

CHAPTER 60

CONDOMINIUM ACT

• Act • Subsidiary Legislation •

ACT

Act No. 24 of 1978

Amended by

Act No. 78 of 1979

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CHAPTER 60
CONDOMINIUM ACT

An Act to facilitate the sub-division of land into parts that are to be owned individually and parts that are to be owned in common, and to provide for connected matters.

[Act No. 24 of 1978 amended by Act No. 78 of 1979.]

[12th October, 1979.]

1. Short title

This Act may be cited as the Condominium Act.

2. Interpretation

(1) In this Act—

“board” means the board of directors of a corporation;

“building” means the buildings included in a property;

“By-law” means a By-law of a corporation;

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

“common expenses” means the expenses of the performance of the objects and duties of a corporation and any expenses specified as common expenses in a declaration;

“common interest” means the interest in the common property appurtenant to a unit;

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

“common property” means all the property except the units;

“corporation” means a corporation incorporated by this Act;

“declarant” means the owner or owners in fee simple of the land described in the description at the time of the registration of a declaration and description of the land, and includes any successor or assignee of such owner or owners but does not include a *bona fide* purchaser of a unit who actually pays fair market value or any successor or assignee of such purchaser;

“declaration” means the declaration specified in section 5 and includes any amendments;

“description” means the description specified in section 8;

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

“Minister” means the Minister responsible for finance;

“owner” means the owner or owners of the freehold estate or estates in a unit and common interest, but does not include a mortgagee unless in possession;

“prescribed” means prescribed by the regulations;

“property” means the land and interests appurtenant to the land described in the description, and includes any land and interests appurtenant to land that are added to the common property;

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

“registered” means registered under the Deeds and Land Registry Act, Chapter 79;

“Registrar” means the Registrar of the Supreme Court;

“regulations” means regulations under this Act;

“surveyor” means a surveyor licensed under the Land Surveyors Act, Chapter 162;

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

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

Declaration and Description

3. Property to comprise freehold land only and who may register

(1) A property shall comprise only freehold land and interests, if any, appurtenant to that land.

(2) A declaration and description may be registered by or on behalf of the owner in fee simple of the land described in the description.

4. Effect of registration

(1) Upon the registration of a declaration and description, the land and the interests appurtenant to the land described in the description shall be governed by this Act.

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

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

5. Matters which a declaration must contain

A declaration shall not be registered unless it is executed by the owner or owners of the land and interests appurtenant to the land described in the description and unless it contains—

- (a) a statement of intention that the land and interests appurtenant to the land described in the description be governed by this Act;
- (b) subject to the consent referred to in paragraph (c), a statement that the original purchase or lease of each unit shall be free of any existing mortgage or charge on the said property;
- (c) the consent in the prescribed form of every person having a registered charge, mortgage, lien, or other claim securing the payment of money against the land or interests appurtenant to the land described in the description;
- (d) a statement, expressed in percentages, of the proportion of the common interests;
- (e) a statement, expressed in percentages allocated to the units, of the proportions in which the owners are to contribute to the common expenses; and
- (f) an address for service.

6. Matters which a declaration may contain

In addition to the matters mentioned in section 5, a declaration may contain—

- (a) a specification of common expenses;
- (b) a specification of any parts of the common property that are to be used by the owners of one or more designated units and not by all the owners;
- (c) provisions respecting the occupation and use of the units and common property;
- (d) provisions restricting gifts, leases and sales of the units and common interests;

- (e) a specification of the number, qualification, nomination, election, term of office, compensation and removal of members of the board, and the meetings, quorum, functions and officers of the board;
- (f) a specification of the duties of the corporation consistent with its objects;
- (g) a specification of the majority required to make By-laws of the corporation;
- (h) provisions regulating the assessment and collection of the contributions towards the common expenses;
- (i) a specification of the majority required to make substantial changes in the common property and the assets of the corporation;
- (j) a specification of any provision requiring the corporation to purchase the units and common interests of any dissenters after a substantial addition, alteration or improvement to or revocation of the common property has been made or after the assets of the corporation have been substantially changed;
- (k) a specification of any allocation of the obligations to repair and to maintain the units and common property;
- (l) a specification of the percentage of substantial damage to the buildings and a specification of the majority required to authorise repairs under section 27;
- (m) a specification of the majority required for a sale of the property or of part of the common property;
- (n) a specification of the majority required for the termination of the governance of the property by this Act; and
- (o) any other matters concerning the property.

7. Amendment of declaration and registration of amendment

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

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

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

(4) The corporation on giving at least seven days' notice to every owner, or an owner on giving at least seven days' notice to the corporation and every other owner, may apply to a Judge of the High Court for an order amending the declaration or description and the Judge, if he or she is satisfied that an amendment is necessary or desirable to correct a manifest error or an inconsistency in the declaration or description or arising out of the carrying out of the intent and purpose of the declaration or description, may make the order.

(5) The amendment of a declaration or description made by an order under subsection (4) shall not have effect until a certified copy of the order has been registered.

8. Matters which a description must contain

(1) A description shall contain—

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

- (b) structural plans of the buildings;
- (c) a specification of the boundaries of each unit by reference to the buildings;
- (d) diagrams showing the shape and dimensions of each unit and the approximate location of each unit in relation to the other units and the buildings;
- (e) a certificate of a surveyor showing that the buildings have been constructed and that the diagrams of the units are substantially accurate and substantially in accordance with the structural plans; and
- (f) a description of any interests appurtenant to the land that are included in the property,

prepared in accordance with the regulations.

(2) A description shall not be registered unless it has been approved in accordance with the regulations.

Registration

9. Condominium Corporations Index

The Registrar in whose office a declaration and description are registered shall keep an index in the prescribed form to be known as the “Condominium Corporations Index”.

10. Condominium Register

(1) The Registrar in whose office a declaration and description are registered shall keep a register in the prescribed form to be known as the “Condominium Register”.

(2) Declarations, descriptions, By-laws, notices of termination, and other instruments respecting land governed by this Act shall be registered and recorded in the Condominium Register in accordance with this Act and the regulations but, except as otherwise provided by this Act and the regulations, the Deeds and Land Registry Act, Chapter 79, shall apply in respect of property governed by this Act.

Units and Common Property

11. Units and common property

(1) Units and common interests shall constitute real property for all purposes, including the purpose of land and house tax, and may be separately conveyed, mortgaged, leased or otherwise disposed of and may be inherited or devised by will and (subject to the provisions of this Act, the declaration and the By-laws) each owner shall be entitled to exclusive ownership and use of his or her unit.

(2) The separate title of each unit shall be registrable in the Deeds and Land Registry and each unit may belong in common ownership to more than one person.

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

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

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

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

(7) Subject to this Act, the declaration and the By-laws, each owner may make reasonable use of the common property.

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

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

(10) Where but for subsection (9) an encumbrance would be enforceable against the common property, the encumbrance shall be enforceable against all the units and common interests.

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

(12) For purposes of assessment to land and house taxes and taxation each unit and common interest shall constitute a parcel and the common property shall not constitute a parcel, and for the purpose of determining liability resulting from a breach of the duties of an occupier of land, the corporation shall be deemed to be the occupier of the common property and the owners shall be deemed not to be occupiers of the common property.

Easements

12. Easements appurtenant to units, common property, etc.

(1) The following easements are appurtenant to each unit—

- (a) an easement for the provision of any service through an installation in the common property or any other unit;
- (b) an easement for support by the common property and any other unit capable of providing support;
- (c) where a building or a part of a building—
 - (i) is moved after registration of the declaration and description, or
 - (ii) after having been damaged and repaired, is not restored to the position occupied at the time of registration of the declaration and description,

an easement for exclusive use and occupation (in accordance with this Act, the declaration and By-laws) over the space of the other units and common property that would be space included in the unit if the boundaries of the unit were determined by the position of the buildings from time to time after registration of the description and not at the time of registration.

(2) The following easements are appurtenant to the common property—

- (a) an easement for the provision of any service through an installation in any unit;
- (b) an easement for support by any unit capable of providing support.

(3) All ancillary rights and obligations reasonably necessary to make easements effective shall apply in respect of the easements provided for in this section.

(4) The corporation may, by By-law—

- (a) lease any part of the common property except any part that the declaration specifies is to be used by the owners of one or more designated units and not by all the owners; and
- (b) grant or transfer an easement or licence over the common property.

(5) A lease or a grant or transfer of an easement or licence mentioned in subsection (4), signed by the authorised officers of the corporation under its seal, shall affect the interest of every owner in the common property as if the lease, grant or transfer had been executed by him or her, and shall have attached thereto an affidavit of one of the officers stating that the lease, grant, or transfer was authorised by a By-law of the corporation.

Corporations

13. Creation, and duties, of corporation

(1) The registration of a declaration and description shall create a corporation without share capital whose members shall be the owners from time to time.

(2) When a declaration and description are registered, the Registrar shall assign a name to the corporation in accordance with the regulations.

(3) It shall be the duty of the corporation to effect compliance by the owners with this Act, and the declaration and By-laws may specify duties of the corporation in accordance with the regulations.

(4) The corporation shall maintain a record in which shall be entered each owner or mortgagee or chargee who notifies the corporation of his or her entitlement to vote and of his or her address for service, and the notice of a meeting required by subsection (9) shall be deemed to have been sufficiently given if given in accordance with that subsection to those persons entered on the record twelve days before the date of the meeting.

(5) A corporation shall hold an annual meeting of the members not more than three months after the registration of the declaration and description, and subsequently not more than fifteen months after the holding of the last preceding annual meeting, and at such meeting any member of the corporation and any mortgagee or chargee entitled to vote shall have an opportunity to raise any matter relevant to the affairs and business of the corporation.

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

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

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

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

(10) A mortgagee or chargee who receives notice of a meeting shall, in order to be entitled to exercise the right of the owner to vote or to consent, notify the corporation and

the owner of his or her intention to exercise such right at least two days before the date specified in the notice.

(11) If an annual meeting referred to in subsection (5) is not called within the time provided for by that subsection, any member of the corporation or any mortgagee or chargee entitled to vote may call the meeting.

14. Objects of corporation

(1) The objects of the corporation are—

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

(2) The corporation may—

- (a) establish funds for administrative expenses sufficient in the opinion of the corporation for the management of the property, for the payment of any premiums of insurance, for the establishment of reserves for capital improvement or for the reconstruction of common property and a discharge of any other obligations of the corporation;
- (b) determine from time to time the amounts of money to be raised for the purposes aforesaid;
- (c) raise the amounts of money so determined by levying contributions on the unit owners in prescribed proportions;
- (d) recover from the unit owner any sum of money expended by the corporation for repairs or work undertaken by it or at its direction in compliance with any notice or order issued by a public body in respect of any part of the property comprising in the unit of the owner;
- (e) employ such staff as may be deemed necessary to carry out its duties;
- (f) receive payment of the proceeds of any insurance claim made by the corporation in respect of the loss of or damage to the building in trust for the unit owners in proportion to their respective interest and, unless the governance of the property by this Act is duly terminated, apply the same for repair or reconstruction of the building;
- (g) by a vote of members who own sixty-six and two-thirds per cent of the common property terminate, on giving sixty days' notice in writing, any agreement between the corporation and any person for the management of the property which may have been entered into at a time when the majority of the members of the board were elected when the declarant was the registered owner of a majority of the units.

(3) Agreements, decisions and determinations lawfully made by the corporation in accordance with this Act, the relevant declaration, and the By-laws, shall be binding on all unit owners.

15. Board of directors of corporation

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

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

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

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

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

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

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

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

16. Declaration or By-laws may provide for members and officers

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

17. Records to be kept

The corporation shall keep adequate records and a member of the corporation may inspect the records on reasonable notice and at any reasonable time.

18. Miscellaneous provisions relating to corporations and members

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

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

19. Judgements against corporation

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

20. Action by corporation respecting common property

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

21. Companies Act not to apply to corporation

The Companies Act shall not apply to a corporation created under this Act.

22. Winding up of corporation

When the owners and the property cease to be governed by this Act—

- (a) the assets of the corporation shall be used to pay any claims for the payment of money against the corporation;
- (b) the remainder of the assets of the corporation shall be distributed among the members of the corporation in the same proportions as the proportions of their common interests.

23. By-laws governing the use of common property

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

- (a) governing the management of the property;
- (b) governing the use of the units or any of them for the purpose of preventing unreasonable interference with the use and enjoyment of the common property and other units;
- (c) governing the use of common property;
- (d) regulating the maintenance of the units and common property;
- (e) governing the use and management of its assets;
- (f) respecting the board;
- (g) specifying the duties of the corporation;
- (h) regulating the assessment and collection of contributions towards the common expenses;
- (i) authorising the borrowing of money to carry out the objects and duties of the corporation;
- (j) respecting the conduct generally of the affairs of the corporation.

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

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

(4) *Rules governing use of common property.*—By-laws may provide for the making of rules by the owners respecting the use of the common property for the purpose of preventing unreasonable interference with the use and enjoyment of the units and common property.

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

Obligations of Owners, etc.

24. Obligations of owners, etc.

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

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

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

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

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

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

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

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

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

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

Modification of Common Property and Assets

25. Substantial alterations

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

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

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

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

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

Insurance

26. Duty of corporation, and power of owners, to insure

(1) A corporation shall insure its liability to repair damage to the property caused by fire, hurricane, tempest, sea wave or other casualty to the extent required by the declaration or the By-laws.

(2) After a corporation has insured its liability to repair, in pursuance of subsections (1), (3) and (4) shall apply.

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

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

(5) Subsection (1) does not restrict the capacity of any person to insure to a greater extent than as provided in that subsection.

(6) The declaration, or By-laws made under section 23, may authorise the corporation to insure the property or any part thereof against risks other than those referred to in subsection (1) and for such purpose a corporation so authorised shall be deemed to have an insurable interest therein.

(7) Where a building is insured for its replacement value an owner may effect a policy of insurance in respect of damage to his or her unit in a sum equal to the amount secured, at the date of any loss referred to in such policy, by mortgages charged upon his unit.

(8) Where such policy of insurance is in force, then, subject to the terms and conditions of the policy, the insurer shall be liable to pay thereunder to the mortgagees whose interests are noted thereon, in order of their respective priorities—

- (a) the value stated in the policy;
- (b) the amount of the loss; or
- (c) the amount sufficient, at the date of the loss, to discharge the mortgages charged upon the unit,

whichever is the least.

(9) Where the amount paid by an insurer in accordance with subsection (8) is sufficient to discharge a mortgage charged upon the unit, the insurer shall be entitled to a transfer of that mortgage.

(10) Where the amount paid by an insurer in accordance with subsection (8) is not sufficient to discharge a mortgage charged upon the unit, the insurer shall be entitled to the assignment of an interest (to the extent of the amount paid by him or her) in such mortgage to secure the amount so paid on such terms and conditions, if any, as are agreed upon under subsection (13) or, failing agreement, on the same terms and conditions as those in the mortgage by the owner.

(11) Where a building is uninsured, or has been insured for less than its replacement value, an owner may—

- (a) effect a policy of insurance in respect of any damage to his unit in a sum equal to the replacement value of the unit less any amount for which the unit is insured under any policy of insurance effected on the building;
- (b) notwithstanding any existing policies, effect a policy of insurance in respect of damage to his or her unit in a sum equal to the amount secured, at the date of any loss referred to in such policy, by mortgages charged upon the unit, and the provisions of subsections (8), (9) and (10) shall apply in respect of any payment pursuant to such policy as they apply to a policy effected pursuant to subsection (7).

(12) For the purposes of subsection (11) the amount for which a unit is insured under a policy of insurance effected in respect of the building is to be determined by dividing the total insurance placed on the building by the total of the unit proportions and multiplying the result by the unit proportion of the unit concerned, and for that purpose the term “unit proportion” means the share of ownership in the common property appurtenant to the unit.

(13) For the purposes of subsections (10) and (11)(b) an insurer and any mortgagee or mortgagees may at any time, whether before or after a policy of insurance has been effected by an owner, agree upon the terms and conditions of the assignment of an interest.

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

(15) A policy of insurance authorised by this section and taken out by an owner in respect of damage to his or her unit shall not be liable to be brought into contribution with any other policy of insurance save another policy authorised by this section and taken out by an owner in respect of damage to the same unit.

Repairs and Maintenance

27. Duty to repair and to maintain

(1) Subject to section 28, the corporation shall undertake repairs to the units and common property after damage.

(2) The corporation shall maintain the common property.

(3) Each owner shall maintain his or her unit.

(4) Notwithstanding subsections (1), (2) and (3) the declaration may provide for any or all of the following—

- (a) that each owner shall, subject to section 28, repair his or her unit after damage; or
- (b) that the owners shall maintain the common property or any part of the common property; or

(c) that the corporation shall maintain the units.

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

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

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

28. Determination of damage and vote for repair

(1) Where damage to buildings occurs, the board shall determine within thirty days of the occurrence whether the estimated cost of repairing would be twenty-five per cent (or such greater percentage as is specified in the declaration) of the value of the buildings (hereinafter referred to as “substantial damage”).

(2) Where there has been a determination that the cost of repairing the buildings would be twenty-five per cent or such greater percentage of the value of the buildings as is specified in the declaration, and owners of eighty per cent of the common property (or such greater percentage as is specified in the declaration) vote for repair within sixty days of the determination, the corporation shall undertake repairs.

Termination

29. Termination by notice after damage

(1) Where on a vote the owners do not vote for repair, the corporation shall, within ten days of the vote, register a notice of termination in the prescribed form.

(2) Where there has been no vote within sixty days of the determination under section 28(1), the corporation shall, within ten days after the expiry of the sixty day period, register a notice of termination in the prescribed form.

30. Effect of registration of notice of termination

Upon the registration of a notice of termination under section 29(1) or (2)—

- (a) the governance of the property by this Act shall be terminated;
- (b) the owners shall be deemed to be tenants in common of the land and interests appurtenant to the land described in the description in the same proportions as their common interests;
- (c) claims against the land and interests appurtenant to the land created before the registration of the declaration and description shall be as effective as if the declaration and description had not been registered;
- (d) encumbrances against each unit and common interest created after the registration of the declaration and description shall be deemed to be claims against the interest of the owners in the land and interest appurtenant to the land described in the description, and have the same priority they had before the registration of the notice of termination; and
- (e) all claims against the property created after the registration of the declaration and description, other than the encumbrance mentioned in paragraph (d) of this section, shall be extinguished.

31. Termination by sale and execution of transfer

(1) Sale of property or any part of common property may be authorised—

- (a) by a vote of owners who own eighty per cent (or such greater percentage as is specified in the declaration) of the common property; and
- (b) by consent of the persons having registered claims against the property or the part of the common property, as the case may be, created after the registration of the declaration and description.

(2) A transfer shall be executed by all the owners and a release or discharge shall be given by all the persons having registered claims against the property or the part of the common property, as the case may be, created after the registration of the declaration and description.

32. Effect of registration of transfer

Upon the registration of a transfer such as is mentioned in section 31(2)—

- (a) the property or the part of the common property, as the case may be, shall cease to be governed by this Act;
- (b) claims against the land and interests appurtenant to the land created before the registration of the declaration and description shall be as effective as if the declaration and description had not been registered; and
- (c) claims against the property or the part of the common property created after the registration of the declaration and description shall be extinguished.

33. Proceeds of sale and rights of dissenters

(1) Subject to subsection (2), the owners shall share the proceeds of a sale in the same proportions as their common interests.

(2) Where a sale is authorised and effected under section 31, any owner who dissented may elect to have the fair market value of the property at the time of the sale determined by an arbitration tribunal constituted in accordance with subsection (4) by serving notice to that effect on the corporation within ten days after the vote; the owner who served the notice shall be entitled to receive from the proceeds of the sale the amount he would have received if the sale price had been the fair market value as determined by the arbitration.

(3) Where the proceeds of sale are insufficient to pay the amount determined under subsection (2), each of the owners who voted for the sale shall be liable for a portion of the deficiency determined by the proportions of their common interests.

(4) An arbitration tribunal shall comprise either—

- (a) a sole arbitrator appointed by the owners and persons who authorised the sale and approved of by the owner who dissented; or
- (b) two arbitrators and an umpire to be appointed as follows—
 - (i) one arbitrator appointed by the owners and persons who authorised the sale,
 - (ii) one arbitrator appointed by the owner who dissented, and
 - (iii) an umpire appointed by instrument in writing by the two arbitrators immediately after they have both been appointed.

34. Termination by notice without sale

(1) Termination of the governance of the property by this Act may be authorised—

- (a) by a vote of owners who own eighty per cent (or such greater percentage as is specified in the declaration) of the common property; and
- (b) by consent of the persons having registered claims against the property created after the registration of the declaration and description.

(2) Where termination of the governance of the property by this Act is authorised under subsection (1), the corporation shall register a notice of termination in the prescribed form, executed by all the owners and all the persons having registered claims against the property created after the registration of the declaration and description.

(3) Upon registration of a notice of termination under subsection (2)—

- (a) the governance of the property by this Act is terminated;
- (b) the owners are tenants in common of the land and the interests appurtenant to the land described in the description in the same proportions as their common interests;
- (c) claims against the land and the interests appurtenant to the land described in the description created before the registration of the declaration and description are as effective as if the declaration and description had not been registered;
- (d) encumbrances against each unit and common interest created after the registration of the declaration and description and claims against the interest of the owner in the land and interests appurtenant to the land described in the description, have the same priority as they had before registration of the notice of termination; and
- (e) all other claims against the property created after the registration of the declaration and description are extinguished.

35. Termination by order of the High Court

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

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

- (a) the scheme and intent of this Act;
- (b) the probability of unfairness to one or more owners if termination is not ordered; and
- (c) the probability, if termination is not ordered, of confusion and uncertainty in the affairs of the corporation or the owners.

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

(4) An order made under this section terminating the governance of the property by this Act shall not have effect until it has been registered.

36. Voting by mortgagees

Where a mortgage or charge of a unit and common interest contains a provision that authorises the mortgagee or chargee to exercise the right of the owner to vote or to consent, the mortgagee or chargee may exercise the right and, where two or more such

mortgages or charges contain such a provision, the right may be exercised by the mortgagee or chargee who has priority.

37. Application for order to require performance of duties

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

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

(3) The lessee of a unit shall be subject to the duties imposed by this Act, the declaration and the By-laws, on an owner, except those duties respecting common expenses, and this section shall apply in the same manner as to an owner, and where the lessee is in contravention of an order under this section, the High Court may terminate the lease.

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

Application of the Land Development Control Act

38. Application of Land Development Control Act

(1) The provisions of the Physical Planning and Development Control Act, Chapter 241A and any law relating to zoning and subdivision control shall not apply in respect of dealings with units and common interests.

(2) Subject to subsection (3), the provisions of the Physical Planning and Development Control Act, Chapter 241A, that apply to the subdivision of land shall apply, *mutatis mutandis*, to descriptions under this Act, and a description shall not be registered unless approved or exempted by the Minister.

(3) Before making an application under the provisions of the Physical Planning and Development Control Act, Chapter 241A, the owner of a property or someone authorised by him or her in writing may apply to the Minister to have the description or any part of the description exempted from that Act, and where in the opinion of the Minister such exemption is in the circumstances appropriate he or she may grant the exemption.

(4) Section 9 of the Physical Planning and Development Control Act, Chapter 241A, shall not apply with respect to a description made for the purposes of this Act.

(5) For the purposes of this section, “Minister” means the Minister for the time being responsible for matters relating to housing.

Sale and Lease of Units

39. Implied covenants in agreements of purchase and sale

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

- (a) register without delay a declaration and description in respect of the property in which the unit is included;
- (b) sell without delay the other residential units included in the property other than any units mentioned in a statement section 41(1)(c); and
- (c) deliver without delay to the purchaser a registrable transfer of the unit.

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

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

- (a) the proposed declarant has taken all reasonable steps to register a declaration and description;
- (b) a declaration and description cannot be registered within a reasonable period of time; and
- (c) the failure and inability to register a declaration and description is caused by circumstances beyond the control of the proposed declarant.

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

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

(6) Every original purchase or lease of a unit shall be made with the consent of any existing mortgagee or chargee and conveyed free of any mortgage or charge; any purchase or lease not so made is void and of no effect.

40. Money received by proposed declarant from purchaser of a proposed unit to be held in trust

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

- (a) its disposition to the person entitled thereto; or
- (b) delivery of prescribed security to the purchaser for repayment.

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

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

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

(5) If a policy of insurance that insures against loss of money paid to a proposed declarant by a purchaser on account of a sale or an agreement for the purchase and sale of a proposed unit contains a provision that derogates in any manner from any right or

benefit conferred on an insured under this Act, such provision shall be void to the extent that it derogates from such right or benefit.

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

- (a) the premiums payable in respect of the policy are paid by the declarant;
- (b) the policy takes effect when it has been executed by the insured, and by or on behalf of the insurer and the declarant.

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

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

- (a) a transfer of the unit acceptable for registration is delivered to the insured; and
- (b) the declarant pays to the insured all monies and all interest payable by the declarant under this section; or
- (c) the insurer pays to the insured the amount of the loss.

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

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

41. Leases of units

(1) A declarant or proposed declarant shall not grant a lease of a unit or proposed unit for residential purposes unless—

- (a) the lessee has entered into a *bona fide* agreement to purchase the unit;
- (b) the lease grants to the lessee a *bona fide* option to purchase the unit;
- (c) every agreement for purchase and sale of a unit included in the property includes a statement that the unit to be included in the lease is or will be leased and specifies the uses that are or will be permitted by the lease; or
- (d) written notice of the lessor's intention to lease the unit has been given to every purchaser under an agreement for purchase and sale, registered owner and mortgagee and chargee entitled to vote, and the period referred to in subsection (2) has expired or, where an application is made under subsection (2), it has been finally disposed of.

(2) Any person notified under subsection (1)(d) may, within twenty-one days after receiving the notice, and on written notice to the declarant, apply to a Judge of the High Court who, if he or she is of the opinion that the declarant has not taken all reasonable steps to sell the unit, may by order prohibit the declarant from leasing the unit or grant such other relief as he or she considers proper.

(3) The notice mentioned in subsection (1)(d) shall specify the unit or units intended to be leased and the uses that will be permitted by the lease but need not set out any other terms or identify any proposed lessee.

(4) A declarant or proposed declarant may grant leases of a unit or proposed unit for residential purposes for a period in each case not exceeding two years, including renewals, but subsection (1) must be complied with in respect of each lease.

(5) This section shall not apply to a renewal of the lease of a unit or proposed unit entered into before an agreement for the purchase and sale of any unit or proposed unit included in the property is entered into.

(6) In this section, “lease” includes a licence to use or occupy and any agreement in the nature of a lease.

42. Offences

A person who knowingly contravenes section 40(1),r 44(1) or (4) or who knowingly purports to enter into a lease in contravention of section 41(1) or (4) shall be guilty of an offence and liable, on summary conviction, to a fine—

- (a) of one hundred thousand dollars where the person convicted is a corporation;
- (b) of eight thousand dollars where the person convicted is not a corporation.

Miscellaneous

43. Termination of management agreement

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

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

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

(2) Upon application to a Judge of the High Court by the corporation or any owner, mortgagee or chargee, the Judge, if satisfied that the application is made in good faith and that it is *prima facie* in the best interest of the applicant to do so, may make an order, upon such terms as to the costs of the investigation or audit or otherwise as he or she considers proper, appointing an inspector to make such investigation of the affairs of any person in receipt of money mentioned in subsection (1) and to make such audit of the accounts and records of such person as the Judge considers necessary.

(3) An inspector appointed under subsection (2) shall have the powers of a Commissioner under the Commissions of Inquiry Act, Chapter 58, which shall apply to such investigation or audit as if it were an inquiry under that Act.

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

45. Regulations

- (1) The Minister may make regulations—

- (a) prescribing the duties of officers for the purposes of this Act;
- (b) governing the method of describing in instruments a property or any part of a property;
- (c) governing surveys, structural plans, descriptions and diagrams, and prescribing procedures for their registration and amendment;
- (d) respecting the registration and recording of declarations, descriptions, By-laws, notices of termination and other instruments;
- (e) requiring, in respect of any class of properties, in lieu of or in addition to the requirements of section 8, surveys of the properties showing the units and common elements;
- (f) respecting the names of corporations;
- (g) respecting additions to the common property;
- (h) requiring the payment of fees to the Registrar and prescribing the amounts thereof;
- (i) prescribing forms and providing for their use;
- (j) respecting any matter necessary to carry out effectively the intent and purposes of this Act.

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

46. Rule against perpetuities, etc., not to apply

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

47. Registration of leasehold condominium, etc.

(1) A lessee of land owned by and leased from the Crown, or a designated agency of the Crown, for a term or terms in the aggregate (including options to renew) of not less than ninety-nine years of which the unexpired portion is not less than eighty years may, with the consent of the Crown or the agency, register a declaration and description.

(2) The Crown or agency may enter into a lease of land with itself for the purposes of this section in which case the lease shall not merge in the fee by operation of law.

(3) Upon the registration of a declaration and description under this section, the land and the interests appurtenant to the land described in the description are governed by this Act which, subject to subsection (4) applies, *mutatis mutandis*, thereto.

(4) A lessee from the Crown or agency who registers a declaration and description under this section may assign or transfer the leasehold estate in respect of each unit designated in the description and, for the purposes of this Act, he or she shall be deemed to be the declarant and the assignee shall be deemed to be the owner of the unit.

(5) The Minister, under this subsection, may make regulations—

- (a) disapplying provisions of this Act with respect to properties to which this section applies;
- (b) modifying any of the provisions of this Act, other than this section, so as to make them applicable to a leasehold condominium;
- (c) providing for matters he or she considers necessary for the purpose of effecting condominium projects in respect of leasehold land being projects equivalent to those provided for by this Act in respect of freehold land;

- (d) designating agencies of the Crown for the purpose of subsection (1).

48. Unit owner to enjoy uninterrupted possession

The owner or assignee of a unit purchased from the declarant is entitled to hold and enjoy the same peaceably and quietly in possession for the term thereby created without interruption from or by the Crown or any agency of the Crown, or the declarant, or any person lawfully claiming through or in trust for them.

CHAPTER 60 CONDOMINIUM ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

1. Condominium Regulations
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Condominium Regulations

SRO 6 of 1979

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CONDOMINIUM REGULATIONS

[Sections 45 and 47. SRO 6 of 1979.]

[12th October, 1979.]

PART I

1. Citation

These Regulations may be cited as the Condominium Regulations.

2. Definition

In these Regulations—

“Chief Surveyor” means the Chief Technical Officer (Surveys);

“Condominium Corporations Index” means the Condominium Corporations Index under section 9 of the Act;

“condominium property” means property as defined in section 2(1) of the Act;

“Condominium Register” means Condominium Register under section 10(1) of the Act;

“hanging line” means an unclosed traverse in the form of a branch emanating from a main traverse or triangulation;

“imperial measurements” means measurements in feet and inches or feet and decimals of a foot;

“Level 1” means the plan delineating the surface of the ground or the projection thereof and showing the relationship of the structures to parcel limits;

“metric measurements” means measurements in metres and decimals of a metre;

“monument” means a bar, post, stake, peg, mound, pit, trench or any other object, thing or device used to mark or witness a boundary of surveyed lands;

“Registrar” means the Registrar of the Supreme Court;

“structural plan”, for the purposes of section 8(1)(b) of the Act, means a copy of the structural drawing prepared for the project mechanically reproduced on such translucent material as the Examiner approves.

Registration and Recording

3. Form of index

The Condominium Corporation Index shall be in Form 1.

4. Registration of declaration and description

(1) The declaration and description shall be delivered to the Registrar for registration together with a copy of the declaration and description.

(2) The Registrar shall—

- (a) cause the copies to be compared with the original to ensure that they are true copies and so certify them;
- (b) endorse on the declaration and description and the certified copies the day, hour and minute of receipt, which shall be the same for both the declaration and the description;
- (c) assign to the declaration a registration number in the series of numbers used for declarations registered under the Act; the number shall be written on the original and the certified copy;
- (d) retain and register the declaration and description in the Condominium Register;

- (e) record in the Condominium Corporations Index such particulars with reference thereto as are indicated by the headings of the columns in Form 1;
- (f) when he or she has registered the documents, retain the certified copies in the Condominium Register and return the originals to the person entitled.

(3) The Condominium Register shall comprise of the certified copies referred to in the foregoing subregulation.

5. Consent

A consent of a party having a registered encumbrance under section 5(b) of the Act shall be in Form 2.

6. Amendment to declaration

(1) An amendment to a declaration under section 7(1) of the Act shall be in Form 2A and shall be accompanied by a declaration of the Secretary or other authorised officer of the Corporation in Form 2B.

(2) Where an amendment to a declaration requires an amendment to the registered description, the amendment to the declaration shall not be registered unless an amendment to the description is registered at the same time.

7. Condominium register

For the purposes of the Deeds and Land Registry Act, Chapter 79, the Condominium Register shall be deemed to be a Register for the parcel of land that comprises the Condominium property.

8. Notice of termination under section 29

A notice of termination under section 29 of the Act shall be in Form 3.

9. Transfer or assignment of Condominium

Where a transfer or assignment made under section 31(2) or 47(4) of the Act are tendered for registration, the Registrar shall not receive the transfer or assignment for registration unless—

- (a) it appears to be executed by all the owners;
- (b) it is accompanied by a release or discharge that appears to be executed by all persons having registered claims against the units and common property created after the registration of the declaration and description;
- (c) the transfer or assignment and every release or discharge is accompanied by such proof as to the execution as is required by or under the Deeds and Land Registry Act, Chapter 79;
- (d) the transfer or assignment is accompanied by a certificate signed by the authorised officers of and under the Seal of the Corporation stating that the seal was authorised by a vote of the owners who at the time of the vote owned eighty per cent of the common property or such greater percentage of the common property as is specified in the declaration.

10. Notice of termination under section 34

(1) A notice of termination under section 34(2) of the Act shall be in Form 4.

(2) The Registrar shall not receive a notice of termination in Form 4 for registration unless—

- (a) it appears to be executed by all the owners and all the persons having registered claims against the units and common properties created after the registration of the declaration and description; and
- (b) it is accompanied by such proof as to the execution as is required by or under the Deeds and Land Registry Act, Chapter 79.

11. Notice of lien

- (1) A notice of lien under section 24(8) of the Act shall be in Form 5.
- (2) A certificate under section 24(9) of the Act shall be in Form 5.
- (3) A discharge of a lien under section 24(7) of the Act shall be in Form 6.

12. Fees

(1) The fees set out in the Schedule shall be payable to the Registrar. The fees shall be paid in stamps, which the Registrar shall cancel by writing across them in ink his or her name or initials and the date of cancellation.

(2) No fee shall be taken by the Registrar which would be payable by the Government or by a public officer in the discharge of his or her duty as such.

PART II

Surveys and Plans

General

13. Form of survey plan

Where a surveyor makes a survey and plan for the purposes of the Act, he or she shall make the survey and plan in accordance with these Regulations and the Land Surveyors Act, Chapter 162, and the regulations made thereunder.

14. Classification of properties

For the purposes of these Regulations, properties are classified as follows—

Class A – Properties each of which is divided into units by vertical planes.

Class B – Properties each of which is divided into units by horizontal or horizontal and vertical planes.

Class C – Properties each of which is divided into units by planes that are neither horizontal nor vertical or by surfaces that are not planes.

15. Application of Regulations

- (1) Regulations 16 to 44 apply to Class A properties.
- (2) Regulations 16 to 46 apply to Class B properties.
- (3) Plans of Class C properties shall be prepared in such manner as the Chief Surveyor considers most suitable to secure accuracy.
- (4) Regulations 16 to 46 do not apply to structural plans.

16. Duties of surveyor

(1) Before undertaking a survey, a surveyor shall refer to all documentary evidence related to the land under survey and the land adjoining the land under survey.

(2) The requirements of all statutes and regulations that affect the boundaries of the land shown on a plan shall be ascertained and complied with before the plan is presented for approval.

17. Positions of monument

(1) Where a monument no longer exists, all evidence concerning its original position shall be considered in the re-establishment thereof.

(2) Where a monument is placed on an existing boundary, the monument shall be placed on the boundary at a point that shall be established from evidence of the boundary line on both sides of the monument so placed.

18. Endorsement of plan

(1) Upon approval of a plan, the Chief Surveyor shall endorse his or her approval on the plan in Form 7.

(2) The Chief Surveyor may at any time examine a survey on the ground.

(3) The Chief Surveyor may request additional information from a surveyor regarding any survey examined under subregulation (2).

19. Documents to accompany plan

Before presenting a plan for approval, a surveyor shall submit to the Chief Surveyor two paper prints of the plan together with a copy of any adjacent or underlying plan and such title records as may be required by the Chief Surveyor.

20. Approval of plan

(1) The Chief Surveyor may approve a plan for registration that does not comply strictly with the requirements of these Regulations or the Land Surveyors Act, Chapter 162, or the regulations made thereunder.

(2) No correction, amendment or other alteration shall be made to any plan that has been approved by the Chief Surveyor except with his or her approval.

Monumentation

21. Definition of condominium property

(1) Every exterior angle of a condominium property shall be defined in the survey by—

- (a) a Concrete Monument;
- (b) an Iron Bar;
- (c) Galvanize Pipe; or
- (d) any acceptable survey monument.

(2) Points in the exterior boundaries of a condominium property at intervals not greater than—

- (a) 1,000 feet, where imperial measurements are used; or
- (b) 300 metres, where metric measurements are used,

shall be defined in the survey in accordance with subregulation (1).

(3) Walls, floors, ceilings, or other physical features may be adopted as the monuments that control the boundaries of condominium units, if a statement to that effect is printed on the plan or diagram of the unit that is registered.

(4) Except as provided in subregulations (1), (2) and (5), other subdivision unit angles or corners and every angle on the condominium plan established to make a closed survey circuit shall be defined by—

- (a) an Iron Bar;
- (b) a Rock Cross; or
- (c) a Cut Cross.

(5) Where subregulation (2) is not applied, and where monumentation in accordance with subregulation (3) is impracticable, boundaries shall be witnessed by measurements to monuments as defined in regulation 2(9).

(6) Monumentation may be varied where, in the opinion of the Chief Surveyor, the requirements of this section are inappropriate having regard to the circumstances.

Standards of Survey for Level 1

22. Boundaries of land

(1) All boundaries of the land being surveyed shall be measured directly or shall be determined by closed traverse or triangulation.

(2) Hanging lines shall be verified by two independent measurements of angle and distance.

23. Permissible error of closure

(1) Where imperial measurements are used, the error of closure in respect of the perimeter of each subdivision unit shall not exceed—

- (a) for the first 100 feet of perimeter, an error of 0.10 feet;
- (b) for the next 1,000 feet of perimeter, an error of 0.02 feet per 100 feet;
- (c) for each succeeding 100 feet of perimeter, up to a total perimeter of 1,900 feet, an error of 0.01 feet; and
- (d) for a total perimeter of more than 1,900 feet, an error of one in 5,000.

(2) Where metric measurements are used, the error of closure in respect of the perimeter of each subdivision unit shall not exceed—

- (a) for the first 30 metres of perimeter, an error of 30 millimetres;
- (b) for the next 300 metres of perimeter, an error of 6 millimetres per 30 metres;
- (c) for each succeeding 30 metres of perimeter, up to a total perimeter of 600 metres, an error of 3 millimetres; and
- (d) for a total perimeter of more than 600 metres, an error of 1 in 5,000.

(3) The errors of closure prescribed in subregulation (1) apply to hanging lines.

24. Position of natural boundary

The position of a natural boundary that forms a boundary of the land being surveyed or that governs the position of that boundary shall be determined by—

- (a) periodic offsets at such intervals as the complexity of the natural boundary demands and to such extent as will enable relocation of the natural boundary, such offset measures to be—
 - (i) of not greater length than 250 feet and at not greater intervals than 200 feet along a controlled traverse where imperial measurements are used, or
 - (ii) of not greater length than 80 metres and at not greater intervals than 60 metres along a controlled traverse where metric measurements are used;
- (b) stadia measurements from stations on a controlled traverse to such points on the natural boundary as are necessary to determine all its irregularities and to enable its relocation, such measurements to be—
 - (i) not more than 1,000 feet in length and at not greater intervals than 200 feet along the natural boundary where imperial measurements are used, or
 - (ii) not more than 300 metres in length and at not greater intervals than 60 metres along the natural boundary where metric measurements are used;
- (c) controlled photogrammetric methods.

25. Bearings

Bearings shall be related to the geographic poles of the earth.

26. Description of monuments

(1) The monuments controlling the extent of units shall be described fully in the declaration and a brief note describing the monuments shall be endorsed on the plan of each level and, when the scale of the plan of any level is not sufficient to illustrate this clearly, a separate plan of compilation shall be drawn showing the specification and relationship between the boundaries of the units and the monumentation.

(2) The original positions of the monuments referred to in subregulation (1) shall be adopted as governing the location of units on any resurvey.

Standards for Level 1 Plans

27. Form of plan

- (1) A plan—
 - (a) shall be drawn on the dull side of durable linen that is not waterproof and is of such quality that opaque or transparent reproductions may be made by either a wet or dry process without damaging the plan;
 - (b) shall be drawn and executed in black Indian ink only and shall show no colouring of any kind whatsoever;
 - (c) shall be drawn to a professional standard of draughtsman ship and be neat and clear and in fit condition for making legible reproductions;
 - (d) shall be certified on the plan by the surveyor in Form 8;
 - (e) shall, where any unit is defined by reference to a building, be certified on the plan by the surveyor in Form 9, and any unbuilt units designated on this plan shall also be certified as substantially representing the units within the structure as provided in Form 9;

- (f) shall show Form 7 immediately below Form 10;
- (g) shall show in the upper right-hand corner below Form 7 the following notation—
“Declaration registered as No. ”; and
- (h) shall be endorsed by each owner in Form 11.

(2) There shall be endorsed on the plan of each level a sheet number and the total number of sheets.

(3) The only handwriting to appear on the plan shall be the signatures of those persons required to sign the plan, and under each signature shall be legibly printed the name of the person signing.

(4) No part of a plan or of any certificate, approval or other matter required thereon shall be stamped, typewritten, stencilled, lithographed or engraved but the title, legend, form of the surveyor's certificate or margin may be printed, if it is machine printed with metallic overprint ink.

28. Scale of plan

A plan shall be drawn to a scale or scales sufficient for clarity of all particulars on the plan.

29. Distances on plan

(1) All distances on a plan of survey shall be shown either in imperial or metric measurements.

(2) Where distances on a plan of survey are shown in metric measurements only, the following shall be included in bold printing in a conspicuous position on the plan—

“METRIC

**MEASUREMENTS SHOWN ON THIS PLAN ARE IN METRES AND MAY BE
CONVERTED TO FEET BY DIVIDING BY 0.3048”**

and where this note appears no further metric designation shall accompany any measurement shown on the plan.

30. Directions

Directions shall be shown on the plan in quadrantal bearings referred to the cardinal points.

31. Limits of units, etc.

The limits of units and common elements shall be shown on the plan by solid lines of a consistent weight.

32. Adjoining land

The adjoining limits of land adjacent to the land being surveyed shall be shown on the plan and verified with actual measurements.

33. Position and form of monuments

(1) A plan shall show the position and form of all survey monuments and other evidence found, conflicting or otherwise.

(2) Monuments and other evidence found shall be distinguished by the abbreviation “Fd.”.

34. Measurements and distances

(1) The measurements of distances and directions obtained by the Surveyor in the course of a survey on the ground shall be reduced to true measurement and shall be shown on the plan.

(2) Where a measurement of distance or direction differs from that shown in the Condominium register or in a deed or other conveyance or plan registered, the measurements shall be followed by—

- (a) the abbreviation “Meas”;
- (b) the corresponding measurement in the Condominium register, on the registered plan or in the deed or conveyance; and
- (c) “Register”, “Plan (No.) ”, or “Deed (No.) ”,

or as the case may be.

35. Content of plan

(1) A plan shall show—

- (a) the bearing and length of each straight line forming any surveyed limit or part of any surveyed limit, except that, in the case of a tier of units that is shown by dimensions to be a series of parallelograms, the direction of each of the said lines of the units may be indicated by the bearings at both ends of the tier;
- (b) the radius, arc length, chord length and cord bearing of each curved line forming any surveyed limit or part of any surveyed limit;
- (c) the perpendicular or radial widths of every street, lane, public passage, unit or common property of which the limits are parallel or concentric;
- (d) the straight line distances and bearings between the points of street intersections on the same side of the street and, where all or part of an intersection is on a curve, the radius, arc length, chord length and bearing of the curved portion;
- (e) the location of the radial centre of an arc that forms the end of a cul-de-sac, clearly defined with reference to the street or streets approaching the cul-de-sac.

(2) Where the arc of a simple curve joins a line that is not tangent to the curve, the junction of curve shall be shown as “not tangential”.

(3) Where space does not permit the showing of the chord length and bearing in their normal position in respect of the curve, they may be shown in schedule form on the plan.

36. Natural features to be shown

(1) Subject to subregulation (2), there shall be shown on a plan all roads, streets, lanes, rivers, canals, streams, lakes, ponds and marshes lying within or abutting upon the surveyed land.

(2) Topographical information that does not relate to the definition of limits of subdivision units, units or common property shall not be shown on a plan.

(3) Natural boundaries shall be accurately plotted on a plan.

(4) Where traverse lines are shown from which natural boundaries have been defined on the ground, complete particulars shall be shown on a plan, including—

- (a) bearings, distances and lengths of offsets and the angles that they make with the respective traverse lines;

- (b) bearings and distances of stadia measurements;
- (c) information relevant to any other method by which a natural boundary is determined; and
- (d) information relating to the boundaries and ties with other surveys and land boundaries.

(5) The particulars required by subregulation (4) shall be shown along the appropriate course on the plan, but where it is not practicable to show such particulars they may be shown in a Schedule if they are identified and related to the appropriate course on the plan.

37. Numbering of property

Every part of a property that is not common property shall be designated on the plan by the word “Unit” followed by a number, and the numbers shall follow consecutively and there shall not be more than one “Unit” designated on each level sheet by the same number and, where a specification is required of parts of the common property that are to be used by the owners of one or more units but not by all of the owners, these exclusive use portions may be designated on a separate plan by numbers or letters or by numbers and letters.

38. Easement

An easement or right of way existing at the time of the survey shall be shown on the plan.

39. Designation of units

Every plan shall bear a title showing the designation of every subdivision unit the whole or a portion of which is included within the area to which the plan applies.

40. Scale of plan to be shown

(1) Each plan shall show under the title the scale to which the plan is drawn, the name of the surveyor or survey organisation or firm and the year in which the survey was completed.

(2) Where the scale shown on a plan of survey is a ratio, a scale bar clearly identified as representing either feet or metres, shall be included on the plan.

41. North point

A simple north point accurately plotted shall be placed in a conspicuous position on each plan.

42. Size of plan

On the lesser of its two dimensions, a plan shall not exceed thirty inches, including a margin of one-half of an inch.

43. Endorsement of plan

Upon the registration of a plan, the Registrar shall endorse on the plan the particulars of registration in Form 10.

44. Documents to be delivered to Registrar

(1) At the time of registration of a plan, there shall be delivered to the Registrar together with the original plan two duplicates of the plan, and the Registrar shall—

- (a) endorse the particulars of registration of the plan on the duplicates;
- (b) retain the duplicates in his or her custody.

(2) A duplicate plan shall be a mechanically reproduced copy of the plan of which it is the duplicate, and shall be reproduced on such material and by such process as the Chief Surveyor approves.

(3) The lands shown on the duplicate plans to be retained by the Registrar shall be coloured a light shade of pink to designate units and yellow to designate the common property.

Standards for Plans other than Level 1

45. Application of regulations to certain plans

Regulation 27 except subregulation (1)(d), and regulations 28, 31, 37, 42, 43 and 44 apply to plans of levels other than Level 1.

46. Designation of certain plans

Plans of levels other than Level 1 shall be designated by the word “Level”, plans of levels above Level 1 shall be numbered consecutively beginning with the number “2” and plans of levels below Level 1 shall be lettered alphabetically beginning with the letter “A”, and—

- (a) may be compiled from information obtained from the structural plans and the plan of Level 1; and
- (b) a section or perspective drawing, sufficiently accurate to portray vertical relationship of all levels, shall be drawn on each sheet.

PART III

Amendments to Descriptions

47. Amendments to descriptions

(1) Regulation 2 and Part II apply, *mutatis mutandis*, to amendments to descriptions.

(2) Amendments of those portions of a registered description referred to in section 8(1)(a), (b), (c), (d) and (f) of the Act may be made by registering new portions in substitution for such portions:

Provided that an amendment to the registered declaration that relates to the amendments to the description is registered at the same time.

(3) Section 38(2) and (3) of the Act apply to amendments made under subregulation (2) of this regulation.

(4) Registered amendments to a description shall for all purposes be substituted for the portions of the description so amended.

(5) The original portions of a registered description that are superseded by registered amendments thereto—

- (a) shall be marked to show that amendments have been registered in substitution therefor; and
- (b) shall be retained in the Registry and be made available for inspection when required.

(6) The amendments to a description shall be integrated with the description, but shall be clearly marked to show—

- (a) that they are amendments; and
- (b) the date of their registration.

(7) Such amendments shall be made in the Condominium Register as are required to reflect the amendments to the description.

First Schedule

CONDOMINIUM ACT

Forms

FORM 1

CONDOMINIUM REGULATIONS

Condominium Corporations Index

Deeds and Land Registry

[Regulation 3.]

<i>Registration No. of Declaration</i>	<i>Date of Registration</i>	<i>Name and address of Corporation</i>	<i>Land or interest in land</i>
		Consecutive Number (Name) Condominium Corporation No. Address for service, etc.	

FORM 2

CONDOMINIUM ACT

CONDOMINIUM REGULATIONS

Consent under Section 5(b) of the Act

[Regulation 5.]

..... having a registered encumbrance within the meaning of paragraph (b) of section 5 of the Condominium Act, registered as Number of in Liber in the Registry hereby consents to the registration of this declaration pursuant to the Condominium Act, against the land or interests appurtenant to the land described in the description.

Dated at this day of, 20.....

.....
.....
.....

FORM 2A
CONDOMINIUM ACT
CONDOMINIUM REGULATIONS

Amendment to Declaration

[Regulation 6.]

Pursuant to section 7(1) of the Act, the Condominium registered as Number
..... in the Registry hereby amends its declaration registered as
Number in the Registry as follows:

The names of all owners and all persons having registered encumbrances against the units and
common interests are set out in Schedule A hereto.

The consents of all owners and all persons having registered encumbrances against the units and
common interests are included in Schedule B hereto.

Witness the seal of the Corporation duly affixed by the authorised officers of the Corporation at
..... this day of, 20.....

.....
(Corporate seal)

.....
(Signed)

SCHEDULE A

The following are the names of all owners and all persons having registered encumbrances
against the units and common interests of Condominium
Corporation Number on the day of, 20

(Note.—Names are to be listed according to unit and level numbers in consecutive numerical order.)

SCHEDULE B

Consent to Amendment

..... being the registered owner of or having a registered
encumbrance against Unit (Number) Level (Number) of (identification of condominium plan)
registered in the Registry hereby consent to the amendment to the declaration of the Corporation
registered as Number in the Registry.

Dated at this day of, 20.....

.....
(Signed)

FORM 2B
CONDOMINIUM ACT
CONDOMINIUM REGULATIONS

Declaration
[Regulation 6.]

I,, declare as follows:

I am the of Condominium Corporation
Number

A By-law authorising the attached amendment to the declaration of the Corporation was registered as Number in the Registry.

The names of all owners and all persons having registered encumbrances against the units and common interests of the date the By-law was registered are set out in Schedule A to the amendment.

The consents of all owners and all persons having registered encumbrances against the units and common interests are included in Schedule B to the amendment.

The persons whose consents are included in Schedule B are the persons whose names are set out in Schedule A, subject to the following exceptions:

Dated:

.....
Secretary or other Authorised Officer

FORM 3
CONDOMINIUM ACT
CONDOMINIUM REGULATIONS

Notice of Termination under Section 29 of the Act
[Regulation 8.]

.....
(Name of Condominium Corporation)

Hereby gives notice that section 29(1) of the Condominium Act that—

1. The board of directors of the Corporation did on the day of, 20....., determine that substantial damage to twenty-five per cent (or such greater percentage as is specified in the declaration) of the building occurred on the day of, 20.....
Where notice is under section 29(1) of the Act add—
2. On a vote, on the day of, 20, the owners who at that time owned eighty per cent (or such greater percentage as is specified in the declaration) of the common property did not vote for repair.

or

Where notice is under section 29(2) of the Act add—

3. There was no vote under section 29(2) of the Act within sixty days after the determination.
4. This notice is given in respect of the property included in Condominium Plan No. registered in the Registry.
5. Upon registration of this notice section 30 of the Condominium Act applies.

Witness the seal of the Corporation duly affixed by the authorised officers of the Corporation at
thisday of, 20

.....
(Corporate seal)
.....

(Signed)

FORM 4

CONDOMINIUM ACT

CONDOMINIUM REGULATIONS

Notice of Termination under Section 34(2) of the Act

[Regulation 10.]

We and the undersigned, being all the members

(Name of Condominium Corporation)

of the Corporation and all the persons having registered claims against the property created after the registration of the declaration and description.

Hereby give notice under section 34(2) of the Condominium Act that, by a vote on the

..... day of, 20..... the owners

who at that time owned eighty per cent (or such greater percentage as is specified in the declaration) of the common property authorised the termination of the government by the Condominium Act of the property included in (identification of Condominium Plan) registered in the Registry.

And that all the persons having registered claims, as aforesaid, having consented, upon the registration of this notice, section 34(3) of the Condominium Act applies.

Witness the seal of the Corporation duly affixed by the authorised officers of the Corporation at this day of, 20.....

.....
(Corporate seal)

.....
(Signed)

OWNERS

.....
(Witness)

.....
Individual

(Name as Registered in Print) Re: Unit (No.) Level
(No.)

.....
(Corporate seal)

.....
Officers of Corporate Owner

(Name of Corporate Owner in Print) Re: Unit (No.)
Level (No.), etc.

REGISTERED CLAIMANTS

.....
(Witness)

.....
Individual

(Name as Registered in Print)

Re: Unit (No.) Level (No.) (or Re: All Units and
Common Property)

.....
Officers of Corporate Claimant)

(Name of Corporate Claimant in Print)

Re: Unit (No.) Level (No.) (or Re: All Units and

FORM 5

CONDOMINIUM ACT

CONDOMINIUM REGULATIONS

Under Section 24(6) of the Act

[Regulation 11(1).]

Notice of Lien

.....
(Name of Condominium Corporation)

Hereby gives notice that it has a lien under the Condominium Act against Unit (No.),
Level (No.) of (identification of Condominium plan), registered in the
Registry and the common interest appurtenant thereto for unpaid common expenses for the
amount of \$ at the date hereof and for such further
amounts as are hereafter not paid when they become due. Upon payment of the amount
outstanding at any time and upon demand, the Corporation will give the owner a discharge of the
lien in the prescribed form. The lien does not secure payments of common expenses which
become due more than three months before the date of registration of this notice.

Witness the seal of the Corporation duly affixed by the authorised officers of the Corporation at,
..... this day of , 20.....

.....
(Corporate Seal)

.....
(Signed)

FORM 5A

CONDOMINIUM ACT

CONDOMINIUM REGULATIONS

Certificate under Section 24(7) of the Act

[Regulation 11(2).]

.....
(Name of Condominium Corporation)

Hereby certifies that, as of the date hereof—

1. The owner of Unit (No.), Level (No.) of (identification of Condominium plan), registered in
the Registry is not in default in the payment of common expenses;

or

The owner is in default in the payment of common expenses
in the amount of \$;
2. The amount of \$ in common expenses stands to the credit of the said owner in
the corporation's records (if applicable);
3. A payment on account of common expenses of \$ is due on (next due date)
for the period (date) to (date);

4. The Corporation is not presently considering any increase in the common expenses; and

or

The Corporation anticipates an increase of approximately per cent in the common expenses as a result of (here give particulars of any known forthcoming increase and the reason for it);

and

5. The Corporation has no knowledge of any circumstances that may result in an increase in the common expenses. (Where applicable add: except (here give particulars of any potential increase and the reason for it).)

(Note.—Such other information may be included in the certificate as the Corporation considers appropriate.)

Witness the seal of the Corporation duly affixed by the authorised officer(s) of the Corporation at that day of , 20.....

.....
(Corporate Seal)

.....
(Signed)

FORM 6

CONDOMINIUM ACT

CONDOMINIUM REGULATIONS

Discharge of Lien under Section 24(10) of the Act

[Regulation 11(3).]

.....
(Name of Condominium Corporation)

Having received payment of the amount mentioned in the notice, of lien registered as No. in respect of UNIT (No.) LEVEL (No.) of (identification of condominium plan) registered in the Registry pursuant to section 24(10) of the Condominium Act, hereby discharge the said UNIT from the said lien.

Witness the seal of the Corporation duly affixed by the authorised officers of the Corporation at, this day of , 20.....

.....
(Corporate Seal)

.....
(Signed)

FORM 7

CONDOMINIUM ACT

CONDOMINIUM REGULATIONS

[Regulation 18(1).]

Approved for Registration

.....

FORM 8

CONDOMINIUM ACT

CONDOMINIUM REGULATIONS

Surveyor's Certificate

[Regulation 27(d).]

I hereby certify that—

1. This survey and plan are correct and in accordance with the Condominium Act, Chapter 60, and the Land Surveyors Act, Chapter 162, and the regulations made thereunder.
2. I was present and did personally supervise the survey represented by this plan.
3. This plan contains a true copy of the field notes of survey.
4. The survey was completed on the day of,
20

Date:

.....
Land Surveyor

.....
(Name in print)

FORM 9

CONDOMINIUM ACT

CONDOMINIUM REGULATIONS

Surveyor's Certificate

[Regulation 27(e).]

I hereby certify that the building(s) shown on this plan is (are) in existence and that the units designated on this plan substantially represent the units within the structure(s).

Date:

.....
Land Surveyor

.....
(Name in print)

FORM 10

CONDOMINIUM ACT

CONDOMINIUM REGULATIONS

Certificate of Registration

[Regulations 27(f) and 43.]

..... Condominium Plan No.
LEVEL – (or LEVELS to)
UNIT – (or UNITS to)
Registered in the Registry at o'clock on the
day of, 20

.....
Registrar

FORM 11

CONDOMINIUM ACT

CONDOMINIUM REGULATIONS

Owner's Certificate

[Regulation 27(h).]

This is to certify that the property included in this plan has been laid out into units and common property in accordance with my (our) instructions.

Dated at this day of, 20.....

.....
(Owner)

.....
(Name in print)

Second Schedule

CONDOMINIUM ACT

CONDOMINIUM REGULATIONS

Registrar's Fees

[Regulation 12.]

	\$	c.
1. (1) For the registration of a declaration and description	75.00	
(2) Where the declaration and description affect more lots or parcels than one, for each lot or parcel after the first	1.50	
(3) For each unit into which the property is divided by the description	0.75	
2. For the registration of a By-law of a corporation	22.50	
3. For the registration of a notice of lien or discharge under section 13 of the Act	9.00	
4. For the registration of a notice of termination	22.50	
5. For the registration of an amendment to a declaration	22.50	
6. Where any instrument after the registration of the declaration and description is by this regulation required to be recorded more than once, for each additional recording	1.50	
7. For the registration of any other document for which no fee is prescribed	5.00	