates a division of a building into different parts;
  - (b) the requirements of the former Act have been or are complied with in so far as those requirements relate to the registration of a strata plan;
  - [(c) deleted]*
  - (d) registration is effected within 24 months after the appointed day.
- (2) Without limiting the generality of subclause (1)(b), for the purpose of enabling a person to comply, as referred to in that subclause, with the requirements of the former Act, the provisions of section 20 of the

**Schedule 3**

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former Act apply to and in respect of an application for a certificate referred to in section 5(6)(c) of the former Act relating to the proposed subdivision illustrated by a strata plan referred to in subclause (1) as if the former Act had not been repealed.

- (3) Where a plan is registered under subclause (1), the land comprised in the plan shall be deemed to have been subdivided under this Act into lots or into lots and common property in the same manner as that land would have been subdivided if that plan had been registered under the former Act, except that —
- (a) where a boundary of any such lot would, if that plan had been validly registered under the former Act, have been, under section 5(5) of the former Act, the centre of a floor, wall or ceiling, that boundary shall upon the registration of the plan and until it is altered in accordance with this Act be the upper surface of that floor, the inner surface of that wall or the under surface of that ceiling, as the case may be; and
  - (b) where a boundary of any lot is adjusted under paragraph (a), the boundaries of the common property are adjusted reciprocally,

and any such lots or common property shall, for the purposes of this Act, be deemed to be lots or common property, or to be lots or common property with boundaries adjusted as referred to in paragraph (a) or (b), as the case may be.

- (4) A lot created by the registration of a plan under subclause (1) does not include any structural cubic space unless that structural cubic space was stipulated in that plan as forming part of that lot.
- (5) Where, under any provision of this Act, any act, matter or thing depends on or results from (either directly or indirectly) the registration of a strata plan, that provision operates in relation to the registration of a plan under subclause (1) in the same way as it operates in relation to the registration of a strata plan.
- (6) Subject to this clause, a reference in this Act to a strata plan includes a reference to a plan registered under subclause (1) as a strata plan.
- (7) The address endorsed, as referred to in section 5(1)(i) of the former Act, upon a plan registered under subclause (1) shall, for the purposes of this Act, be deemed to be the address for the service of notices on

the strata company concerned until that address is altered in accordance with this Act.

- (8) The endorsement, as referred to in section 18 of the former Act, upon a plan registered under subclause (1) shall, for the purposes of this Act, be deemed to be the schedule referred to in section 5(1)(c).
- (9) A reference to a lot shown in a plan capable of being registered under subclause (1) made in any instrument executed before the registration of that plan under subclause (1) (being an instrument relating to the sale or other disposition of an estate or interest in the lot so shown) shall, on and after the registration of that plan, be construed as a reference to the lot which corresponds to the lot so shown.

**3. Former lots and former common property to be derived lots and derived common property**

- (1) Where immediately before the appointed day —
  - (a) a former lot had any boundary that under section 5(5) of the former Act was the centre of a floor, wall or ceiling, that former lot, on the appointed day, becomes for the purposes of this Schedule a derived lot corresponding to that former lot and having, subject to subclause (2), as its boundaries —
    - (i) instead of any boundary that was the centre of a floor, wall or ceiling, the upper surface of that floor, the inner surface of that wall or the under surface of that ceiling, as the case may be; and
    - (ii) except as provided by subparagraph (i), the same boundaries as that former lot;
  - and
  - (b) a former lot had no boundary that under section 5(5) of the former Act was the centre of a floor, wall or ceiling, that former lot, on the appointed day, becomes for the purposes of this Schedule a derived lot corresponding to that former lot and having as its boundaries the same boundaries as that former lot.
- (2) A derived lot does not include any structural cubic space unless that structural cubic space was stipulated, in the relevant strata plan, as forming part of the former lot to which that derived lot corresponds.

**Schedule 3**

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- (3) On the appointed day, former common property becomes, for the purposes of this Schedule, derived common property corresponding to that former common property but has as its boundaries —
- (a) where any derived lot has any of its boundaries ascertained in accordance with subclause (1)(a)(i) or (b), boundaries adjusted reciprocally; and
  - (b) except as provided by paragraph (a), the same boundaries as that former common property.
- (4) A reference to a former lot made in any instrument executed before the appointed day (being an instrument relating to the sale or other disposition of an estate or interest in that former lot) shall, on and after the day, be construed as a reference to the derived lot which corresponds to that former lot.

**4. Continuation of companies**

A company created under the former Act, in relation to a former strata scheme —

- (a) shall continue notwithstanding the repeal of the former Act;
- (b) shall, on the appointed day, be deemed to be the strata company constituted under section 32(1) in respect of the scheme that corresponds to that former strata scheme and to which the provisions of this Act apply by reason of clause 6; and
- (c) notwithstanding section 32(1), shall have as its name its name under the former Act.

**5. Continuation of estates or interests in former lots and former common property and rights in former common property**

A person who, immediately before the appointed day —

- (a) had an estate or interest in a former lot, has on that day the same estate or interest in the derived lot which corresponds to that former lot; or
- (b) had an estate or interest (not being a right or special privilege referred to in clause 13) in former common property, has on that day the same estate or interest in the derived common property which corresponds to that former common property.

**6. Application of Act to former strata schemes, former parcels, derived lots and common property**

Subject to this Schedule, the provisions of this Act shall, on and from the appointed day, apply to and in respect of —

- (a) a former strata scheme as if it were a strata scheme;
- (b) a former parcel as if it were a parcel;
- (c) a derived lot as if it were a lot; and
- (d) derived common property as if it were common property.

**7. Registration of transfers or leases of derived common property registrable under section 10 of former Act**

- (1) Where a transfer or lease of any common property under the former Act —
  - (a) would under section 10 of the former Act have been registrable had this Act not been enacted but had not, before the appointed day, been so registered; and
  - (b) was executed pursuant to an agreement entered into by the company before the appointed day,

that transfer or lease, upon its lodgement in the office of the Registrar of Titles, shall be dealt with under section 19(8) as if it were a dealing referred to in section 19(2).

- (2) For the purposes of section 19(4), a lease referred to in subclause (1) shall be deemed to have been granted under section 19(2).
- (3) In the event of the registration of an instrument by the Registrar of Titles the effect of which is to render the certificate of title to a former lot incorrect in so far as that certificate of title to a former lot certifies the share of the common property held by the proprietor of the former lot, the Registrar of Titles shall amend that certificate of title so as to replace that certificate by a certificate of the kind referred to in section 17(2).

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**8. Reallocation of unit entitlement**

- (1) Section 16 shall, on and from the appointed day, apply to and in respect of a former strata scheme as if —
- (a) in the case of an application for the amendment of an initial allocation of unit entitlement, subsection (2)(b) of that section were omitted and the following provision substituted —

“

- (b) a certificate given by a licensed valuer certifying that, or to the effect that, the unit entitlement of a lot in the former strata scheme bears in relation to the aggregate unit entitlement of all lots in that scheme a proportion greater than 5% more or 5% less than the capital value of that lot bears to the aggregate capital value of all lots in the scheme.

”.

and

- (b) subsection (7) of that section did not prohibit a Land Valuation Tribunal from making an order under that section within 5 years of the registration of the strata plan.
- (2) In the event of the registration by the Registrar of Titles of an amended schedule of unit entitlement under section 15 or 16 on or after the appointed day in respect of a former strata scheme, the Registrar of Titles shall amend the certificates of title to former lots within that strata scheme so as to replace that part of each certificate which certifies the share of the common property held by the proprietor of the former lot concerned by a certificate of the kind referred to in section 17(2).

**9. General meetings of certain continued companies**

- (1) Where, in relation to a company continued as a strata company by the operation of clause 4, the original proprietor is not, on the appointed day, the proprietor of any lots the subject of the strata scheme or is the proprietor of lots the subject of the strata scheme the sum of whose unit entitlements is less than two-thirds of the aggregate unit entitlement and —
- (a) a general meeting of that company has not been held before the appointed day, a general meeting of that strata company



shall be held within 3 months after the appointed day and that general meeting shall, for the purposes of this Act (section 49(3) excepted) be the first annual general meeting of the strata company; or

- (b) an annual general meeting of that company has been held before the appointed day, the last annual general meeting of that company held before that day shall, for the purposes of by-law 11(1) in Part I of Schedule 1 be deemed to have been the first annual general meeting.
- (2) If a meeting of the strata company is not held in accordance with subclause (1)(a), a referee may, pursuant to an application by a proprietor or mortgagee of a lot appoint, by order, a person to convene and hold a general meeting within such time as may be specified in the order and the meeting convened by that person shall for the purposes of this Act (section 49(3) excepted) be the first annual general meeting of the strata company.
- (3) An order made under subclause (2) may include such ancillary or consequential provisions as the referee thinks fit.
- (4) The original proprietor shall deliver to the strata company (being a strata company a general meeting of which is required to be held under subclause (1)(a)), within 14 days after notice in writing is given to him by the strata company or if the documents referred to in paragraphs (a) and (b) are not then in his possession within 14 days after they come into his possession or under his control —
- (a) all plans, specifications, drawings showing water pipes, electric cables, drainage pipes, ventilation ducts or air conditioning systems, certificates (other than certificates of title for lots), diagrams (including lift wiring diagrams) and other documents (including any policy of insurance) obtained or received by him and relating to the parcel or building; and
  - (b) any books of account, notices or other records relating to the former strata scheme or the strata scheme,
- other than documents which exclusively evidence rights or obligations of the original proprietor and which are not capable of being used for the benefit of the strata company or any of the proprietors, other than the original proprietor.

Penalty: \$1 000.

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- (5) Section 43(1)(b)(iii) shall be deemed to be amended by inserting after “section 49(3)” the following “or under clause 9(4) of Schedule 3”.

**10. Meetings of former companies held within 2 months after appointed day**

Notwithstanding the by-laws in Part I of Schedule 1, for the purposes of any general meeting of a strata company continued by the operation of clause 4, being a general meeting held before the expiration of 2 months after the appointed day —

- (a) the procedure for the convening and holding of meetings of such a strata company and the right of persons to vote at and to requisition meetings of such a strata company shall be the same as they were under the former Act; and
- (b) where a notice is given to the strata company under section 50(7), the mortgagee specified in the notice shall have the same voting rights as he would have had if the meeting had been held in accordance with the former Act and if the notice were a notice given under section 24(7) of the former Act.

**11. Notices served by public or local government authority before the appointed day**

The reference in section 38 to a notice served on the proprietor of a lot by a public authority or local government includes a reference to a notice served, before the appointed day, by such an authority or local government on the proprietor of a former lot which has become a derived lot.

**12. Effect of former by-laws**

- (1) Subject to this clause, the former by-laws relating to a former strata scheme shall, notwithstanding the repeal of the former Act, continue in force in respect of the corresponding scheme to which the provisions of this Act apply by reason of clause 6 except to the extent of any inconsistency of the former by-laws with any provision of this Act other than Schedules 1 and 2.

- (2) Subject to this clause and clause 13A, upon the expiration of 12 months (“**the termination day**”) after the commencement of section 90(2) of the *Strata Titles Amendment Act 1995* —
  - (a) any by-laws continued in force by subclause (1) or any by-laws so continued in force, as amended or repealed in accordance with subclause (3), cease to have effect; and
  - (b) sections 42, 42A and 42B and Schedules 1 and 2 apply in respect of the strata scheme concerned.
- (3) Subject to subclause (4), until the termination day the former by-laws relating to a former strata scheme may be added to, amended or repealed in the manner provided by this Act, and any such addition, amendment or repeal shall have effect upon notification being recorded, in the form prescribed under section 42(4), on the relevant strata plan registered under the former Act.
- (4) A company continued as a strata company by operation of clause 4 may determine, by resolution without dissent, that subclause (2) applies for the purposes of the strata scheme as from a day that is sooner than the termination day.
- (5) Subject to subclause (6), a company continued as a strata company for a scheme by operation of clause 4 may determine that —
  - (a) despite subclause (2)(a), a by-law that is consistent with this Act, other than Schedules 1 and 2, is to continue to have effect after the termination day; and
  - (b) despite subclause (2)(b), Schedule 2 or any provision of that Schedule does not apply in respect of that scheme.
- (6) The power to make a determination under subclause (5)(b) does not apply to any by-law in Schedule 2 if immediately before the commencement of section 90 of the *Strata Titles Amendment Act 1995* that by-law applied to the strata company.
- (7) A determination under subclause (5) does not have effect unless notification is recorded before the termination day, in the form prescribed under section 42(4), on the relevant strata plan registered under the former Act.
- (8) A former by-law made by a strata company under this Act or the former Act and recorded on the strata plan does not cease to have

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effect by operation of subclause (2) or (4) unless the by-law is inconsistent with this Act, other than Schedules 1 and 2.

(9) A by-law —

- (a) continued under subclause (5)(a) and recorded under subclause (7); or
- (b) referred to in subclause (8),

has effect despite the provisions of section 42(2) and Schedules 1 and 2, and those provisions are modified accordingly.

(10) Section 93 applies, with all necessary modifications, to enable —

(a) an order of a referee to be applied for where —

- (i) a strata company has purportedly exercised a power conferred by subclause (5) but has acted beyond power; or
- (ii) a power so conferred should have been exercised by a strata company but the company has failed to do so;

and

(b) an order to be made by a referee —

- (i) declaring a by-law purportedly continued under this clause to be invalid;
- (ii) reinstating a by-law that should have been continued by a strata company under this clause; or
- (iii) making applicable all provisions or any provision of Schedule 2 if it should not have been made inapplicable by a strata company under this clause, as the case may require.

(11) An application for an order referred to in subclause (10) cannot be made after the expiration of 3 years from the commencement of section 90(2) of the *Strata Titles Amendment Act 1995*, but a referee may extend that period if a proprietor applies for an extension and satisfies the referee that the justice of the case requires that the period be extended.

(12) Nothing in this clause is to be read as preventing a strata company from doing anything that it is authorized to do under section 42(2).

**13. Maintenance of exclusive use, or special privileges in respect of common property**

- (1) Where immediately before the appointed day a proprietor of a former lot was entitled, pursuant to former by-law 3(f), to a right of exclusive use and enjoyment of, or special privileges in respect of, any of the former common property, the proprietor for the time being of the lot shall continue to be entitled to that right or those special privileges in accordance with the terms of the grant and any such grant shall be determinable on reasonable notice unless the company otherwise resolved by unanimous resolution.
- (2) Where immediately before the appointed day a proprietor of a former lot was entitled, pursuant to a grant contained in a former by-law, to a right of exclusive use and enjoyment of, or special privileges in respect of, any of the former common property, the proprietor for the time being of the lot shall continue to be entitled to that right or those special privileges in accordance with the terms of the by-law.
- (3) For the removal of doubt it is declared that section 20 of the *Town Planning and Development Act 1928* has never applied to any grant referred to in subclause (1) or (2).

**13A. Exclusive use and privileges to lapse unless provided for by by-law or referee's order**

- (1) Where immediately before the commencement of section 90(3) of the *Strata Titles Amendment Act 1995* —
  - (a) a proprietor of a lot was entitled to any right or special privilege by operation of clause 13; but
  - (b) that right or special privilege is not recorded on the strata plan,

that right or special privilege is extinguished at the expiration of 12 months after that commencement except to the extent that it is provided for by a by-law or order made under this clause and recorded by the Registrar of Titles under section 42(4).

- (2) A proprietor for the time being of a lot who considers that he is entitled to a right or special privilege referred to in subclause (1) that is not recorded on the strata plan may serve notice on the strata

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company requiring it to make a by-law, in terms specified in the notice, confirming that right or special privilege.

- (3) Notwithstanding section 42, the strata company may make a by-law referred to in subclause (2) otherwise than pursuant to a resolution without dissent or a special resolution.
- (4) An order may be applied for and made under section 93 in respect of a by-law made following a requisition under subclause (2).
- (5) Where a strata company on which a requisition has been served under subclause (2) —
  - (a) fails to make a by-law in accordance with the requisition within one month after the service of the requisition; or
  - (b) having made such a by-law and having been tendered the prescribed fee, does not cause the by-law to be recorded in accordance with section 42(4) within a reasonable time,

the proprietor who made the requisition may, subject to subclause (7), make an application to a referee for an order under subclause (8).

- (6) The provisions of Part VI apply to an application made to a referee under this clause and to an order made by the referee in the same way as they apply to an application and an order made under that Part.
- (7) An application under subclause (5) cannot be made after the expiration of 3 years from the commencement of section 90(3) of the *Strata Titles Amendment Act 1995*, but a referee may extend that period if a proprietor applies for an extension and satisfies the referee that the justice of the case requires that the period be extended.
- (8) Where on an application under subclause (5) the referee is of the opinion that —
  - (a) the applicant was entitled to a right or special privilege by operation of clause 13; but
  - (b) the right or special privilege is not recorded in the strata plan,

he may order that the applicant is entitled to such rights or special privileges as may be specified in the order and in that order shall specify the method by which the by-law, giving effect, by virtue of subclause (10), to the terms of the order, may be amended, added to or repealed.

- (9) Section 115 applies to an order under subclause (8) as if it were referred to in subsection (1)(a) of that section.
- (10) An order under subclause (8), when recorded under section 115, has effect, subject to any order with respect thereto made by a superior court, as if its terms were a by-law.
- (11) A by-law —
  - (a) made pursuant to a requisition under subclause (2); or
  - (b) giving effect, by virtue of subclause (10), to the terms of an order under subclause (8),

being a by-law expressed to be for the benefit of a specified lot, shall while it remains in force enure as appurtenant to, and for the benefit of, that lot.

- (12) A by-law —
  - (a) made pursuant to a requisition under subclause (2); or
  - (b) giving effect, by virtue of subclause (10), to the terms of an order under subclause (8),

shall be deemed, for the purposes of this Act, to be a by-law referred to in section 42(8).

**13B. Strata companies to notify proprietors of operation of clause 13A**

- (1) A strata company for a scheme shall give notice in the prescribed form to the proprietor of each lot in the scheme.
- (2) The notice shall be given not later than 6 months after the commencement of section 90(3) of the *Strata Titles Amendment Act 1995*.
- (3) The prescribed form shall —
  - (a) state the effect of clause 13A(1);
  - (b) advise any proprietor affected by that clause to take action under that clause for the protection of his rights as soon as is practicable; and
  - (c) provide for the full text of clause 13A to be attached to the form when notice is given under subclause (1).

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- (4) Failure of a strata company to give notice under this clause does not affect the operation of clause 13A(1) but is a ground for the grant of an extension of time under clause 13A(7).

**14. Recovery of contributions levied under former Acts**

- (1) Any contribution levied under the former Act by a company and unpaid at the appointed day may be recovered by the continued strata company as if it were a contribution levied under this Act and bears interest from the appointed day as if it were a contribution levied under this Act.
- (2) Any determination made under the former Act by a company specifying amounts to be raised by regular periodic contributions shall be deemed to be a determination made under section 36(1)(b).

**15. Modification of section 35(1)(j) in relation to companies**

In relation to a company continued as a strata company by the operation of clause 4, section 35(1)(j) shall be deemed to be amended by inserting after “Division 4” the following —

“ , as modified by clause 21 of Schedule 3, ”.

**16. Inspection of former records, etc.**

- (1) A company continued as a strata company by the operation of clause 4 shall, for the purposes of the strata scheme concerned, cause to be retained until the expiration of the prescribed period, any records, minutes of meetings, notices and books of account kept or received by it before the appointed day and in its custody or under its control on that day and upon application under section 43(1) made in respect of a lot the subject of the strata scheme concerned shall make those records, minutes, notices and books available for inspection by the applicant or his agent at a time and place ascertained in accordance with section 43(1)(b).
- (2) Section 43(2) applies to the making of an inspection referred to in subclause (1) in the same way as it applies to the making of an inspection referred to in section 43(1)(b).



**17. Administrative funds of continued companies**

- (1) Where a determination made under section 13(6)(b) of the former Act by a company continued as a strata company by the operation of clause 4 was in force immediately before the appointed day, that determination shall be deemed to be the determination required by section 36(1)(b) to be made by that strata company.
- (2) Where a fund was, immediately before the appointed day, kept under section 13(6)(a) of the former Act by a company continued as a strata company by the operation of clause 4, that fund shall, on the appointed day, be deemed to be the fund required under section 36(1)(a) to be established by that strata company.

**18. Modification of section 43(1)(c) in relation to continued companies**

For the purposes of section 43(1)(c), any contribution levied under the former Act by a company and unpaid before the appointed day shall be deemed to be a contribution levied under section 36(1)(c).

**19. Continuation of councils of former companies**

- (1) The council constituted under the former Act of a company continued as a strata company by the operation of clause 4 shall, subject to this Act, be, on and from the appointed day, the council of that strata company.
- (2) A person who is a member of a council of a company referred to in subclause (1) shall, for the purposes of by-law 4 in Part I of Schedule 1, be deemed to have been elected as a member of that council if he was elected as a member of the council of the company created under the former Act.
- (3) By-law 6(1) in Part I of Schedule 1 shall, in relation to a council referred to in subclause (1), be deemed to be amended by omitting therefrom the words “they assume office as such members” and by inserting instead the words “the appointed day”.

**20. Operation of by-law 1, Part I of Schedule 1**

By-law 1(1)(c) in Part I of Schedule 1 extends to authorizing the giving by a proprietor to a company continued as a strata company by

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the operation of clause 4 of a notice after the occurrence of any event specified in that by-law notwithstanding that that event occurred before the appointed day.

**21. Modification of Part IV, Division 4**

- (1) Section 54 does not apply to or in respect of a company continued as a strata company by the operation of clause 4, which has in force on the appointed day a policy of insurance expiring not later than one year after the appointed day and effected by it in accordance with section 13(4)(c) of the former Act, until the expiry of that policy.
- (2) Section 55(1)(a) does not apply to or in respect of a company continued as a strata company by the operation of clause 4, which has in force on the appointed day a policy of insurance expiring not later than one year after the appointed day and effected by it in accordance with section 13(4)(d) of the former Act, until the expiry of that policy.
- (3) Sections 56(2) and 58 apply to and in respect of a policy of insurance entered into in accordance with the former Act before the appointed day between a company continued as a strata company by the operation of clause 4 and an insurer in the same way as those sections apply to and in respect of a contract of insurance entered into between a strata company and an insurer pursuant to Division 4 of Part IV.
- (4) Notwithstanding the repeal of the former Act, section 17 of the former Act continues to apply to and in respect of a policy of insurance referred to in that section entered into before the appointed day until the expiry of that policy as if this Act had not been enacted.

**22. Evidentiary effect under section 61 of particulars furnished under section 21(3) of former Act**

The particulars of the unit entitlements of any former lots shown on a certified copy of the strata plan referred to in section 21(3) of the former Act or on any amendment of that plan and furnished to any authority referred to in section 21(3) of the former Act shall for the purposes of section 61 be deemed to be particulars furnished to that authority under section 60 of the unit entitlements of the derived lots that correspond to those former lots.

**23. Destruction of or damage to building under former Act**

- (1) Any proceedings under section 19(1) of the former Act which were pending before the Supreme Court immediately before the appointed day may be continued and completed as if they were proceedings under section 31.
- (2) Any declaration made under section 19(1)(b) of the former Act before the appointed day shall, notwithstanding the repeal of the former Act, continue to operate and shall have the same force and effect as if this Act had not been enacted.
- (3) Any proceedings for an order referred to in section 19(3) of the former Act which were pending before the Supreme Court immediately before the appointed day may be continued and completed as if they were proceedings under section 28.
- (4) Any order made under section 19(3) of the former Act before the appointed day shall, notwithstanding the repeal of the former Act, continue to operate and shall, subject to subclause (5), have the same force and effect as if this Act had not been enacted.
- (5) An order referred to in section 19(3) of the former Act may be varied in the same way as if it were an order made under section 28.
- (6) Notwithstanding the repeal of the former Act, section 11 of the former Act and the regulations made under that section continue to apply to and in respect of a building which was destroyed under the former Act and the parcel on which that building was situated.

**24. Administrators under former Act**

- (1) A person who, immediately before the appointed day, held office as an administrator under section 23 of the former Act shall, notwithstanding the repeal of the former Act, continue to have the powers and duties he had, as the holder of that office, immediately before the appointed day.
- (2) The provisions of section 23 of the former Act continue to apply to and in respect of a person holding office as referred to in subclause (1) notwithstanding the repeal of the former Act.
- (3) Where immediately before the appointed day an application under section 23(1) of the former Act was pending, the Supreme Court shall remit the application to such referee as it thinks fit on such terms and conditions (including terms and conditions relating to the payment of

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the costs of the application up to the date of the remittal) as it thinks fit and any application so remitted shall be deemed to be an application capable of being made under section 102.

**25. Recovery of rates paid by company**

A company continued as a strata company may recover any amount referred to in section 14(2) of the former Act paid by it, whether before or after the appointed day, as if section 14(3) of the former Act had not been repealed by this Act.

**26. Regulations — Transitional**

The Governor may, for the purposes of bringing lots, common property, companies and councils, within the meaning of the former Act, under the provisions of this Act and applying the provisions of this Act, with or without modifications, additions or exclusions to or in respect of any such lots, common property, companies or councils, and for any purposes incidental thereto, make regulations containing such transitional, consequential or savings provisions as are necessary or expedient.

*[Schedule 3 amended by No. 42 of 1986 s.12; No. 58 of 1995 s.90; No. 14 of 1996 s.4; No. 61 of 1996 s.39.]*

## Schedule 4

[Section 42C]

### Transitional provisions for by-laws of strata companies other than companies to which Schedule 3 applies

#### 1. Interpretation

In this Schedule —

“**post-1985 company**” means a company referred to in section 42C(1);

“**transition period**” means the period of 12 months after the commencement of section 43(1) of the *Strata Titles Amendment Act 1995*.

#### 2. Transitional provisions

- (1) Section 42C, as modified by subclause (2), applies to a post-1985 company after the expiration of the transition period but the company may determine by resolution without dissent that it is to apply as so modified from an earlier day.
- (2) A by-law made by a post-1985 company and recorded on the strata plan, notwithstanding section 42C, continues in force except to the extent of any inconsistency with this Act, other than Schedules 1 and 2.
- (3) Subject to subclause (4), a post-1985 company may determine that, notwithstanding section 42C, Schedule 2 or any provision of that Schedule does not apply in respect of the strata scheme.
- (4) The power to make a determination under subclause (3) does not apply to any by-law in Schedule 2 if immediately before the commencement of section 91 of the *Strata Titles Amendment Act 1995* that by-law applied to the strata company.
- (5) A determination under subclause (3) does not have effect unless notification is recorded before the expiry of the transition period, in the form prescribed under section 42(4), on the relevant strata plan.

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- (6) A by-law referred to in subclause (2) has effect despite the provisions of Schedules 1 and 2, and those provisions are modified accordingly.
- (7) Section 93 applies, with all necessary modifications, to enable —
  - (a) an order of a referee to be applied for where —
    - (i) a strata company has purportedly exercised the power conferred by subclause (3) but has acted beyond power; or
    - (ii) the power so conferred should have been exercised by a company but the company has failed to do so;
  - and
  - (b) an order to be made by a referee making applicable all provisions or any provision of Schedule 2 if it should not have been made inapplicable by determination made under subclause (3).
- (8) An application for an order referred to in subclause (7) cannot be made after the expiration of 3 years from the commencement of section 44 of the *Strata Titles Amendment Act 1995*, but a referee may extend that period if a proprietor applies for an extension and satisfies the referee that the justice of the case requires that the period be extended.
- (9) Nothing in this Schedule is to be read as preventing a strata company from doing anything that it is authorized to do under section 42(2).

*[Schedule 4 added by No. 58 of 1995 s.91.]*

**Notes**

<sup>1</sup> This reprint is a compilation as at 1 July 1999 of the *Strata Titles Act 1985* and includes the amendments effected by the other Acts referred to in the following Table.

**Table of Acts**

<b>Short title</b>	<b>Number and Year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Miscellaneous</b>
<i>Strata Titles Act 1985</i>	33 of 1985	6 May 1985	30 June 1985 (see section 2 and <i>Gazette</i> 21 June 1985 p.2188)	
<i>Strata Titles Amendment Act 1986</i>	42 of 1986	1 August 1986	1 August 1986	
<i>Acts Amendment (Water Authority Rates and Charges) Act 1987, Part IX</i>	24 of 1987	25 June 1987	14 July 1987 (see section 2 and <i>Gazette</i> 14 July 1987 p.2647)	
<i>Acts Amendment (Heritage Council) Act 1990, Part 2</i>	97 of 1990	22 December 1990	25 February 1991 (see section 2 and <i>Gazette</i> 22 February 1991 p.868)	
<i>Retirement Villages Act 1992, section 86</i>	34 of 1992	19 June 1992	10 July 1992 (see section 2 and <i>Gazette</i> 10 July 1992 p.3185)	
<i>Financial Administration Legislation Amendment Act 1993, Part 4</i>	6 of 1993	27 August 1993	Deemed operative 1 July 1993 ( see section 2(1))	
<i>Acts Amendment (Public Sector Management) Act 1994, section 19</i>	32 of 1994	29 June 1994	1 October 1994 (see section 2 and <i>Gazette</i> 30 September 1994 p.4948)	

**Strata Titles Act 1985**

<b>Short title</b>	<b>Number and Year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Miscellaneous</b>
<i>Planning Legislation Amendment Act (No. 2) 1994, section 46(12)</i>	84 of 1994	13 January 1995	1 March 1995 (see section 2 and <i>Gazette</i> 21 February 1995 p.567)	
<i>Caravan Parks and Camping Grounds Act 1995, section 33</i>	34 of 1995	29 September 1995	1 July 1997 (see section 2 and <i>Gazette</i> 20 June 1997 p.2805)	
<i>Strata Titles Amendment Act 1995</i>	58 of 1995	20 December 1995	14 April 1996 (see section 2 and <i>Gazette</i> 15 March 1996 p.981)	Sections 5(5), 46(2) and 54(3): validation <sup>2, 7, 8</sup> ; Sections 38(2), 43(5) and (6), 45(3), 57(2) and (3), 66 and 93(2): transitional <sup>4, 5, 6, 9, 10, 11</sup>
<i>Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995, Part 13</i>	73 of 1995	27 December 1995	1 January 1996 (see section 2 and <i>Gazette</i> 29 December 1995 p.6291)	
<i>Local Government (Consequential Amendments) Act 1996, section 4</i>	14 of 1996	28 June 1996	1 July 1996 (see section 2)	
<i>Strata Titles Amendment Act 1996</i>	61 of 1996	11 November 1996	20 January 1997 (see section 2 and <i>Gazette</i> 17 January 1997 p.405)	Section 12(2) and (3): transitional <sup>15</sup> ; section 30: transitional <sup>16</sup> ; section 34(4): transitional <sup>17</sup>



<b>Short title</b>	<b>Number and Year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Miscellaneous</b>
<i>Licensed Surveyors Amendment Act 1996, section 28</i>	79 of 1996	14 November 1996	5 April 1997 (see section 2 and <i>Gazette</i> 4 April 1997 p.1750)	
<i>Transfer of Land Amendment Act 1996, section 153(1)</i>	81 of 1996	14 November 1996	14 November 1996 (see section 2(1))	
<i>Equal Opportunity Amendment Act (No. 3) 1997, section 8</i>	42 of 1997	9 December 1997	6 January 1998 (see section 2)	
<i>Statutes (Repeals and Minor Amendments) Act 1997, section 115</i>	57 of 1997	15 December 1997	15 December 1997 (see section 2)	
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998, section 66</i>	10 of 1998	30 April 1998	30 April 1998 (see section 2(1))	
<i>Acts Amendment and Repeal (Financial Sector Reform) Act 1999, section 104</i>	26 of 1999	29 June 1999	1 July 1999 (see section 2 and <i>Gazette</i> 30 June 1999 p.2905)	

<sup>2</sup> Section 5(5) of the *Strata Titles Amendment Act 1995* (No. 58 of 1995) reads as follows —

“

- (5) A plan registered under the principal Act before the provision inserted by subsection (3) came into operation is declared to be, and to have always been, valid if it would have been valid at the time of registration had that provision been then in operation.

”

<sup>3</sup> In respect of matters arising after 1 January 1991, the operation of the *Companies (Western Australia) Code* is subject to the provisions in Division 2 of Part 13 of the *Corporations (Western Australia) Act 1990* (No. 105 of 1990).

<sup>4</sup> Section 38(2) of the *Strata Titles Amendment Act 1995* (No. 58 of 1995) reads as follows —

“

- (2) A strata company does not commit an offence by contravening section 35A(1) of the principal Act during the period from the commencement of subsection (1) to the expiration of 12 months after that commencement.

”

<sup>5</sup> Section 43(5) and (6) of the *Strata Titles Amendment Act 1995* (No. 58 of 1995) reads as follows —

“

- (5) Subsection (4) of section 42 of the principal Act as in force immediately before the commencement of this section applies to any unrecorded by-laws, but the lodgment of notice under paragraph (a) of that subsection in respect of any unrecorded by-law shall be effected not later than —

- (a) 2 years after the passing of the resolution for that by-law; or  
(b) 12 months after the commencement of section 43(5) of the *Strata Titles Amendment Act 1995*,

whichever is the sooner.

- (6) In subsection (5) —

“**unrecorded by-law**” means a by-law or an amendment or repeal of a by-law made, but not referred to on the strata/survey-strata plan as required by section 42(4) of the principal Act, before the commencement of this section.

”

<sup>6</sup> Section 45(3) of the *Strata Titles Amendment Act 1995* (No. 58 of 1995) reads as follows —

“

- (3) A strata company does not commit an offence by contravening section 43(1)(b)(ia) of the principal Act during the period from the commencement of subsection (1)(a)(i) to the expiration of 12 months after that commencement.

”

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<sup>7</sup> Section 46(2) of the *Strata Titles Amendment Act 1995* (No. 58 of 1995) reads as follows —

“

- (2) Expenditure made by the council of a strata company at any time before the commencement of subsection (1) that would have been within paragraph (e) of section 47(2) of the principal Act if that section had then been in operation is declared to be, and to have always been, as valid as it would have been if that section had been then in operation.

”

<sup>8</sup> Section 54(3) of the *Strata Titles Amendment Act 1995* (No. 58 of 1995) reads as follows —

“

- (3) Any insurance effected and maintained by a strata company at any time before the commencement of subsection (1)(b) that would have been within section 55(1)(b) of the principal Act if that section and subsection (1)(b) had then come into operation is declared to be, and to have always been, as valid as it would have been if that section and subsection (1)(b) had then come into operation.

”

<sup>9</sup> Section 57(2) and (3) of the *Strata Titles Amendment Act 1995* (No. 58 of 1995) reads as follows —

“

- (2) Section 60, as inserted by subsection (1), applies to a plan registered after the commencement of this section.
- (3) Section 60, as it existed before the commencement of this section, continues to apply, despite its repeal, to a plan registered before that commencement.

”

<sup>10</sup> Section 66 of the *Strata Titles Amendment Act 1995* (No. 58 of 1995) reads as follows —

“

**66. Transitional provision**

Despite their repeal by section 63, sections 68 and 69 of the principal Act continue to apply to any contract, agreement or document entered into before the commencement of section 63 and the provisions inserted into the principal Act by that section do not apply to any such contract, agreement or document.

11 Section 93(2) of the *Strata Titles Amendment Act 1995* (No. 58 of 1995) reads as follows —

“

- (2) Any proceedings commenced under section 28, 29, 31, 50, 51 or 124 of the principal Act before the commencement of subsection (1) may be continued and determined, and any proceedings in the nature of an appeal arising from those proceedings may be taken and disposed of, as if subsection (1) had not been enacted.

”

12 The *Strata Titles Act 1966* is repealed by this Act, s.131.

13 Now see the *Water Agencies (Powers) Act 1984* (No. 3 of 1984).

14 Section 112(2) of the *Public Sector Management Act 1994* (No. 31 of 1994) allows references to the Public Service Board to be read as references to the Minister for Public Sector Management.

15 Section 12(2) and (3) of the *Strata Titles Amendment Act 1996* (No. 61 of 1996) reads as follows —

“

(2) If —

- (a) a resolution without dissent has been passed by a strata company for a scheme during the relevant period consenting to a proposed re-subdivision and allocation of unit entitlement as mentioned in subparagraph (ii) of section 8A(a) of the principal Act; but
- (b) the plan of re-subdivision was not registered before the expiry of the relevant period,

the resolution without dissent is to be treated as if it were a unanimous resolution for the purposes of that paragraph.

(3) In subsection (2) —

“**relevant period**” means the period —

- (a) beginning on the day of the commencement of the *Strata Titles Amendment Act 1995*; and
- (b) ending with the day before the commencement of the *Strata Titles Amendment Act 1996*.

”

16 Section 30 of the *Strata Titles Amendment Act 1996* (No. 61 of 1996) reads as follows —

“

**30. Transitional provisions as to insurance**

- (1) If immediately before the day on which section 25 of the *Strata Titles Amendment Act 1996* commences (“**the commencement day**”) a strata company for a single tier strata scheme is maintaining insurance in respect of —
  - (a) buildings in the scheme; and
  - (b) damage to property, death or bodily injury,that after the commencement day satisfies the requirements of new section 53D(3), the strata company is to be taken to have made a determination for the purposes of new section 53B(2).
- (2) Subsection (1) does not prevent the strata company exercising the power under new section 53B(2) to revoke a determination under that section.
- (3) If immediately before the commencement day a strata company for a single tier strata company is exempt from the requirements of section 54 or 55(1)(c) of the principal Act by order of a referee under section 103J of that Act, the order continues in force after the commencement day as if the order exempted the strata company from the obligation to insure imposed on it by new section 53D.
- (4) An order to which subsection (3) applies ceases to have effect if —
  - (a) at any time after the commencement day a proprietor serves notice in writing —
    - (i) on the strata company; or
    - (ii) in the case of a two-lot scheme, on the other proprietor,that he requires the termination of the order; and
  - (b) the notice is recorded on the strata/survey-strata plan by the Registrar of Titles.
- (5) It is for the person who has served a notice under subsection (4) to lodge a copy of the notice, accompanied by the prescribed form, with the Registrar of Titles for the purpose of subsection (4)(b).
- (6) In this section —

“**new section**” refers to a section inserted in the principal Act by section 25 of this Act.

”.

<sup>17</sup> Section 34(4) of the *Strata Titles Amendment Act 1996* (No. 61 of 1996) reads as follows —

“

- (4) Section 103L of the principal Act as amended by this section applies to the amount of a premium or other charge of which a proprietor received notice before the commencement of subsection (1) if —
  - (a) under section 36A or 36B a fund for administrative purposes was not maintained under section 36(1)(a);
  - (b) the strata company was required to effect and maintain the insurance to which the premium or other charge related; and
  - (c) the proprietor —
    - (i) paid another proprietor’s share of the amount; and
    - (ii) applies to a referee for an order under section 103L within 3 months after the commencement of subsection (1).

”

<sup>18</sup> Renumbered as section 3AC by the *Strata Titles Amendment Act 1996* (No. 61 of 1996 section 5).

**Defined Terms**

*[This is a list of terms defined and the provisions where they are defined.  
It is not part of the law.]*

Defined Term	Provision(s)
a disposition statement .....	8B(2), 21V(2), 31H(2)
administrator.....	3(1)
application .....	26(1), 27(1)
appointed day .....	item 1(1) of Schedule 3
base lines .....	3(1)
building.....	3(1), 53
change-over day .....	21K
commencement day .....	21K
Commission.....	3(1)
Commissioner of Titles .....	129A(5)
common property .....	3(1)
company .....	item 1(1) of Schedule 3
contract.....	68
council .....	3(1)
date of the contract .....	70(8)
existing small strata scheme .....	21A
floor .....	3(1)
floor area .....	3(1)
floor plan .....	3(1)
former Act .....	item 1(1) of Schedule 3
former by-law .....	item 1(1) of Schedule 3
former common property.....	item 1(1) of Schedule 3
former lot.....	item 1(1) of Schedule 3
former parcel .....	item 1(1) of Schedule 3
former proprietor .....	item 1(1) of Schedule 3
former strata scheme.....	item 1(1) of Schedule 3
interim order.....	82(1)
land .....	3(1)
licensed surveyor.....	3(1)
licensed valuer.....	3(1)
local government .....	3(1)
location plan .....	3(1)
lot.....	3(1), 3B(8), 36B(2), 103D(5)
management contract or arrangement.....	50A(5)
mortgage.....	3(1)
occupier .....	3(1)
open space .....	3(1)
order .....	104(3)
original proprietor.....	3(1), 68

**Defined Terms**

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parcel .....	3(1)
permitted boundary deviation .....	3(1)
person concerned .....	3(1)
plot ratio .....	3(1)
post- 1985 company .....	item 1(1) of Schedule 3
prescribed .....	3(1)
proprietor .....	3(1), 53A(c)
purchaser .....	68
real estate agent .....	70(8)
referee .....	3(1)
Register .....	3(1)
registered interest .....	15(5)
Registrar of Titles .....	3(1)
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