

WESTERN AUSTRALIA.

STRATA TITLES.

No. 39 of 1966.¹

[As amended by Acts:

No. 34 of 1969², assented to 19th May, 1969;

No. 31 of 1970, assented to 27th May, 1970;

No. 76 of 1978³, assented to 20th October, 1978;

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

**AN ACT to facilitate the Subdivision of Land in
Strata and the Disposition of Titles thereto,
and for incidental and other purposes.**

[Assented to 31st October, 1966.]

BE it enacted—

1. This Act may be cited as the *Strata Titles Act, 1966-1978*.

Short title.
Amended by
No. 76 of
1978, s. 1.

2. This Act shall come into operation on a date to be fixed by proclamation¹.

Commence-
ment.

¹ Proclaimed to come into operation 1st November, 1967. See *Gazette* 29th September, 1967, p. 2519.

² Proclaimed to come into operation 13th June, 1969. See *Gazette* 13th June, 1969, p. 1765.

³ Proclaimed to come into operation 1st July, 1979. See *Gazette* 11th May, 1979, p. 1211.

Interpreta-
tion.
Cf. No. 17,
1961 (N.S.W.)
s. 2.
Amended by
No. 34 of
1969, s. 3.

3. In this Act, unless the contrary intention appears—

“building” means a building or buildings shown in a strata plan;

“common property” means so much of the land for the time being comprised in a strata plan as is not comprised in a lot shown in the plan;

“company” means the body corporate created by section thirteen of this Act;

“council” means the council of a company constituted under this Act;

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

“local 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;

“lot” means a lot shown as such on a strata plan;

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

“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 company;

“proprietor” means the person who is the owner for the time being of a lot;

“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;

“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 therein as being divided into two or more lots; and
 - (c) complies with the requirements of section five of this Act,
- and includes any amendment duly made thereto;

“the Court” means the Supreme Court of Western Australia;

“unanimous resolution” means a resolution unanimously passed at a duly convened meeting of the company at which all persons entitled to exercise the powers of voting conferred by or under this Act are present personally or by proxy at the time of the motion;

“unit entitlement” in respect of a lot means the unit entitlement of that lot, specified or apportioned in accordance with the provisions of section eighteen of this Act, as the case may be.

4. (1) Land may be subdivided into lots by registering a strata plan in the manner provided by this Act.

Subdivision.
Ibid. s. 3
“This Act”
includes
regulations
s. 4, No. 30
of 1918.

(2) When a strata plan has been so registered the lots comprised therein, 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.

Amended by
No. 34 of
1969, s. 4.

(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 first mentioned Act; and notwithstanding the provisions of the first mentioned 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 duly registered under this Act a memorial thereof 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 the common property appurtenant thereto.

(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 one hundred and sixty-six of the Transfer of Land Act, 1893, has in relation to such a lot.

Strata plan.
Ibid. s. 4.
Amended by
No. 34 of
1969, s. 5;
No. 31 of
1970, s. 2.

5. (1) A strata plan shall—

- (a) delineate the external surface boundaries of the parcel and the location of the building in relation thereto;
- (b) bear a statement containing such particulars as may be necessary to identify the title to the parcel;
- (c) include a drawing illustrating the lots and distinguishing them by numbers or other symbols;

- (d) define the boundaries of each lot in the building by reference to floors, walls and ceilings, without necessarily showing any bearings or dimensions of the lot;
- (e) show the approximate floor area of each lot;
- (f) define any portions of the parcel not within the building, that are or are intended to be separate tenements, and used in conjunction with the building or portion of the building;
- (g) be endorsed in accordance with section eighteen of this Act;
- (h) have endorsed on it the name of the building;
- (i) have endorsed on it the address at which documents may be served on the company in accordance with section twenty-six of this Act; and
- (j) 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 thereon, in the opinion of the Registrar of Titles, is undesirable.

(3) Where the name of the building in a strata plan is so undesirable, the company concerned may by unanimous resolution and with the consent of the Registrar of Titles change that name to a name that is not so undesirable.

(4) Notice in the prescribed form of any change in the address endorsed on a strata plan at which documents may be served on a company, shall be registered with the Registrar of Titles by the company, within twenty-one days after the date of the change.

(5) Unless otherwise provided in the strata plan, the common boundary of a lot with another lot or with common property shall be the centre of the floor, wall or ceiling, as the case may be.

(6) A strata plan lodged for registration under this Act shall be endorsed with or accompanied by a certificate in the prescribed form—

- (a) of a licensed surveyor registered under the Licensed Surveyors Act, 1909, that the building shown on the plan is within the external surface boundaries of the parcel and where eaves or guttering project beyond those boundaries, that a registered easement has been granted as an appurtenance of the parcel or, where the projection is over a road that the local authority has consented thereto;
- (b) of the Town Planning Board constituted under the Town Planning and Development Act, 1928, under the hand of the chairman thereof, that the proposed subdivision of the parcel shown in the plan has been approved by the Board; and
- (c) of the appropriate local authority under the hand of the town clerk or shire clerk thereof that—
 - (i) the building shown on the plan has been inspected and that it is consistent with the building plans and specifications in respect thereof that have been approved by the local authority;
 - (ii) [*Repealed by No. 34 of 1969, S.5.*]; and
 - (iii) the building, in the opinion of the local authority, is of sufficient standard and suitable to be divided into lots pursuant to this Act.

(7) A strata plan shall be registered as prescribed and when so registered, the Registrar of Titles shall allocate a number to the plan.

(8) [*Added by No. 34 of 1969, S.5. Repealed by No. 31 of 1970, S.2.*]

6. In respect of each lot there shall be implied—

Support and
services.
Ibid. ss. 5
and 7.

(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 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 or 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.

7. (1) Every proprietor is entitled to have his lot sheltered by all such parts of the building as are capable of affording shelter

Shelter.
Ibid. s. 6.

(2) The right created by this section is an easement to which such parts of the building shall be subject.

(3) The easement of shelter created by this section entitles the owner of the dominant tenement to enter on the servient tenement to replace, renew or restore any shelter.

Ancillary
rights.
Ibid. s. 8.

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

Ownership
of common
property.
Ibid. s. 9
(1), (2).

9. (1) The common property shall be held by the proprietors as tenants in common in shares proportional to the unit entitlement of their lots.

(2) The Registrar of Titles shall, in the certificate of title to a lot, certify the share of the proprietor in the common property.

Disposition
of common
property.
Ibid. s. 9
(3), 10.
Amended by
No. 34 of
1969, s. 6.

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

(a) no share in the common property may be disposed of except as appurtenant to the lot of the proprietor thereof; and

(b) an assurance of a lot operates to assure the share of the disposing party in the common property, without express reference thereto.

(2) All the proprietors by unanimous resolution may direct the company to transfer or lease common property, or any part thereof.

(3) Subject to subsection (8) of this section, the company, if it is satisfied that the resolution was duly passed, and that all persons concerned have consented in writing to the proposed transfer or lease, shall execute the appropriate transfer or lease and thereupon—

(a) the transfer or lease is valid and effective without execution by any person having any estate in the common property; and

(b) the receipt of the company—

(i) is a sufficient discharge for; and

(ii) exonerates the person taking under the transfer or 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 company under the transfer or lease.

(4) Every transfer or lease executed under subsection (3) of this section shall be endorsed with or accompanied by a certificate under the seal of the company that the resolution referred to in that subsection was duly passed and that all necessary consents were given.

(5) In favour of—

(a) a purchaser of the common property; and

(b) the Registrar of Titles,

a certificate under subsection (4) of this section, is conclusive evidence of the facts stated therein.

(6) 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 of common property under this section, register the lease as prescribed.

(7) Upon the lodgment for registration of a transfer of common property, the Registrar of Titles shall, before issuing a certificate of title, amend the registered strata plan by deleting therefrom the common property comprised in the transfer.

(8) Except with the prior approval in writing of the Town Planning Board constituted under the Town Planning and Development Act, 1928, and of the appropriate local authority,

- (a) a transfer or mortgage of the common property or part thereof; or
- (b) a lease or licence or lease and licence to use or occupy the common property or part thereof, for any term or terms in the aggregate exceeding ten years 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.

Disposition
on
destruction
of building.
Ibid. s. 11.

11. (1) Upon destruction of the building the company shall forthwith lodge with the Registrar of Titles, notice thereof in the prescribed form.

(2) Upon receipt of the notice referred to in subsection (1) of this section, the Registrar of Titles shall make an entry thereof on the relevant registered strata plan in 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 entitlement of their respective lots.

(3) Where all the proprietors of lots desire to transfer the parcel or any part or parts thereof, whether or not the building thereon is habitable or in ruins or has been removed, they may, by unanimous resolution direct the company to transfer the parcel or part or parts thereof, and thereupon—

- (a) the 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 entitlement of their respective lots; and

- (c) subsections (2) to (6) inclusive of section ten of this Act apply as if the parcel were the common property.

(4) Upon lodgment for registration of a transfer of a parcel by the company pursuant to this section, the Registrar of Titles, before issuing a certificate of title shall make the entry prescribed by subsection (2) of this section.

(5) Where land is transferred by the 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.

12. (1) The proprietors of all lots by unanimous resolution at a meeting convened by the company may direct the company—

Creation of easements and covenants. *Ibid.* s. 12.

- (a) to execute on their behalf a grant of easement or a restrictive covenant burdening the parcel; and
- (b) to accept or surrender on their behalf a grant of easement or a restrictive covenant benefiting the parcel.

(2) Upon such a resolution—

- (a) the company shall execute the appropriate instrument; and
- (b) subsections (3), (4) and (5) of section ten of this Act apply as if the instrument dealt with the common property.

(3) Upon lodgment for registration in the Office of Titles of an instrument under this section, the Registrar of Titles shall register it by noting it on the strata plan as prescribed.

Incorporation of proprietors.
Cf. *ibid.*
ss. 14, 15.

13. (1) Upon the registration of a strata plan, the proprietors, including the persons entitled to the parcel pursuant to subsection (2) of section eleven of this Act, shall be a body corporate 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, 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) The company—

- (a) may sue and be sued on any contract made by it;
- (b) may sue for and in respect of any damage or injury to the common property caused by any person, whether a proprietor or not;
- (c) may be sued in respect of any matter connected with the parcel for which the proprietors are jointly liable;
- (d) shall be regulated in accordance with the by-laws made under section fifteen of this Act for the time being in force; and
- (e) is not subject to the Companies Act, 1961.

Duties and powers of company.

(4) The company shall, among other things—

- (a) enforce the by-laws;
- (b) control and manage the common property;
- (c) insure and keep insured the building to the replacement value thereof against fire and such other risks as may be prescribed, unless the proprietors by unanimous resolution otherwise resolve;

- (d) effect such insurance as it is required by law to effect;
- (e) insure against such other risks as the proprietors may from time to time determine by special resolution in accordance with the by-laws;
- (f) subject to section nineteen of this Act, forthwith apply insurance moneys received by it in respect of damage to the building in rebuilding and reinstating the building so far as that may lawfully be effected;
- (g) pay premiums on any policies of insurance effected by it;
- (h) keep in a good and serviceable repair, and properly maintain, the common property;
- (i) comply with notices and orders of any competent public or local authority requiring repairs to or work to be done in respect of, the parcel or building, or anything in, on or over it; and
- (j) comply with any reasonable request for the names and addresses of the persons who are members of the council of the company.

(5) The company for the purpose of effecting any insurance under paragraph (c) of subsection (4) of this section shall be deemed to have an insurable interest to the replacement value of the building and for the purpose of effecting any other insurance under that subsection shall be deemed to have an insurable interest in the subject matter of that insurance.

(6) The company shall, among other things—

- (a) establish a fund for administrative expenses 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 company;

- (b) determine from time to time the amounts to be raised for those purposes;
- (c) raise amounts so determined by levying contributions on the proprietors in proportion to the unit entitlement of their respective lots; and
- (d) recover from any owner by action in any court of competent jurisdiction any sum of money expended by the company for repairs or work done by it or at its discretion in complying with any notice or order of a competent public or local authority in respect of that portion of the building comprising the lot of that proprietor.

(7) Subject to the provisions of subsection (8) of this section, any contributions to be levied by the company shall be due and payable on the passing of a resolution to that effect and in accordance with the terms of that resolution, and may be recovered by the company in any action in any court of competent jurisdiction from the proprietor entitled at the time when the resolution was passed and from the proprietor entitled at the time when the action was instituted both jointly and severally.

(8) The company shall on the application of a proprietor or any person authorised in writing by him, certify—

- (a) the amount of any contributions due or payable by the proprietor;
- (b) the manner in which the contribution is payable;
- (c) the extent to which the contribution has been paid by the proprietor; and
- (d) the amount of any tax or rate paid by the company pursuant to section fourteen of this Act and not recovered by it,

and in favour of any person dealing with that proprietor, the certificate shall be conclusive evidence of the matters certified therein.

(9) The policy of insurance authorised by this section and taken out by the company in respect of the building is not liable to be brought into contribution with any other policy of insurance save another policy authorised by this section in respect of the same building.

14. (1) Where the amount of any tax or rate levied in respect of a lot by any local or public authority is due and payable and the proprietor has made default in payment thereof, then the authority concerned may serve upon the company a copy of the notice of assessment of the tax or rate together with a notice requiring the company to pay the amount, or so much thereof as remains unpaid, within thirty-five days from the date of the service of the notice upon the company.

Recovery
of rates.
Ibid. s. 16.

(2) If the company fails to comply with the notice referred to in subsection (1) of this section, the authority, without prejudice to its rights against any proprietor,—

- (a) may sue the company for the amount of the tax or rate, or so much thereof as remains unpaid, as a debt in any court of competent jurisdiction; and
- (b) may exercise any other remedy available to the authority under any Act, regulation or by-law,

as if the company were the sole proprietor of the parcel and the tax or rate levied was the tax or rate applicable to the parcel.

(3) Where the company pays the amount of any tax or rate or part thereof, it may recover the amount so paid in any action for debt in any court of competent jurisdiction from the proprietor of the lot in respect of which the tax or rate was levied at the time when the action is instituted.

(4) Where the company pays the amount of any tax or rate or part thereof the amount so paid shall, until recovery by the company, be and remain a

charge upon the lot in respect of which the tax or rate was levied of the same nature and priority as the local or public authority levying the tax or rate had in respect of the amount of the tax or rate or part thereof before payment thereof by the company.

By-laws.
Cf. *ibid.* s. 13.

15. (1) The 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 forth in the Schedule to this Act shall be deemed to be by-laws of the company and may be amended, repealed, or added to, by the 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 or addition to or 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, repeal or addition to a by-law contained in Part I of the Schedule to this Act has effect until—

- (a) the company has lodged a notification thereof in the form prescribed with the Registrar of Titles; and
- (b) the Registrar of Titles has made reference thereto on the appropriate registered strata plan.

(5) The company shall on the application of a proprietor or mortgagee of a lot, to which the by-laws relate, or any person authorised in writing by the proprietor or mortgagee make available for inspection the by-laws for the time being in force.

(6) The by-laws for the time being in force shall bind the company and the proprietors to the same extent as if the by-laws had respectively been signed

and sealed by the company and each proprietor and contained covenants on the part of the company with each proprietor and on the part of each proprietor with any other proprietor and with the company to observe and perform all the provisions of the by-laws.

16. Where the expenses of a public or local authority or any other sum due to a public or local authority, not being a rate or tax, is a statutory charge on all or any part of the parcel, that authority shall, instead of that charge have a like charge on each lot of an amount bearing the same proportion to that charge as the unit entitlement of the respective lot bears to the aggregate unit entitlements of all the lots.

Statutory
land
charges.

17. (1) Where a building is insured to its replacement value a proprietor may effect a policy 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.

Insurance.
Ibid. s. 17.
Amended by
No. 34 of
1969, s. 7.

(2) Where any such policy of insurance is in force—

(a) payment shall be made by the insurer under the policy to the mortgagees whose interests are noted thereon in order of their respective priorities, subject to the terms and conditions of the policy;

(b) subject to the terms and conditions of the policy, the insurer is liable to pay thereunder—

(i) the value stated in the policy;

(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 charged upon the lot, the insurer is entitled to a sub-mortgage of the mortgage to secure the amount so paid on terms and conditions agreed upon as provided in subsection (5) of this section, or failing agreement, on the same terms and conditions as those contained in the mortgage by the proprietor.

(3) Where a building is uninsured, or has been insured to less than its replacement value, a proprietor may—

- (a) effect a policy of insurance in respect of any damage to his lot in a sum equal to the replacement value of his lot less a sum representing the amount to which his lot is insured under any policy of insurance effected on the building; and
- (b) notwithstanding any existing policies of insurance, effect a policy 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 policy, by mortgages charged upon his lot and the provisions of paragraphs (a), (b), (c) and (d) of subsection (2) of this section apply in respect of any payment pursuant to that policy.

(4) For the purposes of subsection (3) of this section, the amount for which a lot is insured under a policy of insurance effected in respect of the building shall be determined by multiplying the value stated in the policy by the unit entitlement of the lot and dividing the product so obtained by the sum of the unit entitlement of all the lots in the building.

(5) For the purposes of paragraph (d) of subsection (2) of this section and of paragraph (b) of subsection (3) of this section any insurer or mortgagee may at any time, whether before or after a policy of insurance has been effected by a proprietor, agree upon the terms and conditions of the sub-mortgage.

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

(7) A policy of insurance authorised by this section and taken out by a proprietor in respect of damage to his lot is not liable to be brought into contribution with any other policy of insurance save another policy of insurance authorised by this section and taken out in respect of damage to the same lot.

(8) This section applies notwithstanding the provisions of The Life Insurance Act, 1774 (14 Geo. III C.48) or any other law relating to insurance.

18. (1) Every plan lodged for registration as a strata plan shall have an endorsement thereon specifying in whole numbers the unit entitlement of each lot and a number equal to the aggregate unit entitlements of all the lots.

Unit
entitlement
of lots.
Ibid. s. 18.

(2) The unit entitlement so endorsed 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 pursuant to subsection (6) of section thirteen of this Act.

Destruction
of the
building.
Ibid. s. 19.

19. (1) For the purposes of this Act, the building is destroyed when—

- (a) the proprietors by unanimous resolution so resolve; or
- (b) the Court is satisfied that having regard to the rights and interests of the proprietors as a whole, it is just and equitable that the building shall be deemed to have been destroyed and makes a declaration to that effect.

(2) When the Court makes such a declaration it may by order impose such conditions and give such directions, including directions for the payment of money, as it thinks fit for the purpose of adjusting as between the company and the proprietors and as between the proprietors themselves the effect of the declaration.

(3) Where the building is damaged, but is not destroyed as provided in subsection (1) of this section, the Court may by order settle a scheme which may include provisions—

- (a) for the reinstatement in whole or in part of the building;
- (b) for transfer or conveyance of the interests of the proprietors of lots that have been wholly or partially destroyed to the other proprietors in proportion to their unit entitlement.

(4) In the exercise of its powers under subsection (3) of this section, the Court may make such orders as it considers necessary or expedient for giving effect to the scheme referred to in that subsection, including orders—

- (a) directing the application of insurance moneys received by the company in respect of damage to the building;
- (b) directing payment of money by the company or by proprietors or by some one or more of them;

- (c) directing such amendment of the strata plan as the Court thinks fit, so as to include in the common property any addition thereto;
- (d) imposing such terms and conditions as the Court thinks fit;

(5) For the purposes of this section an application may be made to the Court by the company or by a proprietor or by a registered mortgagee of a lot.

(6) On any application to the Court under this section, an insurer who has effected insurance on the building or any part thereof, being insurance against destruction of lots or damage to the building, has the right to appear on the application in person or by counsel.

(7) The Court may from time to time vary any order made by it under this section.

(8) The Court on the application of the company or any member thereof, or the administrator appointed under section twenty-three of this Act may by order make provision for the winding up of the affairs of the company and may declare by the same or subsequent order, the company dissolved from a date specified in the order.

(9) On any application under this section the Court may make such order for the payment of costs as it thinks fit.

20. (1) In respect of any application for a certificate under paragraph (c) of subsection (6) of section five of this Act, the local authority shall direct the issue of the certificate, if it is satisfied that—

Certificates relating to subdivision strata plan. Cf. *ibid.* s. 20. Amended by No. 34 of 1969, s. 8.

- (a) separate occupation of the proposed lots will not contravene the provisions of any town planning scheme prepared or adopted by the local 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;
- (c) 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 the public interest.

(2) Upon any refusal by—

- (a) the appropriate local authority to direct the issue of a certificate under paragraph (c) of subsection (6) of section five of this Act or to give its approval under subsection (8) of section ten of this Act; or
- (b) the Town Planning Board to give its approval under that subsection,

or upon the failure of that local authority or that Board to do so within forty days after application for the certificate or the approval, as the case may be, the applicant may, within thirty days of the refusal or failure, appeal in manner prescribed and on payment of the prescribed fees—

- (i) in any case of a refusal or failure by the local authority, to the Minister of the Crown to whom the administration of the Local Government Act, 1960 is for the time being committed by the Governor; and
- (ii) in any case of a refusal or failure by the Town Planning Board, to the Minister of the Crown to whom the administration of the Town Planning and Development Act, 1928 is for the time being committed by the Governor.

(3) The Minister may—

- (a) determine the appeal either on the matter that was before the local authority or the Town Planning Board when refusing or

failing to deal with the application or on hearing evidence and submissions, or partly on each, as he thinks fit; and

- (b) make such order as he thinks fit including such order as to costs and expenses of and incidental to the appeal as he 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.

(4) The decision of the Minister upon any such appeal is final and binding upon the local authority or Town Planning Board as the case may be, and the appellant, and for the purposes of this Act, shall be deemed to be the final decision of the local authority or that Board.

(5) Where the Minister upholds an appeal under this section, the Minister shall issue to the appellant a certificate under his hand certifying that the appeal has been upheld by him and if the appeal is against the refusal or failure of—

- (a) the appropriate local authority to direct the issue of a certificate under paragraph (c) of subsection (6) of section five of this Act or to give its approval under subsection (8) of section ten of this Act, the certificate of the Minister shall, as the case requires, be deemed to be such certificate of the local authority under and for the purposes of the first mentioned subsection or the approval of that local authority under and for the purposes of the last mentioned subsection;
- (b) the Town Planning Board to give its approval under the last mentioned subsection, the certificate of the Minister shall be deemed to be the approval of that Board under and for the purposes of that subsection.

(6) The Registrar of Titles may accept for registration a strata plan that relates to the building in respect of which the local authority refused or failed

to give a certificate under paragraph (c) of subsection (6) of section five of this Act, 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 referred to in subsection (5) of this section; and
- (b) otherwise complies with the provisions of this Act.

Rates and
taxes.
Cf. *ibid.* s. 21.
Amended by
No. 76 of
1978, s. 140.

21. (1) [*Repealed by No. 76 of 1978, s. 140.*]

(2) (a) Where the Valuer-General values 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.

(b) For the purposes of any such valuation 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 company only.

(c) During the period from the registration of the strata plan and until a valuation of the parcel on the basis that the company is owner comes into force under the Valuation of Land Act, 1978, the valuation then in force shall for the purposes of subsections (4) and (5) of this section be deemed to be a valuation of the parcel made by the Valuer-General as if the company is owner.

(d) The Valuer-General is not required to make separate valuations of any part of a parcel otherwise than if the parcel were owned by one owner.

(3) The company shall, within twenty-eight days after the registration of a strata plan or an amendment thereto, deliver to the Valuer-General and to each authority authorised to levy rates or taxes in relation to the parcel or part thereof, two

copies of the registered strata plan or any amendment thereto, including all endorsements thereon, certified as prescribed.

(4) 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 thereof—

- (a) the particulars shown in the certified copy of the strata plan or any amendment thereof delivered as required by subsection (3) of this section, is conclusive evidence of those particulars; and
- (b) the production by an authority authorised to levy rates and taxes in relation to the parcel or any part thereof of what purports to be the certified copy of the strata plan or any amendment thereto so delivered is evidence that it is the certified copy so delivered.

(5) Subject to subsection (6) of this section, where any authority (in this section called the rating authority) authorised to make and levy rates on the parcel, uses a valuation of the parcel made by the Valuer-General on the basis that the company is owner, the following provisions have effect—

- (a) the value of the parcel shown in the valuation shall be apportioned by the local authority or the rating authority, as the case may be, between the lots comprised in the parcel in proportion to the unit entitlement of the respective lots as shown on the registered strata plan, or any amendment thereto;
- (b) subject to section fourteen of this Act, the company is not liable in relation to the parcel for any rate made and levied by the local 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) of this subsection and is, subject to any exemptions or concessions that may be applicable, liable accordingly for any rate made and levied by the local authority or the rating authority, as the case may be, on the owners of land.

(6) Where part—

- (a) 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) 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.

(7) In subsections (5) and (6) of this section, “value of the parcel” means where the body apportioning the value pursuant to paragraph (a) of the first mentioned subsection makes and levies the rates by reference to—

- (a) the unimproved value of the land—the unimproved value of the parcel; or
- (b) the gross rental value of the land—the gross rental of the parcel.

(8) For all purposes in relation to the imposition, assessment or recovery of land 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 Taxation between the lots

comprised in the parcel in proportion to the unit entitlement of the respective lots as shown on the registered strata plan or any amendment thereto;

- (b) the company is not liable in respect of the parcel for land tax;
- (c) for the purposes of the Land Tax Assessment Act, 1976, and subject to any concessions or exemptions that may be applicable thereto, 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) of this subsection.

(9) A reference in the Land Tax Assessment Act, 1976, to an owner includes a proprietor of a lot.

22. Where a public or local authority or person authorised by it has a statutory right to enter upon any part of a parcel, that authority or person is entitled to enter upon any other part of the parcel to the extent necessary or expedient to enable it or him to exercise its or his statutory power.

Powers of entry by public or local authority.
Ibid. s. 22.

23. (1) The company, a creditor of the company, or any person having an estate or interest in a lot may apply to the Court for appointment of an administrator.

Appointment of administrator.
Ibid. s. 23.

(2) The Court may in its discretion on cause shown, appoint an administrator for an indefinite or definite period on such terms and conditions as to remuneration or otherwise as it thinks fit.

(3) The remuneration and expenses of the administrator are payable out of the funds of the company for administrative expenses.

(4) The administrator has, to the exclusion of the company, the powers and duties of the company or such of those powers and duties as the Court may order.

(5) The administrator may delegate any of the powers vested in him by or under subsection (4) of this section.

(6) The Court may in its discretion on the application of the administrator or any person referred to in subsection (1) of this section, remove or replace the administrator.

(7) On any application made under this section the Court may make such order for the payment of costs as it thinks fit.

Voting.
Ibid. ss. 24,
26.

24. (1) Powers of voting conferred by or 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 authorised by law to control his property.

(2) Where the Court upon the application of the company or of a proprietor is satisfied that there is no person able to vote in respect of a lot, the Court—

- (a) shall, in cases where a unanimous resolution is required by this Act; and
- (b) may in its discretion, 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 Court shall determine.

(3) The Court may order service of notice of an application under subsection (2) of this section on such persons as it thinks fit or may dispense with service of that notice.

(4) On making an appointment under subsection (2), the 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 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 by or under this Act—

(a) 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) of this section does not apply unless the mortgagee has given written notice of his mortgage to the company.

25. (1) Every application to the Court under this Act shall be by summons at chambers unless otherwise provided by Rules of Court made under this Act.

Procedure upon application to Court.
Cf. ibid. s. 25.

(2) On any application notice thereof shall be served on such persons as the Court thinks fit, or the Court may dispense with the notice.

(3) The 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 Court may, subject to section twenty-four of this Act, delegate to the 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.

Service of
documents
on company.
Ibid. s. 27.

26. (1) The company shall cause to be continually available a receptacle suitable and suitably placed for purposes of postal delivery, with the name of the company clearly exhibited thereon.

(2) A document may be served on the company or the council thereof by post enclosed in a prepaid letter addressed to the company or the council, as the case may be, at the address shown on the strata plan, or by placing it in the receptacle referred to in subsection (1) of this section.

Offences.
Cf. ibid. s. 28.

27. (1) If default is made in complying with—

- (a) any requirement of subsection (4) of section five, subsection (1) of section eleven, subsection (5) of section fifteen, subsection (3) of section twenty-one, or subsection (1) of section twenty-six of this Act; or
- (b) any duty imposed on the company under subsection (4) of section thirteen of this Act to a public or local authority,

the company and each member of the council thereof, who is knowingly a party to the default, is guilty of an offence.

Penalty: Four hundred dollars.

(2) A person who fails to comply with the provisions of paragraph (a) of subsection (5) of section eleven of this Act is guilty of an offence.

Penalty: Four hundred dollars.

(3) Proceedings for offences against this Act shall be heard and determined in a summary way by a Court of Petty Sessions constituted by a Stipendiary Magistrate sitting alone.

Regulations.
Cf. ibid. s. 29.
Amended by
No. 34 of
1969, s. 9.

28. The Governor may make regulations not inconsistent with this Act prescribing all matters and things that by this Act are required or

permitted to be prescribed or that are necessary or convenient to be prescribed for giving effect to this Act and in particular for and with respect to —

- (a) the manner and form of registering a strata plan;
- (b) the fees to be paid for any procedure or function required or permitted to be done under this Act;
- (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; and
- (d) providing a penalty not exceeding two hundred dollars for any offence against any regulation.

SCHEDULE.

PART I.

1. A proprietor shall—

- (a) permit the company and its agents, at all reasonable times on notice (except in case of emergency when no notice shall be required), to enter his lot for the purpose of inspecting it and maintaining, repairing or renewing pipes, wires, cables and ducts for the time being existing in the lot and capable of being used in connection with the enjoyment of any other lot or the common property, or for the purpose of maintaining, repairing or renewing common property, or for the purpose of ensuring that the by-laws are being observed;
- (b) forthwith carry out all work that may be ordered by any competent public or local 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;
- (c) 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;

Section 15.
Duties of a
proprietor.

- (d) use and enjoy the common property in such a manner as not unreasonably to interfere with the use and enjoyment thereof by other proprietors or the members of their families or visitors;
- (e) not use his lot or permit it to be used in such manner or for such purpose as causes a nuisance to any occupier of a lot (whether a proprietor or not) or the family of such occupier;
- (f) notify the company forthwith upon any change of ownership or of any mortgage or other dealing in connection with his lot.

**Duties of
company.**

2. The company shall—

- (a) control and manage the common property for the benefit of all proprietors;
- (b) keep in a state of good and serviceable repair and properly maintain the fixtures and fittings (including lifts) used in connection with the common property;
- (c) establish and maintain suitable lawns and gardens on the common property;
- (d) maintain and repair (including renewal where reasonably necessary) pipes, wires, cables and ducts for the time being existing in the parcel and capable of being used in connection with the enjoyment of more than one lot or common property;
- (e) on the written request of a proprietor, or registered mortgagee of a lot, produce to that proprietor or mortgagee, or person authorised in writing by that proprietor or mortgagee, the policy or policies of insurance effected by the company, and the receipt or receipts for the last premium or premiums in respect thereof.

3. The company may—

**Powers of
company.**

- (a) purchase, hire or otherwise acquire personal property for use by proprietors in connection with their enjoyment of common property;
- (b) borrow moneys required by it in the performance of its duties or the exercise of its powers;
- (c) 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 combination of those means;

- (d) invest as it may determine any moneys in the fund for administrative expenses;
- (e) 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 thereof;
- (f) grant to a proprietor the right to exclusive use and enjoyment of common property, or special privileges in respect thereof, but any such grant shall be determinable on reasonable notice unless the company by unanimous resolution otherwise resolves;
- (g) do all things reasonably necessary for the enforcement of the by-laws and the control and management of the common property.

4. (1) The powers and duties of the company shall, subject to any restriction imposed or direction given at a general meeting, be exercised and performed by the council of the company. A meeting of the council at which a quorum is present shall be competent to exercise all or any of its authorities, functions or powers.

Council
of the
company.

(2) The council shall consist of not less than three nor more than seven proprietors and shall be elected at each annual general meeting, but where there are not more than three proprietors, the council shall consist of all proprietors.

(3) Except where the council consists of all the proprietors, the company may by resolution at an extraordinary general meeting remove any member of the council before the expiration of his term of office and appoint another proprietor in his place to hold office until the next annual general meeting.

(4) Any casual vacancy on the council may be filled by the remaining members of the council.

(5) Except where there is only one proprietor, a quorum of the council shall be two, where the council consists of three or four members; three, where it consists of five or six members; and four, where it consists of seven members.

(6) The continuing members of the council may act notwithstanding any vacancy therein, but if and so long as the number of members is reduced below the number fixed by or pursuant to these by-laws as the necessary 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 of convening a general meeting of the company, but for no other purpose.

(7) At the commencement of each meeting the council shall elect a chairman for the meeting.

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

(9) The council may—

- (a) meet together for the conduct of business, adjourn and otherwise regulate its meetings as it thinks fit, but shall meet when any member of the council gives to the other members not less than seven days' notice of a meeting proposed by him, specifying the reason for calling it;
- (b) employ for and on behalf of the company such agents and servants 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 company;
- (c) subject to any restriction imposed or direction given at a general meeting, 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.

(10) The council shall—

- (a) keep minutes of its proceedings;
- (b) cause minutes to be kept of general meetings;
- (c) cause a record to be kept of unanimous resolutions;
- (d) cause proper books of account to be kept in respect of all sums of money received and expended by it and the matters in respect of which such receipt and expenditure take place;
- (e) prepare proper accounts relating to all assets and liabilities of the company, and the income and expenditure thereof, for each annual general meeting;
- (f) on application of a proprietor or mortgagee, or any person authorised in writing by him, make the minutes of general meetings, records of unanimous resolutions, books of account and records relating to books of account available for inspection at all reasonable times.

(11) All acts done in good faith by the council shall notwithstanding it be afterwards discovered that there was some defect in the appointment or continuance in office of any member of the council be valid as if that member had been duly appointed or had duly continued in office.

**General
meetings.**

5. (1) A general meeting of proprietors shall be held within three months after their incorporation.

(2) Subsequent general meetings shall be held once in each year and so that not more than fifteen months shall elapse between the date of one annual general meeting and that of the next.

(3) All general meetings other than the annual general meeting shall be called extraordinary general meetings.

(4) (a) The council may whenever it thinks fit and shall upon a requisition in writing made by proprietors entitled to a quarter or more of the total unit entitlement of the lots convene an extraordinary general meeting.

(b) If the council does not within twenty-one days after the date of the making of the requisition proceed to convene an extraordinary general meeting the requisitionists, or any of them representing more than one-half of the total 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 a meeting, but any meeting so convened shall not be held after the expiration of three months from that date.

(5) Subject to the provisions of the by-laws relating to special resolutions, seven 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 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. (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.

Proceedings
at general
meetings.

(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 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, 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 of a general meeting 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) At the commencement of a general meeting, a chairman of the meeting shall be elected.

(7) At any general meeting resolutions may be passed by a simple majority vote, except where it is otherwise required by or under the Act.

(8) 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.

(9) 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.

(10) A demand for a poll may be withdrawn.

(11) 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.

(12) 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.

Votes of
proprietors.

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

(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 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.

(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.

(10) Where proprietors are entitled to successive interests in a lot, the proprietor entitled to the first interest is alone entitled to vote, whether on a show of hands or a poll; whether by the Act the unanimous resolution of proprietors is required or not.

(11) Where a proprietor is a trustee he shall exercise the voting rights in respect of the lot to the exclusion of persons beneficially interested in the trust, and such persons shall not vote.

8. (1) The common seal of the 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 two members thereof, who shall sign every instrument to which the seal is affixed, but where there is only one member of the company his signature shall be sufficient for the purpose of this clause. Common seal.

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

9. The by-laws in Part II of this Schedule may be amended by special resolution of the company and not otherwise. Amendment of by-laws.

10. A special resolution means a resolution passed at a general meeting of which at least fourteen days' notice specifying the proposed special resolution has been given by a majority of not less than three-quarters of the total unit entitlement of the lots and not less than three-quarters of the members. Special resolution.

11. In these by-laws, "the Act" means the Strata Titles Act, 1966.

PART II.

Additional
duties of
proprietors.

1. A proprietor shall not—

- (a) use his lot 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 his lot or the common property after notice in that behalf from the council.

Restricted
use of lot.

2. Where the purpose for which a lot is intended to be used is shown expressly or by necessary implication on or by the registered strata plan, a proprietor shall not use his lot for any other purpose or permit it so to be used.