

**BERMUDA
1986 : 33**

CONDOMINIUM ACT 1986

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[17 July 1986]

[preamble and words of enactment omitted]

PART I

INTERPRETATION AND APPLICATION

Short title

1 This Act may be cited as the Condominium Act 1986.

Interpretation

- 2 (1) In this Act unless the context otherwise requires—
- "board" means the board of management of a corporation as provided for in section 15;
- "building" means one or more buildings on the same condominium parcel;
- "bye-law" means one of the bye-laws of a corporation as amended from time to time, and includes a bye-law passed in substitution for a former bye-law;
- "common property" means so much of a condominium parcel as is not comprised in a unit;
- "condominium" has the meaning assigned to it in subsection (2);
- "condominium parcel" means the land comprised in a condominium plan;
- "condominium plan" means a plan that complies with section 6;
- "contribution" means a contribution levied pursuant to section 23(1)(c);
- "corporation" means a condominium incorporated pursuant to section 8;
- "counsel" means a barrister and attorney;
- "court" means —
- (a) in section 20, the relevant court;

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(b) in sections 22, 36, 37 and 38, a magistrate's court;

(c) elsewhere, the Supreme Court;

"developer" means a person who is proposing to present, or has presented, a condominium plan to the Registrar for registration, as the context may require;

"functions" includes powers and duties;

"land" includes —

(a) land covered with water;

(b) all things growing on land;

(c) buildings and other things permanently affixed to land;
and

(d) interests in land;

"land taxation" means the imposition and collection under the authority of an Act of taxes, rates or charges in respect of the ownership or occupation of land;

"land taxation Act" means an Act providing for land taxation;

"land taxation authority", in relation to any land in a condominium parcel, means the person or body having land taxation powers in relation to that land;

"lease" includes tenancy;

"manage" includes maintain, and grammatical variations shall be construed accordingly;

"management agreement" means an agreement entered into by a corporation governing the general management, administration and control of —

(a) the real and personal property of the corporation that is associated with the residential units; and

(b) the common property so associated;

"the Minister" means the Minister responsible for Housing;

"own" means own in fee simple;

"owner" means owner of a unit;

"prescribed" means prescribed by regulation;

"purchase agreement" means an agreement between a developer and another person by which the latter purchases from the developer a residential unit or a proposed residential unit, or acquires from him a right to purchase such a unit;

"recreational agreement" means an agreement entered into by a corporation that —

- (a) allows persons other than the owners to use recreational facilities that are located on the common property; or
- (b) allows the owners to use recreational facilities that are not located on the common property;

"register" means to record in an official register in accordance with section 54 and the regulations, and "registration" has a corresponding meaning;

"Registrar" means the Chief Surveyor of the Department of Works and Engineering or such other public officer as the Governor may by notice published in the Gazette designate to be the Registrar;

"regulation" means a regulation made under section 63;

"residential" means used or intended to be used for residential purposes;

"special resolution", in relation to a corporation, means a resolution—

- (a) passed at a duly convened meeting of the corporation by a majority of not less than 75% of all the persons entitled to exercise the powers of voting conferred by this Act or the bye-laws; or
- (b) signed by not less than 75% of all the persons who, at a duly convened meeting of the corporation, would be entitled to exercise the powers of voting conferred by this Act or the bylaws;

"title", in relation to a thing, means the right of a person, or, as the case may be, the rights of all persons, to that thing;

"transfer" includes convey, and the noun "transfer" includes conveyance;

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"unit" means a space that is situated within a building and that is described in a condominium plan;

"unit factor", in relation to a unit forming part of a condominium, is the mathematical expression, called for by section 6(g), that denotes the proportionate interest of the owner of that unit in the condominium.

(2) For the purposes of this Act "condominium" means a scheme for the sharing of land whereby the land is divided into individual parts and common parts so that —

- (a) the individual parts are capable of being enjoyed separately; and
- (b) persons having rights in individual parts can enjoy the common parts in common with other persons having rights in other individual parts.

Application of this Act

3 Subject to section 66, this Act applies to condominiums in respect of which the requirements of section 4 are satisfied, but not to condominiums of any other kind.

PART II

ESTABLISHMENT OF CONDOMINIUMS

Basic requirements for condominiums under this Act

4 (1) Only a person who owns land may organize it as a condominium under this Act.

(2) A condominium cannot be incorporated under this Act unless the Registrar is satisfied that 51 per cent or more of the net internal floor area of the building is calculated to provide for people residential accommodation which they own.

(3) In subsection (2), "net internal floor area" means the floor area of all the enclosed parts of the building, leaving out of account common property other than that which is used exclusively for purposes ancillary to residential accommodation.

Procedure for incorporating a condominium under this Act

5 (1) Land may be organized as a condominium under this Act if a condominium plan relating to the land is registered.

(2) A person desiring to organize land as a condominium under this Act shall make application for the incorporation of the condominium by presenting a condominium plan to the Registrar for registration.

Requirements for condominium plan

6 Subject to section 6A, every plan presented to the Registrar for registration as a condominium plan shall —

- (a) have a heading describing the plan as a condominium plan;
- (b) delineate the external surface boundaries of the condominium parcel and the location of the building in relation to them;
- (c) show all particulars necessary to enable the title to the land that is to form the condominium parcel to be identified;
- (d) include a drawing illustrating the units and distinguishing them by numbers or other symbols;
- (e) define the boundaries of each unit;
- (f) show the floor area of each unit;
- (g) have a schedule showing the basis on which unit factors are established for the units and specifying the unit factor for each unit;
- (h) show the address which will be the registered address of the condominium corporation when constituted;
- (i) contain any other prescribed features;
- (j) be accompanied by a certificate from the Director of Planning that planning permission has been granted as required by section 64(1);
- (k) be accompanied by the prescribed professional certificates; and
- (l) be signed by the developer.

[section 6 amended by 1998 : 40 effective 21 July 1998]

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Condominium plans submitted for registration by Bermuda Housing Corporation

6A (1) Notwithstanding section 6 or any other provision of this Act, in the case of a scheduled plan submitted to the Registrar by the Bermuda Housing Corporation for registration as a condominium plan, the plan shall, in addition to the matters specified in section 6, delineate the boundaries of the land to be disposed of with each unit and for the purposes of this section "unit" shall be deemed to include such land.

(2) In this section—

- (a) "the Bermuda Housing Corporation" means the Corporation continued under section 4 of the Bermuda Housing Act 1980 [*title 29 item 1*]; and
- (b) "scheduled plan" means a plan showing land specified in Schedule II to this Act or any part thereof.

[section 6A inserted by 1998 : 40 effective 21 July 1998]

Registration of condominium plan

7 The Registrar may require that a condominium plan presented to him pursuant to section 5(2) be amended so as to comply with the requirements of this Act and the regulations; and, where the Registrar is satisfied that those requirements have been complied with in relation to such a plan, he shall retain and register the condominium plan (duly amended in any case where amendment was in his opinion required).

Incorporation of condominium

8 (1) Upon the registration of a condominium plan under section 7, the following have effect —

- (a) there is established a condominium corporation (in this Act referred to as "a corporation" or "the corporation", as the case may require), in respect of the condominium;
- (b) the common property of the condominium parcel vests in the corporation;
- (c) each unit of the condominium becomes real property vested in the developer and, subject to anything to the contrary in this Act or in the condominium plan or the bye-laws, may be owned, used and enjoyed, and be transferred, mortgaged, leased and otherwise disposed of or dealt with, and be acquired, in all respects as real property.

(2) The establishment of a corporation in relation to a condo-

minium pursuant to subsection (1), and the date on which that occurs, are in this Act referred to respectively as the incorporation, and the date of incorporation, of that condominium.

- (3) The members of a corporation are —
- (a) the owners of the units; or
 - (b) those persons who are entitled to the condominium parcel where the condominium status of the condominium parcel is terminated pursuant to section 41.

Legal capacity etc of corporation

9 A corporation —

- (a) has perpetual succession and power to acquire, hold and dispose of real and personal property;
- (b) may sue and be sued in its registered name;

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(c) shall have a common seal.

Boundaries of condominium units

10 (1) Unless a condominium plan provides otherwise, where —

(a) a boundary of a unit is described by reference to a floor, wall or ceiling; or

(b) a wall located within a unit is a load-bearing wall

the only portion of that floor, wall or ceiling, as the case may be, that forms part of the unit is the finishing material that is in the interior of that unit, including any lath and plaster, panelling, gypsum board, flooring material or covering or any other material that is attached, laid, glued or applied to the floor, wall or ceiling, as the case may be.

(2) Notwithstanding subsection (1), all doors and windows of a unit are part of the unit unless the condominium plan provides otherwise.

Statutory easements

11 (1) Upon the incorporation of a condominium, there are implied in respect of each unit shown on the condominium plan—

(a) the following easements, being easements benefiting the unit—

(i) an easement for the subjacent and lateral support of the unit by the common property and by every other unit capable of affording the unit such support;

(ii) an easement for the shelter of the unit by the common property and by every other unit capable of affording the unit shelter;

(iii) easements for the passage or provision of water, (whether for drinking, draining or any other purpose), sewage, gas, electricity, garbage, artificially heated or cooled air and other services, including telephone, radio and television services, through or by means of pipes, wires, cables or ducts for the time being existing, to the extent to which those pipes, wires, cables or ducts are capable of being used in connection with the enjoyment of the unit;

(b) the following easements, being easements burdening the unit —

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- (i) an easement for the subjacent and lateral support of the common property and every other unit capable of enjoying such support from the unit;
- (ii) an easement to provide shelter to the common property and to every other unit capable of enjoying shelter from the unit;
- (iii) easements for the passage or provision of water (whether for drinking, draining or any other purpose), sewage, gas, electricity, garbage, artificially heated or cooled air and other services, including telephone, radio and television services, through or by means of pipes, wires, cables or ducts for the time being existing within the unit to the common property and every other unit capable of enjoying those easements.

(2) Where an easement is implied by subsection (1), the provider of any utility service that serves the condominium parcel or a unit on that parcel is entitled to the benefit of the easement to the extent that use by him of the easement is appropriate to the provision by him of that service, but not to the exclusion of the provider of any other utility service.

(3) For the purposes of subsection (1), there are implied in favour of, and against, units and common property, as the case may be—

- (a) all ancillary rights (including the right on behalf of a dominant tenement to enter upon a servient tenement and replace, renew or restore anything on the servient tenement from which the dominant tenement is entitled to benefit); and
- (b) all ancillary obligations,

that are reasonably necessary to be enjoyed or suffered if an easement implied by subsection (1) is to be fully operative.

PART III

MANAGEMENT AND ADMINISTRATION

Management and control

12 A corporation is responsible for the management, administration and control of its common property.

Duties of corporation

13 A corporation shall —

- (a) keep its common property clean and in a state of good and serviceable repair;
- (b) carry out such work as may be ordered or required in respect of the common property by any public officer or public body in the exercise of statutory powers;
- (c) do all things reasonably necessary for the enforcement of the obligations, if any, contained in the bye-laws for the management, administration and control of the building.

Powers of corporation

14 A corporation may, in its discretion but subject to any restriction imposed or direction given by a bye-law or at a general meeting of the corporation—

- (a) engage and remunerate staff for any purpose relating to the functions of the corporation;
- (b) retain and remunerate accountants for the purpose of preparing or auditing the corporation's accounts;
- (c) retain as manager, and remunerate, a professional trade or business firm or person to carry out on behalf of the corporation any of the functions of the corporation;
- (d) insure and keep insured the building or any part of the building to its reinstatement value against fire and other risks;
- (e) establish and maintain lawns, gardens and playgrounds on the common property;
- (f) act on behalf of the owners in respect of any other matter in which the owners have a joint interest or liability;
- (g) acquire personal property to be used —

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- (i) for the maintenance, repair or replacement of the real or personal property of the corporation or the common property; or
- (ii) by owners in connection with their enjoyment of the real and personal property of the corporation or the common property;
- (h) borrow money required by the corporation in the performance of its functions;
- (i) secure the repayment of money borrowed by it and of interest on that money by negotiable instrument, by a mortgage of unpaid contributions (whether levied or not), or by a mortgage of any property owned by the condominium, or by any combination of those means;
- (j) grant a lease to an owner under section 31; and
- (k) make an agreement with an owner or tenant of a unit for the provision of amenities or services by the corporation to the unit or to the owner or tenant.

Board of management

15 (1) A corporation shall have a board of management, which shall be constituted in accordance with the requirements of the bye-laws.

(2) The functions of a corporation shall, subject to any restriction imposed or direction given at a general meeting of the corporation, be performed by the board.

(3) All acts done in good faith by a board are, notwithstanding that it is afterwards discovered that there was some defect in the election or appointment or continuance in office of any member of the board, as valid as if he had been properly elected or appointed or had properly continued in office.

Statutory meeting

16 Where a condominium has been incorporated, there shall —

- (a) within 90 days from the day that 50% of the residential

units are sold; or

(b) within 180 days from the day the first residential unit is sold,

whichever is sooner, be held a meeting of the corporation (to be called "the statutory meeting"), at which a board shall be elected.

Annual general meeting

17 (1) The board shall in each year convene a general meeting of the owners as the annual general meeting of the corporation in addition to any other general meetings of the corporation in that year, and shall refer to the meeting as such in the notices calling it.

(2) Not more than fifteen months shall elapse between the date of one annual general meeting of a corporation and the date of the next.

Bye-laws

18 (1) Every corporation shall have bye-laws regulating the corporation, and providing for the management, administration and control of the real and personal property of the corporation and of the units and the common property.

(2) The bye-laws bind the corporation and the owners to the same extent as if the bye-laws had been signed and sealed by the corporation and by each owner, and contained covenants on the part of each owner with every other owner and the corporation to observe and perform all the provisions of the bye-laws.

(3) Upon the incorporation of a condominium, the bye-laws of the corporation are those set forth in Schedule I.

(4) A bye-law may be amended, repealed or replaced by a special resolution.

(5) Amendment, appeal or replacement of a bye-law does not take effect until it is registered.

[section 18 amended by 1998 : 40 effective 21 July 1998]

Restriction on bye-laws

19 A bye-law is not competent to prohibit or restrict the devolution of a unit or any transfer, lease, mortgage or other dealing in or with a unit, or to modify or destroy any easement created or implied by this Act.

Enforcement of bye-laws

20 (1) If an owner, tenant or other person living in a residential unit contravenes a bye-law, the corporation may recover from the owner

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or the tenant or both a penalty of not more than \$2000 in respect of that contravention as if it were a civil debt.

(2) In an action under this section for a penalty it is for the corporation to prove that —

- (a) the bye-law is valid and the bye-laws make valid provision for the penalty; and
- (b) the bye-law has been contravened by the person alleged by the corporation to have contravened it.

(3) The court upon the conclusion of the hearing of an action under this section may either —

- (a) give judgment against the defendant in the amount sued for, or any such lesser amount as appears to the court proper in the circumstances; or
- (b) dismiss the action,

and make such award as to costs as appears to the court proper in the circumstances.

(4) A corporation may not bring an action under this section unless it is authorized by its bye-laws to do so.

(5) For the purposes of an action under this section, a copy of a bylaw that is certified by the Registrar as being a true copy of the bye-law as registered is prima facie proof —

- (a) of the contents of the bye-law; and
- (b) that the bye-law was properly made.

(6) The bringing of an action against a person under this section does not restrict, limit or derogate from any other remedy that an owner or a corporation may have against that person.

Voting rights

21 (1) When a matter is to be decided by voting, one vote is available in right of each unit.

(2) The right to vote in right of a unit is exercisable by the owner unless the unit is mortgaged and a mortgagee is qualified under, and in fact exercises the vote in right of the unit that is conferred by, subsections (3), (4) and (5).

(3) If the holder of a mortgage registered against a unit, being the mortgage ranking first in priority of any mortgage so registered, ("a first mortgagee") gives notice in writing to the corporation that he wishes

to be given notice of all general meetings of the corporation, the corporation shall give him the same notice of every such meeting as it is required to give the owner.

(4) If, in relation to a general meeting of a corporation, a first mortgagee—

(a) not fewer than two days before the meeting gives notice in writing to the corporation of his intent to attend the meeting and vote in right of the unit against which his mortgage is registered; and

(b) actually attends the meeting,

then he, and not the owner, may exercise the vote in right of that unit at that meeting.

(5) Where by virtue of a bye-law a resolution of a general meeting may be obtained by owners rendering their vote in writing without assembling in a meeting, the rendering of a vote in writing by a first mortgagee pursuant to the bye-law shall count for the purposes of subsection (4) as actual attendance by him at the meeting.

Voting where owner incapable

22 (1) Voting powers conferred by this Act or the bye-laws on an owner may, if he is for any reason unable to exercise control over his property, be exercised by the person who for the time being is authorized by law to exercise that control.

(2) If the court, on application by the corporation or by an owner, is satisfied that there is no person capable, willing or reasonably available to exercise the voting powers in respect of a unit, the court shall appoint such person as the court thinks fit to exercise those voting powers.

(3) On making an appointment under subsection (2), the court may make any order it considers necessary or expedient to give effect to the appointment.

Administrative expenses

23 (1) In addition to its other powers under this Act, the powers of a corporation include the following —

(a) to establish a fund sufficient, in the opinion of the board, to finance administrative expenses, that is to say, expenses incurred for the management, administration and control of the common property, the payment of any premiums of insurance and the discharge of any other obligation of the corporation;

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- (b) to determine from time to time the amounts to be raised for the purposes mentioned in paragraph (a);
- (c) to raise amounts so determined by levying contributions on the owners corresponding to the unit factors for their units;
- (d) to recover from an owner as a civil debt any sum of money spent by the corporation pursuant to any enactment or bye-law in respect of the unit, or in respect of common property that is leased to that owner under section 31.

(2) A contribution levied pursuant to subsection (1)(c) is due and payable on the passing of a resolution to that effect and in accord with the terms of the resolution, and may be recovered as a civil debt by the corporation —

- (a) from the person who was the owner at the time when the resolution was passed; and
- (b) from the person who was the owner at the time when the action was instituted,

jointly or severally.

(3) A corporation shall, on the application of an owner or a person authorized in writing by him, certify —

- (a) the amount determined as the contribution of the owner pursuant to subsection (1)(c);
- (b) the manner in which any such contribution is payable;
- (c) the extent to which any such contribution has been paid;
- (d) the interest, if any, owing on any unpaid balance of any such contribution,

and, in favour of a person dealing with an owner, such a certificate is conclusive proof of any matter properly so certified.

Interest on outstanding accounts

24 The corporation may, if its bye-laws so permit, charge interest on any unpaid balance of a contribution owed to it by an owner under

section 23.

Recovery of money

25 If any interest referred to in section 24, or a deposit referred to in section 34(4), is owing from an owner to a corporation, the corporation may, in addition to any other rights of recovery that it has in law, recover the amount of the interest or deposit in the same manner as it may recover a contribution under section 23, and for that purpose the amount shall be considered as a contribution under section 23.

Investments

26 A corporation may invest any funds not immediately required by it in investments in which a trustee is permitted by the Trustee Act 1975 [*title 26 item 51*] to invest trust moneys.

Information on request

27 A corporation shall, within 20 days of receiving from an owner or an intending purchaser or an intending or a registered mortgagee of a unit a written request in that behalf, provide to him such of the following as are mentioned in that request —

- (a) a statement setting forth the amount of any contributions due and payable in respect of a unit;
- (b) the particulars of —
 - (i) any action commenced against the corporation and served on it;
 - (ii) any unsatisfied judgment or order for which the corporation is liable; and
 - (iii) any written demand made on the corporation for an amount in excess of \$5000 that, if not met, may result in an action being brought against the corporation;
- (c) a copy of the current budget, if any, of the corporation;
- (d) a copy of the financial statements, if any, relating to the latest financial year of the corporation for which such statements have been prepared;
- (e) a copy of the bye-laws of the corporation;
- (f) a copy of any minutes of a general meeting of the corporation.

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Insurance

28 (1) A corporation —

- (a) shall place and maintain adequate insurance on the units, other than improvements made to the units by the owners, and the common property against loss resulting from destruction or damage caused by fire, windstorm and any other peril against which the bye-laws require the corporation to maintain such insurance;
- (b) shall, if its bye-laws so require, place and maintain insurance on the improvements made to the units by the owners against loss resulting from destruction or damage caused by fire, windstorm and any other peril against which the bye-laws require the corporation to maintain such insurance; and
- (c) may place and maintain insurance on the units and the common property or either of them against perils other than perils against which this Act or the bye-laws require the corporation to maintain insurance, and for that purpose the corporation has an insurable interest in the units and the common property.

(2) Any payment by an insurer under a policy of insurance for the destruction of or damage to a unit or the common property shall, notwithstanding the terms of the policy —

- (a) be paid to the insurance trustee designated in the bye-laws or, if the bye-laws do not designate an insurance trustee, to the corporation; and
- (b) be used forthwith, subject to sections 39, 41 and 42, for the repair or replacement of the insured property that was destroyed or damaged.

Copies of insurance policies

29 A corporation shall, within 20 days of receiving from an owner or an intending purchaser or an intending or a registered mortgagee of a unit a written request in that behalf, provide to him copies of the policies of insurance placed by the corporation.

Disposal of common property

30 A corporation may be authorized by a special resolution to transfer or lease the common property, or part of it.

Exclusive use areas

31 Notwithstanding section 30, a corporation may, if its bye-laws so permit, by a lease grant to one or more owners exclusive possession of an area or areas of the common property.

Covenants benefiting condominium parcel

32 The board of a corporation has power to acquire on behalf of the owners an easement or a restrictive covenant benefiting the condominium parcel.

Covenants burdening condominium parcel

33 A corporation may be authorized by a special resolution to grant on behalf of the owners an easement or a restrictive covenant burdening the condominium parcel.

Rental of residential units

34 (1) An owner of a residential unit shall not rent out his unit until he has given notice in writing to the corporation of his intention to do so.

(2) A notice given pursuant to subsection (1) shall set forth the address at which the owner may be served with a notice under section 35 or with process under section 36(2) or under section 37(2).

(3) If an owner of a residential unit rents out his unit, it is a condition of the tenancy, notwithstanding anything in the tenancy agreement, that any person living in the unit shall not—

- (a) cause damage to the real or personal property of the corporation or the common property; or
- (b) contravene the bye-laws.

(4) The corporation may require any owner who rents out his residential unit to pay to and maintain with the corporation a deposit that the corporation may use for—

- (a) the repair or replacement of any real or personal property of the corporation or of any common property; and
- (b) the maintenance, repair or replacement of any common property that is subject to a lease granted to the owner of the unit under section 31,

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that is damaged, destroyed, lost or removed, as the case may be, by a person living in the unit.

(5) A deposit referred to in subsection (4) shall not exceed one twelfth of the value established as the annual rental value of the unit under the Land Valuation and Tax Act 1967 [*title 14 item 31*].

(6) Within 20 days of the commencement of any tenancy of a residential unit, the owner of the unit shall inform the corporation by notice in writing of the tenant's name.

(7) Within 20 days of the ending of any tenancy of a residential unit, the owner of the unit shall inform the corporation by notice in writing of that fact.

(8) Within 20 days of receiving a notice under subsection (7), a corporation shall, as the case may require, either—

- (a) return to an owner the whole of any deposit that he made with the corporation in compliance with a requirement of the corporation under subsection (4); or
- (b) if the corporation has used the deposit for one or more of the purposes specified in subsection (4), deliver to the owner—
 - (i) a statement accounting for the amount used; and
 - (ii) the unused balance, if any, of the deposit; or
- (c) if the corporation is entitled to make use of the deposit for one or more of those purposes but is unable to determine the amount of it that it will need, deliver to the owner an estimate of that amount and, within 60 days of so delivering that estimate, deliver to him—
 - (i) a final statement accounting for the amount used; and
 - (ii) the unused balance, if any, of the deposit.

Corporation may give owner's tenant notice to quit

35 (1) A corporation may give a tenant renting a residential unit notice under this section to quit the unit if a person living in the unit

- (a) causes damage, other than normal wear and tear, to the

real or personal property of the corporation or to the common property; or

(b) contravenes a bye-law.

(2) Where a corporation gives a tenant notice under this section—

(a) the tenant shall give up possession of the unit; and

(b) notwithstanding anything to the contrary in the Rent Increases (Domestic Premises) Control Act 1978 [*title 29 item 3*] or in the tenancy agreement between the tenant and his landlord, the tenancy agreement terminates,

on the last day of the month immediately following the month in which the notice is served on the tenant.

(3) A notice given under this section shall be served on the tenant and the landlord.

Enforcement of section 35

36 (1) If a tenant to whom notice to quit a unit has been given under section 35 does not give up possession of the unit, the corporation may apply to the court under this section for an order under subsection (4).

(2) Notice of an application to the court under this section must be served on the tenant and the landlord not fewer than three days, excluding any Saturday or public holiday, before the day appointed by the court for the hearing of the application.

(3) An application to the court under this section shall be supported by an affidavit sworn on behalf of the corporation —

(a) establishing service of the notice to quit under section 35;

(b) stating the reasons for the giving of the notice;

(c) stating the failure of the tenant to give up possession and the reasons, if any, given by him for that failure; and

(d) stating any other relevant facts.

(4) On hearing an application under this section, the court, if satisfied as to the facts presented by the corporation, may by order —

(a) require the tenant to give up possession of the unit;

(b) fix a day on which he shall do so; and

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(c) give any further direction in the matter that the court considers warranted in the circumstances.

(5) Where an order made under subsection (4) fixes a day for a tenant to give up possession of a unit, his tenancy terminates on that day notwithstanding anything to the contrary in the Rent Increases (Domestic Premises) Control Act 1978 [*title 29 item 3*] or in his tenancy agreement with the landlord.

Court order to tenant to quit

37 (1) If a corporation considers that a person living in a residential unit that is being rented —

- (a) is a danger to, or is intimidating, persons in occupation of other units on the condominium parcel; or
- (b) has caused or is causing damage, other than normal wear and tear, to the real or personal property of the corporation, or to the common property,

the corporation may, whether or not the tenant of the unit has been given notice by the corporation under section 35, or by the landlord under the tenancy agreement, to quit the unit, apply to the court under this section for an order under subsection (4).

(2) Notice of an application by the corporation to the court under this section must be served on the tenant and the landlord not fewer than three days, excluding any Saturday or public holiday, before the day appointed by the court for the hearing of the application.

(3) An application under this section shall be supported by an affidavit sworn on behalf of the corporation —

- (a) setting forth particulars of the danger to, or intimidation of, persons, or the damage to property, alleged; and
- (b) stating any other relevant facts.

(4) On hearing an application under this section, the court, if satisfied that danger to, or intimidation of, persons or damage to property, being danger, intimidation or damage of a kind mentioned in subsection (1), has occurred and that there are grounds for believing that further such danger, intimidation or damage may occur if the tenant is permitted to remain in possession of the unit, may by order —

- (a) require the tenant to give up possession of the unit;

- (b) fix the day on which he shall do so; and
- (c) give any further direction in the matter that the court considers warranted in the circumstances.

(5) Where an order made under subsection (4) fixes a day for a tenant to give up possession of a unit, his tenancy terminates on that day notwithstanding anything to the contrary in his tenancy agreement with the landlord.

By-law authority required for action under section 34, 35 or 37

38 (1) A corporation shall not —

- (a) impose or collect deposits under section 34; or
- (b) give notices to quit under section 35; or
- (c) make applications to the court under section 37,

unless the corporation's bye-laws so permit.

(2) For the purposes of subsection (1), permission granted by bylaws may be either general or specific.

Schemes for repair of damage to condominium building

39 (1) Where a building has been damaged but the condominium status of the condominium parcel to which the building belongs is not to be terminated, an interested party may apply to the court under this section for the court to approve a scheme.

(2) In this section —

"interested party" means the corporation or an owner or a registered mortgagee;

"scheme" means a plan prepared by an interested party for the repair of damage to a building, and for the distribution of the cost of the repair among persons affected.

(3) On an application to the court under this section the court may by order approve a scheme, which may include provisions —

- (a) for the reinstatement of the building in whole or in part;
- (b) for the transfer of interests of owners of units that have been damaged or destroyed to other owners, taking unit factors into account.

(4) In the exercise of its powers under subsection (3), the court may include in a scheme such provisions as it considers necessary or

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expedient for giving effect to the purposes of the scheme, including provisions—

- (a) directing the application of insurance moneys paid or payable to the corporation;
 - (b) directing the payment of money by the corporation or the owners or one or more of them;
 - (c) directing an amendment of the condominium plan so as to include in the common property any accretion to it; and
 - (d) imposing terms and conditions on persons affected by the scheme.
- (5) An insurer who has effected insurance against damage to or destruction of the whole or part of a building which will be affected by a scheme has the right to appear in person or by counsel on an application to the court under this section.

PART IV

SUPERVISION AND TERMINATION

Appointment of administrator

40 (1) An interested party may apply to the court under this section for the court to appoint an administrator to exercise functions of the corporation in accordance with subsection (5).

(2) In this section "interested party" means the corporation or an owner or a registered mortgagee or the Minister.

(3) On an application to the court under this section the court may appoint an administrator for an indefinite period or for a fixed period on such terms and conditions as to remuneration or otherwise as the court thinks fit.

(4) The remuneration and expenses of an administrator appointed under this section are administrative expenses within section 23.

(5) An administrator has, to the exclusion of the board and the corporation, those functions of the corporation that the court vests in him.

(6) An administrator may delegate any of the functions so vested in him.

(7) The court may, on the application of an interested party or the administrator, remove or replace the administrator.

Termination of condominium status

41 (1) An interested party may apply to the court under this section for the court to terminate the condominium status of a condominium parcel.

(2) In this section "interested party" means the corporation or an owner or a registered mortgagee or the Minister.

(3) On an application to the court under this section, the court, if it is satisfied that, having regard to the rights and interests of —

- (a) the owners as a whole; and
- (b) any other person appearing to the court to have an interest in the condominium parcel or any part of it ("an affected person"),

it is just and equitable that the condominium status of the condominium parcel should be terminated, may make a declaration to that effect.

(4) In a declaration that it makes under subsection (3) the court may include such conditions and give such directions, including directions for the payment of money, as the court thinks fit for the purpose of adjusting the effect of the declaration —

- (a) as between the corporation and the owners; or
- (b) as amongst the owners; or
- (c) as respects an affected person.

(5) In addition to any interested party, the following have the right to appear in person or by counsel on an application to the court under this section—

- (a) an affected person;
- (b) an insurer who has effected insurance against damage or destruction of the whole or part of a building on the condominium parcel.

Effect of termination of condominium status

42 (1) On the termination of the condominium status of a condominium parcel being terminated, the corporation shall forthwith give the Registrar notice in writing in the prescribed form of the termination.

(2) On receipt of a notice given under subsection (1), the Registrar shall make a memorandum in the prescribed form on the con-

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minium plan in respect of the notice, and the owners of the units in the condominium parcel are thereupon entitled to the condominium parcel as tenants in common in shares corresponding to the unit factors for their units, but subject to the effect of any declaration made by the court under section 41(3).

Disposal of land

43 (1) Where the condominium status of a condominium parcel has been terminated and it is desired that the corporation should have power to dispose of land that formed part of the condominium parcel immediately before the termination of its condominium status, the court, if it is satisfied that every person having an interest in that land has consented in writing to the release of that interest, may by order authorize and empower the corporation to make the appropriate transfer of that land.

(2) A transfer executed in accordance with subsection (1) is valid and effective without execution by any person having such an interest in the land as is mentioned in that subsection; and the receipt of the corporation for the consideration given for the transfer is a sufficient discharge of, and exonerates, all persons taking under the transfer from any responsibility for the application of the consideration expressed to have been so received.

Dissolution of a corporation

44 (1) An interested party may apply to the court under this section for the court to order the winding-up and dissolution of a corporation in relation to the condominium status of whose condominium parcel a declaration has been made under section 41.

(2) In subsection (1) "interested party" means the corporation or a member of the corporation or the Minister or a person appointed as administrator under section 40 to exercise functions of the corporation.

(3) On an application to the court under this section concerning a condominium, the court may, if it thinks fit, by order appoint a liquidator of the corporation, and give directions for the winding-up by him of the corporation's affairs.

(4) The law and practice governing the winding-up by the court, and the dissolution, of a local company under the Companies Act 1981 [*title 17 item 5*] apply in relation to the winding-up of the affairs and the dissolution of a corporation under subsection (3) *mutatis mutandis* as they apply in relation to such a company; and for the

purposes of the application of that law and practice to a corporation —

- (a) a reference to a director of a company shall be deemed to be a reference to a member of the corporation's board; and
- (b) a reference to a member of a company shall be deemed to be a reference to an owner.

PART V

LAND TAXATION

Supply of information to land taxation authorities

45 (1) Not later than 28 days after the incorporation of a condominium, the corporation shall furnish to the land taxation authority 2 copies of the condominium plan, certified in the prescribed manner.

(2) For purposes of land taxation, in relation to a condominium parcel or part of one —

- (a) the particulars shown on a certified copy of a condominium plan furnished pursuant to subsection (1) are conclusive proof of those particulars; and
- (b) the production by a land taxation authority of what purports to be a certified copy of a condominium plan furnished pursuant to subsection (1) is prima facie proof that it is the certified copy so furnished.

(3) Where a corporation leases land to an owner under section 31, it shall within 28 days of the execution of the lease furnish to the land taxation authority the prescribed particulars of the lease.

Units, but not common property, subject to land taxation

46 Notwithstanding section 8(1)(b), for land taxation purposes—

- (a) common property is not a separate parcel of land;
- (b) a corporation's ownership of common property shall be disregarded; and
- (c) each unit shall be treated on the basis that the unit, and the interest in common property belonging to the unit, together constitute a single parcel of land.

PART VI

CONTROL OF DEVELOPERS

Supply of documents by developer to corporation

47 (1) Where a condominium has been incorporated on the application of a developer, he shall, within one year (or such longer period as the Registrar may in any particular case in writing allow) after the date of the incorporation, provide to the corporation the original or a copy of the following documents, in so far as they relate to the condominium parcel—

- (a) all warranties and guarantees on the real and personal property of the corporation and the common property and the units;
- (b) the—
 - (i) structural, electrical, mechanical and architectural working drawings and specifications; and
 - (ii) as-built drawings,that exist for the common property;
- (c) the plans that exist showing the location of underground utility services, sewer pipes and cable television lines located on the common property;
- (d) all written agreements to which the corporation is a party;
- (e) all certificates, approvals and permits issued by any public authority.

(2) A corporation may at any time before it receives a copy of a document under subsection (1) make to the developer a request in writing for a copy of that document, and the developer shall, within 20 days of receiving that request, provide to the corporation without charge a copy of that document if the document is in his possession or power.

Sale of residential units by developer

48 (1) A developer shall not sell or agree to sell a residential unit or a proposed residential unit to a purchaser unless he has available for the purchaser at the developer's place of business, and actually provides to the purchaser, at a charge, if any, no greater than the prescribed charge if the purchaser so requests, a copy of —

- (a) the purchase agreement;
- (b) the bye-laws or proposed bye-laws;
- (c) any management agreement or proposed management agreement;
- (d) any recreational agreement or proposed recreational agreement;
- (e) the condominium plan or the proposed condominium plan;
- (f) in relation to any mortgage that affects, or any proposed mortgage that will affect, the title to the unit or proposed unit (being in either case a mortgage offered or arranged by the developer), either —
 - (i) a copy of the mortgage; or
 - (ii) a notice setting forth the information specified in subsection (2).

(2) The information referred to in subsection (1)(f)(ii) is the following —

- (a) the maximum principal amount available under the mortgage;
- (b) the maximum payment (calculated on a monthly basis) that may be paid under the mortgage;
- (c) the amortization period;
- (d) the term;
- (e) the interest rate or the formula, if any, for determining the interest rate;
- (f) the prepayment privileges, if any.

(3) Every purchaser of a residential unit has the right, without incurring any liability for doing so, by notice in writing to the developer to rescind the purchase agreement within 10 days from the date the purchase agreement was executed.

(4) If a purchase agreement is rescinded under subsection (3), the developer shall, within 10 days of receiving the purchaser's notice rescinding the agreement, return to the purchaser all money that was paid by the purchaser in respect of the purchase.

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Supply of information by developer to purchasers

49 Every developer who enters into a purchase agreement shall include in the agreement the following —

- (a) a statement that is at least as prominent as the rest of the contents of the agreement, and that is printed in red ink on the outside front cover or on the first page of the agreement, in the following terms —

"Section 48 of the Condominium Act 1986 confers upon the purchaser the right to obtain certain documents and information of vital importance for this agreement.";

- (b) a description, drawing or photograph showing —
- (i) the interior finishing of all major improvements to the common property located within a building;
 - (ii) the recreational facilities, equipment and other amenities to be used by the persons living in the residential units;
 - (iii) the equipment to be used for the maintenance of the common property;
 - (iv) the location of roadways, walkways, fences, parking areas and recreational facilities;
 - (v) the landscaping; and
 - (vi) the exterior finishing of the building,
- as they will exist when the developer has fulfilled his obligations under the purchase agreement;
- (c) the amount or estimated amount (calculated on a monthly basis) of the contributions in respect of the unit; and
- (d) the basis on which unit factors are established for all units (whether residential or not), and the unit factor for the unit.

Certain payments to be held in trust

50 (1) Subject to subsection (7), there shall be held in trust, in the manner specified in subsection (2), all money, other than money paid by way of rent or security deposit, paid by a purchaser under a purchase

agreement; and

- (a) if the improvements to the residential unit and the common property are substantially completed, that money may be paid to the developer upon the purchaser receiving title to the unit;
- (b) if the improvements to the residential unit are substantially completed but the improvements to the common property are not substantially completed —
 - (i) not more than 50% of that money less the interest earned on it may be paid to the developer upon the purchaser receiving title to the unit; and
 - (ii) on the improvements to the common property being substantially completed, the balance of that money and all the interest earned on the total amount held in trust in respect of that purchase agreement may be paid to the developer.

(2) A developer who receives money that is required by subsection (1) to be held in trust shall forthwith deposit the money in an interest-bearing trust account maintained by a licensed bank in Bermuda,

(3) A bank where money is deposited under subsection (2) shall keep it on deposit in Bermuda, and shall not pay it out to a developer except in accordance with a statement in writing from the Registrar certifying that the relevant requirements of subsections (1) and (6) have been satisfied.

(4) If, where money is being held in trust pursuant to subsection (1), a purchaser takes possession of the unit or occupies it before receiving title to the unit, the interest earned on that money from the day the purchaser's possession or occupation of the unit commences to the day he receives title to the unit shall be applied against the purchase price.

(5) Subject to subsection (4), a developer is entitled to the interest earned on money held in trust pursuant to subsection (1).

(6) For the purposes of this section, improvements to a unit or the common property, as the case may be, are deemed to be substantially completed when the improvements are ready for use, or are being used, for the purpose intended.

(7) Subsections (1) to (6) do not apply in respect of money paid to a developer under a purchase agreement if that money is held under the provisions of a scheme approved by the Minister that provides for the

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receipt, handling and disbursing of that money, or indemnifies against loss of that money, or both.

Limit on security deposit

51 If a purchaser of a residential unit, before receiving title to the unit, rents that unit from the developer, the amount that the developer may charge the purchaser as a security deposit in respect of the unit shall not exceed one month's rent charged for the unit or, in the case of premises to which the Rent Increases (Domestic Premises) Control Act 1978 [*title 29 item 3*] applies, the limit prescribed that Act.

Management agreements

52 (1) Subject to subsection (2), a corporation may, notwithstanding anything contained in a developer's management agreement, terminate a developer's management agreement without cause at any time after the board of the corporation is comprised of persons who were elected to the board after the majority of the residential units were owned by persons other than the developer.

(2) A developer's management agreement —

(a) may not be terminated under subsection (1) until 2 years have elapsed from the day that the agreement was entered into except where the agreement permits termination at an earlier date; and

(b) may only be terminated under subsection (1) on the corporation giving 60 days notice in writing to the other party to the agreement of the corporation's intention to terminate the agreement;

and the corporation is not liable to any other party to the agreement by reason only of the agreement being terminated under this section.

(3) In this section "developer's management agreement" means a management agreement that was entered into by a corporation at a time when its board was comprised of persons who were elected to the board at a time when the majority of residential units were owned by the developer.

(4) This section does not derogate from any other rights that a corporation may have to terminate a developer's management agreement.

53 (1) Any waiver or release given of the rights, benefits or protections provided by or under sections 47 to 52 is void.

(2) A remedy that a purchaser of a residential unit has under this Act is in addition to any other rights or remedies that he has.

PART VII

MISCELLANEOUS

Registration under this Act

54 (1) The Registrar shall establish and maintain official registers in which to record documents or information which he is required or empowered by or under this Act to register.

(2) An official register, and a record in an official register, shall be in such form as may be prescribed or, if a form is not prescribed, then in such form as the Registrar may think fit.

Corporation's register of owners

55 (1) Every corporation shall keep at its registered address a register (in this Act called the corporation's "register of owners"), and shall, in so far as the information is duly supplied to the corporation, record in the register, in respect of each unit —

(a) the name of the owner, and the date on which he became the owner; and

(b) the date on which a person ceased to be the owner,

of the unit.

(2) Subject to subsection (1), a corporation shall keep its register of owners in such a form as may be prescribed or, if a form is not prescribed then in such a form as the corporation think fit.

(3) Until a change of ownership of a unit has been duly notified to a corporation, the person duly recorded in the corporation's register of owners as the owner of the unit shall, so far as concerns the rights, powers and duties of the corporation under this Act in relation to owners, be deemed to be the owner of that unit; and he shall have the corresponding rights, powers and duties of an owner accordingly.

(4) A corporation shall keep its register of owners readily available for inspection by owners and by the corporation's officers.

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Right of entry

56 Where any public authority or any person authorized by a public authority has a statutory right to enter on any part of a condominium parcel, the authority or person is entitled to enter on any part of the parcel to the extent necessary or expedient to enable it or him to exercise that statutory right.

Service on a corporation

- 57 (1) A document may be served on a corporation—
- (a) by leaving it at its registered address, or by sending it there by registered mail; or
 - (b) by personal service on a member of the board.
- (2) For the purposes of this section "document" includes summons, notice, tax notice, order and other legal process.

Service by a corporation

- 58 (1) A corporation may serve on a landlord a notice given under section 35 or process under section 36(2) or under section 37(2) —
- (a) by personal service; or
 - (b) by registered mail sent to the address given to the corporation under section 34(1) and (2).
- (2) A corporation may serve on a tenant a notice given under section 35 or process under section 36(2) or under section 37(2)—
- (a) by personal service; or
 - (b) if the tenant cannot be served personally by reason of his absence from the premises or by reason of his evading service—
 - (i) by giving it to an adult person who apparently lives with the tenant; or
 - (ii) by posting it up in a conspicuous place on some part of the premises; or
 - (iii) by sending it by registered mail to the tenant at the address where he lives.

Change of registered address

- 59 (1) A corporation may by resolution of the board change its registered address.
- (2) A change in a corporation's registered address under sub-

section (1) does not take effect until a notice of that change of address is registered.

Fees for documents

60 A corporation may charge a reasonable fee to compensate it for any expenses it incurs in producing and providing a document or information required of it under this Act.

Offences

61 (1) A person who fails to comply with any duty or prohibition imposed upon him by any provision to which this section applies commits an offence against this Act.

(2) The provisions to which this section applies are:—

section 27;

section 28(1) and (2);

section 29;

section 34(1), (6), (7) and (8);

section 42(1);

section 47(1) and (2);

section 48(1) and (4);

section 50(2) and (3);

section 51 ;

section 55(1), (2) and (4); and

section 65(3).

(3) Where a condominium corporation commits an offence under subsection (1), each member of the board that is knowingly a party to the commission of the offence commits an offence against this Act.

Punishment of offences

62 Any person committing an offence against this Act may be proceeded against summarily:

Punishment on conviction : imprisonment for 12 months or a fine of \$5,000 or both such imprisonment and fine.

Regulations

63 (1) The Minister may make regulations—

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- (a) respecting the manner of registering a condominium plan;
 - (b) prescribing forms to be used for the purposes of this Act;
 - (c) prescribing fees (other than fees referred to in section 60);
 - (d) prescribing anything that is required or permitted by this Act to be prescribed, or that is necessary or convenient to be prescribed for carrying out this Act or giving effect to it; and
 - (e) creating offences and prescribing penalties (including, if thought fit, imprisonment) for such offences but not exceeding the penalties fixed by section 62.
- (2) Regulations are subject to the affirmative resolution procedure.

Application of Development and Planning Act 1974

64 (1) Subject to subsection (2), nothing in this Act restricts the application of the Development and Planning Act 1974 [*title 20 item 1*] ("the 1974 Act"), or of any development plan made under the 1974 Act, in relation to land which it is proposed to develop, or which has been developed, as a condominium under this Act.

(2) The creation of units as part of the development of land as a condominium under this Act and any transfer or grant of a lease relating to such a unit—

- (a) are not subdivisions of land within the meaning of section 35A of the 1974 Act; and accordingly
- (b) are not restricted or controlled by anything in section 35B of that Act.

(3) In this section "develop" and "development" have the meanings assigned to them in section 1 of the 1974 Act.

[Section 64 amended by 1997 : 3 effective 1 April 1997]

Investigation of affairs of a corporation

65 (1) The Minister may at any time either of his own volition or at the request of any other person (an "applicant") appoint one or more in-

spectors to investigate the affairs of a corporation under this section.

(2) A request by an applicant for an investigation shall be supported by such evidence as the Minister may require showing that the applicant is not actuated by malice; and the Minister may, before appointing an inspector or inspectors pursuant to a request by an applicant, require the applicant to give security for payment of the costs of the investigation.

(3) Every officer or agent of a corporation whose affairs are under investigation under this section shall produce to an inspector all books or documents relating to the affairs of the corporation that are in his possession or power, and shall answer truthfully any question so relating that is put to him by an inspector; and an inspector may examine on oath every such officer or agent in relation to the affairs of the corporation, and may administer an oath accordingly.

(4) On the conclusion of an investigation an inspector shall report to the Minister his opinion on the subject-matter of the investigation; and the Minister may supply a copy of the report to the corporation or the applicant or both, if he thinks fit.

(5) All expenses of or incidental to an investigation instituted pursuant to a request by an applicant shall be defrayed by him unless the Minister directs that they be defrayed in whole or in part by the corporation or out of public funds; and all expenses of or incidental to an investigation instituted by the Minister of his own volition shall be defrayed out of public funds.

Application of this Act to existing condominiums

66 (1) The Minister may by an order made under this section in accordance with subsection (2)(b) modify this Act in its application to a condominium to which this section applies.

(2) This section applies to any condominium that is wholly or mainly of a residential nature—

(a) which was formed before 17 July 1986; and

(b) as to which the Minister is satisfied—

(i) that all of the persons owning dwellings in the condominium saw a draft of an order that the Minister proposed to make under this section in relation to the condominium ; and

(ii) not fewer than two-thirds of those persons approved the draft.

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(3) Where the Minister makes an order under and in accordance with this section in relation to a condominium, this Act applies to that condominium, subject to the modifications of this Act specified in the order, with effect from the date of the commencement of the order.

(4) An order made under this section in relation to a condominium may, if two-thirds of the persons owning dwellings in the condominium agree, contain such incidental provision as the Minister deems necessary or expedient for adjusting the arrangements at that condominium to the effect of the order.

(5) For the purposes of this section, the person who has the greatest beneficial interest in a dwelling in a condominium is the person who owns that dwelling.

(6) Section 6 of the Statutory Instruments Act 1977 [*title 1 item 3*] does not apply to an order made under this section.

Commencement

67 [omitted]

[This Act was brought into operation on 17 October 1987 by BR 55/1987]

SCHEDULE I

(Section 18(3))

STANDARD CORPORATION BYE-LAWS

Interpretation

1 (1) In these bye-laws—

(a) "the Act" means the Condominium Act 1986;

(b) "annual general meeting" means an annual general meeting of the corporation;

(c) "general meeting" means a general meeting of the corporation.

(2) Words defined in section 2 of the Act and used in these bye-laws have the same meaning in these bye-laws.

(3) The rights and obligations given to or imposed on the corporation or the owners by these bye-laws are in addition to any rights or obligations given to or imposed on the corporation or the owners by or under the Act.

(4) If there is any conflict between these bye-laws and the Act or the regulations, the latter prevail.

Duties of owners

2 An owner—

- (a) shall permit the corporation and its agents at all reasonable times on notice, (except in case of emergency, when no notice is required), to enter his unit for the purpose of—
 - (i) inspecting the unit;
 - (ii) maintaining, repairing or replacing pipes, wires, cables and ducts existing in or on the unit and used or capable of being used in connection with the enjoyment of any other unit or the common property;
 - (iii) maintaining, repairing or replacing the common property; or
 - (iv) ensuring that the bye-laws are being observed;
- (b) shall forthwith—
 - (i) carry out all work that may be required pursuant to these bye-laws or may be lawfully required by any public authority in respect of his unit, other than any work for the benefit of the building generally; and
 - (ii) pay all rates, taxes, charges and assessments that may be payable in respect of his unit;
- (c) shall maintain his unit in a state of good repair; and for the purposes of section 6A, "unit" shall be deemed to include the land referred to in that section
- (d) shall notify the corporation forthwith of—
 - (i) any change in the ownership of the unit; or,
 - (ii) any mortgage of the unit; and
- (e) shall not make structural, mechanical or electrical alterations to his unit or to the common property without the prior written consent of the board, which shall not be unreasonably withheld.

[amended by 1998 : 40 effective 21 July 1998]

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Constitution of the board

3 (1) The board shall consist of not fewer than 3 and not more than 9 individuals.

(2) Notwithstanding paragraph (1), if there are not more than 2 owners, the board may consist of one or more individuals not exceeding 7 in number.

(3) An individual shall not be a member of the board unless he is 21 years of age or older.

Eligibility to sit on the board

4 (1) A person does not need to be an owner in order to be elected to the board.

(2) Notwithstanding subsection (1)—

(a) if a unit has more than one owner, only one owner may sit on the board in respect of that unit at one time; and

(b) an owner who has not paid to the corporation the contributions due and owing in respect of his unit may not be elected to the board.

Voting

5 At an election of members of the board each person entitled to vote may vote for the same number of candidates as there are vacancies to be filled on the board.

Term of office

6 (1) Subject to paragraph (2), a member of the board shall be elected at an annual general meeting for a term expiring at the conclusion of the annual general meeting convened in the 2nd year following the year in which he was elected to the board.

(2) At the statutory meeting convened under section 16 of the Act—

(a) not more than 50% of the members of the board shall be elected for a term expiring at the conclusion of the annual general meeting convened in the year next following the year in which they were elected; and

(b) the balance of the members shall be elected for a term expiring at the conclusion of the annual general meeting convened in the 2nd year following the year in which they were elected.

(3) Each member of the board shall remain in office until—

(a) his term of office expires; or

- (b) he is removed under bye-law 7; or
- (c) the office becomes vacant under bye-law 8,

whichever happens first.

Removal of a member of the board

7 Except where the board consists of fewer than 3 individuals, the corporation may by resolution at a general meeting remove a member of the board before the expiration of his term of office and appoint another individual in his place to hold office for the remainder of the term.

Vacating of the office of a member of the board

8 The office of a member of the board is vacated if he—

- (a) becomes bankrupt; or
- (b) is more than 30 days in arrears in payment of any contribution required to be made by him as an owner; or
- (c) is adjudged to be of unsound mind under any statutory provision; or
- (d) is convicted of an indictable offence for which he liable to imprisonment for a term of not less than 2 years; or
- (e) is absent from 3 consecutive meetings of the board without permission of the board and it is resolved at a subsequent meeting of the board that his office be vacated; or
- (f) resigns his office by serving notice in writing on the corporation; or
- (g) dies.

Filling vacancies

9 When a vacancy occurs on the board under bye-law 8, the board may appoint an individual to fill the vacancy for the remainder of the former member's term.

Officers of the corporation

10 (1) At the first meeting of the members of the board held after the general meeting of the corporation at which they were elected, the board shall designate from its members a president, a vice-president, a secretary and a treasurer of the corporation, to be the officers of the corporation.

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(2) Notwithstanding paragraph (1), the board may designate one person to fill the offices of secretary and treasurer.

(3) In addition to those duties assigned to the officers by the board—

(a) the president or, in the event of his absence or disability, the vice-president—

(i) is responsible for the daily execution of the business of the corporation; and

(ii) shall act as chairman of the meetings of the board;

(b) the secretary or, in the event of his absence or disability, another member of the board designated by the board—

(i) shall record and maintain all the minutes of the board;

(ii) is responsible for all the correspondence of the corporation; and

(iii) shall carry out his duties under the direction of the president and the board;

(c) the treasurer or, in the event of his absence or disability, another member of the board designated by the board, shall—

(i) receive all money paid to the corporation and deposit it as the board may direct;

(ii) properly account for the funds of the corporation and keep such books as the board directs;

(iii) present to the board, when directed to do so by the board, a full and detailed account of receipts and disbursements of the corporation; and

(iv) present at every annual general meeting—

(aa) a budget for the forthcoming financial year of the corporation; and

(bb) an audited statement for the most recently completed financial year of the corporation.

(4) A person ceases to be an officer of the corporation if he ceases to be a member of the board.

(5) If a person ceases to be an officer of the corporation, the board shall designate from its members a person to fill that office of the corporation for the remainder of the term.

(6) If a board consists of not more than 3 persons, those persons may perform the duties of the officers of the corporation in such manner as the board may direct.

Majority vote and quorum of the board

11 (1) At meetings of the board, all matters shall be determined by majority vote and, in the event of a tie vote, the chairman is entitled to a casting vote in addition to his original vote.

(2) A quorum for a meeting of the board is a majority of the members of the board.

Written resolutions

12 A written resolution of the board signed by all of the members of the board has the same effect as a resolution passed at a meeting of the board duly convened and held.

Seal of the corporation

13 (1) The corporation's seal shall not be used except—

(a) under the authority of a resolution of the board given prior to its use; and

(b) in the presence of not fewer than 2 members of the board, who shall sign the instrument to which the seal is affixed.

(2) Notwithstanding paragraph (1), if there are not more than 2 members of the corporation, one member may be authorized by the board to use the corporate seal and sign any instrument to which the seal is affixed.

Signing authority

14 The board shall prescribe, by resolution—

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- (a) those officers or other persons who are authorized to sign cheques, drafts, instruments and documents not required to be signed under the corporate seal; and
- (b) the manner, if any, in which those cheques, drafts, instruments or other documents are to be signed.

Powers of the board

15 (1) The board shall—

- (a) meet at the call of the president to conduct its business, and adjourn and otherwise regulate its meetings as it thinks fit; and
- (b) meet when a member of the board gives to the other members not less than 7 days notice of a meeting proposed by him, specifying the reason for calling the meeting.

(2) The board may employ on behalf of the corporation any agents and employees it thinks necessary to manage, administer and control the real and personal property of the corporation and the common property, and in that respect may authorize those persons to exercise the powers and carry out the duties of the corporation.

(3) The board may, subject to any restriction imposed on it or direction given to it at a general meeting of the corporation, delegate to any of its members or to other persons any or all of its functions as it thinks fit, and may any time revoke that delegation.

Duties of the board

16 The board shall—

- (a) cause proper books of account to be kept of all money received and expended by it, and the matters in respect of which the receipt and expenditure took place;
- (b) prepare for each annual general meeting financial statements relating to all money of the corporation, and the income and expenditures of the corporation;
- (c) maintain financial records of all the assets, liabilities and equity of the corporation;
- (d) submit to the annual general meeting an annual report consisting of the financial statements and other information as the board may determine or as may be directed by a resolution passed at a general meeting.

Procedure

17 All meetings of the board and all general meetings shall be conducted according to the rules of procedure adopted by the board.

General meetings other than annual general meetings

18 The board—

- (a) shall convene a general meeting on the written request of the owners who are entitled to vote and represent not less than 15% of the total unit factors for the units; and
- (b) may convene a general meeting whenever it considers it proper to do so.

Notice of general meetings

19 (1) When an annual general meeting or a general meeting is to be convened, the board shall, not less than 7 days before the day on which the meeting is to be held, give to each owner notice in writing of the meeting stating—

- (a) the place, date and time at which the meeting is to be held; and
- (b) the nature of any special business, if any, to be dealt with at the meeting.

(2) An annual general meeting or a general meeting or anything done at such a meeting is not invalid by reason only that —

- (a) a person, by accident, was not, in respect of that meeting, give notice under paragraph (1) or section 21(3) of the Act; or
- (b) a person did not in fact receive a notice given under that paragraph or that subsection in respect of that meeting.

Quorum

20 (1) Except as other wise provided by these bye-laws, no business shall be transacted at an annual general meeting or a general meeting unless quorum of persons entitled to vote is present, or represented by proxy, at the time when the meeting commences.

(2) A quorum for an annual general meeting or a general meeting consists of not less than 50% of all the persons entitled to receive notice under bye-law 19 being present in person or represented by proxy at the meeting.

(3) If a quorum is not present within 30 minutes from the time appointed for the commencement of an annual general meeting or a gen-

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eral meeting, the meeting shall stand adjourned to the corresponding day in the next week at the same place and time; and, if at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the commencement of the meeting, the persons entitled to vote who are present or represented by proxy constitute a quorum for the purpose of that meeting.

Chairmanship and order of business at general meetings

21 (1) The president or, in the event of his absence or disability, the vice-president or other person elected at the meeting, shall act as chairman of an annual general meeting or a general meeting.

(2) The order of business at an annual general meeting and, as far as practicable, at any other general meeting, shall be as follows —

- (a) call to order by the chairman;
- (b) calling of the roll and certifying of proxies;
- (c) proof of notice of meeting, waiver or proxies, as the case may be;
- (d) reading and disposal of any unapproved minutes;
- (e) reports of officers;
- (f) reports of committees;
- (g) election of members of the board;
- (h) unfinished business;
- (i) new business;
- (j) adjournment.

Voting

22 Voting is regulated by section 21 of the Act and bye-laws 23 to 31.

Show of hands

23 (1) At an annual general meeting or a general meeting, a resolution shall be voted on by a show of hands unless a poll is demanded by a person entitled to vote and present in person or by proxy; and, unless a poll is so demanded, a declaration by the chairman that a resolution has been carried on the show of hands is conclusive proof of

the fact without proof of the number or proportion of votes recorded in favour of or against the resolution.

(2) If a person demands a poll, that person may withdraw that demand, and on the demand being withdrawn the vote shall be taken by a show of hands.

Taking a poll

24 A poll, if demanded, shall be conducted in such manner as the chairman may direct, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

Tie vote

25 In the case of a tie in a vote taken at an annual general meeting or a general meeting, whether on a show of hands or on a poll, the chairman of the meeting is entitled to a casting vote in addition to his original vote.

Votes at an annual general meeting or a general meeting

26 Except for matters requiring a special resolution, all matters shall be determined by a majority vote.

Manner of voting

27 On a show of hands or on a poll, votes may be given either personally or by proxy.

Appointment by proxy

28 An instrument appointing a proxy shall be in writing under the hand of the person making the appointment, and may be either general or for a particular meeting, but a proxy need not be an owner.

Restrictions on voting

29 (1) Except as provided for in paragraph (2) of this bye-law or section 21 of the Act, there are no restrictions or limitations on an owner's rights to vote at an annual general meeting or a general meeting.

(2) If at the time of an annual general meeting or a general meeting an owner has not paid to the corporation all contributions that are due and owing in respect of his unit, that owner is ineligible to cast a vote at the meeting in respect of any resolution other than a special resolution.

(3) An owner's ineligibility to cast a vote does not affect the rights conferred on a mortgagee by section 21(3) to (5) of the Act.

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Voting by co-owners

30 (1) Where two or more persons are recorded in the corporation's register of owners as the owner of a unit, the vote of the most senior of them to tender a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the others.

(2) Seniority for the purposes of paragraph (1) is determined by the order in which the names stand in the register.

Signed resolutions

31 If a resolution of the members of the corporation requires a majority vote, that resolution, signed in person or by proxy by all the persons who at a properly convened annual general meeting or general meeting would be entitled to vote, has the same effect as a resolution duly passed at such a meeting.

Capital replacement reserve fund

32 The board shall establish and maintain a fund called a "Capital Replacement Reserve Fund" to be used for the repair or replacement of—

- (a) any real and personal property owned by the corporation; and
- (b) the common property,

when the repair or replacement does not occur annually.

Failure to comply with by-laws

33 The corporation is authorized to exercise the powers provided for in section 20 of the Act.

Tenants

34 The corporation is authorized to —

- (a) impose and collect deposits under section 34 of the Act;
- (b) give notices to give up possession of residential units under section 35 of the Act; and
- (c) make applications to the court under section 37 of the Act.

Amendment of by-laws

35 Notwithstanding bye-law 19, if a bye-law is to be amended, repealed or replaced, the persons entitled to vote shall be given written copies of the text of the proposed amendment, repeal or replacement not less than 14 days before the day on which the special resolution is to be voted on.

Restrictions on use of property

36 (1) An owner shall not —

- (a) use or enjoy the real or personal property of the corporation or the common property in such a manner as unreasonably to interfere with its use and enjoyment by other owners or their occupants;
- (b) use his unit in a manner or for a purpose that will cause a nuisance or hazard to any other owner or his occupant;
- (c) use his unit for a purpose that is illegal;
- (d) make undue noise in or on his unit or on the real property of the corporation or the common property;
- (e) keep an animal in or on his unit or on the real property of the corporation or the common property after a date specified in a notice given to him by the board;
- (f) use his unit, if it is a residential unit, for other than residential purposes;
- (g) do anything in respect of his unit, the real or personal property of the corporation or the common property, or bring or keep anything on the unit or such property that will in any way increase the risk of fire or result in an increase of any insurance premiums payable by the corporation;
- (h) use a toilet, sink, tub, drain or other plumbing fixture for a purpose other than that for which it is constructed;
- (i) hang or place on the real property of the corporation or the common property or within or on a unit anything that is, in the opinion of the board, aesthetically unpleasing when viewed from outside the units;
- (j) leave articles belonging to his household on the real property of the corporation or the common property when those articles are not in actual use;

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- (k) obstruct a sidewalk, walkway, passage, driveway or parking area otherwise than for ingress and egress to and from his unit;
 - (l) use any portion of the real property of the corporation or the common property except in accordance with the by-laws.
- (2) An owner shall ensure that his occupants comply with requirements which are binding upon him under paragraph (1).
- (3) In this bye-law —
- "occupant", in relation to an owner, means a person present in or on that owner's unit or in or on the real or personal property of the corporation or the common property with that owner's permission;
- "owner" includes a tenant.

[schedule I amended by 1998 : 40 effective 21 July 1998]

SCHEDULE II (section 6A(2))

ALL THOSE LANDS being lands—

- (a) known as Cedar Park Estate situated in the parish of Devonshire delineated on the attached drawings prepared by Bermuda-Caribbean Engineering Consultants Ltd., containing 2.206 hectares or thereabouts, and numbered SV 10442/Q/18;
- (b) known as Prospect Estate situated in the parish of Devonshire, delineated on the attached drawings prepared by Bermuda-Caribbean Engineering Consultants Ltd., containing 2.547 hectares or thereabouts and numbered SV 10443/11/16;
- (c) known as Top Square Estate situated in the town of St. George delineated on the attached drawings prepared by Ted Gauntlett Chartered Surveyor containing 0.423 hectares or thereabouts and numbered TG/0702.

[Drawings Omitted]

[schedule II inserted by 1998 : 40 effective 21 July 1998]

[Amended by:

1997 : 3

1998 : 40]