



ANNO VICESIMO NONO  
ELIZABETHAE SECUNDAE REGINAE

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No. 42 of 1980

**An Act to provide for the horizontal subdivision and vertical subdivision of land into lots and the disposition of titles thereto; and for purposes incidental thereto and connected therewith; and to amend the Auctioneers and Agents Act 1971–1978 in certain particulars**

[ASSENTED TO 6TH JUNE, 1980]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. **Short title.** This Act may be cited as the *Building Units and Group Titles Act 1980*.

2. **Commencement.** This Act shall come into operation on a date to be fixed by Proclamation.

3. **Arrangement of Act.** This Act is arranged in Parts and Divisions and Schedules as follows:—

PART I—PRELIMINARY (ss. 1–7);

PART II—SUBDIVISION OF LAND (ss. 8–24);

*Division 1—Creation of Lots and Common Property*—(ss. 8–19);

*Division 2—Common Property*—(ss. 20–23);

*Division 3—Approval of Local Authority*—(s. 24);

PART III—VARIATION OR EXTINGUISHMENT OF PLANS (ss. 25–26);

PART IV—MANAGEMENT (ss. 27–68);

*Division 1—Bodies Corporate* (ss. 27–41);

*Division 2—Councils* (ss. 42–48);

*Division 3—Original Proprietors* (s. 49);

*Division 4—Managing Agents* (s. 50);

*Division 5—Proprietors and Other Occupiers of Lots* (ss. 51–53);

*Division 6—Insurance* (ss. 54–60);

*Division 7—Rating and Taxation* (ss. 61–68);

PART V—DISPUTES (ss. 69–118);

*Division 1—Referee* (ss. 69–70);

*Division 2—Applications for Orders* (ss. 71–74);

*Division 3—Orders by Referee* (ss. 75–95);

*Division 4—Tribunals* (ss. 96–105);

*Division 5—Appeals* (ss. 106–109);

*Division 6—Miscellaneous* (ss. 110–118);

PART VI—GENERAL (ss. 119–134);

SCHEDULES

FIRST SCHEDULE

PART 1—REPEALS;

PART 2—AMENDMENTS OF THE AUCTIONEERS AND AGENTS ACT 1971–1978;

SECOND SCHEDULE—MEETINGS OF, AND VOTING AT MEETINGS OF,  
BODY CORPORATE;

PART 1—FIRST ANNUAL GENERAL MEETING;

PART 2—MEETINGS OTHER THAN FIRST ANNUAL GENERAL  
MEETING;

THIRD SCHEDULE—BY LAWS.

**4. Repeals and amendments.** (1) The Acts referred to in Part 1 of the First Schedule are repealed as and to the extent indicated therein.

(2) (a) The *Auctioneers and Agents Act 1971–1978* is amended as and to the extent indicated in Part 2 of the First Schedule.

(b) That Act as so amended may be cited as the *Auctioneers and Agents Act 1971–1980*.

**5. Savings and transitional.** (1) (a) In this section, save where a contrary intention appears—

“appointed day” means the date fixed by proclamation under section 2;

“continued body corporate” means a body corporate continued by the operation of subsection (3);

“former Acts” mean the *Building Units Titles Act 1965–1972* and the *Group Titles Act 1973*;

“former building units plan” means a building units plan registered under the *Building Units Titles Act 1965–1972* and includes a building units plan of resubdivision registered under that Act;

“former by-law” means a by-law within the meaning of the former Acts that was in force immediately before the appointed day;

“former common property” means so much of a former parcel as, immediately before the appointed day, was not comprised in any former lot;

“former group titles plan” means a group titles plan registered under the *Group Titles Act 1973* and includes a group titles plan of resubdivision registered under that Act;

“former lot” means a lot or unit under the former Acts as it existed immediately before the appointed day;

“former parcel” means land which, immediately before the appointed day, comprised the former lots and the former common property the subject of a former plan;

“former plan” means a former building units plan or a former group titles plan;

“former proprietor” means a person who, immediately before the appointed day, was a proprietor of a former lot;

(b) For the purposes of the application of any provision of this Act to or in respect of a plan to which the provisions of this Act apply by reason of subsection (5), a reference to an original proprietor is a reference to the person who held the former parcel in fee-simple at the time of registration of the former plan in respect thereof.

(c) The express application with or without modification of any provision of this Act by any provision of this section to or in respect of any act, matter or thing referred to in this section shall not, except in so far as a contrary intention appears, be construed as preventing or limiting the application of any other provision of this Act to that or any other act, matter or thing.

(2) **Registration of plans.** (a) Notwithstanding section 9 or 10 a building units plan, group titles plan, building units plan of resubdivision or group titles plan of resubdivision within the meaning of the former Acts which is first lodged for registration after the appointed day may be registered as a building units plan, group titles plan, building units plan of resubdivision or group titles plan of resubdivision, as the case may be, but shall not be so registered unless—

- (i) the requirements of the former Acts have been or are complied with in so far as those requirements relate to the registration of a building units plan, group titles plan, building units plan of resubdivision or group titles plan of resubdivision, as the case may be;
- (ii) in the case of a building units plan, the certificate referred to in section 4 (6) (b) of the *Building Units Titles Act 1965–1972* states that the approval given by the local authority to the erection of that building was given not earlier than two years before the appointed day; and
- (iii) in the case of a group titles plan, the certificate referred to in section 4 (5) of the *Group Titles Act 1973* states that the decision of the local authority to approve in principle the application for that certificate was given not earlier than two years before the appointed day.

(b) Without limiting the generality of paragraph (a) (i), for the purpose of enabling a person to comply, as referred to in that paragraph, with the requirements of the former Acts—

- (i) the provisions of section 20 (other than subsection (4) (a), (c), (d), (e), (f) and (g)) of the *Building Units Titles Act 1965–1972* apply to and in respect of an application for a certificate referred to in section 4 (6) (b) of that Act relating to the proposed subdivision illustrated by a building units plan or building units plan of resubdivision referred to in paragraph (a); and
- (ii) the provisions of section 18 (other than subsection (5) (a), (c), (d), (e), (f) and (g)) of the *Group Titles Act 1973* apply to and in respect of an application for a certificate referred to in section 4 (5) of that Act, relating to the proposed subdivision illustrated by a group titles plan or group titles plan of resubdivision referred to in paragraph (a),

as if the former Acts had not been repealed.

(c) Where a plan is registered under paragraph (a), the land comprised in the plan shall be deemed to have been subdivided under this Act into lots and common property in the same manner as that land would have been subdivided if that plan had been registered under the former Acts and any such lots or common property shall, for the purposes of this Act, be deemed to be lots or common property.

(d) For the purposes of the registration of a plan under paragraph (a), the reference in section 10 (5) to a building units plan of resubdivision or a group titles plan of resubdivision shall be construed as a reference to a building units plan of resubdivision within the meaning of section 20 (4) of the *Building Units Titles Act 1965-1972* or, as the case may be, a group titles plan of resubdivision within the meaning of section 18 (5) of the *Group Titles Act 1973*.

(e) Where, under any provision of this Act, any act, matter or thing depends on or results from (either directly or indirectly) the registration of a plan, that provision operates in relation to the registration of a plan under paragraph (a) in the same way as it operates in relation to the registration of a plan.

(f) Subject to this subsection, a reference in this Act to a building units plan, group titles plan, building units plan of resubdivision or group titles plan of resubdivision includes a reference to a plan registered under paragraph (a) as a building units plan, group titles plan, building units plan of resubdivision or group titles plan of resubdivision, as the case may be.

(g) The address endorsed, as referred to in section 4 (1) (h) of the *Building Units Titles Act 1965-1972* or section 4 (1) (h) of the *Group Titles Act 1973*, upon a plan registered under paragraph (a) shall, for the purposes of this Act, be deemed to be the address for the service of notices on the body corporate concerned until that address is altered in accordance with this Act.

(h) The schedule endorsed, as referred to in section 18 of the *Building Units Titles Act 1965-1972* or section 15 of the *Group Titles Act 1973*, upon a plan (not being a building units plan of resubdivision within the meaning of section 20 (4) of the *Building Units Titles Act 1965-1972* or a group titles plan of resubdivision within the meaning of section 18 (5) of the *Group Titles Act 1973*) registered under paragraph (a) shall, for the purposes of this Act, be deemed to be the schedule referred to in section 9 (1) (f) or 9 (2) (f), as the case may be.

(i) A reference to a lot or unit shown in a plan capable of being registered under paragraph (a) made in any instrument executed before the registration of that plan under paragraph (a) (being an instrument relating to the sale or other disposition of an estate or interest in the lot or unit so shown) shall, on and after the registration of that plan, be construed as a reference to the lot which corresponds to the lot or unit so shown.

(3) **Continuation of bodies corporate.** A body corporate, constituted under the former Acts in relation to a former plan—

(a) shall continue notwithstanding the repeal of the former Acts;

- (b) shall, on the appointed day, be deemed to be the body corporate constituted under section 27 (1) in respect of that plan; and
- (c) notwithstanding section 27 (1), shall have as its corporate name its corporate name under the former Acts.

(4) **Continuation of estates or interests in former lots and former common property and rights in former common property.** A person who, immediately before the appointed day—

- (a) had an estate or interest in a former lot, has on that day the same estate or interest in the lot which corresponds to that former lot; or
- (b) had an estate or interest (not being a right or special privilege referred to in subsection (11)) in former common property, has on that day the same estate or interest in the common property which corresponds to that former common property.

(5) **Application of Act to former plans, former parcels, former lots and former common property.** Subject to this section, the provisions of this Act shall, on and from the appointed day, apply to and in respect of—

- (a) a former building units titles plan as if it were a building units titles plan;
- (b) a former group titles plan as if it were a group titles plan;
- (c) a former parcel as if it were a parcel;
- (d) a former lot as if it were a lot; and
- (e) former common property as if it were common property.

(6) **Registration of transfers or leases of common property registrable under former Acts.** Where a transfer or lease of any common property under the former Acts—

- (a) would under section 10 of the *Building Units Titles Act 1965-1972* or section 9 of the *Group Titles Act 1973* have been registrable had this Act not been enacted but had not, before the appointed day, been lodged for registration under those Acts; and
- (b) was executed pursuant to an agreement entered into by the body corporate before the appointed day,

that transfer or lease, upon its lodgment in the office of the Registrar of Titles, shall be dealt with under section 22 (11) as if it were a transfer or lease referred to in section 22 (1).

(7) **General meetings of certain continued bodies corporate.**

(a) Where, in relation to a continued body corporate the original proprietor is not, on the appointed day, the proprietor of any lots the subject of the plan and—

- (i) a general meeting of that body corporate has not been held before the appointed day, a general meeting of that body corporate shall be held within three months after the appointed day, and that general meeting shall, for the purposes of this Act (other than section 29 (4)) be the first annual general meeting of the body corporate; or

(ii) a general meeting of that body corporate has been held before the appointed day, the last general meeting of that body corporate held before that day shall, for the purposes of clause 1 (1) of Part 2 of the Second Schedule be deemed to have been the first annual general meeting.

(b) If a meeting of the body corporate is not held in accordance with paragraph (a) (i), the referee may, pursuant to an application by a proprietor or first mortgagee of a lot appoint, by order, a person to convene a general meeting within such time as may be specified in the order and the meeting convened by that person shall for the purposes of this Act (other than section 29 (4)) be the first annual general meeting of the body corporate.

(c) An order made under paragraph (b) may include such ancillary or consequential provisions as the referee thinks fit.

(d) The agenda for a meeting convened under paragraph (a) (i) or paragraph (b) shall be the agenda specified in section 29 (2).

(e) The original proprietor shall not fail or neglect to deliver to the body corporate (being a body corporate a general meeting of which is required to be held under paragraph (a) (i)), within 14 days after notice in writing is given to him by the body corporate or if the documents referred to in subparagraphs (i) and (ii) are not then in his possession within 14 days after they come into his possession or under his control—

(i) all plans, specifications, drawings showing water pipes, electric cables, drainage, ventilation ducts or air-conditioning systems, certificates (other than certificates of title for lots), diagrams (including lift wiring diagrams) and other documents (including policies of insurance) obtained or received by him and relating to the parcel or building;

(ii) any book of account, notice or other record relating to the plan; and

(iii) the budget showing the estimated expenditure of the body corporate in relation to the parcel on an annual basis,

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

Penalty: \$1 000.

**(8) Meetings of former bodies corporate held within two months after appointed day.** Notwithstanding the Second Schedule, for the purposes of any general meeting of a continued body corporate, being a general meeting held before the expiration of two months after the appointed day—

(i) the procedure for the convening and holding of meetings of such a body corporate and the rights of persons to vote at and to requisition meetings of such a body corporate shall be the same as they were under the former Acts; and

(ii) where a notice is given to the body corporate under section 53 (3), (5) or (6), the mortgagee specified in the notice shall have the same voting rights as he would have had if the meeting had been held in accordance with the former Acts and if the notice were a notice given under section 26 (2) of the *Building Units Titles Act 1965-1972* or section 24 (2) of the *Group Titles Act 1973*.

(9) **Notices served by public or local authority before the appointed day.** The reference in section 33 to a notice served on the proprietor of a lot by a public or local authority includes a reference to a notice served, before the appointed day, by such an authority on the proprietor of a former lot.

(10) **Effect of former by-laws.** Subject to subsection (11), the former by-laws relating to a former plan shall be the by-laws relating to the corresponding plan to which the provisions of this Act apply by reason of subsection (5) save to the extent of any inconsistency of the former by-laws with any provision of this Act other than the Third Schedule.

In relation to that plan those by-laws shall be deemed to be the by-laws set forth in the Third Schedule and the provisions of this Act shall apply thereto.

(11) **Maintenance of exclusive use, etc., of, and special privileges in respect of, common property.** Where immediately before the appointed day a proprietor of a former lot was entitled, whether pursuant to a resolution of the body corporate under the former Acts or pursuant to a former by-law, to a right of exclusive use and enjoyment of, or special privileges in respect of, any of the former common property, the proprietor for the time being of the lot shall continue to be entitled to that right or those special privileges and the resolution or former by-law, as the case may be, shall be deemed to be a by-law made pursuant to section 30 (7).

(12) **Recovery of contributions levied under former Acts.** (a) Any contribution levied under the former Acts by a body corporate and unpaid at the appointed day may be recovered by the continued body corporate as if it were a contribution levied under this Act.

(b) Any determination made under the former Acts by a body corporate specifying amounts to be raised by regular periodic contributions shall be deemed to be a determination made under section 38 (1) (j) of the kind referred to in section 38 (4).

(13) **Modification of section 38 (1) (e) in relation to continued bodies corporate.** In relation to a continued body corporate, a reference in section 38 (1) (e) to "Division 6" shall be read as a reference to Division 6, as modified by section 5 (20).

(14) **Inspection of former records, etc.** (a) A continued body corporate shall cause to be retained, until the expiration of the prescribed period, any records, minutes of meetings, notices and books of account kept or received by it before the appointed day and in its custody or under its control on that day and upon application under section 40 (1) made in respect of a lot the subject of the plan concerned shall make those records, minutes, notices and books available for inspection by the



applicant or his agent at a time and place ascertained in accordance with section 40 (1) (b).

(b) Section 40 (2) applies to the making of an inspection referred to in paragraph (a) in the same way as it applies to the making of an inspection referred to in section 40 (1) (b).

**(15) Administrative and sinking funds of continued bodies corporate.**

(a) Where a determination made under section 15 (2) (b) of the *Building Units Titles Act 1965-1972* or section 13 (2) (b) of the *Group Titles Act 1973* by a continued body corporate was in force immediately before the appointed day, that determination shall be deemed to be the determination required under section 38 (1) (j) to be made by that body corporate.

(b) Where a fund was, immediately before the appointed day, kept under section 15 (2) (a) of the *Building Units Titles Act 1965-1972* or section 13 (2) (a) of the *Group Titles Act 1973* by a continued body corporate that fund shall, on the appointed day, be deemed to be the fund required under section 38 (1) (l) to be established by that body corporate.

(c) In relation to a continued body corporate which had not, before the appointed day, made a determination under section 15 (2) (b) of the *Building Units Titles Act 1965-1972* or section 13 (2) (b) of the *Group Titles Act 1973*, in section 38 (1) (j) the words "14 days after the registration of the plan" shall be read and construed as "three months after the appointed day".

(d) In relation to a continued body corporate which had, before the appointed day, made a determination under section 15 (2) (b) of the *Building Units Titles Act 1965-1972* or section 13 (2) (b) of the *Group Titles Act 1973* but had not before that day established a fund under section 15 (2) (a) of the *Building Units Titles Act 1965-1972* or section 13 (2) (a) of the *Group Titles Act 1973*, in section 38 (1) (l) the words "upon first determining the amounts referred to in paragraph (j)" shall be read as "upon receiving any amounts raised pursuant to a determination referred to in section 5 (15) (a)".

(e) Until a continued body corporate establishes its sinking fund—

(i) it may disburse the moneys in its administrative fund for the purpose of meeting its liabilities referred to in section 38 (1) (j) or (k); and

(ii) section 38 (3) does not apply to that body corporate.

(f) Upon the establishment of its sinking fund a continued body corporate shall—

(i) determine what part of its administrative fund should be allocated for the purpose of meeting its actual or expected liabilities referred to in section 38 (1) (k); and

(ii) notwithstanding section 38 (3), transfer the amount so determined to its sinking fund.

**(16) Notices to continued body corporate in respect of roll.** A notice given under section 26 (2) of the *Building Units Titles Act 1965-1972* or section 24 (2) of the *Group Titles Act 1973* before the appointed day by a mortgagee to a body corporate shall, for the purpose of the making by the body corporate of a recording under section 39 (3) (c) of the name

of the mortgagee of the lot specified in the notice, be deemed to be a notice given to that body corporate under section 53 (3) and for the purpose of completing the recording in the roll required by section 39 (3) (c)—

- (a) the address, if any, specified in the notice as the address of the mortgagee shall be deemed to be the address for the service of notices on the mortgagee shown in a notice given to the body corporate under section 53 (3); and
- (b) where more than one notice is given to a body corporate before the appointed day, the body corporate shall record as the first mortgagee of the lot, the mortgagee first entitled in priority under the former Acts.

Any notice given before the appointed day by a mortgagor of a former lot to a body corporate, being a notice of the discharge of a mortgage notice of which had been given to the body corporate under section 26 (2) of the *Building Units Titles Act 1965-1972*, or section 24 (2) of the *Group Titles Act 1973*, shall, for the purpose of the making under section 39 (3) (e) by the body corporate of a recording of the discharge of that mortgage, be deemed to be a notice given to that body corporate under section 53 (4).

**(17) Modification of section 40 (1) (c) in relation to continued bodies corporate.** For the purposes of section 40 (1) (c), any contribution levied under the former Acts by a body corporate and unpaid before the appointed day shall—

- (a) if levied pursuant to a determination specifying amounts to be raised by regular periodic contributions, be deemed to be a contribution determined under section 38 (1) (j); or
- (b) except as provided in paragraph (a), be deemed to be a contribution determined under section 38 (1) (k).

**(18) Continuation of councils of continued bodies corporate.** (a) The council constituted under the former Acts of a continued body corporate shall, subject to this Act, be, on and from the appointed day, the council of that body corporate.

(b) A person who is a member of a council of a continued body corporate shall, for the purposes of section 43 (1), be deemed to have been elected as a member of that council if he was elected as a member of the council of the body corporate constituted under the former Acts.

(c) At the first meeting of the council after the commencement of this Act the council may elect persons who shall be chairman, secretary and treasurer of the body corporate until persons are elected to those offices by the body corporate.

**(19) Operation of section 53 in relation to former plan.** Section 53 extends to authorizing the giving by any person to a continued body corporate of a notice after the occurrence of any event specified in that section notwithstanding that that event occurred before the appointed day.

**(20) Modification of Part IV, Division 6.** (a) Section 55 does not apply to or in respect of a continued body corporate which has in force on the appointed day a policy of insurance expiring not later than one

year after the appointed day and effected by it in accordance with section 15 (1) (a) of the *Building Units Titles Act 1965-1972* or section 13 (1) (a) of the *Group Titles Act 1973*, until the expiry of that policy.

(b) Section 56 (1) (a) does not apply to or in respect of a continued body corporate which has in force on the appointed day a policy of insurance expiring not later than one year after the appointed day and effected by it in accordance with section 15 (1) (b) of the *Building Units Titles Act 1965-1972* or section 13 (1) (b) of the *Group Titles Act 1973*, until the expiry of that policy.

(c) Sections 57 (2) and 60 apply to and in respect of a policy of insurance entered into in accordance with the former Acts before the appointed day between a continued body corporate and an insurer in the same way as those sections apply to and in respect of a contract of insurance entered into between a body corporate and an insurer pursuant to Division 6 of Part IV.

(d) Notwithstanding the repeal of the *Building Units Titles Act 1965-1972* section 17 of that Act continues to apply to and in respect of a policy of insurance referred to in that section entered into before the appointed day until the expiry of that policy as if this Act had not been enacted.

**(21) Effect of section 62 in relation to former parcels.** (a) A valuation of a former parcel made by the Valuer-General in accordance with section 21 (2) (a) of the *Building Units Titles Act 1965-1972* or section 19 (2) (a) of the *Group Titles Act 1973* and in force immediately before the appointed day shall, for the purposes of this Act, be deemed to be a valuation made in accordance with section 62 (1) by the Valuer-General.

(b) In relation to a parcel to which the provisions of this Act apply by reason of subsection (5) a valuation of which had not, at the appointed day, been made in accordance with section 21 (2) (a) of the *Building Units Titles Act 1965-1972* or section 19 (2) (a) of the *Group Titles Act 1973*, in section 62 (2) the words "the registration of a plan" shall be read as "the appointed day".

**(22) Evidence of lot entitlement on former plans.** Save where particulars of the lot entitlements of lots are endorsed upon a copy of a registered plan (or amendment thereof) furnished by the Registrar of Titles under section 14, the particulars of the lot entitlements of any former lots shown on a certified copy of the building units plan referred to in section 21 (3) of the *Building Units Titles Act 1965-1972* or a group titles plan referred to in section 19 (3) of the *Group Titles Act 1973* or on any amendment thereof and furnished to any authority referred to in section 21 (3) of the *Building Units Titles Act 1965-1972* or section 19 (3) of the *Group Titles Act 1973* shall for the purposes of section 63 be deemed to be particulars endorsed on a plan furnished to that authority under section 14 of the lot entitlements of the lots.

**(23) Destruction of or damage to building or extinguishment under former Acts.** (a) Any proceedings under section 19 (1) of the *Building Units Titles Act 1965-1972* or section 16 (1) of the *Group Titles Act 1973* which were pending before the Court immediately before the appointed day may be continued and completed as if they were proceedings under section 25.

(b) A declaration made under section 19 (1) (b) of the *Building Units Titles Act 1965–1972* or section 16 (1) (b) (ii) of the *Group Titles Act 1973* before the appointed day shall, notwithstanding the repeal of the former Acts, continue to operate and shall have the same force and effect as if this Act had not been enacted.

(c) Any proceedings for an order referred to in section 19 (3) of the *Building Units Titles Act 1965–1972* which were pending before the Court immediately before the appointed day may be continued and completed as if they were proceedings under section 25 (7).

(d) An order made under section 19 (3) of the *Building Units Titles Act 1965–1972* before the appointed day shall, notwithstanding the repeal of the former Acts, continue to operate and shall, subject to paragraph (e), have the same force and effect as if this Act had not been enacted.

(e) An order referred to in section 19 (3) of the *Building Units Titles Act 1965–1972* may be varied in the same way as if it were an order made under section 25.

(f) Notwithstanding the repeal of the former Acts—

(i) section 11 of the *Building Units Titles Act 1965–1972* and the regulations made under that section continue to apply to and in respect of a building which before the appointed day was destroyed within the meaning of that Act and the parcel on which that building was situated;

(ii) section 17 of the *Group Titles Act 1973* and the regulations made under that section continue to apply to and in respect of a plan which before the appointed day was extinguished within the meaning of that Act.

**(24) Administrators under former Acts.** (a) A person who, immediately before the appointed day, held office as an administrator under section 23 of the *Building Units Titles Act 1965–1972* or section 21 of the *Group Titles Act 1973* shall, notwithstanding the repeal of the former Acts, continue to have the powers and duties he had, as the holder of that office, immediately before the appointed day.

(b) The provisions of section 23 of the *Building Units Titles Act 1965–1972* or section 21 of the *Group Titles Act 1973* continue to apply to and in respect of a person holding office as referred to in paragraph (a) notwithstanding the repeal of the former Acts.

(c) Where immediately before the appointed day an application under section 23 (1) of the *Building Units Titles Act 1965–1972* or section 21 (1) of the *Group Titles Act 1973* was pending, the Court shall remit the application to such referee as it thinks fit on such terms and conditions (including terms and conditions relating to the payment of the costs of the application up to the date of the remittal) as it thinks fit and an application so remitted shall be deemed to be an application capable of being made under section 94.

**(25) Recovery of rates paid by body corporate.** A continued body corporate may recover any amount referred to in section 16 (1) of the *Building Units Titles Act 1965–1972* or section 14 (1) of the *Group Titles*

*Act 1973* paid by it, whether before or after the appointed day, as if section 16 (3) of the *Building Units Titles Act 1965-1972* or section 14 (3) of the *Group Titles Act 1973* had not been repealed by this Act.

(26) **Regulations.** (a) The Governor in Council may, for the purposes of bringing lots, units, common areas, common property, bodies corporate and councils, within the meaning of the former Acts, under the provisions of this Act and applying the provisions of this Act, with or without modifications, additions or exclusions to or in respect of any such lots, units, common areas, common property, bodies corporate or councils, and for any purposes incidental thereto, make regulations containing such transitional, consequential or savings provisions as the Governor in Council considers necessary or expedient.

(b) A regulation made under this subsection may make provisions which differ in their application according to such factors as may be specified in the regulation.

**6. Construction of Act.** This Act shall be read and construed with and as an amendment of the *Real Property Acts, The Registrar of Titles Act of 1884, The Real Property (Local Registries) Act of 1887* and *The Central and Northern District Boundaries Act of 1900*:

Provided that those Acts shall be read and construed subject to this Act and to the extent that those Acts are inconsistent with this Act, this Act shall prevail.

**7. Interpretation.** (1) In this Act and in all instruments purporting to be made or executed thereunder unless the contrary intention appears—

“administrative fund” means the fund established by a body corporate under section 38 (1) (1);

“aggregate lot entitlement” means the sum of the lot entitlements of all lots on a plan;

“body corporate” means a body corporate incorporated by section 27;

“building” means the building or buildings shown on a building units plan each of which contains two or more lots or parts of lots and, where more than one building is shown on the plan, means any one or more of those buildings;

“building units plan” means a plan which—

(a) is described in the title or heading thereto as a building units plan;

(b) shows the building comprised therein as being divided into lots;

(c) shows the common property comprised therein; and

(d) complies with the requirements of section 9,

and includes a plan of resubdivision of a lot or common property or a lot and common property in a building units plan registered under this Act;

“common property” means so much of a parcel as from time to time is not comprised in any lot;

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- “company nominee”, in relation to a corporation, means the individual, if any, for the time being authorized under section 52 by the corporation;
- “council” means the council of a body corporate constituted under Division 2 of Part IV;
- “Court” means the Supreme Court of Queensland;
- “Crown Law Officer” means the Attorney-General or Solicitor-General;
- “group titles plan” means a plan which—
- (a) is described in the title or heading thereto as a group titles plan;
  - (b) shows the land comprised therein as being divided into lots and common property; and
  - (c) complies with the requirements of section 9, and includes a plan of resubdivision of a lot or common property or a lot and common property in a group titles plan registered under this Act;
- “land” means land under the provisions of the Real Property Acts held by the registered proprietor in fee-simple;
- “local authority”, in relation to a parcel, means the local authority for the area under the *Local Government Act 1936–1979* in which the parcel is situated or, where the parcel is situated in the City of Brisbane, Brisbane City Council as constituted under the *City of Brisbane Act 1924–1977*;
- “lot” means a lot shown as such on a plan;
- “lot entitlement” means the lot entitlement of a lot specified or apportioned in accordance with the provisions of section 10 (5) or (6) or 19, as the case may be;
- “managing agent” means a person appointed under section 50 or 94 for the time being a managing agent of a body corporate;
- “mortgage” includes a charge for securing money or money’s worth;
- “occupier”, in relation to a lot, means a person in lawful occupation of that lot;
- “original plan”—
- (a) in relation to a plan of resubdivision, means the registered plan containing the lots or common property the subject of the plan of resubdivision;
  - (b) in relation to a plan of amalgamation, means the registered plan containing the lots the subject of the plan of amalgamation;
  - (c) in relation to a conversion of lots into common property, means the registered plan containing those lots;
- “original proprietor” means the person by whom a parcel the subject of a plan was held in fee-simple at the time of registration of the plan;

- “ parcel ” means the land comprised in a plan;
- “ plan ” means a building units plan or a group titles plan;
- “ proprietor ” means the person for the time being registered or entitled to immediate registration under the Real Property Acts as the proprietor of a lot;
- “ Public Trustee ” means the Public Trustee within the meaning of the *Public Trustee Act 1978*;
- “ Real Property Acts ” means the *Real Property Act 1861–1979* and the *Real Property Act 1877–1979*;
- “ referee ” means a referee appointed under section 69;
- “ registered plan ” means a plan as amended from time to time registered under this Act;
- “ resolution without dissent ” means a resolution which is passed at a duly convened general meeting of a body corporate and against which no vote is cast;
- “ roll ” means the roll referred to in section 39 that relates to a plan or to a plan that has been extinguished;
- “ service right ” means a service right created or implied by section 17 or 18;
- “ service obligation ” means a service obligation created or implied by section 17 or 18;
- “ sinking fund ” means the fund established by a body corporate under section 38 (1) (m);
- “ special resolution ” means a resolution which is passed at a duly convened general meeting of a body corporate by the proprietors of not less than 75 per centum of the aggregate lot entitlement of the lots and not less than 75 per centum of the total number of proprietors;
- “ town planning scheme ” means a town planning scheme approved, and as amended from time to time, pursuant to the *Local Government Act 1936–1979*;
- “ tribunal ” means a tribunal constituted under section 96;
- “ unanimous resolution ” means a resolution which is unanimously passed at a duly convened general meeting of a body corporate at which all persons entitled to exercise the powers of voting conferred by or under this Act are present personally or by proxy or vote in writing at the time of the motion;
- “ wall ” includes door, window or other structure dividing a lot from common property or from another lot.

(2) A reference in this Act to a resubdivision of a lot or common property or of a lot and common property is a reference to the alteration of the boundaries of—

- (a) one or more lots so as to create only two or more different lots;
- (b) one or more lots so as to create one or more different lots and common property;

(c) one or more lots and common property so as to create one or more different lots or one or more different lots and common property; or

(d) common property so as to create one or more lots,

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

(3) In this Act, in relation to a parcel situated in the City of Brisbane, unless the contrary intention appears—

(a) a reference to the *Local Government Act 1936–1979* includes a reference to the *City of Brisbane Act 1924–1977* and the *City of Brisbane Town Planning Act 1964–1979*;

(b) a reference to a provision of the *Local Government Act 1936–1979* includes a reference to any corresponding provision of the *City of Brisbane Act 1924–1977* or the *City of Brisbane Town Planning Act 1964–1979*;

(c) a reference to the *City of Brisbane Town Planning Act 1964–1979* includes a reference to the Town Plan for the City of Brisbane approved pursuant thereto;

(d) a reference to a town planning scheme includes a reference to the town plan for the City of Brisbane approved, and as amended from time to time, pursuant to the *City of Brisbane Town Planning Act 1964–1979*.

(4) In this Act unless the contrary intention appears a reference to the *Local Government Act 1936–1979* includes a reference to any town planning scheme approved pursuant thereto that is applicable in relation to the parcel in question.

## PART II—SUBDIVISION OF LAND

### *Division 1—Creation of Lots and Common Property*

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

(2) A lot may consist of separate parts.

(3) When a plan has been registered—

(a) each lot comprised therein may devolve or be transferred, leased, mortgaged or otherwise dealt with; and

(b) subject to the approval of the local authority to the lease, a lease of part of a lot and, in the case of a group titles plan, of part of any improvements on a lot may be registered,

in the same manner and form as any other land held under the provisions of the Real Property Acts.

Easements to or over lots may be registered.

(4) A plan shall for the purposes of the Real Property Acts be deemed upon registration to be embodied in the register book; and notwithstanding the provisions of those Acts, a proprietor shall hold his lot and his share in the common property subject to any interests affecting the same for the time being notified on the registered plan and subject to any amendments to lots or common property shown on that plan.



(5) Upon registration of a plan a memorial thereof shall be entered on the deed of grant or certificate of title relating to the parcel and the Registrar of Titles shall thereafter be authorized to issue a separate certificate of title for each lot showing that the proprietor holds the share of the common property appurtenant thereto in accordance with the lot entitlement set forth in the plan.

(6) The provisions of section 67 of the *Auctioneers and Agents Act* 1971-1980 shall apply to a sale of any part of a parcel contained in a group titles plan as if that parcel were freehold land under the Real Property Acts.

**9. Registration of plan.** (1) A building units 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 such parcel;
- (c) include a drawing illustrating the lots and distinguishing such lots by numbers;
- (d) define the boundaries of each lot in the building by reference to floors, walls and ceilings:

Provided that it shall not be necessary to show any bearing or dimensions of a lot;

- (e) show the approximate floor area of each lot;
  - (f) have endorsed upon it a schedule complying with the provisions of section 19;
  - (g) have endorsed upon it the name of the building;
  - (h) have endorsed upon it the address at which documents may be served on the body corporate in accordance with section 127;
  - (i) contain such other features as may be prescribed.
- (2) A group titles plan shall—
- (a) delineate the external surface boundaries of the parcel and the location of each lot and the common property in relation thereto;
  - (b) bear a statement containing such particulars as may be necessary to identify the title to such parcel;
  - (c) delineate the lots and distinguish such lots by numbers;
  - (d) delineate the common property;
  - (e) show the area of each lot and of the common property;
  - (f) have endorsed upon it a schedule complying with the provisions of section 19;
  - (g) have endorsed upon it the name of the parcel;
  - (h) have endorsed upon it the address at which documents may be served on the body corporate in accordance with section 127;
  - (i) contain such other matters, be in such form and of such standard of accuracy, as may be prescribed.

(3) (a) Save with the consent of the Crown Law Officer a plan shall not be registered if the name of the building or the name of the parcel, as the case may be, endorsed thereon, in the opinion of the Registrar of Titles, is undesirable.

(b) A plan shall not be registered if the name of the building or the name of the parcel, as the case may be, endorsed thereon is currently endorsed on a registered plan or is reserved pursuant to section 120.

(4) A body corporate may, by resolution without dissent and with the consent of the Registrar of Titles, change the name of the building or the parcel, as the case may be, endorsed upon the plan to a name with which the plan could be registered without contravention of subsection (3).

(5) In a building units plan, the common boundary of any lot with another lot or with common property shall be the centre of the wall, floor or ceiling, as the case may be.

(6) Save with the consent of the Crown Law Officer upon the recommendation in writing of the local authority, a group titles plan shall not contain more than 50 lots.

(7) Every plan lodged for registration shall be endorsed with or be accompanied by a certificate of the local authority sealed with the common seal of the local authority that the proposed subdivision of the parcel as illustrated in the plan has been approved by the local authority and that all the requirements of the *Local Government Act 1936-1979* as modified by this Act have been complied with in regard to the subdivision.

(8) Every building units plan lodged for registration shall be endorsed with or be accompanied by certificates respectively—

(a) of a licensed surveyor registered under the *Surveyors Act 1977-1978* that the building shown on the building units plan is within the external surface boundaries of the parcel the subject of the building units plan and, where eaves or guttering project beyond such external boundaries, that an appropriate easement has been granted as an appurtenance of the parcel or, where that projection is over a road, that the local authority has consented thereto pursuant to the ordinances or by-laws, as the case may be; and

(b) where the construction of the building shown on the building units plan was commenced after 1st February, 1973, of an architect within the meaning of the *Architects Act 1962-1971* that the building has been substantially completed in accordance with plans and specifications approved by the local authority or a designated officer of the local authority or, where the building has not been constructed under the supervision of an architect, of a building surveyor (or where there is no building surveyor a building inspector) of the local authority (which certificate a building surveyor or building inspector is hereby authorized to give unless otherwise directed by the local authority) that the building has been substantially

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completed in accordance with plans and specifications approved by the local authority or a designated officer of the local authority.

(9) No certificate given by a building surveyor or building inspector in good faith for the purposes of subsection (8) (b) shall subject the building surveyor or building inspector to any liability whatsoever in respect thereof and the proof of any allegation of the absence of good faith on the part of the building surveyor or building inspector shall be upon the person so alleging.

(10) For the purposes of this section the terms "building surveyor" and "building inspector" include, where there is no building surveyor or building inspector of the local authority, the officer of the local authority whose duties include the performance of duties usually undertaken by a building surveyor or building inspector of a local authority.

(11) Before registering a building units plan the Registrar of Titles may require proof to his satisfaction by statutory declaration or otherwise of the time of commencement of construction of the building to which the plan relates.

(12) Every group titles plan lodged for registration shall be endorsed with or be accompanied by a certificate of a licensed surveyor registered under the *Surveyors Act 1977-1978* that the boundaries of the lots and of the common property shown on the group titles plan have been faithfully and truly surveyed, measured and marked on the ground and that the measurements and boundaries given in the plan are correct and comply with the standards of accuracy set forth in regulation 32 under the provisions of the *Surveyors Regulations 1978*.

(13) Before registering a plan the Registrar of Titles may make or cause to be made such inspection of the parcel to which the plan relates as he considers necessary.

(14) Upon lodgment for registration of a plan the Registrar of Titles shall allot thereto a number.

(15) Registration of a plan shall be effected by notifying under the seal of the Registrar of Titles on the plan the fact and date of such registration.

(16) Every building units plan, group titles plan, building units plan of resubdivision or amalgamation, group titles plan of resubdivision or amalgamation or notice of conversion lodged for registration shall be accompanied by the prescribed fees (including the fee prescribed pursuant to section 14).

**10. Resubdivision.** (1) Lots or common property or lots and common property may be resubdivided, with the approval of the local authority, by the registration of a plan relating to the lots or common property or lots and common property so resubdivided in the manner provided by this Act for the registration of plans:

Provided that lots or common property or lots and common property contained in a group titles plan may only be resubdivided by a group titles plan of resubdivision:

Provided further that where a resubdivision affects common property or creates additional common property the approval of the body corporate by unanimous resolution is required.

(2) The provisions of this Act relating to plans and to appeals from any decision of a local authority or failure of a local authority to make a decision shall with such modifications as may be necessary apply to resubdivision.

(3) Notwithstanding the provisions of section 27 proprietors of lots in a building units plan of resubdivision or group titles plan of resubdivision shall not be a body corporate, but shall, upon the date of registration of such plan of resubdivision be members of the body corporate constituted in respect of the original plan.

(4) On registration of a building units plan of resubdivision or group titles plan of resubdivision, lots comprised therein shall be subject to the burden and have the benefit of any easements, service rights and service obligations affecting such lots in the original plan as are included in the plan of resubdivision.

(5) Where the resubdivision is of one or more lots so as to create only two or more different lots the schedule endorsed on the building units plan of resubdivision or group titles plan of resubdivision as required by section 19 shall apportion among the lots the lot entitlement of such lot or lots in the original plan as are included in the plan of resubdivision and the Registrar when registering that plan shall amend the schedule to the original plan to show the lot entitlement of each lot and each proposed lot and the aggregate lot entitlement as whole numbers.

(6) Where the resubdivision affects common property or creates additional common property the schedule endorsed on the building units plan of resubdivision or group titles plan of resubdivision as required by section 19 shall—

(a) show as a whole number, in respect of—

(i) each lot comprised in the parcel other than any lot or lots the subject of the proposed resubdivision; and

(ii) each proposed lot,

the proposed lot entitlement of that lot or proposed lot and show the proposed aggregate lot entitlement; and

(b) be accompanied by a certificate under the seal of the body corporate concerned certifying that it has by unanimous resolution agreed to each proposed lot entitlement and the proposed aggregate lot entitlement shown in that schedule.

(7) A resubdivision that creates additional common property shall not be registered unless every mortgage, current lease, caveat or other interest recorded on the certificate of title in respect of each lot from

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which the additional common property or part thereof is derived has been discharged, surrendered, withdrawn or otherwise disposed of in so far as it affects that additional common property or part thereof.

(8) When registering a building units plan of resubdivision or group titles plan of resubdivision the Registrar of Titles shall amend the original plan in the manner prescribed.

(9) Upon registration of a building units plan of resubdivision or group titles plan of resubdivision land therein shall not be dealt with by reference to lots in the original plan.

(10) A reference in this section to common property means, in the case of a building units plan, the common property within a building.

**11. Amalgamation of lots.** (1) Two or more lots may be amalgamated into one lot with the approval of the local authority by the registration of a building units plan of amalgamation or group titles plan of amalgamation.

(2) The lot entitlement of a lot created by the amalgamation of two or more lots shall be the sum of the lot entitlements of those lots.

(3) When registering a building units plan of amalgamation or group titles plan of amalgamation the Registrar of Titles shall amend the original plan and the schedule of lot entitlements endorsed thereon in the manner prescribed.

**12. Conversion of lots into common property.** (1) One or more lots may be converted into common property with the approval of the local authority by registering with the Registrar of Titles, as a notice of conversion, a notice executed by the proprietor or proprietors of that lot or those lots and approved by the body corporate by unanimous resolution.

(2) The provisions of this Act relating to plans and to appeals from any decision of a local authority or failure of a local authority to make a decision shall with such modifications as may be necessary apply to conversions of lots into common property.

(3) A notice of conversion shall not be registered unless every mortgage, current lease, caveat or other interest recorded on each certificate of title has in so far as it affects the lot or lots to which the notice relates been discharged, surrendered, withdrawn or otherwise disposed of, as the case may be.

(4) When registering a notice of conversion the Registrar of Titles shall—

- (a) amend the original plan in the manner prescribed;
- (b) amend the schedule of lot entitlements endorsed upon the original plan in accordance with the schedule complying with the provisions of section 19 lodged with the notice; and
- (c) cancel the certificate of title for each lot converted into common property.

13. **Plans and notices of conversion to be signed.** Where a building units plan, group titles plan, building units plan of resubdivision or amalgamation, group titles plan of resubdivision or amalgamation or notice of conversion is lodged in the office of the Registrar of Titles for registration it shall not be registered unless it is signed by every person having a sufficient estate or interest to transfer the land or lots comprised in the plan or notice.

14. **Copies of plan to certain authorities and bodies corporate.** Upon payment of the prescribed fee the Registrar of Titles shall, within 28 days after the registration of a plan or an amendment thereof, furnish to the Valuer-General, to the Commissioner of Land Tax, to the local authority in relation to the parcel or any part thereof and to the body corporate, two copies of the registered plan or amendment thereof including all endorsements thereon.

15. **Support.** In respect of each lot there shall be implied—

- (a) in favour of the proprietor of the lot and as appurtenant thereto, an easement for the lateral support and, in the case of a building units plan, the subjacent support thereof by the common property and by every other lot capable of affording support whether by party wall or otherwise;
- (b) as against the proprietor of the lot and to which the same shall be subject, an easement for the lateral support and, in the case of a building units plan, subjacent support of the common property and of every other lot capable of enjoying support whether by party wall or otherwise.

16. **Shelter.** (1) Every proprietor of a lot in a building units plan shall be entitled to have his lot sheltered by all such parts of the building as are capable of affording shelter.

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

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

17. **Services.** In respect of each lot there shall be implied—

- (a) in favour of the proprietor of the lot and as appurtenant thereto, easements for the passage or provision of services (including water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air, heating oil, telephone, radio and television) through or by means of any pipes, poles, wires, cables or ducts to be laid down or erected or which are for the time being existing in or over the parcel to the extent to which those services are capable of being used in connexion with the enjoyment of the lot;
- (b) as against the proprietor of the lot and to which the lot shall be subject, easements for the passage or provision of services (including water, sewerage, drainage, gas, electricity, garbage,

artificially heated or cooled air, heating oil, telephone, radio and television) through or by means of any pipes, poles, wires, cables or ducts to be laid down or erected or which are for the time being existing within that lot as appurtenant to the common property and also to every other lot capable of enjoying such services,

but the easements conferred by this section shall not be exercised by any proprietor in such a manner as unreasonably to prevent any other proprietor from enjoying the use and occupation of his lot and the common property.

**18. Ancillary rights.** All ancillary rights and obligations reasonably necessary to make easements effective shall apply in respect of easements implied or created by this Act.

**19. Lot entitlement.** (1) Every plan lodged for registration and every notice of conversion shall have endorsed upon it a schedule specifying in whole numbers the lot entitlement of each lot and a number equal to the aggregate lot entitlement of all lots contained in that plan, and that lot entitlement shall determine—

- (a) the voting rights of proprietors;
- (b) the quantum of the undivided share of each proprietor in the common property;
- (c) the proportion payable by each proprietor of contributions levied pursuant to section 32.

(2) In a group titles plan the lot entitlement of each lot shall (as nearly as is practicable) bear in relation to the aggregate lot entitlement of all lots contained in that plan the same proportion as the unimproved value of that lot bears to the sum of the unimproved values of all the lots contained in the plan.

(3) Every group titles plan lodged for registration as such shall be accompanied by a certificate under the hand of a valuer registered under the provisions of the *Valuers Registration Act 1965-1979* setting out his opinion as to the unimproved value, and the lot entitlement, of each lot contained in the plan.

#### *Division 2—Common Property*

**20. Ownership of common property.** (1) The common property shall be held by the proprietors as tenants in common in shares proportional to the lot entitlements of their respective lots.

(2) The Registrar of Titles in issuing a certificate of title for a lot shall certify therein that the proprietor holds the share in the common property appurtenant thereto in accordance with the lot entitlement of that lot as set forth in the plan.

(3) Save as in this Act provided, no share in the common property shall be disposed of except as appurtenant to the lot of the proprietor and any assurance of a lot shall operate to assure the share of the disposing party in the common property without express reference thereto.

**21. Acquisition of additional common property.** (1) A body corporate may, pursuant to a unanimous resolution, accept—

- (a) a transfer of land, not being a lot within the parcel, which abuts on the parcel; or
- (b) a lease of land, not being a lot within the parcel, whether or not it abuts on the parcel,

for the purpose of creating additional common property.

(2) A transfer or lease referred to in subsection (1) shall be accompanied by—

- (a) the certificate of title comprising the land described in the transfer or lease or, in the case of a transfer of a lease or sub-lease, the registered lease referred to in the transfer or sub-lease;
- (b) a certificate under the seal of the body corporate certifying that the resolution authorizing the acceptance of the transfer or lease was a unanimous resolution,

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

(3) Upon the registration under the Real Property Acts of any such transfer, other than a transfer of a lease, the land comprised therein becomes common property and is subject to the provisions of this Act relating to common property and the Registrar of Titles shall make an appropriate recording on the registered plan to which the parcel relates.

(4) Upon the registration under the Real Property Acts of any such lease, transfer of a lease or sub-lease—

- (a) the leasehold interest becomes common property and thereupon is subject to such of the provisions of this Act relating to common property as are applicable to a leasehold interest;
- (b) the body corporate is responsible for all payments and the performance of all duties required of the lessee by the terms of the lease or sub-lease, as the case may be; and
- (c) the Registrar of Titles shall make an appropriate noting on the registered plan to which the parcel relates and on the certificate of title or the lease, as the case may be, comprising the demised land to the effect that during the term of the lease or sub-lease the demised land is incorporated with and as part of, the common property.



(5) A body corporate may, pursuant to a unanimous resolution and with the concurrence of the lessor, surrender a lease accepted by it under this section.

(6) Upon the registration under the Real Property Acts of any such surrender the Registrar of Titles shall make an appropriate recording on the registered plan on which the lease was recorded.

**22. Transfer or lease of part of common property.** (1) A body corporate may, subject to the approval of the local authority—

(a) pursuant to a unanimous resolution, execute a transfer of;

(b) pursuant to a special resolution, execute a lease of or rent, part of common property other than common property the subject of a lease accepted or acquired by the body corporate under section 21 (1).

(2) Subject to the approval of the local authority and if not prevented by the terms of the lease a body corporate may, pursuant to a special resolution, transfer a lease of common property accepted or acquired by it under section 21 (1) or grant, by way of sub-lease, a lease of its estate or interest in common property the subject of a lease so accepted or acquired.

(3) A body corporate may, pursuant to a special resolution, accept the surrender of a lease, or, if otherwise empowered so to do, re-enter under a lease granted under subsection (1) or (2) or referred to in section 5 (6).

(4) Subject to subsection (7), the provisions of this Act relating to subdivision and to appeals from any decision of a local authority or failure of a local authority to make a decision shall with such modifications as may be necessary apply to transfers and to leases of part of common property.

(5) A transfer or lease of part of the common property shall be with such modifications as may be necessary in conformity with the provisions of the *Local Government Act 1936-1979*.

(6) The body corporate, if it is satisfied that all persons having registered interests in the parcel and all other persons having interests (other than statutory interests) which have been notified to the body corporate have—

(a) in the case either of a memorandum of transfer or lease, consented in writing to the release of those interests in respect of the land comprised in the proposed transfer; or

(b) in the case of a lease, approved in writing of the execution of the proposed lease,

shall execute the appropriate memorandum of transfer or lease and the memorandum of transfer or lease shall be valid and effective without execution by any person having an interest in the common property and the receipt of the body corporate for the purchase money, rent, premiums or other moneys payable to the body corporate under the terms of the memorandum of transfer or lease shall be a sufficient

discharge, and shall exonerate the persons taking under the memorandum of transfer or the lessee, as the case may be, from any responsibility for the application of the moneys expressed to have been so received.

(7) The local authority shall not give its approval to a transfer, lease, sub-lease or transfer of a lease of part of the common property unless it is satisfied—

- (a) that the proposed transfer, lease, sub-lease or transfer of lease 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;
- (b) that if the application for approval were an application to the local authority for a certificate for the purposes of section 9 (7) in respect of the subdivision of the parcel as illustrated in the plan (excluding the part the subject of the proposed transfer, lease, sub-lease or transfer of lease) it would be proper for the local authority to direct the issue of the certificate;
- (c) that the easements, services and rights referred to in sections 15, 16, 17 and 18 and presently enjoyed or exercised, or capable of being enjoyed or exercised, will not be, or be likely to be, unduly interfered with by the proposed transfer, lease, sub-lease or transfer of lease or that suitable alternative arrangements approved by the local authority have been agreed upon by the parties in relation thereto.

(8) Every—

- (a) memorandum of transfer or lease executed pursuant to subsection (1); and
- (b) transfer of lease or sub-lease executed, or surrender of lease accepted pursuant to subsection (2) or (3),

lodged for registration with the Registrar of Titles shall be endorsed with or accompanied by a certificate under the seal of the body corporate that the resolution was duly passed, that the memorandum of transfer, lease, sub-lease, transfer of lease or surrender of lease conforms with the terms thereof and that all necessary consents were given.

(9) In favour of purchasers or lessees of part of the common property and in favour of the Registrar of Titles the certificate shall be conclusive evidence of the matters certified therein.

(10) Upon lodgment for registration of a memorandum of transfer of part of the common property and any plan of subdivision under the Real Property Acts necessary therefor, the Registrar of Titles shall, before issuing a certificate of title, amend the registered plan by deleting therefrom the part of common property comprised in the memorandum of transfer.

(11) The Registrar of Titles shall register—

- (a) the memorandum of transfer by noting it on the registered plan in the manner prescribed and issuing to the transferee a certificate of title for the land transferred;

- 
- (b) the lease executed pursuant to subsection (1) or the surrender of that lease by noting it on the registered plan in the manner prescribed;
  - (c) the transfer of lease, sub-lease or surrender of sub-lease by making any memorials in accordance with the provisions of the Real Property Acts and by noting it on the registered plan in the manner prescribed.

(12) Notwithstanding the provisions of this section a body corporate shall not grant a lease of common property where the access to or egress from the parcel by any proprietor is interfered with.

**23. Creation of easements.** (1) A body corporate may by unanimous resolution—

- (a) execute a grant of easement;
- (b) accept a grant of easement;
- (c) surrender a grant of easement;
- (d) accept the surrender of a grant of easement.

(2) Subsection (1) does not authorize a body corporate to accept a grant or execute a surrender of easement relating to common property the subject of a lease accepted or acquired by the body corporate under section 21 (1) that, apart from subsection (1), it is not entitled to accept or execute as a lessee or, by the terms of the lease, it is prevented from accepting or executing.

(3) A body corporate may, pursuant to a unanimous resolution, consent to the execution or acceptance by a lessor of a grant or surrender of easement relating to common property the subject of a lease accepted or acquired by the body corporate under section 21 (1).

(4) The body corporate, if it is satisfied that all persons having registered interests in the parcel and all other persons having interests (other than statutory interests) which have been notified to the body corporate have consented in writing to the release of those interests in respect of the land comprised in the proposed disposition, shall execute the appropriate instrument and any plan necessary therefor and every instrument shall be valid and effective without execution by any person having an interest in the parcel, and the receipt of the body corporate of any moneys payable to the body corporate under the terms of the instrument shall be a sufficient discharge, and shall exonerate the persons taking under the instrument from any responsibility for the application of the moneys expressed to have been so received.

(5) Every instrument executed pursuant to subsection (4) and lodged for registration with the Registrar of Titles shall be endorsed with or accompanied by a certificate under the seal of the body corporate that the resolution was duly passed and that all necessary consents were given.

(6) In favour of persons dealing with the body corporate pursuant to this section and in favour of the Registrar of Titles the certificate shall be conclusive evidence of the matters certified therein.

(7) The Registrar of Titles shall register the instrument creating or surrendering an easement by noting it on the registered plan in the manner prescribed.

*Division 3—Approval of Local Authority*

**24. Approval of subdivision.** (1) The provisions relating to subdivision of land contained in the *Local Government Act 1936–1979*, or any other Act, shall not apply to—

- (a) a subdivision of land into lots effected by the registration of a building units plan; or
- (b) a resubdivision of lots or common property or lots and common property effected by the registration of a building units plan of resubdivision:

Provided always that the boundaries of the parcel correspond with boundaries of a lawful subdivision within the meaning of the *Local Government Act 1936–1979*.

(2) Subject to this section, the local authority may direct the issue of a certificate for the purposes of section 9 (7) in relation to—

- (a) a subdivision of land into lots effected by the registration of a group titles plan; or
- (b) a resubdivision of lots or common property or lots and common property effected by the registration of a group titles plan of resubdivision,

notwithstanding that it does not comply with the provisions relating to subdivision contained in the *Local Government Act 1936–1979*.

To the extent to which the local authority, on application stating the specific provisions from which waiver is required and the reason therefor and having regard to all the circumstances of the case, considers that waiver of compliance with those provisions is warranted, the local authority is hereby authorized to waive such compliance, but the boundaries of the parcel shall correspond with the boundaries of a lawful subdivision within the meaning of the *Local Government Act 1936–1979*.

(3) The power of a local authority to make ordinances or by-laws, as the case may be, shall include power to make all such ordinances or by-laws not inconsistent with this Act as may be necessary or convenient to regulate and control subdivision undertaken by the registration of a group titles plan pursuant to the provisions of this Act (including but without limiting the generality hereof matters to which sections 22 and 25 relate).

(4) In respect of an application for a certificate for the purposes of section 9 (7) the local authority shall, subject to subsection (5), direct the issue of the certificate if it is satisfied that—

- (a) the subdivision complies with the applicable provisions referred to in subsections (1), (2) and (3);

- (b) separate occupation of the proposed lots will not contravene—
  - (i) the provisions of—
    - (A) the town planning scheme; or
    - (B) a by-law made pursuant to section 33 (21) of the *Local Government Act 1936–1979*; or
  - (ii) the policies of the local authority in force—
    - (A) in the case of a building units plan, at the date of the approval given by the local authority to the erection of the building; or
    - (B) in the case of a group titles plan, at the date of lodgment of the application;
- (c) any consent or approval required under any such town planning scheme, ordinance or by-law has been given in relation to the separate occupation of the proposed lots;
- (d) 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, the public interest and the adequacy of access drives and parking areas within the common property.

(5) (a) Within 40 days (or such longer period as may be approved by the Minister for the time being charged with the administration of the *Local Government Act 1936–1979*) after the date of receipt of the application in respect of a group titles plan for a certificate for the purposes of section 9 (7), the local authority shall notify the applicant in writing of its decision to approve and the conditions imposed, if any, or refuse the application but the local authority shall not issue such a certificate until it is satisfied that any necessary works lawfully required by the conditions of approval are completed and any money lawfully required to be paid to the local authority is paid and that the applicant has entered into any necessary agreement with the local authority lawfully required and has furnished any security lawfully required by the ordinances or by-laws, as the case may be, of the local authority and that all other conditions of approval lawfully required have been complied with in every respect.

(b) Where the application has been approved pursuant to paragraph (a) and the applicant has complied in every respect with the requirements of or pursuant to the ordinances or by-laws, as the case may be, of the local authority, the local authority shall within 14 days of notice being given to it of such compliance or, if the relevant plan is submitted to it at a later date, within 14 days of such later date, issue or endorse on the plan the certificate required for the purposes of section 9 (7).

(6) An applicant for a certificate required for the purposes of section 9 (7) who feels aggrieved by—

- (a) the refusal of a local authority to direct the issue of the certificate;
- (b) the failure of a local authority to—
  - (i) direct the issue of a certificate; or
  - (ii) notify approval and conditions imposed (if any) pursuant to subsection (5) (a),

within 40 days (or such longer period as may be approved by the Minister for the time being charged with the administration of the *Local Government Act 1936-1979*) after the receipt by the local authority of the application for that certificate;

- (c) the conditions imposed by a local authority pursuant to subsection (5) (a); or
- (d) the failure of a local authority to comply with the provisions of subsection (5) (b),

may appeal to The Local Government Court within the meaning of the *City of Brisbane Town Planning Act 1964-1979* in accordance with the provisions of section 34 (15) of the *Local Government Act 1936-1979* and the provisions of that section shall extend with such modifications as may be necessary to and in respect of such appeal.

(7) The decision of The Local Government Court upon any appeal under this Act shall be final and shall be binding upon the local authority and the appellant and for the purposes of this Act shall be deemed to be the final decision of the local authority.

### PART III—VARIATION OR EXTINGUISHMENT OF PLANS

**25. Variation or extinguishment of plan.** (1) For the purposes of this Act a plan is extinguished on the happening of the following events:—

(a) when—

- (i) the body corporate by unanimous resolution so resolves; or
- (ii) 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 plan should be extinguished, and makes an order to that effect; and

(b) when, in the case of a group titles plan, the approval of the local authority to the extinguishment has been obtained.

(2) Upon a proposal to extinguish a group titles plan pursuant to this section, the body corporate shall make application to the local authority for approval to the extinguishment of the plan.

(3) Upon an application pursuant to subsection (2) the local authority shall not refuse to approve the application but may approve the application subject to reasonable and relevant conditions including—

- (a) the removal of such improvements therefrom as would be necessary for the land and improvements remaining thereon to comply with the requirements of the ordinances or by-laws, as the case may be, of the local authority;
- (b) the subdivision of the parcel in such a manner that the locations of any remaining improvements thereon comply with the provisions of the ordinances or by-laws, as the case may be, of the local authority.

(4) (a) Within 40 days (or such longer period as may be approved by the Minister for the time being charged with the administration of the *Local Government Act 1936-1979*) after the date of receipt of an application for approval pursuant to subsection (2) the local authority shall notify the applicant in writing of its decision to approve the application and the conditions, if any, required by the local authority.

(b) Where the application has been approved and the applicant has complied in every respect with the conditions, if any, lawfully imposed by the local authority pursuant to subsection (3), the local authority shall within 14 days of notice being given to it of such compliance issue a certificate that the requirements of the local authority have been complied with.

(5) An applicant for approval to the extinguishment of a plan who feels aggrieved by—

(a) the failure of a local authority to notify approval and the conditions imposed (if any) within 40 days (or such longer period as may be approved by the Minister for the time being charged with the administration of the *Local Government Act 1936-1979*) after the receipt by the local authority of the application for approval;

(b) the conditions imposed by a local authority pursuant to subsection (3); or

(c) the failure of a local authority to comply with the provisions of subsection (4) (b),

may appeal to The Local Government Court within the meaning of the *City of Brisbane Town Planning Act 1964-1979* in accordance with the provisions of section 34 (15) of the *Local Government Act 1936-1979* and the provisions of that section shall extend with such modifications as may be necessary to and in respect of such appeal.

(6) Where an order is made pursuant to subsection (1) (a) (ii), the Court may by order—

(a) 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 body corporate and the proprietors and as amongst the proprietors themselves the effect of the order; and

(b) in the case of a group titles plan, impose any of the conditions which a local authority may impose pursuant to subsection (3).

(7) (a) Where a building is damaged but the relevant building units plan is not extinguished pursuant to subsection (1), the Court may by order settle a scheme, including provisions—

(i) for the reinstatement in whole or in part of the building;

(ii) for the transfer or vesting of the interests of proprietors of lots which have been wholly or partially destroyed to the other proprietors in proportion to their lot entitlements.

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

- (i) directing the application of insurance moneys received by the body corporate in respect of damage to the building;
- (ii) directing payment of money by the body corporate or by proprietors or by some one or more of them;
- (iii) directing such amendment of the building units plan as the Court thinks fit, so as to include in the common property any accretion thereto;
- (iv) imposing such terms and conditions as it thinks fit.

(8) For the purpose of the foregoing provisions of this section an application may be made to the Court by the body corporate or by a proprietor or by a registered mortgagee of a lot.

(9) On an application to the Court under the foregoing provisions of this section in relation to a building units plan, an insurer who has effected insurance on a building or any part thereof (being insurance against destruction of lots or damage to the building) shall have the right to appear in person or be represented by counsel or a solicitor, or by an agent authorized in writing, who may examine witnesses and address the Court on behalf of the insurer.

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

(11) (a) The Court, on the application of the body corporate, a proprietor or the managing agent appointed under section 94, may by order make provision for the winding up of the affairs of the body corporate.

(b) By the same or subsequent order the Court may declare the body corporate dissolved as on and from a date specified in the order.

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

(13) Where the Court makes an order under subsection (7) the Registrar of Titles shall, upon lodgment for registration of a request to register that order, do all such things as appear to him to be necessary or proper to give effect to the order.

**26. Disposition on extinguishment of plan.** (1) Upon extinguishment of a plan the body corporate shall forthwith lodge with the Registrar of Titles—

- (a) a notification of the extinguishment in the form prescribed; and
- (b) in the case of a group titles plan, the certificate of the local authority that the requirements of the local authority have been complied with, together with any plan of subdivision under the Real Property Acts approved by the local authority and required by the local authority pursuant to section 25 (3) (b).



(2) Upon receipt of the notification referred to in subsection (1) together with any other documents required to be lodged by that subsection, the Registrar of Titles shall make an entry thereof on the registered plan in the manner prescribed.

(3) Upon the entry in pursuance of subsection (2) the proprietors shall be entitled to the land comprised in the extinguished plan as tenants in common—

- (a) in the case of a building units plan, in shares proportional to the lot entitlements of their respective lots; or
- (b) in the case of a group titles plan, in such shares as the proprietors by unanimous resolution may resolve or as the Court may order having regard to the rights and interests of the proprietors as a whole upon an application made to the Court by any person specified in section 25 (8).

(4) Upon extinguishment of a plan, the body corporate by unanimous resolution may transfer the land comprised in the extinguished plan or any part or parts thereof.

(5) The body corporate, if it is satisfied that all persons having registered interests in the parcel and all other persons having interests (other than statutory interests) which have been notified to the body corporate have consented in writing to the release of those interests in respect of the land comprised in the proposed disposition, shall execute the appropriate memorandum of transfer and the memorandum of transfer shall be valid and effective without execution by any person having an interest in the parcel and the receipt of the body corporate for any moneys payable to the body corporate under the terms of the memorandum of transfer shall be a sufficient discharge, and shall exonerate the persons taking under the memorandum of transfer from any responsibility for the application of the moneys expressed to have been so received.

(6) Every memorandum of transfer executed pursuant to subsection (5) and lodged for registration shall be endorsed with or accompanied by a certificate under the seal of the body corporate that the resolution was duly passed and that all necessary consents were given.

(7) In favour of purchasers of the land comprised in the extinguished plan and in favour of the Registrar of Titles, the certificate shall be conclusive evidence of the facts stated therein.

(8) Upon lodgment for registration of a memorandum of transfer of land comprised in an extinguished plan by the body corporate pursuant to this section, the Registrar of Titles shall, before issuing a certificate of title, make the entry prescribed by subsection (2).

(9) Where land is transferred by the body corporate pursuant to this section—

- (a) the proprietors shall surrender to the Registrar of Titles their duplicate certificates of title for cancellation;
- (b) the Registrar of Titles shall, after cancelling the folios of the register book constituted by the certificates of title relating to the lots, register the memorandum of transfer by issuing to the

transferee a certificate of title for the land transferred and, where part only of the land comprised in the extinguished plan is transferred, issue to the proprietors as tenants in common in the shares determined pursuant to subsection (3) a certificate of title for that part of the land that was not transferred.

(10) Where no resolution is made in accordance with subsection (4) the proprietors may surrender to the Registrar of Titles their duplicate certificates of title for cancellation and the Registrar of Titles shall, after cancelling the folios of the register book constituted by the certificates of title relating to the lots, issue to the proprietors as tenants in common in the shares determined pursuant to subsection (3) a certificate of title under the Real Property Acts for the land comprised in the extinguished plan.

(11) The person who is the proprietor of a lot immediately prior to the extinguishment of a plan shall continue after extinguishment to be liable for any rate or charge made and levied by a local authority before extinguishment in respect of that lot.

#### PART IV—MANAGEMENT

##### *Division 1—Bodies Corporate*

**27. Constitution of bodies corporate.** (1) The proprietor or proprietors from time to time shall, by virtue of this Act, upon registration of the plan be a body corporate under the name “The Proprietors—(insert name of the building) Building Units Plan No.                   ” or “The Proprietors—(insert name of the parcel) Group Titles Plan No.                   ”, as the case may be. (The name of the building or parcel shall be the name endorsed upon the relevant plan and the plan number shall be the number allotted to that plan pursuant to section 9 (14).

(2) The *Companies Act* 1961–1978 does not apply to or in respect of a body corporate constituted under this Act.

(3) Subject to this Act the body corporate shall have the powers, authorities, duties and functions conferred or imposed on it by or under this Act or the by-laws and shall do all things reasonably necessary for the enforcement of the by-laws and the control, management and administration of the common property.

(4) Notwithstanding the provisions of section 25, a body corporate continues in existence until the folios of the register book constituted by the certificates of title relating to the lots under the plan have been cancelled.

(5) The body corporate shall have perpetual succession and a common seal and shall be capable of suing and being sued in its corporate name and shall be regulated in accordance with the by-laws for the time being in force.

(6) The body corporate may—

(a) sue and be sued on any contract made by it;

- (b) sue for and in respect of any damage or injury to the common property caused by any person, whether a proprietor or not;
- (c) be sued in respect of any matter connected with the parcel for which the proprietors are jointly liable.

(7) In any case in which work is carried out for the purpose of constructing or preparing the common property the body corporate, upon registration of the plan, shall be deemed to have been a party to an enforceable contract for the carrying out of such work, and may sue in respect of that contract.

**28. Seal of body corporate.** (1) The common seal of a body corporate shall be kept—

- (a) where the body corporate is constituted by one proprietor, by that proprietor; or
- (b) where the body corporate is constituted by two or more proprietors, by such proprietor or member of the council as the body corporate determines or, in the absence of any such determination, by the secretary of the council.

(2) The common seal of the body corporate shall only be affixed to an instrument or document in the presence of—

- (a) where the body corporate is constituted by one or two proprietors, that proprietor or those proprietors, as the case may be; or
- (b) where the body corporate is constituted by more than two proprietors, such two persons, being proprietors or members of the council, as the body corporate determines or, in the absence of any such determination, the secretary and any other member of the council,

who shall attest the fact and date of the affixing of the seal by their signatures.

(3) Notwithstanding subsections (1) and (2), a managing agent shall, for the purpose of exercising or performing any of his powers, authorities, duties or functions, be entitled to have the custody of the common seal of the body corporate and to affix it to any instrument or document and, where he so affixes it, shall attest the fact and date of the affixing of the seal by his signature.

(4) Where a managing agent has affixed the common seal of the body corporate to any instrument or document, he shall be deemed to have done so under the authority of a delegation made under section 50 by the body corporate.

(5) Subsection (4) shall not operate so as to enable a person to fraudulently obtain a benefit from its operation, but any benefit that accrues to a person from the operation of that subsection shall be deemed not to be fraudulently obtained if the benefit was first obtained by that person without any fraud by him.

**29. Meetings of body corporate.** (1) Within three months after the registration of the plan, the original proprietor, whether or not he is a proprietor at the time he does so, shall, in the prescribed manner, convene a meeting of the body corporate to be held within that period.

Penalty: \$1 000.

(2) The agenda for a meeting convened under subsection (1) shall consist of the following items:—

- (a) to decide whether insurances effected by the body corporate should be confirmed, varied or extended;
- (b) to decide whether any amounts determined under section 38 (1) (j) or (k) or (2) should be confirmed or varied;
- (c) where there are more than three proprietors, to determine the number of members of the council;
- (d) to elect the chairman, secretary and treasurer of the body corporate and other members of the council;
- (e) to decide what matters, if any, shall be restricted matters for the purposes of section 46;
- (f) to decide whether the by-laws in force immediately before the holding of the meeting should be amended, added to or repealed; and
- (g) to decide whether a managing agent should be appointed under section 50 by the body corporate and, if a managing agent is to be appointed, which powers, authorities, duties or functions of the body corporate should be delegated to him.

(3) The meeting convened under subsection (1) shall be the first annual general meeting of the body corporate and at such meeting a chairman, secretary and treasurer shall be elected:

Provided that a person may be elected to one or more of those offices.

(4) An original proprietor shall not fail or neglect to deliver to the body corporate at its first annual general meeting—

- (a) all plans, specifications, drawings showing water pipes, electric cables, drainage, ventilation ducts or air-conditioning systems, certificates (other than certificates of title for lots), diagrams (including lift wiring diagrams) and other documents (including policies of insurance) obtained or received by him and relating to the parcel or building;
- (b) if they are in his possession or under his control, the roll, books of account and any notices or other records relating to the plan; and
- (c) the budget showing the estimated expenditure of the body corporate in relation to the parcel on an annual basis,

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

Penalty: \$1 000.

(5) Part 1 of the Second Schedule applies to and in respect of the first annual general meeting of the body corporate and voting at that meeting and Part 2 of the Second Schedule applies to and in respect of meetings of the body corporate, other than the first annual general meeting, and voting at those meetings.

(6) If a meeting of the body corporate is not convened in accordance with subsection (1), a referee may, pursuant to an application by the body corporate, a proprietor or a mortgagee of a lot, appoint by order a person to convene a meeting of the body corporate within such time as may be specified in the order and the meeting convened by that person shall, for the purposes of subsection (3), be deemed to be the meeting convened under subsection (1).

(7) At any time after the meeting convened under subsection (1) has been held, the referee may, pursuant to an application made to him by a proprietor or mortgagee of a lot, appoint by order a person, nominated by the proprietor or mortgagee, who has consented to that nomination, if there is not a council, to convene a meeting of the body corporate within such time as may be specified in the order and a meeting so convened shall, for the purpose of the election of the chairman, secretary and treasurer of the body corporate and the other members of the council, be deemed to be a first annual general meeting of the body corporate.

(8) An order made under subsection (6) or (7) may include such ancillary or consequential provisions as the referee thinks fit.

(9) Notwithstanding the Second Schedule, where an order made under subsection (6) or (7) so provides—

(a) the person appointed to convene a meeting of a body corporate by the order shall preside at the meeting and, while he so presides, shall be deemed to be the chairman of the body corporate; and

(b) notice of that meeting may be given in the manner specified in the order.

(10) An original proprietor who has failed to convene a meeting of the body corporate in accordance with subsection (1) remains liable to the penalty provided by that subsection notwithstanding that an order has been made under subsection (6) or that a meeting has been convened pursuant to any such order.

**30. By-laws.** (1) Except as provided in this section the by-laws set forth in the Third Schedule shall be the by-laws in force in respect of each plan.

(2) Subject to subsections (7) and (11), a body corporate, pursuant to a special resolution, may, for the purpose of the control, management, administration, use or enjoyment of the lots and common property the subject of the plan, make by-laws amending, adding to or repealing the by-laws set forth in the Third Schedule or any by-laws made under this subsection.

(3) An amendment of, addition to or repeal of the by-laws has no force or effect until the Registrar of Titles has, pursuant to a notification in the prescribed form lodged in his office by the body corporate, recorded the notification on the registered plan.

(4) A lease of a lot or common property shall be deemed to contain an agreement by the lessee that he will comply with the by-laws for the time being in force.

(5) Without limiting the operation of any other provision of this Act, the by-laws for the time being in force bind the body corporate and the proprietors and any mortgagee in possession (whether by himself or any other person), lessee or occupier, of a lot to the same extent as if the by-laws had been signed and sealed by the body corporate and each proprietor and each such mortgagee, lessee and occupier respectively and as if they contained mutual covenants to observe and perform all the provisions of the by-laws.

(6) No amendment of or addition to a by-law shall be capable of operating to prohibit or restrict the devolution of a lot or a transfer, lease, mortgage or other dealing therewith or to destroy or modify any easement, service right or service obligation implied or created by this Act.

(7) Without limiting the generality of any other provision of this section, a body corporate may, with the consent in writing of the proprietor of a lot, pursuant to a resolution without dissent make a by-law in respect of that lot conferring on that proprietor the exclusive use and enjoyment of, or special privileges in respect of, the common property or any part thereof upon such terms and conditions (including the proper maintaining and keeping in a state of good and serviceable repair of the common property or that part of the common property, as the case may be, and the payment of money by that proprietor to the body corporate) as may be specified in the by-law and may, in like manner, make a by-law amending, adding to or repealing any by-law made under this subsection.

(8) A by-law referred to in subsection (7) shall, while it remains in force, enure as appurtenant to, and for the benefit of, the lot in respect of which it was made.

(9) The proprietor for the time being of a lot in respect of which a by-law referred to in subsection (7) is in force—

(a) is, subject to section 40 (4), liable to pay to the body corporate any moneys referred to in the by-law in accordance with the by-law; and

(b) is, unless excused by the by-law, responsible for the performance of the duty of the body corporate under section 38 (1) (b) (i) in respect of the common property, or the part of the common property, to which the by-law relates.

(10) Any moneys payable by a proprietor to the body corporate under a by-law referred to in subsection (7) may be recovered, as a debt, by the body corporate in any court of competent jurisdiction.

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(11) Where an order made under Division 3 of Part V has effect as if its terms were a by-law, a by-law may vary or nullify the effect thereof:

Provided always that such by-law shall be made pursuant to a resolution without dissent.

**31. Copy of by-laws to be provided.** (1) Where any lot or common property is leased, otherwise than to a proprietor of a lot, the lessor shall, within 7 days after the lessee's becoming entitled under the lease to possession of the lot or common property, provide the lessee, in accordance with subsection (2), with a copy of the by-laws for the time being in force in respect of the plan.

Penalty: \$100.

(2) A lessee is provided with a copy of the by-laws in accordance with this subsection if the copy is—

- (a) served personally on the lessee;
- (b) where the lease relates to a lot or common property that is fully enclosed by walls or other structures, left in a conspicuous position at the lot or on the common property; or
- (c) where the lease relates to a lot, served in the manner provided by section 127 (3) (a) or (b).

**32. Levies by body corporate on proprietors.** (1) A body corporate may levy the contributions determined by it in accordance with section 38 (1) (j) and (k) and contributions referred to in section 38 (1) (q) and the amount (if any) determined pursuant to section 38 (2) in respect thereof by serving on the proprietors notice in writing of the contributions payable by them in respect of their respective lots.

(2) Contributions levied by a body corporate shall be levied in respect of each lot and shall be payable, subject to this section, by the proprietors in shares proportional to the lot entitlements of their respective lots.

(3) In respect of a contribution levied under subsection (1) a proprietor of a lot is, subject to section 40 (4), liable, jointly and severally with any person who was liable to pay that contribution when that proprietor became the proprietor of that lot, to pay such part of that contribution as was unpaid when he became the proprietor of that lot.

(4) Regular periodic contributions to the administrative fund and sinking fund of a body corporate referred to in section 38 (4) shall be deemed to have been duly levied on a proprietor of a lot notwithstanding that notice levying the contributions was not served on him.

(5) Without affecting the liability of a proprietor of a lot in respect of a contribution levied under this section, where a mortgagee is in possession (whether by himself or any other person) of a lot he shall be liable jointly and severally with the proprietor of the lot of which he is in possession for a contribution levied on that proprietor in accordance with this Act but shall not be so liable in respect of a contribution, other

than regular periodic contributions to the administrative fund and sinking fund referred to in section 38 (4), unless notice in writing of the levy of the contribution has been served on him.

- (6) A contribution levied in respect of a lot under this section—
- (a) becomes due and payable to the body corporate in accordance with the decision of the body corporate to make the levy;
  - (b) if paid within 30 days after the date when it becomes due and payable shall be reduced by that part of the contribution attributable to the amount determined pursuant to section 38 (2) (if any); and
  - (c) may be recovered, as a debt, by the body corporate in any court of competent jurisdiction,

and any part of a contribution attributable to the amount determined pursuant to section 38 (2) so paid shall form part of the fund to which the contribution upon which the amount was determined belongs.

(7) Nothing in this section shall be construed to prevent a body corporate, in general meeting, either generally or in a particular case, determining that a contribution may be reduced as provided in subsection (6) (b) notwithstanding that the contribution is not paid as prescribed in that subsection.

**33. Power of body corporate to carry out work.** (1) Where a notice has been served on the proprietor of a lot by a public or local authority requiring that proprietor to carry out work on or in relation to that lot and the notice is not complied with the body corporate may carry out the work.

(2) Where a proprietor, mortgagee in possession, lessee or occupier of a lot fails or neglects to carry out work—

- (a) required to be carried out by him under a term or condition of a by-law referred to in section 30 (7); or
- (b) necessary to remedy a breach of the duty imposed on him by section 51 (a),

the body corporate may carry out that work.

(3) Where the body corporate carries out work on or in relation to a lot or common property pursuant to subsection (1) or (2), it may, subject to section 40 (4), recover the cost of so doing, as a debt—

- (a) from the proprietor, mortgagee in possession, lessee or occupier referred to in subsection (1) or (2); or
- (b) where the work is carried out pursuant to—
  - (i) subsection (1) or (2) (b), from any person who, after the work is carried out, becomes the proprietor of the lot on or in relation to which the work was carried out; or
  - (ii) subsection (2) (a), from any person who, after the work is carried out, becomes the proprietor of the lot in respect of which the by-law referred to in subsection (2) (a) was made.



(4) Where an order has been made under Part V and the order is not complied with, the body corporate may carry out any work specified in the order and recover from the person against whom the order was made the cost of so doing, as a debt, in any court of competent jurisdiction.

(5) Where—

(a) part of a building comprised in a lot in a building units plan contains a structural defect which affects or is likely to affect the support or shelter provided by that lot for another lot in that building or the common property; or

(b) a defect occurs in any pipes, poles, wires, cables or ducts referred to in section 51 (a) (ii) within a lot,

and the defect is not due to any breach of the duty imposed on any person by section 51 (a), the body corporate may, at its own expense, carry out such work as is necessary to rectify the defect.

**34. Change of body corporate's address.** (1) A body corporate may, in general meeting, decide that the address, as recorded on the registered plan, for the service of notices on the body corporate shall be changed.

(2) Where—

(a) a body corporate has, under subsection (1), decided that the address for the service of notices on it shall be changed;

(b) notice in the prescribed form of the change of address has been lodged in the office of the Registrar of Titles; and

(c) the Registrar of Titles has made such recording on the registered plan as he considers appropriate,

the address for service of notices on the body corporate shall, notwithstanding any other provision of this Act, be the address recorded on that plan.

**35. Agreement for payment to a proprietor of consideration on transfer or lease of common property.** A body corporate may, pursuant to a special resolution, make an agreement with a proprietor with respect to the payment to him of the whole or any part of the consideration under any transaction proposed to be entered into by the body corporate under Division 2 of Part II or of any moneys payable to the body corporate under a by-law referred to in section 30 (7).

**36. Power of entry.** (1) For the purpose of carrying out—

(a) pursuant to section 33 (1), (2), (4) or (5), any work;

(b) any work required to be carried out by a body corporate—

(i) by a notice served on it by a public or local authority; or

(ii) by an order of the referee or a tribunal;

(c) any work referred to in section 38 (1) (b) or (c); or

(d) any work necessary to repair or renew any pipes, poles, wires, cables or ducts referred to in section 51 (a) (ii),

the body corporate may, by its agents, servants or contractors, enter upon any part of the parcel for the purpose of carrying out the work—

- (e) in the case of an emergency, at any time; or
- (f) in any other case, at any reasonable time on notice given to any occupier of that part of the parcel.

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

Penalty: \$200.

**37. Miscellaneous powers of body corporate.** (1) A body corporate may—

- (a) invest any moneys in its administrative fund or sinking fund in any manner permitted by law for the investment of trust funds or in any prescribed investment;
- (b) borrow moneys and secure the repayment thereof and of any interest in such manner as may be agreed upon by the body corporate and the lender;
- (c) enter into an agreement with a proprietor or occupier of a lot for the provision of amenities or services by it to the lot or to the proprietor or occupier thereof;
- (d) acquire and hold any personal property;
- (e) enter into hiring agreements and leasing agreements; and
- (f) accept or acquire a lease, licence or permit for the purposes of providing moorings for vessels.

(2) Interest received on an investment made under subsection (1), shall form part of the fund to which the investment belongs.

**38. Duties of body corporate.** (1) A body corporate shall—

- (a) control, manage and administer the common property for the benefit of the proprietors;
- (b) properly maintain and keep in a state of good and serviceable repair—
  - (i) the common property including where practicable the establishment and maintenance of suitable lawns and gardens thereon; and
  - (ii) any personal property vested in the body corporate;
- (c) where necessary, renew or replace any fixtures or fittings comprised in the common property and any personal property vested in the body corporate including the maintenance and repair (and where reasonably necessary, the renewal) of pipes, poles, wires, cables and ducts for the time being existing in the parcel and capable of being used in connexion with the enjoyment of more than one lot or of the common property;
- (d) cause to be constructed and maintained at or near the street alignment of the parcel a receptacle suitable for the receipt of mail and other documents with the name of the body corporate clearly shown thereon;

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- (e) effect insurance in accordance with Division 6;
  - (f) cause proper records to be kept of notices given to the body corporate under this or any other Act, of any orders under Part V served on the body corporate and of any orders made by a court and served on the body corporate;
  - (g) cause to be kept and retained, until the expiration of the prescribed period, minutes of its meetings, which shall include particulars of motions passed by it at those meetings, and proper books of account in respect of moneys received or expended by the body corporate showing the items in respect of which the moneys were received or expended;
  - (h) cause to be prepared, from the books referred to in paragraph (g), a proper statement of accounts of the body corporate in respect of each period commencing on the date of registration of the plan or the date up to which the last previous such statement was prepared and ending on a date not earlier than two months before each annual general meeting;
  - (i) cause annual general meetings to be convened in accordance with clause 1 (1) of Part 2 of the Second Schedule;
  - (j) not later than 14 days after the registration of the plan and from time to time thereafter, determine the amounts necessary in its opinion to be raised by way of contributions for the purpose of meeting its actual or expected liabilities incurred or to be incurred under paragraph (b) or for the payment of insurance premiums or any other liability of the body corporate, other than amounts referred to in paragraph (k) or (q);
  - (k) not later than one year after the registration of the plan and from time to time thereafter determine the amounts necessary in its opinion to be raised by way of contributions for the purpose of meeting its actual or expected liabilities—
    - (i) for painting or repainting any part of the common property which is a structure or other improvement;
    - (ii) for the acquisition of any personal property;
    - (iii) under paragraph (c); and
    - (iv) for any other expenditure, other than expenditure to meet a liability referred to in paragraph (j) or (q);
  - (l) upon first determining the amounts referred to in paragraph (j), establish, as its administrative fund, a fund into which shall be paid those amounts, the proceeds of the sale or other disposal of any personal property of the body corporate and any fees received by it under section 40 and into which may be paid any amounts paid to the body corporate by way of discharge of insurance claims;
  - (m) upon first determining the amounts referred to in paragraph (k), establish a sinking fund into which those amounts and any amounts paid to the body corporate by way of discharge of insurance claims shall be paid unless the latter amounts have been paid into the administrative fund under paragraph (l);

- (n) from time to time, levy, in accordance with section 32, on each person liable therefor a contribution to raise the amounts referred to in paragraphs (j) and (k);
- (o) pay any moneys referred to in paragraphs (l), (m) and (p) that are received by it and are not otherwise invested in accordance with section 37 (1) (a) into an account established in a bank in the name of the body corporate;
- (p) whenever it receives moneys, other than moneys referred to in paragraph (l) or (m), pay those moneys into the sinking fund;
- (q) if the body corporate—
  - (i) becomes liable to pay any moneys that it is unable to pay forthwith; and
  - (ii) is not required, under paragraph (n), to levy contributions to meet the liability,
    - levy, in accordance with section 32, contributions to raise those moneys; and
- (r) implement the decisions of the body corporate.

(2) The body corporate from time to time may in respect of contributions determined in accordance with subsection (1) (j) or (k) or contributions referred to in subsection (1) (q) determine by special resolution, for the purposes of section 32, an amount being not greater than ten per centum of those contributions.

- (3) A body corporate shall not disburse any moneys—
  - (a) except as provided in paragraph (b)—
    - (i) from its administrative fund, otherwise than for the purpose of meeting its liabilities referred to in subsection (1) (j);
    - (ii) from its sinking fund, otherwise than for the purpose of meeting its liabilities referred to in subsection (1) (k); or
  - (b) from its administrative fund or its sinking fund, otherwise than for the purpose of carrying out its powers, authorities, duties and functions under this Act or the by-laws or meeting any liability referred to in subsection (1) (q).

(4) A determination made by a body corporate under subsection (1) (j) or (k) may specify that the amounts to be raised for the purposes referred to in subsection (1) (j) or (k) shall be raised by such regular periodic contributions as may be specified in the determination.

(5) If a body corporate fails or neglects to convene an annual general meeting within the period required by clause 1 (1) of Part 2 of the Second Schedule, the annual general meeting held next after the expiration of that period shall be an annual general meeting of the body corporate.

(6) No action shall lie against a body corporate, its agents, servants or contractors on account of anything done in good faith and without negligence under the authority of this Act or purporting to be under the authority of this Act.

**39. Roll.** (1) A body corporate shall prepare and maintain a roll in accordance with this section.

(2) The roll shall be kept in the form of a book (either bound or loose-leaf) which shall contain one or more pages in respect of each lot the subject of the plan concerned.

(3) The body corporate shall record the following information on a page of the roll relating to the lot to which the information relates:—

- (a) the lot entitlement of the lot, as shown from time to time on copies of schedules of lot entitlement forwarded under section 14 and received by the body corporate;
- (b) the name and address of the original proprietor as shown on the folio of the register comprising the lot upon registration of the plan and the name of and address for the service of notices on the proprietor of that lot as shown in the prescribed notices;
- (c) the name of the first mortgagee of the lot as shown on the prescribed notice and the address for the service of notices on him as shown therein;
- (d) the name of the company nominee of any corporation that is a proprietor or mortgagee of a lot as shown in the prescribed notices;
- (e) the discharge, transfer or assignment of a mortgage referred to in paragraph (c) as shown in a prescribed notice and, except in the case of a discharge, the address for the service of notices on the transferee or assignee as shown therein;
- (f) the entry into possession of the lot by a mortgagee as shown in a prescribed notice;
- (g) the name and address of any lessee of the lot the prescribed notice of the granting of whose lease has been given and the address for the service of notices on the lessor and lessee as shown therein;
- (h) the termination or assignment of any lease, referred to in paragraph (g), as shown in a prescribed notice and, in the case of an assignment, the name of the assignee and the address for the service of notices on him as shown therein;
- (i) the name of any person who has become entitled, otherwise than as a transferee, to the lot, the prescribed notice of which entitlement has been given to the body corporate and the address for the service of notices on him as shown therein; and
- (j) the address for the service of notices on any person as shown in a prescribed notice.

In this subsection the expression “prescribed notice” or “prescribed notices” means the relevant notice or, as the case may be, notices given to the body corporate under section 53.

(4) The body corporate shall record and maintain in the roll a copy of the by-laws for the time being in force with respect to the plan concerned.

**40. Supply of information, certificates and copies by body corporate.**

(1) A body corporate shall, upon application made to it in writing in respect of a lot the subject of a plan by a proprietor or mortgagee of that lot or by a person authorized in writing by such a proprietor or mortgagee and on payment of the prescribed fee, do such one or more of the following things as are required of it in the application:—

- (a) inform the applicant of the name and address of each person who is the chairman, secretary or treasurer of the body corporate or a member of the council and of any person who has been appointed under section 50 or 94 as managing agent;
- (b) make available for inspection by the applicant or his agent—
  - (i) the roll;
  - (ii) the notices and orders referred to in section 38 (1) (f);
  - (iii) the plans, specifications, drawings showing water pipes, electric cables, drainage, ventilation ducts or air-conditioning systems, certificates, diagrams and other documents delivered under section 5 (7) (e) or 29 (4);
  - (iv) the minutes of general meetings of the body corporate and of the council;
  - (v) the books of account of the body corporate;
  - (vi) a copy of the statement of accounts of the body corporate last prepared by the body corporate in accordance with section 38 (1) (h);
  - (vii) every current policy of insurance effected by the body corporate and the receipt for the premium last paid in respect of each such policy;
  - (viii) any other record or document in the custody or under the control of the body corporate;
  - (ix) the by-laws for the time being in force,
    - at such time and place as may be agreed upon by the applicant or his agent and the body corporate and, failing agreement, at the parcel at a time and on a date fixed by the body corporate under subsection (2);
- (c) certify, as at the date of the certificate, in respect of the lot in respect of which the application is made—
  - (i) the amount of any regular periodic contributions determined by the body corporate under section 38 (1) (j) and (k) and (4) and the periods in respect of which those contributions are payable;
  - (ii) whether there is any amount unpaid of any contribution determined under section 38 (1) (j) and of any contribution determined by the body corporate under section 38 (1) (k) and, if so, the amount thereof and, in the case of a contribution levied under section 38 (1) (k), the date on which any such contribution was levied;
  - (iii) whether there is any amount unpaid of any contribution levied under section 38 (1) (q) and, if so, the amount thereof and the date on which it was levied;

- (iv) whether there is any amount unpaid by a proprietor under a by-law referred to in section 30 (7);
  - (v) whether there is any amount unpaid of any contribution levied under section 124 (2) and, if so, the amount thereof and the date on which it was levied;
  - (vi) whether there is any amount recoverable from the proprietor of that lot under section 33 (3) or (4) and, if so, the amount thereof; and
  - (vii) the amount, if any, determined under section 38 (2) in respect of any unpaid contribution referred to in this paragraph; or
- (d) furnish to the applicant or his agent a copy of the by-laws for the time being in force or any part thereof within a period of 21 days commencing on the day next after the day on which the application is received by the body corporate.

(2) Where an applicant and a body corporate fail to reach an agreement referred to in subsection (1) (b) within three days after the receipt of the application by the body corporate, the body corporate shall forthwith send by post to the applicant a notice fixing a time, specified in the notice, between 9 a.m. and 8 p.m. on a date so specified, being a date not later than ten days after the receipt of the application by the body corporate for the making of the inspection referred to in subsection (1) (b).

(3) The body corporate shall permit any person to whom the by-laws are made available for inspection to make copies of or take extracts from the by-laws.

(4) In favour of a person taking for valuable consideration an estate or interest in any lot a certificate given under subsection (1) (c) by the body corporate in respect of that lot is conclusive evidence, as at the date of the certificate, of the matters stated therein.

**41. Exemption from certain provisions of Act.** (1) (a) Where all of the proprietors of lots contained in a plan reside permanently in their respective lots the body corporate may by resolution without dissent resolve that any one or more of the following provisions of this Act shall not apply to that body corporate, that is to say:—

(i) section 74 (a) and (b);

(ii) clauses 1 (5), (6), (7) and (8), 4 (b) and (c), 5 (b), 6 and 8 of Part 2 of the Second Schedule.

(b) A resolution pursuant to paragraph (a) shall cease to be a resolution of the body corporate if the proprietor of any lot ceases to reside permanently therein.

(2) Where subsection (1) does not apply to a body corporate, it may by resolution without dissent resolve to make an application on any one or more of the prescribed grounds to the referee for an order that any one or more of the provisions of this Act specified in subsection (1) shall not apply to that body corporate.

(3) An application made by a body corporate pursuant to subsection (2) shall be in the prescribed form, be accompanied by the prescribed fee, if any, and specify the grounds upon which the application is made.

(4) Where the referee considers that the grounds specified in an application made pursuant to subsection (2) justify the making of an order he may make an order specifying which provision or provisions of this Act specified in subsection (1) shall not apply to the body corporate which made the application.

(5) The provisions of Part V shall so far as applicable apply to the making of an order under this section.

#### *Division 2—Councils*

**42. Constitution of councils.** (1) After the first annual general meeting of a body corporate, there shall be a council consisting of a chairman, secretary and treasurer and such other members as may be elected or appointed pursuant to this section.

(2) The chairman, secretary and treasurer of the body corporate shall be members of, and be also respectively the chairman, secretary and treasurer of, the council:

Provided that a person may be elected to one or more of those offices.

(3) (a) Where there are not more than three proprietors, the council shall consist of each proprietor, if any, who is an individual or his nominee, together with the company nominee of each proprietor, if any, which is a corporation.

(b) Where there is one proprietor only, he may make any decision that a duly convened council may make under this Act and such decision shall be deemed to be a decision of the council.

(4) Where there are more than three proprietors, the council shall consist of such number of persons, being not less than three nor more than the number of proprietors or seven, whichever is the lesser, as is determined by the body corporate.

(5) The members of a council referred to in subsection (4) (if any) and the chairman, secretary and treasurer shall be elected at each annual general meeting of the body corporate or, if the number of proprietors increases to more than three, at an extraordinary general meeting convened for the purpose.

(6) A person is not eligible for election as chairman, secretary or treasurer of the body corporate or as a member of a council unless he is—

- (a) an individual who is a proprietor;
- (b) a company nominee of a corporation which is a proprietor; or
- (c) an individual who is not a proprietor but who is nominated for election by a proprietor.



Notwithstanding the provisions of this section, the body corporate may determine that the holder of the office of secretary or treasurer of the body corporate shall not be a member of the council whereupon, upon election to that office a person shall be the secretary or, as the case may be, treasurer of the body corporate and of the council but shall not be a member of the council.

(7) A member of a council may, with the consent of the council, appoint a proprietor or company nominee of a corporation which is a proprietor to act in his place as a member of the council at any meeting of the council and any proprietor or company nominee of a corporation which is a proprietor so appointed shall, when he is so acting, be deemed to be a member of the council.

(8) A proprietor or company nominee of a corporation may be appointed under subsection (7) whether or not he is a member of the council.

(9) If a person appointed under subsection (7) is a member of the council he may, at any meeting of the council, separately vote in his capacity as such a member and on behalf of the member in whose place he has been appointed to act.

(10) Notwithstanding any other provision of this section, a council may be constituted before the first annual general meeting of the body corporate.

(11) The members of a council constituted under subsection (10) (if any) and the chairman, secretary and treasurer of a body corporate shall be elected at a general meeting of the body corporate and the provisions of subsection (6) and such of the provisions of Part 1 of the Second Schedule as relate to the election of the chairman, secretary and treasurer of a body corporate and of members of a council apply to and in respect of the election of the chairman, secretary and treasurer and of those members of a council to be so constituted.

(12) Part 2 of the Second Schedule (other than clause 16 (1)) does not apply to or in respect of the election of the chairman, secretary and treasurer of a body corporate and the members of a council to be constituted under subsection (10).

(13) The provisions of this Division (other than subsections (1), (2), (3) and (5) of this section) apply to and in respect of a council constituted under subsection (10) and the members thereof.

(14) Where there is no council of a body corporate, the body corporate shall exercise and perform the powers, authorities, duties and functions of the council but nothing in this subsection prevents a managing agent appointed under this Act from exercising or performing any powers, authorities, duties or functions conferred or imposed upon him.

**43. Vacation of office of member of council.** (1) A person elected as chairman, secretary or treasurer of the body corporate or as a member of a council vacates his office—

(a) if, where he was a proprietor at the time of his election, he ceases to be a proprietor;

- (b) if, where he was not a proprietor at the time of his election or was a company nominee, the individual who nominated him for election or the corporation for which he is a company nominee, as the case may be—
- (i) ceases to be a proprietor; or
  - (ii) notifies the body corporate, in writing, that his office, as a member of the council, is vacated:
- Provided that this paragraph (b) shall not apply to a secretary or treasurer of the body corporate who is not a member of the council;
- (c) upon the receipt by the body corporate from him of notice in writing of his resignation;
  - (d) upon the election at a general meeting of the body corporate of another person to that office or as a member of the council;
  - (e) where he is a member referred to in section 42 (3) and the number of proprietors increases to more than three, upon the election of the chairman, secretary and treasurer of the body corporate and the other members of the council at the annual general meeting, or the extraordinary general meeting referred to in section 42 (5);
  - (f) if he is absent without prior leave granted by the council from three consecutive meetings of the council of which due notice has been given to him;
  - (g) if he becomes bankrupt or compounds with his creditors or otherwise takes advantage of the laws in force for the time being relating to bankruptcy;
  - (h) if he is convicted in Queensland of an indictable offence or, elsewhere than in Queensland, is convicted of an offence which would be an indictable offence if committed in Queensland;
    - (i) if he dies or becomes mentally ill; or
    - (j) if the body corporate, pursuant to a special resolution, determines that his office is vacated.

(2) Upon the occurrence of a vacancy in the office of chairman, secretary or treasurer of the body corporate or another member of a council, otherwise than by reason of subsection (1) (d) or (e), the body corporate shall appoint a person eligible for election as such to fill the vacancy, and a person so appointed shall, subject to this section, hold office for the balance of his predecessor's term of office.

**44. Chairman, secretary and treasurer of council.** (1) The chairman shall preside at all meetings of the council at which he is present and, if he is absent from any meeting, the members of the council present at that meeting shall appoint one of their number to preside at that meeting during the absence of the chairman.

(2) A person shall not exercise or perform any of the powers, authorities, duties or functions of the body corporate or of the treasurer of the body corporate, being powers, authorities, duties or functions

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relating to the receipt or expenditure of, or accounting for, moneys, or the keeping of the books of account, of the body corporate, unless he is—

- (a) the treasurer of the body corporate;
- (b) a managing agent who is empowered to exercise or perform that power, authority, duty or function; or
- (c) a person with whom the treasurer of the body corporate is required by an order of the council to exercise or perform jointly that power, authority, duty or function, and who is enabling the treasurer to comply with the order.

Penalty: \$500.

(3) The treasurer of a body corporate may delegate the exercise or performance of any of his powers (other than this power of delegation), authorities, duties or functions as treasurer, the delegation of which is specifically approved by the council, to another member of the council so approved, subject to such limitations as to time or otherwise as are so approved and, while a delegate is acting in accordance with the terms of a delegation under this subsection, he shall be deemed to be the treasurer of the body corporate.

(4) The council may, by a notice in writing served on the treasurer of the body corporate, order that he shall not exercise or perform any of his powers, authorities, duties or functions that are specified in the notice, unless he does so jointly with another person so specified.

(5) A person who has possession or control of—

- (a) any records, books of account or keys belonging to a body corporate;
- (b) the roll kept by a body corporate; or
- (c) any other property of a body corporate,

shall, within seven days after service on him of notice of a resolution of the council requiring him to do so, deliver those records, books of account and keys and that roll and other property to a member of the council specified in the notice.

Penalty: \$500.

**45. Meetings of councils.** (1) At a meeting of a council more than one-half of the members of the council constitutes a quorum.

(2) Subject to this Act, the decision on any matter of the majority of the members voting on that matter shall be the decision of the council at any meeting at which a quorum is present.

(3) A decision of a council has no force or effect if, before that decision is made, notice in writing is given to the secretary of the council by not less than half of the total number of proprietors, the sum of whose lot entitlements exceed one-half of the aggregate lot entitlement, that the making of the decision is opposed by those proprietors.

(4) A council shall cause to be kept a record of its decisions, of any notices given to its secretary under subsection (3) and full and accurate minutes of its meetings.

**46. Council's decisions to be decisions of body corporate.** (1) In this section, "restricted matter" means—

- (a) any matter relating to the striking of a special monetary levy on all proprietors;
- (b) any matter which seeks to alter the rights, privileges or obligations of proprietors;
- (c) any matter which seeks to alter the annual monetary contribution of proprietors;
- (d) any matter a decision on which may, in accordance with any provision of this Act, only be made by the body corporate pursuant to a unanimous resolution, resolution without dissent or a special resolution or in general meeting of the body corporate; and
- (e) any matter referred to in section 48 and specified in a resolution of the body corporate passed for the purposes of that section.

(2) Subject to this Act, the decision of a council on any matter, other than a restricted matter, shall be the decision of the body corporate.

(3) Notwithstanding that a council holds office, the body corporate may in general meeting continue to exercise or perform all or any of the powers, authorities, duties and functions conferred or imposed on it by this Act.

**47. Statutory restrictions on powers of councils.** (1) Unless—

- (a) otherwise determined pursuant to a special resolution of the body corporate;
- (b) in an emergency authorized by the referee; or
- (c) consented to by each person entitled to vote at a general meeting of the body corporate,

the council shall not, in any one case, undertake expenditure exceeding the sum obtained by multiplying the prescribed amount by the number of lots the subject of the plan.

(2) In respect of any proposed expenditure which, under subsection (1), the council is not entitled to undertake the council shall—

- (a) submit the proposal for determination at an extraordinary general meeting of the body corporate convened for the purpose of, or for purposes which include, consideration of the proposal; and
- (b) if the proposed expenditure is in respect of work to be performed or the purchase of personal property submit at least two tenders to that meeting with the proposal.

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

- (a) in payment of any premium of insurance effected by or on behalf of the body corporate;
- (b) to comply with—
  - (i) a notice or order served on the body corporate by any public or local authority; or

- (ii) an order made with respect to the body corporate by a referee or a tribunal; or
- (c) in discharge of any liability incurred in respect of an obligation of the body corporate authorized by the body corporate in general meeting.

**48. Restrictions imposed on council by body corporate.** The body corporate may in general meeting decide what matters or class of matters, if any, shall be determined only by the body corporate in general meeting.

*Division 3—Original Proprietors*

**49. Duties of original proprietor.** (1) An original proprietor shall give to the purchaser of a lot or of a proposed lot a statement in writing in compliance in every respect with the requirements of this section.

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

- (a) clearly identify the lot or proposed lot to which the statement relates;
- (b) state the names and addresses respectively of the original proprietor and the purchaser;
- (c) set out or be accompanied by particulars of—
  - (i) the lot entitlement of every lot and the aggregate lot entitlement; or
  - (ii) the proposed lot entitlement of every proposed lot and the proposed aggregate lot entitlement;
- (d) set out or be accompanied by details of—
  - (i) any management agreement that the original proprietor has entered into in respect of the plan or proposed plan; and
  - (ii) any existing agreement for service or maintenance of the common property or any part thereof, including the terms and conditions of that agreement and the estimated costs thereof to the proprietor of each lot;
- (e) set out or be accompanied by the by-laws in force in respect of the plan or the proposed by-laws in respect of the proposed plan;
- (f) state the date on which the statement is given; and
- (g) be signed by the original proprietor or on his behalf by a person authorized in writing by the original proprietor in that regard.

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

- (a) be given by the original proprietor to the purchaser before the purchaser signs any contract, agreement or document whatsoever legally binding or intended to bind the purchaser legally in respect of the sale; or
- (b) form part of a contract, agreement or document referred to in paragraph (a).

(4) If, at any time after the original proprietor gives a statement in writing pursuant to subsection (1) to a person who enters into a contract, agreement or document whatsoever legally binding or intended to bind

that person as purchaser in respect of the sale of a lot or of a proposed lot and before the registration of that person as the proprietor of the lot (or earlier rescission of the contract, agreement or document)—

- (a) the original proprietor in his own right or exercising power as the body corporate enters into a management agreement or agreement for service or maintenance of the common property or any part thereof or varies any existing agreement whereby the rights of the purchaser are likely to be affected;
- (b) the original proprietor makes a by-law other than a by-law which is the same as a proposed by-law that was set out in or accompanied the statement given to the purchaser pursuant to subsection (1) or amends, adds to or repeals any by-law;
- (c) the lot entitlement of any lot or the aggregate lot entitlement is not the same as the lot entitlement or proposed lot entitlement or the aggregate lot entitlement or proposed aggregate lot entitlement, as the case may be, that was set out in or accompanied the statement given to the purchaser pursuant to subsection (1); or
- (d) there is any change in the proposed lot entitlement or the proposed aggregate lot entitlement that was set out in or accompanied the statement given to the purchaser pursuant to subsection (1),

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

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

- (a) a statement in compliance in every respect with subsections (1), (2) and (3); or
- (b) a notice prescribed in subsection (4),

the purchaser may void the contract, agreement or other document signed by him in relation to the original proprietor by notice in writing given to the original proprietor within 30 days after he first becomes aware of the failure:

Provided always that a purchaser may not void a contract, agreement or other document pursuant to paragraph (b) unless he proves that his rights have been materially affected by a matter referred to in that paragraph.

(6) Upon the voidance of a contract referred to in this section the original proprietor shall be liable at law for the repayment to the purchaser of all moneys paid by him under the contract and such moneys shall be recoverable, by action as for a debt, by the purchaser accordingly.

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

(8) Where pursuant to this section a purchaser voids a contract entered into by him for the purchase of a lot or a proposed lot to which this section applies after the lot purchased by him has been registered in his name, then that purchaser, subject to the tender to him of repayment in full as prescribed by subsection (6), shall execute such instruments as, being necessary to register that title in the name of the original proprietor or his nominee, are presented to him for execution by or on behalf of the original proprietor and deliver up to the original proprietor or his nominee any relevant certificate of title in his possession or under his control, but the purchaser shall not be liable for any costs or expenses in respect thereof.

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

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

(11) In this section, "original proprietor" includes, in respect of a proposed lot or proposed plan, the person who upon registration of the proposed plan becomes the original proprietor.

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

#### *Division 4—Managing Agents*

**50. Managing agent.** (1) Subject to subsection (2), a body corporate may, in general meeting and by instrument in writing, appoint upon such terms and conditions as the body corporate determines a managing agent and may, in like manner, delegate to him—

- (a) all of its powers, authorities, duties and functions;
- (b) any one or more of its powers, authorities, duties and functions specified in the instrument; or
- (c) all of its powers, authorities, duties and functions except those specified in the instrument,

and may, in like manner, revoke wholly or in part the delegation.

(2) A body corporate may not, under subsection (1), delegate to a managing agent its power to make—

- (a) a delegation under that subsection; or
- (b) a decision on a restricted matter within the meaning of section 46.

(3) A power, authority, duty or function the exercise or performance of which has been delegated under subsection (1) may, while the delegation remains unrevoked, be exercised from time to time in accordance with the delegation.

(4) A delegation under subsection (1) may be made subject to such conditions or such limitations as to the exercise or performance of all or any of the powers, authorities, duties or functions, or as to time or circumstances, as may be specified in the instrument of delegation.

(5) Notwithstanding any delegation made under subsection (1), the body corporate may continue to exercise or perform all or any of the powers, authorities, duties or functions delegated by it.

(6) Any act or thing done or suffered by a managing agent while acting in the exercise of a delegation under subsection (1) has the same force and effect as if it had been done or suffered by the body corporate and shall be deemed to have been done or suffered by the body corporate.

(7) Where the instrument of his appointment so provides, a managing agent shall have and may exercise and perform all the powers, authorities, duties and functions of the chairman, secretary or treasurer of the body corporate and the council or such of those powers, authorities, duties and functions as may be specified in the instrument.

(8) Upon registration of the plan, a person shall not be appointed a managing agent otherwise than by the body corporate or a referee.

(9) Notwithstanding any agreement between a body corporate and a managing agent, there shall be implied in the agreement or instrument of appointment of a managing agent appointed pursuant to this section who is the managing agent at the expiration of a period of three years from the date of the first annual general meeting of the body corporate a term that the body corporate, within 30 days after the expiration of that period, may terminate his appointment as managing agent.

No action shall lie against a body corporate, original proprietor or any proprietor of a lot in respect of a termination of appointment under this subsection.

#### *Division 5—Proprietors and Other Occupiers of Lots*

**51. Duties of proprietors and other occupiers of lots.** A proprietor, mortgagee in possession (whether by himself or any other person), lessee or occupier of a lot shall not—

- (a) do any thing or permit any thing to be done on or in relation to that lot so that—
  - (i) any support or shelter provided by that lot for another lot or common property is interfered with; or
  - (ii) the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air, heating oil and other services (including telephone, radio and



television services) through or by means of any pipes, poles, wires, cables or ducts for the time being in or upon the lot is interfered with;

- (b) use or enjoy that lot, or permit that lot to be used or enjoyed, in such a manner or for such a purpose as to cause a nuisance or hazard to the occupier of any other lot (whether that person is a proprietor or not); or
- (c) use or enjoy the common property in such a manner or for such a purpose as to interfere unreasonably with the use or enjoyment of the common property by the occupier of any other lot (whether that person is a proprietor or not) or by any other person entitled to the use and enjoyment of the common property.

A proprietor or mortgagee in possession (whether by himself or any other person) shall repair and maintain his lot and keep the same in a state of good repair, reasonable wear and tear, and damage by fire, storm, tempest or act of God excepted.

**52. Power for individuals to act for corporate proprietors and mortgagees of lots.** (1) A corporation may authorize an individual to exercise or perform on its behalf any power, authority, duty or function conferred by or under this Act on the corporation as proprietor or mortgagee of a lot and may revoke the authority of an individual so authorized.

(2) Where an individual exercises or performs a power, authority, duty or function that he is, by a proprietor or mortgagee of a lot, authorized pursuant to subsection (1) to exercise or perform, the power, authority, duty or function shall be deemed to be exercised or performed by the proprietor or mortgagee, as the case may be, of the lot.

(3) Nothing in subsection (1) or (2) affects any liability or obligation imposed by or under this Act on a corporation which is a proprietor or mortgagee of a lot.

(4) A document under the seal of a corporation purporting to be an authorization under subsection (1) or to be a revocation of such an authorization is admissible in evidence and shall, unless the contrary is proved, be deemed to be such an authorization or revocation, as the case may be.

**53. Notices to be given by proprietors and mortgagees.** (1) An original proprietor and any person who, under this section, has given notice of an address for the service of notices on him may give notice in writing to the body corporate of an address or change of address for the service of notices on him.

(2) (a) After delivery to a transferee of a lot of an instrument or instruments of transfer in the name of the transferee duly executed and capable of immediate registration, the transferor shall give to the body corporate written notice which shall identify the lot and—

- (i) specify the name of the transferee in full, the address for the service of notices on the transferee, the address for the service

of notices on the transferor and the date upon which the instrument was or instruments were so delivered; and

- (ii) bear written confirmation by the transferee of the accuracy of the information contained in the notice.

(b) Where a transferor of a lot fails to comply with paragraph (a), the transferee of the lot may give to the body corporate written notice which shall identify the lot and specify his name in full, address for service of notices and the date upon which the instrument was or instruments were delivered to him.

(3) After the delivery to a first mortgagee of an executed bill of mortgage of a lot, the mortgagee may give to the body corporate written notice of the mortgage which shall identify the lot and—

- (a) specify the name of the mortgagee in full and the address for the service of notices on the mortgagee and the date on which the bill of mortgage was so delivered; and
- (b) bear written confirmation by the mortgagor of the accuracy of the information contained in the notice.

(4) After the delivery to a mortgagor of a discharge of a bill of mortgage of a lot the mortgagor may give to the body corporate written notice of the discharge which shall identify the lot and the mortgage that has been discharged and—

- (a) specify the date on which the discharge was so delivered; and
- (b) bear written confirmation by the mortgagee of the discharge of the bill of mortgage.

(5) After the delivery by a first mortgagee of a transfer of a bill of mortgage of a lot, the transferee may give to the body corporate written notice of the transfer which shall identify the lot and—

- (a) specify the name of the transferee in full and the address for the service of notices on the transferee and the date on which the transfer was so delivered; and
- (b) bear written confirmation by the transferor of the accuracy of the information contained in the notice.

(6) After the entry into possession of a lot by a first mortgagee, the mortgagee may give to the body corporate written notice which shall identify the lot and specify the date on which he entered into possession.

(7) After granting a lease or sub-lease of a lot or part of a lot, the lessor may give to the body corporate written notice of the granting of the lease which shall identify the lot, specify the name of the lessee in full and the address for the service of notices on him and the address for the service of notices on the lessor.

(8) After the termination or assignment of any lease or sub-lease of a lot or part of a lot, the lessor may give to the body corporate written notice of the termination or assignment which shall identify the lot and the lease or sub-lease that has been terminated or assigned and—

- (a) specify the date of the termination or assignment; and

- (b) in the case of an assignment—
  - (i) specify the name of the assignee in full and the address for the service of notices on him;
  - (ii) bear written confirmation by the assignee of the accuracy of the information contained in the notice.
- (9) After a person becomes entitled, otherwise than as a transferee, to be registered under the Real Property Acts as the proprietor of a lot, he may give to the body corporate written notice, in the form of a statutory declaration, which shall identify the lot and specify—
  - (a) by what right he became entitled to the lot; and
  - (b) his name, in full, the address for the service of notices on him and the date upon which he became entitled to the lot.
- (10) Where—
  - (a) a body corporate believes that a person may, under this section, give a notice to it; and
  - (b) the body corporate has not received that notice, the body corporate may serve a notice on that person specifying the capacity in which it believes he is entitled to give the notice and requiring him—
    - (c) to state, within fourteen days, whether or not he is a person entitled to give a notice in that capacity; and
    - (d) if he is such a person, to give that notice.
- (11) Where a body corporate has served a notice under subsection (10) on a person whom it believes to be a person entitled to give a notice to the body corporate under this section that person is not entitled to cast a vote at any meeting of the body corporate until he gives the required notice.
- (12) A vote cast at a meeting of a body corporate by or on behalf of a corporation has no effect unless the body corporate has been given notice in writing specifying the company nominee of the corporation.
- (13) A notice referred to in subsection (12) may be included in any other notice that the corporation to which it relates or any other person is entitled under this section to give to the body corporate.

*Division 6—Insurance*

**54. Interpretation.** (1) In this Division—

- “building” means building or buildings shown on a building units plan, but does not include a proprietor’s fixture;
- “damage policy”, in relation to a building or the common property including improvements thereon, means a contract of insurance providing, in the event of the building or the common property including improvements thereon being destroyed or damaged by fire, lightning, explosion or any other occurrence specified in the policy—
  - (a) for—
    - (i) the rebuilding of the building or the common property including improvements thereon or its replacement

by a similar building or the common property including improvements thereon in the event of its destruction; and

- (ii) the repair of damage to or the restoration of the damaged portion of the building or the common property including improvements thereon in the event of its being damaged but not destroyed,

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

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

“proprietor’s fixture” means any structure or fixture made after the registration of the building units plan forming part of a building, being a structure or fixture which is exclusively for the use and enjoyment of a lot within or partly within that building but not being a floor, wall or ceiling.

(2) A damage policy may provide that, instead of the work and the payments specified in the definition of “damage policy” in subsection (1) being carried out or made upon the occurrence of any of the events specified in that definition, the liability of the insurer shall, upon the occurrence of any such event, be limited to an amount specified in the policy.

**55. Insurance of buildings and common property.** The body corporate shall insure and keep insured the building and the common property including any improvements thereon under a damage policy to the reinstatement or replacement value thereof unless the body corporate, by special resolution, otherwise resolves.

**56. Further insurance by body corporate.** (1) In addition to insurance effected by a body corporate pursuant to section 55 the body corporate shall effect insurance—

- (a) in respect of any occurrence against which it is required by law to insure, including any insurance required to be effected by reason of the provisions of the *Workers’ Compensation Act 1916–1979*;
- (b) in respect of damage to property, death or bodily injury occurring upon the common property; and

(c) against the possibility of the proprietors becoming jointly liable by reason of a claim arising in respect of any other occurrence against which the body corporate, pursuant to a special resolution, decides to insure.

(2) Insurance effected pursuant to subsection (1) (b) shall be for a cover of the prescribed amount or, if not prescribed, \$500 000.

(3) The body corporate may insure any property which it is not required to insure pursuant to this Division and in which it has an insurable interest.

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

(2) Insurance effected by a proprietor does not affect, and shall not be taken into consideration in determining, the amount payable to a body corporate under a contract of insurance entered into between it and an insurer pursuant to this Division, notwithstanding anything contained in that contract of insurance.

**58. Insurance of mortgaged lot.** (1) A contract of insurance may be entered into by a proprietor in respect of damage to his lot in a sum equal to the amount secured at the date of the contract by mortgage of his lot and where such a contract is in force—

(a) subject to the terms and conditions of the contract—

(i) a payment to be made under that contract by the insurer in respect of damage shall be made to each mortgagee whose interest is noted thereon in order of his respective priority; and

(ii) the amount of the payment shall be the amount stated in the contract, the amount of the loss, or an amount sufficient, at the date of the loss, to discharge the mortgage of the lot, whichever is the least amount;

(b) where the amount so paid by the insurer equals the amount necessary to discharge a mortgage of the lot, the insurer shall be entitled to an assignment of that mortgage; and

(c) where the amount so paid by the insurer is less than the amount necessary to discharge a mortgage of the lot, the insurer shall be entitled to secure the amount so paid by a transfer of the bill of mortgage to the insurer and the mortgagee as tenants in common in undivided shares proportional to the amount paid by the insurer and the balance necessary to discharge the mortgagee's interest.

(2) A contract of insurance entered into as referred to in subsection (1) shall not be liable to be brought into contribution with any other such contract of insurance except another such contract of insurance which—

(a) is in respect of damage to the same lot; and

(b) relates to the same mortgage debt,

as that referred to in the contract of insurance firstmentioned in this subsection.

**59. Rebuilding.** Subject to any order made under section 25 or 26, where a body corporate receives payment of moneys from an insurer in respect of destruction of or damage to a building or common property including any improvements thereon, those moneys shall, unless the body corporate by unanimous resolution otherwise resolves, forthwith be applied by the body corporate in rebuilding, replacing, repairing or restoring the building or common property including any improvements thereon, as the case may require, so far as the same may lawfully be effected.

**60. Insurable interest of body corporate.** Notwithstanding any other law relating to insurance, a body corporate shall be deemed to have a sufficient insurable interest in the subject-matter of any contract of insurance entered into by it pursuant to this Division.

#### *Division 7—Rating and Taxation*

**61. Interpretation.** In this Division “area” has the meaning ascribed to that expression in the *Valuation of Land Act 1944–1977*.

**62. Valuation of parcel.** (1) Where the Valuer-General causes a parcel to be valued under and subject to the *Valuation of Land Act 1944–1977*, the parcel shall, notwithstanding the provisions of that or any other Act, be valued as a single parcel of land and as if it were owned by a single owner and, for the purposes of any such valuation and all purposes incidental thereto (including objection to and appeal against a valuation) but not otherwise, the parcel and all improvements thereon shall be deemed to be owned by the body corporate and by no other person.

(2) During the period from the registration of a plan and until a valuation of the parcel showing the body corporate as owner becomes effective for rating and taxing purposes the valuation in force during that period shall, for the purposes of sections 64 and 65 be deemed to be a valuation of the parcel made by the Valuer-General as if the body corporate were shown thereon as owner.

(3) The Valuer-General is not for the purposes of making, levying, imposition, assessment or recovery of rates or taxes referred to in this

Division, required to make separate valuations of any parts of a parcel otherwise than as if the parcel were owned by a single owner.

(4) Notwithstanding the provisions of the *Valuation of Land Act 1944-1977*, the Valuer-General may upon the registration of a plan, cause a valuation of the parcel to be made under and subject to that Act showing the body corporate as owner.

**63. Particulars of lot entitlements to be conclusive.** For all purposes in relation to the making, levying, imposition, assessment or recovery of rates, charges or taxes in relation to the parcel or any part thereof—

- (a) the particulars shown on the copy of a plan or amendment thereof furnished by the Registrar of Titles pursuant to section 14 shall be conclusive evidence of those particulars; and
- (b) the production by an authority authorized to levy rates, charges or taxes in relation to the parcel or any part thereof of what purports to be the copy of the plan or amendment thereof so furnished shall be prima facie evidence that it is the copy so furnished.

**64. Rating of lots.** For all purposes in relation to the making, levying or recovery of rates or charges by a local authority pursuant to the *Local Government Act 1936-1979* in relation to a parcel the following provisions have effect:—

- (a) the unimproved value of the parcel shown in the valuation shall be apportioned by the local authority between the lots comprised in the parcel in proportion to the lot entitlements of the respective lots as shown on the registered plan;
- (b) save as is provided in section 67, the body corporate is not liable in respect of the parcel for any rate or charge made and levied by the local authority;
- (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 an unimproved value equal to that apportioned to it under paragraph (a) and is liable accordingly for any rate or charge made and levied by the local authority on the owners of land;
- (d) where part of a parcel is subject to rates or charges or rates and charges levied by a local authority in respect of water supply, sewerage, cleansing or garbage services, otherwise than on the basis of unimproved value, such rates or charges or rates and charges shall be levied upon the proprietor of each lot, in accordance with such basis or bases as may be adopted by the local authority pursuant to the *Local Government Act 1936-1979*:

Provided that where a rate or charge cannot be directly related to use of the service within a particular lot, the rate or charge shall be apportioned by the local authority between the lots in accordance with the lot entitlements of the respective lots.

**65. Land Tax.** (1) For all purposes in relation to the imposition, assessment or recovery of land tax in relation to a parcel, the following provisions shall have effect:—

- (a) the unimproved value of the parcel shown in the valuation shall be apportioned by the Commissioner of Land Tax between the lots comprised in the parcel in proportion to the lot entitlements of the respective lots as shown on the registered plan;
- (b) the body corporate shall not be liable in respect of the parcel for land tax;
- (c) for the purpose of the *Land Tax Act 1915–1979* and subject to any concessions or exemptions which may be applicable, each lot shall be deemed to be a separate parcel of land with an unimproved value equal to that apportioned to it under paragraph (a);
- (d) in the case of a building units plan, the provisions of sections 11 (6A), 11 (6B) and 13 (1) (viii) of the *Land Tax Act 1915–1979* shall not apply to a lot deemed to be a separate parcel under paragraph (c);
- (e) in the case of a group titles plan, the provisions of sections 11 (6A), 11 (6B), 13 (1) (viii) and 13 (3) of the *Land Tax Act 1915–1979* shall apply to the parcel and for the purpose of such application each lot together with the portion of the common property appurtenant thereto that bears to the whole of the common property the same proportion as the undivided share of the proprietor of the lot bears to the whole estate in the common property shall be taken to be one parcel owned by the proprietor.

(2) A reference in the *Land Tax Act 1915–1979* to an owner or joint owner includes a proprietor of a lot.

**66. Recovery of rates and charges.** Where any rate or charge lawfully levied in respect of a lot by a public or local authority is due and payable and the proprietor has made default in payment thereof, that authority may recover the rate or charge due and payable in an action for debt in any court of competent jurisdiction from the person who is the proprietor of the lot at the time when such action is instituted, and may exercise any other remedy available to the authority under the *Local Government Act 1936–1979* as if the lot were land within the meaning of that Act and the proprietor of the lot were the proprietor of land.

**67. Local authority may recover arrears of rates and charges upon conversion etc.** Upon registration of a plan of resubdivision or amalgamation or a notice of conversion, a local authority may recover any rates and charges outstanding or accrued and unpaid at the time of registration—

- (a) in respect of a lot that becomes common property, from the body corporate;



- (b) in respect of a lot part of which only becomes common property, from the proprietor for the time being of the balance of the lot;
- (c) in respect of one or more lots that are resubdivided or amalgamated, from the proprietor of each lot thereby created in proportion to the lot entitlement that his lot bears to the sum of lot entitlements of the lots created thereby.

**68. Sufficient compliance with certain provisions of Local Government Act.** Where a notice required under section 27 (11) (iii) (c) or any other provision of the Local Government Act to be affixed to or displayed on land in a manner prescribed under that Act cannot be so affixed to or displayed on a lot, there shall be sufficient compliance with that section or other provision if it is affixed to or displayed on the common property in the manner prescribed in that section or other provision.

## PART V—DISPUTES

### *Division 1—Referee*

**69. Appointment of referee.** (1) The Governor in Council may, from time to time, appoint referees and such other officers as he considers necessary to assist them to exercise and perform the powers, authorities, duties and functions conferred or imposed upon them by or under this Act.

(2) Every such appointment shall be made under and every appointee shall hold his appointment in accordance with the *Public Service Act 1922-1978*.

(3) An officer of the Public Service of Queensland may be appointed to and hold the office of referee or other office under this section in conjunction with any other position in the Public Service.

**70. Delegation of powers, etc., of referee.** (1) A referee may, by instrument in writing, delegate to a person employed under and subject to the provisions of the *Public Service Act 1922-1978* the exercise or performance of such of the powers (other than this power of delegation), authorities, duties and functions conferred or imposed on the referee by or under this or any other Act as may be specified in the instrument, and may, in like manner, revoke wholly or in part the delegation.

(2) A power, authority, duty or function the exercise or performance of which has been delegated under subsection (1) may, while the delegation remains unrevoked, be exercised or performed from time to time in accordance with the delegation.

(3) A delegation under subsection (1) may be made subject to such conditions or such limitations as to the exercise or performance of all or any of the powers, authorities, duties or functions delegated, or as to time or circumstances, as may be specified in the instrument of delegation.

(4) Notwithstanding any delegation made under subsection (1), the referee may continue to exercise or perform all or any of the powers, authorities, duties or functions delegated by him.

(5) Any act or thing done or suffered by a delegate while acting in the exercise of a delegation under subsection (1) has the same force and effect as if it had been done or suffered by the referee and shall be deemed to have been done or suffered by the referee.

*Division 2—Applications for Orders*

**71. Referee may inspect certain records.** (1) Where application is made for an order under this Part, the body corporate has, in relation to a referee, the same duties under section 40 (1) and (2) as it has under that section in relation to a proprietor.

(2) A body corporate shall not neglect or fail to perform any duty owed by it to a referee under subsection (1).

Penalty: \$500.

**72. Applications for orders to be made to referee.** Application for an order under this Part shall be made to a referee in writing specifying the grounds on which it is made and the order sought and shall be accompanied by the fee prescribed in respect of the application, if any, and the prescribed deposit, if any.

**73. Procedure after referee receives application.** (1) After receipt of an application for an order under this Part, a referee—

- (a) may require the applicant to provide him with such further information in relation to the application as, in his opinion, may assist the investigation of the application;
- (b) may refuse to proceed with the application until a requirement made by him pursuant to paragraph (a) has been complied with;
- (c) shall give written notice of the application to the body corporate to which the application relates and to any other person who, in his opinion, would be affected if the order sought were made: Provided that an applicant need not be given a notice under this paragraph;
- (d) shall, in a notice referred to in paragraph (c), specify the order sought and invite the body corporate and any member thereof and any other person to whom the notice is given to make to him, within a time specified in the notice, a written submission in respect of the matter to which the application relates;
- (e) may, by further notice, allow the body corporate and each person to whom a notice under paragraph (c) was given a longer time within which to make a submission referred to in paragraph (d);
- (f) may make such other investigations with respect to the application as he thinks fit; and
- (g) may enter upon any parcel to which a dispute relates for the purpose of carrying out any investigation with respect to the application at any reasonable time on notice given to every person who has been notified of the application and to the body corporate.

(2) A person shall not obstruct or hinder the referee or his delegate in the exercise of his powers under subsection (1) (g).

Penalty: \$500.

**74. Body corporate to display and give certain notices.** A body corporate given a notice under section 73 (1) (c) or (e) shall—

- (a) forthwith cause the notice or a copy thereof to be prominently displayed within the parcel on some part of the common property;
- (b) keep the notice so displayed until the expiration of the time limited by the notice for the making of submissions; and
- (c) forthwith serve a copy of the notice on each person whose name appears on its roll.

*Division 3—Orders by Referee*

**75. Orders under this Division.** (1) A referee shall not make an order, other than an order under section 76 (2), until after—

- (a) the expiration of the time specified in the notice given under section 73 (1) (c); or
- (b) where a further notice has been given under section 73 (1), the expiration of the longer time specified in that notice,

for the making of written submissions with respect to the application seeking the order.

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

(3) The referee may order a body corporate, a managing agent, a proprietor, a person having an estate or interest in a lot or an occupier of a lot to do, or to refrain from doing, a specified act with respect to a parcel.

(4) The referee may, by order, dismiss an application for an order.

(5) An application may be withdrawn by the applicant at any time before an order is made.

(6) An application may be amended by the applicant at any time before an order is made provided that the applicant shall satisfy the referee that he has served every party to whom the referee has given written notice of the application with a copy of the amendment and advice that he is entitled to make within a time specified in the notice further written submissions to the referee. In such a case the referee shall not make an order until after the expiration of the time so specified which shall not be less than the time allowed by him for submissions in respect of the original application.

(7) The referee may not, in connexion with an application for an order, make any order for the payment of costs.

(8) Subject to section 76 (5), an order made by the referee shall not be capable of being varied or revoked by him but this subsection does not prevent a subsequent order being made.

**76. Interim orders.** (1) In this section, “interim order” means an order made under subsection (2).

(2) Where an applicant for an order under section 77 (1) states in his application that he requests an interim order, the referee may, if he is satisfied on reasonable grounds that, by reason of the urgent circumstances of the case, he should do so—

(a) make, under this subsection, any order that may be made under section 77 (1) with respect to the application; and

(b) before the expiration of three months from the date on which it takes effect and upon a further request made by the applicant, renew an interim order that is in force by serving notice in accordance with subsection (6) that the order is renewed.

(3) An interim order may be made or renewed notwithstanding—

(a) that any power or duty of the referee under section 73 (1) has not been exercised or performed with respect to the application; or

(b) where the referee has given written notice of the application under section 73 (1) (c), that any time specified under section 73 (1) (d) or (e) in that or any further notice has not expired.

(4) An interim order made pursuant to an application for an order under section 77 (1) ceases to have effect—

(a) at the expiration of three months from the date on which it takes effect or, where the referee has renewed the interim order, at the expiration of six months from that date;

(b) where the interim order is revoked by a tribunal under section 107 (1) (c) or by the referee under subsection (5), when it is so revoked; or

(c) where—

(i) the referee makes an order under section 77 (1) with respect to the application; or

(ii) the referee dismisses the application, before the interim order ceases to have effect under paragraph (a) or (b), when the order is made under section 77 (1) or the application is dismissed, as the case may be.

(5) The referee may revoke an interim order and, if he does so, he shall serve notice in accordance with subsection (6) that the order has been revoked.

(6) A notice of the renewal or revocation of an interim order shall be served—

(a) except as provided in paragraph (b), on the body corporate for the plan to which the order relates; or

(b) where the order requires a person to do or refrain from doing a specified act, on that person.

(7) A person shall not in, or in connexion with, a request for an interim order or for the renewal of any such order, make a statement that he knows is false or misleading in a material respect.

Penalty for an offence against this subsection: \$500.

**77. General powers of referee to make orders.** (1) A referee may, pursuant to an application of a body corporate, a managing agent, a proprietor, a person having an estate or interest in a lot or an occupier of a lot in respect of a parcel, make an order for the settlement of a dispute, or the rectification of a complaint, with respect to the exercise or performance of, or the failure to exercise or perform, a power, authority, duty or function conferred or imposed by this Act in connexion with that parcel on any person entitled to make an application under this subsection or on the chairman, secretary or treasurer of the body corporate.

(2) Where a body corporate has a discretion as to whether or not it exercises or performs a power, authority, duty or function conferred or imposed on it by this Act, it shall be deemed to have refused or failed to exercise or perform that power, authority, duty or function only if it has decided not to exercise or perform that power, authority, duty or function.

(3) Nothing in subsection (1) empowers the referee to make an order under that subsection for the settlement of a dispute, or the rectification of a complaint, with respect to the exercise or performance of, or the failure to exercise or perform, a power, authority, duty or function conferred or imposed on the body corporate by this Act where that power, authority, duty or function may, in accordance with any provision of this Act, only be exercised or performed pursuant to a unanimous resolution, resolution without dissent or special resolution.

(4) Nothing in this Part authorizes the referee to make an order of the kind that may be made by the Court under section 25 or 26.

(5) Nothing in this Part affects the generality of subsection (1), but an order in respect of any matter dealt with in any other section of this Part shall not be made under this section.

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

- (a) requires a party to the dispute before him to pay money not exceeding the sum of \$1 000 to a person specified in the order;
- (b) requires a party to the dispute before him to do, or refrain from doing, some specified act to which the application relates;
- (c) strikes out for want of jurisdiction the dispute before him.

(2) An order made by a referee may direct that the order shall be complied with within a time limited in the order.

(3) An order made by a referee that requires the payment of money may be made to take effect instanter or so as to take effect upon default being made in complying with some other order made by the referee.

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

Where, pursuant to an application by a proprietor for an order under this section, the referee considers that the body corporate for the parcel to which the application relates has unreasonably refused to consent to a proposal by that proprietor—

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

the referee may make an order that the body corporate consent to the proposal.

**80. Order with respect to acquisition of personal property.** Where, pursuant to an application by a proprietor for an order under this section, the referee considers that an acquisition, or a proposed acquisition, by the body corporate for the parcel to which the application relates of personal property is unreasonable, the referee may order—

- (a) that the personal property acquired be sold or otherwise disposed of by the body corporate within a specified time; or
- (b) that the personal property be not acquired.

**81. Order to acquire personal property.** Where, pursuant to an application by a proprietor for an order under this section, the referee considers that the body corporate for the parcel to which the application relates has unreasonably refused to acquire personal property, the referee may order the body corporate to acquire the personal property.

**82. Order to make or pursue insurance claim.** Where, pursuant to an application by a proprietor for an order under this section, the referee considers that the body corporate for the parcel to which the application relates has unreasonably refused to make or pursue an insurance claim in respect of damage to a building or any other property insured by the body corporate under Division 6 of Part IV, the referee may order the body corporate to make or pursue the claim.

**83. Order varying certain contributions.** Where, pursuant to an application by a proprietor for an order under this section, the referee considers that the body corporate for the parcel to which the application relates has determined an unreasonable amount pursuant to section 38 (2) in respect of a contribution for the purposes of section 32, the referee may, in respect of such contributions as are specified in the order, order that the amount shall not be payable or that the amount payable be an amount specified by him in the order instead of the amount so determined.

**84. Order to supply information or documents.** Where, pursuant to an application for an order under this section, the referee considers that the body corporate for the parcel to which the application relates, or the managing agent for that parcel, or the chairman, secretary or treasurer of that body corporate has wrongfully—

- (a) withheld from the applicant information to which he is entitled under this Act; or

- (b) failed to make available for inspection by the applicant or his agent a record or document that, under this Act, he is entitled to inspect,

the referee may order that body corporate, managing agent, chairman, secretary or treasurer to supply or make available the information or to make so available the record or document, as the case may require, to the applicant.

**85. Order relating to animal kept contrary to by-laws.** Where, pursuant to an application by a body corporate, a proprietor, a person having an estate or interest in a lot or an occupier of a lot for an order under this section, the referee considers that a person is keeping an animal on a lot or common property in contravention of the by-laws, the referee may order that person to cause the animal to be removed from the parcel within a specified time, and thereafter to be kept away from the parcel, unless the keeping of the animal on the lot or common property, as the case may be, is subsequently authorized pursuant to the by-laws.

**86. Order relating to animal kept pursuant to by-laws.** Where, pursuant to an application by a body corporate, a proprietor, a person having an estate or interest in a lot or an occupier of a lot for an order under this section, the referee considers that an animal kept on a lot or the common property in accordance with the by-laws causes a nuisance or hazard to the proprietor or occupier of another lot or unreasonably interferes with the use and enjoyment of another lot or of the common property, the referee may—

- (a) order the person keeping the animal to cause the animal to be removed from the parcel within a specified time, and thereafter to be kept away from the parcel; or
- (b) order the person keeping the animal to take, within a time specified in the order, such action so specified as, in the opinion of the referee, will terminate the nuisance, hazard or unreasonable interference.

**87. Order confirming information for roll.** (1) Where a person fails to provide written confirmation of a notice under section 53 that is required to bear that confirmation and a body corporate, managing agent, proprietor or other person having or acquiring an estate or interest in a lot applies for an order under this section, the referee may, subject to subsection (2), order the body corporate in respect of the plan concerned to enter the information in the notice in the roll notwithstanding that it does not bear that confirmation.

(2) In making an order under subsection (1) the referee may amend in any manner he thinks fit the information in the notice to which the order relates.

(3) The referee shall dismiss an application for an order under this section if he considers that the rights of any person would be prejudiced if he makes the order.

(4) A copy of an order under subsection (1) served on a body corporate shall be deemed to be a notice given to the body corporate under section 53 and information entered on a roll pursuant to such an order shall be deemed to have been entered from a notice bearing written confirmation required by that section.

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

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

(2) An order under subsection (1), when recorded under section 112, has effect, subject to any order with respect thereto made by a superior court, as if its terms were a by-law.

(3) The provisions of this section do not apply with respect to a by-law made or deemed to be made pursuant to section 30 (7).

**89. Order granting certain licence.** (1) Pursuant to an application by a proprietor for an order under this section, a referee may, subject to this section, order that the applicant, and any occupier of the lot of which the applicant is the proprietor, may use specified common property in such a manner, for such purposes, and upon such terms and conditions, if any, as are specified in the order.

(2) A referee shall not make an order under subsection (1) unless he is satisfied—

- (a) that the lot of which the applicant is proprietor is incapable of reasonable use and enjoyment by the proprietor or occupier of the lot unless the order is made; and
- (b) that the body corporate has refused to grant a licence to use common property in such a manner, for such purposes, and upon such terms and conditions as would enable that proprietor or such an occupier reasonably to use and enjoy that lot.

(3) An order under subsection (1), when recorded under section 112, has effect, subject to any order with respect thereto made by a superior court, as if its terms were a by-law.

**90. Order invalidating purported by-law.** (1) Where, pursuant to an application by any person entitled to vote at a meeting of the body corporate (including both a first mortgagee and a mortgagor of a lot) for an order under this section, a referee considers that a body corporate did not have the power to make a by-law purporting to have been made by it, the referee may make an order declaring the by-law to be invalid.



(2) An order under subsection (1), when recorded under section 112, has effect, subject to any order with respect thereto made by a superior court, as if its terms were a by-law repealing the by-law to which the order relates.

**91. Order for variation of contributions or manner of payment thereof.** Where, pursuant to an application by a proprietor or by a mortgagee in possession (whether by himself or another person) for an order under this section, a referee considers that any amount of contributions levied under section 32 or determined under section 38 is inadequate or excessive, or that the manner of payment of contributions is unreasonable, the referee may—

- (a) order variation of the amount;
- (b) order payment of contributions in a different manner; or
- (c) make both such orders.

**92. Order where voting rights denied or due notice of item of business not given.** (1) Where, pursuant to an application by a person under this section, a referee is satisfied that a particular resolution would not have been passed at a general meeting of a body corporate but for the fact that the applicant—

- (a) was improperly denied a vote on the motion for the resolution; or
- (b) was not given due notice of the item of business pursuant to which the resolution was passed,

the referee may order that the resolution be treated as a nullity on and from the date of the order.

(2) An application for an order under subsection (1) may not be made after 30 days after the date of the meeting at which the resolution was passed.

(3) Where—

- (a) an order under subsection (1) is made in respect of a resolution making a by-law amending, adding to or repealing another by-law;
- (b) the by-law made pursuant to that resolution is in force; and
- (c) the order is recorded as provided by section 112,

the by-laws shall, subject to their having been or being amended, added to or repealed under section 30 and to any order with respect to the order under subsection (1) made by a superior court, have force and effect on and from the date the order is so recorded to the same extent as they would have had if the resolution had not been passed.

**93. Order varying amount of insurance to be provided.** Where, pursuant to an application by a proprietor or a mortgagee of a lot for an order under this section, a referee considers that the amount for which

the body corporate for the parcel concerned has insured under section 55 or 56 (1) (c) is not reasonable, the referee may order the body corporate to vary that amount to a specified amount.

**94. Order appointing managing agent to exercise or perform certain powers, etc. (1) Where—**

- (a) in consequence of the making of an order under this Part a duty is imposed on a body corporate;
- (b) a duty is otherwise imposed by this Act on a body corporate;
- (c) a duty is imposed by this Act on the chairman, secretary or treasurer of a body corporate or of the council of a body corporate; or
- (d) a judgment debt is owed by a body corporate,

a referee may—

- (e) in the case referred to in paragraph (a), on the application of the person who obtained the order so referred to;
- (f) in the case referred to in paragraph (b) or (c), on the application of a person having an estate or interest in a lot the subject of the plan concerned; or
- (g) in the case referred to in paragraph (d), on the application of the judgment creditor,

by order appoint a managing agent (being a person who has consented in writing to the appointment) to perform that duty and any other duty specified in the order or to pay that judgment debt, as the case may require.

(2) A referee who appoints a managing agent under subsection (1) may also order that the managing agent shall have and may exercise and perform—

- (a) all of the powers, authorities, duties and functions of the body corporate for the parcel to which the order relates or of the chairman, secretary or treasurer of that body corporate or the council of that body corporate;
- (b) any one or more of those powers, authorities, duties or functions specified in the order; or
- (c) all of those powers, authorities, duties and functions except those specified in the order.

(3) Where a referee makes an order under subsection (1), no person other than the managing agent appointed by the order may, while that managing agent holds office as such, exercise or perform any power, authority, duty or function which the managing agent is authorized to exercise or perform by that order or an order under subsection (2).

(4) The appointment of a managing agent under this section may be made upon such terms and conditions (including terms and conditions relating to his remuneration by the body corporate and the duration of his appointment) as the referee specifies in the order making the appointment.

**95. Copy of order to be served.** (1) An order by a referee shall be made in writing and a copy thereof, certified by the referee to be a true copy, shall be served by the referee on—

- (a) the body corporate for the parcel to which the order relates;
- (b) the applicant for the order;
- (c) any person who duly made a written submission to the referee in connexion with the application; and
- (d) any person who, by the order, is required to do, or to refrain from doing, a specified act.

(2) The copy of the order duly certified shall be accompanied by a statement setting out the reasons for the referee's decision.

*Division 4—Tribunals*

**96. Appointment of tribunal.** Every stipendiary magistrate and acting stipendiary magistrate shall by virtue of his appointment to that office and without any further or other appointment whatsoever constitute a tribunal for the purposes of this Act while he continues to be a stipendiary magistrate or an acting stipendiary magistrate.

If a tribunal which has begun an investigation into a matter under this Division ceases to be a stipendiary magistrate or an acting stipendiary magistrate by reason of the expiration of the period of, or his retirement from his appointment as stipendiary magistrate or acting stipendiary magistrate, he shall continue to be a tribunal for the purpose of determining that matter.

**97. Tribunal may investigate as appropriate.** (1) Before making an order under this Part a tribunal shall make a thorough investigation without regard to legal forms or solemnities.

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

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

**98. General provisions relating to orders on appeal.** (1) An order made by a tribunal may include such ancillary or consequential provisions as the tribunal thinks fit.

(2) For the purpose of securing compliance with an order on appeal, a tribunal may order a body corporate, the chairman, secretary or treasurer of a body corporate or its council, a managing agent or a proprietor or other person having an estate or interest in a lot or an occupier of a lot to do or refrain from doing a specified act with respect to a parcel.

(3) A tribunal may, by order, dismiss an appeal.

**99. Representation before a tribunal.** A person may appear before the tribunal on the hearing of the appeal, or be represented by counsel or a solicitor, or by an agent authorized in writing, who may examine witnesses and address the tribunal on behalf of that person.

**100. Adjournment of appeal.** (1) A tribunal may from time to time adjourn the hearing of an appeal to such times and places and for such purposes as the tribunal considers necessary.

(2) The tribunal shall cause notice of the adjournment and of the time and place to which the hearing of the appeal is adjourned to be given to any person served with a notice pursuant to section 106 (7) who is not present or represented at the time the hearing is adjourned.

**101. Continuity of hearing.** (1) The hearing of an appeal shall at all times during its continuance be conducted by the same tribunal.

(2) Subject to section 96, if a hearing is interrupted before an order is made therein by the death, incapacity or removal of the stipendiary magistrate or acting stipendiary magistrate constituting the tribunal and the appellant desires to have the appeal determined the appeal shall be heard *de novo* by a tribunal constituted at the same place by another stipendiary magistrate or acting stipendiary magistrate.

**102. Copy of order to be served.** (1) An order made by a tribunal under this Part shall be made in writing and the tribunal shall cause to be sent to the referee—

(a) the order; and

(b) the records of the tribunal relating to the appeal including records forwarded to it by the referee when referring that appeal to the tribunal.

(2) Where an order has been sent to the referee under subsection (1), he shall serve a copy of the order, certified by him to be a true copy, on—

(a) the body corporate for the parcel to which the order relates;

(b) the applicant for the order and the appellant;

(c) any person who was given notice under section 106 (7) of the time and place for the determination of the appeal; and

(d) any person who, by the order, is required to do, or to refrain from doing, a specified act.

**103. Witness may be summoned before tribunal.** (1) Upon the request of a person to whom a notice has been given under section 106 (7), or the agent of any such person, a tribunal under its hand may summon any person to attend the tribunal at the time and place specified in the summons and then and there to give evidence and to produce books, documents or writings in his custody or control which he is required by the summons to produce.

(2) The fee payable for the issue of a summons is such amount as may be prescribed.

(3) A person served with a summons under subsection (1) shall not, without reasonable excuse, disobey the summons.

Penalty: In the case of a corporation, \$1 000;

In any other case, \$500 or imprisonment for a term of six months or both such fine and imprisonment.

(4) A person is not bound to produce any books, documents or writings not specified or otherwise sufficiently described in the summons or which he would not be bound to produce upon a subpoena for production in the Court.

(5) A summons under subsection (1) need not be obeyed by a person unless he is tendered his reasonable expenses for attending the tribunal in accordance with the summons.

**104. Tribunal may administer oath.** (1) A tribunal may administer an oath or affirmation to a person appearing as a witness before it, whether or not he has appeared in answer to a summons, and may examine the witness upon oath or affirmation.

(2) A person appearing as a witness before a tribunal—

(a) shall not refuse to be sworn or to make an affirmation;

(b) shall not refuse to answer any question relevant to any proceedings before the tribunal put to him by the tribunal or by any person entitled to appear before the tribunal in those proceedings; and

(c) shall not knowingly give false testimony in any evidence given by him to the tribunal.

Penalty: \$500 or imprisonment for six months or both such fine and imprisonment.

(3) A witness before a tribunal has—

(a) the same protection; and

(b) in addition to the penalties provided by this Act, the same liabilities,

as he would have had if he had been a witness before the Court instead of the tribunal.

**105. Contempt of tribunal.** (1) A person shall not wilfully insult or disturb a tribunal, or interrupt the proceedings of a tribunal, or by writing or speech use words which are false or defamatory of a tribunal or otherwise commit any wilful contempt of a tribunal.

Penalty: \$500 or imprisonment for six months or both such fine and imprisonment.

(2) A tribunal has, in relation to a contravention of subsection (1) committed in the face of the tribunal, all the powers of a Magistrates Court under section 40 of the *Justices Act 1886-1979*.

*Division 5—Appeals*

**106. Appeal against order of referee.** (1) Where a referee makes an order under this Part—

- (a) the applicant for the order;
- (b) a person who, in connexion with the application for the order, duly made written submissions to the referee; or
- (c) being an order requiring a person to do or refrain from doing a specified act, that person,

may appeal to a tribunal against the order of the referee by lodging a written notice of appeal with the referee, accompanied by the prescribed fee, not later than 21 days after the order takes effect.

(2) A person may appeal under this section against an order made by a referee under section 76 (2) only on the grounds that the referee acted unreasonably by making the order.

(3) A notice of appeal lodged under subsection (1) shall specify—

- (a) the name and address of the appellant;
- (b) the order appealed against;
- (c) the grounds of the appeal; and
- (d) any other matter prescribed.

(4) The tribunal to which an appeal lies under this section is the tribunal to which, pursuant to subsection (5), the referee forwards the notice of appeal.

(5) Where a notice of appeal is lodged under subsection (1), the referee shall forward to the tribunal that, in his opinion, is nearest to the parcel to which the order appealed against relates—

- (a) the notice of appeal;
- (b) his records relating to the order appealed against; and
- (c) the notices referred to in subsection (6).

(6) The notices that the referee is required by subsection (5) (c) to forward are notices that shall be addressed to each of the following addressees:—

- (a) the appellant;
- (b) each person (other than the appellant) entitled under subsection (1) to appeal against the order; and
- (c) the body corporate for the parcel to which the order appealed against relates, unless it is the appellant.

Each notice shall be accompanied by a copy of the notice of appeal and shall specify the tribunal which is to hear the appeal.

(7) The tribunal to which documents are forwarded under subsection (5) shall cause—

- (a) the notices referred to in subsection (6) to be completed by specifying therein—
  - (i) the place at which the tribunal specified in the notices is to determine the appeal; and

- (ii) a time and day for the determination of the appeal to which the documents relate; and
  - (b) each notice to be sent by registered post to the addressee thereof so that it would, in the ordinary course of post, be received by the addressee not less than seven days before the day specified in the notice pursuant to paragraph (a) (ii).
- (8) Where a notice of appeal is accompanied by an application for an order under this subsection—
- (a) the referee, before he forwards to a tribunal the documents referred to in subsection (5); or
  - (b) the tribunal to which he has sent those documents,
- may, by order, stay the operation of the order appealed against and, where he does so, forward notice of the order made under this subsection to the persons referred to in subsection (6).

**107. Determination of appeal from order of referee.** (1) In the determination of an appeal from an order of the referee, a tribunal—

- (a) if the tribunal thinks it is proper to do so, may admit evidence other than the evidence before the referee when he made the order;
- (b) where the order was made otherwise than under section 76 (2), may, by order, affirm, vary or revoke the order appealed against or substitute the tribunal's order for the order appealed against;
- (c) where the order was made under section 76 (2), may dismiss the appeal or, by order, revoke the order appealed against; and
- (d) shall not make any order as to costs.

(2) An order made under subsection (1) (b) has effect, and the provisions of this Act other than section 106 apply to it, in all respects as if it were an order made under the provision of this Act under which the order appealed against was made.

**108. Appeal to Court on question of law.** (1) An appeal lies to the Court from an order made by a tribunal under section 107 on the ground that the order is erroneous in law but on no other ground.

(2) The persons who may appeal under subsection (1) are—

- (a)—
  - (i) the appellant to the tribunal;
  - (ii) where he was not the appellant to the tribunal, the applicant for the original order made by the referee;
  - (iii) any person who, in connexion with the application for the original order, duly made written submissions to the referee; and
  - (iv) where an order requires a person to do or refrain from doing any act, that person;

- (b) in any case where the body corporate for the parcel to which the appeal relates is not included in paragraph (a) that body corporate.

**109. Appeal does not lie from tribunal except as provided in this Division.** Except as provided by this Division, an appeal does not lie from an order made by a tribunal.

*Division 6—Miscellaneous*

**110. Refund of prescribed deposit.** Upon the final determination of an application made under this Part, the prescribed deposit which accompanied the application shall, unless the referee, the tribunal or the Court making that determination otherwise directs on the ground that the application was vexatious or frivolous in its nature, be refunded to the applicant.

**111. Effect of certain orders.** (1) The terms of an order made under section 79, 80, 81, 83, 91 or 92 (other than section 92 (3) (a)) or under section 93 or an order made under section 77 in which the referee declares that it is to have effect as a decision of a body corporate shall be deemed to be a resolution passed by the body corporate in respect of the plan to which the order relates.

(2) Upon service upon it by the referee of a copy of an order referred to in subsection (1), the body corporate shall cause the terms of the order to be recorded in its minute book.

(3) Except in the case of a unanimous resolution or a resolution without dissent, a resolution passed by a body corporate has no force or effect if it purports to rescind or amend a resolution deemed by subsection (1) to have been passed by the body corporate.

(4) Where an order referred to in subsection (1) specifies a period during which a resolution passed by the body corporate has no force or effect if it purports to alter the effect of that order, such a resolution has no force or effect if it is passed during that period—

(a) unless it is a unanimous resolution or a resolution without dissent; or

(b) unless, upon an application made as referred to in subsection (5), a referee makes an order under this paragraph authorizing the submission to a general meeting of the body corporate of a motion for that resolution.

(5) An application for an order under subsection (4) (b)—

(a) may be made by any person who, if the application for the order referred to in subsection (1) were made at the time the application referred to in this subsection is made, would be entitled to make the application for the order referred to in subsection (1);

(b) shall specify the order sought;



- (c) shall be made to the referee in writing specifying the grounds on which it is made; and
- (d) shall be accompanied by the prescribed fee and the prescribed deposit, if any.

(6) An application referred to in subsection (5) shall be dealt with in all respects as if it were an application for an order under this Part.

**112. Recording on plan of effect of certain orders.** Where—

- (a) an order is made under section 88, 89 or 90 or under section 92 (being an order referred to in section 92 (3) (a));
- (b) a copy of the order, certified by the referee as a true copy is lodged in the office of the Registrar of Titles; and
- (c) the prescribed fee is paid,

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

**113. Penalty for contravention of certain orders.** (1) A person shall not contravene an order made under this Part, not being an order made under section 76 (2), to do or refrain from doing a specified act.

Penalty: \$100 and, subject to subsection (2), a further penalty not exceeding \$10 for every day during which the contravention continues.

(2) The maximum amount that may be recovered in any prosecution for an offence under subsection (1) is \$500.

(3) A person shall not contravene an order under section 76 (2) to do or refrain from doing a specified act.

Penalty: \$500.

(4) Proceedings for an offence under subsection (1) or (3) of contravening an order may only be taken by the applicant for the order or body corporate concerned.

(5) In proceedings under this section—

- (a) the imposition of a penalty operates as a judgment under the *Magistrates Courts Act 1921-1976* against the defendant and in favour of the prosecutor for the amount of the penalty; and
- (b) an order for a person to pay an amount of costs operates as a judgment for that amount under that Act against that person and in favour of the person whose costs are ordered to be paid.

(6) A penalty imposed under this section or costs referred to in subsection (5) (b) shall not be enforceable or recoverable except as provided in subsection (5).

(7) Any costs awarded against a defendant in proceedings under this section shall include the amount of the fee paid on filing the application for the order contravened.

(8) A document purporting to be a copy of an order made by a referee or a tribunal shall be admissible in evidence and shall, until the contrary is proved, be deemed to be an order made by the referee or tribunal, as the case may be.

**114. Protection of referee and tribunal.** No action shall lie against a referee, including his delegate, or a tribunal on account of any proceeding taken, any publication made or anything done under the authority of this Act or taken, made or done bona fide purportedly under the authority of this Act.

**115. Enforcement of orders for payment of money.** (1) The person to whom payment is to be made under an order that requires the payment of money may enforce the order by filing in the office of the Registrar of the Magistrates Court at a place appointed for holding Magistrates Courts in the Magistrates Court District wherein the person required by the order to make payment resides or has a place of business or wherein the person to whom payment is to be made resides—

- (a) a copy of the order certified by the referee to be a true copy; and
- (b) his affidavit, taken by a justice, as to the amount not paid under the order and, where the order is to take effect upon any default, as to the making of that default,

whereupon the order shall be deemed to be a judgment that requires payment of money duly made by a Magistrates Court pursuant to the *Magistrates Courts Act 1921-1976* and may be enforced accordingly.

(2) No court fees shall be payable under subsection (1) up to and including entry of judgment.

(3) It shall be competent to a person to file a copy of an order pursuant to subsection (1) once only and a second or subsequent filing purportedly pursuant to that subsection shall be ineffectual.

(4) The *Limitation of Actions Act 1974* applies in respect of a decision of a referee and in respect of the enforcement of any order made by the referee as it applies in respect of any judgment.

**116. Time at which order takes effect.** Except—

- (a) where express provision is otherwise made by this Act; or
- (b) to the extent that a referee or tribunal specifies in an order under this Part,

an order takes effect when a copy of the order, certified by the referee to be a true copy, is served—

- (c) where the order requires a person to do or refrain from doing a specified act, on that person; or
- (d) in any other case on the body corporate for the parcel to which the order relates.

**117. Inquiries.** The referee shall, upon inquiry having been made to him by a person in writing in or to the effect of the prescribed form and upon payment of the fee prescribed in respect of the inquiry—

- (a) by notice in writing, inform that person whether or not—
  - (i) any application (being an application that has not been finally disposed of at a date and time specified in the notice) has been received by the referee for an order under this Act with respect to the parcel to which the inquiry relates; or
  - (ii) any order has been made under this Act with respect to that parcel, being an order of a class prescribed for the purposes of this subparagraph and specified in the inquiry; and
- (b) where any such application has been received by the referee or any such order has been so made, provide in that notice particulars of the application or order, as the case may be.

**118. Referee or tribunal not to have jurisdiction where title to land in question.** Notwithstanding any other provision of this Part, a referee or tribunal shall not have jurisdiction under this Part in any case in which the title to land is in question otherwise than for the purpose of determining any matter before the referee or tribunal, as the case may be, and any determination made by the referee or tribunal shall not have any force or effect except as provided by this Act.

#### PART VI—GENERAL

**119. Other rights and remedies not affected by this Act.** (1) Nothing in this Act derogates from any rights or remedies that a proprietor or mortgagee of a lot or a body corporate may have in relation to any lot or the common property apart from this Act.

(2) Where the court in which any proceedings to enforce any rights or remedies referred to in subsection (1) is of the opinion that, having regard to the subject-matter of the proceedings, the taking of the proceedings was not, in the circumstances of the case, warranted by reason that Part V makes adequate provision for the enforcement of those rights or remedies, the court shall order the plaintiff to pay the defendant's costs in such amount as may be determined by the court.

**120. Reservation of name.** (1) A person may make an application in the prescribed manner and form, accompanied by the prescribed fee, to the Registrar of Titles for the reservation of a name set out in the application as the name of a building in a proposed building units plan or the name of a parcel in a proposed group titles plan.

(2) If the Registrar of Titles is satisfied as to the bona fides of the application and that the proposed name is a name with which the plan could be registered without contravention of section 9 he shall reserve the proposed name in the manner prescribed for a period of two years from the date of the lodging of the application.

(3) If, at any time during the period for which a name is reserved, an application, accompanied by the prescribed fee, is made to the Registrar of Titles for an extension of that period and the Registrar of Titles is satisfied as to the bona fides of the application, he may extend that period for a further period of one year.

(4) During a period for which a name is reserved—

(a) in respect of a proposed building units plan, another building units plan; or

(b) in respect of a proposed group titles plan, another group titles plan,

shall not be registered under this Act whether originally or on change of name, under the reserved name.

(5) The reservation of a name under this section in respect of a proposed plan does not in itself entitle a plan to be registered by that name.

(6) An applicant for the reservation of a name who, during the period for which that name is reserved—

(a) lodges the plan in respect of which that name is reserved;

(b) decides not to proceed with the registration of the plan in respect of which that name is reserved; or

(c) decides not to register the plan in the name so reserved,

shall notify the Registrar of Titles to that effect and—

(d) in the case of paragraph (a), the Registrar of Titles shall note his records accordingly; and

(e) in the case of paragraph (b) or (c), the name shall cease to be reserved.

**121. Body corporate is representative of proprietors in proceedings.**

(1) Where the proprietors of the lots the subject of a plan are jointly entitled to take proceedings against any person or are liable to have proceedings taken against them jointly (any such proceedings being proceedings for or with respect to common property), the proceedings may be taken by or against the body corporate and any judgment or order given or made in favour of or against the body corporate in any such proceedings shall have effect as if it were a judgment or order given or made in favour of or against the proprietors.

(2) Where a proprietor is liable to make a contribution to another proprietor in respect of a judgment debt arising under a judgment referred to in subsection (1), the amount of that contribution shall bear to the judgment debt the same proportion as the lot entitlement of the lot of the firstmentioned proprietor bears to the aggregate lot entitlement.

**122. Body corporate's power to take proceedings as agent for proprietor in case of structural defects. Where—**

(a) the condition of any lot in a parcel affects or is likely to affect the support or shelter provided by that lot for another lot in the same building or the common property; and

- (b) the proprietor of the lot in that condition has neglected or refused within a reasonable time to take any proceedings under the *Builders' Registration and Home-owners' Protection Act 1979* or for the purpose of exercising any other right or enforcing any other remedy available to him to have that condition rectified,

the body corporate may, as agent for the proprietor of the lot in that condition but at its own expense, take any of the proceedings referred to in paragraph (b).

**123. Dividing fences.** (1) For the purposes of the *Dividing Fences Act 1953-1972* the body corporate in respect of a plan shall be deemed to be the owner of the parcel the subject of that plan, other than such part, if any, of that parcel which is the subject of a lease accepted or acquired by the body corporate under section 21.

(2) The provisions of the *Dividing Fences Act 1953-1972* apply in respect of the common boundaries between lots in a group titles plan as if the proprietors of the lots were the owners of adjoining land.

**124. Costs in proceedings by proprietors against body corporate.**

(1) In any proceedings brought by one or more proprietors against the body corporate, the court may order that any moneys (including costs) payable by the body corporate pursuant to an order of the court made in those proceedings shall be paid, only in respect of such lots as are specified in the order and in such proportions as may be so specified, by the body corporate out of contributions levied for the purpose.

(2) Where a court makes an order under subsection (1) the body corporate shall, for the purpose of paying the moneys ordered to be paid by it, levy contributions in accordance with the terms of the order and shall pay the moneys out of the contributions paid pursuant to that levy. The provisions of section 32 with such modifications as may be necessary apply to and in respect of contributions levied under this subsection in the same way as those provisions apply to contributions levied under that section.

**125. Apportionment of statutory charges.** (1) Where by reason of any Act or of anything done under the authority of any Act, any expenditure by a public or local authority would, if the parcel were not the subject of a plan, be a charge on the land comprised in that parcel, that expenditure is a charge on each lot for an amount bearing to the whole of that expenditure the same proportion as the lot entitlement of that lot bears to the aggregate lot entitlement.

(2) The proprietor or mortgagee of a lot the subject of a charge referred to in subsection (1) may pay to the authority entitled to the charge the amount thereof and thereupon—

- (a) the lot and the appurtenant beneficial interest in the common property are freed from the charge; and
- (b) the authority has no legal rights against the proprietor or his lot or appurtenant beneficial interest in common property in respect of the subject-matter of the charge.

**126. Notice of application for order under section 25 or 26.** (1) The Court may, in respect of any proceedings on an application for an order under section 25 or 26, make either or both of the following orders:—

- (a) order that public notice, by advertisement or otherwise, be given of the proceedings; or
- (b) order that service of notice of the application upon any person be dispensed with.

(2) Subject to *The Supreme Court Act of 1921*, the Court shall not make an order referred to in subsection (1) (b) in respect of any person unless the Court is satisfied that—

- (a) that person cannot be found in Queensland;
- (b) it is uncertain whether that person is living; or
- (c) service cannot be effected upon that person without expense disproportional to the value, if any, of his interest.

**127. Service of documents on body corporate, proprietors and others.**

(1) A summons or other legal process may be served on a body corporate by leaving it with the chairman or secretary of the body corporate or with any member of the council.

(2) A document other than a document referred to in subsection (1) may be served on a body corporate—

- (a) by leaving it with any person referred to in subsection (1) or in the receptacle provided by the body corporate in accordance with section 38 (1) (d); or
- (b) by post on the body corporate at its address recorded on the registered plan.

(3) Subject to this Act, a notice or other document required or authorized by this Act to be served by a referee, a tribunal, a body corporate, a council or the secretary of a council on a proprietor, lessee, mortgagee or occupier of a lot may be served—

- (a) by leaving it with some person apparently of or above the age of sixteen years—
  - (i) where the person to be served is an occupier of the lot, at the lot; or
  - (ii) where an address for the service of notices on the person to be served is recorded in the roll, at the address so recorded;
- (b) by post on the person to be served, where an address for the service of notices on that person is recorded in the roll, at the address so recorded; or
- (c) in the case of a proprietor, in any manner authorized by the by-laws for the service of notices on proprietors.

(4) Notice under section 44 (5) may be served on a person—

- (a) personally or by post; or
- (b) by leaving it with a person apparently of or above the age of 16 years at the place of residence or place of business of the firstmentioned person.

**128. Powers of entry by public or local authority.** A public or local authority which is authorized by any Act to enter upon part of a parcel for the purpose of exercising any power conferred on it may enter upon any other part of that parcel if it is necessary to do so in order to exercise that power.

**129. Powers of entry of referee in certain cases.** (1) Where a referee believes on reasonable grounds that—

- (a) an offence against any provision of this Act; or
- (b) a breach of the by-laws,

has been or is being committed upon any part of a parcel, he may, at any reasonable time on reasonable notice given to an occupier of that part of the parcel enter upon that part for the purpose of ascertaining whether that offence or breach has been or is being committed.

(2) When exercising his power under subsection (1), the referee may, if he thinks fit, be accompanied by—

- (a) the chairman, secretary or treasurer of the body corporate or other member of the council; or
- (b) the managing agent, if any, of the parcel concerned.

(3) A person shall not obstruct or hinder—

- (a) the referee, in the exercise of his power under subsection (1); or
- (b) a person accompanying the referee in pursuance of subsection (2).

Penalty: \$200.

**130. Voting rights.** (1) Any 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 authorized by law to control that property;
- (c) in the case of a proprietor or a registered mortgagee which is a corporation, by the company nominee.

(2) Where the Court upon the application of the body corporate or of any proprietor or of any registered mortgagee is satisfied that there is no person able to vote in respect of a lot or that the person able to vote in respect of a lot cannot be found, the Court—

- (a) in cases where a unanimous resolution is required by this Act, shall; and
- (b) in its discretion in any other case, may,

appoint the Public Trustee 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) on such persons as it thinks fit or may dispense with service of such 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 an order so made.

(5) The powers of the Court under this section may be exercised by the Registrar in the first instance, who may refer the application to a judge and who shall so refer it at the request of the applicant or any respondent.

(6) In this section and in section 132 the term " Registrar " means the Registrar of the Court at Brisbane, Rockhampton or Townsville, as the case may be, and includes a deputy registrar.

**131. Voting rights of mortgagees.** (1) Where a proprietor's interest is subject to a registered mortgage, the power of voting conferred upon 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 registered mortgagee first entitled in priority;
- (b) in other cases, may be exercised by the first or a subsequent mortgagee present personally or by proxy according to their respective priorities, and shall not be exercised by the proprietor where a mortgagee is present personally or by proxy.

(2) Subsection (1) shall not apply unless the mortgagee has given written notice of his mortgage to the body corporate.

**132. Procedure upon application to Court.** (1) Every application to the Court under this Act shall be by summons at chambers unless otherwise provided by rules of court made in relation thereto.

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

(3) The Court may, if it thinks fit, adjourn an application into court and thereupon may give such directions as to all matters, including filing of pleadings as may appear necessary and proper for a final hearing of the application.

(4) The Court may delegate to the Registrar all or any of its powers under this Act.

(5) The power to make rules of the Supreme Court includes power to make rules regarding the practice and procedure of the Court under this Act.

**133. Offences.** (1) Any person (including a body corporate) who contravenes or fails to comply with any provision of this Act, other than the Third Schedule, commits an offence against this Act and, if no penalty is expressly provided for that offence, shall be liable on conviction to a penalty not exceeding \$500.



(2) An offence against this Act shall be prosecuted in a summary way under the *Justices Act 1886-1979*.

**134. Regulations.** (1) The Governor in Council may, from time to time, make regulations not inconsistent with this Act for or with respect to—

- (a) the preparation of plans and documents for the purposes of this Act;
- (b) the plans and documents that under this Act may be lodged in the office of the Registrar of Titles;
- (c) the registration in the office of the Registrar of Titles of plans and documents;
- (d) the fees to be paid in respect of the lodgment and registration in the office of the Registrar of Titles of plans and documents;
- (e) the forms to be used for the purposes of this Act;
- (f) the fees to be paid in respect of applications made to a referee or a tribunal under this Act and the remission of any such fees;
- (g) the nomination and election of the offices of chairman, secretary and treasurer of bodies corporate and of other members of councils;
- (h) the practice and procedure to be followed by referees and tribunals;
- (i) the enforcement of orders made by referees and tribunals; and
- (j) any matter or thing which by this Act is required or permitted to be prescribed or is necessary or convenient to be prescribed for carrying out or giving effect to any provision of this Act.

(2) A regulation made under subsection (1) may impose a penalty not exceeding \$200 for an offence against a regulation.

(3) A regulation made under subsection (1) may make provisions which differ in their application according to such factors as are specified in the regulation.

SCHEDULES

FIRST SCHEDULE  
PART I—REPEALS

[Section 4

Year and Number of Act	Short Title	Extent of Repeal
No. 3 of 1965	<i>The Building Units Titles Act of 1965</i> ..	The whole
No. 36 of 1972	<i>Auctioneers and Agents Act and Another Act Amendment Act 1972</i>	Part III
No. 58 of 1973	<i>Group Titles Act 1973</i> .. .. .	The whole

## PART 2

## AMENDMENTS OF THE AUCTIONEERS AND AGENTS ACT 1971-1978

Provision Amended	Amendment
Section 5	<p>Section 5 is amended in subsection (1), by omitting the definition "Land" and substituting the following definition:—</p> <p>““Land”—Land held in fee simple or for an estate of leasehold: The term includes a lot comprised in a building units plan under the <i>Building Units and Group Titles Act 1980</i>;”.</p>
Section 42	<p>Section 42 is amended by inserting after subsection (1) the following subsections:—</p> <p>“(2) Where the applicant—</p> <ul style="list-style-type: none"> <li>(a) is a managing agent appointed pursuant to the <i>Building Units and Group Titles Act 1980</i>;</li> <li>(b) resides in the building to which his appointment relates;</li> <li>(c) has an office in that building;</li> <li>(d) has complied with the provisions of the Act other than the educational qualifications referred to in paragraph (d) of subsection (1); and</li> <li>(e) satisfies the Committee that he has sufficient knowledge and ability in relation to the keeping and operation of trust accounts under this Act,</li> </ul> <p>the Committee shall exempt him from those educational qualifications and may grant him a licence subject to the condition that during the subsistence of the licence or any renewal thereof he shall be restricted in his real estate agency business to the letting of lots in the building of which he is managing agent and shall not carry on business as a real estate agent in any other capacity or in respect of any other property nor act in any manner as a real estate salesman.</p> <p>(3) After the expiration of three months after the commencement of this subsection, a managing agent appointed pursuant to the <i>Building Units and Group Titles Act 1980</i> shall not perform the functions of a real estate agent in respect of which functions a licence would be issued under subsection (2) unless he holds a real estate agents licence.”.</p>
Section 67A	<p>Section 67A is amended by—</p> <ul style="list-style-type: none"> <li>(a) in the note appearing in and at the beginning thereof, omitting the words “building unit” and substituting the words “lot in a building units plan”;</li> </ul>

PART 2

AMENDMENTS OF THE AUCTIONEERS AND AGENTS ACT 1971-1978

Provision Amended	Amendment
	<p>(b) omitting subsection (1) and substituting the following subsection:—</p> <p>“ (1) Where an auctioneer by auction or real estate agent as such—</p> <p>(a) sells any lot in a building units plan or proposed lot in a proposed building units plan where the construction of the building to which the plan relates commenced or is proposed to be commenced after the coming into operation of the <i>Auctioneers and Agents Act and Another Act Amendment Act 1972</i>, and</p> <p>(b) any representation, promise or term is made or offered to the purchaser with respect to the availability or provision to the purchaser of a separate Certificate of Title under the <i>Real Property Act 1861-1979</i> for the lot together with the share of the common property appurtenant thereto, whether the representation, promise or term is a term of the transaction or not, then, notwithstanding any other provision of this Act, that auctioneer or real estate agent shall retain in the trust account into which he has paid the same pursuant to this Act all moneys received by the auctioneer or real estate agent in respect of that transaction until a building units plan in which the lot, the subject of the transaction, is incorporated as a lot is registered by the Registrar of Titles in accordance with the <i>Building Units Titles Act 1965-1972</i> or the <i>Building Units and Group Titles Act 1980</i> unless the person who has paid that money shall be sooner entitled under this section to a refund thereof in which event the auctioneer or real estate agent shall make the refund from the trust account in compliance in every respect with the requirements of this Act in relation to payment by him of moneys from a trust account.”;</p> <p>(c) in subsections (2), (3), (4), (5), (6), (7), (10) and (11), omitting the word “unit” wherever occurring and substituting the word “lot” in each case;</p> <p>(d) in subsection (3), omitting the words “<i>The Real Property Acts 1861 to 1963</i>” and substituting the words “<i>Real Property Act 1861-1979</i>”;</p> <p>(e) in subsections (5) and (6), inserting after the words “<i>Building Units Titles Act 1965-1972</i>” where occurring the words “or the <i>Building Units and Group Titles Act 1980</i>” in each case.</p>

## SECOND SCHEDULE

[Section 29

MEETINGS OF, AND VOTING AT MEETINGS OF, BODY  
CORPORATE

## PART 1—FIRST ANNUAL GENERAL MEETING

**1. Interpretation.** In this Part—

“business” means the items in the agenda referred to in section 29 (2);

“meeting” means the first annual general meeting of a body corporate.

**2. Inspection of roll by original proprietor.** For the purposes of preparing the notices referred to in clause 3, an original proprietor, whether or not he has ceased to be a proprietor, or his agent authorized in writing is entitled to inspect the roll without making payment or written application.

**3. Notice of meeting and contents thereof.** (1) Notice of the meeting shall be served on each person (other than the original proprietor) who is a proprietor or first mortgagee of a lot, as ascertained from the roll, at least 14 days before the meeting and shall—

- (a) set forth as the agenda of the meeting the items referred to in section 29 (2) and no other business; and
- (b) inform each person to whom the notice is addressed that he or, where the notice is addressed to a corporation, a company nominee of the corporation, may vote at the meeting—
  - (i) in the case of a proprietor of a lot subject to a mortgage shown on the roll, only in accordance with section 131;
  - (ii) except in the case of a motion requiring a unanimous resolution or resolution without dissent, only if all contributions levied and payable on the lot, and any other moneys recoverable under this Act by the body corporate from the person to whom the notice has been addressed at the date of the notice (being contributions levied on him, or moneys recoverable from him, in respect of the lot of which he is the proprietor or first mortgagee) have been duly paid before the commencement of the meeting; and
  - (iii) either in person at the meeting or by proxy given in writing to the secretary of the body corporate before a time specified in the notice (being a time not later than the time for the holding of the meeting).

(2) Notwithstanding subclause (1), where the meeting referred to in that subclause is a meeting of a body corporate continued by the operation of section 5 (3), notice of that meeting may be served on a proprietor or first mortgagee of a lot whose name does not appear on the roll by prominently displaying the notice, in the case of a building units plan, within the building on some part of the common property or, in the case of a group titles plan, on some part of the common property.

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(3) Where it is served on a first mortgagee of a lot, notice of the meeting shall include the name of the proprietor of the lot and the addresses of the lot and the place where the meeting is to be held.

**4. Restrictions on submitting motions.** (1) A motion shall not be submitted to the meeting unless it relates to the business of the meeting.

(2) A person is not entitled to move a motion at a meeting or to nominate a person for election as the chairman, secretary or treasurer of the body corporate or a member of the council unless he is entitled to vote on that motion or in that election.

(3) For the purposes of subclause (2), a proprietor who but for the existence of a mortgage over his lot would be entitled to vote on a motion or in an election or a company nominee of any such proprietor that is a corporation shall be deemed to be entitled to vote on that motion or in that election.

**5. Persons entitled to vote at meetings.** (1) Subject to section 131, a person is entitled to vote at a meeting in respect of any lot only if he is the proprietor of that lot as shown on the roll or, where the proprietor so shown is a corporation, the company nominee of that corporation as shown on that roll.

(2) Notwithstanding any other provision of this clause, a first mortgagee of a lot as shown on the roll, or, where the first mortgagee is a corporation, the company nominee, as shown on that roll, of that corporation is entitled to cast a vote at a meeting in respect of that lot in accordance with section 131.

(3) Notwithstanding section 53 (11) co-proprietors or co-mortgagees shall only be entitled to cast a vote by a person duly appointed in writing as a proxy by them jointly and if notice of his appointment has been given to the secretary of the body corporate before the commencement of the meeting.

(4) Only the proprietor entitled to the first of two or more successive estates in a lot is, subject to this Part, entitled to cast a vote at a meeting.

(5) A proprietor who is the trustee of a lot is, subject to this Part, entitled to cast a vote at a meeting and the persons beneficially interested in the trust are not entitled to cast a vote.

(6) Notwithstanding any other provision of this Act, a person shall not be entitled to cast a vote at a meeting except in respect of a motion for a resolution which to be effective must be passed by unanimous resolution or resolution without dissent unless—

(a) all contributions levied and payable in respect of the lot in respect of which he is entitled to vote; and

(b) any other moneys recoverable under this Act by the body corporate from him,

at the date of the notice given under clause 3 (1) have been duly paid before the commencement of the meeting.

(7) The voting rights conferred by this clause are subject to section 53 (11) and (12).

**6. Quorum.** (1) Business shall not be considered at a meeting unless the number of persons present at that meeting either personally or by proxy and entitled to vote constitutes a quorum.

(2) Except as provided in subclause (3), one-fourth of the persons entitled to vote on any matter at a meeting constitutes a quorum for considering that matter.

(3) Where there is no quorum, as provided in subclause (2), for considering any matter at a meeting within one-half hour after that matter arises for consideration at that meeting, the meeting shall stand adjourned to the same day in the next week at the same place and time and if there is no quorum, as provided in subclause (2), for considering that matter at the adjourned meeting within one-half hour after that matter arises for consideration, the number of persons present personally or by proxy and entitled to vote constitutes a quorum for considering that matter.

**7. Motions out of order.** The chairman of a meeting may rule a motion out of order if he considers that the motion, if carried, would conflict with this Act or the by-laws or would otherwise be unlawful or unenforceable.

**8. Method of casting votes.** Except as provided in clause 5 (3), a vote may be cast at a meeting by a person entitled to vote, either personally or by his proxy duly appointed in writing.

**9. Chairman to preside.** The chairman of the body corporate, if present, shall preside at the meeting and, in his absence, the persons present and entitled to vote at the meeting may elect one of their number to preside at the meeting and the person so elected shall, while he is so presiding, be deemed to be the chairman of the body corporate.

**10. Chairman to have available names of persons entitled to vote.** The chairman at a meeting shall have available for inspection, before submitting a matter to a vote at the meeting, a list of the names of the persons who are entitled to vote on that matter.

**11. Counting of votes on election of chairman, secretary, treasurer and council.** Each person entitled to vote on an election of the chairman, secretary and treasurer of the body corporate and other members of the council has one vote in respect of each lot in respect of which he is entitled to vote.

**12. Counting of votes.** (1) Subject to this clause, a motion submitted at a meeting shall be decided according to the number of votes cast for and against the motion, whether personally or by proxy, each person entitled to vote having one vote in respect of each lot in respect of which he is entitled to vote.

(2) If—

- (a) a poll is demanded by any person entitled to vote at a meeting on a motion submitted at that meeting, whether or not the motion has been decided in accordance with subclause (1), and the demand is made by that person personally at the meeting; or
- (b) a motion submitted at the meeting is for a resolution which, if it is to be effective, is required by this Act to be a special resolution,

the motion shall be decided according to the value, ascertained in accordance with subclause (3), of the votes cast for and against the motion, whether personally or by proxy.

(3) For the purposes of subclause (2) the value of a vote cast on a motion submitted at a meeting by a person entitled to vote in respect of a lot is equal to the lot entitlement of that lot.

(4) Any one co-proprietor or co-mortgagee may demand a poll and on any poll each co-proprietor or co-mortgagee shall be entitled to such part of the vote applicable to a lot as is proportional to his interest in the lot. A joint proxy (if any) on a poll shall have a vote proportional to the interests in the lot of such of the co-proprietors or co-mortgagees as do not vote personally or by individual proxy.

(5) A poll shall be taken in such manner as the chairman thinks fit.

(6) A demand for a poll may be withdrawn by the person who made it.

(7) In the case of equality in the votes whether on a show of hands or on a poll the chairman of the meeting shall be entitled to a casting vote in addition to his original vote whether or not he has exercised that original vote.

**13. Chairman's declaration of vote.** The declaration of the chairman of the result of the voting on any motion submitted at a meeting, otherwise than on a poll, shall be conclusive without proof of the votes recorded for or against the motion.

**14. Amendment or revocation of certain resolutions.** A unanimous resolution, resolution without dissent or special resolution of a body corporate may not be amended or revoked at a meeting except by a subsequent unanimous resolution, resolution without dissent or special resolution, as the case may be.

**15. Appointment of proxy.** An instrument appointing a proxy shall be in writing under the hand of the person making the appointment or his attorney, and may be either general or for a particular meeting. A proxy need not be a proprietor.

## SECOND SCHEDULE

## PART 2—MEETINGS OTHER THAN FIRST ANNUAL GENERAL MEETING

**1. General meetings of body corporate.** (1) An annual general meeting of a body corporate shall be held in each year on a date not earlier than one month before nor later than one month after each anniversary of the first annual general meeting.

(2) (a) A general meeting of a body corporate (in this clause referred to as an "extraordinary general meeting"), which is not an annual general meeting, shall be held whenever it is convened by the council.

(b) All business shall be deemed special which is transacted at an annual general meeting (with the exception of the consideration of accounts and the election of the chairman, secretary and treasurer of the body corporate and other members of the council) or at an extraordinary general meeting.

(3) Without limiting the power of a council under subclause (2)—

(a) the secretary of a council or, in his absence, any member of the council shall convene an extraordinary general meeting of the body corporate as soon as practicable after he receives a requisition for an extraordinary general meeting signed by one or more persons entitled to vote in respect of one or more lots, the lot entitlement or the sum of the lot entitlements of which is at least one-fourth of the aggregate lot entitlement; and

(b) where a member of the council other than the secretary receives a requisition to convene an extraordinary general meeting of the body corporate under this subclause, he may give, on behalf of the council, the notice required to be given under subclause (4).

(4) (a) Notice of a general meeting of a body corporate shall—

(i) be served on each proprietor and first mortgagee of a lot, as ascertained from the roll, at least 7 days before the meeting;

(ii) where it is so served on a first mortgagee of a lot, include the name of the proprietor of the lot and the addresses of the lot and the place where the meeting is to be held; and

(iii) where it is so served pursuant to a requisition referred to in subclause (3) (a), specify a date for the convening of the extraordinary general meeting to which it relates that is not later than one month after the date on which the secretary or member, as the case may be, of the council received the requisition.

(b) Nothing in paragraph (a) (i) requires a proprietor to serve on himself notice referred to therein.

(5) Every notice for an annual general meeting shall—

(a) be accompanied by a copy of the statement of accounts of the body corporate last prepared by the body corporate in accordance with section 38 (1) (h);

(b) include a form of motion for adoption of those accounts;



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- (c) when necessary, be accompanied by a ballot-paper for the election of candidates as chairman, secretary and treasurer of the body corporate and as other members of the council; and
  - (d) if no nomination is received for any such position prior to the closing date, contain advice that the position will be filled from nominations received from the floor of the meeting.
- (6) Every notice for an annual general meeting or an extraordinary general meeting shall—
- (a) include—
    - (i) a form of motion to confirm the minutes of the last general meeting;
    - (ii) where the notice is for a meeting required to be convened by a person appointed under section 29 (7) by reason of there not being a council, a form of motion for the election of a council; and
    - (iii) a form of each other motion which—
      - (A) relates to the striking of a special monetary levy on all proprietors;
      - (B) seeks to alter the rights, privileges or obligations of proprietors; or
      - (C) seeks to alter the annual monetary contribution of proprietors,to be considered at the meeting;
  - (b) be accompanied by—
    - (i) a voting-paper in respect of each motion referred to in paragraph (a) to be considered and determined at the meeting for use by a person entitled to vote if the person wishes to cast his vote in writing; and
    - (ii) a copy of the minutes of the last general meeting; and
  - (c) inform each person to whom the notice is addressed and, where the notice is for an annual general meeting, each person to whom a ballot-paper is given in accordance with subclause (5) (c), that he or, where the notice is addressed to a corporation, a company nominee of the corporation may vote in respect of each motion and, where relevant, on election of the chairman, secretary and treasurer of the body corporate and other members of the council—
    - (i) in the case of a proprietor of a lot subject to a mortgage shown on the roll, only in accordance with section 131;
    - (ii) except in the case of a motion requiring a unanimous resolution or a resolution without dissent, only if all contributions levied and payable on the lot, and any other moneys recoverable under this Act by the body corporate from the person to whom the notice is addressed at the date of the notice (being contributions levied on him, or moneys recoverable from him, in respect of the lot of which he is the proprietor or first mortgagee) have been duly paid before the commencement of the meeting; and

- (iii) either in person at the meeting, by proxy given in writing to the secretary of the body corporate before a time specified in the notice (being a time not later than the time for the holding of the meeting), in respect of some or all of the motions set out in the notice by casting his vote on the voting-paper referred to in paragraph (b) accompanying the notice, or, where relevant, in respect of the election of the chairman, secretary and treasurer of the body corporate and other members of the council, by casting his vote on the ballot-paper given to him in accordance with subclause (5) (c).

(7) A motion shall not be submitted at a general meeting unless notice of the motion has been given in accordance with this clause.

(8) A reference in subclause (7) to a motion includes a reference to a motion to amend a motion unless there is no vote cast in writing, as referred to in clause 5 (b), in respect of the motion sought to be amended.

(9) 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 shall be transacted at an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

**2. Persons entitled to vote at general meetings.** (1) Subject to section 131, a person is entitled to vote in respect of any lot on any motion submitted at a general meeting of a body corporate or on an election of the chairman, secretary and treasurer of the body corporate and other members of the council only if he is the proprietor of that lot as shown on the roll or, where the proprietor so shown is a corporation, the company nominee of that corporation as shown on that roll.

(2) Notwithstanding any other provision of this clause, a first mortgagee of a lot, as shown on the roll, or, where the first mortgagee is a corporation, the company nominee, as shown on that roll, of that corporation is entitled to vote in respect of that lot on any motion submitted at a general meeting of a body corporate or on an election of the chairman, secretary and treasurer of the body corporate and members of the council in accordance with section 131.

(3) Notwithstanding section 53 (11), co-proprietors or co-mortgagees shall only be entitled to cast a vote by a person duly appointed in writing as a proxy by them jointly and if notice of his appointment has been given to the secretary of the body corporate before the commencement of the meeting at which the vote is cast or by furnishing to the secretary of the body corporate a voting-paper referred to in clause 1 (6) (b) indicating their joint vote on that motion or, where relevant, a ballot-paper, duly completed, referred to in clause 1 (5) (c).

(4) Only the proprietor entitled to the first of two or more successive estates in a lot is, subject to this Part, entitled to cast a vote on a motion submitted at a general meeting of a body corporate or on an election of the chairman, secretary and treasurer of the body corporate and other members of the council.

(5) A proprietor who is the trustee of a lot is, subject to this Part, entitled to cast a vote on a motion submitted at a general meeting of a body corporate or on an election of the chairman, secretary and treasurer of the body corporate and other members of the council and the persons beneficially interested in the trust are not entitled to cast such a vote.

(6) Notwithstanding any other provision of this Act, at a general meeting of the body corporate a person shall not be entitled to vote in respect of—

- (a) any motion other than a motion which to be effective must be passed by unanimous resolution or resolution without dissent; or
- (b) the election of the chairman, secretary or treasurer of the body corporate or the other members of the council,

unless—

- (c) all contributions levied and payable in respect of the lot in respect of which he is entitled to vote; and
- (d) any other moneys recoverable under this Act by the body corporate from him,

at the date of the notice given under clause 1 (4) have been duly paid before the commencement of the meeting.

(7) The voting rights conferred by this clause are subject to section 53 (11) and (12).

**3. Quorum.** (1) A motion submitted at a general meeting of a body corporate shall not be considered at that meeting and an election of the chairman, secretary and treasurer of the body corporate and other members of the council shall not be held at a meeting of the body corporate unless the number of persons present at that meeting either personally or by proxy and entitled to vote, together with the number of voters whose votes are cast in writing on that motion or election, constitute a quorum for considering that motion or holding that election.

(2) Except as provided in subclause (3), one-fourth of the persons entitled to vote on a motion or on an election of chairman, secretary and treasurer of the body corporate and other members of the council constitute a quorum for considering that motion or holding that election.

(3) Where there is no quorum, as provided in subclause (2), for considering any motion or holding an election of chairman, secretary and treasurer of the body corporate and other members of the council at a general meeting of a body corporate within one-half hour after that motion or business arises for consideration at that meeting, the meeting shall stand adjourned to the same day in the next week at the same place and time and if there is no quorum, as provided in subclause (2), for considering that motion or holding that election at the adjourned meeting within one-half hour after that motion or business arises for consideration, the number of persons present personally or by proxy and entitled to vote, together with the number of voters whose votes are cast in writing on that motion or on that election, constitute a quorum for considering that motion or business.

(4) A general meeting of a body corporate is, subject to this clause, validly held notwithstanding that the only person present at the meeting is the chairman of the body corporate.

**4. Motions out of order.** At a general meeting of a body corporate the chairman may rule that a motion submitted at the meeting is out of order if—

- (a) he considers that the motion, if carried, would conflict with this Act or the by-laws or would otherwise be unlawful or unenforceable;
- (b) except in respect of a motion to amend a motion, clause 1 (7) has not been complied with with respect to the motion; or
- (c) in respect of a motion to amend a motion, there is any vote cast in writing, as referred to in clause 5 (b), in respect of the motion sought to be amended.

**5. Method of casting votes.** Except as provided in clause 2 (3), a vote on a motion submitted at a general meeting of a body corporate or on an election of the chairman, secretary and treasurer of the body corporate and other members of the council may be cast—

- (a) by the person entitled to vote, either personally or by his proxy duly appointed in writing; or
- (b) by furnishing to the secretary of the body corporate a voting-paper referred to in clause 1 (6) (b) indicating the vote of the person entitled to vote on that motion or a ballot-paper, duly completed, referred to in clause 1 (5) (c), as the case may be.

**6. Withdrawal of voting paper.** Notwithstanding that a person entitled to vote at a general meeting of a body corporate has cast a vote on a motion submitted at that meeting or on an election of the chairman, secretary and treasurer of the body corporate and other members of the council by indicating his vote on that motion on a voting-paper referred to in clause 1 (6) (b) or ballot-paper referred to in clause 1 (5) (c), if he attends that meeting either personally or by another person holding a proxy, he may before commencement of the business of the meeting notify the chairman or secretary of the body corporate that he withdraws that voting-paper or ballot-paper and, where he does so—

- (a) for the purpose of determining whether there is a quorum for consideration of any such motion or for the holding of any such election at the meeting, his voting-paper or ballot-paper, as the case may be, shall be disregarded;
- (b) for the purpose of counting the votes on that motion or that election, his voting-paper or ballot-paper shall be disregarded; and
- (c) he or his proxy duly appointed in writing may vote on that motion or that election at the meeting in the same manner as if he had not furnished that voting-paper or ballot-paper.

**7. Chairman to preside.** The chairman of a body corporate shall preside at a general meeting of the body corporate at which he is present and, in his absence from any such meeting, the persons present at that meeting and entitled to vote on motions submitted at that meeting may elect one of their number to preside at that meeting and the person so elected shall, while he is so presiding, be deemed to be the chairman of the body corporate.

**8. Scrutineers.** At a general meeting, the chairman may appoint persons as scrutineers who shall be entitled to inspect all voting-papers and ballot-papers furnished to the secretary of the body corporate under clause 5 (b) and relating to business at that meeting.

**9. Chairman to have available names of persons entitled to vote.** The chairman at a general meeting of the body corporate shall have available for inspection, before submitting a motion to the meeting or the holding of the election of the chairman, secretary and treasurer of the body corporate and other members of the council, a list of the names of the persons who are entitled to vote on that motion or at that election.

**10. Counting of votes on election of chairman, secretary, treasurer and council.** Each person entitled to vote on an election of the chairman, secretary and treasurer of a body corporate and other members of the council has one vote in respect of each lot in respect of which he is entitled to vote.

**11. Counting of votes on motions.** (1) Subject to this clause, a motion submitted at a general meeting of a body corporate shall be decided according to the number of votes cast for and against the motion, whether personally, by proxy or in writing, each person entitled to vote having one vote in respect of each lot in respect of which he is entitled to vote.

(2) If—

- (a) a poll is demanded by any person entitled to vote at a general meeting of a body corporate on a motion submitted at that meeting, whether or not the motion has been decided in accordance with subclause (1), and the demand is made by that person personally at the meeting or on the voting-paper on which he votes in respect of that motion; or
- (b) a motion submitted at such a meeting is for a resolution which, if it is to be effective, is required by this Act to be a special resolution,

the motion shall be decided according to the value, ascertained in accordance with subclause (3), of the votes cast for and against the motion, whether personally, by proxy or in writing.

(3) For the purposes of subclause (2) the value of a vote cast on a motion submitted at a general meeting of a body corporate by a person entitled to vote in respect of a lot is equal to the lot entitlement of that lot.

(4) Any one co-proprietor or co-mortgagee may demand a poll and on any poll each co-proprietor or co-mortgagee shall be entitled to such part of the vote applicable to a lot as is proportional to his interest in the lot. A joint proxy (if any) on a poll shall have a vote proportional to the interests in the lot of such of the co-proprietors or co-mortgagees as do not vote personally or by individual proxy.

(5) A poll shall be taken in such manner as the chairman thinks fit.

(6) A demand for a poll may be withdrawn by the person who made it.

(7) In the case of equality in the votes whether on a show of hands or in a poll the chairman of the meeting shall be entitled to a casting vote in addition to his original vote whether or not he has exercised that original vote.

**12. Chairman's declaration of vote.** The declaration of the chairman of the result of the voting on any motion submitted at a general meeting of the body corporate, otherwise than on a poll, shall be conclusive without proof of the votes recorded for or against the motion.

**13. Requisition for motion to be included on agenda for general meeting.** (1) Any person entitled to vote at a general meeting of a body corporate may by notice in writing served on the secretary of the council require inclusion in the agenda of the next general meeting of the body corporate (other than a meeting in respect of which notices have already been given under clause 1 (4)) of a motion set out in the firstmentioned notice and the secretary shall comply with the notice.

(2) For the purposes of subclause (1), a proprietor who but for the existence of a mortgage over his lot would be entitled to vote at a general meeting of the body corporate or a company nominee of any such proprietor that is a corporation shall be deemed to be entitled to vote at that meeting.

**14. Amendment or revocation of resolution.** A unanimous resolution, resolution without dissent or special resolution of a body corporate may not be amended or revoked except by a subsequent unanimous resolution, resolution without dissent or special resolution, as the case may be.

**15. Duties of original proprietor until officers elected.** Until the offices of chairman, secretary and treasurer of the body corporate are filled the powers, authorities, duties and functions conferred or imposed on the holders of those offices shall be exercised and performed by the original proprietor or by his agent duly authorized in writing.

**16. Meetings of body corporate before first annual general meeting.**

(1) Until the first annual general meeting of the body corporate, the secretary of the body corporate may convene an extraordinary general meeting and shall do so on receipt of a requisition signed by one or more persons entitled to vote in respect of one or more lots, the lot entitlement or the sum of the lot entitlements of which is at least one-fourth of the aggregate lot entitlement.

(2) The provisions of this Part (other than clause 1 (1), (2), (3) and (5)) apply to and in respect of a meeting referred to in subclause (1) so far as those provisions are not inconsistent with, or incapable of applying to, such a meeting.

**17. Appointment of proxy.** An instrument appointing a proxy shall be in writing under the hand of the person making the appointment or his attorney, and may be either general or for a particular meeting. A proxy need not be a proprietor.

[Section 30

THIRD SCHEDULE

BY-LAWS

**1. Council's power to employ agents and servants.** A council may employ for and on behalf of the body corporate such agents and servants as it thinks fit in connexion with the exercise and performance of the powers, authorities, duties and functions of the body corporate.

**2. Notice-board.** A council shall cause a notice-board to be affixed to some part of the common property.

**3. Meetings and delegation of powers and duties.** The council may—

(a) meet together for the conduct of business, adjourn and otherwise regulate its meetings as it thinks fit;

Provided that it shall meet when the secretary or, in his absence, any member of the council at the request of not less than one-third of the members of the council gives, within the period of time, if any, specified in the request to the other members not less than seven days notice of a meeting proposed by him specifying the reason for calling such meeting and, where a member of the council other than the secretary is requested to convene a meeting of the council under this by-law, he may give, on behalf of the council, the notice required to be given under by-law 4;

(b) 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 such delegation.

**4. Notice of council meetings.** For not less than twenty-four hours ending immediately before a council holds a meeting it shall cause a notice of its intention to hold the meeting, containing the agenda for the meeting, to be displayed on the notice-board.

**5. Voting in writing by members of council.** Where—

- (a) by-law 4 has been complied with in relation to any meeting;
- (b) the council has caused to be served on each member of the council a copy of any motion for a proposed resolution to be submitted at that meeting; and
- (c) any such resolution has been approved in writing by a majority of the members of the council,

the resolution shall, subject to section 45 (3), be as valid as if it had been duly passed at a duly convened meeting of the council, notwithstanding that the meeting was not held.

**6. Minute of certain resolutions to be included in council's minutes.**

The council shall cause to be included in its minutes a minute of all resolutions passed pursuant to by-law 5.

**7. Acts etc., of council valid notwithstanding vacancies.** Any act or proceeding of a council done in good faith is, notwithstanding that at the time when the act or proceeding was done, taken or commenced there was—

- (a) a vacancy in the office of a member of the council; or
- (b) a defect in the appointment, or a disqualification of a member, as valid as if the vacancy, defect or disqualification did not exist and the council were fully and properly constituted.

**8. Powers and duties of secretary.** The powers and duties of a secretary of a body corporate include—

- (a) the preparation and distribution of minutes of meetings of the body corporate and the submission of a motion for confirmation of the minutes of any meeting of the body corporate at the next such meeting;
- (b) the giving on behalf of the body corporate and of the council of the notices required to be given under this Act;
- (c) the maintenance of the roll;
- (d) the supply of information on behalf of the body corporate in accordance with section 40 (1) (a) and (b);
- (e) the answering of communications addressed to the body corporate;
- (f) the calling of nominations of candidates for election as chairman, secretary and treasurer of the body corporate and other members of the council; and
- (g) subject to section 29 (1), (6) and (7), the convening of meetings of the body corporate and of the council.

**9. Powers and duties of treasurer.** The powers and duties of a treasurer of a body corporate include—

- (a) the notifying of proprietors of any contributions levied pursuant to this Act;



- (b) the receipt, acknowledgement and banking of and the accounting for any money paid to the body corporate;
- (c) the preparation of any certificate applied for under section 40 (1) (c); and
- (d) the keeping of the books of account referred to in section 38 (1) (g) and the preparation of the statement of accounts referred to in section 38 (1) (h).

**10. Noise.** A proprietor or occupier of a lot shall not upon the parcel create any noise likely to interfere with the peaceful enjoyment of the proprietor or occupier of another lot or of any person lawfully using common property.

**11. Vehicles.** A proprietor or occupier of a lot shall not park or stand any motor or other vehicle upon common property except with the consent in writing of the body corporate.

**12. Obstruction.** A proprietor or occupier of a lot shall not obstruct lawful use of common property by any person.

**13. Damage to lawns, etc., on common property.** A proprietor or occupier of a lot shall not—

- (a) damage any lawn, garden, tree, shrub, plant or flower being part of or situated upon common property; or
- (b) except with the consent in writing of the body corporate, use for his own purposes as a garden any portion of the common property.

**14. Damage to common property.** A proprietor or occupier of a lot shall not mark, paint, drive nails or screws or the like into, or otherwise damage or deface, any structure that forms part of the common property except with the consent in writing of the body corporate, but this by-law does not prevent a proprietor or person authorized by him from installing—

- (a) any locking or other safety device for protection of his lot against intruders; or
- (b) any screen or other device to prevent entry of animals or insects upon his lot.

**15. Behaviour of invitees.** A proprietor or occupier of a lot shall take all reasonable steps to ensure that his invitees do not behave in a manner likely to interfere with the peaceful enjoyment of the proprietor or occupier of another lot or of any person lawfully using common property.

**16. Depositing rubbish, etc., on common property.** A proprietor or occupier of a lot shall not deposit or throw upon the common property any rubbish, dirt, dust or other material likely to interfere with the peaceful enjoyment of the proprietor or occupier of another lot or of any person lawfully using the common property.

**17. Appearance of building.** In the case of a building units plan, a proprietor or occupier of a lot shall not, except with the consent in writing of the body corporate, hang any washing, towel, bedding, clothing or other article or display any sign, advertisement, placard, banner, pamphlet or like matter on any part of his lot in such a way as to be visible from outside the building.

**18. Storage of flammable liquids, etc.** A proprietor or occupier of a lot shall not, except with the consent in writing of the body corporate, use or store upon his lot or upon the common property any flammable chemical, liquid or gas or other flammable material, other than chemicals, liquids, gases or other material used or intended to be used for domestic purposes, or any such chemical, liquid, gas or other material in a fuel tank of a motor vehicle or internal combustion engine.

**19. Garbage disposal.** A proprietor or occupier of a lot shall—

- (a) save where the body corporate provides some other means of disposal of garbage, maintain within his lot, or on such part of the common property as may be authorized by the body corporate, in clean and dry condition and adequately covered, a receptacle for garbage;
- (b) comply with all local authority by-laws and ordinances relating to the disposal of garbage;
- (c) ensure that the health, hygiene and comfort of the proprietor or occupier of any other lot is not adversely affected by his disposal of garbage.

**20. Keeping of animals.** A proprietor or occupier of a lot shall not keep any animal upon his lot or the common property after notice in that behalf from the council.

**21. Illegal use of lot prohibited.** A proprietor or occupier of a lot shall not use his lot for any purpose which may be illegal or injurious to the reputation of the parcel.

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