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WEDNESDAY 6TH APRIL, 2022

THE OFFICIAL GAZETTE 6TH APRIL, 2022
LEGAL SUPPLEMENT — C

BILL No. 4 of 2022 *Wednesday 6th April, 2022*

PARLIAMENT OFFICE
Public Buildings,
Georgetown,
Guyana.

6th April, 2022.

The following Bill which will be introduced in the National Assembly is published for general information.

S.E. Isaacs,
Clerk of the National Assembly.

GUYANA

BILL No. 4 of 2022

CONDOMINIUM BILL

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A Bill

Intituled

AN ACT to make provision for the horizontal and vertical subdivision of land and buildings into units for individual ownership and to make provision for the use and management of condominiums and matters connected thereto.

A.D. 2022 Enacted by the Parliament of Guyana:-

PART I
PRELIMINARY

Short title. 1. This Act may be cited as the Condominium Act.

Interpretation. 2. (1) In this Act-

"board" means the board of directors of a corporation;

"building" means any building or buildings to which a Declaration and Description apply and forming part of a property;

"by-laws" in relation to any property, means the by-laws of a Corporation;

"claim" includes a right, title, interest, encumbrance, or demand of any kind affecting land, but does not include the interest of an owner in his or her unit and common interest;

"common expenses" means the expenses of the performance of the objects and duties of a corporation and any expenses specified as common expenses in a Declaration;

"common interest" means the interest in the common property appurtenant to a unit;

"common profits" means the balance of all incomes, rents, gains and profits from the common property remaining after the deduction of the common expenses;

"common property" means that part or parts of a property designated which, upon the recording of a Declaration and Description, is not contained within the boundaries of any unit;

"condominium" means any building divided into units, each unit being attached to, or dependent to a substantial degree on, the other units forming the building for support, shelter or easements relating to services under this Act, irrespective of whether the units of the condominium belong to different persons or one person, and includes dockominiums;

"Condominium Corporation" means a corporation incorporated by this Act;

"Condominium scheme" or "scheme" means a scheme in relation to a condominium;

"declarant" means the absolute owner or owners of the land described in the Description at the time of the registration of a Declaration and Description of the land, and includes any successor or assignee of such owner or owners but does not include a bona fide purchaser of a unit who actually pays fair market value or any successor or assignee of such purchaser;

"Declaration" in relation to a property means the instrument under section 12 by which the property is expressly declared to be subject to this Act and includes any lawful amendments to that instrument;

"Description" means the instrument containing a description of the property under section 15 and includes any lawful amendments to that instrument;

"encumbrance" means a claim that secures the payment of money or the performance of any other obligation, and includes a mortgage and a lien;

"Minister" means the Minister responsible for housing;

"meeting" includes a virtual meeting conducted on an audio-visual platform;

"parcel" includes a lot of land;

"prescribed" means prescribed by regulations made by the Minister;

"promoter" means a private owner or developer of a condominium;

"property" means-

(a) the land and interests appurtenant to the land described in the Description, and includes any land and interests appurtenant to land that are added to the common property;

(b) any structures above-water appurtenant to coastal land or above submerged land, as well as any dock slips associated with that land or the structures, included in the property;

"proposed declarant" means the absolute owner or owners of the land described in the Description at the time of the approval of a Declaration and Description of the land but before the registration of a Declaration and Description of the land, and includes any successor or assignee of such owner or owners;

"proposed Declaration" means a Declaration which has been submitted to the Minister for approval but has not yet been registered in the Condominium Register;

"proposed Description" means a Description which has been submitted to the Minister for approval but has not yet been registered in the Condominium Register;

"proposed unit" means land described in an agreement for purchase and sale that provides for delivery to the purchaser of a deed or transfer capable of registration after a Declaration and Description have been registered in respect of the land;

"registered" means-

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(a) in the case of unregistered land to which the Deeds Registry Act applies, registered under the Deeds Registry Act; and

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(b) in the case of registered land to which the Land Registry Act applies, registered under the Land Registry Act;

"Registrar" has the same meaning-

(a) in the case of unregistered land to which the Deeds Registry Act applies, as in the Deeds Registry Act; and

(b) in the case of registered land to which the Land Registry Act applies, as in the Land Registry Act;

"substantial damage" means damage to a building where the estimated cost of repairing the damage would be either-

(a) twenty-five per cent of the value of the building; or

(b) such greater percentage as is specified in the Declaration;

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"surveyor" means a surveyor registered under the Land Surveyors Act;

"unit" means-

(a)a part or parts of the land included in the Description and designated as a unit by the Description, and comprises the space enclosed by its boundaries and all the material parts of the land within that space at the time the Declaration and Description are registered for any type of independent use, including one or more rooms or enclosed spaces located on one or more floors in a building and with a direct exit to a public street or highway or to a common property leading to a public street or highway;

(b) an interest in structures above-water appurtenant to coastal land or above submerged land, as well as any dock slips associated with that land or the structures, included in the property;

"unit entitlement" means the interest in a unit expressed as a percentage and fixed either-

(a) as the approximate proportion which the estimated price of the unit at the date of the submission of the proposed Declaration and proposed Description for the approval of the Minister bears to the then aggregate estimated price of all the units under the condominium taken together; or

(b) as the approximate proportion which the floor area of the unit bears to the aggregate floor area of all the units taken together,

and the estimated price referred to in paragraph (a) shall reflect any substantially exclusive advantages which may be enjoyed by one or more, but not all, unit owners in any part of the common property.

(2) Reference in this Act to construction of any condominium shall be deemed to include a reference to conversion of any existing building into units.

(3) For the purposes of this Act, the ownership of land includes the ownership of space.

Application.

3. This Act shall apply to all condominiums constructed or to be constructed under a Declaration and Description including condominiums constructed or to be constructed by the Government.

PART II
APPROVAL AND REGISTRATION

Approval by the Minister

Approval of Minister required for Declaration and Description.

4. (1)Where it is proposed to construct on any land any condominium, or to convert any existing building into a condominium, for residential, business or commercial purposes, or any combination of such purposes, a proposed Declaration and proposed Description in relation thereto shall be submitted to the Minister for approval by the promoter of the condominium.

(2) A proposed Declaration and proposed Description submitted for the approval of the Minister in accordance with subsection (1) shall be accompanied by proof that such fees as may be prescribed have been paid to the Registrar.

Approval of Declaration and Description.

5. (1)Where the Minister is satisfied that a proposed Declaration and proposed Description are consistent with the provisions of this Act and any other written law applicable thereto and are in the public interest, he may, by order, approve the proposed Declaration and proposed Description and if he is not so satisfied, he may reject the proposed Declaration and proposed Description.

(2)For the purposes of subsection (1), the Minister may empanel a technical review team to review the proposed Declaration and proposed Description.

(3)When empanelled, the technical review team shall review the proposed Declaration and proposed Description and shall make a recommendation to the Minister on the basis of its findings.

(4) Subject to subsection (1), the Minister may, within a period of three months after the submission of a proposed Declaration and proposed Description for his approval, and not thereafter, direct the promoter of the condominium to amend either or both of them in such manner as may be specified by the Minister.

(5)Without prejudice to the provisions of subsection (1), in approving or rejecting a proposed Declaration and proposed Description the Minister shall have regard to-

(a) the financial resources of the promoter of the condominium;
(b) the experience of the promoter of the condominium;
(c) the proposed location of the condominium;
(d) the recommendations of any technical review team empanelled under subsection (2); and
(e) such other conditions as may be prescribed.

(6) It shall be lawful for the Minister, before approving or rejecting a proposed Declaration and proposed Description to direct the promoter of the condominium to furnish to the Minister or any other person specified by him, within such time as may be specified by the Minister, such particulars or clarifications in respect of the condominium as may be specified by the Minister and where the promoter refuses or fails to comply with the direction within the time so specified, the Minister may reject the proposed Declaration and proposed Description.

(7)No proposed Declaration and proposed Description shall be rejected by the Minister unless the promoter has been given a reasonable opportunity of being heard.

(8) Where the Minister rejects a proposed Declaration and proposed Description pursuant to subsection (1), he shall furnish the promoter with a written statement of reasons for the refusal.

Time limit for approving Declaration and Description.

6. (1) Within one month of receiving the submission of the proposed Declaration and proposed Description, the Minister shall dispatch to the promoter of the condominium or the authorised agent of the promoter a notification, in writing, acknowledging receipt of the submission of the proposed Declaration and proposed Description.

(2) The Minister shall decide before the expiry of a period of three months from the date of the notification mentioned in subsection (1), whether he-

(a) approves the proposed Declaration and proposed Description;

(b) rejects the proposed Declaration and proposed Description; or

(c) directs that the proposed Declaration and proposed Description be amended,

and where the Minister does not, within that period, communicate his decision to the promoter of the condominium in writing, the proposed Declaration and proposed Description shall be deemed to have been approved by the Minister.

(3) Where the amended proposed Declaration and amended proposed Description are submitted to the Minister pursuant to a direction by him, the Minister shall, within one month, dispatch to the promoter of the condominium or the authorised agent of the promoter a notification, in writing, acknowledging receipt of the amended proposed Declaration and amended proposed Description.

(4) The Minister shall decide before the expiry of three months from the date of the notification mentioned in subsection (3), whether he approves or rejects the amended proposed Declaration and amended proposed Description.

(5) Where the Minister does not communicate his decision, in writing, to the promoter of the condominium within the period provided for under subsection (4), the amended proposed Declaration and amended proposed Description shall be deemed to have been approved by the Minister.

(6) Every approval of, rejection of or direction to amend a proposed Declaration and proposed Description by the Minister shall be communicated in writing to the promoter who submitted the Declaration for approval.

Restriction on doing of certain things under Declaration and Description.

7. (1) No person shall, unless a proposed Declaration and proposed Description have been approved-

(a)start the construction of any building or the conversion of an existing building into units, under the proposed Declaration and proposed Description;

(b)accept any sum of money from any person for, or in connection with, the sale of any unit of the building, including as an advance towards the price of any such unit or as a deposit under any agreement to sell the unit; or

(c)do any other thing under the proposed Declaration and proposed Description.

(2) When approving a proposed Declaration and proposed Description, the Minister may impose such conditions as he thinks fit.

Registration of Declaration and Description

Approved Declaration and Description required to be registered.

8.(1) An approved Declaration and Description shall, as soon as may be after the completion of the construction of the building thereunder, be submitted to the Registrar for registration by, or on behalf of, the owner of the land described in the Description.

(2) An approved Declaration and Description may, with the approval of the Minister, be amended prior to registration.

(3) An approved Declaration and Description which are presented to the Registrar for registration under this section shall be registered no later than four weeks after their presentation.

Declarations for existing condominiums.

9. (1) Within six months after the date on which this Act comes into operation, the owners of the units of every condominium existing on the aforesaid date shall-

(a)prepare a Declaration and Description in respect of that condominium;

(b) submit the Declaration to the Registrar for registration in accordance with section 8; and

(c) otherwise comply with the provisions of this Act.

(2) A Declaration and Description referred to in subsection (1) shall not require the approval of the Minister under this Act.

(3)Upon registration of a Declaration and Description referred to in subsection (1), the owner of each unit of every condominium existing on the aforesaid date shall-

(a)in the case of unregistered land to which the Deeds Registry Act applies, be issued with a Transport which shall be registered in the Deeds Registry; and

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(b)in the case of registered land to which the Land Registry Act applies, be issued with a Certificate of Title which shall be registered in the Land Registry,

as provided under section 20.

Cap. 36:22

(4) Upon the issuance of a Transport or Certificate of Title under subsection (3) any Certificate of Sale which was issued in respect of the condominium unit under section 50 (1) of the Condominium (Regulation and Miscellaneous Provisions) Act shall cease to be of legal effect.

(5) For the avoidance of doubt, a Certificate of Sale issued under section 50 (1) of the Condominium (Regulation and Miscellaneous Provisions) Act prior to the commencement of this Act shall continue to be valid until is replaced with a Transport or Certificate of Title in accordance with subsection (3).

Property to comprise land only and effect of registration.

10. (1) Property to which this Act applies shall comprise only land and any interests appurtenant to that land.

(2) Upon the registration of a Declaration and Description, the land and the interests appurtenant to the land described in the Description shall be governed by this Act.

(3) The property to which a Declaration and Description relates shall be deemed to be divided into the same number of separate parcels of land as there are units described in the Description.

(4) Each such parcel of land shall have the same limits and boundaries as its corresponding unit described in the Description.

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(5) Upon registration, where the land described in the Description is land to which the Deeds Registry Act or the Land Registry Act applies, there shall be endorsed on each Transport or Certificate of Title, as the case may be, that relates to a condominium unit and a condominium property respectively, a statement that the provisions of this Act shall apply to the land to which each of the transports or certificates, as the case may be, relate.

Units to be conveyed free from encumbrances.

11. (1) Where before the first conveyance of any unit there is a mortgage or charge affecting such unit, then either-

(a) before the making of such first conveyance -

(i) every such mortgage or charge shall be paid and satisfied; or

(ii) the unit shall be released from the mortgage or charge by a valid instrument of release duly lodged for record in the registry; or

(b) upon the making of such first conveyance the mortgagees or chargees shall join therein,

and if any first conveyance of a unit is made without complying with this subsection then such conveyance shall be void and of no effect.

Matters which a Declaration shall contain.

12. A Declaration shall not be approved or registered unless it is executed by the owner of the land and interests appurtenant to the land described in the Description and unless it contains-

(a) a statement of intention that the land and interests appurtenant to the land described in the Description be governed by this Act;

(b) subject to the consent referred to in paragraph (c), a statement that the original purchase or lease of each unit shall be either-

(i) free of any existing mortgage or charge on the said property; or

(ii) joined therein by any existing mortgagees or chargees;

in accordance with the provisions of section 11.

(c) the consent in the prescribed form of every person having a registered charge, mortgage, lien, or other claim securing the payment of money against the land or interests appurtenant to the land described in the Description;

(d) a statement, expressed in percentages, of the proportion of the common interests;

(e) a statement, expressed in percentages allocated to the units, of the proportions in which the owners are to contribute to the common expenses;

(f) a statement, expressed in percentages, of the unit entitlement of each unit; and

(g) an address for service.

Matters which a Declaration may contain.

13. In addition to the matters mentioned in section 12, a Declaration may contain-

(a) a specification of common expenses;

(b) a specification of any parts of the common property that are to be used by the owners of one or more designated units and not by all the owners;

(c) provisions respecting the occupation and use of the units and common property;

(d) provisions restricting transfers, assignments, gifts, leases and sales of the units and common interests and any other applicable restrictive covenants;

(e) a specification of the number, qualification, nomination, election, term of office, compensation and removal of

members of the board, and the meetings, quorum, functions and officers of the board;

(f) a specification of the duties of the Corporation consistent with its objects;

(g) a specification of the majority required to make by-laws of the Corporation;

(h) provisions regulating the assessment and collection of the contributions towards the common expenses;

(i) a specification of the majority required to make substantial changes in the common property and the assets of the Corporation;

(j) a specification of any provision requiring the Corporation to purchase the units and common interests of any dissenters after a substantial addition, alteration or improvement to or revocation of the common property has been made or after the assets of the Corporation have been substantially changed;

(k) a specification of any allocation of the obligations to repair and to maintain the units and common property;

(l) a specification of the percentage of substantial damage to the buildings and a specification of the majority required to authorise repairs under section 45;

(m) a specification of the majority required for a sale of the property or of part of the common property;

(n) a specification of the majority required for the termination of the governance of the property by this Act; and

(o) any other matters concerning the property.

Amendment of Declaration and registration of amendment.

14. (1) Subject to subsection (3), a Declaration may be amended only with the approval of the Minister and the consent of all owners and all persons having registered encumbrances against the units and common property.

(2) Subject to subsection (3), when a Declaration is amended the Corporation shall register a copy of the amendment executed by all the owners and all persons having registered encumbrances against the units and common interests, and until the copy has been registered the amendment shall not have effect.

(3) Notwithstanding subsections (1) and (2), the Corporation may by resolution of the board change its address for service and the change shall not have effect until a notice therein in the prescribed form has been registered.

(4) The Corporation on giving at least seven days' notice to every owner, or an owner on giving at least seven days' notice to the Corporation and every other owner, may request in writing that the Registrar amend the Declaration and the Registrar, if he or she is satisfied that an amendment is necessary or desirable to correct a manifest error or an inconsistency in the Declaration or arising out of the carrying out of the intent and purpose of the Declaration, may amend the Declaration accordingly.

(5) The amendment of a Declaration by the Registrar under subsection (4) shall not have effect until the amendment has been registered.

(6) The provisions of sections 4, 5 and 6 shall apply *mutatis mutandis* to amendments to Declarations submitted to the Minister for approval pursuant to subsection (1).

Matters which a Description shall contain.

15. (1) A Description shall contain-

(a) a survey plan showing the perimeter of the horizontal surface of the land and the perimeter of the buildings;

(b) structural plans of the buildings;

(c) a specification of the boundaries of each unit by reference to the buildings;

(d) diagrams showing the shape and dimensions of each unit and the approximate location of each unit in relation to the other units and the buildings;

(e) a certificate of an engineer showing that the buildings have been constructed and that the diagrams of the units are substantially accurate and substantially in accordance with the structural plans; and

(f) a description of any interests appurtenant to the land that are included in the property.

Cap.97:01

(2) The provisions of the Land Surveyors Act shall apply to any plan or drawing, in respect of any land, prepared or furnished under this section to the extent to which those provisions are not inconsistent with the provisions of this section.

(3) A Description shall not be registered unless it has been prepared and approved in accordance with regulations made under this Act.

Amendment of Description and registration of amendment.

16. (1) The Corporation on giving at least seven days' notice to every owner, or an owner on giving at least seven days' notice to the Corporation and every other owner, may request in writing that the Registrar amend the Description and the Registrar, if he or she is satisfied that an amendment is necessary or desirable to correct a manifest error or an inconsistency in the Description or arising out of the carrying out of the intent and purpose of the Description, may amend the Description accordingly.

(2)The amendment of a Description by the Registrar under subsection (1) shall not have effect until the amendment has been registered.

Condominium Corporations Index and Condominium Register.

17. (1) The Registrar in whose office a Declaration and Description are registered shall keep an index in the prescribed form to be known as the "Condominium Corporations Index".

(2)The Registrar in whose office a Declaration and Description are registered shall keep a register in the prescribed form to be known as the "Condominium Register".

(3)Declarations, Descriptions, by-laws, notices of termination, and other instruments respecting land governed by this Act shall be registered and recorded in the Condominium Register in accordance with this Act and any regulations made under this Act.

(4)Notwithstanding subsections (1), (2) and (3), the Deeds Registry Act shall apply in respect of unregistered property governed by this Act and the Land Registry Act shall apply in respect of registered property governed by this Act.

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Fees for registration.

18. (1)There shall be paid to the Registrar such fees as may be prescribed for the registration of a Declaration and a Description or any amendments thereto.

(2)Notwithstanding anything contained in subsection (1), the Minister may by order direct that no fees shall be payable under that subsection for the registration of any Declaration or Description in respect of any condominium owned or promoted by the Government, any local Government authority, the Central Housing and Planning Authority constituted under the Housing Act or any corporate body owned by, or in which the controlling interest vests in, the State or any agency on behalf of the State.

Cap 36:20

PART III

PROVISIONS PERTAINING TO UNITS AND COMMON PROPERTY

Units and Common Property

Units to constitute immovable property. Cap. 81:01

19. Subject to this Act, each unit together with the undivided share in the common property held therewith shall for all purposes, including taxation under the Income Tax Act-

(a) in the case of unregistered land to which the Deeds Registry Act applies, constitute immovable property and may be conveyed, leased, mortgaged or otherwise dealt with or disposed of in the same manner and form as immovable property under the Deeds Registry Act; and

Cap. 5:01

(b) in the case of registered land to which the Land Registry Act applies, constitute immovable property and may be conveyed, leased, mortgaged or otherwise dealt with or disposed of in the same manner and form as land under the Land Registry Act.

Cap. 5:02

Title of ownership.

20. (1) The separate title of each unit shall-

(a) in the case of unregistered land to which the Deeds Registry Act applies, consist of a Transport and shall be registered in the Deeds Registry; and

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(b) in the case of registered land to which the Land Registry Act applies, consist of a Certificate of Title and shall be registered in the Land Registry,

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and each unit may belong in common ownership or joint ownership to more than one person.

(2) A Transport under subsection (1) (a) shall include the following particulars-

(a) a description of the property, including a reference to the folio where the Transport is registered;

(b) the unit number or symbol of the unit and any other data necessary for its proper identification; and

(c) a statement as to the user of the unit and any covenants, conditions and restrictions relating thereto.

(3) A Certificate of Title under subsection (1) (b) shall be in such form as may be prescribed.

(4) A Transport under subsection (1) (a) shall be in such form as may be prescribed.

Incidents of unit ownership and common property.

21. (1) Each unit owner shall be entitled to exclusive ownership and use of his unit.

(2) Subject to this Act, the Declaration and the by-laws, each unit owner may make reasonable use of the common property.

(3) No condition shall be permitted to exist and no activity shall be carried on in any unit of the common property that is likely to damage the property.

(4) The Corporation and any person authorised by the Corporation may enter any unit at any reasonable time to perform the objects and duties of the Corporation.

(5) The owners shall be tenants in common of the common property.

(6) An undivided interest in the common property shall be appurtenant to each unit and the proportions of the common interests shall be those expressed in the Declaration.

(7) The ownership of a unit shall not be separated from the ownership of the common interest, and any instrument that purports to separate the ownership of a unit from a common interest shall be void.

(8) Except as may be provided by this Act, the common property shall not be partitioned or divided and no claim or encumbrance shall be enforceable against the common property after the Declaration and Description are registered.

(9) Where, but for subsection (8), a claim or encumbrance would be enforceable against the common property, the claim or encumbrance shall be enforceable against all the units and common interests.

(10) Any unit and common interest may be discharged from an encumbrance by payments to the claimant of a portion of the sum claimed determined by the proportions specified in the Declaration for sharing the common expenses and upon payment of a portion of the encumbrance sufficient to discharge a unit and common interest, and upon demand the claimant shall give the owner a discharge of that unit and common interest in accordance with any regulations made under this Act.

(11) For the purposes of-

(a)assessment of property taxes and taxation-

(i) each unit and common interest shall constitute a parcel; and

(ii) the common property shall not constitute a parcel; and

(b)determining liability resulting from a breach of the duties of an occupier of land-

(i) the Corporation shall be deemed to be the occupier of the common property; and

(ii) the unit owners shall be deemed not to be occupiers of the common property.

Easements and Ancillary Rights

Easement relating to support.

22. In respect of each unit there shall be implied-

(a) in favour of the owner of such unit and as appurtenant thereto, and as against other unit owners in the condominium, an easement for the subjacent, suprajacent and lateral support thereof by every other unit and by the common property, to the extent to which it is capable of providing such support;

(b) as against the owner of such unit and to which the unit shall be subject, and in favour of every other unit owner in the condominium, an easement for the subjacent, suprajacent and lateral support of every other unit and of the common property, to the extent to which the unit is capable of providing it.

Easement relating to shelter.

23. (1) Every unit owner shall be entitled, as appurtenant to his unit, to have the unit sheltered by all such parts of the building as are capable of affording shelter.

(2)The right of shelter created by this section shall be an easement to which all of the said parts as are capable of affording the shelter shall be subject.

Easement relating to services.

24. In respect of each unit there shall be implied-

(a) in favour of the owner of such unit and as appurtenant thereto, and as against other unit owners in the condominium, such easement for the provision of any service through installation in the common property or any other unit;

(b) as against the owner of such unit and to which the same shall be subject, and in favour of every other unit owner in the condominium, such easement for the provision of any service through installation in the common property or any other unit.

Easement relating to use and occupation of space.

25. Where a building or a part of a building-

(a) is moved after registration of the Declaration and Description; or

(b) after having been damaged and repaired, is not restored to the position occupied at the time of registration of the Declaration and Description,

there shall be implied in respect of each unit an easement for exclusive use and occupation, in accordance with this Act, the Declaration and by-laws, over the space of the other units and common property that would be space included in the unit if the boundaries of the unit were determined by the position of the buildings from time to time after registration of the Description and not at the time of registration.

Easements relating to leases.

26. (1) The Corporation may, by by-laws-

(a) lease any part of the common property except any part that the Declaration specifies is to be used by the owners of one or more designated units and not by all the owners; and

(b) grant or transfer an easement or licence over the common property.

(2)A lease or a grant or transfer of an easement or licence under this section, signed by the authorised officers of the Corporation under its seal, shall affect the interest of every owner in the common property as if the lease, grant or transfer had been executed by him or her, and shall have attached thereto an affidavit of one of the officers stating that the lease, grant, or transfer was authorised by by-laws of the Corporation.

Ancillary rights.

27. All ancillary rights and obligations reasonably necessary to make those easements effective shall apply in respect of any easement implied or created by this Act.

PART IV
CONDOMINIUMS GENERALLY

Corporation

Creation and duties of Corporation.

28. (1)The registration of a Declaration and Description shall create a Corporation without share capital whose members shall be the owners from time to time.

(2) When a Declaration and Description are registered, the Registrar shall assign a name to the Corporation in accordance with any regulations made under this Act.

(3) It shall be the duty of the Corporation to effect compliance by the owners with this Act, and the Declaration and by-laws may specify duties of the Corporation in accordance with any regulations made under this Act.

(4) The Corporation shall maintain a record in which shall be entered each owner or mortgagee or chargee who notifies the Corporation of his or her entitlement to vote and of his or her address for service, and the notice of a meeting required by section 29 (5) shall be deemed to have been sufficiently given if given in accordance with that subsection to those persons entered on the record twelve days before the date of the meeting.

(5) Notwithstanding subsection (1), where and so long as the whole of the property to which a Declaration and Description relate is owned by-

(a) a company or other corporate body; or

(b) the Government, any local government authority or one individual,

a Corporation shall not be created with respect to that property and the owner or Board of Directors or management committee of the owner, as the case may be, shall be responsible for complying with the provisions of the Declaration and this Act in respect of that property.

Meetings of Corporation.

29. (1) A Corporation shall hold an annual meeting of the members not more than three months after the registration of the Declaration and Description, and subsequently not more than fifteen months after the holding of the last preceding annual meeting, and at such meeting the board shall present-

(a) a report of the transactions and activities of the board during the previous year; and

(b) a statement of the audited accounts of receipts and expenditures under section 34 (2) for the previous year,

and any member of the Corporation and any mortgagee or chargee entitled to vote shall have an opportunity to raise any matter relevant to the affairs and business of the Corporation.

(2) The board may at any time call a meeting of the members of the Corporation for the transaction of business the nature of which shall be specified in the notice calling the meeting.

(3) The board, upon receipt of a requisition in writing made by members of the Corporation who together own at least twenty-five per cent of the common property, shall call and hold a meeting of the members of the Corporation and, if the meeting is not called and held within thirty days of the receipt of the requisition, any person who is party to the requisition may call the meeting, and, in such case, the meeting shall be held within sixty days of the receipt of the requisition.

(4) The requisition shall state the nature of the business to be presented at the meeting, shall be signed by the persons who are party to the requisition, and shall be left at the address for service of the Corporation.

(5) At least ten days' written notice of every meeting of the members of the Corporation specifying the place, the date, the hour and the nature of the business thereof shall be given to each member and to each mortgagee or chargee entitled to vote, virtually or personally or by prepaid letter post addressed to him or her at the address provided under subsection (4).

(6) A mortgagee or chargee who receives notice of a meeting shall, in order to be entitled to exercise the right of the owner to vote or to consent, notify the Corporation and the owner of his or her intention to exercise such right at least two days before the date specified in the notice.

(7) If an annual meeting referred to in subsection (1) is not called within the time provided for by that subsection, any member of the Corporation or any mortgagee or chargee entitled to vote may call the meeting.

(8) Save as otherwise provided by this Act, on a poll the voting entitlements of unit owners shall correspond to the unit entitlement of their respective units.

Duties of the Corporation.

30. The duties of the Corporation are to-

(a) manage its property and any assets of the Corporation for the benefit of all unit owners, mortgagees and chargees;
(b) be responsible for the enforcement of the by-laws;
(c) keep the common property in a state of good and serviceable repair;
(d) comply with notices or orders issued by any public body requiring repairs or work to be undertaken in respect of the property;
(e) carry out any other duties prescribed by the Declaration or the by-laws.

Powers of the Corporation.

31. (1) The Corporation is entitled to-

(a) establish funds for administrative expenses sufficient in the opinion of the Corporation for the management of the property, for the payment of any premiums of insurance, for the establishment of reserves for capital improvement or for the reconstruction of common property and a discharge of any other obligations of the Corporation;
(b) determine from time to time the amounts of money to be raised for the purposes aforesaid;

(c) raise the amounts of money so determined by levying contributions on the unit owners in prescribed proportions;

(d) recover from the unit owner any sum of money expended by the Corporation for repairs or work undertaken by it or at its direction in compliance with any notice or order issued by a public body in respect of any part of the property comprising in the unit of the owner;

(e) employ such staff as may be deemed necessary to carry out its duties;

(f) receive payment of the proceeds of any insurance claim made by the Corporation in respect of the loss of or damage to the building in trust for the unit owners in proportion to their respective interest and, unless the governance of the property by this Act is duly terminated, promptly apply the same for repair or reconstruction of the building;

(g) by a vote of members who own sixty-six and two-thirds per cent of the common property terminate, on giving sixty days' notice in writing, any agreement between the Corporation and any person for the management of the property which may have been entered into at a time when the majority of the members of the board were elected when the declarant was the registered owner of a majority of the units.

(2)Agreements, decisions and determinations lawfully made by the Corporation in accordance with this Act, the relevant Declaration and the by-laws, shall be binding on all unit owners.

Board of directors of Corporation.

32. (1)The affairs of the Corporation shall be managed by a board of directors consisting of three persons, or such greater number as the Declaration or the by-laws may provide, elected by the members of the Corporation.

(2)The term of office of a member of the board shall be three years or such shorter period as the Declaration or the by-laws may provide.

(3)A member of the board may continue to act until his or her successor has been elected, and each member shall be eligible for re-election.

(4) If a vacancy in the membership of the board occurs the majority of the remaining members of the board may appoint any person qualified to be a member of the board under the Declaration or the by-laws to fill the vacancy for the remainder of the term.

(5) A quorum for the transaction of business shall be a majority of the members of the board or such greater number as the Declaration or the by-laws may provide.

(6) A board elected at a time when the declarant owns a majority of the units shall, not more than twenty-one days after the declarant ceases to be the registered owner of a majority of the units, call a meeting of the members of the Corporation to elect a new board of directors, and such meeting shall be held within twenty-one days after the calling of the meeting.

(7)The acts of a member of the board or an officer of the board shall be valid notwithstanding any defect that may afterwards be discovered in his or her election or qualifications.

(8) A director may be removed before the expiration of his or her term of office by a vote of members who together own a majority of the units, and the members may elect in his or her stead any person qualified to be a member of the board under the Declaration or by-laws.

Declaration or by-laws may provide for members and officers.

33. The Declaration or the by-laws may specify and regulate the qualifications, nomination, election, compensation and removal of members of the board, and the meetings, functions and officers of the board.

Records and accounts to be kept.

34. (1) The Corporation shall keep adequate records and a member of the Corporation may inspect the records on reasonable notice and at any reasonable time.

(2)The Corporation shall keep detailed and accurate accounts in chronological order of the receipts and expenditures in the course of the management of the property.

(3) All accounts kept under subsection (2), vouchers authorising payments and receipts for payments shall be available for inspection by any member of the Corporation on reasonable notice and at any reasonable time.

(4) The accounts maintained under this section by the Corporation shall be audited annually by an auditor appointed by the Corporation.

(5) The members and employees of the Corporation shall grant to the auditor appointed under subsection (4) access to all books, documents, cash and securities of the board and the Corporation and shall give to the auditor on request all such information as may be within their knowledge in relation to the functioning of the Corporation.

(6) A person who knowingly contravenes the provisions of this section commits an offence and shall be liable, on summary conviction, to a fine of-

(a) one million dollars where the person convicted is a Corporation; or

(b) five hundred thousand dollars where the person convicted is not a Corporation.

Miscellaneous provisions relating to Corporations and members.

35. (1) Each member of the Corporation, and every person having an encumbrance against a unit and common interest, shall have the right to the performance of any duty of the Corporation specified by this Act.

(2) The Corporation may own, acquire, encumber and dispose of immovable and personal property for the use and enjoyment of the property and the members of the Corporation shall share the assets of the Corporation in the same proportions as the proportions of their common interests in accordance with the provisions of this Act, the Declaration and the by-laws.

Judgments against Corporation.

36. A judgment for the payment of money against the Corporation shall also be a judgment against each owner at the time the cause of action arose for a portion of the judgment determined by the proportions specified in the Declaration for sharing the common expenses.

Action by Corporation respecting common property.

37. An action with respect to the common property may be brought by the Corporation and a judgment for the payment of money in favour of the Corporation in such action shall be an asset of the Corporation.

Application of Companies Act and winding up of Corporation.

38. (1) Subject to the provisions of this Act, the Minister may by order apply to a Corporation any provision of the Companies Act with such modifications, exceptions and qualifications, as he may specify in the order.

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(2)Notwithstanding subsection (1), the Companies Act shall apply to the winding up of a Corporation as if it were a company and the members of its board were the directors of the company and the High Court may appoint a liquidator for that purpose.

(3)Where a Corporation is wound up pursuant to subsection (2)-

(a) the assets of the corporation shall be used to pay any claims for the payment of money against the corporation; and

(b) the remainder of the assets of the corporation shall be distributed among the members of the corporation in the same proportions as the proportions of their common interests.

By-laws and Rules Governing Use of Common Property

By-laws governing use of common property.

39. (1) A Corporation, by a vote of members who own sixty-six and two-thirds per cent, or such greater percentage as is specified in the Declaration, of the common property, may make by-laws-

(a) governing the management of the property;

(b) governing the use of the units or any of them for the purpose of preventing unreasonable interference with the use and enjoyment of the common property and other units;

(c) governing the use of common property;

(d) regulating the maintenance of the units and common property;

(e) governing the use and management of its assets;

(f) respecting the board;

(g) specifying the duties of the Corporation;

(h) regulating the assessment and collection of contributions towards the common expenses;

(i) authorising the borrowing of money to carry out the objects and duties of the Corporation; and

(j) respecting the conduct generally of the affairs of the Corporation.

(2) All such by-laws shall be reasonable as well as not inconsistent with the provisions of this Act and the Declaration.

(3) When by-laws are made by a Corporation, the Corporation shall register a copy of the by-laws together with a document executed by the Corporation certifying that the by-law were made in accordance with the provisions of this Act, the Declaration and the by-laws, and until the copy and certificate have been registered the by-laws shall not have effect.

Rules governing use of common property.

40. (1) The by-laws may provide for the making of rules by the owners respecting the use of the common property for the purpose of preventing unreasonable interference with the use and enjoyment of the units and common property

(2) All such rules shall be reasonable as well as not inconsistent with the provisions of this Act, the Declaration and the by-laws, and shall be complied with and enforced in the same manner as the by-laws.

Rights and Obligations of Owners

Rights and obligations of owners.

41. (1) Every owner shall be bound by and shall comply with this Act, the Declaration and the by-laws and every owner shall have a right to compliance by other owners with the provisions of this Act, the Declaration and the by-laws.

(2) The Corporation and any person having an encumbrance against any unit and common interest, shall have a right to compliance by the owners with this Act, the Declaration and the by-laws.

(3)Owners shall contribute towards the common expenses to the extent of their respective proportions specified in the Declaration, and the assessment and collection of contributions towards the common expenses may be regulated by the Declaration or the by-laws, and the common profits shall be distributed among the owners in the same proportions as their common interests.

(4)The obligation of an owner to contribute towards the common expenses shall not be avoided by waiver of the right to use the common property or by abandonment.

(5)Where an owner defaults in his or her obligation to contribute towards the common expenses in the proportion allocated to his or her unit, the Corporation shall have a lien for the unpaid amount against that unit and its appurtenant common interest.

(6)The lien mentioned in subsection (5) may be enforced in the same manner as a mortgage.

(7) After payment of the unpaid amount, and upon demand, the Corporation shall give the owner a discharge in the prescribed form.

(8) The lien mentioned in subsection (5) shall expire three months after the default that gave rise to the lien first occurred unless the Corporation within that time registers a notice of lien in the prescribed form.

(9) Any person acquiring an interest in a unit from an owner may, with the consent of the owner, request the Corporation to give a certificate in the prescribed form in respect of the common expenses of the owner and of any default in payment thereof by the owner; the certificate shall bind the Corporation as against the person requesting the certificate from the day it is given.

(10) The Corporation shall give the certificate requested under subsection (9) within seven days after receipt of the request therefor; if the Corporation fails to give the certificate within that time, the Corporation is deemed, as against the person requesting the certificate, to have given the certificate stating that no default has occurred.

(11) A unit owner shall have no personal liability for the acts or omissions of the Corporation and his liability for the common expenses shall be limited to the amounts of the contributions from time to time levied upon him.

Substantial Alterations

Substantial alterations.

42. (1) The Corporation, by a vote of members who own eighty per cent, or such greater percentage as is specified in the Declaration, of the common property, may make any substantial addition, alteration or improvement to or renovation of the common property or may make any substantial change in the assets of the Corporation, and may, by a vote of the majority of the members, make any other addition, alteration or improvement to or renovation of the common property or any other change in the assets of the Corporation.

(2) A grant or transfer of an easement to the Corporation shall be as effective as if the Corporation owns land capable of being benefited by the easement.

(3) The cost of any addition, alteration or improvement to or renovation of the common property and the cost of any substantial change in the assets of the Corporation shall be common expenses.

(4) The Declaration may provide that if any substantial addition, alteration or improvement to or renovation of the common property is made, or if any substantial change in the assets of the Corporation is made, the Corporation shall on demand of any owner who dissented purchase his or her unit and common interest.

(5) If the Corporation and the owner who dissented do not agree as to the purchase price, the owner who dissented may elect to have the fair market value of his unit and common interest determined by arbitration by serving a notice to that effect upon the Corporation.

Insurance, Repairs and Maintenance

Duty of Corporation to insure.

43. (1) A Corporation shall insure its liability to repair damage to the property caused by fire, flooding, tempest, sea wave or other casualty and shall keep the property insured to the replacement value thereof.

(2) The Corporation shall give written notice of the insurance effected by it in pursuance of subsection (1), and of any change therein or the termination thereof, to each owner and mortgagee and on the written request of any owner or mortgagee of a unit shall enable such owner or mortgagee, or any person authorised in writing and nominated by such owner or mortgagee, to inspect the policy or policies of insurance effected by the Corporation and the receipt or receipts for the last premium or premiums paid in respect thereof.

(3)A policy of insurance taken out by a Corporation in pursuance of subsection (1) shall not be liable to be brought into contribution with any other policy of insurance save another policy authorised under subsection (1).

(4)The Corporation shall, for the purposes of effecting any insurance under subsection (1), be deemed to have an insurable interest in the property.

(5)The Declaration, or by-laws made under this Act, may authorise the Corporation to insure the property or any part thereof against risks other than those referred to in subsection (1) and for such purpose a Corporation so authorised shall be deemed to have an insurable interest therein.

Power of owners to insure.

44. (1) Notwithstanding section 43, an owner may effect a policy of insurance in respect of damage to-

(a) his or her unit arising from risks which are not covered by the policy effected by the Corporation; and

(b) any improvements made to his or her unit,

provided that such policy shall not be liable to be brought into contribution with any other policy of insurance save another policy authorised by this section and taken out by an owner in respect of damage to the same unit.

(2) Nothing in this section limits the right of an owner to insure against risks other than damage to his or her unit.

Duty to repair and maintain.

45. (1) Subject to section 46, the Corporation shall undertake repairs to the units and common property after damage.

(2)The Corporation shall maintain the common property and each owner shall maintain his or her unit.

(3)Notwithstanding subsections (1) and (2), the Declaration may provide for any or all of the following-

(a) that each owner shall, subject to section 46, repair his or her unit after damage;

(b) that the owners shall maintain the common property or any part of the common property; or

(c) that the Corporation shall maintain the units.

(4)The Corporation shall undertake repairs that an owner is obliged to make, but which he or she has not executed within a reasonable time.

(5) An owner shall be deemed to have consented to repairs to his or her unit undertaken by the Corporation under this section.

(6) For the purposes of this Act, the obligation to repair after damage and to maintain shall be mutually exclusive, and the obligation to repair after damage shall not include repairs or improvements made to units after registration of the Declaration and Description.

Determination of damage and vote for repair.

46. (1) Where damage to a building occurs, the board shall determine within thirty days of the occurrence whether the damage is substantial damage.

(2)Where there has been a determination that the damage is substantial damage and owners of eighty per cent of the common property, or such greater percentage as is specified in the Declaration, vote for repair within sixty days of the determination, the Corporation shall undertake repairs.

(3) Any sums received under any policy of insurance taken out on the building, on account of the damage to the building, shall be used for the purpose of

the repair of the building under this section and any deficiency in the amount required for the repair shall, subject to the provisions of section 47, be deemed to be common expenses.

Scheme for repair of building.

47. (1) Where it becomes the duty of the Corporation to repair any building, the board shall without undue delay draw up a scheme for that purpose and submit it for the approval of the Corporation at a meeting called for that purpose.

(2)If a scheme submitted to a Corporation for approval under subsection (1) is approved as submitted or with amendments by a special resolution by the Corporation, it shall be binding on the Corporation and all unit owners.

(3)Where a scheme drawn up under subsection (1) is not approved by the Corporation, the board shall file a scheme, with an application for its approval, in the High Court which may, after giving the unit owners a reasonable opportunity of being heard, settle a scheme for the repair of the damaged building, which, having regard to the rights and interests of such unit owners generally, appears to that court to be just and equitable.

(4)A scheme settled by the High Court under subsection (1) may include provision for-

(a) permitting any unit owner, whose unit has been damaged and who does not agree to participate in the scheme, to convey his unit and his interest in the common property to any other unit owner or the Corporation in relation to the unit, on the payment of such compensation as the High Court considers just;

(b) the repair of part only of the building; or

(c) the conveyance of the interests of some unit owners to other unit owners in proportion to their unit ownership.

(5)In the exercise of its powers under this section, the High Court may make such orders as it thinks necessary or expedient for giving effect to the scheme settled by it, including orders-

(a) directing how insurance moneys received in respect of the damage to the building shall be applied;

(b) directing such consequential amendments of the relevant Declaration and the by-laws of the Corporation in such manner as it thinks fit; and

(c) imposing such terms and conditions as it thinks fit.

(6)Where an application to the High Court is made under this section, any insurer who has effected insurance on the property or any part thereof, being insurance against damage to the building, may appear in person or by attorney-at-law in all proceedings relating to the application as if he were a party thereto.

Termination

Termination by notice after damage and effect of registration of notice.

48. (1) Where there has been a determination that the damage is substantial damage and on a vote the owners do not vote for repair, the Corporation shall, within ten days of the vote, register a notice of termination in the prescribed form.

(2)Where there has been no vote within sixty days of the determination under section 46 (2), the Corporation shall, within ten days after the expiry of the sixty-day period, register a notice of termination in the prescribed form.

(3)Upon the registration of a notice of termination under subsection (1) or (2)-

(a) the governance of the property by this Act shall be terminated;

(b) the owners shall be deemed to be tenants in common of the land and interests appurtenant to the land described in the Description in the same proportions as their common interests;

(c) claims against the land and interests appurtenant to the land created before the registration of the Declaration and Description shall be as effective as if the Declaration and Description had not been registered;

(d) encumbrances against each unit and common interest created after the registration of the Declaration and Description shall be deemed to be claims against the interest of the owners in the land and interest appurtenant to the land described in the Description, and have the same priority they had before the registration of the notice of termination; and

(e) all claims against the property created after the registration of the Declaration and Description, other than the encumbrance mentioned in paragraph (d), shall be extinguished.

Termination by order of the High Court.

49. (1) A Corporation, an owner, or a person having an encumbrance against a unit and common interest, may apply to the High Court for an order terminating the governance of the property by this Act.

(2)The High Court may order that the governance of the property by this Act be terminated if the Court is of the opinion that the termination would be just and equitable; for the purpose of deciding whether the termination will be just and equitable the Court shall have regard to-

(a) the scheme and intent of this Act;

(b) the probability of unfairness to one or more owners if termination is not ordered; and

(c) the probability, if termination is not ordered, of confusion and uncertainty in the affairs of the Corporation or the owners.

(3) Where an order of termination is made under subsection (2), the High Court may include in the order any provisions that the Court considers appropriate in the circumstances.

(4)An order made under this section terminating the governance of the property by this Act shall not have effect until it has been registered in the Deeds Registry or Land Registry, as the case may be.

Voting by mortgagees and charges.

50. Where a mortgage or charge of a unit and common interest contains a provision that authorises the mortgagee or chargee to exercise the right of the owner to vote or to consent, the mortgagee or chargee may exercise the right and, where two or more such mortgages or charges contain such a provision, the right may be exercised by the mortgagee or chargee who has priority.

Application for order to require performance of duties.

51. (1) Where a duty imposed by this Act, a Declaration or the by-laws is not performed, the Corporation, an owner, or any person having an encumbrance against a unit and common interest, may apply to the High Court for an order directing the performance of the duty.

(2)The High Court may by order direct performance of the duty and may include in the order any provisions that the Court considers appropriate in the circumstances.

(3)The lessee of a unit shall be subject to the duties imposed by this Act, the Declaration and the by-laws, on an owner, except those duties respecting common expenses unless agreed upon between the owner and lessee, and where the lessee is in contravention of an order under this section, the High Court may terminate the lease.

(4)Nothing in this section shall restrict the grant of any remedies otherwise available for failure to perform any duty imposed by this Act.

Sale of Units

Implied covenants in agreements of purchase and sale.

52. (1) Every agreement for purchase and sale entered into by a proposed declarant in respect of a proposed unit for residential purposes shall be deemed to contain a covenant by the vendor to take all reasonable steps to-

(a) register without delay a Declaration and Description in respect of the property in which the unit is included; and

(b) deliver without delay to the purchaser a registrable transfer of the unit.

(2)Notwithstanding any provision to the contrary contained therein, an agreement for the purchase and sale of a proposed unit for residential purposes shall not be terminated by a proposed declarant by reason only of a failure to register the Declaration and Description within the period of time specified in the agreement, unless the purchaser consents to the termination in writing.

(3)Notwithstanding subsection (2), the proposed declarant may apply for termination to a Judge of the High Court who may, by order, terminate the agreement if he or she is satisfied that-

(a) the proposed declarant has taken all reasonable steps to register a Declaration and Description;

(b) a Declaration and Description cannot be registered within a reasonable period of time; and

(c) the failure and inability to register a Declaration and Description is caused by circumstances beyond the control of the proposed declarant.

(4)The Judge may, in an order under subsection (3), provide that a Declaration and Description shall not be registered in respect of the property in which the proposed unit is included until such period as he or she specifies in the order has expired.

(5)An order under subsection (3) shall be ineffective until a certified copy thereof has been registered.

Money received from purchaser to be held in trust.

53. (1)All money received by or on behalf of a proposed declarant from a purchaser on account of a sale or an agreement for the purchase and sale of a proposed unit for residential purposes before the registration of the Declaration and Description, other than money paid as rent or as an occupancy charge, shall be held in trust by the person receiving such money for the person entitled in respect of the agreement and such money shall be held in a separate account at a bank until-

(a) its disposition to the person entitled thereto upon the handing over of possession of the unit; or

(b) the delivery of security to the purchaser for repayment; or

(c) if the purchaser consents in writing to the disposition to the vendor.

(2)Where an agreement for purchase and sale such as is referred to in subsection (1) is terminated and the purchaser is entitled to the return of any money paid under the agreement, the proposed declarant shall pay to the purchaser interest on such money at the prescribed rate.

(3)Subject to subsection (2), where a purchaser of a proposed unit under an agreement for purchase and sale such as is referred to in subsection (1) enters into possession or occupation of the unit before a transfer of the unit acceptable for registration is delivered to him or her, the proposed declarant shall pay interest at the prescribed rate on all money received by him or her on account of the purchase price from the day the purchaser enters into possession or occupation until the day a transfer acceptable for registration is delivered to him or her.

(4)Subject to subsections (2) and (3), the proposed declarant shall be entitled to any interest earned on the money required to be held in trust under subsection (1).

(5)If a policy of insurance that insures against loss of money paid to a proposed declarant by a purchaser on account of a sale or an agreement for the purchase and sale of a proposed unit contains a provision that derogates in any manner from any right or benefit conferred on an insured under this Act, such provision shall be void to the extent that it derogates from such right or benefit.

(6)A policy that insures against loss of any money paid by an insured to a declarant and the loss of any interest payable by a declarant to a purchaser under an agreement for the purchase and sale of a proposed unit shall be security for the purpose of subsection (1) (b) if-

(a) the premiums payable in respect of the policy are paid by the declarant;

(b) the policy takes effect when it has been executed by the insured, and by or on behalf of the insurer and the declarant.

(7) Where an insurer receives written notice of a claim by an insured under such a policy he or she shall pay the insured within sixty days after the right of the insured to payment under the policy has been established.

(8) It shall be a condition of such a policy that an insurer shall remain liable under the policy until-

(a) a transfer of the unit acceptable for registration is delivered to the insured; and

(b) the declarant pays to the insured all monies and all interest payable by the declarant under this section; or

(c) the insurer pays to the insured the amount of the loss.

(9) Where an insurer is required to make a payment under such a policy, interest at the prescribed rate shall be paid to the insured to the date of payment of the loss.

(10) An insurer shall, immediately upon receipt of written notice of a claim by an insured under such a policy, furnish the insured with forms upon which to make proof of his or her loss.

(11) A person who knowingly contravenes the provisions of subsection (1) commits an offence and shall be liable, on summary conviction, to a fine of-

(a) one million dollars where the person convicted is a Corporation; or

(b) five hundred thousand dollars where the person convicted is not a Corporation.

PART V

CONDOMINIUMS IN THE PUBLIC SECTOR

Application of this Part.

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54. (1)This Part applies to condominiums owned or promoted by the Government, any local Government authority, the Central Housing and Planning Authority constituted under the Housing Act or any corporate body owned by, or in which the controlling interest vests in the State or any agency on behalf of the State.

(2)The provisions of Parts I to IV shall apply to any condominium referred to in subsection (1) subject to such modifications as are specified in this Part.

Sale of units in certain cases.

55. (1) After a Declaration and Description have been registered in respect of any condominium referred to in section 54 (1), any employee of the owner, being the Government or authority or body referred to in that section, authorised to do so by the owner thereof by notification in the *Gazette*, may issue on behalf of the owner, to any person to whom the owner has approved the sale of any unit in the condominium, an instrument of title of ownership to the effect that the unit has been sold to him, after satisfying himself that payment of the purchase price has been fully made and that other conditions of the sale, which are required to be satisfied before the sale, have been satisfied by the person.

(2)The separate title of each unit shall-

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(a) in the case of unregistered land to which the Deeds Registry Act applies, consist of a Transport and shall be registered in the Deeds Registry; and

Cap. 5:02

(b) in the case of registered land to which the Land Registry Act applies, consist of a Certificate of Title and shall be registered in the Land Registry,

and each unit may belong in common ownership or joint ownership to more than one person.

(3)In selling any unit in a condominium referred to in section 54 (1) the owner thereof shall give preference to a tenant of the unit who has been residing in the unit immediately before the sale.

(4)While selling any unit in any condominium referred to in section 54 (1), the owner may stipulate that the sale is subject to the condition that the purchaser and his successors in interest shall not sell, transfer or assign the unit to any person for a period of ten years, or such shorter period as may be specified by the owner, from the date of the sale to the purchaser.

(5)Where the condition under subsection (4) is imposed, the purchaser may within the period so specified sell the unit back to the owner who sold it to him at a price that may be agreed to between them and the condition so stipulated shall be stated in the Transport or Certificate of Title issued under subsection (1).

(6)A sale in contravention of the condition stipulated under subsection (4) shall be null and void and shall not confer any right on the purchaser of the unit.

(7)A Transport or Certificate of Title issued under subsection (1) in respect of any unit of any property shall be in such form as may be prescribed and shall specify the terms and conditions subject to which such sale is made and the terms and conditions specified in the Transport or Certificate of Title shall, notwithstanding anything contained in any other written law, be binding on the owner of the unit who sold it and the person who purchased it and their successors in interest.

(8)Notwithstanding anything contained in this Act or any other written law, no fees or stamp duty or other duties shall be payable under this Act, the Tax Act

Cap. 80:01

or any other written law on or in respect of any Transport or Certificate of Title issued under subsection (1).

Chairman of board of directors in certain cases.

56. (1) Notwithstanding anything contained in section 32, the chairman of the board of directors of any Corporation established for a condominium referred to in section 54 and the units of which have been sold under section 55, shall be a public officer or an employee of a local Government authority, nominated by the Minister.

(2)This section shall cease to apply to any condominium referred to in section 54 on such date as may be specified by the Minister by order.

PART VI
MISCELLANEOUS

Termination of management agreement.

57. The Corporation may, by vote of members who own not less than sixty-six and two thirds per cent of the common property, terminate, on giving sixty days' notice in writing, any agreement between the Corporation and any person for the management of the property entered into at a time when the majority of the members of the board were elected and when the declarant was the registered owner of a majority of the units.

Examination of records and procedure for following money received for common expenses.

58. (1) Every person who has received money paid by or on behalf of an owner for the payment of common expenses shall, upon reasonable notice and during normal business hours, make available for examination by the Corporation or any owner, mortgagee or chargee, all records relating to the disposition of such money.

(2)Upon application to a Judge of the High Court by the Corporation or any owner, mortgagee or chargee, the Judge, if satisfied that the application is made in good faith and that it is *prima facie* in the best interest of the applicant to do so,

may make an order, upon such terms as to the costs of the investigation or audit or otherwise as he or she considers proper, appointing an inspector to make such investigation of the affairs of any person in receipt of money mentioned in subsection (1) and to make such audit of the accounts and records of such person as the Judge considers necessary.

(3)An inspector appointed under subsection (2) shall have the powers of a Commissioner under the Commissions of Inquiry Act, which shall apply to such investigation or audit as if it were an inquiry under that Act.

Cap. 19:03

(4)All money received for the payment of common expenses relating to a property shall be held by the person who has received it in trust for the performance of the duties and obligations in respect of which the money is paid and he or she shall pay such money into a separate account at a bank.

(5)A person who knowingly contravenes the provisions of subsection (1) or (4) commits an offence and shall be liable, on summary conviction, to a fine of-

(a) one million dollars where the person convicted is a Corporation; or

(b) five hundred thousand dollars where the person convicted is not a Corporation.

Appointment of administrator and his functions.

59. (1)The Corporation, a judgment creditor of the Corporation or any person having an interest in any unit, may apply to the High Court for the appointment of an administrator for the management of the property.

(2)The High Court may, after giving the Corporation, the owners of the units in the property, the mortgagees or chargees of the units and the judgment creditors of the Corporation a reasonable opportunity of being heard, appoint an

administrator for an indefinite or fixed period, on such terms and conditions as to remuneration or otherwise as that court thinks fit, for the management of the property.

(3)The remuneration and expenses of any administrator appointed under this section shall be deemed to be common expenses.

(4)An administrator appointed under this section shall, to the exclusion of the Corporation, exercise all the functions of the Corporation, or such of those functions as the High Court orders, and may delegate any of the functions so vested in him to any person employed by him.

(5)The High Court may, on the application of an administrator appointed under subsection (1) or any other person referred to in that subsection, remove or replace the administrator.

Penalties.

60. (1) A unit owner who-

(a) refuses or fails to keep his unit in proper repair with the effect that it affects the physical integrity of any other unit or the building;

(b) causes willfully or by gross negligence any damage to any other part of the property, including the common property; or

(c) uses or allows or causes to be used the unit or the common property in a manner contrary to the provisions of this Act or the Declaration,

shall, without prejudice to any other liability he may incur thereby, be liable on summary conviction to a fine of five hundred thousand dollars and where the offence is a continuing one to a further penalty of fifty thousand dollars for each day after the first day during which the offence continues.

(2)Where a unit owner has been convicted a second time of an offence under subsection (1), in respect of any unit of any property or any other part of the property, including the common property, on application made therefor by the Corporation, the High Court may forfeit the unit to the Corporation and direct the Corporation to pay to the unit owner such reasonable compensation, having regard to the market value of the unit, as the High Court thinks appropriate.

(3)Where a Corporation refuses or fails to exercise or perform the functions conferred on it under this Act, the Corporation shall, without prejudice to any other liability it may incur thereby, be liable on summary conviction to a fine of one million dollars.

Power of exemption from fees.

61. (1)The Minister may, by notice, exempt any unit owner, promoter of any condominium, Corporation or any class thereof, wholly or partially, from the payment of any fees payable under this Act.

(2) A notice of any exemption granted under subsection (1) shall be published in the *Gazette*.

Regulations.

62. (1) The Minister may make regulations-

(a) prescribing the duties of officers for the purposes of this Act;

(b) governing the method of describing in instruments a property or any part of a property;

(c) governing surveys, structural plans, Descriptions and diagrams, and prescribing procedures for their registration and amendment;

(d) respecting the registration and recording of Declarations, Descriptions, by-laws, notices of termination and other instruments;

(e) requiring, in respect of any class of properties, in lieu of or in addition to the requirements of section 12, surveys of the properties showing the units and common elements;

(f) respecting the names of Corporations;

(g) respecting additions to the common property;

(h) requiring the payment of fees to the Registrar and prescribing the amounts thereof;

(i) prescribing forms and providing for their use;

(j) respecting any matter necessary to carry out effectively the intent and purposes of this Act.

(2)Any provision of the regulations may be made to apply to properties generally or to a particular class of properties.

Rule against perpetuities, etc., not to apply.

63. The rules of law against perpetuities and inalienability shall not apply with respect to any transaction under the provisions of this Act or to the terms of any Declaration or by-laws registered in accordance with this Act.

Repeal. Cap. 36:22

64. The Condominium (Regulation and Miscellaneous Provisions) Act is repealed.

Savings and transitional. Cap. 36:22

65. (1) Notwithstanding section 64, any order or other subsidiary legislation made under the Condominium (Regulation and Miscellaneous Provisions) Act shall remain in force until such time as any order or other subsidiary legislation is made under this Act in place of such order or other subsidiary legislation.

(2)Any act, decision or other matter carried out or any application made, proceedings instituted, or order made under the Condominium (Regulation and Miscellaneous Provisions) Act shall be deemed to have been carried out, made or instituted under this Act, and this Act shall apply accordingly.

(3) Any authority, approval or exemption granted by the Minister under the Condominium (Regulation and Miscellaneous Provisions) Act shall be deemed to continue as if granted by the Minister under this Act, unless otherwise revoked by the Minister.

(4)At the date of commencement of this Act-

(a) every condominium scheme submitted to the Minister for approval under section 3 of the Condominium (Regulation and Miscellaneous Provisions) Act and that is wholly or partly dealt with shall continue and be dealt with in all respects as if this Act had not come into force.

(b) every condominium scheme submitted to the Minister for approval under section 3 of the Condominium (Regulation and Miscellaneous Provisions) Act and that has not been wholly or partly dealt with shall be deemed to be an application made under this Act, and this Act shall apply accordingly.

EXPLANATORY MEMORANDUM

This Bill seeks to make provision for the horizontal and vertical subdivision of land and buildings into units for individual ownership and to make provision for the use and management of Condominiums and matters connected thereto.

This Bill is divided into six (6) Parts and contains sixty-five (65) clauses.

Part I of the Bill provides for the preliminary provisions and contains clauses 1 to 3. Clause 1 of the Bill provides for the short title of the Act and clause 2 provides for the interpretation of certain terms used in the Bill. By clause 3 of the Bill, the Bill applies to all condominiums constructed or to be constructed under a Declaration and Description including condominiums constructed or to be constructed by the Government.

Part II of the Bill makes provision for the approval and registration of Declarations and Descriptions generally and contains clauses 4 to 18. Clause 4 of the Bill requires that proposed Declarations and Descriptions be approved by the Minister before a condominium is constructed or before an existing building is converted into a condominium. Clause 5 of the Bill empowers the Minister to approve, reject or direct the amendment of a proposed Declaration and proposed Description. Clause 6 of the Bill imposes a time limit, within which time the Minister shall approve, reject or direct the amendment of a proposed Declaration and proposed Description and requires the minister to communicate his decision to the promoter of the condominium. Clause 7 of the Bill imposes restrictions on doing certain things under a proposed Declaration and proposed Description before they have been approved by the Minister. Clause 8 of the Bill requires an approved Declaration and approved Description to be registered.

In accordance with clause 9 of the Bill the owners of a condominium existing prior to the commencement of the Act shall register a Declaration and Description for that condominium and otherwise bring themselves into compliance with the provisions of the Bill. Clause 10 provides that all property to which the Bill applies shall comprise only land and the effect of registration of a Declaration and Description on land. Clause 11 provides for the first conveyance of a unit to be free from encumbrances.

Clause 12 of the Bill provides for the matters which a Declaration shall contain and clause 13 of the Bill provides for the matters which a Declaration may contain. Clause 14 of the Bill provides for the manner in which a Declaration may be amended and requires the amendment to be registered. Clause 15 of the Bill provides for the matters which a Description shall contain and clause 16 of the Bill provides for the manner in which a Description may be amended and requires the amendment to be registered. Clause 17 of the Bill imposes an obligation on the Registrar to keep a Condominium Corporations Index and a Condominium Register and clause 18 provides for fees to be paid upon registration.

Part III of the Bill sets out provisions pertaining to units and common property and contains clauses 19 to 27. Clause 19 of the Bill provides that units in a condominium constitute immovable property and clause 20 of the Bill provides for the title of ownership of a condominium unit. Clause 21 of the Bill sets out the incidents of unit ownership and ownership of the common property.

Clause 22 of the Bill provides for an easement relating to support in respect of each unit, clause 23 of the Bill provides for an easement relating to shelter in respect of each unit, clause 24 of the Bill provides for an easement relating to services in respect of each unit, clause 25 of the Bill provides for an easement relating to use and occupation of space in respect of each unit and clause 26 of the Bill provides for easements relating to leases of the common property. Clause 27 of the Bill provides for the application of all ancillary rights and obligations which are reasonably necessary to make the easements under this Part effective.

Part IV of the Bill makes provision for condominiums generally and contains clauses 28 to 53. Clause 28 of the Bill provides for the creation of a Corporation upon the registration of a Declaration and Description and sets out the duties of the Corporation. Clause 29 of the Bill makes general provision for meetings held by the Corporation; clause 30 of the Bill provides the objects of the Corporation and clause 31 of the Bill sets out the powers of the Corporation. Clause 32 of the Bill provides for the affairs of the Corporation to be managed by a board of directors and clause 33 of the Bill provides that the Declaration or the by-laws may specify and regulate the qualifications, compensation and meetings etc. of the members and officers of the board.

Clause 34 of the Bill requires the Corporation to keep adequate records and clause 35 of the Bill makes miscellaneous provisions relating to Corporations and their members. Clause 36 of the Bill provides for a judgment for the payment of money against the Corporation to also be a judgment against each owner and clause 37 of the Bill provides for an action with respect to the common property to be brought by the Corporation. Clause 38 of the Bill provides for the application of the Companies Act to Corporation and makes provision for the winding up of a Corporation. Clause

39 of the Bill empowers the Corporation to make by-laws governing the use of the common property and Clause 40 of the Bill empowers the owners to make rules governing the use of the common property. Clause 41 of the Bill sets out the rights and obligations of unit owners. Clause 42 of the Bill provides the manner in which substantial alterations may be made to the common property.

Clause 43 of the Bill imposes a duty on the Corporation to insure its liability to repair damage to the condominium property and clause 44 of the Bill empowers unit owners to insure their respective units. Clause 45 of the Bill imposes a duty on the Corporation to undertake repairs to the units and common property after damage, imposes a duty on the Corporation to maintain the common property and also imposes a duty on each unit owner to maintain his or her unit. Clause 46 of the Bill imposes a duty on the board to determine whether damage to a building is substantial and empowers the unit owners to vote to repair the building. Clause 47 of the Bill provides for a scheme to be drawn up and submitted to the Corporation for approval for the purposes of effecting repairs to a building.

Clause 48 of the Bill provides for the termination of a condominium by notice after the building has been damaged and clause 49 of the Bill provides for the termination of the governance of condominium property by order of the High Court. Clause 50 of the Bill provides for mortgagees and charges to exercise the right of the owner to vote and clause 51 of the Bill provides for an application to be made to the High Court for an order directing the performance duties under the Bill. Clause 52 of the Bill provides for the inclusion of implied covenants in agreements of

purchase and sale of units, clause 53 of the Bill requires that all money received from a purchaser of a unit is to be held in trust.

Part V of the Bill makes provision for condominiums in the public sector and contains clauses 54 to 56. By clause 54 of the Bill, this Part of the Bill applies to condominiums owned or promoted by the Government or any other State-controlled entities. Clause 55of the Bill provides for the sale of units and issuance of instruments of title under this Part. Clause 56of the Bill provides for the chairman of the board of directors of any Corporation established for a condominium under this Part to be a public officer or an employee of a local Government authority, nominated by the Minister.

Part VI of the Bill makes certain miscellaneous provisions and contains clauses 57 to 65. Clause 57 of the Bill provides for the termination of a management agreement by the Corporation and clause 58 of the Bill provides for the examination of the Corporation's records and the procedure for following money received by the Corporation for common expenses. Clause 59 of the Bill provides for the appointment of an administrator by the High Court and his functions. Clause 60 of the Bill sets out the various penalties under the Bill. Clause 61 of the Bill empowers the Minister to exempt persons from the payment of any fees payable under the Bill.

Clause 62 of the Bill empowers the Minister to make regulations. Clause 63 of the Bill provides for the non-application of the rules of law against perpetuities and inalienability with respect to transactions under the Bill or to the terms of Declarations or by-laws registered in accordance with the Bill. Clause 64 of the Bill repeals the Condominium (Regulation and Miscellaneous

Provisions) Act, Cap. 36:22. Clause 65 of the Bill sets out the relevant savings and transitional provisions which are intended to take effect upon the repeal of the Condominium (Regulation and Miscellaneous Provisions) Act, Cap. 36:22 and the Condominium Regulations, No. 8 of 1990.

Hon. Collin Croal, MP
Minister of Housing and Water