

CHAPTER 139

**LAW OF PROPERTY AND CONVEYANCING
(CONDOMINIUM)**

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CHAPTER 139

LAW OF PROPERTY AND CONVEYANCING
(CONDOMINIUM)

**An Act to provide for the ownership in fee simple
of units in multi-unit buildings.**

*30 of 1965
17 of 1969
12 of 2003*

*[Assent 5th August, 1965]
[Commencement 1st April, 1967]*

1. This Act may be cited as the Law of Property and Conveyancing (Condominium) Act.

Short title.

2. This Act shall apply only to property as hereinafter defined which is expressly made subject to the provisions of this Act by a Declaration in the manner hereinafter provided.

Application of Act.

3. In this Act unless the context otherwise requires —

Interpretation.

“body corporate” means the body corporate referred to in section 13 of this Act;

“building” means a multi-unit building or buildings comprising part of the property which is or is to be included in a Declaration;

“byelaws” means the relevant byelaws which regulate the operation of a property and includes the provisions of the articles of association of a company registered under the Companies Act to the extent that they relate to the operation of such property;

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“common expenses” means —

- (a) all sums lawfully levied against unit owners by the body corporate;
- (b) the expenses of the operation of the property;
- (c) other expenses agreed upon as common expenses by the body corporate;
- (d) expenses declared to be common expenses by the provisions of this Act or by the Declaration or the byelaws;

“common property” means so much of the property which, upon the recording of a Declaration, is not contained within the boundaries of any unit;

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- “Declaration” means the instrument by which property is subjected to the provisions of this Act and includes such instruments as may from time to time lawfully amend such Declaration;
- “mortgage” includes a charge for securing money or money’s worth;
- “operation of the property” means the control, management and administration of the property including the maintenance, repair, replacement and improvement of the common property;
- “property” means land owned in fee simple to which a Declaration relates upon which or upon part of which there is erected or there is in the course of erection a building designed for internal subdivision as a multi-unit building together with all other structures, installations, fixtures, easements, rights and appurtenances belonging to or enjoyed with such land and building;
- “Registry” means the Registry of Records of The Bahamas;
- “relevant” in relation to a Declaration or byelaws means the Declaration or the byelaws applicable to any property, building, unit or unit owner as the case may be;
- “special resolution” means a resolution of which at least seven days prior notice is given and which is passed at a duly convened general meeting of the body corporate by a majority of not less than three-fourths of the total unit entitlement and not less than three-fourths of all the persons entitled to exercise the powers of voting conferred upon unit owners by or under this Act present personally or by proxy at the time of the passing of the resolution;
- “unanimous resolution” means a resolution of which at least fourteen days prior notice is given and which is unanimously passed at a duly convened general meeting of the body corporate whereat all persons entitled to exercise the powers of voting conferred upon unit owners by or under this Act are present personally or by proxy at the time of the passing of the resolution;

“unit” means a part of the property to which a Declaration relates intended for any type of independent use and which includes one or more floors or parts thereof in a building and which has direct access to a street or to common property leading to a street and may include any appurtenance such as a balcony, terrace or patio or any other structure such as a garage, store or parking place which may be situated in some other part of the property;

“unit entitlement” means the unit entitlement of any unit fixed in accordance with the provisions of section 4(4) of this Act for the purposes mentioned in section 7(4) of this Act;

“unit owner” means the owner in fee simple of any unit and includes any person entitled by or under this Act to exercise any powers of a unit owner.

4. (1) A Declaration for the purposes of this Act shall comprise an instrument (which may be in several parts and have annexed thereto such drawings, plans and schedules as may be deemed necessary or convenient) duly executed under seal by the person or persons having the legal and equitable title in fee simple absolute to the property to which the Declaration relates and shall contain the following particulars —

Contents of
Declaration.

- (a) a statement of the interests which the person or persons executing the instrument have in the property and his or their intention by virtue of such Declaration to subject the property to which it relates to the provisions of this Act;
- (b) a description of the property sufficient to identify it and its location precisely;
- (c) a description of the building including its location in relation to the property, the number of storeys, basements, cellars and units and the principal materials of which it is or is to be constructed;
- (d) the distinguishing number or other symbol, the location, approximate floor area, limits, boundaries and any other data necessary for the proper identification of each unit;
- (e) the drawings and plans of the building in accordance with the provisions of section 5 of this Act;

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- (f) a statement of the covenants, conditions and restrictions covering the use, occupancy and transfer of the several units;
- (g) a Schedule prescribing the unit entitlement of each unit on a basis prescribed by subsection (4) of this section;
- (h) a description of the common property;
- (i) the style and title of the body corporate referred to in section 13 of this Act and, if it is a company registered under the Companies Act, a copy of its memorandum and articles of Association;
- (j) the byelaws applicable to the property;
- (k) any other matters (not inconsistent with the provisions of this Act) in connection with the property which the person or persons executing the Declaration may deem desirable to prescribe;
- (l) the methods consistent with this Act to be observed and the conditions to be fulfilled for the amendment of the Declaration by the unit owners.

*5 of 1987, s. 2.
12 of 2003.*

(2) No such Declaration or any amendment thereof shall be valid or in any way affect the property to which it relates unless and until it is lodged for record in the registry. A fee of five hundred dollars shall be payable for recording any Declaration and a fee of one hundred dollars for recording any amendment thereof.

(3) Insofar as it is practicable to do so the limits and boundaries of each unit in the building shall be defined by reference to floors, walls and ceilings and, unless the Declaration otherwise provides, the common boundary of any unit with another unit or with the common property shall be the centre of the floor, wall or ceiling.

(4) The unit entitlement of a unit shall be expressed in the Declaration as a fraction or percentage and shall be fixed either —

- (a) as the approximate proportion that the estimated value of the unit at the date of the Declaration bears to the then aggregate estimated value of all the units taken together; or
- (b) as the approximate proportion that the floor area of the unit at the date of the Declaration bears to the then aggregate floor area of all the units taken together,

but such proportion shall reflect any substantially exclusive advantages that may be enjoyed by one or more unit owners but not all unit owners in a part or parts of the common property.

5. (1) As a part of every Declaration there shall be a complete set of drawings and plans of each floor, basement and cellar of the building showing the layout, locations, designations and approximate dimensions of the units which shall be accompanied by a certificate of a recognised architect certifying that such drawings and plans are accurate copies of the drawings and plans of the building as approved by such proper authority as has power to approve plans for the construction of buildings.

Drawings and plans.

(2) The certificate referred to in subsection (1) of this section shall also include a statement that the drawings and plans accurately depict the building as erected and completed unless at the date of the recording of the Declaration the building is not complete in which event such statement shall be lodged for record in the registry upon the completion of the building and before the first conveyance of any unit in the building under the provisions of this Act.

(3) An architect shall be deemed to be recognised within the meaning of this section if he is in possession of such professional qualifications as may from time to time be approved by the Minister of Works for the purposes of this section.

6. (1) Upon the lodgement for recording of a Declaration under the provisions of section 4 of this Act, the property to which the Declaration relates shall thereupon be deemed to be divided in such number of separate parcels of land (in this Act defined as “units”) each having such limits and boundaries as are described in the Declaration and such parts of the property not included within the limits and boundaries of units shall be deemed to be common property for the purposes of this Act which shall be held in undivided shares by all the unit owners in accordance with section 7(1) of this Act.

Effect of registration of Declaration.

(2) Where before the first conveyance of any unit there is in being any mortgage or charge affecting such unit, then either —

17 of 1969, s. 2.

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- (a) before the making of such first conveyance —
- (i) every such mortgage or charge shall be paid and satisfied; or
 - (ii) the unit shall be released from the mortgage or charge by a valid instrument of release duly lodged for record in the registry; or
- (b) upon the making of such first conveyance the mortgagees or chargees shall join therein,

and if any first conveyance of a unit is made without the provisions of this subsection having been complied with then such conveyance shall be void and of no effect.

(3) Subject to the provisions of this Act each unit together with the undivided share in the common property held therewith shall for all purposes constitute an estate in real property which, subject to the provisions of this Act, may devolve or be conveyed, leased, mortgaged or otherwise dealt with in the same manner and form as land.

(4) When recorded a Declaration shall be binding on all owners of units in the building to which the Declaration relates and shall constitute constructive notice to subsequent purchasers and all other persons.

Incidents of unit
ownership.

7. (1) The undivided share of each unit owner in the common property shall be in the same proportion as his unit entitlement and shall be held by him as a tenant in common with all other persons who are for the time being unit owners in the building to which the Declaration relates.

(2) No share in the common property shall be disposed of except as appurtenant to the unit to which it relates and any assurance of a unit shall operate to assure the share of the disposing party in the common property without express reference thereto.

(3) Save as is otherwise provided by section 31 of this Act, no unit owner or any other person shall be entitled to bring any action for partition or the division of any part of or interest in the common property.

(4) The unit entitlement of any unit shall determine the quantum of the undivided share in the common property appertaining to each unit and, unless the Declaration or the byelaws otherwise provide —

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- (a) the voting rights of the unit owner; and
 - (b) the proportion of the common expenses payable from time to time as contributions by each unit owner.

(5) The unit entitlement shall have a permanent character and shall not be varied unless all the unit owners affected consent thereto, such consent being given in the manner prescribed by the relevant Declaration.

(6) Unless other provision to the contrary is contained in the relevant Declaration, no unit owner shall be entitled to subdivide his unit.

(7) It is hereby declared that no right to dower shall accrue from the ownership in fee simple of any unit under the provisions of this Act or of the share in the common property appertaining to such unit.

8. Every deed relating to a unit executed after the date of the recording of the relevant Declaration shall include the following particulars —

Contents of
deeds of unit.

- (a) a description of the property including the volume and page wherein the Declaration is recorded in the registry;
- (b) the unit number or symbol of the unit and any other data necessary for its proper identification;
- (c) a statement as to the user of the unit and any covenants, conditions and restrictions relating thereto;
- (d) the unit entitlement;
- (e) any further details which the grantor or grantee may deem desirable to set forth consistent with the Declaration and the provisions of this Act.

9. In respect of each unit there shall be implied —

Support.

- (a) in favour of the owner of such unit and as appurtenant thereto, an easement for the subjacent and lateral support thereof by the common property and by every other unit capable of affording support;
- (b) as against the owner of such unit and to which the same shall be subject, an easement for the subjacent and lateral support of the common property and of every other unit capable of enjoying support.

Shelter.

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

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

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

Provided that save in the case of emergency, a person shall not exercise the right conferred by this subsection except after due notice to the owner of the servient tenement and at reasonable times during the hours of daylight.

Services.

11. In respect of each unit there shall be implied —

(a) in favour of the owner of such unit and as appurtenant thereto, easements for the passage or provision of water, sewage, drainage, gas, electricity, garbage, artificially heated or cooled air and other services (including telephone, radio and television services) through or by means of any pipes, wires, cables or ducts for the time being existing in the property to the extent to which those pipes, wires, cables or ducts are capable of being used in connection with the enjoyment of such unit;

(b) as against the owner of such unit and to which the same shall be subject, easements for the passage of provision of water, sewage, drainage, gas, electricity, garbage, artificially heated or cooled air and other services (including telephone, radio and television services) through or by means of any pipes, wires, cables or ducts for the time being existing within such unit as appurtenant to the common property and also to every other unit capable of enjoying such easements.

Ancillary rights.

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

13. (1) The operation of the property shall be vested in a body corporate constituted in the manner provided by this section and such body corporate shall have the powers and duties prescribed by this Act and the relevant byelaws.

Operation of the property by a body corporate.

(2) Where a company has been incorporated under the Companies Act to operate a property to which a Declaration relates and provision is made for every owner for the time being of a unit in such property to be *ipso facto* a member of such company as of right, such company shall, if the Declaration so provides, be deemed to be a body corporate for the purposes of this Act. In any other case as from the date of the recording of a Declaration all the owners from time to time of the units in the property to which the Declaration relates shall constitute a body corporate by virtue of this Act under such style and title as is prescribed in the Declaration.

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(3) A body corporate constituted under this Act shall be a non-profit making body which shall have perpetual succession and a common seal, shall be capable of suing and being sued in its corporate name and shall have powers and duties as are prescribed by this Act or contained in byelaws for the time being in force.

- (4) In particular the body corporate may —
- (a) sue and be sued on any contract made by it;
 - (b) sue any person for and in respect of any damage or injury to the common property whether or not the person sued is a unit owner; and
 - (c) sue in respect of any matter connected with the property for which the unit owners are jointly liable.

14. (1) The duties of the body corporate shall include the following —

Duties and powers of body corporate.

- (a) to operate the property for the benefit of all unit owners and to be responsible for the enforcement of the byelaws;
- (b) to keep the common property in a state of good and serviceable repair;
- (c) to insure and keep insured the building (in respect of which the body corporate shall be deemed to have an insurable interest) to the replacement value thereof against fire, hurricane and seawave unless the unit owners by unanimous resolution otherwise decide;

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- (d) to insure against such other risks as the unit owners may by special resolution determine for which purpose the body corporate shall be deemed to have an insurable interest;
 - (e) to comply with notices or orders issued by any competent public authority requiring repairs to or work to be done in respect of the property or the building;
 - (f) to carry out the directions of the unit owners expressed by resolution or otherwise as may be prescribed by the Declaration or the byelaws, and
 - (g) to carry out any other duties which may be prescribed by the Declaration of the byelaws.

17 of 1969, s. 3.

(2) The powers of the body corporate shall include the following —

- (a) to establish funds for administrative expenses sufficient in the opinion of the body corporate for the operation of the property, for the payment of any premiums of insurance, for the establishment of reserves for capital improvements or renewals of common property and the discharge of any other obligations of the body corporate;
- (b) to determine from time to time amounts of money to be raised for the purposes aforesaid;
- (c) to raise the amounts of money so determined by levying contributions on the unit owners in proportion to the unit entitlement of their respective units;
- (d) to recover from any unit owner any sum of money expended by the body corporate for repairs or work done by it or at its direction in complying with any notice or order issued by a competent public authority in respect of any part of the property comprising the unit of any unit owner;
- (e) to employ such staff as may be deemed necessary to carry out its duties;
- (f) to receive the proceeds of any insurance taken out by the body corporate against the loss or damage of the building in trust for the unit

17 of 1969, s. 3.

owners in proportion to their respective interests and, subject to the provisions of section 31 of this Act, to apply the same for the repair or reconstruction of the building, and

- (g) to exercise any other powers as may be conferred upon the body corporate by the Declaration or the byelaws. *17 of 1969, s. 3.*

(3) All agreements, decisions and determinations lawfully made by the body corporate in accordance with this Act, the relevant Declaration and byelaws shall be deemed to be binding on all unit owners.

15. (1) Subject to the provisions of this Act, the byelaws shall among other things provide for the following matters — *Contents of byelaws.*

- (a) the nomination and election of a board of management;
- (b) the method of removal from office of members of such board;
- (c) the powers and duties of such board;
- (d) the method of calling meetings of unit owners;
- (e) the fixing of a quorum;
- (f) the percentages of votes consistent with the provisions of this Act which shall be necessary to adopt decisions binding on all unit owners;
- (g) the operation of the property; and
- (h) the determination and collection of common expenses.

(2) The byelaws may among other things provide for the formulation and enforcement of such restrictions on and requirements respecting the use and maintenance of units and the use of all common property, not set forth in the Declaration, as are designed to prevent unreasonable interference with the use of their respective units and of the common property by the several unit owners. Such byelaws may restrict the user of certain parts of the common property exclusively to certain units.

(3) Byelaws shall not be added to, amended or repealed except by special resolution and any such addition, amendment or repeal shall not come into operation unless and until lodged for record in the registry as an amendment of the relevant Declaration.

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- Schedule (4) Save as may otherwise be specifically provided by the byelaws contained in a Declaration, the byelaws set out in the Schedule to this Act shall be in force as regards the property to which such Declaration relates.
- Voting rights. **16.** (1) Any powers of voting conferred by or under this Act may be exercised —
- (a) in the case of a unit owner who is an infant, by his guardian; and
 - (b) in the case of a unit owner who is for any reason unable to control his property, by the person for the time being authorised by law to control that property.
- (2) Where on the application of the body corporate or any unit owner the Supreme Court is satisfied that there is no person able or that no person can be traced who is able to vote in respect of a unit, the court —
- (a) shall, in cases where a unanimous resolution is required by or under this Act; and
 - (b) may, in its discretion, in any other case,
- appoint the Registrar of the Supreme Court or some other fit and proper person for the purposes of exercising such powers of voting under this Act as the court shall determine.
- (3) Where a unit is subject to a mortgage which has been recorded in the registry and notice in writing thereof has been given to the body corporate, the power of voting conferred upon the unit owner of such unit by or under this Act may be exercised by the mortgagee first in priority and shall not be exercised by the unit owner unless such mortgagee has by notice in writing to the body corporate waived the right conferred on him by this subsection. Such mortgagee may at any time by further notice in writing to the body corporate revoke such waiver of his right under this subsection.
- Accounts. **17.** (1) The body corporate shall keep detailed and accurate records in chronological order of the receipts and expenditures arising from the operation of the property. Such records and any vouchers authorising any payments shall be available for inspection by any unit owner at all reasonable times.

(2) Annual accounts duly audited by a qualified auditor shall be rendered by the body corporate to all unit owners at least once in every year.

18. (1) Any contribution levied by the body corporate on any unit owner shall be due and payable by the unit owner seven clear days after the service of a notice in writing of the levying of such contribution.

The recovery of contributions.

(2) Any contribution which has not been paid by a unit owner upon its becoming due may be recovered as a debt by the body corporate by action in a court of competent jurisdiction and any such action shall be maintainable without prejudice to the rights conferred upon the body corporate by section 21 of this Act.

(3) A unit owner shall not have power to exempt himself from his liability to make contributions to the body corporate by waiver of the use or enjoyment of any of the common property or by the abandonment of his unit.

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

Liability of unit owners.

20. (1) Upon the execution of any conveyance of a unit, the grantee shall be jointly and severally liable with the grantor for all unpaid contributions due by the latter to the body corporate up to the date of the conveyance without prejudice to the grantee's right to recover from the grantor any amounts paid by the grantee therefor.

Joint and several liability of grantor or grantee for unpaid contributions.

(2) For the purposes of this section the body corporate shall be bound on the application of any unit owner or any person authorised in writing by him to certify —

- (a) the amount of any contribution which on the date of such certificate is due and payable by such unit owner;
- (b) the time within which such contribution is payable;
- (c) the extent (if any) to which any such contribution has been paid by the unit owner,

and any such certificate shall be conclusive in favour of such person.

Charge on the unit.

21. (1) Any unpaid contribution due from the owner of any unit together with interest thereon at such rate as may be prescribed by byelaws, shall constitute a charge upon such unit with effect from the date on which such contribution became payable and shall rank prior to all other encumbrances on the unit except any charge under section 25(1) of the Real Property Tax Act or any Act amending or replacing the same.

Ch. 375.

(2) The charge on a unit in pursuance of subsection (1) of this section shall not become effective until a notice in writing under the common seal of the body corporate is lodged for record in the registry stating —

- (a) the name of the body corporate and the address of the property;
- (b) the volume and page of the record of the relevant Declaration;
- (c) the name of the owner of the unit and the unit designation; and
- (d) the amount due and the date on which it was payable.

5 of 1987, s. 2.

(3) Such charge shall continue in force until all sums secured thereby with interest thereon shall have been fully paid or until the expiration of six years from the date on which the contribution was levied (or the last payment (if any) on account of such contribution was made) whichever first occurs. Upon such payment the unit owner shall be entitled on demand to the body corporate to a certificate under its common seal that the amount due has been paid and on lodging such certificate for record at the registry and the payment of a fee of four dollars such charge shall thereupon be satisfied.

(4) The body corporate shall have the same powers of sale for the purpose of enforcing the charge created by subsection (1) of this section as a mortgagee under the provisions of the Conveyancing and Law of Property Act.

Ch. 138.

22. (1) The owners of all units may by unanimous resolution at a meeting convened by the body corporate for the purpose direct the body corporate —

- (a) to convey or lease on their behalf common property or any part thereof;
- (b) to execute on their behalf a grant of easement or restrictive covenant burdening the property; and
- (c) to accept on their behalf a grant of easement or a restrictive covenant benefiting the property.

Disposal or interest in common property.

(2) The body corporate, if it is satisfied that such resolution is duly passed and that all parties having an interest in the property of which the body corporate has notice have consented in writing to the release of their interests in respect of the land in the proposed conveyance, lease or covenant, shall execute the appropriate conveyance, lease or covenant and the said conveyance, lease or covenant shall be valid and effective without execution by any person having an interest in the property or the common property, and the receipt of the body corporate for any purchase money, rent, premium or any other money payable shall be a sufficient discharge and shall exonerate all persons taking under the conveyance, lease or covenant as the case may be from any responsibility for the application of the moneys expressed to have been so received.

(3) Any such conveyance, lease or covenant lodged for record in the Registry shall be endorsed with or accompanied by a certificate under the seal of the body corporate that the resolution was duly passed and that the conveyance, lease or covenant conforms with the terms thereof and that all necessary consents were given and in favour of purchasers or any other persons dealing with the body corporate pursuant to this section such certificate shall be conclusive evidence of the facts stated therein.

(4) The Registrar-General shall cause the record of any instrument executed under the provisions of this section to be noted upon the Declaration relating to the property affected by the instrument.

23. (1) Every unit owner, his tenants, the employees of such owners and tenants and any other person who in any manner uses the property shall be subject to and shall comply with any byelaws in force relating to the orderly conduct and proper use of such property.

Compliance with
byelaws,
covenants,
restrictions etc.

(2) Every unit owner and any person deriving any interest in the unit or the common property appertaining thereto from such unit owner shall strictly comply with the covenants, conditions and restrictions set forth in the relevant Declaration or byelaws or in any deed of title relating to the unit and all such covenants, conditions and restrictions shall run with and bind the land.

(3) Action to enforce the provisions of this section shall be maintainable by the body corporate acting on behalf of the unit owners or by an aggrieved unit owner.

(4) In any action arising from the breach by any person of the byelaws or any such covenants, conditions or restrictions the court may, in addition to giving equitable relief by way of an injunction or otherwise, award damages against such person or empower the body corporate to take such steps to remedy the breach as the court thinks just and to recover any expenses so incurred from such person. In case of flagrant or repeated failure by any person to comply with the requirements of this section, the court may order such person to give sufficient security with or without surety or sureties for his future compliance with the byelaws or the said covenants, conditions or restrictions as the case may be.

Insurance.

17 of 1969, s. 4.

24. (1) Where the body corporate insures the building in pursuance of paragraph (c) of section 14(1) the following provisions of this section shall apply notwithstanding any other law relating to insurance for the time being in force¹.

(2) The body corporate shall give written notice of any insurance effected by it on the building and any change therein or termination thereof to each unit owner and, on the written request of any unit owner or mortgagee of a unit, shall produce for inspection by such owner or mortgagee or any person authorised in writing by such owner or mortgagee the policy or policies of insurance effected by the body corporate and the receipt or receipts for the last premium or premiums paid in respect thereof.

(3) The policy of insurance taken out by the body corporate in respect of the building as aforesaid shall not be liable to be brought into contribution with any other policy of insurance save another policy authorised under the provisions of paragraph (c) of section 14(1) of this Act in respect of the same building.

Power of unit
owner to insure.

17 of 1969, s. 5.

25.² (1) Where a building is insured to its replacement value, a unit owner may effect a policy of insurance in respect of any damage to his unit in a sum equal to the

¹ See note to section 25.

² The provisions of this section and the amendment of s. 24(1) do not apply to any contract of insurance entered into prior to 28 July, 1969 except insofar as may otherwise be mutually agreed between the insurer and the assured (17 of 1969, s. 8.)

amount secured, at the date of any loss referred to in such policy, by any mortgages charged upon his unit. Where any such policy of insurance is in force —

- (a) payment shall be made by the insurer under such policy to the mortgagees whose interests are noted thereon in order of their respective priorities, subject to the terms and conditions of the policy;
- (b) subject to the terms and conditions of such policy, the insurer shall be liable to pay thereunder —
 - (i) the value stated in such policy; or
 - (ii) the amount of the loss; or
 - (iii) the amount sufficient at the date of the loss to discharge any mortgages charged upon the unit,whichever is the least amount;
- (c) where the amount so paid by the insurer equals the amount necessary to discharge a mortgage charged upon the unit, the insurer shall be entitled to an assignment of that mortgage;
- (d) where the amount so paid by the insurer is less than the amount necessary to discharge a mortgage charged upon the unit, the insurer shall be entitled to a submortgage of such mortgage to secure the amount so paid on terms and conditions agreed upon as provided in subsection (3) of this section, or, failing agreement, on the same terms and conditions as those contained in the mortgage made by the unit owner.

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

- (i) effect a policy of insurance in respect of any damage to his unit in a sum equal to the replacement value of his unit less a sum representing the amount to which his unit is insured under any policy of insurance effected on the building;

(ii) notwithstanding any existing policies, effect a policy of insurance in respect of any damage to his unit in a sum equal to the amount secured, at the date of any loss referred to in such last-mentioned policy, by any mortgages charged upon his unit and the provisions of paragraphs (a), (b), (c) and (d) of subsection (1) of this section shall apply in respect of any payment pursuant to such last-mentioned policy.

(b) For the purposes of this subsection, the amount to which a unit is insured under a policy of insurance effected in respect of the building shall be determined by multiplying the value stated in such policy by the unit entitlement of the unit and dividing the product so obtained by the sum of the unit entitlement of all units.

(3) For the purposes of paragraph (d) of subsection (1) and subparagraph (ii) of paragraph (a) of subsection (2) of this section, any insurer and any mortgagee or mortgagees may at any time, whether before or after a policy of insurance has been effected by a unit owner, agree upon the terms and conditions of the submortgage.

(4) Nothing in this section shall limit the right of a unit owner to insure against risks other than damage to his unit.

(5) Any policy of insurance authorised by this section and taken out by a unit owner in respect of damage to his 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 in respect of damage to the same unit.

(6) This section shall apply notwithstanding the provisions of any other law relating to insurance.

26. (1) It shall be the duty of the body corporate promptly to repair or reconstruct the building where it has sustained damage which —

(a) renders less than seventy-five per cent of the accommodation in the building unfit for occupation; or

(b) is in excess of that prescribed by paragraph (a) and within sixty days of the event causing the damage ninety per cent or more in number of the unit owners have resolved that the building shall be reconstructed.

Repair or
reconstruction of
building.

(2) The proceeds of insurance (if any) shall be used for the purpose of the repair or reconstruction of the building under this section and any deficiency shall constitute common expenses within the meaning of this Act.

(3) Where in pursuance of subsection (1) of this section it becomes the duty of a body corporate to repair or reconstruct the building, the body corporate shall, without undue delay, draw up a scheme for the purpose and if such scheme (either in its original or amended form) is approved by special resolution, it shall be binding on the body corporate and all unit owners. Where such a scheme is not so approved, it shall be the duty of the body corporate to file a scheme in the Supreme Court which may, after hearing any objections on behalf of individual unit owners, settle a scheme which, having regard to the rights and interests of unit owners generally, appears just and equitable for the repair or reconstruction of a damaged building under this section. Such scheme may include provisions for — *17 of 1969, s. 6.*

- (a) permitting any unit owner whose unit has been damaged and who does not agree to participate in the scheme to convey his unit and his interest in the common property to the other unit owners on the payment of such compensation as the court thinks just;
- (b) the reinstatement of part only of the building; and
- (c) the conveyance of the interests of some unit owners to other unit owners in proportion to their unit entitlement.

(4) In the exercise of its powers under subsection (3) the court may make such orders as it deems necessary or expedient for giving effect to the scheme including orders —

- (a) directing how insurance moneys received in respect of damage to the building shall be applied;
- (b) directing such consequential amendments of the Declaration and byelaws relating to the building as the court deems necessary; and
- (c) imposing such terms and conditions as it thinks fit.

(5) Where an application to the court is made under this section, any insurer who has effected insurance on the building or any part thereof (being insurance against damage to the building) shall have the right to appear in person or by counsel.

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

Appointment of
an administrator.

27. (1) The body corporate or any judgment creditor of the body corporate or any person having an interest in any unit may apply to the Supreme Court for the appointment of an administrator or administrators for the operation of the property.

(2) The court may in its discretion on cause shown, appoint an administrator or administrators for an indefinite or a fixed period on such terms and conditions as to remuneration or otherwise as the court thinks fit. The remuneration and expenses of any such administrator shall form part of the common expenses within the meaning of this Act.

(3) The administrator or administrators shall, to the exclusion of the body corporate, have the powers and duties of the body corporate or such of those powers and duties as the court shall order and the administrator or administrators may delegate any of the powers so vested in him or them as the case may be.

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

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

Copies of
Declaration and
byelaws to be
open for
inspection.

28. A body corporate shall keep true copies of the Declaration and byelaws and all amendments thereto and shall make such copies available for inspection at convenient hours by any unit owner, mortgagee or other interested party or by any person duly authorised in writing by any of them.

Service of
documents on the
body corporate.

29. (1) Every body corporate shall nominate a person to receive the service of summonses, notices or other

processes and the name and place of residence or business (which shall not be located more than twenty miles from the building for the operation of which the body corporate is responsible) of such person shall from time to time as occasion may require —

- (a) be exhibited on a notice board to be placed in a prominent position on or near the front of the building; and
- (b) be lodged for record at the registry upon the payment of a fee of four dollars; and
- (c) be published in the *Gazette*.

5 of 1987, s. 2.

(2) Unless the body corporate maintains an office in such building, it shall cause to be provided and fixed at or near the front of the building a receptacle suitable for the purpose of receiving articles by post and on such receptacle the name of the body corporate shall be clearly designated.

(3) Any summons, notice or other process may be served on the body corporate or the board of management thereof by post enclosed in a prepaid registered wrapper addressed to such body corporate or board, as the case may be, at the address of the person nominated to receive such processes or by placing it in the receptacle referred to in subsection (2) of this section.

30. (1) Every unit owner, any mortgagee of a unit or other person having an interest in any unit shall register with the body corporate an address for the service of notices upon him and, unless the person concerned resides permanently in the building, such address shall be one which is not within the building.

Service of documents by the body corporate.

(2) Any notice given under this Act by a body corporate or board of management shall be sent by post in a prepaid registered wrapper addressed to the person for whom it is intended at the address registered by him with the body corporate under the provisions of subsection (1) of this section.

(3) When any such notice is sent from The Bahamas to an address in another country it shall be sent by prepaid registered air mail.

(4) Any notice sent by post in the manner prescribed by this section shall be deemed to be served on the person to whom it is addressed on the seventh day after the day on which the wrapper containing the same is posted.

Removal of
property from
the Act and
proceedings for
partition.

31. (1) A property to which a Declaration refers may be removed from the provisions of this Act by an order of the Supreme Court where on the application of any interested party the court is satisfied that —

- (a) unit owners have so resolved by a resolution passed by ninety per centum or more in number of the unit owners and that all mortgagees of the units have by instrument under seal either consented thereto or agreed that their several mortgages be transferred to the percentage of the undivided interest of the several unit owners in the property as hereinafter provided; or
- (b) the building has been destroyed or damaged and is not to be reconstructed or repaired in pursuance of Section 26 of this Act; or
- (c) circumstances have arisen that, having regard to the rights and interests of the unit owners as a whole, it is just and equitable to remove the property from the provisions of this Act.

(2) For the purposes of this section an interested party shall be deemed to be the body corporate, a unit owner or a mortgagee of a unit.

(3) Upon the making of an order by the Supreme Court under the provisions of this section, the property to which the order relates shall be deemed to be owned in common by all the unit owners and such undivided share in the property shall accrue to each unit owner in the same proportion as the unit entitlement which such owner previously had in the common property.

(4) Where an order has been made under subsection (1) of this section, a majority in number of the unit owners in the property may apply to the court either —

- (a) to apportion so much of the property as remains among the unit owners in proportion to their former unit entitlement and to direct the body corporate to effect the necessary transfers of title; or
- (b) to order that so much of the property as remains shall be sold and that the net proceeds of any such sale together with the proceeds (if any) of insurance policies shall constitute one fund to be divided among all the unit owners in proportion to their respective unit entitlements,

and the court may, if it considers it is equitable and just to do so, proceed accordingly and make such orders and give such directions in respect thereof as the court thinks fit.

(5) Where an order has been made under subsection (1) of this section the court may appoint a liquidator and give directions for the winding-up of the affairs of any body corporate which has been constituted under the provisions of this Act as if it were a company being wound up by the court under the Companies Act. In any such winding-up no unit owner shall be liable to contribute to the assets of the body corporate a sum exceeding forty dollars. By a subsequent order the court may declare the body corporate to be dissolved as from a date to be specified in the order.

5 of 1987, s. 2.

Ch. 308.

(6) In any proceedings under this section the court may make such order for the payment of costs as it thinks fit.

32. Where at any time before the 28th day of July, 1969, any first conveyance of a unit was made or executed in contravention of the provisions of subsection (2) of section 6 of this Act as in force immediately prior to that date but so that if the Law of Property and Conveyancing (Condominium) (Amendment) Act, 1969, had been at that time in force no such contravention would have been made, then every such conveyance as aforesaid is hereby declared, notwithstanding anything to the contrary in this Act as so in force, to have been made in conformity with the requirements of the said subsection, and any person liable to be legally proceeded against, and any interest liable to be impugned, on the ground that any conveyance so made or executed was void or of no effect, is hereby freed, acquitted, discharged and indemnified as well against the Queen's Most Excellent Majesty, Her Heirs and Successors as against all persons whatsoever from or in respect of such liability.

Validation of
past transactions:
indemnity.

17 of 1969, s. 7.

SCHEDULE (Section 15(4))

BYELAWS

1. (1) The powers and duties of the body corporate shall, subject to any restriction imposed or direction given at a general meeting, be exercised and performed by the Board of the body corporate.

Board of the
body corporate.

(2) The Board shall consist of not less than three nor more than seven unit owners and shall be elected at each annual general meeting:

Provided that where there are not more than three unit owners, the Board shall consist of all unit owners.

(3) Except where the Board consists of all the unit owners, the body corporate may by resolution at an extraordinary general meeting remove any member of the Board before the expiration of his term of office and appoint another unit owner in his place to hold office until the next annual general meeting.

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

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

(6) The Board may appoint persons who are unit owners (whether or not members of the Board) to hold such offices and to perform such functions as the Board may from time to time determine.

Meetings of the Board.

2. (1) At the commencement of each meeting the Board shall elect a chairman for the meeting, who shall have a casting as well as an original vote, and if any chairman so elected shall vacate the chair during the course of a meeting the Board shall choose in his stead another chairman who shall have the same rights of voting.

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

(3) All acts done in good faith by the Board shall, notwithstanding it be afterwards discovered that there was some defect in the appointment or continuance in office of any member of the Board or some technical irregularity in the Board's proceedings, be as valid as if such member had been duly appointed or had duly continued in office or as if the proceedings were regular.

General meetings.

3. (1) A general meeting of unit owners shall be held within three months after lodging the Declaration for record.

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

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

(4) The Board may, whenever it thinks fit and shall upon a requisition in writing made by unit owners entitled to twenty-five per centum of the total unit entitlement of the units, convene an extraordinary general meeting,

(5) Seven day's notice of every general meeting specifying the place, the date and the hour of meeting and in case of special business the general nature of such business shall be given to all unit owners and registered first mortgagees who have notified their interests to the body corporate, but accidental omission to give such notice to any unit owner or to any registered first mortgagee or non-receipt of such notice by any unit owner or registered first mortgagee shall not invalidate any proceedings at any such meeting.

(6) Unless it be otherwise resolved by special resolution all general meetings of the unit owners shall be held on the property.

(7) Any resolution in writing in one or more parts signed by all unit owners shall be as valid and effectual as if it had been passed at a meeting of the members duly called and constituted.

4. (1) Save as in these byelaws otherwise provided, no business shall be transacted at any general meeting unless a quorum of persons entitled to vote is present in person or by proxy at the time when the meeting proceeds to business. One-half of the persons entitled to vote present in person or by proxy shall constitute a quorum.

Proceedings at
general meetings.

(2) If within one-half hour from the time appointed for a general meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time, and, if at the adjourned meeting a quorum is not present within one-half hour from the time appointed for the meeting, the persons entitled to vote in person or by proxy shall be a quorum.

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

5. (1) At any general meeting a resolution by the vote of the meeting shall be decided on a show of hands unless a poll is demanded by any unit owner present in person or by proxy. Unless a poll be so demanded a declaration by the chairman that a resolution has on the show of hands been carried shall be conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against such resolution. A demand for a poll may be withdrawn.

Voting at general
meeting.

(2) A poll if demanded shall be taken in such manner as the chairman thinks fit and the result of the poll shall be deemed to be the resolution of the meeting at which such poll was demanded.

(3) In the case of equality in the votes whether on a show of hands or on a poll the chairman of the meeting shall be entitled to a casting vote in addition to his original vote.

6. (1) On a show of hands each unit owner shall have one vote; on a poll the votes of unit owners shall correspond with the unit entitlement of their respective units.

Votes of unit
owners.

(2) On a show of hands or on a poll votes may be given either personally or by proxy.

(3) An instrument appointing a proxy shall be in writing under the hand of the appointer or his attorney, and may be either general or for a particular meeting. A proxy need not be a unit owner.

(4) Except in cases where by or under this Act a unanimous resolution is required, no unit owner shall be entitled to vote at any general meeting unless all contributions payable in respect of his unit have been duly paid.

(5) Co-unit owners may vote by proxy jointly appointed by them, and in the absence of such proxy shall not be entitled to vote on a show of hands, except when the unanimous resolution of unit owners is required by this Act; but any co-unit owner may demand a poll. On any poll each co-unit owner shall be entitled to such part of the vote applicable to a unit as is proportionate to his interest in the unit. The joint proxy (if any) on a poll shall have a vote proportionate to the interests in the unit of such of the co-unit owners as do not vote personally or by individual proxy.

Further powers
of body
corporate.

7. The body corporate may —

- (a) purchase, hire or otherwise acquire personal property for use by unit owners in connection with their enjoyment of common property;
- (b) borrow on a short term basis any moneys required by it in the performance of its duties or the exercise of its powers; and
- (c) invest as it may determine any moneys in the fund for administrative expenses.

Duties of a unit
owner.

8. A unit owner shall —

- (a) permit the body corporate and its agents, at all reasonable times on notice (except in case of emergency when no notice shall be required), to enter his unit for the purpose of inspecting the same and maintaining, repairing or renewing pipes, wires, cables and ducts for the time being existing in the unit and capable of being used in connection with the enjoyment of any other unit or common property, or for the purpose of maintaining, repairing or renewing common property, or for the purpose of ensuring that these byelaws are being observed;
- (b) forthwith carry out all work that may be ordered by any competent public authority in respect of his unit other than such work as may be for the benefit of the building generally and pay all rates, taxes, charges, outgoings and assessments that may be payable in respect of his unit;
- (c) repair and maintain his unit and keep the same in a state of good repair, reasonable wear and tear, damage by fire, hurricane, seawave, force majeure or act of God excepted;
- (d) use and enjoy the common property in such a manner as not unreasonably to interfere with the use and enjoyment thereof by other unit owners or their families, visitors or employees;

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- (e) not use his unit or permit the same to be used in such manner or for such purpose as shall cause a nuisance or hazard to any occupier of a unit (whether a unit owner or not) or the family of such occupier; and
 - (f) notify the body corporate forthwith upon any change of ownership or of any mortgage or other dealing in connection with his unit.

9. The body corporate shall have a common seal which shall at no time be used except by authority of the Board previously given and in the presence of the members of the Board or at least two members thereof, who shall sign every instrument to which the seal is affixed: Common seal.

Provided that where there is only one member of the body corporate his signature shall be sufficient for the purpose of this clause.

10. The byelaws in the Schedule to this Act may be amended by special resolution of the body corporate, and not otherwise. Amendment of byelaws.