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SECTIONAL PROPERTIES ACT

NO. 21 OF 1987

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SECTIONAL PROPERTIES ACT

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NO. 21 OF 1987

SECTIONAL PROPERTIES ACT

[Date of assent: 23rd December, 1987.]

[Date of commencement: 1st April, 1990.]

An Act of Parliament to provide for the division of buildings into units to be owned by individual proprietors and common property to be owned by proprietors of the units as tenants in common and to provide for the use and management of the units and common property and for connected purposes

[Act No. 21 of 1987, Act No. 7 of 1990, Act No. 21 of 1990, L.N. 131/1990.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Sectional Properties Act.

2. Application

This Act shall apply only in respect of land held on freehold title or on a leasehold title where the unexpired residue of the term is not less than forty-five years.

3. Interpretation

(1) In this Act, unless the context otherwise requires—

“**board**” means the board of a Corporation as provided for in section 26;

“**building**” means one or more structures on the same parcel;

“**by-laws**”, in relation to a Corporation, means the by-laws of the Corporation as amended from time to time and includes by-laws made in substitution for them;

“**common property**” means so much of a parcel as is not comprised in a unit shown in a sectional plan;

“**Corporation**” means the body corporate incorporated in accordance with section 17;

“**Court**” means the High Court of Kenya;

“**developer**” means a person who, whether alone or in conjunction with another person, sells or offers for sale to the public units or proposed units that have not previously been sold to the public;

“**landlord**” means the owner of a unit that is being rented and includes a person acting on behalf of the owner;

“**local authority**” means a local authority duly constituted under the Local Government Act (Cap. 265);

“management agreement” means an agreement entered into by a Corporation governing the general control, management and administration of

- (a) the movable and immovable property of the Corporation associated with the residential units; and
- (b) the common property associated with the residential units;

“Minister” means the Minister for the time being responsible for matters relating to Land;

“owner” means a person who is registered as the owner of—

- (a) the freehold estate in a unit; or
- (b) the leasehold estate in a unit when the parcel on which the unit is located is held under a lease;

“parcel” means the land comprised in a sectional plan;

“proprietor” means—

- (a) in relation to land or a lease, the person named in the register as the proprietor thereof; and
- (b) in relation to any unit, the person or persons for the time being registered as proprietors of an estate in the unit;

“purchase agreement” means an agreement with a developer whereby a person purchases a unit or proposed unit or acquires a right to purchase a unit or proposed unit;

“recreational agreement” means an agreement entered into by a Corporation that allows—

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

“Registrar” means a Registrar appointed under the Registered Land Act (Cap. 300);

“residential unit” means a unit used or intended to be used for residential purposes;

“sectional plan” means a plan registered in a land registry which complies with section 9 and includes a plan of a sub-division registered under section 12;

“special resolution” means a resolution—

- (a) passed at a properly convened meeting of a Corporation by a majority of not less than seventy-five *per centum* of all the persons entitled to exercise the voting powers conferred by this Act or the by-laws and representing not less than seventy-five *per centum* of the total unit factors for all the units; or
- (b) signed by not less than seventy-five *per centum* of all the persons who, at a properly convened meeting of a Corporation, would be

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entitled to exercise the voting powers conferred by this Act or the by-laws and representing not less than seventy-five *per centum* of all the total unit factors for all the units;

“title document” means a document indicating title to a unit which is registerable under the Registered Land Act;

“tribunal” means a tribunal appointed under section 11 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (Cap. 301);

“unanimous resolution” means a resolution—

- (a) passed unanimously at a properly convened meeting of the Corporation by all the persons entitled to exercise the voting powers conferred by this Act or the by-laws and representing the total units; and
- (b) signed by all persons who, at a properly convened meeting of a Corporation, would be entitled to exercise the voting powers conferred by this Act or the by-laws;

“unit” means a space that is situated within a building and described in a sectional plan by reference to floors, walls and ceilings within the building;

“unit factor”, in relation to a unit, means the unit factor determined for that unit as shown in the schedule of unit factors endorsed on a sectional plan registered by the Registrar.

(2) For the purposes of this Act, the terms **“easement”**, **“registry”** and **“the register”** shall have the meaning assigned to those terms under the Registered Land Act.

[Act No. 21 of 1990, Sch.]

PART II – REGISTRATION OF SECTIONAL PLANS AND UNITS

4. Sub-division of buildings into units

(1) An existing or planned structure may be designated a building containing a unit or part of a unit or divided into two or more units by the registration of a sectional plan under this Act.

(2) The Registrar shall not register a sectional plan unless—

- (a) the sectional plan describes two or more units in it; and
- (b) the sectional plan is presented for registration in quadruplicate.

(3) For the purposes of the Registered Land Act, a sectional plan shall be deemed on registration to be embodied in the register.

5. Registration of sectional plans

(1) On the registration of a sectional plan the Registrar—

- (a) shall close the register of the parcel described in it; and
- (b) shall open a separate register for each unit described in the plan; and
- (c) shall on the payment of the prescribed fee, issue title deed for sectional property in respect of each unit.

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(2) Any interests affecting the parcel which are noted on the register closed under paragraph (a) of subsection (1) shall be endorsed on the registers opened under paragraph (b) and on the title deed for sectional property issued under paragraph (c) of that subsection.

(3) No more than one unit may be referred to in one register and no other land, except the share in the common property apportioned to the owner of that unit in accordance with section 6(2) may be referred to in the same register.

(4) Any interest affecting an individual unit which is part of a sectional plan registered under section 4(1) and not endorsed pursuant to subsection (2) of this section shall be endorsed on—

- (a) the register of the unit opened under paragraph (b) of subsection (1); and
- (b) the title deed for sectional property issued in respect of the unit under paragraph (c) of subsection (1).

(5) Notwithstanding any other written law, as soon as a sectional plan is registered under this Act the title to a unit comprised in the plan shall, with effect from the date of the registration of the sectional plan, be deemed to be issued under the Registered Land Act.

(6) After a register for a unit is opened pursuant to subsection (1) the unit may devolve or be transferred, leased, charged or otherwise dealt with in the same manner and form as land held under the Registered Land Act and the provisions of that Act shall apply to those dealings in so far as those provisions do not conflict with this Act or regulations made thereunder.

[Act No. 21 of 1990, Sch.]

6. Certificate to indicate share in common property

(1) The Registrar, on opening a register for a unit under section 5(1), shall include in that register the share in the common property apportioned to the owner of that unit under subsection (2) of this section, and shall include that share in the common property on a title deed for sectional property issued in respect of the unit under section 5(1)(c).

(2) The common property comprised in a registered sectional plan shall be held by the owners of all the units as tenants in common in shares proportional to the unit factors for their respective units.

(3) Except as provided in this Act, a share in the common property shall not be disposed or become subject to a charge except as appurtenant to the unit of an owner and a disposition of a charge on a unit shall operate to dispose of or charge that share in the common property without express reference to it.

(4) While the same person is the owner of all the units, subsection (2) shall apply as if there were different owners for each of the units.

[Act No. 21 of 1990, Sch.]

7. Incidental rights of owners of common property, etc.

(1) The common property and each unit on a sectional plan shall, by virtue of this section, have as appurtenant thereto all such rights of support, shelter and protection, and for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, air and all other services of whatsoever nature (including telephone, radio and television services) over the parcel and every structure

thereon as may from time to time be necessary for the reasonable use or enjoyment of the common property or unit.

(2) The common property and each unit on a sectional plan shall, by virtue of this section, have as appurtenant thereto a right to the full, free and uninterrupted access and use of light to or for any windows, doors or other apertures existing at the date of the registration of the sectional plan and enjoyed at that date.

(3) The rights created by this section shall carry with them all ancillary rights necessary to make them effective as if they were easements.

(4) Nothing in this section shall affect any parcel other than the parcel to which the sectional plan relates.

8. Liability of owner of a unit

Except to the extent that an interest endorsed on a sectional plan relates to a particular unit, the owner of a unit shall only be liable in respect of an interest endorsed on the sectional plan in proportion to the unit factor for his unit.

9. Requirements of sectional plans

(1) Every plan presented for registration as a sectional plan under this Act shall

- (a) be described in the heading of the plan as a sectional plan;
- (b) delineate the external surface boundaries of the parcel and the location of the building in relation to them;
- (c) bear a statement containing those particulars as may be necessary to identify the title to the parcel;
- (d) include a drawing illustrating the units and distinguishing the units by numbers or other symbols;
- (e) define the boundaries of each unit;
- (f) show the approximate floor area of each unit;
- (g) have endorsed on it a schedule specifying in whole numbers the unit factor for each unit in the parcel;
- (h) be signed by the proprietor;
- (i) have endorsed on it the address at which documents may be served on the Corporation concerned in accordance with section 64; and
- (j) contain any other particulars prescribed by the regulations.

(2) If a sectional plan presented for registration includes residential units, that plan shall, in addition to meeting the requirements of subsection (1), delineate to the satisfaction of the Registrar the boundaries of the areas that are or may be leased under section 42 to an owner of a residential unit.

(3) The Registrar shall, within twenty-one days from the day a sectional plan is registered, submit to the local authority of the area in which the parcel is located, a copy of the registered sectional plan.

10. Boundaries of sectional units

(1) Unless otherwise stipulated in the sectional plan if—

- (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 panels, flooring material or coverings 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 otherwise stipulated in the sectional plan.

11. Certificates to accompany sectional plans

(1) Every plan presented for registration as a sectional plan shall be endorsed with or accompanied by—

- (a) a certificate of a surveyor as defined under the Survey Act (Cap. 299) stating that the structure shown on the plan is within the external surface boundaries of the parcel which is the subject of the plan, and if gutterings project beyond those external boundaries, that an appropriate easement has been granted as an appurtenance of the parcel; and
- (b) a certificate of the local authority stating that the proposed division of the structure as illustrated on the plan has been approved by the local authority.

(2) Where the plan presented for registration as a sectional plan is in respect of building containing units it shall, in addition to the certificate required under subsection (1), be endorsed or accompanied by a certificate of a surveyor as defined under the Survey Act (Cap. 299) or such other person as shall be approved by the Director of Survey stating that the units shown on the plan correlate with the existing structure.

(3) If an application is made for a certificate under subsection (1)(b) the local authority—

- (a) may with respect to a structure that was constructed prior to the commencement of this Act or for which the building permit was issued prior to the commencement of this Act prohibit the issue of the certificate if it considers it proper to do so; and
- (b) shall, with respect to a structure for which a building permit was issued on or after the commencement of this Act, direct the issue of the certificate if it is satisfied that the structure conformed to—
- (i) the development scheme, development control by-law, zoning by-law or land use by-law, as the case may be; and
- (ii) any permit issued under that scheme or by-law that existed at the time the building permit was issued.

(4) The provisions of the Land Planning Act (Cap. 303) and Town Planning Act (Cap. 134 of 1948) relating to the sub-division of land do not apply to the division of a building under a sectional plan if—

- (a) the surface boundaries of the parcel as defined in this Act on which that building is located correspond to the boundaries of a parcel as defined in the Town Planning Act and the Land Planning Act; and
- (b) the building located on the parcel contains two or more units.

[Act No. 21 of 1990, Sch.]

12. Application for sub-division, etc., of a unit

(1) Any proprietor may with the approval of the local authority, sub-divide or consolidate his unit by registering a sectional plan relating to the unit intended to be so sub-divided or consolidated in the manner provided by this Act for the registration of sectional plans.

(2) Except as provided in this section the provisions of this Act relating to sectional plans apply with all necessary modifications to a sub-division or consolidation of units.

(3) On the registration of a sectional plan of sub-division or consolidation, units comprising the sectional plan are subject to the burden and have the benefit of any easements affecting those units in the original sectional plan which are included in the sectional plan of sub-division or consolidation.

(4) The schedule endorsed on a sectional plan of sub-division or consolidation as required by section 9(1) shall apportion among the units the unit factor or factors for the unit or units in the original sectional plan that are included in the sub-division or consolidation.

(5) Before registering a proposed sectional plan of sub-division or consolidation the Registrar shall amend the original sectional plan in the manner prescribed by the regulations.

(6) On registration of a sectional plan of sub-division or consolidation the land comprised in it shall not be dealt with by reference to units in the original sectional plan.

13. Conversion to units

If a building contains premises that are—

- (a) rented for residential purposes to a tenant who is not a party to a purchase agreement; and
- (b) not included in a sectional plan,

the owner of those premises or a person acting on his behalf shall not sell those premises as a residential unit until the sectional plan that includes those premises is registered at a registry.

14. Easements in favour of the owner

After the registration of a sectional plan, there is implied in respect of each unit shown on the sectional plan—

- (a) in favour of the owner of the unit and as appurtenant to the unit, an easement for the subjacent and lateral support of the unit by the common property and by every other unit capable of affording support;
- (b) in favour of the owner of the unit, and as appurtenant to the unit, an easement for the shelter of the unit by the common property and by every other unit capable of affording shelter; and

- (c) in favour of the owner of the unit, and as appurtenant to the unit, easement for the passage or provision of water, sewerage, 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 parcel to the extent to which those pipes, wires, cables or ducts are capable of being used in connection with the enjoyment of the unit.

15. Easements against the owner

(1) After the registration of a sectional plan, there is implied in respect of each unit shown on the sectional plan—

- (a) as against the owner of the unit, an easement, to which the unit is subject, for the subjacent and lateral support of the common property and of every other unit capable of enjoying support;
- (b) as against the owner of the unit, an easement, to which the unit is subject, to provide shelter to the common property and to every other unit capable of enjoying shelter; and
- (c) as against the owner of the unit, an easement, to which the unit is subject, for the passage or provision of water, sewerage, 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 the unit as appurtenant to the common property and also to every other unit capable of enjoying those easements.

(2) When an easement is implied by this section, the owner of any utility service providing a service to the parcel, or to any unit on it, is entitled to the benefit of any of those easements that are appropriate to the proper provision of that service, but not to the exclusion of the owner of any other utility service.

16. Easement or restrictions exist without mention

(1) Easements or restrictions as to user implied or created by this Act or the by-laws take effect and are enforceable—

- (a) without any memorial or notification on that part of the register constituting titles to the dominant or servient tenements;
- (b) without any express indication of those tenements.

(2) All ancillary rights and obligations reasonably necessary to make easements effectively apply in respect of easements implied by this Act, including the right of an owner of dominant tenement to enter a servient tenement and replace, renew or restore anything the dominant tenement is entitled to benefit from.

PART III – ESTABLISHMENT OF THE CORPORATION**17. Establishment of a Corporation**

(1) On the registration of a sectional plan there shall be constituted a Corporation under the name “The Owners, Sectional Plan No. . . (the number to be specified being the number given to the plan on registration)”.

- (2) A Corporation shall consist of all those persons—
- (a) who are the owners of units in the parcel to which the sectional plan relates; or
 - (b) who are entitled to the parcel when the sectional arrangement is terminated under this Act.
- (3) The Corporation shall have perpetual succession and a common seal.
- (4) The Corporation shall be regulated in accordance with this Act and the by-laws specified in the regulations shall subject thereto, have effect in relation to the corporation and its board.
- (5) The provisions of the Companies Act (Cap. 486) shall not apply to the Corporation.

[Act No. 21 of 1990, Sch.]

18. Actions by or against the Corporation

- (1) The Corporation shall be capable of suing and being sued in its corporate name subject to section 21, and of doing anything that a body corporate may do.
- (2) Without restricting the generality of subsection (1), the Corporation may sue for and in respect of damage or injury to the common property caused by any person, whether that person is the proprietor of a unit or not.

19. Liability in tort

- (1) Where any proceedings are brought under the Occupiers Liability Act (Cap. 34) or in tort or in respect of an alleged breach of any statutory duty and it is required by law that proceedings be brought against the owner or occupier of any particular parcel of land or premises, the provisions of this section shall apply notwithstanding any Act or rule of law to the contrary.
- (2) For the purposes of any proceedings to which this section applies—
- (a) the common property and each of the units shall be separate premises; and
 - (b) where the proceedings are brought in respect of the common property, the Corporation shall be deemed to be the owner and occupier of the common property and any judgment which may be awarded to the plaintiff shall be entered against the Corporation accordingly:

Provided that, where the cause of action arose through the negligence or unauthorized act or omission of one or more of the proprietors of former proprietors, the Corporation may join that proprietor or those proprietors as co-defendants and judgment may be given against the Corporation and the proprietor or proprietors jointly and severally.

- (3) The amount of any judgment (including costs) given jointly and severally as provided in subsection (2) may be recovered as a debt by the Corporation from the proprietor or proprietors against whom judgment is given in an action in any court of competent jurisdiction.

(4) Where the defendant in any proceedings to which this section applies is the Corporation, the proprietors of the units at the time when judgment is entered shall be deemed to have guaranteed to the plaintiff the payment by the Corporation of the full amount awarded by way of judgment.

(5) If the Corporation in a general meeting so resolves, any sum payable by it in accordance with the provisions of this section may be paid out of any general fund established by it.

20. Duties of the Corporation

(1) The Corporation shall—

- (a) subject to this Act, carry out any duties imposed on it by the by-laws;
- (b) unless by unanimous resolution all the proprietors otherwise resolve, insure and keep insured buildings and other improvements on the parcel against fire;
- (c) effect such other insurance as it is required by law to effect or as it may consider expedient;
- (d) pay the premiums in respect of any policies of insurance effected by it;
- (e) keep the common property in a state of good repair;
- (f) comply with any notice or order duly served on it by any competent local authority or public body requiring repairs to, or work to be performed in respect of, the land or any building or improvements thereon;
- (g) subject to this Act, control, manage, and administer the common property and do all things reasonably necessary for the enforcement of the by-laws;
- (h) do all things reasonably necessary for the enforcement of any lease or licence under which the land is held;
- (i) do all things reasonably necessary for the enforcement of any contract of insurance entered into by it under this section.

(2) The Corporation shall—

- (a) establish and maintain a fund for administrative expenses sufficient, in the opinion of the Corporation, for the control, management, and administration of the common property, and for the payment of any insurance premiums, rent, and the discharge of any other obligation of the Corporation;
- (b) determine from time to time the amounts to be paid for the purposes aforesaid;
- (c) raise amounts so determined by levying contributions on the proprietors in proportion to the unit entitlement of their respective units.

(3) The Corporation may, pursuant to a resolution of the proprietors, distribute any money or personal property in its possession and surplus to its current requirements among the proprietors for the time being according to their unit entitlements.

(4) For the purposes of effecting any policy of insurance under the provisions of subsection (1) the Corporation shall be deemed to have an insurable interest on all the buildings and other improvements on the parcel.

(5) Any policy of insurance authorized by this section and effected by the Corporation in respect of any buildings or other improvements on the parcel shall not be liable to be brought into contribution with any other policy, save another policy authorized by this section in respect of the same buildings or improvements.

21. Powers of the Corporation

Subject to this Act, the Corporation shall have all such powers as are reasonably necessary to enable it to carry out the duties imposed on it by this Act and by the by-laws:

Provided that the Corporation shall not have power to carry on any trading activities.

22. Dealings affecting the common property

(1) Any instrument evidencing any transfer, lease, grant of easement, or other dealing affecting the common property, or land that is to become part of the common property, may be executed by the Corporation, if the transfer, lease, grant, or dealing has been approved by unanimous resolution of the Corporation.

(2) A certificate under the common seal of the Corporation that any such approval has been given shall be sufficient evidence of the approval in the absence of proof to the contrary.

23. Registration of transfers of common property

(1) Every memorandum of transfer of the whole or any part or parts of the common property shall, in addition to any plan that the Registrar may require to be deposited under section 4, be accompanied by a sectional plan which shall be in substitution for and shall be deposited under the same number as the existing sectional plan, and shall show the effect of the transfer to the satisfaction of the Registrar.

(2) Where any unit is subject to any existing registered charge, lease, or sublease, the Registrar shall not register any transfer of the whole or any part or parts of the common property until there has been produced to him a consent in writing by every registered chargee, lessee, and sublessee to the release of his interest in the land comprised in the transfer; and upon registration of the transfer each such consent shall operate as a discharge of the charge or a surrender of the lease or sublease, as to the land comprised in the transfer, as the case may be.

(3) The Registrar shall register any transfer to which subsection (1) refers by—

- (a) causing an appropriate memorial relating to the transfer to be noted on the new unit plan and on the supplementary record sheet; and
- (b) issuing in the name of the transferee a certificate of sectional property for the land transferred free from any incidental rights existing over the land by virtue of any written law.

24. Voting rights

(1) The voting rights of the owner of a unit shall be determined by the unit factor for his unit.

(2) When an owner's interest is subject to a registered charge, a power of voting conferred on an owner by this Act or the by-laws—

- (a) if a unanimous resolution is required, may not be exercised by the owner, but is exercisable by the registered chargee first entitled in priority; and
- (b) in other cases, is exercisable by the chargee first entitled in priority and may not be exercised by the owner if the chargee is present personally or by proxy.

(3) Subsection (2) does not apply unless the chargee has given written notice of his charge to the Corporation.

(4) An owner or chargee, as the case may be, may exercise his right to vote personally or by proxy.

25. Voting where owner incapable

(1) Any powers of voting conferred by this Act or the by-laws may be exercised—

- (a) in the case of an owner who is a minor, by the guardian of his estate or, if no guardian has been appointed, by the Public Trustee; or
- (b) in the case of an owner who is for any reason unable to exercise control over his property, by the person who for the time being is authorized by law to exercise control over that property.

(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 vote in respect of a unit, the Court—

- (a) shall in cases when a unanimous resolution is required by this Act; and
- (b) may, in its discretion, in any other case,

appoint the Public Trustee or such other person as the Court determines for the purpose of exercising the powers of voting under this Act and the by-laws.

(3) On making an appointment under this section, the Court may make any order it considers necessary or expedient to give effect to the appointment.

26. Board of management

(1) A Corporation shall have a board of management that shall be constituted as provided by the by-laws of the Corporation.

(2) A Corporation shall, within fifteen days of a person becoming or ceasing to be a member of the board, file at the land registry a notice in the prescribed form stating the name and address of that person and the day that the person became or ceased to be, as the case may be, a member of the board.

(3) The powers and duties of a Corporation shall, subject to any restriction imposed or direction given at a general meeting, be exercised and performed by the board of the Corporation.

(4) 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 the member had been properly elected or appointed or had properly continued in office.

27. Convening of meetings of the Corporation

When a developer registers a sectional plan, he shall within—

- (a) ninety days from the day that fifty percent of the residential units are sold; or
- (b) one hundred and eight days from the day that the first residential unit is sold,

whichever is sooner, convene a meeting of the Corporation at which a board shall be elected.

28. Annual meeting

(1) The board shall, once every year, convene an annual general meeting of the owners.

(2) An annual general meeting of the owners shall be convened by the board within fifteen months of the conclusion of the immediately preceding annual general meeting.

29. Appointment of institutional manager

(1) The board shall, not more than twenty-eight days after its election, appoint an institutional manager for the management of the units, the movable and immovable property of the Corporation and the common property.

(2) The person appointed as an institutional manager under subsection (1) shall be—

- (a) an accountant registered under the Accountants Act (Cap. 531) who has held a practising certificate for a period of not less than five years or an accountancy firm that has had an office in Kenya for period of not less than five years; or
- (b) a person registered as an estate agent under the Estate Agents Act (Cap. 533); or
- (c) an advocate.

(3) An institutional manager shall perform such functions as may be delegated to him by the Corporation.

(4) Where an institutional manager relinquishes his appointment for whatever reason the board shall appoint another institutional manager within twenty days.

(5) The institutional manager shall—

- (a) be paid such remuneration as may be specified in the by-laws; and
- (b) have such possession and use of the seal of the Corporation as is necessary to carry out his functions under this Act.

(6) A local authority, a judgment creditor of the Corporation for an amount of not less than five thousand shillings or any owner or person having a registered interest in or over the units comprised in a sectional plan may apply to the tribunal for the appointment of a receiver and manager upon such terms as the tribunal may direct.

(7) The tribunal may order any or all of the duties of the Board or the Corporation to be vested in the receiver and manager to the exclusion of the Board or the Corporation.

(8) *Deleted by Act No. 21 of 1990, Sch.*

[Act No. 7 of 1990, Sch, Act No. 21 of 1990, Sch.]

30. By-laws of the Corporation

(1) The Corporation may make by-laws to provide for the control, management and administration of the units, the movable and immovable property of the Corporation and the common property.

(1A) Notwithstanding subsection (1) on first registration the by-laws specified in the regulations shall be the by-laws of the Corporation.

(2) Any by-law may be amended, repealed or replaced by a special resolution.

(3) An amendment, repeal or replacement of a by-law does not take effect until—

- (a) the Corporation has filed a copy of it with the Registrar; and
- (b) the Registrar has made a memorandum of the filing on the sectional plan.

(4) No by-law shall operate to prohibit or restrict the devolution of units or any transfer, lease or other dealing with them or to destroy or modify an easement implied or created by this Act.

(5) The by-laws bind the Corporation and the owners to the same extent as if the by-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 with the Corporation to observe and perform all the provisions of the by-laws.

(6) A by-law made by the Corporation under subsection (1) shall have no force or effect to the extent to which it purports to prohibit or restrict—

- (a) the keeping on a unit of a dog used as a guide by a completely blind owner, occupier or resident of the unit; or
- (b) the use of a dog as a guide on a unit or common property by a completely or partially blind person.

[Act No. 21 of 1990, Sch.]

31. Enforcement of by-laws

(1) If an owner, tenant or other person residing in a residential unit contravenes a by-law, the Corporation may take proceedings in the tribunal to recover from the owner or tenant or both a penalty of not more than twenty-five thousand shillings in respect of that contravention.

(2) In order to succeed in an action under subsection (1) the Corporation shall establish to the satisfaction of the tribunal that—

- (a) the by-law was properly enacted; and
- (b) the by-law was contravened by the owner, tenant or other person residing in the residential unit.

(3) On hearing the matter, the tribunal may—

- (a) give judgment against the defendant in the amount being sued for or any lesser amount as appears proper in the circumstances; or
- (b) dismiss the action and make an award as to costs as appears proper in the circumstances.

(4) A Corporation may not commence an action under this section unless it is authorized by the by-laws to do so.

(5) For the purposes of subsection (2)(a), a copy of a by-law that is certified by the Registrar as being a true copy of the by-law filed at the land registry is *prima facie* proof—

- (a) of the contents of the by-law; and
- (b) that the by-law was properly enacted.

(6) The commencement of an action against a person under this section does not restrict, limit or derogate from a remedy that an owner or the Corporation may have against the person.

(7) In the event of non-compliance with the order of a tribunal, the aggrieved party may apply to the Resident Magistrate's Court to enforce the order of the tribunal.

(8) The tribunal shall make its ruling after a hearing conducted in accordance with the rules of natural justice and there shall be no appeal to any court from a ruling of the tribunal except in respect of an error of law.

[Act No. 21 of 1990, Sch.]

32. Control and management

(1) A Corporation is responsible for the enforcement of its by-laws and the control, management and administration of its movable and immovable property and the common property.

(2) Without restricting the generality of subsection (1), the duties of a Corporation include the following—

- (a) to keep in a state of good and serviceable repair and properly maintain the movable and immovable property of the Corporation and the common property;
- (b) to comply with notices or orders by any local authority or public authority requiring repairs to or work to be done in respect of the parcel.

(3) A Corporation may by a special resolution acquire or dispose of an interest in immovable property.

33. Administrative expenses

(1) In addition to its other powers under this Act, the powers of a Corporation include the power to recover from an owner by an action in debt any sum of money spent by the Corporation—

- (a) pursuant to a by-law; or
- (b) as required by a local authority or other public authority, in respect of the unit or common property that is leased to that owner under section 42.

(2) A contribution levied as provided in subsection (2) of section 20 is due and payable on the passing of a resolution to that effect and in accordance with the terms of the resolution, and may be recovered by an action for 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,

both jointly and severally.

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

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

and, in favour of a person dealing with that owner the certificate is conclusive proof of the matter certified in it.

(4) A Corporation may register a caution against the title to an owner's unit for the amount of a contribution levied on the owner but unpaid by him.

(5) On the registration of the caution under subsection (4) the Corporation has a charge against the unit equal to the unpaid contribution.

(6) A charge under subsection (5) has the same priority from the date of registration of the caution as a charge under the Registered Land Act (Cap. 300).

(7) If the Corporation has registered a caution under this section the Corporation shall, on the payment to it of the amount of the unpaid contribution, withdraw the caution.

(8) The Corporation may delegate any or all of its functions under this section to the institutional manager, and shall provide such assistance as is necessary to the institutional manager to perform such delegated functions.

34. Interest on outstanding account

The Corporation may, if permitted to do so by the by-laws, charge interest at a rate to be set out in the by-laws on any unpaid balance of a contribution owing to it by an owner.

35. Recovery of money

If any interest referred to in section 34 or a deposit referred to in section 51(3) is owing by an owner to a Corporation, the Corporation may, in addition to any rights of recovery that it has in law, recover that amount in the same manner as a contribution under section 33.

36. Recovery of costs

If a Corporation registers a caution against the title to a unit under section 33(4) it may recover from the owner of the unit the cost incurred in preparing and registering the caution and in discharging the caution.

37. Investments

Subject to section 34, a Corporation may invest any funds not immediately required by it only in those investments in which a trustee may invest under the Trustee Act (Cap. 167).

38. Information on request

(1) On the written request of an owner, a purchaser or chargee of a unit the institutional manager shall, within twenty days of receiving that request, provide the person making the request, subject to the payment of such charge as is prescribed in the regulations, with one or more of the following as requested by that person—

- (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 the Corporation;
 - (ii) any unsatisfied judgment or order for which the Corporation is liable; and
 - (iii) a written demand made on the Corporation for an amount in excess of five thousand shillings that, if not met, may result in an action being brought against the Corporation;
- (c) the particulars of or a copy of any subsisting recreational agreement;
- (d) the particulars of or a copy of any subsisting management agreement;
- (e) a copy of the budget, if any, of the Corporation;
- (f) a copy of the financial statement, if any, of the Corporation;
- (g) a copy of the by-laws of the Corporation;
- (h) a copy of any minutes of proceedings of a general meeting of the Corporation or of the board of management.

(2) Where a request is made under subsection (1) and the institutional manager fails to comply with provisions of that subsection the aggrieved person may seek an order that the institutional manager comply with such request.

(3) Where an aggrieved person takes proceedings before a tribunal pursuant to subsection (2), the tribunal shall have power to make an order against the institutional manager that it comply with subsection (1) and the tribunal shall also have power to award a penalty against the institutional manager of a sum not exceeding five hundred shillings per day for each day exceeding twenty days after a request has been properly made under subsection (1).

(4) The tribunal shall make an order—

- (a) pursuant to subsection (2) if it finds non-compliance with subsection (1) proved; or
- (b) dismissing the proceedings,

and in either case may make such award as to costs as seems appropriate in the circumstances.

(5) The tribunal shall make its order under subsection (4) after a hearing conducted in accordance with the rules of natural justice and there shall be no appeal to any court from a decision of the tribunal except in respect of an error of law.

[Act No. 7 of 1990, Sch.]

39. Documents required

(1) The owner of the land at the time a sectional plan is registered shall provide to the Corporation without charge not later than one hundred and eighty days from the day the sectional plan is registered the original or a copy of the following documents—

- (a) all warranties and guarantees on the movable and immovable property of the Corporation and the common property for which the Corporation is responsible;
- (b) the—
 - (i) structural, electrical, mechanical and architectural working drawings and specification; and
 - (ii) as built drawings,

which exist for the common property for which the Corporation is responsible;

- (c) the plans that exist showing the location of underground utility services and sewer pipes;
- (d) all written agreements to which the Corporation is a party;
- (e) all certificates, approvals and permits issued by a local authority, the Government or an agent of the Government which relate to any property for which the Corporation is responsible.

(2) A Corporation may at any time before it receives a document under subsection (1) make a written request to the owner of the land referred to in subsection (1) for a copy of that document and that person shall, within twenty days receiving that request, provide to the Corporation without charge a copy of that document if the document is in the possession of that person.

40. Insurance

(1) Where a sectional plan has not been registered prior to the sale of any units the developer—

- (a) shall place insurance on the units and the common property against—
 - (i) loss resulting from destruction or damage caused by fire and such other perils as are specified in the by-laws; and
 - (ii) damages awarded against the developer, the owner of a unit or the Corporation in an action for occupier's liability; and
- (b) may place insurance on the units and the common property or either of them against additional perils other than those specified in the Act or the by-laws,

and for that purpose the developer has an insurable interest in the units and the common property.

(2) Upon the registration of the sectional plan, the insurable interest in the units and the common property passes to the Corporation, and if no insurance on the units and common property has been effected under subsection (1), the Corporation—

- (a) shall place insurance on the units and the common property against—
 - (i) loss resulting from destruction or damage caused by fire and such other perils as are specified in the by-laws; and
 - (ii) damages awarded against the owner of a unit or the body corporate in an action for occupier's liability; and
- (b) may place insurance on the units and the common property or either of them against additional perils other than those specified in the Act or the by-laws.

(3) A Corporation shall, subject to subsection (4), maintain such insurance on the units and common property as has been placed under subsection (1) or (2).

(4) Upon the appointment of an institutional manager as provided under this Act, the duty to maintain insurance under the terms of subsection (3) devolves upon the institutional manager.

(5) In complying with subsection (1) or (2) the developer or Corporation, as the case may be, must place insurance which provides that upon—

- (a) the insured property being destroyed or damaged; and
- (b) that property being replaced or repaired,

no deduction shall be made from the settlement for depreciation of the property.

(6) Where insurance has been placed under subsection (1)(b) or (2)(b), such insurance may be continued by the Corporation unless it is prohibited from doing so by a resolution passed at a properly convened meeting of the Corporation.

(7) Any payment by an insurer under a policy of insurance for 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 by-laws or, where the by-laws do not designate an insurance trustee, to the Corporation; and

- (b) be used forthwith, subject to sections 54(3)(a) and 55(4) for the repair or replacement of the insured property which was destroyed or damaged.

(8) Notwithstanding the Insurance Act (Cap. 487) or any other policy of insurance, where insurance is placed by both a developer or a body corporate, and an owner against the loss resulting from destruction of or damage to the units or the common property—

- (a) the insurance placed by the developer or the body corporate is deemed to be first loss insurance; and
- (b) the insurance placed by the owner of the unit in respect of the same property which is insured by the developer or the Corporation is deemed to be excess insurance.

41. Copies of insurance policies

A Corporation or an institutional manager, where such a person has been appointed, shall, within twenty days of receiving a request in writing from an owner or a person authorized in writing by an owner or the chargee of a unit, provide to the person making the request, subject to the payment of such charge as is prescribed in the by-laws, copies of the policies of insurance placed by the developer or the Corporation.

[Act No. 21 of 1990, Sch.]

42. Disposition of common property

(1) By a unanimous resolution a Corporation may be directed to transfer or lease the common property or any part of it or may grant an easement on the whole or part of the common property.

(2) No part of the common property may be transferred or leased, where such part of the common property is used for personal access to one or more units.

(3) Where the board of management is satisfied that the unanimous resolution was properly passed and that all persons having registered interests in the parcel and all other persons having interests, other than statutory interests, notified to the Corporation—

- (a) have, in the case of either a transfer or a lease, consented in writing to the release of those interests in respect of the land comprised in the proposed transfer; or
- (b) have, in the case of a lease, approved in writing of the execution of the proposed lease,

the Corporation shall execute the appropriate transfer or lease.

(4) A transfer or lease executed in accordance with subsection (3) is valid and effective without execution by any person having an interest in the common property and the receipt of the Corporation of the purchase money, rent, premiums or other money payable to the Corporation under the terms of the transfer or lease is a sufficient discharge of and exonerates the persons taking under the transfer or the lease from any responsibility for the application of the money expressed to have been so received.

(5) The Registrar shall not register a transfer or lease authorized under this section unless it has endorsed on it, or is accompanied by a certificate under the seal of the Corporation stating—

- (a) that the unanimous resolution was properly passed;
- (b) that the transfer or lease conforms with the terms of it; and
- (c) that all necessary consents were given.

(6) The certificate referred to in subsection (4) is—

- (a) in favour of a purchaser or lessee of the common property, or party to it; and
- (b) in favour of the Registrar,

conclusive proof of the facts stated in the certificate.

(7) On the filing for registration of a transfer of common property, the Registrar shall register the same in the manner prescribed in the regulations.

(8) On the filing for registration of a lease of common property, the Registrar shall register the lease in the manner prescribed by the regulations.

[Act No. 21 of 1990, Sch.]

43. Exclusive use areas

Notwithstanding section 42, a Corporation may, if its by-laws permit it to do so, grant a lease to an owner of a residential unit permitting that owner to exercise exclusive possession in respect of an area or areas of the common property.

44. Covenants benefiting parcel

By a unanimous resolution a Corporation may be directed to accept on behalf of the owners a grant of easement or a restrictive covenant benefiting the parcel.

45. Procedure for granting restrictive covenants

(1) By a unanimous resolution a Corporation may be directed to execute on behalf of the owners a grant of easement or a restrictive covenant burdening the parcel.

(2) When the board is satisfied that the unanimous resolution was properly passed and that—

- (a) all persons having interests in the parcel; and
- (b) all other persons having interests, other than statutory interests, that have been notified to the Corporation,

have consented in writing to the release of those interests in respect of the land comprised in the proposed disposition, the Corporation shall execute the appropriate instrument to grant the easement or covenant.

(3) An instrument granting an easement or covenant executed in accordance with subsection (2) is valid and effective without execution by any person having an interest in the parcel, and the receipt of the Corporation is a sufficient discharge of and exonerates all persons taking under the instrument from any responsibility for the application of the money expressed to have been so received.

(4) The Registrar shall not register an instrument granting an easement or covenant authorized under this section unless it has endorsed on it, or is accompanied by, a certificate under the seal of the Corporation stating that the unanimous resolution was properly passed and that all necessary consents were given.

(5) The certificate referred to in subsection (4) is—

- (a) in favour of a person dealing with the Corporation under this section; and
- (b) in favour of the Registrar,

conclusive proof of the facts stated in the certificate.

(6) The Registrar shall register the instrument granting the easement or covenant by noting it on the sectional plan in the manner prescribed by the regulations.

PART IV – PROVISIONS RELATING TO RESIDENTIAL UNITS

46. Sale of residential unit

(1) A developer shall not sell or agree to sell a unit or proposed unit unless he has delivered to a purchaser a copy of—

- (a) the purchase agreement;
- (b) the by-laws or proposed by-laws;
- (c) any management agreement or proposed management agreement;
- (d) any recreational agreement or proposed recreational agreement;
- (e) the lease of the parcel, if the parcel on which the unit is located is held under a lease and the certificate of sectional property in respect of the unit or proposed unit which has been or will be issued under section 5(1)(c);
- (f) any charge that affects or proposed charge that will affect the title to the unit or proposed unit or, in respect of that charge or proposed charge a notice prescribed under subsection (2); and
- (g) the sectional plan or proposed sectional plan.

(2) A developer shall deliver to the purchaser in respect of a charge or proposed charge a written notice stating—

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

(3) Subject to subsection (4), a purchaser of a unit under this section may, without incurring any liability for doing so, rescind the purchase agreement within ten days from the date the purchase agreement was executed by the parties to it.

(4) A purchaser may not rescind the purchase agreement under subsection (3) if all the documents required to be delivered to the purchaser under subsection (2) have been delivered to the purchaser not less than ten days prior to the execution of the purchase agreement by the parties to it.

(5) If a purchase agreement is rescinded under subsection (3) the developer shall, within ten days from his receipt of a written notice by the purchaser of the rescission, return to the purchaser all of the money paid in respect of the purchase of the unit.

47. Contents of purchase agreement

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

- (a) a notification that is at least as prominent as the rest of the contents of the purchase agreement and that is printed in red ink on the outside front cover or on the first page of the purchase agreement stating as follows—

“The purchaser may, without incurring any liability for doing so, rescind this agreement within ten days of its execution by the parties to it unless all of the documents required to be delivered to the purchaser under section 46 of the Sectional Properties Act, 1987 have been delivered to the purchaser not less than ten days prior to the execution of this agreement by the parties to it.”;

- (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 person residing in the residential units;
 - (iii) the equipment to be used for the maintenance of the common property;
 - (iv) the location of roadways, walkway, fences, parking areas and recreational facilities;
 - (v) the landscaping; and
 - (vi) the exterior finishing of the building as it will exist when the developer has fulfilled his obligations under the purchase agreements;
- (c) the amount or estimated amount of the monthly unit contributions in respect of a residential unit; and
- (d) the unit factor of the unit and the basis of unit factor apportionment for all units comprised in the sectional plan.

48. Payment held in trust

(1) A developer or a person acting on his behalf shall hold in trust all the money paid by a purchaser under a purchase agreement other than rents, security deposits or mortgage advances; and—

- (a) if the improvements to the unit and the common property are substantially completed, the money may be paid to the developer on delivery of the title documents to the purchaser; or

- (b) if the improvements to the unit are substantially completed but the improvements to the common property are not substantially completed—
- (i) not more than fifty percent of that money less the interest earned on it may be paid to the developer on delivery of the title document to the purchaser; 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) The developer or a person acting on his behalf who receives money that is to be held in trust under subsection (1) shall forthwith deposit the money into an interest earning trust account maintained in a bank or financial institution licensed under the Banking Act (Cap. 488).

(3) If money is being held in trust under subsection (1) and the purchaser of the unit takes possession of or occupies the unit prior to receiving the title document, the interest earned on that money from the day the purchaser takes possession or occupies the unit to the day he receives the title document shall be applied against the purchase price of the unit.

(4) Subject to section (3), the developer is entitled to the interest earned on money held in trust under this section.

(5) For the purposes of this section, improvements to the 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.

(6) This section does not apply in respect of money paid to a developer or to a person acting on behalf of a developer, under a purchase agreement, if that money is held under the provisions of a plan, agreement, scheme or arrangement approved by the Minister that provides for the receipt, handling and disbursing of all or a portion of that money or indemnities against loss of all or a portion of that money or both.

(7) The provisions of this section shall not apply if the purchaser does not perform his obligations under the purchase agreement.

49. Limit on security deposit

If a purchaser of a unit prior to 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.

50. Management agreements

(1) 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 while the majority of units were owned by a developer.

(2) Subject to subsection (3), a Corporation may, notwithstanding anything contained in a developer's management agreement or a collateral agreement,

terminate a developer's management agreement at any time after its board is comprised of persons who were elected to the board after the majority of the units were owned by persons other than a developer.

(3) A developer's management agreement—

- (a) may not be terminated under subsection (2) without cause until two years have elapsed from the day that the agreement was entered into, except when the agreement permits termination at an earlier date; and
- (b) may only be terminated under subsection (2) on the Corporation giving sixty days' written notice to the other party to the agreement of its intention to terminate the agreement, and the Corporation is not liable to the other party to the agreement by reason only of the agreement being terminated under this section.

51. Rental of residential units

(1) An owner of a residential unit shall not rent his unit until he has given written notice to the Corporation of his intention to rent the unit, setting forth—

- (a) the address at which he may be served with a notice given by the Corporation under section 52 or an order referred to in section 53; and
- (b) the amount of rent to be charged for the unit.

(2) If the owner of a residential unit rents his unit it shall be a condition of that tenancy, notwithstanding anything in the tenancy agreement, that the persons residing in that unit shall not—

- (a) cause damage to the movable or immovable property of the Corporation or the common property; or
- (b) contravene the by-laws.

(3) The Corporation may require an owner who rents 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 the movable and immovable property of the Corporation or of the 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 42 that is damaged, destroyed, lost or removed, as the case may be, by a person residing in the rented unit.

(4) A deposit referred to in subsection (3) shall not exceed one month's rent charged for the unit.

(5) The owner of a residential unit shall give the Corporation written notice of the name of the tenant residing in the unit within twenty days from the commencement of the tenancy.

(6) Within twenty days of ceasing to rent his residential unit, the owner shall give the Corporation written notice that his unit is no longer rented.

(7) A Corporation shall, within twenty days of receiving a written notice under subsection (6)—

- (a) return the deposit to the owner;
- (b) if the Corporation has made use of the deposit for one or more of the purposes referred to under subsection (3), deliver to the owner—
 - (i) a statement of account showing the amount used; and
 - (ii) the balance of the deposit not used, if any; or
- (c) if the Corporation is entitled to make use of the deposit, deliver to the owner an estimated statement of account showing the amount it intends to use and, within sixty days after delivering to the owner the estimated statement of account, deliver to the owner—
 - (i) a final statement of account showing the amount used; and
 - (ii) the balance of the deposit not used, if any.

52. Notice to give up possession

(1) The Corporation may give a tenant renting a residential unit a notice to give up possession of that unit, if a person residing in that unit—

- (a) causes damage, other than normal wear and tear, to the movable or immovable property of the Corporation or to the common property; or
- (b) contravenes a by-law.

(2) When the Corporation gives a tenant a notice under subsection (1)—

- (a) the tenant shall give up possession of the residential unit; and
- (b) notwithstanding the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (Cap. 301) and the Rent Restriction Act (Cap. 296) or anything contained 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 subsection (1) shall be served on the tenant and his landlord.

53. Application for order to give up possession

(1) If a tenant is given notice under section 52(1) and does not give up possession, the Corporation or the landlord, as the case may be, may take proceedings before a tribunal for an order requiring the tenant to give up possession of the residential unit.

(2) The application to the tribunal under subsection (1) shall be supported by an affidavit—

- (a) indicating service of the notice under section 52 to give up possession;
- (b) stating the reasons for giving the tenant a notice to give up possession;

- (c) stating the failure of the tenant to give up possession and the reasons given, if any, for that failure; and
- (d) stating any other relevant facts.

(3) On hearing an application made under this section the tribunal may order the tenant to give up possession of the residential unit by a date specified in the order and may make any other order that it considers proper in the circumstances.

(4) If the Corporation is granted an order under subsection (3), it shall serve a copy of that order on the landlord.

(5) In the event of non-compliance with the order of a tribunal, the aggrieved party may apply to the Resident Magistrate's Court for the enforcement of the order of the tribunal.

(6) The tribunal shall make its ruling after a hearing conducted in accordance with rules of natural justice and there shall be no appeal to any court from a ruling of the tribunal except in respect of an error of law.

PART V – MISCELLANEOUS PROVISIONS

54. Damage to building, etc.

(1) If a building is damaged but the sectional status is not terminated pursuant to section 55 or 56 an application to settle a scheme under subsection (2) may be made to the Court by the Corporation, an owner, a registered chargee of a unit or a purchaser under an agreement for sale of a unit.

(2) On an application under this section the Court may by order settle a scheme including provisions—

- (a) for the reinstatement in whole or in part of the building; or
- (b) for the transfer of the interests of owners of units that have been wholly or partially destroyed to the other owners in proportion to their unit factors.

(3) In the exercise of its powers under subsection (2) the Court may make such orders as it considers necessary or expedient for giving effect to the scheme, including orders—

- (a) directing the application of insurance money received by the Corporation in respect of damage to the building;
- (b) directing payment of money by the Corporation or by the owners or by one or more of them;
- (c) directing such amendment of the sectional plan as the Court thinks fit, so as to include in the common property any accretion to it; and
- (d) imposing any terms and conditions it thinks fit.

(4) On an application to the Court under this section an insurer who has effected insurance on the building or any part of it, being insurance against destruction of units or damage to the building, has the right to appear in person or by agent or an advocate.

55. Termination of sectional property

(1) The sectional status of a building may be terminated by a unanimous resolution.

(2) An application to terminate the sectional status of a building may be made to the Court by the Corporation, an owner, a registered chargee of a unit or a purchaser under an agreement for sale of a unit.

(3) On an application under this section, if the Court is satisfied that having regard to the rights and interests of the owners as a whole or the registered chargee or purchaser under agreement for sale of units, it is just and equitable that the sectional status of the building should be terminated, the Court may make a declaration to that effect.

(4) When a declaration has been made pursuant to subsection (3) the Court may by order impose any conditions and give any directions, including directions for the payment of money, that it thinks fit for the purpose of adjusting as between the Corporation and the owners and as amongst the owners themselves the effect of the declaration.

(5) On an application to the Court under this section an insurer who has effected insurance on the building or a part of it, being insurance against destruction of units or damage to the building, has the right to appear in person or by agent or by an advocate.

56. Effect of termination of sectional property

(1) On the sectional status of the building being terminated under section 55, the Corporation shall forthwith file with the Registrar a notice of the termination in the prescribed form.

(2) On the receipt of a notice referred to in subsection (1) the Registrar shall make a notification in respect of the notice on the sectional plan in the manner prescribed by the regulations and on the notification being made, the owners of the units in the plan are entitled to the parcel as tenants in common in shares proportional to the unit factors of their respective units.

57. Sale of property

(1) When the sectional status of a building is being terminated the Corporation may be directed, by a unanimous resolution, to transfer the parcel or any part of it.

(2) When the board is satisfied that the unanimous resolution was properly passed and that—

- (a) all persons having registered interests in the parcel; and
- (b) all other persons having interests, other than statutory interests, which have been notified to the Corporation,

have consented in writing to the release of the interests in respect of the land comprised in the proposed disposition, the Corporation shall execute the appropriate transfer.

(3) A transfer executed pursuant to subsection (2) is valid and effective without execution by any person having an interest in the parcel and the receipt

of the Corporation is sufficient discharge of and exonerates the person taking under the transfer from any responsibility for the application of the money expressed to have been received.

(4) The Registrar shall not register a transfer executed pursuant to this section—

- (a) unless the transfer has endorsed on it or is accompanied by a certificate under the seal of the Corporation that the unanimous resolution was properly passed and that all necessary consents were given; and
- (b) until the notification required by section 56 has been made on the sectional plan.

(5) A certificate issued pursuant to subsection (4) is—

- (a) in favour of a purchaser of the parcel; and
- (b) in favour of the Registrar,

conclusive proof of the facts stated in the certificate.

(6) When land is transferred by a Corporation pursuant to this section, the Registrar—

- (a) shall close the registers relating to the units and reopen the register closed under section 5(1); and
- (b) shall register the transfer.

58. Dissolution of Corporation

(1) The Court, on an application by the Corporation, a member of the Corporation, or an institutional manager, may by order provide for the winding up of the affairs of a Corporation.

(2) By the same or subsequent order the Court may declare the Corporation dissolved on a date specified in the order.

59. Copies of sectional plan to assessing authority

(1) A Corporation shall, within twenty eight days after the registration of a sectional plan or an amendment to it, furnish to the rating authority two copies of the sectional plan or an amendment to it including all endorsements on it, certified as prescribed by the regulations.

(2) For all purposes in relation to the making, levying, imposition, assessment or recovery of rates, charges or taxes in relation to the parcel or a part of it—

- (a) the particulars shown on the certified copy of the sectional plan or any amendment to it furnished pursuant to subsection (1) are conclusive proof of those particulars; and
- (b) the production by an assessing authority of what purports to be a certified copy of a sectional plan or an amendment to it furnished pursuant to subsection (1) is *prima facie* proof that it is certified copy so furnished.

(3) For the purpose of this section “**rating authority**” has the meaning assigned to it under the Rating Act (Cap. 267).

60. Assessment and taxation

For the purpose of assessment of rates by a rating authority—

- (a) each unit and the share in the common property appurtenant to it constitutes a separate parcel of land and improvements; and
- (b) the common property does not constitute a separate parcel of land or improvements.

61. Liability of Corporation

The Corporation is not liable in relation to the parcel for any rate, charge or tax levied by a rating authority.

62. Petition to Court

(1) Unless otherwise provided for in this Act or the regulations, an application to the Court under this Act shall be by petition.

(2) On an application, notice shall be served on the persons whom the Court directs.

(3) Notwithstanding subsection (2) the Court may dispense with notice.

(4) The Court may direct the trial of an issue and may give any directions as to all matters, including filing of pleadings, that appear necessary and proper for the final hearing of the application.

(5) The Court may from time to time vary any order made by it under this Act.

63. Right of entry

When a local authority, public authority or person authorized by either of them has a statutory right to enter on any part of a parcel, the authority or person is entitled to enter on any other part of the parcel to the extent necessary or expedient to enable it or him to exercise its or his statutory powers.

64. Service of documents and notices

(1) A document including any written notice or request may be served on a Corporation—

- (a) by leaving it at or by sending it by registered post—
 - (i) if a change of address for service has not been filed under section 66(2), to the address shown on the sectional plan; or
 - (ii) if a change of address for service has been filed under section 66(2), to the address for service shown on the latest notice filed; or
- (b) by personal service on a member of the board.

(2) For the purposes of this section, “**document**” includes a summons, notice, tax notice, order and other legal process.

65. Service of notices

(1) A Corporation may serve on a landlord a notice given under section 52(3) or an order referred to in section 53(4)—

- (a) by personal service; or

(b) by registered post sent to the address given to the Corporation under section 50.

(2) A Corporation may serve on a tenant a notice given under section 52(1) or an order referred to in section 53(3)—

(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 is residing with the tenant;

(ii) by posting it up in a conspicuous place on some part of the premises; or

(iii) by sending it by registered post to the tenant at the address where he resides.

66. Change of address for service

(1) A Corporation may by resolution of the board change its address for service.

(2) A change in the address for service under subsection (1) does not take effect until a notice of that change of address is filed in the prescribed form at the land registry.

67. Fees for documents

The Corporation may charge a reasonable fee to compensate it for the expenses it incurs in producing and providing a document required under this Act.

68. Writ of execution

If a judgment is obtained against a Corporation, a writ of execution in respect of it may be registered against the sectional plan.

69. Offences and penalty

(1) A person who fails to comply with section 13(1) or 46 is guilty of an offence and liable to a fine not exceeding twenty thousand shillings.

(2) Subject to subsection (1) a person who fails to comply with this Act is guilty of an offence and liable to a fine not exceeding fifty thousand shillings.

(3) If a Corporation fails to comply with this Act, each member of the board who is knowingly a party to that failure is guilty of an offence and liable to a fine not exceeding fifty thousand shillings.

70. Waiver, release, etc.

(1) This Act applies notwithstanding any agreement to the contrary and any waiver or release given of the rights, benefits or protections provided by or under this Act 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 at law.

(3) A purchase agreement may be enforced by a purchaser notwithstanding that the developer failed to comply with this Act.

71. Regulations

The Minister may make regulations—

- (a) in respect of forms to be used for the purposes of this Act including the form of certificates of title to units;
 - (b) respecting the manner of registering sectional plans;
 - (c) prescribing the fees to be paid for any procedure or function required or permitted to be done under this Act;
 - (d) respecting the practice and procedure governing application to the Court under this Act;
 - (e) concerning all matters that by this Act are required or be permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.
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