

STRATA TITLES ACT 1985.

(No. 33 of 1985.)

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STRATA TITLES.

No. 33 of 1985.

AN ACT to facilitate the subdivision of land into cubic spaces and the disposition of titles thereto, to provide for incidental and connected purposes and to repeal the Strata Titles Act 1966.

[Assented to 6 May 1985.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Strata Titles Act 1985*. Short title.

Commence-
ment.

2. This Act shall come into operation on a day to be fixed by proclamation.

Interpreta-
tion.

3. (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;

“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; and

(b) any leasehold interest acquired by a strata company under section 18;

“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) of this definition 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 licensed surveyor registered under the Licensed Surveyors Act 1909;

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

“local government authority” in relation to a parcel, means the council of a municipality constituted under the Local Government Act 1960 in whose municipal district the parcel is situated;

“location 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” 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, strata plan of subdivision or strata plan of consolidation to which that strata scheme relates, being in each case 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 unless that structural cubic space has boundaries described as prescribed and is described in that floor plan as part of a lot;

“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;

“original proprietor” in relation to a strata 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 plan to which the scheme relates;

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

“person concerned” means—

- (a) a person appearing by the register book kept under the Transfer of Land Act 1893 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;

“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;

“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;

“resumption” means the compulsory acquisition of land under the provisions of any Act or Act of the Commonwealth authorizing compulsory acquisition of land;

“special resolution” means—

- (a) a resolution passed at a duly convened general meeting of the strata company, of which at least 14 days’ notice specifying the proposed special resolution has been given, by a majority of not less than 75 per cent of the aggregate unit entitlement of the lots and not less than 75 per cent of the proprietors; or
- (b) a resolution passed at a duly convened general meeting of the strata company, of which at least 14 days’

notice specifying the proposed special resolution has been given, by a majority of the persons entitled to exercise the powers of voting conferred under this Act who are present and vote either personally or by proxy and agreed to, in writing signed by him or them, within 28 days after the day of the meeting by a sufficient number of other persons who were entitled to exercise the powers of voting conferred under this Act at the meeting (or of persons who at the time of their signatures were entitled to exercise those powers in place of those other persons) so that the resolution has been passed or agreed to by a majority of not less than 75 per cent of the aggregate unit entitlement of the lots and not less than 75 per cent of the proprietors;

“strata company” means a body corporate constituted under section 32;

“strata plan” means 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 the requirements of Part II,

and includes any amendment duly made to that plan;

“strata scheme” means—

- (a) the manner of division, from time to time, of a parcel into lots or into lots and common property 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 not for the exclusive enjoyment of one lot; and
- (c) any cubic space enclosed by a structure enclosing any such pipes, wires, cables or ducts;

“Town Planning Board” means the Board of that name constituted under the Town Planning and Development Act 1928;

“unanimous resolution” means—

- (a) a resolution that is passed unanimously at a duly convened general meeting of the strata company 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 com-

pany 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.

(2) 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).

(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 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.

PART II.—LAND IN STRATA SCHEMES.

Division 1.—Creation of lots and common property.

Subdivision
into lots and
common
property.

4. (1) Land may be subdivided into lots or lots and common property by the registration of a strata plan under and in the manner provided by this Act.

(2) Where a 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 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 book kept under the Transfer of Land Act 1893; 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 plan; and

(b) any amendments to lots or common property shown on that plan.

(4) Where a 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 issue 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 shall take effect without any memorial or notification on folia of the register book constituting titles 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.

5. (1) A strata plan shall—

Registration
of strata
plan.

- (a) consist of a location plan and a floor plan in respect of the parcel;
- (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 building;
- (e) have endorsed on it the address at which documents may be served on the strata company in accordance with section 125 (2) (b); and
- (f) contain such other features as may be prescribed.

(2) A strata plan shall not be registered under this Act if the name of the building endorsed on the plan is, in the opinion of the Registrar of Titles, undesirable.

(3) A strata plan lodged for registration under this Act shall be accompanied by certificates given by—

- (a) a licensed surveyor in accordance with section 22;
- (b) the local government authority in accordance with section 23; and
- (c) a licensed valuer in accordance with section 14 (2).

(4) A strata plan lodged for registration under this Act shall, where section 25 (1) so requires, be accompanied by a certificate of approval given by the Town Planning Board in accordance with that section and signed by the Chairman of that Board.

(5) A strata plan shall be registered in the prescribed manner and, upon registration, the Registrar of Titles shall allocate a number to the plan.

Strata plan
may restrict
use of lot.

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

(2) Where a registered strata plan restricts the use to which a lot or part of a lot may be put, a proprietor, occupier or other resident of the lot shall not use, or permit to be used, that lot or part lot in any manner that contravenes the restriction.

Penalty: \$500.

(3) Subject to subsection (4), a restriction endorsed on a registered strata plan under this section may be varied or removed by the unanimous resolution of the strata company but the variation or removal shall be effective only if the local government authority approves the resolution and,

if the subdivision in the strata plan was one to which the consent of the Town Planning Board was required under this Act, the Town Planning Board approves the resolution.

(4) A resolution varying or removing a restriction endorsed on a registered 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 plan accordingly.

7. The proprietor of a lot, part of which does not form part of a building, shall not make or cause or permit to be made any alteration or extension of a structural kind to or in respect of that part of his lot except with the prior approval, expressed by unanimous resolution, of the strata company.

Structural
extensions
restricted.

8. (1) Lots or common property, or lots and common property, may be subdivided by the registration of a plan under and in the manner provided by this Act as a strata plan of subdivision.

Subdivision
within strata
scheme.

(2) For the purposes of this section, "common property" does not include a reference to common property that is the subject of a lease accepted by the strata company under section 18.

(3) A strata plan of subdivision shall—

- (a) be accompanied by an application under the seal of the strata company in the prescribed form requesting the Registrar of Titles to register the plan and confirming that the strata company has by unanimous resolution consented to the proposed subdivision and to the proposed allocation of unit entitlement set out in the application;
- (b) define the boundaries of each lot in the parcel that is to be altered or created by the strata plan of subdivision by reference to a floor plan;

- (c) where amendment of the location plan is necessary in consequence of the 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 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 in the case of an application for registration of a strata plan;
- (e) be accompanied by a certificate given by the local government authority containing, subject to appropriate and necessary modifications, the same particulars as are required by section 23 in the case of an application for registration of a strata plan and the local government authority 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);
- (f) where section 25 (1) requires, be accompanied by a certificate of approval of the subdivision given by the Town Planning Board in accordance with that section and signed by the Chairman of that Board;
- (g) be accompanied by a certificate of a licensed valuer in accordance with section 14 (2);
- (h) be accompanied by a certificate given by every person, other than a proprietor, 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; and

- (i) be capable of registration only if every lot or part lot of a strata plan the transfer of which is necessary to give effect to the strata plan of subdivision is free of registered encumbrances immediately prior to registration of the strata plan of subdivision.
- (4) Every transfer or other document that is necessary to give effect to the strata plan of subdivision shall be lodged for registration together with the strata plan of subdivision.
- (5) Upon registration of a strata plan of subdivision—
 - (a) that plan shall be deemed to be part of the strata plan as previously registered;
 - (b) the Registrar of Titles shall amend the strata plan and the schedule of unit entitlement in the manner prescribed;
 - (c) every lot of the strata plan as previously registered that is enlarged under the strata plan of subdivision by the addition of part of a lot or common property of the strata plan as previously registered shall by operation of law be subject to any encumbrance registered or caveat lodged with the Registrar of Titles against the firstmentioned lot and every such encumbrance or caveat is deemed to be amended accordingly;
 - (d) 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;
 - (e) every lot or part lot of the strata plan as previously registered that is common property under the strata plan of

subdivision shall by operation of law vest in the proprietors to be held by them as tenants in common in shares proportional to the unit entitlements of their respective lots; and

- (f) the share of a proprietor in common property vested in the proprietors under paragraph (e) 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.

Consolidation of lots within strata scheme.

9. (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 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 plan of consolidation shall—

- (a) where section 25 (1) requires, be accompanied by a certificate of approval of the consolidation given by the Town Planning Board in accordance with that section and signed by the Chairman of that Board;
- (b) be accompanied by a certificate given by the local government authority certifying—
 - (i) that the local government authority consents to the consolidation;
 - (ii) in a case where the proposed consolidation is exempt from the requirement of approval by the Town Planning Board, that the proposed consolidation is so exempt; and

- (iii) in a case where the Town Planning Board has granted approval subject to conditions under section 25, that the conditions attached to the approval of the Town Planning Board 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 plan of consolidation shall be deemed to be part of the strata plan as previously registered and the Registrar of Titles shall amend the strata plan and the schedule of unit entitlement accordingly in the prescribed manner.

10. (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.

Conversion
of lots
within strata
scheme into
common
property.

(2) A transfer under subsection (1) shall not be registered unless—

- (a) it is accompanied by a certificate given by the local government authority 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 unanimous resolution consented to the conversion effected by the transfer; and
- (c) every mortgage, charge, current lease, caveat or other interest recorded in the folio of the Register Book comprising 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 plan in the prescribed manner;
- (b) amend the schedule of unit entitlement in the prescribed manner; and
- (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.

Support and
services.

11. (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.

Shelter.

12. (1) Every proprietor 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.

Ancillary rights.

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

Unit entitlement of lots.

14. (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 5 and 8 to accompany a strata plan and a strata plan of 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 plan a proportion not greater than 5 per cent more or 5 per cent less than the proportion that the capital value of that lot bears to the aggregate capital value of all the lots delineated on the plan.

(3) A certificate given by a licensed valuer for the purposes of this Act shall be valid for such period as is prescribed.

15. (1) The schedule of unit entitlement registered in respect of a strata 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.

Reallocation
of unit
entitlement
by
unanimous
resolution.

(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 unanimous resolution consented to the registration of the amended schedule of unit entitlement;
- (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 plan a proportion not greater than 5 per cent more or 5 per cent less than the proportion that the capital value of that lot bears to the aggregate capital value of all the lots delineated on the plan.

(3) An amended schedule of unit entitlement shall not be registered under this section more than once in every 5 years or within 5 years of an order of reallocation by a Land Valuation Tribunal under section 16.

(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) For the purposes of subsection (2) (b), "registered interest" includes a caveat in respect of a lot but excludes a writ of *fiery facias* or a warrant of execution in respect of a lot.

Reallocation
by Land
of unit
entitlement
Tribunal.

16. (1) Upon the application of a proprietor of a lot within a strata 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 strata 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 capital value of a lot identified in the certificate has varied by more than 5 per cent in relation to the capital value of another lot identified in the certificate since the registration of the 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.

(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 strata scheme of a unit entitlement that bears in relation to the aggregate unit entitlement of all lots delineated on the strata plan a proportion not greater than 5 per cent more or 5 per cent less than the proportion that the capital value of each lot bears to the aggregate capital value of all the lots delineated on the plan; and
- (b) order that the schedule of unit entitlement registered in respect of the strata 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 strata 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) A Land Valuation Tribunal shall not make an order under this section within 5 years of—

- (a) the registration of the strata plan;
- (b) the registration of an amended schedule of unit entitlement under section 15;
- (c) an order of reallocation of unit entitlement by a Land Valuation Tribunal under this section; or
- (d) an order of the Supreme Court under section 28, 29 or 31 that substitutes a new schedule of unit entitlement.

Division 2.—Common property.

Ownership
of common
property.

17. (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 strata scheme.

18. (1) A strata company may, pursuant to a unanimous resolution, accept a transfer or lease of land, not being a lot within the parcel, which is 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.

Acquisition
of 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 unanimous resolution,

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 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 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 unanimous resolution 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 and for the purposes of this subsection a resolution may be taken to be a unanimous resolution although such a proprietor has not voted.

(6) Upon the registration of any such surrender, the Registrar of Titles shall make an appropriate recording on the registered 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.

19. (1) Except as otherwise provided in this section—

Transfer or
lease of
common
property.

- (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 unanimous resolution 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 unanimous resolution and where satisfied that all persons concerned have consented in writing to the transfer, may, if not prevented by the terms of the lease, transfer a lease of common property accepted or acquired by the 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 unanimous resolution, 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 issuing to the transferee a certificate of title for the land transferred, and no notification of the transfer shall be made on any certificate of title or folium of the register book; 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 issuing a certificate of title, amend the registered strata plan in the manner prescribed.

(10) Subject to subsection (11), except with the prior approval in writing of the Town Planning Board and of the local government authority,—

- (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 10 years 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,

shall not be valid and effective.

(11) Subsection (10) does not apply so as to require the approval of the Town Planning Board in the case of a subdivision of a parcel exempted from the requirement of a certificate of approval of the Town Planning Board by regulations made under section 25 (2).

20. (1) A strata company may, pursuant to a unanimous resolution—

Creation of
easements
and
covenants.

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

(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 unanimous resolution, 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.

21. Where a strata plan or strata plan of subdivision 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.

Encroach-
ments
treated as
common
property.

Division 3.—Certificates and approvals.

22. The certificate of a licensed surveyor which is required by section 5 to accompany a strata plan lodged for registration shall be in the prescribed form and shall certify that—

Certificate
of licensed
surveyor.

- (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 registered as an appurtenance of the parcel.

Certificate
of local
government
authority.

23. (1) Subject to this section, the certificate of the local government authority which is required by section 5 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 authority or on appeal by order of the Minister to whom the administration of the Local Government 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 authority, 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 Town Planning Board, 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 authority 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 authority,

with the approval of the Minister to whom the administration of the Local Government Act 1960 is for the time being committed by the Governor, does not object to the encroachment; and

- (e) in a case where the Town Planning Board 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 Town Planning Board have been complied with.

(2) An application for a certificate under subsection (1) shall be granted by the local government authority and the certificate shall be issued where the local government authority 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 authority 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.

(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 authority is unable to certify as to the matters referred to in paragraph (a) of subsection (1) because the available records of the local government authority 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 authority 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 that have been approved by the local government authority or on appeal by order of the relevant Minister.

(4) A local government authority may, either generally or as otherwise provided by the instrument of delegation, by writing under the seal of the local government authority, delegate to an officer of the local government authority any of the functions conferred on local government authorities under this Act, other than the functions so conferred by subsection (3) and section 24.

(5) A certificate given by a local government authority for the purposes of this Act shall be signed by the town clerk or shire clerk of the authority except that, where the local government authority has delegated the function of giving a certificate to an officer of the authority, the certificate shall be signed by the delegate.

Preliminary
determina-
tions by local
government
authority.

24. (1) Upon or at any time after the submission of building plans and specifications to the local government authority in accordance with section 374 of the Local Government Act 1960, an application may be made to the local government authority 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 authority, of sufficient standard to be brought under this Act.

(2) Upon or at any time after the submission of an application to the local government authority 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 authority for a determination that the local government authority is satisfied that the proposed development will not be contrary to any of the requirements referred to in paragraphs (a), (b) and (c) of section 23 (2).

(3) A local government authority 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 authority 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 authority may require to enable it to deal with the application.

(5) A determination made by a local government authority 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 authority for a period of 2 years after it is made unless the local government authority, 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 authority under subsection (1) and the local government authority 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 authority shall grant the certificate required by section 5 or 8, as the case may require, so long as it is satisfied as to the matters in subsections (1) (c), (d) and (e) and (2) of section 23.

(8) Where a favourable determination has been made by a local government authority under subsection (2) and the local government authority is satisfied that any condition attached to the determination has been complied with, the local government authority shall grant the certificate required so long as it is satisfied as to the matters in subsection (1) of section 23.

Certificate
of Town
Planning
Board.

25. (1) Subject to this section, every strata plan, strata plan of subdivision and strata plan of consolidation lodged for registration under this Act shall be accompanied by a certificate of approval given by the Town Planning Board unless the proposed 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 or consolidation, or subdivisions or consolidations of any class or description or in any geographical area, from the requirement of a certificate of approval given by the Town Planning Board for the purposes of section 5, 8 or 9.

(3) An application for a certificate under this section shall be made to the Town Planning Board 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 Town Planning Board otherwise agrees in a particular case.

(4) A certificate granted by the Town Planning Board under this section shall certify the approval of the Board to the subdivision or consolidation, as the case may be, and shall be in the prescribed form and signed on behalf of the Board by the Chairman 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 Board may grant a certificate unconditionally or subject to such conditions as are specified in the certificate.

(5) The Town Planning Board shall not grant a certificate of approval to a proposed strata scheme that is situate in a rural area unless the Board is satisfied that the proposed strata scheme will not materially affect the rural character of the area.

(6) Sections 20 and 21 of the Town Planning and Development Act 1928 do not apply to a subdivision effected by the registration of a strata plan or a strata plan of subdivision or to a consolidation effected by the registration of a strata plan of consolidation or to a transfer converting a lot within a strata scheme to common property.

26. (1) In this section, "application" means an application to a local government authority for a certificate, determination or approval, as the case may be—

Appeals
against local
government
authority
decision.

- (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 Town Planning Board;
- (d) under section 23 (1) (e) that conditions attached to an approval given by the Town Planning Board 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 authority 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 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 authority will be of sufficient standard to be brought under this Act;

- (j) under section 24 (2) that a proposed development will not be contrary to any of the matters referred to in paragraphs (a), (b) and (c) of section 23 (2);
- (k) under section 6 (3) that the local government authority approves a resolution of a strata company varying or removing a restriction as to use endorsed on a registered strata plan under that section;
- (l) as required in the case of an application for registration of a strata plan of subdivision 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 strata plan of consolidation, under section 9 (3) (b);
- (n) under section 10 (2) that the local government authority consents to the conversion effected by a transfer of a lot or lots within a strata scheme into common property; and
- (o) under section 19 (10) that the local government authority approves a transfer, mortgage or other disposition as referred to in that subsection of common property within a strata scheme.

(2) A local government authority 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 authority 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 Act 1960 is for the time being committed by the Governor against—

- (a) a refusal by a local government authority to approve an application of the kind referred to in paragraphs (a), (b), (d), (h), (i) and (1) (i) of subsection (1);
- (b) the attachment of a condition to the approval of an application of the kind referred to in paragraph (i) of subsection (1); or
- (c) the failure of a local government authority 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 authority to approve of an application of the kind referred to in paragraphs (c), (e), (f), (g), (j), (k), (1) (ii), (m), (n) and (o) of subsection (1);
- (b) the attachment of a condition to the approval of an application of the kind referred to in paragraph (j) of subsection (1); or

- (c) the failure of a local government authority 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 authority 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 authority and the applicant, and for the purposes of this Act shall be deemed to be the final decision of the local government authority.

(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 authority 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 authority, determination or approval.

(12) The Registrar of Titles may accept for registration a strata plan, strata plan of subdivision, strata plan of consolidation or a transfer under section 10 that relates to the strata scheme in respect of which the local government authority refused or failed to give a certificate, notwithstanding that the strata plan is not endorsed with or accompanied by such a certificate, if the strata 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.

27. (1) In this section, "application" means an application to the Town Planning Board for approval or a certificate of approval, as the case may be—

Appeal
against Town
Planning
Board.

- (a) under section 25 that the Town Planning Board approves the proposed subdivision in a strata plan or strata plan of subdivision or approves the proposed consolidation in a strata plan of consolidation;
- (b) under section 19 (10) that the Town Planning Board 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 Town Planning Board 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 Town Planning Board 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 Town Planning Board to approve of an application of the kind referred to in paragraphs (a) to (c) of subsection (1);
- (b) the attachment of a condition under section 25 (4) to the approval of the Town Planning Board; or
- (c) the failure of the Town Planning Board 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 Town Planning Board 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.

(8) The decision of the Minister or the Town Planning Appeal Tribunal upon any such appeal is final and binding upon the Town Planning Board and the applicant, and for the purposes of this Act, shall be deemed to be the final decision of that Board.

(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 Town Planning Board to give its approval the certificate of the Minister or the Tribunal shall be deemed to be the approval of that Board.

(10) The Registrar of Titles may accept for registration a strata plan, strata plan of subdivision or a strata plan of consolidation in respect of which the Town Planning Board has refused or failed to give a certificate, notwithstanding that the strata plan, strata plan of subdivision or strata plan of consolidation is not endorsed with or accompanied by such a certificate, if the strata plan, strata plan of subdivision or strata plan of consolidation, as the case may be—

- (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 the provisions of this Act.

PART III.—VARIATION OR TERMINATION OF STRATA SCHEMES.

28. (1) Where a building is damaged or destroyed, the Supreme 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.

Variation of
strata
scheme upon
damage or
destruction
of building.

(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 Supreme 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 Supreme 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;
- (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 Supreme 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 Supreme 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 Supreme Court thinks fit.
- (4) The Supreme 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 Supreme 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 Supreme Court may make such order for the payment of costs as it thinks fit.

Variation of
strata
scheme
upon
resumption.

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

Termination
of strata
scheme by
unanimous
resolution.

30. (1) The proprietors 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 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 for cancellation; and
- (b) the Registrar of Titles, after cancelling the folia of the register book constituted by the certificates of title relating to the lots, shall register the transfer by issuing to the transferee a certificate of title for the land transferred.

31. (1) The Supreme 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 terminating the strata scheme concerned.

Termination
of strata
scheme by
order of
Supreme
Court.

(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 Supreme 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 Supreme 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 Supreme Court may from time to time amend any order made under this section.

(6) Where the Supreme 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 Supreme Court may make such order for the payment of costs as it thinks fit.

(8) Upon the making of an order under this section terminating a strata 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 strata scheme, the Registrar of Titles shall make an entry on the relevant registered strata plan in the manner prescribed and thereupon 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.

(10) Where all the proprietors of lots 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 of the parcel, and thereupon—

- (a) the strata company shall execute the appropriate transfer;
- (b) the proprietors of the parcel or part thereof 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.

(11) 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 (9).

(12) 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 for cancellation; and
- (b) the Registrar of Titles, after cancelling the folia of the register book constituted by the certificates of title relating to the lots, shall register the transfer by issuing to the transferee a certificate of title for the land transferred.

PART IV.—MANAGEMENT.

Division 1.—Strata companies.

Incorporation of proprietors.

32. (1) Upon the registration of a strata plan, the proprietors from time to time shall constitute a strata company by the name of “The Owners of [the name of the building]” and the number of the strata plan allocated to it, by the Registrar of Titles, on the registration, and a strata company shall be a body corporate with perpetual succession and a common seal.

(2) For the purpose of this section the name of the building shall be that appearing on the strata plan and shall be in the form of—

(a) the number of the building and the name of the street; or

(b) a name approved by the Registrar of Titles, followed by the name of the city or town in or near which the building is.

(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*; 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.

33. (1) Where the proprietors of the lots the subject of a strata 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.

Strata
company is
represent-
ative of
proprietors in
proceedings.

(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.

Contract
formalities.

34. (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.

Duties of
strata
companies.

35. (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 (which for the purposes of this paragraph includes the making good of inherent defects and, where necessary, renewal or replacement) and properly maintain the common property, including the fittings, fixtures and lifts used in connection with the common property;

- (d) keep in good and serviceable repair (which for the purposes of this paragraph includes the making good of inherent defects and, where necessary, renewal or replacement) and properly maintain any personal property vested in the strata company;
- (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 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 or local government authority requiring repairs to or 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 \$200.

36. (1) A strata company shall—

Levy of
contribu-
tions on
proprietors.

- (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 the proprietors in proportion to the unit entitlements of their respective lots; and
- (d) recover from any proprietor, by action in a court of competent jurisdiction if necessary, any sum of money 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 or local government authority in respect of that portion of the building comprising the lot of that proprietor.

(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, by special resolution, the strata 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.

37. (1) A strata company may—

Powers of
strata
company.

- (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.

Power of
strata
company to
carry out
work.

38. (1) Where a notice has been served on the proprietor of a lot by a public or local government authority 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.

39. (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 or local government authority;
- (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

Power of
strata
company
to enter.

- (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.

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

Penalty: \$200.

Change of
strata
company's
address for
service.

40. (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. (1) A strata company may by special resolution and with the approval of the Registrar of Titles resolve that the name of the building and, in consequence, the name of the strata company shall be changed.

Change of
name of
strata
company.

(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 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.

By-laws.

42. (1) A strata company may make by-laws for its corporate affairs and for the control, management, use and enjoyment of the lots, the common property and the parcel.

(2) The provisions set out in Schedule 1 shall be deemed to be by-laws of the strata company and may be amended, repealed or added to by the strata company, but those contained in Part I of that Schedule may be amended, repealed or added to only by unanimous resolution.

(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 2 years 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 plan.

(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: \$200.

(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 unanimous resolution 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 unanimous resolution, make a by-law amending or repealing any by-law made under this subsection.

(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 strata 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.

(16) Schedule 2 sets out model provisions all or any of which may, subject to this section, be included in the by-laws of a strata company.

43. (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

Supply of
information
and
certificates
by strata
company.

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 plan;
 - (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 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); or

(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;

(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; and

- (v) any amount and rate of interest payable under section 36 (4) in respect of any unpaid contribution referred to in that section.

Penalty: \$200.

(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 o'clock in the morning and 8 o'clock in the night 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: \$200.

(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.

Division 2.—Councils.

44. (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.

Functions
of Councils.

(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. (1) A corporation is eligible to be chairman, secretary or treasurer of the strata company or a member or alternate member of the council.

Corporate
body may be
councillor,
etc.

(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 the 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. 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.

Performance
of functions
where no
council.

47. (1) Unless otherwise determined by a special resolution of the strata company or, in an emergency, authorized by the referee, the council shall not, in any one case, undertake expenditure exceeding the sum obtained by multiplying the prescribed amount by the number of lots that are the subject of the strata scheme.

Statutory
restrictions
on powers of
councils.

(2) Where proposed expenditure would exceed an amount calculated in accordance with subsection (1), the council shall—

- (a) submit the proposal for determination at an extraordinary 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.

(3) Subsection (1) does not apply to the expenditure of moneys—

- (a) in payment of any premium of insurance effected by or on behalf of the strata company;
- (b) to comply with—
 - (i) a notice or order served on the strata company by any public or local government authority; or
 - (ii) an order made with respect to the strata company by a court or tribunal or the referee; or
- (c) in discharge of any liability incurred in respect of an obligation of the strata company authorized by the strata company in general meeting.

Recovery of
books and
records by
council.

48. (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: \$200.

(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.

Division 3.—Meetings.

49. (1) Within 3 months after the registration of the 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.

First annual
general
meeting.

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 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: \$2 000.

(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.

Voting.

50. (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 Supreme 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 Supreme 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 Supreme Court shall determine.

(3) The Supreme 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 Supreme 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) The powers of the Supreme Court under this section shall be exercised by the Master of the Court.

(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.

51. (1) In any case where under this Act a unanimous resolution 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 (as defined in section 3 (1)), a person included in the majority in favour of the resolution may apply to the Supreme Court to have the resolution as so supported declared sufficient to authorize the particular act proposed and if the Supreme Court so orders, the resolution shall be deemed to have been passed as a unanimous resolution.

Relief where
unanimous
resolution
required.

(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 Supreme Court declares to have a sufficient interest in the proceedings to require that he should be served with notice of the application,

and the Supreme 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 Supreme Court shall not order a party who opposes an application under this section to pay the costs of a successful applicant unless the Supreme Court considers the actions of that party in relation to the application to have been unreasonable.

Performance
of functions
by
proprietors
in general
meeting.

52. 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.

Interpreta-
tion.

53. In this Division—

“building” includes—

- (a) proprietors’ improvements and proprietors’ fixtures forming part of the building other than paint, wall-paper and temporary wall, floor and ceiling coverings;

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

Insurance of
buildings.

54. (1) Unless the strata company otherwise resolves by unanimous resolution, a strata company shall 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.

Penalty: \$200.

(2) A contract of insurance entered into for the purposes of subsection (1) 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) A resolution of a strata company under subsection (1) shall cease to have effect if a proprietor at any time after the passing of that resolution serves notice in writing upon the strata company that he requires the strata company to effect insurance in accordance with subsection (1).

(4) Upon receiving a notice served on it by a proprietor under subsection (3), a strata company shall inform every other proprietor accordingly.

Further
insurance by
strata
company.

55. (1) In addition to insurance effected by the strata company under section 54, a strata company shall effect and maintain insurance—

- (a) in respect of any occurrence against which it is required by law to insure;

- (b) against such other risks as the strata company may from time to time determine by special resolution; and
- (c) unless the strata company otherwise resolves by unanimous resolution, in respect of damage to property, death or bodily injury for which the strata company could become liable in damages.

Penalty for contravention of subsection (1) (a) or (c): \$200.

(2) Insurance effected in accordance with subsection (1) (c) shall be for a cover of not less than \$750 000 or such other amount as may be prescribed in place of that amount.

(3) A resolution of a strata company under subsection (1) (c) shall cease to have effect if a proprietor at any time after the passing of that resolution serves notice in writing upon the strata company that he requires the strata company to effect insurance in accordance with subsection (1) (c).

(4) A strata company may insure and keep insured the building against any occurrence other than those occurrences referred to and included in section 54 (1).

(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.

56. (1) Nothing in this Division limits any right of a proprietor to effect insurance. Insurance by proprietor.

(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.

Insurance of
mortgaged
lot.

57. (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 paragraphs (a), (b), (c) and (d) of subsection (2) 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.

Insurable
interest.

58. 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.

Application
of insurance
moneys to
rebuilding.

59. 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.

Delivery of
strata plan
to auth-
orities.

60. (1) Within 28 days after the registration of a strata plan, a strata plan of subdivision, a strata plan of consolidation or a transfer under section 10, the strata company shall deliver to the Valuer-General and to each authority authorized to levy rates or taxes in relation to the parcel or part of the parcel 2 copies of the registered strata plan, strata plan of subdivision or strata plan of consolidation or one copy of the transfer, as the case may require, including all endorsements thereon, certified as prescribed.

(2) If default is made in complying with subsection (1), the strata company and each member of the council of that company who is knowingly a party to the default commits an offence and is liable on conviction to a fine not exceeding \$400.

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

61. 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 plan, strata plan of

subdivision, strata plan of consolidation or transfer delivered as required by section 60, is conclusive evidence of those particulars;

and

- (b) the production by an 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.

62. (1) Where the Valuer-General values the unimproved value of a parcel 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.

Rating on
unimproved
value.

(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 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 any 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 authority 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 authority 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 authority or the rating authority, as the case may be, on the owners of land.
- (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.

63. (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.

Rating on
gross rental
value.

(2) Subject to subsection (3), where any 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 authority 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.

64. (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.

Proprietor
may appeal
against
unimproved
value of
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.

Land tax
and
metropolitan
region
improvement
tax.

65. (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, 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.

66. Where in relation to a strata scheme an authority provides one water service to all the proprietors and the quantity of water used by each proprietor is not measured, any charges that may become payable for water used by the proprietors in excess of the set allowance in relation to the scheme or that quantity (if any) for which no charge additional to rates is made, as the case may be, shall be payable by and may be recovered by the authority from the strata company.

Charges for
water
supplied.

67. Where under section 533 (4), 533 (4h) or 533D of the Local Government Act 1960 the unimproved value or the gross rental value of a parcel is valued for rating purposes by a valuer appointed by the Council of the City of Perth, sections 62, 63 and 64 shall apply and be construed as if—

Application
of sections
62, 63 and 64
to City of
Perth.

- (a) references to the Valuer-General were references to the valuer appointed by the Council of the City of Perth;
- (b) references to the Valuation of Land Act 1978 were references to the Local Government Act 1960; and
- (c) the reference in section 64 to Part IV of the Valuation of Land Act was a reference to section 533 (4i) of the Local Government Act 1960.

PART V.—PROTECTION OF PURCHASERS.

68. (1) An original proprietor shall give to a person who purchases a lot or a proposed lot from him a statement in writing that complies in every respect with the requirements of this section.

Duties of
original
proprietor.

(2) A statement in writing under this section shall—

- (a) clearly identify the lot or proposed lot to which the statement relates;
- (b) state the names and addresses respectively of the original proprietor and the purchaser;

- (c) set out or be accompanied by particulars of—
 - (i) the unit entitlement of every lot within the strata scheme and the aggregate unit entitlement; or
 - (ii) the proposed unit entitlement of every proposed lot within the strata scheme and the proposed aggregate unit entitlement;
- (d) set out or be accompanied by details of every management agreement and every agreement for service or maintenance of all or any part of the common property that the strata company or the original proprietor has entered into, or the original proprietor in his own right or exercising the power of the strata company proposes to enter into, including the terms and conditions of every such agreement and the estimated costs to the proprietor of the lot;
- (e) set out or be accompanied by the by-laws in force in respect of the strata scheme, including any by-laws made but not yet referred to on the strata plan as required by section 42 (4), or the proposed by-laws in respect of the proposed strata scheme;
- (f) set out or be accompanied by a copy of section 36 (1) (a), (b) and (c) and, where contributions are payable in respect of the lot, information concerning the amount of the contributions and the periods in respect of which the contributions are payable;
- (g) set out or be accompanied by a copy of section 36 (2) and details of any existing or proposed reserve fund, including information concerning the amount of any contributions that are payable and the periods in respect of which the contributions are payable;

- (h) set out or be accompanied by details of every lease granted or proposed to be granted to the purchaser or any other person in relation to the common property;
 - (i) set out or be accompanied by details of every licence granted or proposed to be granted to the purchaser or any other person in relation to the common property, including licences granting exclusive use and enjoyment or special privileges;
 - (j) set out or be accompanied by a copy of sections 68 and 70;
 - (k) state the date on which the statement is given; and
 - (l) be signed by the original proprietor or on his behalf by a person authorized in writing by the original proprietor for that purpose.
- (3) A statement in writing under this section shall—
- (a) be given by the original proprietor to the purchaser before the purchaser signs any contract, agreement or document whatsoever legally binding or intended to bind the purchaser legally in respect of the sale; or
 - (b) form part of a contract, agreement or document referred to in paragraph (a).
- (4) If, at any time after the original proprietor gives a statement in writing pursuant to subsection (1) to a person who enters into a contract, agreement or document whatsoever legally binding or intended to bind that person as purchaser in respect of the sale of a lot or of a proposed lot and before the registration of that person as the proprietor of the lot (or earlier rescission of the contract, agreement or document)—
- (a) the strata company, or the original proprietor in his own right or exercising the power of the strata company, enters into a

management agreement or agreement for service or maintenance of the common property or any part of it, other than an agreement which is the same as a proposed agreement set out in or accompanying the statement given to the purchaser pursuant to subsection (1), or varies any existing such agreement whereby the rights of the purchaser are likely to be affected;

- (b) the strata company or the original proprietor exercising the power of the strata company makes a by-law other than a by-law which is the same as a proposed by-law that was set out in or accompanied the statement given to the purchaser pursuant to subsection (1) or amends or repeals any by-law;
- (c) 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 set out in or accompanied the statement given to the purchaser pursuant to subsection (1);
- (d) there is any change in the proposed unit entitlement or the proposed aggregate unit entitlement that was set out in or accompanied the statement given to the purchaser pursuant to subsection (1); or
- (e) a lease or licence in relation to the common property is granted, other than a lease or licence which is the same as a proposed lease or licence that was set out in or accompanied the statement given to the purchaser pursuant to subsection (1), or is varied in addition to or contrary to the terms of any lease or licence details of which were set out in or accompanied the statement given to the purchaser pursuant to subsection (1),

the original proprietor shall forthwith give to the purchaser notice in writing disclosing full particulars thereof and if the purchaser has been materially prejudiced (proof of which shall lie on him) by any matter referred to in the notice and he has not agreed to be bound by that matter, he may avoid the contract, agreement or other document by notice in writing given to the original proprietor within 30 days of the date of receipt by him of the notice given by the original proprietor.

(5) If the original proprietor fails to give to a purchaser—

- (a) a statement substantially in compliance in every respect with subsections (1), (2) and (3); or
- (b) a notice that substantially conforms to the requirements of subsection (4),

and the purchaser is materially prejudiced by the failure (proof of which shall lie on him), the purchaser may avoid the contract, agreement or other document signed by him in relation to the original proprietor by notice in writing given to the original proprietor within 30 days after he first becomes aware of the failure or within 30 days after the registration of the transfer of the lot to him, whichever period expires first.

(6) Upon the avoidance of a contract referred to in this section, the original proprietor shall be 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.

(7) Except as provided by subsections (4) and (5), this section applies so as not to render illegal or void any contract or to empower any party to avoid the contract.

(8) Where pursuant to this section a purchaser avoids a contract entered into by him for the purchase of a lot or a proposed lot to which this section applies after the lot purchased by him has been registered in his name, then that purchaser, subject to the tender to him of repayment in full as provided by subsection (6), shall—

- (a) execute such instruments as, being necessary to register that title in the name of the original proprietor or his nominee, are presented to him for execution by or on behalf of the original proprietor; and
- (b) deliver up to the original proprietor or his nominee any relevant certificate of title in his possession or under his control,

but the purchaser shall not be liable for any costs or expenses in respect of the transaction.

(9) Any covenant, agreement or condition expressed or implied in any contract, agreement or document whatsoever legally binding, or intended legally to bind, the purchaser in respect of the sale to that purchaser of any lot or any proposed lot to which this section applies, or in a separate document, whereby it is agreed between the original proprietor and the purchaser that this section or any provision of this section shall not apply in respect of that sale, or shall so apply subject to exceptions, limitations or restrictions, or otherwise affecting or prejudicing the rights and remedies conferred on the purchaser under this section shall be void and of no legal effect.

(10) In any civil proceedings arising out of or connected with a contract, agreement or document to which this section relates, the onus of proving that the statement referred to in subsection (2) was duly given shall lie upon the party so alleging.

(11) In this section, “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.

(12) The provisions of this section do not apply to any contract, agreement or document or any management or other agreement entered into before the commencement of this Act.

69. For the purposes of the avoidance of any contract, agreement or other document to which section 68 (5) applies, the purchaser under the contract, agreement or other document shall be taken to have been aware at all times of the provisions of section 68, and of the obligations of the original proprietor under that section, and to have read any statement or notice given to him, being a statement or notice required by that section to be given to him at the time when he received it.

Interpretation of "aware" in section 68 (5).

70. (1) No person shall sell a lot in a proposed strata scheme before the 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 plan are to be paid to a solicitor or a real estate agent, who shall be named or specified in the contract, to be held by that solicitor or real estate agent on trust for the purchaser until the strata plan is registered.

Purchase moneys when units pre-sold.

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

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

(4) If the strata plan is not registered within 6 months after any such sale, the purchaser may at any time after the expiration of that period but before the plan is registered avoid the sale.

(5) Where a purchaser avoids a sale under this section, all moneys, including the deposit, shall be recoverable by him from the solicitor or real estate 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) Except as provided by subsections (3) and (4), this section applies so as not to render illegal or void any contract or to empower any party to avoid the contract.

(7) Any covenant, agreement or condition expressed or implied in any contract, agreement or document whatsoever legally binding, or intended legally to bind, the purchaser in respect of the sale to that purchaser of any lot in a proposed strata scheme before the strata plan is registered under Part II, or in a separate document, whereby it is agreed that this section shall not apply in respect of that sale, or shall so apply subject to exceptions, limitations or restrictions, or otherwise affecting or prejudicing the rights and remedies conferred on the purchaser under this section shall be void and of no legal effect.

(8) In this section, "real estate agent" means a person licensed as a real estate agent under the Real Estate and Business Agents Act 1978.

PART VI.—RESOLUTION OF DISPUTES.

Division 1.—Strata Titles Referee.

Appointment
of Strata
Titles
Referee.

71. (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. A person who—

Eligibility
to hold
office as
referee.

- (a) is or has been a stipendiary magistrate or is a practitioner within the meaning of the term in the Legal Practitioners Act 1893;

and

- (b) has not attained the age of 70 years,
may be appointed and hold office as a referee.

73. (1) A referee—

Terms and
conditions
of office of
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, from time to time determines;
- (c) shall be paid the same travelling and other allowances as are paid from time to time to an officer employed under the Public Service Act 1978;
- (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 before he attains the age of 65 years, 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 Revenue Fund, the terms and conditions of office as a referee in respect of matters mentioned in paragraphs (b), (c), (d), and (g) of subsection (1) 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.

74. 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. (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.

Delegation
by referee.

(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. (1) There shall be established and maintained in Perth a registry at which all records of referees shall be kept.

Registry
and officers.

(2) There shall be appointed under the Public Service Act 1978 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.

Division 2.—Applications for orders.

77. (1) An application for an order under this Part shall be made in writing to a referee and shall specify the grounds on which the application is made and the order sought.

Applications
for orders to
be made to
referee.

(2) An application under subsection (1) shall be accompanied by the prescribed fee.

Referee may
inspect
certain
records.

78. (1) Where an application is made to a referee for an order under this Part in relation to a strata scheme, the strata company for the strata scheme has, in relation to a referee, the same duties under section 43 as it has under that section 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.

Procedure
after referee
receives
application.

79. (1) Subject to subsection (3), after receiving an application for an order under this Part, a referee—

- (a) may require the 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) may refuse to proceed with the application until a requirement made under paragraph (a) has been complied with;
- (c) shall give written notice of the application to the strata company to which the application relates and to any other person who, in the opinion of the referee, would be affected if the order sought were made;
- (d) shall, in a notice required to be given by paragraph (c), 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;
- (e) may, by further notice, allow the strata company, any member of the strata

company and each person to whom a notice under paragraph (c) was given a longer time within which to make a submission under paragraph (d);

- (f) may make such other investigations with respect to the application as the referee thinks fit; and
- (g) may enter upon any parcel to which a dispute relates for the purpose of carrying out any investigation with respect to the application at any reasonable time on notice given to every person who has been notified of the application and to the strata company.

(2) A person shall not obstruct or hinder the referee or a delegate of the referee in the exercise of the powers conferred by subsection (1) (f) or (g).

Penalty: \$500.

(3) A referee may, without being obliged to comply with subsection (1) (c) or (d) and notwithstanding that a time specified under subsection (1) (d) may not have expired, by order dismiss an application for an order under this Part if—

- (a) the application is frivolous, vexatious, misconceived or lacking in substance;
- (b) a decision in favour of the applicant is not within the jurisdiction of the referee; or
- (c) the applicant has unreasonably delayed complying with a requirement under subsection (1) (a).

80. A strata company given a notice under section 79 (1) (c) or (e) shall—

**Strata
company to
display and
give certain
notices.**

- (a) forthwith cause the notice or a copy of it to be prominently displayed within the parcel on some part of the common property;

- (b) keep the notice so displayed until the expiration of the time limited by the notice for the making of submissions; and
- (c) forthwith serve a copy of the notice on each person who is a proprietor or a mortgagee who has given notice in writing of his interest to the strata company.

Division 3.—Orders by referee.

Orders
under this
Division.

81. (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) (c), or where a further notice has been given under section 79 (1) (e), the expiration of the longer time specified in that notice, or where an application has been amended under subsection (6), the expiration of the time specified in the notice served under that subsection.

(2) An order made may include such ancillary or consequential provisions as the referee thinks fit.

(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) An application may be amended by the applicant at any time before an order is made provided that the applicant satisfies the referee that he has served every party to whom the referee has given written notice of the application with a copy of the amendment and a notice to the effect that he is entitled to make further written

submissions to the referee within the time specified in the notice and the time specified in the notice shall be not less than the time specified in the notice given in respect of that application under section 79 (1) (d).

(7) 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.

82. (1) In this section, "interim order" means ^{Interim orders.} 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
- (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. (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 strata 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 strata 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.

General powers of referee to make orders.

(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 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 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 Supreme 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.

84. (1) A referee is empowered to make an order that— Further powers of referee.

- (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. Where, pursuant to an application by a proprietor for an order under this section, the referee considers that the strata company for the strata scheme to which the application relates has unreasonably refused to consent to a proposal by that proprietor— Order with respect to certain consents affecting common property.

- (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.

Order with
respect to
acquisition
of personal
property.

86. 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 strata 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.

Order to
acquire
personal
property.

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

Order to
make or
pursue
insurance
claim.

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

Order
varying
certain rates
of interest.

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

90. Where, pursuant to an application for an order under this section, the referee considers that the strata company for the strata scheme to which the application relates, or the administrator for that strata scheme, or the chairman, secretary or treasurer of that strata company has wrongfully—

Order to supply information or documents.

- (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.

91. 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.

Order relating to animal kept contrary to by-laws.

92. 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 pro-

Order relating to animal kept pursuant to by-laws.

prietor, 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.

Order
revoking
amendment
of by-law
or reviving
repealed
by-law.

93. (1) Where, pursuant to an application by any person entitled to vote at a meeting of the strata company (including both a first mortgagee and a proprietor who is a mortgagor of a lot) for an order under this section, the referee considers that, having regard to the interest of all proprietors in the use and enjoyment of their lots or the common property, an amendment or repeal of a by-law or the addition of a new by-law should not have been made or effected, the referee may order that the amendment be revoked, that the repealed by-law be revived or that the additional by-law be repealed.

(2) 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.

(3) The provisions of this section do not apply with respect to a by-law made or deemed to be made pursuant to section 42 (8).

Order
granting
certain
licence.

94. (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. (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 respect to any fixture or fitting to be attached to the common property, the referee may—

Referee
may make
certain
by-laws.

- (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.

Order
invalidating
purported
by-law.

96. (1) Where, pursuant to an application by any person entitled to vote at a meeting of the strata company (including both a first mortgagee and a proprietor who is a mortgagor of a lot) for an order under this section, a referee considers that a strata company did not have the power to make a by-law purporting to have been made by it, the referee may make an order declaring the by-law to be invalid.

(2) 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 repealing the by-law to which the order relates.

Power of
referee to
invalidate
proceedings.

97. (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. 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).

Order
authorizing
application
to Land
Valuation
Tribunal.

99. (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—

Order for
variation or
manner of
payment of
contribu-
tions.

- (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.

Order where
voting rights
denied or due
notice of
item of
business not
given.

100. (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. 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 strata 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.

Order
varying
amount of
insurance to
be provided.

102. (1) Where—

Order
appointing
admin-
istrator.

- (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 strata 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 strata scheme to which the order relates.

103. (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.

Order calling first annual general meeting of strata company.

(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.

104. (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—

Copy of
order to be
served.

- (a) the strata company for the strata 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.

Division 4.—Appeals and remittals.

105. (1) Where a referee makes an order under this Part—

Appeal
against order
of referee.

- (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 section 82 (2) 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 strata 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

(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);

106. (1) In the determination of an appeal from an order of a referee, the District Court—

Determina-
tion of appeal
from order
of referee.

(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.

No appeal
except under
this
Division.

107. Except as provided by this Division, an appeal does not lie from an order made by a referee.

Remittal to
District
Court.

108. (1) Where an application for an order has been made to a referee under this Part but has not been finally determined, the applicant or the referee or any person who has been given written notice of the application under section 79 may apply to the District Court for an order remitting the application to the District Court.

(2) Upon considering an application under subsection (1) the District Court may order that an application to a referee under this Part be remitted to the District Court where the Court thinks such a remittal proper having regard to—

- (a) whether the determination of the application involves a difficult question of law;
- (b) whether the application involves a question of public importance; and
- (c) such other matters as the District Court considers relevant.

(3) In determining a remittal under this Division, the District Court shall, without prejudice to any other power that may otherwise be available to the Court, have and may exercise all powers conferred by this Act on referees.

109. (1) Before making an order under this Part, the District Court shall make a thorough investigation without regard to legal forms or solemnities.

District Court may investigate as appropriate.

(2) The District Court is not bound to apply the rules of evidence and, after informing itself in such manner as it thinks fit, may make an order under this Part with or without any hearing and, where a hearing is held, whether or not it is conducted formally.

(3) Notwithstanding subsection (2), the District Court shall conduct a hearing where any person entitled or required to appear before the District Court on the hearing of the application or appeal so appears.

(4) In the determination of a remittal under this Division, the District Court shall not make any order as to costs.

110. (1) An order made by the District Court whether on appeal or on remittal of an application may include such ancillary or consequential provisions as the District Court thinks fit.

General provisions relating to orders on appeal or remittal.

(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 strata scheme.

(3) The District Court may, by order, dismiss an appeal or refuse an application.

Expenses
of strata
company on
appeal or
remittal.

111. (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) Notwithstanding section 36, where an order against a strata company is made under this Division by the District Court on the remittal to that Court of an 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 and the remittal.

Representa-
tion before
District
Court.

112. Notwithstanding section 39 of the District Court of Western Australia Act 1969, a person may be represented on the hearing by the District Court of an appeal or application under this Part by an agent authorized in writing who may examine witnesses and address the District Court on behalf of that person.

Copy of
order to be
served.

113. (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) in the case of an appeal, 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 strata scheme to which the order relates;

- (b) the applicant for the order and 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.

Division 5.—Miscellaneous.

114. (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 strata scheme to which the order relates.

Effect of
certain
orders.

(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.

Recording
on strata
plan of
effect of
certain
orders.

115. Where—

- (a) an order is made under section 93, 94, 96 or under section 100 (being an order referred to in section 96 (3) (a));

- (b) a copy of the order, certified by the referee as a true copy, is lodged in the office of the Registrar of Titles; and

- (c) the prescribed fee is paid,

the Registrar of Titles shall record the order on the registered strata plan to which the order relates.

116. (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.

Penalty for
contraven-
tion of
certain
orders.

Penalty: \$100 and a daily penalty of \$10.

(2) A person shall not contravene an order made under section 82 (2) to do or refrain from doing a specified act.

Penalty: \$500.

(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.

117. 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.

Protection
of referee.

118. 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—

Enforce-
ment of
orders for
payment of
money.

- (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.

Time at
which order
takes
effect.

119. 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 strata scheme to which the order relates.

Inquiries
to referee.

120. 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 strata scheme to which the inquiry relates; or
 - (ii) any order has been made under this Act with respect to that strata 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.

121. 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.

Referee not to have jurisdiction where title to land in question.

PART VII.—MISCELLANEOUS.

122. (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.

Other rights and remedies not affected by 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.

123. For the purposes of the Dividing Fences Act 1961, the strata company for a strata scheme shall be deemed to be the owner of the parcel that is the subject of that scheme, other than such part, if any, of that parcel which is the subject of a lease accepted or acquired by the strata company under section 18.

Dividing fences.

Notice of
application
for order
under
section 28,
29 or 31.

124. (1) The Supreme 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) Subject to the Supreme Court Act 1935, the Supreme Court shall not make an order referred to in subsection (1) (b) in respect of any person unless the Supreme 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.

Service of
documents
on strata
company,
proprietors
and others.

125. (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 plan.

(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 address of the proprietor's lot;

(iii) by leaving it on the lot (otherwise than on a part of the lot provided for the accommodation of a vehicle or as a storeroom);

(iv) by leaving it in any place provided on the parcel for the receipt of articles posted to the address of the lot; or

(v) in any manner authorized by the by-laws for the service of notices on proprietors.

(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.

126. A public authority or local government authority 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.

Powers of
entry by
public
authority or
local
government
authority.

Service of
orders by
public and
local
government
authorities.

127. Where a public authority or local government authority is authorized or required by any Act to serve or deliver a notice or order on all the proprietors of lots in a strata scheme, the public authority or local government authority may serve or deliver the notice or order on the strata company for the strata 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 strata scheme by the notice or order shall be deemed to be imposed on the strata company.

Powers of
entry of
referee in
certain
cases.

128. (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 strata 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: \$200.

129. (1) Every application to the Supreme Court under this Act shall be by summons at chambers unless otherwise provided by rules of court.

Procedure
upon
application
to Supreme
Court.

(2) Notice of an application to the Supreme Court under this Act shall be served on such persons as the Supreme Court thinks fit, or the Court may dispense with notice.

(3) The Supreme 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.

(4) The Supreme Court may, delegate to a Master of the Court all or any of its powers under this Act.

(5) Rules of court may be made for regulating the practice and procedure of the Court under this Act.

130. 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—

Regulations.

- (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, whether by means of endorsements of transfers, consents and instructions as to the issue of certificates of title on the 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 \$200.

Repeal.

131. The Strata Titles Act 1966 is repealed.

Transitional
and savings.

132. (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.

SCHEDULES.**SCHEDULE 1. (Section 42 (2)).****BY-LAWS.****PART I.****1. (1) A proprietor shall—**

Duties of
proprietor,
occupiers,
etc.

- (a) forthwith carry out all work that may be ordered by any competent public or local government authority 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; and
- (c) notify the strata company forthwith upon any change of ownership or 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 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.

Power of
proprietor to
decorate etc.

2. 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.

Power of
strata
company
regarding
submeters.

3. (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 a savings bank or building society 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. (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.

Constitution
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 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-bylaw (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-bylaw (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. The procedure for nomination and election of members of a council shall be in accordance with the following rules—

Election of
council.

(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

(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.

Chairman,
secretary
and
treasurer of
council.

6. (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. The chairman, secretary and treasurer of the council shall also be respectively the chairman, secretary and treasurer of the strata company.

Chairman,
secretary
and
treasurer of
strata
company.

8. (1) At meetings of the council, all matters shall be determined by a simple majority vote.

Meetings of
council.

(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-bylaw (3) of this by-law whether or not he is a member of the council.

(5) If a person appointed under sub-bylaw (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.

Powers and
duties of
secretary
of strata
company.

9. 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.

Powers and
duties of
treasurer
of strata
company.

10. 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, acknowledgement 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. (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.

General
meetings of
strata
company.

(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.

(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) Subject to the provisions of the Act relating to special resolutions, not less than 7 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-bylaw (5) of this by-law.

Proceedings
at general
meetings.

12. (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.

(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. 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.

Restriction
on moving
motion or
nominating
candidate.

14. (1) On a show of hands each proprietor has one vote.

Votes of
proprietors.

(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. (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.

Common seal

(2) The council shall make provision for the safe custody of the common seal.

Amendment
of by-laws.

16. The by-laws in Part II of this Schedule may be amended or repealed or added to by special resolution of the strata company.

PART II.

Additional
duties of
proprietors,
occupiers,
etc.

1. 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 him by the council.

Notice of
alteration
to lot.

2. 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.

Appearance
of lot.

3. 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. (Section 42 (16))

OPTIONAL ADDITIONAL BY-LAWS.

Vehicles.

1. 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.

Obstruction
of common
property.

2. A proprietor, occupier, or other resident of a lot shall not obstruct lawful use of common property by any person.

Damage to
lawns, etc.,
on common
property.

3. 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. 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. Behaviour of proprietors and occupiers.
5. 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. Children playing upon common property in building.
6. A proprietor, occupier, or other resident of a lot shall not deposit or throw upon the common property any rubbish, dirt, dust or other material likely to interfere with the peaceful enjoyment of the proprietor, occupier, or other resident of another lot or of any person lawfully using the common property. Depositing rubbish, etc., on common property.
7. A proprietor, occupier, or other resident of a lot shall not, except with the consent in writing of the strata company— Drying of laundry items.
- (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. A proprietor, occupier, or other resident of a lot shall keep clean all glass in windows and all doors on the boundary of the lot, including so much thereof as is common property. Cleaning windows etc.
9. 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. Storage of inflammable liquids, etc.

Moving
furniture
etc., on or
through
common
property.

10. 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.

Floor
coverings.

11. A proprietor of a lot shall ensure that all floor space within the lot (other than that comprising kitchen, laundry, lavatory or bathroom) is 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.

Garbage
disposal.

12. 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 government authority by-laws and ordinances 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.

SCHEDULE 3.

(Section 132)

TRANSITIONAL AND SAVINGS PROVISIONS.

Interpreta-
tion.

1. (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;

“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.

Registration
of
unregistered
former
strata plans.

2. (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) the certificate referred to in section 5 (6) (c) of the former Act was given by the appropriate local authority not earlier than 2 years before the appointed day; and
- (d) registration is effected within 12 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 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) (d).

(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. (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

Former
lots and
former
common
property
to be
derived lots
and derived
common
property.

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.

(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 that day, be construed as a reference to the derived lot which corresponds to that former lot.

4. A company created under the former Act, in relation to a former strata scheme—

Continuation
of companies.

- (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. A person who, immediately before the appointed day—

Continuation
of estates
or interests
in former
lots and
former
common
property
and rights
in former
common
property.

- (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 12) 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. Subject to this Schedule, the provisions of this Act shall, on and from the appointed day, apply to and in respect of—

Application
of Act to
former
strata
schemes,
former
parcels,
derived lots
and derived
common
property.

- (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. (1) Where a transfer or lease of any common property under the former Act—

Registration
of transfers
or leases
of derived
common
property
registrable
under
section 10
of 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 lodgment 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).

Reallocation
of unit
entitlement.

8. (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 per cent more or 5 per cent 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. (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—

General
meetings of
certain
continued
companies.

- (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 12 (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.

(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".

Meetings of
former
companies
held within
2 months
after
appointed
day.

10. 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.

Notices
served by
public or
local
government
authority
before the
appointed
day.

11. The reference in section 38 to a notice served on the proprietor of a lot by a public or local government authority includes a reference to a notice served, before the appointed day, by such an authority on the proprietor of a former lot which has become a derived lot.

Effect of
former
by-laws.

12. (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 Schedule 1.

(2) Nothing in this clause affects the operation after the appointed day of section 42 in relation to a company continued as a strata company by the operation of clause 4.

13. (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.

Maintenance of exclusive use, or special privileges in respect of common property.

(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.

14. (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.

Recovery of contributions levied under former Acts.

(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. 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—

Modification of section 35 (1) (j) in relation to companies.

" , as modified by clause 21 of Schedule 3, "

16. (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).

Inspection of former records, etc.

(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).

Admin-
istrative
funds
of continued
companies.

17. (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.

Modification
of section
43 (1) (c) in
relation to
continued
companies.

18. 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).

Continuation
of councils
of former
companies.

19. (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 7 (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".

Operation
of by-law 1,
Part I of
Schedule 1.

20. 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 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. (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.

Modification
of Part IV,
Division 4.

(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. 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.

Evidentiary
effect under
section 61 of
particulars
furnished
under
section 21 (3)
of former
Act.

23. (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.

Destruction
of or damage
to building
under former
Act.

(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.

Admin-
istrators
under
former Act.

24. (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 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.

Recovery of
rates paid
by company.

25. 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. 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.

Regulations
~~Transi-~~
tional.
